

Rule determination

National Electricity Amendment (Bringing early works forward to improve transmission planning) Rule 2024

Proponent

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About the AEMC

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

Acknowledgement of Country

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Summary

- 1 The Commission (AEMC) has decided to make a more preferable final rule (final rule) in response to a rule change request submitted by The Honourable Chris Bowen MP, Minister for Climate Change and Energy. The rule change request proposes to improve cost recovery arrangements for early works for actionable projects in the Australian Energy Market Operator's (AEMO's) Integrated System Plan (ISP).
- 2 Our final rule improves cost recovery certainty and thereby encourages Transmission Network Service Providers (TNSPs) to undertake early works to a greater extent and at an earlier stage.
- 3 Early works describe activities such as (but not limited to) stakeholder engagement, corridor assessment, procurement of equipment and assets with long lead times, preparation of jurisdictional planning approvals and easement acquisition.
- 4 Improved transmission planning through early works mitigates the risk of project delays and later cost increases and thus provides benefits for consumers.

The final rule supports better upfront transmission planning to minimise the risk of project delays and future cost increases

- 5 Improving cost recovery certainty for TNSPs provides an incentive to undertake early works concurrently with the Regulatory Investment Test for Transmission (RIT-T). This allows TNSPs to better consider social, cultural, heritage and environmental factors when developing and assessing credible options as part of the RIT-T. These factors have the potential to significantly impact project costs and timeframes.
- 6 The final rule encourages more and earlier planning activities by:
 - **Enabling a TNSP to submit an early works contingent project application (CPA)** without needing to first complete a RIT-T and pass AEMO's feedback loop assessment.
 - **Introducing in the NER a definition of early works** to guide the AER's assessment and TNSPs' preparation of an early works CPA and protect consumers against inefficient expenditure.
 - **Clarifying that AEMO can specify, in the ISP, examples of early works** (and preparatory activities) for actionable ISP projects.
- 7 Further, consistent with the draft rule, the final rule amends the NER to delay the AEMC's ISP review by two years to allow better alignment with the recommendations resulting from the Energy and Climate Change Ministerial Council's (ECCMC) review of the ISP and allow for current reforms to settle. Under the final rule, the AEMC will need to complete its ISP review by 1 July 2027.

Stakeholder feedback has shaped our final rule on early works

- 8 The majority of stakeholders supports the overall intent of the rule change. However, stakeholders requested the Commission examine amendments to the following aspects of the draft rule:
 - **NER principles to provide guidance to the AER when assessing and TNSPs when preparing an early works CPA**
 - **treatment of already incurred early works costs in a RIT-T and feedback loop**
 - **threshold for submitting an early works CPA.**

We have made changes between the draft and the final rule in response to stakeholder feedback and based on further analysis

9 We have considered stakeholder comments and the Commission has undertaken further analysis in response to the feedback on the draft rule. On this basis, we made the below changes between the draft and final rule. The changes seek to better support the overall policy intent of the rule change — which is to incentivise TNSPs to undertake increased and earlier transmission planning activities through:

- **providing more flexibility to the AER when assessing the efficiency of early works expenditure.** The final rule includes NER principles the AER must have regard to when considering an early works CPA. The principles provide transparency to stakeholders and are sufficiently flexible to allow TNSPs to undertake early works if:
 - they relate to one (or more) option(s) considered in the RIT-T, or
 - the early works can be sold or utilised on a different project.
- **treating incurred early works costs as ‘sunk’ in a RIT-T and feedback loop assessment.** The final rule clarifies that a TNSP should consider incurred early works costs as ‘sunk’ in a RIT-T and likewise AEMO in its feedback loop assessment — to ensure consumers gain the most benefit from decisions already made and costs already incurred. The final rule clarifies that TNSPs have to:
 - include any incurred costs for items that can be re-sold or utilised for other projects in the RIT-T
 - transparently document any early works costs in the RIT-T and CPA to recover the costs for project delivery.
- **lowering the early works CPA threshold.** The final rule supports TNSPs undertaking lower value early works, which is important in the context of smaller ISP projects, whilst maintaining a meaningful distinction between preparatory activities and early works.
- **including transitional rules to support implementation of the final rule.** The final rule includes transitional rules that:
 - provide the AER with 12 months to update and publish their *Cost benefit analysis (CBA) guidelines* and allow any prior consultation to satisfy the rules requirements to update their CBA guidelines.¹
 - allow a TNSP that has commenced preparing a RIT-T Project Assessment Draft Report (PADR) or Project Assessment Conclusion Report (PACR) for an actionable ISP project, to elect application of the final rule.

The final rule contributes to achieving the NEO

10 The Commission has considered the NEO² and the issues raised in the rule change request and assessed the final rule against three assessment criteria: outcomes for consumers, principles of good regulatory practice and emissions reduction.

11 **Bringing early works forward improves outcomes for consumers by mitigating the risk of greater costs to consumers in the future**

The Commission’s final rule improves cost recovery certainty for efficient and earlier planning

¹ See AER’s draft amendments under: <https://www.aer.gov.au/industry/registers/resources/reviews/2024-review-cost-benefit-analysis-and-regulatory-investment-test-guidelines>.

² Section 7 of the NEL.

activities. Incurring greater costs of planning earlier in the process will significantly benefit consumers by avoiding greater costs to consumers in the future. To incentivise TNSPs to undertake better upfront transmission planning, our final rule:

- improves cost recovery certainty for TNSPs for early works by introducing the concept of an early works CPA
- specifies NER principles that provide more flexibility to the AER when assessing the efficiency of early works expenditure and TNSPs when including early works activities in their early works CPA
- clarifies the treatment of incurred early works costs in a RIT-T and feedback loop assessment to ensure that consumers gain the most benefit from costs that have already been incurred based on decisions already made
- lowers the early works CPA threshold to support TNSPs in undertaking lower value early works activities whilst not setting the threshold too low, to maintain a meaningful distinction between early works and preparatory activities.

12 **The new NER arrangements for early works improve simplicity, consistency and transparency for stakeholders**

Our final rule provides a simple process for cost recovery for early works by allowing TNSPs to submit an early works CPA prior to completion of the RIT-T and without requiring AEMO to undertake a feedback loop assessment. It further provides better information and improved transparency for stakeholders, assisting TNSPs with preparing and the AER with assessing an early works CPA. It does this by:

- introducing a NER definition of early works to guide the AER's assessment of an early works CPA, provide guidance to TNSPs and protect consumers from inefficient expenditure
- embedding a set of principles into the NER that the AER must have regard to when assessing whether to approve the costs of early works
- clarifying in the NER that AEMO, in the ISP, can specify examples of early works (and preparatory activities) for actionable ISP projects to assist TNSPs with preparing an early works CPA, and the AER when assessing the early works costs in an early works CPA
- clarifying in the NER that TNSPs are to exclude any incurred costs from a RIT-T, but
 - TNSPs are to include any incurred costs for early works that can be re-sold or utilised for other projects in the RIT-T
 - transparently document any early works costs in the RIT-T and any subsequent CPA.

13 **Supporting emissions reduction through more timely delivery of actionable ISP projects**

The final rule supports more timely delivery of transmission infrastructure. Timely delivery of transmission is an essential enabler of economy-wide emissions reduction. More and earlier planning activities will reduce the risk of transmission delays, supporting timely connection of the additional wind and solar generation required for the transition to net zero.

The final rule commences on 5 September 2024

- 14 The new arrangements for early works come into effect immediately. The final rule includes a transitional rule that allows a TNSP to elect application of the final rule to an ISP project for which the TNSP has already commenced either stage of the RIT-T in terms of preparing the PADR or PACR.

