Thursday, 20 August 2026

Australian Energy Market Commission
Level 15, 60 Castlereagh Street
Sydney NSW 2000

Lodged via email to: Alisa.Toomey@aemc.gov.au

CEC submission to AEMC's Consultation Paper: Electricity Network Regulation Review Package 1

The Clean Energy Council (CEC) is the peak body for the clean energy industry in Australia, representing nearly 900 leading businesses across renewable energy, energy storage, and renewable hydrogen. We are committed to accelerating Australia's transition to a clean energy future as rapidly as possible while maintaining a secure and reliable electricity supply for customers.

The CEC welcomes the opportunity to comment on the AEMC's Consultation Paper: *Electricity Network Regulation Review Package 1* (Consultation Paper).

This is Tranche 2 of CEC's submission on the Consultation Paper and comments only on questions in the consultation paper insofar as it relates to Transmission. Tranche 2 only reflects the views of our developer and investor industry members (**CEC industry members**) and does not reflect the views of Network Service Provider members. CEC's comments insofar as it relates to Distribution specifically are in a separate submission dated 7 August 2026. We note, however, some of the recommendations affect provisions in Chapter 5 of the NER which apply to Network Service Providers more generally.

This letter sets out our key points and recommendations. The detailed response to AEMC's consultation questions 3 and 4 is set out in the Appendix.

Key points

The current framework is not consistently delivering least-cost connection outcomes. While contestability for the detailed design, construction and ownership of transmission connection assets outside Victoria was introduced through the 2017 Transmission Connection and Planning Arrangements rule change, uptake of third-party providers has remained limited. Feedback from industry participants suggests that a range of factors influence provider selection, including detailed design requirements for contestable IUSA components and DNAs, delivery risk considerations, and information asymmetries throughout the connection process. As a result, connection applicants may not always be in a position to select providers solely on the basis of cost and efficiency, which may limit opportunities to achieve the lowest overall connection costs for consumers.

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Greater transparency and oversight would support efficient investment outcomes. The current Transmission Ring-fencing Guideline relies primarily on reporting arrangements that may not provide sufficient information for the AER to independently assess how effectively contestability is operating in practice. Strengthening visibility of connection processes and outcomes would help provide confidence that investment and procurement decisions are being made on an efficient basis. This is important because uncertainty regarding regulatory processes and project delivery can increase perceived risk, which may ultimately be reflected in higher financing costs and, in turn, higher costs to consumers

Effective regulatory frameworks should not depend solely on formal complaints. Transmission connection arrangements involve ongoing commercial relationships between connection applicants and network businesses over extended periods and across multiple projects. In these circumstances, the absence of formal complaints should not necessarily be interpreted as evidence that processes are operating optimally. Independent monitoring, periodic reviews and other objective sources of information can provide a more complete understanding of how well the framework is supporting efficient outcomes for all parties.

Improved information transparency would support better decision-making and more efficient outcomes. Connection applicants are not always provided with a consistent level of information regarding the costs and procurement of connection works, including unbundled pricing, CAPEX and OPEX breakdowns, and visibility of tendering processes. Limited transparency can make it more difficult to assess alternative delivery options and identify the most cost-effective solution. Similarly, in access standard negotiations, connection applicants are required to provide supporting justification for proposed negotiated access standards (NAS), while there is no equivalent obligation on other parties when advising the NAS is unsuitable and an alternative NAS requires evaluation. Greater transparency from all participants would help facilitate more efficient negotiations and better-informed investment decisions.

The objective of the recommendations is to support a least-cost connection process that delivers the best outcomes for consumers. By improving transparency, strengthening regulatory visibility, reducing information asymmetries, and ensuring contestable services are selected on their merits, the framework can better promote efficient investment, effective competition, lower connection costs and, ultimately, lower costs for electricity consumers.

Recommendations

Ring-fencing arrangements (Question 3)

No.	Recommendation
1	The NER should require the AER each year to undertake periodic audits of projects undertaken by different TNSPs. Audits should be the primary tool for the AER to independently assess compliance, consistent with the approach to retail regulation compliance (self-reporting backed by periodic audits).
2	Reporting requirements in clause 6.2 of the Guideline should be expanded to identify the asset types to which contestable services relate, so that any barriers to non-RESP participation in particular asset categories are visible.
3	A pathway should be provided for developers to raise compliance concerns on an anonymised basis, as a secondary mechanism supporting periodic audits.

4	Where a ring-fencing waiver exceeding five years is sought, the NER should require the AER to publish its reasons before granting the waiver and to invite public submissions (currently a discretion under NER 5.3.2(b)(iii)).
5	Ring-fencing obligations applying to TNSPs providing contestable transmission connection services should also apply to regulated DNSPs providing the same services, to remove the current uneven treatment.