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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 MP, Minister for Climate Change and Energy, about bringing early works forward to improve transmission planning.

1.1 Our final rule incentivises TNSPs to undertake more and earlier planning activities

Consistent with our draft rule, our final rule provides greater cost recovery certainty for early works and thereby encourages Transmission Network Service Providers (TNSPs) to efficiently undertake more planning activities earlier in the economic assessment process by:

- **Enabling a TNSP to submit an early works contingent project application (CPA)** without needing to first complete a regulatory investment test for transmission (RIT-T) and pass AEMO's feedback loop assessment. This provides TNSPs with earlier cost recovery certainty and an incentive to undertake early works concurrently with the RIT-T.
- **Introducing in the NER a definition of early works** to guide the AER's assessment and TNSPs' preparation of an early works CPA and protect consumers against inefficient expenditure.
- **Clarifying that AEMO can specify, in the ISP, examples of early works** (and preparatory activities) for actionable ISP projects.

We have made the following changes between the draft and final rule in line with the overall policy intent of the rule change — which is to incentivise TNSPs to undertake increased and earlier transmission planning activities:

- **Providing more flexibility to the AER when assessing the efficiency of early works expenditure.** The final rule includes NER principles the AER must have regard to when considering an early works CPA. The principles provide transparency to stakeholders and are sufficiently flexible to allow TNSPs to undertake early works if they relate to one (or more) option(s) considered in the RIT-T, or if the early works can be sold or utilised on a different project.
- **Treating incurred early works costs as 'sunk' in a RIT-T and feedback loop assessment.** But TNSPs have to 1) include any costs for early works that can be re-sold or utilised for other projects in the RIT-T, and 2) transparently document any early works costs in the RIT-T and subsequent CPA to recover the costs for project delivery. Excluding incurred costs in the RIT-T ensures that consumers gain the most benefit from costs that have already been incurred based on decisions already made. This approach to the consideration of 'sunk' costs in a cost-benefit analysis ensures consumers do not pay more than necessary. The final rule also:
 - clarifies that the changes to the application of the RIT-T (in respect of the treatment of incurred early works costs) also apply to AEMO Victorian Planning.
 - provides the AER with 12 months to update and publish its *Cost benefit analysis (CBA) guidelines* in line with the early works amendments and allow prior consultation, in anticipation of the amending rule, to satisfy the consultation requirements to update the guidelines.
- **Lowering the early works CPA threshold.** The final rule supports TNSPs undertaking lower value early works, which is important in the context of smaller ISP projects, whilst maintaining a meaningful distinction between preparatory activities and early works.

- **Specifies an immediate commencement date (5 September 2024)** and includes a transitional rule that allows a TNSP to elect application of the final rule to an ISP project for which the TNSP has already commenced either stage of the RIT-T in terms of preparing the Project Assessment Draft Report (PADR) or Project Assessment Conclusions Report (PACR).

We also note that, consistent with the draft rule, the final rule amends the NER to delay the AEMC's ISP review by two years to allow better alignment with the Energy and Climate Change Ministerial Council's (ECMC) review of the ISP and allow for current reforms to settle. The AEMC will need to complete its ISP review by 1 July 2027.

These changes are discussed further in chapter 3

1.2 Stakeholder views shaped our final rule

The majority of stakeholders supported the overall intent of the rule change. Stakeholders acknowledged that incurring greater planning costs earlier in the economic assessment process will significantly benefit consumers by avoiding greater costs due to the increased risk of project delays and later consideration of key impacting factors.³

However, stakeholders requested the Commission examine amendments to the following aspects of the draft rule:

- principles in the NER where a TNSP undertakes early works concurrently with the RIT-T
- the treatment of already incurred early works costs in a RIT-T
- threshold for submitting an early works CPA
- mechanism for the transfer of early works costs if the early works are used on another project
- delay of the AEMC's ISP review.

1.2.1 NER principles to guide early works activities occurring concurrently with the RIT-T

The draft rule introduced NER principles to mitigate the risks for consumers of a TNSP undertaking early works concurrently with the RIT-T. The principles sought to;

- mitigate the risk of restricting option comparison through early works unreasonably favouring one credible option or set of credible options over others, and
- protect consumers and ensuring they are not paying more than necessary.

AEMO, DCCEEW, ENA, and Transgrid considered the draft principles unnecessarily restrict the types of early works a TNSP could undertake, including detailed stakeholder engagement on specific options, corridor assessment, early procurement, planning approvals and easement acquisition.⁴ A key theme from the views expressed by these stakeholders was that a more flexible set of principles would provide a more practical and appropriate approach for assessing early works activities in a CPA lodged prior to RIT-T completion.

In contrast, EUAA and JEC (formerly PIAC) and the CEFC were supportive of the principles' intent, however they did not consider they go far enough to protect consumers from the risks associated with an early works CPA. They recommended including further guidance in the rules to protect consumers.⁵

In considering stakeholder feedback, the Commission has had regard to the overall policy intent of this rule change. The Commission considers that amending the principles and making them more

3 Submissions to the draft determination, AER, p.1; AEMO, p.1; DCCEEW, p.1; EUAA, p.1; AGL, p.1; CEFC, p.1; ENA, p.1; Transgrid, p.1.

4 Submissions to the draft determination: AEMO, p. 5-6; DCCEEW, p. 1-2; ENA, p. 3-6; Transgrid, p.2-3.

5 Submissions to the draft determination: EUAA, p. 3-4; JEC, p.4; CEFC, p. 2-3.

flexible is important to realise the overall intent of this rule change, which is to incentivise TNSPs to undertake more planning activities to mitigate risk of project delays and later cost increases. Section 3.2.2 provides further details on our rationale for this change between draft and final rule.

1.2.2 The treatment of already incurred early works costs in a RIT-T and feedback loop

The draft determination clarified that when preparing a RIT-T, feedback loop assessment and CPA (to recover the total project costs), a TNSP must reflect the costs approved in any prior early works CPA for the specific actionable ISP project to accurately reflect the total cost of the project.

The AER supported the draft position.⁶ In contrast, AEMO considered that a TNSP should generally exclude any incurred early works costs from a RIT-T and feedback loop, but TNSPs should:

- include any costs for items that can be re-sold or utilised for other projects in the RIT-T
- transparently document any already incurred early works costs in the RIT-T.

AEMO noted that including already incurred costs in the ranking of options runs the risk of consumers paying more than is necessary.⁷

The Commission has considered the impact of both approaches. We have undertaken further analysis and our final determination is to treat already incurred early works costs as sunk in a RIT-T and feedback loop assessment. However, in line with AEMO's proposal, a TNSP in the RIT-T and AEMO in its feedback loop assessment are required to include any costs for items that can be re-sold or utilised for other projects. This final position ensures that consumers would benefit from payments/decisions that have already been made in the past. Including already incurred costs in the ranking of options runs the risk of consumers paying more than is necessary. Further, the proposed approach aligns with how we would generally consider such a question from an economic perspective.

The final rule includes transitional arrangements which provide the AER with 12 months to update and publish its CBA guidelines in line with the final rule and allow prior consultation, in anticipation of the final rule, to satisfy the consultation requirements to update the guideline.

1.2.3 Threshold for submitting an early works CPA

The draft rule specified that an early works CPA must exceed either \$30 million or 5 per cent of the value of the maximum allowed revenue (MAR) for the relevant TNSP for the first year of the relevant regulatory control period whichever is the larger amount. This draft position ensured consistency with the existing CPA threshold.