Connection and facility access arrangements (Question 4)

No.	Recommendation
6	NER 5.3.4(b)(2)(ii) should be amended to make clear that detailed designs for contestable IUSA components and DNA assets are to be based on Nominal Design Values, consistent with Planning Values and regardless of whether a RESP or non-RESP provides the service, and may be reviewed and approved after the Connection Agreement is signed.
7	The AEMC should introduce a mechanism incentivising TNSPs to deliver non-contestable works (including cut-in works) on time — for example, enforceable delivery milestones or a delivery performance incentive scheme — with appropriate allowance for delays outside the TNSP's control.
8	TNSPs should be required to provide unbundled pricing for contestable and non-contestable works, and in relation to non-contestable works, a detailed CAPEX breakdown in a standardised format co-designed by the AER with industry, and greater OPEX transparency. NER 5.2A.6(b) should require this information to be provided as a matter of course rather than only on request.
9	NER 5.3.6(4)(ii) should be amended so that the Offer to Connect remains open for 60 business days, unless otherwise agreed, in place of the current 20 days.
10	TNSPs should be required to give Connection Applicants a summary of the proposed tender documentation for non-contestable connection works and the names of panel service providers invited to tender, before the tender is issued; and the option to participate in evaluation and selection of tender offers for connection works.
11	The AEMC should consult on improved dispute resolution mechanisms, which can provide alternative pathways to the Part B, Chapter 8 arbitration mechanism. Alternatives could include a formalised internal escalation mechanism, a high-level AER review of non-contestable works offers (to be completed within a reasonable time), and an optional independent engineering review for non-contestable works of high value (e.g. greater than $20 million).
12	Additional pathways to scrutinise projects should be established that do not require a developer to complain: TNSPs should notify the AER at least of the cost of non-contestable works for each project (which permits the AER to build a cost database that can also inform AEMO and the AEMC workstreams), and the AER each year should conduct periodic audits of selected completed projects across different TNSPs.
13	A rules-based obligation should require the NSP and AEMO to provide evidence-based written reasons why a proposed Negotiated Access Standard is not suitable when it

	advises that an alternative NAS requires evaluation, mirroring the existing obligation on Connection Applicants. NSPs should also provide more detailed harmonic impedance and allocation data earlier in the connection process, and the AEMC should consult on whether the Automatic Access Standard target remains fit for purpose.

The CEC welcomes further engagement with the AEMC on this review. Further queries can be directed to Diane Staats at dstaats@cleanenergycouncil.org.au in the first instance.

Kind regards

Martin Kennedy

General Manager – Market, Operations and Grid

Appendix — Detailed response to the consultation questions

This Appendix contains the CEC's detailed response to the AEMC's consultation questions on transmission ring-fencing (Question 3) and connection and facility access arrangements (Question 4), including the supporting evidence and suggested recommendations.

Question 3: Are changes required to the ring-fencing arrangements?

The response below addresses the following questions in the Consultation Paper insofar as it relates to Transmission Ring-fencing Guideline (**Guideline**):

1. **Are changes required to the ring-fencing arrangements? How effective do you think the ring-fencing obligations have been to date, in terms of preventing the cross-subsidisation of contestable activities and discriminatory behaviour? What changes, if any, are required to ensure they remain fit-for-purpose in the future?**
3. **Are there any other problems with the ring-fencing arrangements or ring-fencing waivers that you think we should consider in this Review?**

Overview of Question 3 responses

The CEC has consistently called for the establishment of a robust ex-ante framework in relation to the ring-fencing provisions applied to network businesses. This is regardless of whether any specific regulated entity has actually misused its position; the purpose of such frameworks is to prevent perception that the risk could arise, because an increase in perceived risk carries increases in risk premia and cost, which are ultimately borne by consumers. There is a need for a robust ring-fencing framework to deter breaches of the Guideline – by enabling the AER to detect breaches of the Guideline and by requiring adequate controls, processes and procedures to be put in place to ensure that the TNSP complies with the Guideline. Uncertainty about how consistently ring-fencing protections are applied can itself raise the cost of capital for connection infrastructure, regardless of whether any individual TNSP has acted inappropriately, because investors price in regulatory and counterparty risk. A stronger evidentiary basis for monitoring compliance would support investor confidence and help lower costs to consumers.

In assessing the effectiveness of the Guideline, as implemented by the AER, it needs to be recognised that formal complaint mechanisms may under-represent genuine compliance concerns, given the repeat, long-term nature of the commercial relationship between developers and TNSPs, a dynamic recognised in other regulated sectors with repeat-dealing relationships. Unlike other network businesses (eg telecommunications) where negotiations for access to the network may only happens once, renewable energy developers undertake repeat negotiations with the same TNSP within the same project (for contestable and non-contestable components), and across the many projects they are developing as part of the clean energy transition. This makes the developer more reluctant to raise concerns about discriminatory conduct because of the need to maintain relationships for other components and for future projects.

The AER does not require, under the Guideline, the TNSP to provide information that is detailed enough for the AER to detect if discriminatory conduct is occurring, and if so, at what stage, nor detailed enough to deter discriminatory conduct. As a result, we understand the AER is effectively relying on TNSP self-reporting to ensure compliance. This is not best practice for a regulator and increases the risk that non-compliance may go undetected.