TNSPs expressed concerns that the threshold was set too high.⁸ ENA considered that the draft threshold risks many beneficial early works activities falling below this threshold. They also noted that a high threshold may introduce incentives for TNSPs to bundle early works activities to meet the threshold, delaying initial early works activities in order to combine them with later activities to meet the threshold.⁹

The Commission understands that the \$30 million threshold may be difficult to meet for some smaller actionable ISP projects. However, we also note that the final rule should provide for a meaningful distinction between preparatory activities and early works. Having further considered

⁶ AER submission to the draft determination, p.3.

⁷ AEMO submission to the draft determination, p. 3-4.

⁸ ENA submission to the draft determination, p.7.

⁹ ENA submission to the draft determination, p.7.

this issue, the final rule lowers the threshold in line with the overall intent of the rule change – to incentivise TNSPs to undertake better and more planning activities at an earlier stage.

Whilst not commenting on the threshold, JEC proposed introducing a ceiling for an early works CPA.¹⁰ Such a ceiling would provide consumers with a safety net in the event that a project that has incurred significant early works costs does not proceed. The Commission acknowledges JEC's concern. However, we do not consider a cap as proposed by JEC is appropriate given the bespoke nature of actionable ISP projects.

1.2.4 A mechanism for the transfer of early works costs if the early works are used on another project.

The draft rule determination did not provide for any mechanism to transfer of early works costs if the early works are used on another project.

The EUAA, CEFC and JEC requested the final rule provides for a mechanism to return costs to consumers if, for example, a TNSP uses equipment procured through an early works CPA for another project or on-sells equipment to another TNSP.¹¹ The CEFC also considered it important that long lead equipment, procured with the aid of consumer support does not provide TNSPs with a competitive advantage under contestable processes.¹²

The Commission acknowledges these risks but considers they are partly addressed by the existing regulatory arrangements (see for further detail section 3.1.2). Further, we consider that the benefits of TNSPs undertaking better and earlier planning – with the aim to improve cost estimate accuracy and the timely delivery of actionable ISP projects – overall outweigh the above described risks to consumers.

1.2.5 Delay of the AEMC's ISP review

The draft determination was to delay the AEMC's ISP review by two years with a 1 July 2027 completion date.

Stakeholders expressed mixed views on delaying the AEMC's ISP review. The AER and AEMO expressed general support for the two year delay.¹³ ENA suggested a further delay until 1 July 2029 to accommodate for learnings from the other reforms to the ISP framework currently in train.

In contrast, consumer groups expressed a preference for the AEMC undertaking a review of the ISP framework in a timely manner. EUAA suggested the AEMC undertake a shorter interim review of the ISP framework in 2025.¹⁴ Similarly, JEC argue that the ISP is not currently fit for purpose and that the coordination and planning needs of the NEM have changed substantially since 2018.¹⁵ Likewise, the Centre for Independent Studies (CIS) noted that the ECMC ISP review did not have a mandate to consider the long-term interests of consumers and that an earlier AEMC review would be beneficial.¹⁶

Based on the timing of current and ongoing reforms we have decided to maintain the draft position in terms of delaying the AEMC ISP review completion date until 1 July 2027. This means that our review of the ISP framework will be able to build on the recent and ongoing changes to the ISP framework, including the recent AEMC rule changes that have emerged from the AEMC's

10 JEC submission to the draft determination, p.3.

11 Submissions to the draft determination: EUAA, p. 3-4; CEFC, p.4; JEC, p.4.

12 CEFC submission to draft determination, p.3.

13 Submissions to the draft determination: AER, p.4; AEMO p.6.

14 EUAA submission to the draft determination, p. 4-5.

15 JEC submission to the draft determination, p. 1-2.

16 CIS submission to the draft determination, p. 6-8.

transmission planning and investment review (TPIR) and the ongoing implementation of the ECMC ISP review recommendations through AEMC rule change processes (with the intent of any changes applying to the 2026 ISP).

1.3 Our final rule complements other reforms to support the delivery of major transmission projects

Transmission is a critical enabler for the transition to net zero, both in the national electricity market (NEM) and for the Australian economy more broadly. This transition will require an unprecedented level of investment in, and build of, transmission infrastructure to deliver power from renewable generation and energy storage to consumers, and to deliver it quickly.

The AEMC's TPIR recommended improvements to the regulatory frameworks for transmission investment and planning to support efficient investment in and timely delivery of major transmission projects. This rule change is a recommendation from TPIR and forms part of a set of reforms that support the efficient delivery of and investment in major transmission projects.¹⁷

Our final rule improves the planning process for actionable ISP projects and complements the work being carried out by other entities to improve transmission investment and planning and more and earlier consideration of social, cultural, heritage and environmental impacts. Other complementary work includes:

- **AEMC ISP rule changes:** The AEMC has commenced the process for three rule changes to amend the National Electricity Rules (NER) and the National Gas Rules (NGR) to enhance the ISP. The rule changes seek to implement the recommendations from the ECMC review of the ISP framework. The rule changes seek to enhance the ISP by expanding its consideration of gas market information,¹⁸ consumer energy resources and other distributed resources,¹⁹ as well as earlier consideration of community sentiment.²⁰
- **Energy Ministers' National Energy Transformation Partnership:** The partnership seeks to identify opportunities to accelerate delivery of priority transmission projects, and progress associated regulatory reforms to ensure they are fit-for-purpose and streamlined.²¹
- **The Australian Energy Infrastructure Commissioner's Community Engagement Review:** At the most recent ECMC meeting on 19 July 2024, Ministers agreed their response to the Australian Energy Infrastructure Commissioner's review. Ministers outlined how all jurisdictions will address the review's recommendations to build and maintain community support for social licence for the clean energy transformation, and increase landholder and community support for energy infrastructure.²²

17 The complementary rule changes that have recently been completed and include the AEMC's *Improving the workability of the feedback loop, Enhancing community engagement in transmission building, Introducing a targeted ex post review for ISP projects, Accommodating financeability in the regulatory framework and Sharing concessional finance benefits with consumers rule changes*.

18 AEMC's Better integrating gas into the ISP (Electricity) rule change, <https://www.aemc.gov.au/rule-changes/better-integrating-gas-isp-electricity>.

19 AEMC's Improving consideration of demand-side factors in the ISP rule change, <https://www.aemc.gov.au/rule-changes/improving-consideration-demand-side-factors-isp>.

20 AEMC's Better integrating community sentiment into the ISP rule change, <https://www.aemc.gov.au/rule-changes/better-integrating-community-sentiment-isp#:~:text=Rule%20Change%3A%20Open&text=On%203%20June%202024%2C%20the,community%20sentiment%20into%20the%20ISP>.

21 National Energy Transformation Partnership <https://www.energy.gov.au/sites/default/files/2022-08/National%20Energy%20Transformation%20Partnership.pdf>.

22 DCCEEW Community Engagement Review, see under: <https://www.dcceew.gov.au/energy/renewable/community-engagement-review>.

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.²³

For this rule change, the relevant energy objective is the NEO. The NEO is:²⁴

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.²⁵

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.²⁶ For this rule change, the Commission has made a more preferable final rule.

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

We have to take into account the revenue and pricing principles when making rules with respect to the regulation of revenues earned, or prices charged, by owners, controllers or operators of transmission systems, for the provision by them of services that are subject of a transmission determination.²⁷

Relevantly, the revenue and pricing principles provide that a regulated network service provider should be provided with a reasonable opportunity to recover at least the efficient costs the operator incurs in complying with a regulatory obligation or requirement, or making a regulatory payment.²⁸

²³ Section 88(1) of the NEL.

²⁴ Section 7 of the NEL.

²⁵ Section 32A(5) of the NEL.

²⁶ Section 91A of the NEL.

²⁷ Items 15 and 17 of Schedule 1 of the NEL.

²⁸ Section 7A of the NEL.

2.2.3 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.