As a matter of regulatory best practice, there needs to be pathways for the AER to independently detect breaches of the Guideline. Without such pathways, the effectiveness of the Guideline is likely to be undermined, and developers will continue to be reluctant to engage

a non-RESP[1] to provide contestable electricity services. This will reduce competition in contestable services, resulting in higher connection costs which are passed on to consumers.

To address concerns that non-compliances with the Guideline cannot be independently detected, we recommend the NER requires the AER to undertake periodic audits of projects undertaken by TNSPs. Consideration should also be given to having pathways to provide feedback on compliance issues with the Guideline on an anonymous basis. However, we consider periodic audits should be the primary tool for the AER to independently obtain information to assess TNSP compliance, given the limitations of using anonymous information. This would align with the approach taken on retail regulation compliance – i.e. self-reporting, backed by periodic audits.

The only insight the AER can currently derive from the limited information reported under section 6.2 of the Guideline is whether a non-RESP provided any contestable electricity services during the previous calendar year. We recommend expanding the reporting requirements to identify the asset types to which those contestable services relate. This would provide greater visibility of whether barriers exist to non-RESP participation in particular asset categories. For example, if non-RESPs are providing contestable services only in relation to DCAs, this may indicate that the detailed design requirements in NER 5.3.4(b)(2)(ii) are acting as a material barrier to the provision of contestable IUSA components and DNA assets (as DCAs are not subject to an equivalent requirement).

Detailed responses to Consultation Question 3

Detailed responses to the AEMC's consultation questions on transmission ring-fencing arrangements can be found in below.

1. **Limited reporting undermines the effectiveness of the ring-fencing arrangements**

We consider that the reporting requirements under clause 6.2.1 of the Guideline are inadequate as they do not require the TNSP to provide information that is detailed enough for the AER to detect if discriminatory conduct is occurring, and if so at what stage, nor detailed enough to deter discriminatory conduct.

Clauses 6.2.1(vi) and (vii) of the Guideline require reporting on the total number of connection applications received by a TNSP in that calendar year that include connections electricity services solely provided by a RESP and by a person other than a RESP.

The only insight the AER can derive from this limited information is whether a non-RESP provided any contestable electricity services during the previous calendar year.

Recommendation

We recommend expanding the reporting requirements in clause 6.2 of the Guideline to identify the asset types to which those contestable services relate.

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[1] **RESP** refers to **Related Electricity Service Provider** which under the Guideline, in relation to a TNSP, includes:
- any affiliated entity of the TNSP; and
- the part of the TNSP,

that provides contestable electricity services, but excludes a part of an affiliated entity that provides prescribed transmission services, negotiated transmission services or direct control services

This would provide greater visibility of whether barriers exist to non-RESP participation in particular asset categories. For example, if non-RESPs are providing contestable services only in relation to DCAs, this may indicate that the detailed design requirements in NER 5.3.4(b)(2)(ii) are acting as a material barrier to the provision of contestable IUSA components and DNA assets (as DCAs do not have an equivalent requirement). This would provide evidence in support of the need to amend the detailed design requirements for contestable IUSA components and DNA assets, as recommended below: see section 1 of the response to Question 4 of the Consultation Paper.

AER will not require additional reporting without a complaint

CEC's Jan 2025 submission on the AER's draft Transmission Ring-fencing Guideline outlines the detailed information that TNSPs would need to report on for the AER to be in a position to determine if there has been non-compliance with the Guideline at the different stages of a project: see in particular, section 3.4-3.6 on pages 5-9 of CEC's submission. A summary is also provided in the attached Schedule. These are not onerous obligations given the limited number of projects using a non-RESP for contestable services.

However, AER has indicated that they would not collect this additional information until there was a complaint about a TNSP. In particular, the AER states at page 26 of its Explanatory Statement on the Guideline:

> We have considered that the non-discrimination obligations in the guideline have signalled clearly our expectation that TNSPs and their staff will not engage in discrimination with respect to connection projects where contestable services are being provided by a rival to a RESP.
>
> However, it may be helpful to point out that we consider that **the additional information sought by the CEC may be relevant if the AER is to investigate a future complaint about a possible breach of the guideline by a TNSP.**

Given the repeat, long-term nature of the commercial relationship between developers and TNSPs, complaints-based enforcement alone may under-represent genuine compliance concerns. This means the AER's reliance on TNSP self-reporting may not provide a complete picture of compliance with the guideline.

Impacts

CEC industry members are concerned that without detailed reporting requirements under the Guideline or pathways to independently detect discriminatory conduct:

- developers will be reluctant to use a non-RESP for contestable electricity services, resulting in higher connection costs which are passed on to consumers. This appears to be confirmed by the Transmission Ring-Fencing Reports: see section 2 below.
- the ring-fencing framework to a large extent is rendered ineffective
- risk premiums for projects will increase as investors will not have confidence that developers will be able to connect to the grid at an efficient cost and without undue delay.

2. Transmission Ring-Fencing Compliance reports

The AER has published the Transmission Ring fencing Compliance reports. The reports reveal that Connection Applicants are still choosing the RESP to provide contestable electricity services. For example:

- TransGrid reports that, based on the 36 connection applications received in 2025, one connection applicant (3%) contracted a non-Lumea party to provide contestable services at the time of connection application.
- ElectraNet reports that that in 2025, no connection applications (0%) involved the provision of contestable services by a person other than the RESP.

Interestingly, Powerlink reports that, out of the 11 connection applications it received for the period from 24 August to 31 December 2025, all connection applications included contestable services provided by persons other than a Powerlink RESP.

Recommendation

We encourage the AER and AEMC to investigate what asset types in NER 5.2A.4 were provided by a non-RESP. If it was only for DCAs, it is likely to indicate that the detailed design requirements in NER 5.3.4(b)(2)(ii) are a material barrier to providing contestable IUSA components and DNA assets as DCAs do not have an equivalent requirement. This would provide evidence supporting amendments to this clause, as recommended in section 1 of the response to Question 4 below.

3. Failure to require separation of staff

The AER did not extend the staff separation requirement in clause 4.3 of the Guideline to the negotiated transmission services. In the view of CEC industry members, the failure to do so undermines the information access and disclosure requirements in the clause 4.2 of the Guideline.

Without a staff separation requirement, there is an inherent structural risk that information gained through the regulated business could be used to advantage the RESP in competing for contestable services or in the pursuit of its own projects, rather than any reflection of actual TNSP conduct.

4. Removal of maximum limit on ring-fencing waivers

The AER removed the maximum 5-year limit on waivers. As the energy market continues to evolve rapidly, periodic reassessment of long-duration waivers helps ensure regulatory settings continue to deliver the most efficient outcome for consumers. In the view of CEC industry members, it is preferable for the AER to reassess a waiver's impact on connection costs and consumer outcomes within 5 years as the energy market is undergoing rapid technological and structural change and can be anticipated to continue to do so.

Recommendation

We recommend that the NER requires the AER to:

- publish its reasons for granting a waiver that exceeds 5 years prior to granting a waiver (to provide the opportunity for public comment); and
- invite public submissions on waiver applications which exceed 5 years (currently the AER has only a discretion to do so under 5.3.2(b)(iii)).

This is consistent with good regulatory practice which should require adequate consultation where there are derogations to statutory protections designed to ensure connection services are delivered at efficient cost to consumers.

5. Reliance on self-reporting to detect non-compliances is not best practice

As noted above, the AER appears to be relying solely on self-reporting to detect non-compliances with the Guideline, given that developers are very unlikely to make a complaint to the AER. However, this is not best practice for a regulator. The Australian National Audit Office in a report on the Regulation of the National Electricity Market recognises "self-reporting introduces an inherent risk to the reliability of the information provided": see para 3.40 and without processes to verify its accuracy, affects the reliability of information the AER publishes: see para 15. We also note that self-reporting under the Guideline will be ineffective if the CEO, who signs the declaration regarding compliance with the Guideline, is not aware of conduct across an organisation.

When assessing its compliance and assessment priorities, the AER takes into account whether a complaint has been made in assessing the risk of a breach of the Guideline or provisions of the NER. We are concerned that the AER does not have the information needed to assess the likelihood of a breach given that developers are reluctant to make a formal complaint against a TNSP without alternative pathways for developers to raise concerns. The AER powers to seek responses from the TNSP are only in relation to a "complaint or concern" about a TNSP's compliance with the Guideline under clause 6.4 of the Guideline.

Without pathways for the AER to **independently** detect any breach of the Guideline or for developers to provide feedback on an anonymised basis, the effectiveness of the Guideline is likely to be undermined, and developers will continue to be reluctant to engage a non-RESP to provide contestable electricity services. This will reduce the range of parties able to deliver those services, resulting in higher connection costs which will be passed on to consumers.

5.1 Periodic audit

To address the limitations of solely relying on self-reporting and to ensure that the AER engages in best practice, we recommend the NER requires the AER each year to undertake periodic audits of projects undertaken by TNSPs.

A periodic audit could enable the AER to detect if there has been non-compliance with the Guideline in relation to a particular project and therefore would be an effective deterrent to non-compliance. We consider that this requirement supports AER's powers and function to monitor compliance by Registered Participants with the Rules under section 15(1)(a) of the NEL and note that the AER's powers and functions can be expanded to those conferred on it under the Rules under section 15(1)(g) of the NEL.

Recommendation

We recommend that the NER require the AER each year to undertake periodic audits of projects undertaken by different TNSPs.

5.2 Survey/complaint line

We also consider there should be other pathways for a developer to raise concerns about compliance with the Guideline on an anonymised basis, for example, via

- a survey which could ask for feedback on concerns about compliance with the Guideline and any waivers granted to that Guideline; or
- a complaint line.