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

2.3 How we have applied the legal framework to our decision

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

- **Outcomes for consumers:** Does the rule improve planning for actionable ISP projects to ensure the best outcomes for consumers - in terms of mitigating the risk for project delays and later cost increases for consumers?
- **Principles of good regulatory practice:** Does the rule promote simplicity of cost recovery arrangements and better information and transparency on what planning activities are beneficial and efficient to undertake? And does it effectively complement other reforms underway?
- **Emissions reduction:** Does the rule support emissions reduction through more timely delivery of transmission infrastructure required to facilitate increased grid connection of renewable energy?

These assessment criteria reflect the key potential impacts – costs and benefits – of the rule change request, for impacts within the scope of the NEO. 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.

2.3.1 Bringing early works forward improves outcomes for consumers by mitigating the risk of greater costs to consumers in the future

The Commission’s final rule improves cost recovery certainty for efficient and earlier planning activities. The final rule seeks to mitigate the risk of:

- project cost increases and delays because of transmission options not accurately reflecting social, cultural, heritage and environmental impacts
- additional later costs to consumers due to supply chain delays and labour supply issues by enabling TNSPs to secure long lead time items earlier in the planning process.

To meet the intent of the rule change, in terms of promoting outcomes for consumers by incentivising TNSPs to undertake better upfront transmission planning, our final rule:

- specifies NER principles that provide more flexibility to the AER when assessing the efficiency of early works expenditure and incentivise TNSPs to undertake early works activities (see section 3.2.2 for further detail)
- clarifies the treatment of incurred early works costs as ‘sunk’ in a RIT-T and feedback loop assessment to ensure that consumers gain the most benefit from costs that have already been incurred based on decisions already made (see section 3.4 for further detail)

- lowers the early works threshold to support TNSPs in undertaking lower value early works activities whilst not setting the threshold too low to maintain a meaningful distinction between early works and preparatory activities (see section 3.1.1 for further detail).

2.3.2 The new arrangements for early works improve simplicity, consistency and transparency for stakeholders

Our final rule provides a simple process for cost recovery for early works by allowing TNSPs to submit an early works CPA prior to completion of the RIT-T and without requiring AEMO to undertake a feedback loop assessment. It further provides better information and improved transparency for stakeholders, assisting TNSPs with preparing and the AER with assessing an early works CPA. It does this by:

- introducing a NER definition of early works to guide the AER's assessment of costs in an early works CPA, providing cost recovery certainty for TNSPs and protecting consumers from inefficient expenditure²⁹ (see section 3.2.1 for further detail on this aspect of the final rule)
- embedding a set of principles into the NER that the AER must have regard to when assessing whether to approve the costs of early works³⁰ (see section 3.2.2 for further detail on this aspect of the final rule)
- clarifying in the NER that AEMO, in the ISP, can specify examples of early works (and preparatory activities) for actionable ISP projects to assist TNSPs with preparing an early works CPA, and the AER when assessing an early works CPA³¹ (see section 3.3 for further detail on this aspect of the rule)
- clarifying in the NER that a TNSP should exclude any incurred costs from a RIT-T and feedback loop, but
 - TNSPs should include any costs for items that can be re-sold or utilised for other projects in the RIT-T,
 - transparently document any early works costs in the RIT-T³² (see section 3.4 for further detail on this aspect of the rule)

Additionally, our final rule delays the AEMC's ISP review by two years.³³ A two-year delay ensures alignment with other reforms from the AEMC's TPIR work program and more broadly with the outcomes of the ECMC ISP Review and the current AEMC rule change processes to implement the ECMC's ISP review recommendations. Given the wide-scale change to the economic assessment process underway, a two-year delay allows the AEMC to embed the current suite of rule changes and then assess in detail how the reforms have performed when considering further reform.

2.3.3 Supporting emissions reduction through more timely delivery of actionable ISP projects

The final rule supports more timely delivery of the transmission infrastructure. Timely delivery of transmission is an essential enabler of economy-wide emissions reduction. More and earlier planning activities would reduce the risk of transmission delays, supporting timely connection of the additional wind and solar generation required for the transition to net zero.

29 See definition of early works in Chapter 10 of the final rule.

30 Clause 6A.8.2(d1) of the final rule.

31 Clause 5.22.6(6)(vii) of the final rule.

32 See clauses 5.16A.7(c) and 5.16A.4(d)(10) of the final rule.

33 Clause 11.126.10 of the final rule.

3 How our rule will operate

The Commission's final determination amends the regulatory framework to encourage TNSPs to efficiently undertake more planning activities earlier in the economic assessment process. The Commission's final rule:

- **enables TNSPs to submit an early works CPA without needing to complete a RIT-T** and pass AEMO's feedback loop assessment. This provides TNSPs with earlier cost recovery certainty and an incentive to undertake early works concurrently with the RIT-T process (section 3.1).
 - To support TNSPs submitting an early works CPA, the final rule **lowers the threshold for submitting an early works CPA** (section 3.1.1).
 - Consistent with the draft rule, the final rule does not provide for an explicit mechanism for the transfer of early works costs if the early works are used on another project (section 3.1.2).
- **Introduces guidance for TNSPs' preparation and the AER's assessment of an early works CPA** by amending the NER to include:
 - a definition of early works (section 3.2.1)
 - amended NER principles that the AER must have regard to when assessing an early works CPA (section 3.2.2).
- **Clarifies that AEMO may specify examples of early works and TNSPs must carry out preparatory activities** (section 3.3).
- **Clarifies the treatment of early works costs in a RIT-T** (section 3.4) by:
 - requiring a TNSP and AEMO to exclude any incurred early works costs that cannot be sold or utilised on another project from a RIT-T and feedback loop assessment (section 3.4.1)
 - including a transitional rule to ensure that any consultation the AER has undertaken in relation to its CBA guidelines update counts towards its consultation obligations under the NER, noting that the AER will need to reflect this aspect of final rule in its final updated CBA guidelines (section 3.4.2)
- **Delays the AEMC's ISP review by two years (completion by 1 July 2027)** to enable alignment with the outcomes of the ECMC ISP Review and allow for these and other reforms recently completed or currently underway to embed (section 3.5).
- **Specifies an immediate commencement date (5 September 2024)** and includes a transitional rule that allows a TNSP to elect application of the final rule to an existing actionable ISP project for which the TNSP has already commenced either stage of the RIT-T, in terms of preparing the PADR or PACR (section 3.6).

3.1 A TNSP can submit an early works CPA prior to completing the RIT-T

Box 1: Final determination – Enabling a TNSP to submit an early works CPA prior to completing the RIT-T and feedback loop and lowering the threshold for an early works CPA

Consistent with our draft determination, the Commission's final determination is to enable a TNSP to submit an early works CPA to the AER without needing to complete a RIT-T and pass AEMO's feedback loop assessment prior to submitting.

The Commission's final determination is to lower the threshold to submit an early works CPA. This is a change between the draft and final rule. The intent of this change is to support TNSPs in

undertaking lower value early works activities whilst maintaining a meaningful distinction between early works and preparatory activities.

Consistent with the draft rule, the final rule does not provide for an explicit mechanism to transfer early works costs if the early works are used on another project. The existing NER arrangements already implicitly provide for a mechanism to remove assets from one TNSP's RAB where not being used to provide services.

The final rule enables TNSPs to commence early works concurrently with the RIT-T, by providing them with cost recovery certainty.