We recognise the limitations of any anonymous survey or complaint line. For example, a developer may only be prepared to raise concerns about TNSP processes, versus specific conduct, to ensure their project cannot be identified from the complaint, such as, a TNSP requiring detailed design requirements for contestable IUSA components and DNA assets which are more onerous than required by its RESP. Similarly, if a complaint is anonymous to the AER, it makes it hard for them to meaningfully investigate.

As with the ACCC complaints line, there should be the option for the developer to include their contact details so that the AER can follow up on the complaint made.

It is also important that the AER is required to undertake period audits as the primary tool for ensuring there is compliance with the ring-fencing guideline.

6. Ring-Fencing requirements for TNSPs and DNSPs when providing contestable transmission connection services

Any ring-fencing requirements applicable to regulated TNSPs with RESPs providing contestable transmission connection services, should also apply to regulated DNSPs providing the same contestable transmission services.

At present, the Transmission Ring-Fencing Guideline only binds TNSPs who provide prescribed transmission services. This has created an uneven playing field as regulated DNSPs face none of the same restrictions as regulated TNSPs for assisting their affiliated contestable transmission connection services business (e.g. staff separation, information sharing provisions).

Question 4 Changes to the connection and/or facility access arrangements

This section addresses changes needed to the connection and/or facility access arrangements at a transmission level. We note, however, some of the recommendation affect provisions in Chapter 5 of the NER which apply to Network Service Providers more generally.

Overview to Question 4 responses

Barriers to Connection Applicants using a non-RESP

1. CEC developer members have advised that the detailed design requirements for contestable Identified User Shared Asset (IUSA) components and DNA assets in NER 5.3.4(b)(2)(ii) are a significant barrier to Connection Applicant choosing a non-RESP for these services and should be amended to make clear that these detailed designs:
   - should be consistently and explicitly based on Nominal Design Values, regardless of whether the service provider is a RESP or non-RESP[2] .
   - can be reviewed and approved after the Connection Agreement has been signed.

2. Another key barrier to Connection Applicants using a non-RESP for contestable services is a concern that their projects may be delayed if the RESP does not provide the contestable services. The AEMC should consult on mechanisms to ensure TNSPs are incentivised to

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[2] Nominal Design Value should be agreed with industry, should reflect that the plant is at a concept stage and be consistent with the Standard Planning Data and Detailed Planning Data outlined in the Power System Model Guidelines, Power System Design Data Sheet, Power System Setting Data Sheet and in schedules 5.5.3 to 5.5.5.

deliver non-contestable works, such as cut-in works, within the same timeframes regardless who provides the contestable works

Improvements to the negotiate-arbitrate framework suggested by CEC developer members

3. CEC developer members have advised of instances where the TNSP does not provide the Connection Applicant with adequate commercial information to be able to negotiate effectively. To ensure this is addressed, the NER should be amended to make clear that TNSPs must provide unbundled pricing for contestable and non-contestable works including price estimates and final pricing and, in relation to non-contestable works, a further CAPEX/OPEX breakdown. In addition, the TNSP should be required to provide a detailed CAPEX breakdown in a standardised format which the AER co-designs with industry (including TNSPs). Additional transparency on OPEX is also needed to support informed negotiation and decision-making by Connection Applicants.

4. CEC developer members have advised that Connection Applicants do not always receive the required commercial information (including final pricing) in a sufficiently timely manner to support their negotiations. We understand this is due to the timing of the TNSP's tendering process with their panel, which in some cases can leave Connection Applicant with as little as 20 business days to assess tender offers for connection works, significantly weakening their negotiation position. On this basis, NER 5.3.6(4)(ii) should be amended to require the Offer to Connect to remain open for 60 business days (instead of 20 days), unless otherwise agreed.

5. CEC developer members have requested greater transparency of, and involvement in, the tendering process for connection works, which would enable more efficient outcomes for projects and consumers. To facilitate this, we recommend the NER be amended to require TNSPs to provide:
   - a summary of the proposed tender documentation for non-contestable connection works, including the names of the panel service providers invited to tender, before the tender is issued to the TNSP's panel of service providers.
   - the option to participate in the evaluation and selection of tender offers by the TNSP panel of service providers for non-contestable, and if applicable, contestable, connection works, including the ability to review, clarify and request refinements to tender submissions before a final offer is selected.

6. The AEMC and industry acknowledge that the arbitration dispute mechanism under Part B of Chapter 8 of the NER has been rarely used and, in the view of CEC developer members, is ineffective at constraining the market power a TNSP may otherwise seek to exert in negotiations[3]. There needs to be additional faster, lower cost and more flexible mechanisms which enable TNSP pricing and terms of supply for connection works to be scrutinised, as are common in other industries.

   We have suggested review mechanisms which can initiated by the Connection Applicant in paragraph 3.1 of Section A below. However, recognising that the Connection Applicant may be reluctant to initiate these review mechanisms, we have suggested other pathways for TNSP pricing and terms of supply for connection works to be scrutinised in paragraph 3.2 of Section A below (including periodic audits).

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[3] See pages vi, 13, and 30 of the Consultation Paper.

Changes needed to the framework for negotiating access standards

7. Changes are needed to address the imbalance in access standard negotiation processes. In particular, a rules-based obligation which requires the NSP and AEMO to provide evidence-based reasons in writing to the Connection Applicant as to why the proposed Negotiated Access Standard (NAS) under NER 5.3.4A(b1) is not suitable when advising an alternative NAS requires evaluation. This would mirror the current requirements on Connection Applicants, balancing negotiating positions and leading to more efficient outcomes and ultimately lower costs for consumers.

8. NSPs should also provide more detailed harmonic impedance and allocation data to facilitate negotiations earlier in the connection process and to ensure that harmonic filter investments are fit for purpose (i.e with the right design, in the right location, and addressing the issues in the network conditions).

9. We recommend that the AEMC consult on whether the Automatic Access Standard (AAS) target remains fit for purpose and can ensure that the significant amount of new renewable generation and energy storage forecast by the ISP to connect to the power system can do so in a timely manner and at the lowest cost to consumers.

Detailed responses to Consultation Question 4

Detailed responses to the AEMC's consultation questions on connection and/or facility access arrangements can be found in below.

Question 4: Are changes required to the connection and/or facility access arrangements?

1. Do you think the current connection and/or facility access arrangements are acting as a barrier to entry into contestable markets? If so, how?

Despite the AEMC introducing contestability for detailed design, construction and ownership of assets on the transmission network outside Victoria under the 2017 *Transmission Connection and Planning Arrangements* rule change, there have only been a limited number of projects which have selected third parties to provide those contestable services. This is confirmed by the first Transmission Ring fencing Compliance reports which the AER has published[4]. CEC has been advised by developer members, that developers are choosing the RESP to provide contestable services even though their pricing and terms of supply are less favourable. Some of the reasons for doing so are discussed below.

1. Detailed design requirements for IUSA/DNA

CEC developer members have advised that for contestable Identified User Shared Asset (IUSA) components or Designated Network Asset (DNA) services where a RESP is not selected to carry out the work, some TNSPs require:

- different (more onerous) requirements for the detailed design of the contestable IUSA components or DNA to be submitted with the generator performance standard (GPS) connection application, despite the two streams being substantially separable.

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[4] Compliance reports | Australian Energy Regulator (AER)

- those construction drawings to be reviewed and approved by the TNSP *prior to* the TNSP commencing its review of the Connection Application's GPS modelling-related items.

The preparation of these more detailed design drawings, and their review and approval, can add 6 to 18 months onto a project's timeline (depending on the level of detail required). It also introduces complexity and risk[5] to the connection process as the timeframe for reviewing the detailed design drawings is left open. This could present a significant deterrent in connecting parties seeking offers from a non-RESP to provide contestable services.

The additional detail being required by TNSPs from the Connection Applicant only when non-RESP entities are engaged is above what is needed at the connection application (R0) stage. R0 simulations are by definition based on planning parameters, not detailed design parameters (which are used at R1 phase)[6] and the plant's own designs are not yet at this level of detail when the initial connection application package is submitted.

The AER at pages 9-10 of its Explanatory Statement recognises that, for contestable IUSAs, TNSPs requesting more detailed design drawings than they would otherwise if a RESP was chosen could be considered discriminatory conduct contrary to the Transmission Ring Fencing Guideline. However, since there have been derogations from the Guideline, it is important that the NER is amended to mitigate the perceived risk that discriminatory conduct could arise.

Recommendation

NER 5.3.4(b) should be amended to make clear that the detailed designs of IUSA components or DNA assets required to be submitted to the TNSP under NER 5.3.4(b)(3)(ii):

- should be based on the same set of Nominal Design Values (which are consistent with Planning Values), regardless of whether these services are provided by a RESP or a non-RESP[7]
- the review and approval process of the detailed designs may occur after the Connection Agreement has been signed.

  We note that the connecting parties would still need to meet the relevant functional and technical requirements and would face substantial delay and cost risks if the Nominal Design Values prove substantially inaccurate. The materiality of these risks presents a natural incentive for connecting parties to 'get it right', making the provision of detailed designs unnecessary. We also note that given the necessarily low level of design maturity at such an early stage, there is a material inefficiency faced by both connecting parties and TNPSs within the current approach, which forces connecting parties to prepare, and TNSPs to review, detailed design information that is unlikely to reflect the final design.

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[5] The AEMC at page 16 of its Final Determination on Expanding the transmission ring-fencing framework (Final Determination) acknowledged that the TNSPs may unreasonably delay the provision of an offer to connect through this review process and "a connecting party … cannot be confident that delays are a result of legitimate reasons or a result of discriminatory conduct".

[6] We note that Schedule 5.5 (Technical Details to Support Application for Connection and Connection Agreement) of the NER distinguishes between data required to support a Connection Application (which is to be based on system planning data) and more detailed data, including data based on detailed design, which is to be submitted at the R1 stage.