The majority of stakeholders support introducing an early works CPA to encourage TNSPs to undertake more and earlier planning activities to improve cost estimate accuracy and timely delivery of actionable ISP projects.³⁴ The CEFC noted that providing a framework for a TNSP to submit an early works CPA "will allow TNSPs to commence early works earlier and therefore promotes the timely delivery of critical transmission projects that will enable more renewable generation to connect and put downward pressure on electricity prices."³⁵

The Commission notes that, consistent with the draft determination, under the final determination a TNSP *may* submit an early works CPA.³⁶

Introducing an early works CPA aligns with this rule change's assessment criterion of outcomes for consumers and good regulatory practice by:

- undertaking early works concurrently with the RIT-T will improve the information available to TNSPs during the identification and assessment of transmission investment options, thereby supporting better outcomes for consumers through mitigating the risk of project delays and cost increases
- providing stakeholders with predictability and stability in the regulatory framework.

3.1.1 Lowering the threshold for submitting an early works CPA

The final rule lowers the threshold to submit an early works CPA. Under the new threshold, a TNSP may submit an early works CPA if the total cost included in the CPA exceeds either \$30 million or 5 per cent of the value of the maximum allowed revenue (MAR) for the relevant TNSP for the first year of the relevant regulatory control period whichever is the **smaller** amount.³⁷

The final rule thereby introduces different thresholds for an early works CPA and a CPA to recover the cost for project delivery. This aligns with our assessment criteria of outcomes for consumers and principles of good regulatory practice by:

- facilitating TNSPs to also bring early works forward for smaller, i.e. less costly, actionable ISP projects
- promoting predictability and stability in the regulatory framework through maintaining a meaningful distinction between preparatory activities and early works.

34 Submissions to the draft determination: AER, p.1.; AEMO, p.1; DCCEE, p.1; EUAA, p.1; AGL, p.1; CEFC, p.1; ENA, p.1.

35 CEFC submission to the draft determination, p.1.

36 Clause 5.16A.7(b) of the final rule. To streamline the drafting of the final rule and ensure clarity for stakeholders, we have removed draft clause 5.16A.7(c). The draft clause provided that a TNSP is not obliged to submit an early works CPA if it is not prudent to do so. The Commission considers that this is already sufficiently captured in clause 5.16A.7(b) and has decided to streamline the drafting and avoid duplication by removing draft clause 5.16A.7(c).

37 Clause 6A.8.A1(b)(2)(ii) of the final rule.

The lowered early works CPA threshold seeks to incentivise TNSPs to undertake early works, including for lower value actionable ISP projects

TNSPs in their submissions considered that the draft threshold was set too high.³⁸ ENA proposed the early works CPA threshold be set to 1 per cent of the MAR, which would be consistent with the materiality threshold applied to cost pass through applications.³⁹

The draft rule sought to ensure consistency with the existing requirements more generally and specified the threshold for submitting an early works CPA as: the CPA must exceed either \$30 million or 5% of the value of the MAR for the relevant TNSP for the first year of the relevant regulatory control period whichever is the **larger** amount.⁴⁰ TNSPs argued that a lowered early works CPA threshold would enable them to undertake more meaningful early works, particularly for smaller ISP projects that AEMO suddenly determines as actionable during a regulatory control period. One example is Electranet's Mid North South Australia REZ Expansion. This was a 'future ISP project' under the Draft 2024 ISP. The Final 2024 ISP gave it actionable status due to the identification of a smaller project option.⁴¹

The Commission considers that enabling TNSPs to undertake early works concurrently with the RIT-T, also for smaller actionable ISP projects, is important to ensure the intent of the rule change is met – to mitigate the risk of project delays and of later project cost increases that impact consumers. We have accordingly decided to lower the threshold to support TNSPs undertaking lower value early works.

We note that JEC proposed to introduce a ceiling for an early works CPA.⁴² ENA did not support this proposal in their submission.⁴³ The Commission does not consider an early works CPA ceiling as proposed by JEC is appropriate given the bespoke nature and size of ISP projects.

The early works CPA threshold maintains a meaningful distinction between preparatory activities and early works

In making its final determination, the Commission considers it important to maintain a meaningful distinction between preparatory activities and early works. Under the current rules, TNSPs undertake **preparatory activities** to design and investigate the costs and benefits of actionable ISP projects, future ISP projects and REZ stages, including but not limited to feasibility studies, desktop analysis, land use mapping, stakeholder engagement, concept design, and preliminary environmental and cultural heritage impact assessments. In contrast, **early works** are activities that are more substantial and distinct from preparatory activities, such as more detailed and comprehensive stakeholder engagement, detailed engineering design, land-use planning, procurement of equipment with long lead times.

As a result of early works being more substantive than preparatory activities, the cost recovery arrangements differ. TNSPs recover the costs for:

- **preparatory activities** through their general operating expenditure (opex) allowance, i.e. include costs in their revenue proposal, as the activities/costs are less significant than early works costs

38 Submissions to the draft determination: ENA, p.7; Transgrid, p.4.

39 ENA submission to the draft determination, p.2.

40 Clause 6A.8.A1(b)(2) of the draft rule.

41 See for example *ElectraNet Mid North South Australia REZ Expansion* and *Tasnetworks Waddamana to Palmerston transfer capability upgrade*, AEMO 2024 ISP, p. 62.

42 JEC submission to the draft determination, p.3.

43 ENA submission to the draft determination, p.8.

- **early works** through a CPA given the more significant and capital expenditure (capex) nature of the activities/costs.

The Commission considers that lowering the early works CPA threshold considerably, e.g. in line with ENA's proposal, could risk creating a situation where TNSPs effectively recover costs for preparatory activities through an early works CPA. A significantly lowered threshold would allow TNSPs to capitalise preparatory activities, for which the costs are currently included in their general opex allowance. However, we consider this risk exists with a significantly lowered threshold and the draft threshold as:

- under a significantly lowered threshold, TNSPs may effectively recover the costs for preparatory activities through an early works CPA rather than their general opex allowance
- maintaining the draft threshold could mean that TNSPs bundle preparatory activities and early works to meet a higher threshold.

Our final rule seeks to address these risks with a significantly lower and the draft threshold. We consider that the final lowered early works CPA threshold appropriately addresses these risk whilst still maintaining a meaningful distinction between preparatory activities and early works, which is reflected through different cost recovery arrangements.

3.1.2 **Transfer of early works costs if early works are sold or utilised on a different project**

The draft rule did not include a mechanism to return costs to consumers if a TNSP uses early works assets to deliver prescribed services on other projects, assuming the assets are not required for the project receiving early works support (either because the ISP project does not go ahead or an option which does not suit the assets is preferred).

In their submissions, the EUAA, CEFC and JEC raised concerns that there is no requirement and limited incentive in place for TNSPs to sell early works assets if a project no longer needs them or is cancelled.⁴⁴ They requested that the final rule provide a mechanism to return costs to consumers in relation to two scenarios: 1) a TNSP on-sells equipment, or 2) a TNSP uses early works equipment for another project.

In relation to scenario 1), the Commission considers that existing NER arrangements already implicitly provide for a mechanism to remove assets from one TNSP's RAB where not being used to provide services:

- where the assets no longer contribute to the provision of prescribed transmission services, the AER can remove those assets from the RAB at the annual rolling forward process.
- for the purchasing TNSP, the assets would be treated through their normal procurement process and be placed in their RAB.

In relation to scenario 2), the Commission considers that this is a risk, however the benefits of undertaking better and earlier planning outweigh the risks to consumers.

In addition, the CEFC raised a concern that a TNSP may not have sufficient incentives to sell equipment if a project does not go ahead, even if doing so is in the interests of consumers. They noted that there is a risk that a TNSP may use early works assets to gain a competitive advantage, for example when participating in a jurisdictional competitive tender process (which could, for example, include the Victorian arrangements or the NSW electricity infrastructure investment arrangements).⁴⁵ The Commission recognises that there is a residual risk for this to occur, but considers that a TNSP would face a reputational risk if they were to behave in such a way and also

⁴⁴ Submissions to the draft determination: EUAA, p. 3 - 4; CEFC, p.4; JEC, p.4.

⁴⁵ CEFC submission to the draft determination, p.3.

notes that it is not within the scope of the NER to account for any potential interactions with the recently established jurisdictional transmission planning and investment frameworks.

3.2 Guidance for TNSPs when preparing and the AER when assessing an early works CPA

Box 2: Final determination – Including a definition of early works and principles in the NER to guide TNSPs’ preparation and the AER’s assessment of an early works CPA

Consistent with our draft determination, our final determination introduces a definition of ‘early works’ into chapter 10 the NER to guide TNSPs’ preparation and the AER’s assessment of an early works CPA.

We have amended the NER principles that apply in the case of a TNSP submitting an early works CPA before having completed the RIT-T. The final NER principles provide for greater flexibility in terms of lowering the requirements for early works activities that occur concurrently with the RIT-T. The final rule to better aligns with the overall policy intent, which is to incentivise TNSPs to undertake more and earlier planning activities to mitigate the risk of project delays for consumers.

3.2.1 Our final rule includes a definition of early works

Consistent with the draft rule, the final rule introduces the following NER definition of early works to guide a TNSPs’ preparation and the AER’s assessment of an early works CPA.⁴⁶

Early Works

Activities undertaken by a Transmission Network Service Provider in respect of an actionable ISP project:

- a) prior to construction of the preferred option; and
- b) which:
 - i) improve the accuracy of cost estimates for that project; or
 - ii) facilitate that project being delivered within the timeframes specified by the most recent Integrated System Plan.

Stakeholders supported the introduction of a NER definition of early works. Introducing early works as a defined term will provide clarity to TNSPs and the AER and improve outcomes for consumers.⁴⁷ The EUAA supported the definition, however, they recommended additional inclusions to further improve outcomes for consumers.⁴⁸ The Commission concluded that the EUAA’s suggested amendments did not align with the rule change’s assessment criterion of ‘principles of good regulatory practice.’ In implementing the definition, the Commission is seeking to promote a principles-based approach over prescription and consider the EUAA’s suggestions to be overly prescriptive.

The definition assists the AER in determining whether costs proposed in an early works CPA are in the long term interest of consumers: efficient early works costs help to improve the accuracy of cost estimates or facilitate delivery in line with the timeframes specified by the most recent ISP.

⁴⁶ See definition of early works under Chapter 10 of the final rule.

⁴⁷ Submissions to the draft determination: AER, p.2; AEMO, p.2; AGL, p.1; ENA, p.3.

⁴⁸ EUAA submission to the draft determination, p. 4-5.

Introducing a NER definition aligns with this rule change's good regulatory practice assessment criterion – by providing better information and improved transparency for stakeholders, thereby assisting TNSPs with preparing and the AER with assessing an early works CPA.

3.2.2 Our final rule includes more flexible NER principles, lowering the requirements for early works activities that occur concurrently with the RIT-T

The final rule includes more flexible principles that ensure the overall intent of the rule change is met⁴⁹ – namely to incentivise TNSPs to undertake more and earlier planning activities to mitigate the overall risk to consumers in terms of project delays and later cost increases.

The draft principles aimed to address risks specifically associated with bringing early works forward (i.e. in the case of an early works CPA occurring before a TNSP completes a RIT-T). The draft rule required the AER, when assessing an early works CPA, to have regard to the two proposed principles to ensure it only approves a regulatory allowance for activities where the benefits to consumers outweigh the potential harms:

- Draft principle (1) required the early works to be common across options considered in the RIT-T. The intent of this principle was to mitigate the risk of restricting option comparison through early works unreasonably favouring one credible option or set of credible options over others
- Draft principle (2) required that the early works can be sold or utilised to support other projects (examples of such early works could be ordering equipment with long lead times, investigating the technical feasibility of a new non-network technology). The intent was to mitigate the risks of inefficient expenditure to consumers.

We consider that more flexible principles are aligned with our assessment criterion of outcomes for consumers and note that stakeholders' submissions have focused on *mitigating the risk to consumers if TNSPs undertake early works* concurrently with the RIT-T. However, the Commission's primary objective with this rule change is to *provide incentives so that TNSPs undertake early works* concurrently with the RIT-T - to mitigate the overall risk of project delays and cost estimate accuracy to consumers, and consequently, later cost increases.

To meet this objective, we have decided to:

- amend the wording of principle (1) to allow for activities that relate to at least one option considered in the RIT-T, if assisting with the selection of the preferred option. The early works could for example be ordering assets where only some credible options would require them or undertaking detailed stakeholder engagement for the benefit of ensuring one option is genuinely 'credible'. This also allows for consideration of early works related to non-network options (NNOs).
- maintain principle (2).
- only require the AER to have regard to one of the principles, as relevant.

Stakeholders expressed mixed views on the draft principles. The AER supported the draft principles to protect consumers from the risks of an early works CPA.⁵⁰ The CEFC and EUAA supported the intent of the principles, however did not find them sufficient to protect consumers.⁵¹ TNSPs, DCCEEW, AEMO, ENA did not support the principles, arguing that they unreasonably restrict the type of activities that could be included in an early works CPA.⁵² These stakeholders

⁴⁹ Clause 6A.8.2(d1) of the final rule.

⁵⁰ AER submission to the draft determination, p.2.

⁵¹ Submissions to the draft determination: CEFC, p. 2-3; EUAA, p. 3-4.

suggested that a more flexible set of principles would provide a more practical and appropriate basis for the AER when assessing early works activities in a CPA lodged prior to RIT-T completion, providing examples of alternative principles for the Commission to consider.⁵³

The Commission has further tested these stakeholder views. We note that stakeholders' interpretation of the draft principles is narrow, given that the drafting of the introductory clause states that '*the AER must have regard to*', i.e. the AER may also consider additional matters or base their decision on only one principle.⁵⁴ However, we consider amending the principles is important to provide confidence that the overall policy intent is met. We agree with stakeholders that amendments are required to allow TNSPs to undertake early works in relation to NNOs and generally activities that may not be common across multiple options (i.e. detailed stakeholder engagement or environmental studies on a single option) to inform option selection. The Commission acknowledges that this means increased risk to consumers in terms of potential biasing option comparison - however, we consider there is a greater risk for consumers if a TNSP does not undertake any early works due to the principles being perceived as overly restrictive. On balance, we have decided to make the principles more flexible to allow for a greater scope of early works being captured by the principles under the final rule.

We have had regard to the suggested additional or amended principles included in stakeholder submissions. We have decided to not adopt any of the suggested wording changes as we considered the suggestions to be overly prescriptive, or create circularity with reference to the definition of early works. Our final position aligns with the rule change's assessment criteria of outcomes for consumers and good regulatory practice - the amended principles seek to balance prescription and flexibility within the regulatory framework for TNSPs, supporting early works CPAs and improving investment certainty, enabling better planning and management of project time frames and costs.

3.3 AEMO may specify examples of early works

Box 3: Final determination – Clarifying that AEMO can include examples of early works (and preparatory activities) in the ISP

Our final rule determination clarifies in the NER that AEMO, in the ISP, can provide specific examples of early works (and preparatory activities). This assists:

- TNSPs in including efficient costs in their revenue proposal or early works CPA, and
- the AER when assessing the costs for early works and preparatory activities.

Any examples of early works that AEMO would include in its ISP would not represent an exhaustive list of early works activities nor obligate TNSPs to complete specific activities.

In relation to preparatory activities, the final determination further clarifies that a TNSP must carry out preparatory activities for an actionable ISP project, where these have not already commenced.