[7] Nominal Design Value should be agreed with industry, should reflect that the plant is at a concept stage and be consistent with the Standard Planning Data and Detailed Planning Data outlined in the Power System Model Guidelines, Power System Design Data Sheet, Power System Setting Data Sheet and in Schedules 5.5.3 to 5.5.5.

We consider that this amendment:

- will reduce the cost of contestable services, potentially resulting in material cost savings for projects (and ultimately lower consumer prices)
- will ensure that the detailed design requirements do not add risk to the Connection Application process whilst still meeting the needs of the TNSP
- will reduce workload for both connecting parties and TNSPs

  As discussed in footnote 8, risk of non-compliance with the TNSP's functional specification wholly lies with the Connection Applicant. In addition, any delays or other risks associated with remodelling due to changes from R0 to R1 parameters also sit with the Proponents, and TNSPs and AEMO are compensated for their time spent on projects whatever their duration.

- will increase investor confidence which will help more projects reach Financial Investment Decision and reduce project costs
- is consistent with the other provisions of the NER dealing with the detailed design of contestable IUSA components and DNA assets[8]

Please note that we understand that this amendment is not relevant to Victoria[9].

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[8] The National Electricity Rules require:

- the Connection Applicant to submit a detailed design of those components and assets with its Connection Application under NER 5.3.4(b)(2)(ii) – but does not specify the level of detail of the drawings. For example, it does not state that the drawings need to be issued for construction drawings even though this term is used in the table in NER 5.2A.4
- the Connection Applicant to outline a process for how the TNSP will undertake a review these drawings under NER 5.3.4(b)(2)(i) – it does not require the drawings to be reviewed and approved prior to the assessment of the Connection Application or even at the R(0) stage
- the detailed design to be *consistent* with the TNSP's minimum function specification provided under NER 5.3.3(c) of the NER: NER 5.3.4(b1)(1). It does not require drawings to be submitted which demonstrate *compliance* with the TNSP's functional specifications at the R0 stage
- *before commissioning*, the Primary TNSP must ensure that the contestable IUSA components and DNA assets are built to the TNSP's functional specifications: NER 5.7.8 – ie functional specification compliance only needs to be demonstrated before commissioning, not before a Connection Application is made.

  Please note that any risk of non-compliance with the TNSP's functional specification wholly lies with the Connection Applicant. A Connection Applicant is likely to accept this risk as it can be minimised by using the same contractor for D&C services that the TNSPs use (who are familiar with the TNSPs functional requirements and who can provide the exact same outcome as the TNSP would in terms of the assets installed).

[9] The 2018 TCAPA Rule preserved Victorian connection arrangements in NER version 109. This means the concepts of IUSA, DCA and DNA do not exist in Victoria. Instead, Victoria applies its own contestable framework for transmission connections where (1) the connecting party is able to choose a declared transmission system operator (DTSO) to provide connection services (2) VicGrid as transmission planner independently manages the transmission connections process and sets technical specifications for these assets (3) the full suite of connection services (including operations and maintenance) are contestable.

2. Project delays

The CEC's developer members have advised that a key barrier to Connection Applicants using a non-RESPs for contestable services is a concern that there are no enforceable mechanisms under the NER for the delivery of non-contestable works, such as "cut-in" to the shared network in accordance with agreed milestones.

Under the negotiate-arbitrate framework, the timely delivery of projects is a matter of contractual negotiation between TNSP and the developer. However, CEC developer members have advised that some TNSPs may not accept liquidated damages for delays at a level that is generally available on ordinary commercial terms[10].

In addition, the AEMC and AER have recognised that there is a potential risk that a TNSP could preference its own projects and those projects which have selected its RESP to provide contestable services in terms of the "cut-in" to the shared network[11]. This remains a significant concern to CEC developer members despite the Transmission Ring Fencing Guideline, as the AER has made a decision not to require TNSPs to provide information broken down by the major stages of the project which would allow it to detect if a TNSP was taking longer to provide cut-in works to the shared network where a project does not use the RESP for contestable works.

The absence of enforceable delivery milestones or liquidated-damages-style incentives for non-contestable works creates asymmetric risk exposure between the parties. For connecting parties, post-financial close (ie, during construction or commissioning phase) delays to a project have a quantifiable impact on a day by day basis, as:

- contracts signed with off takers, financiers and contractors have binding schedules with "liquidated damages" for delays applied on a day-by-day basis.
- offtake agreements (PPAs) often have similar liquidated damages arrangements
- bank finance agreements and offtake agreements will have sunset dates where the project enters default if it has not achieved its Commercial Operations Date (COD) or 100% output. If the project defaults, then the company will need to seek to pay back that loan
- variation costs from contractors to the project owner can result due to delay costs.

We recommend that the AEMC considers whether there are other more effective mechanisms than the negotiate-arbitrate framework to incentivise the TNSPs to deliver non-contestable works, such as cut in works, on time. This is important for the transition generally but also to ensure that TNSPs do not favour their RESP when providing cut-in works.