The final determination ensures clarity for TNSPs when preparing their early works CPA by specifying that AEMO is to provide examples of beneficial early works for specific actionable ISP projects.⁵⁵ With regard to preparatory activities, our final rule clarifies that the ISP may specify

52 Submissions to the draft determination: DCCEEW p. 1-2; AEMO, p. 5-6; ENA, p. 3-6; Transgrid, p. 2-3.

53 Submissions to the draft determination: ENA, p.5; DCCEEW, p.3; AEMO, p.6.

54 Clause 6A.8.2(d1) of the draft rule.

55 Clause 5.22.6(6)(vii) of the final rule.

preparatory activities that must be carried out for a future ISP project.⁵⁶ These are activities that investigate the costs and benefits of projects that would likely be needed in the future but have not been deemed actionable by the ISP. The final rule further clarifies that a TNSP must carry out preparatory activities for actionable ISP projects, that the TNSP considers beneficial, where these activities have not already commenced.⁵⁷ Our final rule thereby clarifies that TNSPs must carry out preparatory activities for actionable ISP projects regardless of whether these activities are specified in the ISP or not.

Stakeholders who commented on this issue agree that AEMO providing examples of beneficial early works and preparatory activities for a specific actionable ISP project will assist TNSPs when preparing their early works CPA.⁵⁸

Clarifying in the NER that AEMO, in the ISP, can provide specific examples of early works and preparatory activities for an actionable ISP project aligns with our assessment criterion of good regulatory practice - by promoting predictability and stability in the regulatory framework for TNSPs and the AER alike.

3.4 Treatment of already incurred early works costs in a RIT-T

Box 4: Final determination – Treating already incurred early works costs as ‘sunk’ in a RIT-T and feedback loop

In contrast to the draft rule, the final rule requires TNSP to exclude any incurred costs, that cannot be sold or utilised on another project, from a RIT-T and consequently AEMO does not consider those costs in its feedback loop assessment. However, under the final rule TNSPs should:

- at the publication of either the PADR or the PACR, whichever is applicable during the project timeline, exclude all incurred early works costs that cannot be sold or utilised to support other projects
- include any costs in a RIT-T for early works that can be sold or utilised for other projects
- transparently document any early works costs in the RIT-T and any final CPA.

Our final rule includes savings and transitional rules which provide the AER with 12 months to update and publish its CBA guidelines in line with the final rule and allow any prior consultation, in anticipation of the final rule, to satisfy the consultation requirements to update the CBA guidelines.

3.4.1 Excluding incurred early works costs from the RIT-T

The final rule is a change from the draft rule by requiring a TNSP to exclude any incurred early works costs from a RIT-T (i.e. the PADR and/or PACR, whichever is applicable depending on the timing of incurring the early works costs) and consequently AEMO does not include those incurred costs in its feedback loop assessment under clause 5.16A.5(b) of the NER.⁵⁹

Excluding incurred costs from the RIT-T analysis ensures that consumers gain the most benefit from costs that have already been incurred based on decisions already made. However, the final rule specifies that a TNSP must include any costs for items that can be re-sold or utilised for other

⁵⁶ Clause 5.22.6(c) of the final rule.

⁵⁷ Clause 5.22.6(d) of the final rule.

⁵⁸ Submissions to the draft determination: AEMO, p.6; AER, p.2.

⁵⁹ Clause 5.16A.7(c) of the final rule.

projects in the RIT-T, and transparently document any early works costs (incurred and not incurred) to reflect the total overall cost of the project in the RIT-T and any subsequent CPA.⁶⁰

Box 5: Treating already incurred early works costs as 'sunk' will benefit consumers

The below simplified example illustrates the benefits of TNSPs excluding any incurred costs from the RIT-T analysis. Our example assumes a TNSP considers two options/projects for addressing a network need under the RIT-T: project A and project B. Both projects address the identified need and the benefit of either project is \$200 million.

Project	Benefit	Estimated total project costs before early works	Early works costs	Revealed remaining project costs	Total cost to customers including all early works	Total project cost
A	\$200m	\$100m	\$10m	\$100m	\$111m	\$110m
B	\$200m	\$120m	\$1m	\$104m	\$115m	\$105m

After completing preparatory activities, the TNSP considers project A will be the least cost option and undertakes \$10 million in early works. It also completes \$1 million to further investigate the feasibility of project B. This means customers will underwrite \$11 million in incurred early works.

After completing early works:

- The investments reveal that project B would have been cheaper in total: \$105 million including early works.
- However, the remaining costs for project A after early works are still less than for project B. Project A = \$100 million, project B = \$104 million.
- It is in the long-term interests of consumers that the TNSP completes project A, as the revealed remaining project cost after treating early works costs as 'sunk' for project A is less than project B (project A = \$100 million, project B = \$104 million)
- This leaves customers to pay \$111 million for project A (\$11 million in early works and \$100 million in completing the project), which is less than \$115 million for project A (\$11 million in early works and \$104 million in completing the project).

Of the stakeholders who commented on this issue, views diverged on the best way to treat early works costs in a RIT-T and feedback loop. The AER agreed with the draft position, noting that the TNSP should select the preferred option in a RIT-T based on the total cost of an option to the consumer.⁶¹ Conversely, AEMO contended that RIT-T proponents should exclude incurred early works costs from the RIT-T, unless they can be sold or utilised on another project. AEMO noted that a TNSP should be required to transparently document these costs in the RIT-T.⁶² They considered that excluding incurred costs in the RIT-T assessment ensures that consumers gain the most benefit from costs that have already been incurred based on decisions already made. Once early works costs have been spent (and these early works cannot be sold or utilised on a different project), including already incurred costs in the ranking of options runs the risk of consumers paying more than is necessary.⁶³

The Commission has considered stakeholder feedback and undertaken further analysis on this issue. On this basis, we do not consider that treating incurred early works costs as sunk would

⁶⁰ Clauses 5.16A.7(c), 5.16A.4(d)(10) and 6A.8.2(b)(10) of the final rule.

⁶¹ AER submission to the draft determination p.3.

⁶² AEMO submission to the draft determination, p. 3 - 4.

⁶³ AEMO submission to the draft determination, p.4.

alter the incentives on TNSPs to undertake a different amount of early works. The final position of treating incurred early works costs as ‘sunk’ aligns with the rule change’s assessment criteria of outcomes for consumers and good regulatory practice:

- **Outcomes for consumers:** Consumers would benefit from payments/decisions that have already been made in the past. Including already incurred costs in the ranking of options runs the risk of consumers paying more than is necessary.
- **Good regulatory practice:** The proposed approach aligns with how the Commission would generally consider such a question from an economic perspective, ensuring that the regulatory framework builds on previous investments and decisions when considering efficient expenditures.

3.4.2 Implementation considerations: Aligning the update of the AER CBA guidelines with the final rule and application under the Victorian arrangements

Transitional rules to allow prior consultation, in anticipation of the final rule, to satisfy the AER’s consultation requirements

The final rule will require updates to the AER’s CBA guidelines. We note that the AER has already commenced its process to update its CBA guidelines and has published a draft update of its CBA guidelines on 9 August 2024. The AER’s draft updated CBA guidelines are based on the draft rule. We note that due to the change from draft to final on the issue of treatment of early works costs in a RIT-T, the AER’s final updated CBA guidelines will need to also change compared to the draft to reflect the final rule. To support the AER in updating its CBA guidelines, 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 final 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.
- Any AER consultation on its updated CBA guidelines that has occurred to date will count towards the AER’s consultation requirements under the NER.

Our final rule in terms of treatment of incurred early works costs in a RIT-T also applies to AEMO Victorian Planning

The final rule also clarifies that the changes in terms of the treatment of incurred early works costs in the RIT-T also apply to AEMO Victorian Planning, in the same way that TNSPs in other jurisdictions will treat incurred early works costs in a RIT-T. This aligns with our assessment criterion of principles of good regulatory practice by promoting consistency across the regulatory framework for transmission planning and investment.

3.5 Delaying the AEMC’s ISP review by two years

Box 6: Final determination – Delaying the AEMC’s ISP review by two years ensures alignment with recently completed and ongoing reforms

Consistent with the draft, the final determination is to delay the AEMC’s ISP review by two years (completion by 1 July 2027).

The delay moves the completion date from 1 July 2025 to 1 July 2027 under the NER.⁶⁴

Of the stakeholders who commented on the delay of the AEMC's ISP review, the majority were supportive.⁶⁵ ENA noted that the AEMC could consider a further delay to 1 July 2029, noting that a completion date of 1 July 2027 would still not allow sufficient time for learnings from the 2026 ISP and progression of actionable ISP projects to be adequately considered.⁶⁶ The EUAA encouraged the AEMC undertake a shorter interim review in 2025 to provide consumers with confidence in the ISP.⁶⁷ Both the CIS and JEC did not support a delay to the AEMC's review.⁶⁸ CIS noted that the ECMC's ISP review had no statutory obligation to protect the long-term interest of consumers. JEC noted that a holistic review of the ISP framework is necessary and should not be delayed to ensure the ISP framework remains fit for purpose. The Commission has considered stakeholder feedback. In response to the CIS's concerns, the AEMC notes that by implementing the ECMC's ISP review recommendation through its rule change process, the recommendations must meet the NEO and be in the long term interests of consumers in order to be implemented. We acknowledge consumer groups' strong support for the AEMC undertaking a holistic review of the ISP framework as soon as possible. We do not consider that the ENA's proposal to delay the AEMC reform (finalise by 1 July 2029) has sufficient merit as the regulatory framework is constantly changing. Therefore, on balance, we consider that a two-year delay allows the AEMC to embed the current suite of rule changes and then assess in detail how the reforms have performed when considering further reform.

3.6 The final rule commences immediately

Box 7: Final determination – Commencement date and transitional rule

The final rule specifies the commencement date to be 5 September 2024. It also includes a transitional rule which enables a TNSP to elect application of the final rule where they have already commenced preparing the PADR or PACR.

The immediate implementation date allows for TNSPs to use the new cost recovery arrangements for any actionable projects from the most recent 2024 ISP. Different to the draft rule, the final rule also includes a transitional rule which enables a TNSP, who has already commenced the RIT-T process for an actionable ISP project in terms of having started preparing a PADR or PACR, to elect application of the final rule.⁶⁹

⁶⁴ Clause 11.126.10(a) of the final determination.

⁶⁵ Submissions to the draft determination: AER, p.4; AEMO, p.6; ENA, p.6; EUAA, p.3.

⁶⁶ ENA submission to the draft determination, p.2.

⁶⁷ EUAA submission to the draft determination, p.5.

⁶⁸ Submissions to the draft determination: CIS, p. 6-8; JEC, p.4.

⁶⁹ Clause 11.174.3 of the final rule.

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) and 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.⁷⁰

A.1 The Minister proposed a rule to improve cost recovery certainty for early works

The proposal sought to implement the TPIR stage 3 recommendations to improve the economic assessment process for actionable ISP projects by incentivising a TNSP to undertake early works earlier in the planning process. The proposal suggested amendments to the NER that provide TNSPs with greater cost recovery certainty for early works by:

- enabling TNSPs to submit an early works CPA to the AER without needing to first complete a RIT-T and AEMO's feedback loop assessment
- introducing a NER definition of early works to guide the AER's assessment of an early works CPA, provide cost recovery certainty for TNSPs, and protect consumers from inefficient expenditure
- clarifying in the NER that AEMO, in the ISP, can specify examples of early works and preparatory activities for actionable ISP projects.

It also suggested delaying the AEMC's ISP review to allow time to embed the current suite of rule changes and then assess how the reforms have performed.

A.2 The proposal seeks to support delivery of major projects and improve outcomes for consumers

The proposal outlined that the NER does not provide the required certainty for TNSPs to conduct early works earlier in the planning process. Under current arrangements, TNSPs do not carry out early works when it would be most beneficial for the timely and efficient delivery of the ISP project concurrently with the RIT-T – contributing to the risk of project delays and cost increases that are ultimately worn by consumers.

A.3 The process to date

FAST TRACK PROCESS

On 9 May 2024, the Commission published a notice advising of its intention to initiate the rule making process in respect of the rule change request.⁷¹ The Commission decided to fast-track this rule change request. This is because it concluded that the rule change request is consistent with

⁷⁰ See our website for more information on the rule change process: <https://www.aemc.gov.au/our-work/changing-energy-rules>.

⁷¹ This notice was published under section 95 of the NEL.

the relevant recommendation of the TPIR Stage 3 Final Report and adequate consultation with the public was undertaken during that review on the relevant recommendation.⁷² Accordingly, the Commission published a draft rule determination on 23 May 2024 without first consulting on a consultation paper. The Commission received 10 submissions on the draft rule determination. Issues raised in submissions are discussed and responded to throughout this final rule determination.

⁷² The decision to fast-track the rule change request was made under section 96A(1)(b) of the NEL.

B 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.

B.1 Final rule determination and final rule

In accordance with section 102 and 102A of the NEL, the Commission has made this final rule determination for a more preferable final rule in relation to the rule proposed by the Honourable Chris Bowen MP, Minister for Climate Change and Energy.

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.

B.2 Power to make the rule

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

The more preferable final rule falls within section 34 of the NEL as it relates to the activities of persons (including Registered participants) participating in the national electricity market under section 34(1)(a)(iii) of the NEL. Additionally, the more preferable final rule falls within the matters set out in Schedule 1 to the NEL as it relates to items 15 and 17 because the final rule relates to: the regulation of revenues by transmission network services providers; and principles to be applied by the AER in exercising or performing an AER economic regulatory function or power relating to the making of a transmission determination.

B.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
- the revenue and pricing principles.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.⁷³

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.⁷⁴ The more preferable final electricity rule is compatible with AEMO's declared network functions because they would not affect those functions.

⁷³ 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.

⁷⁴ Section 91(8) of the NEL.

B.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.⁷⁵ 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:⁷⁶

1. the national electricity system
2. one or more, or all, of the local electricity systems⁷⁷
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.⁷⁸ 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.⁷⁹

The Commission’s 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.

B.5 Civil penalty provisions and conduct provisions

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

The more preferable final rule does not amend any clauses that are currently classified as civil penalty provisions or conduct provisions under the National Electricity (South Australia) Regulations.

⁷⁵ These regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations 2016.

⁷⁶ Clause 14A of Schedule 1 to the NT Act, inserting section 88(2a) into the NEL as it applies in the Northern Territory.

⁷⁷ These are specified Northern Territory systems, listed in schedule 2 of the NT Act.

⁷⁸ Clause 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

⁷⁹ 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.

Abbreviations and defined terms

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
CPA	Contingent Project Application
ECMC	Energy and Climate Ministerial Council
ISP	Integrated System Plan
NEL	National Electricity Law
NEO	National Electricity Objective
NER	National Electricity Rules
NERL	National Energy Retail Law
NERO	National Energy Retail Objective
NERR	National Energy Retail Rules
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules
NT Act	<i>National Electricity (Northern Territory) (National Uniform Legislation) Act 2015</i>
Proponent	The individual / organisation who submitted the rule change request to the Commission
RIT-T	Regulatory Investment Test for Transmission
TNSP	Transmission Network Service Provider