Recommendation

The AEMC should consider introducing a mechanism under the NER that would incentivise TNSPs delivering non-contestable works (including cut-in works) on time eg through enforceable delivery milestones for non-contestable works or a financial incentive scheme

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[10] This is despite Schedule 5.11 (Negotiating principles for negotiated transmission services) at para 9 which states that "the terms and conditions of access for a negotiated transmission service (including, in particular, any exclusions and limitations of liability and indemnities) must not be unreasonably onerous taking into account the allocation of risk between the Transmission Network Service Provider and the other party".

[11] This risk was recognised by the AEMC at page 15 Final Determination and the AER in their Explanatory Memorandum on the Guideline at pages 11, 20 and 21.

based on delivery performance. In doing so, a TNSP should not be penalised for delays beyond its control.

This will lead to better planning outcomes as it will make it easier for:

- connecting parties to plan their projects as they will have more certainty earlier on the delivery of key works; and
- TNSPs to plan and coordinate across projects.

In addition, it will encourage developers to use third parties for contestable services where this is the lower cost option, resulting in lower consumer prices.

2. Do you think changes are needed to the regulatory framework for negotiating connections and/or facility access arrangements? If so, what changes are required?

This section considers changes which are needed to the "negotiate-arbitrate" framework under chapter 5 of the NER in **Section A** and changes to the framework for negotiating access standards under Chapter 5 of the NER in **Section B**.

A. Changes needed to the "negotiate-arbitrate" framework

CEC has received feedback from developer members that current connection offers do not always reflect market-based terms on bonding, timeframes, assumptions and risk allocation. The AEMC can conduct its own inquiries with developer members and TNSPs to confirm as part of the review. Alternatively, the AEMC may appoint an independent third party to obtain confidential feedback from developers on their experience negotiating with TNSPs and also to understand the constraints and drivers behind the TNSP's commercial positions.

Developer members also have provided feedback that they have no visibility of the TNSP tendering process for non-contestable and contestable services, which results in inefficient outcomes.

Accordingly, improvements are needed to the regulatory framework for negotiating connections and/or facility access arrangements under Chapter 5 of the NER, including changes to the "negotiate-arbitrate" framework.

1. Improvements to the "negotiate arbitrate" framework

The effectiveness of the "negotiate arbitrate" framework for connections and access arrangement with a TNSP under Chapter 5 of the NER assumes:

- the Connection Applicant has adequate commercial information to be able to negotiate with the TNSP on an informed basis for the specific services they require (eg connection services)
- this information is provided in a timely manner
- the Connection Applicant will use the arbitration dispute mechanism under Part B of Chapter 8 of the NER to constrain any market power a NSP may otherwise seek to exert in negotiation[12].

[12] See page 13, and 30 of the Consultation Paper.

However, CEC industry member feedback suggests these assumptions may not always be reflected in the current connection and access arrangements, as discussed below, and recommendations are made to improve the effectiveness of the “negotiate-arbitrate” framework.

1.1. More information is needed to facilitate negotiations

The Connection Applicant does not have adequate commercial information to be able to effectively negotiate with the TNSP. A key problem is the lack of transparency in the pricing information provided.

1.2. Lack of transparency in pricing Information

CEC developer members have advised that at least some NSPs provide only a high-level annuity charge. This usually is a single line item (provided as an annuity figure) which bundles design, procurement and construction for non-contestable IUSA, contestable IUSA and DNA/Dedicated Connection Asset (DCA) works, as well as operations and maintenance services over a 20-30 year period, and the costs of finance.

Greater transparency in pricing would enable the Connection Applicant to better compare:

- quotations from the NSP/RESP and a third-party contractor, improving cost discipline in the process and permitting informed decisions about whether to go to the market or use the NSP
- the cost between NSPs to decide which State in Australia generation developers may want to develop projects.

Additional transparency will also facilitate a timely review of whether a project’s costs are fair and reasonable using the proposed pathways outlined in paragraph 3.1 of section A below.

TNSPs will also benefit from greater transparency as they will be in a better position to compete if they know where their offer can be improved.

All of this will lead to lower costs and better outcomes for consumers.

1.3. Recommendations to increase transparency in pricing

The AEMC should consult on measures to increase transparency in pricing.

Unbundled pricing

We recommend that the NER be amended if necessary to support TNSPs in providing pricing which is separated between contestable and non-contestable services, for both estimated and final pricing.

We note that NER 5.3.6(b4)(2) already requires unbundled pricing in the Offer to Connect. Some CEC developer members are of the view that backing this with a Tier 1 civil penalty provision should be considered in order to better incentivise compliance. It will also ensure regulatory consistency between the ring-fencing provisions and the Competition and Consumer Act.

Despite concerns being raised about the bundling pricing for contestable and non-contestable services in submissions to the AER, we have been advised by developer members that some TNSPs still only provide bundled pricing.

The NER should also be amended to require TNSPs to provide, at least for non-contestable works, a further breakdown of the respective capital expenditure (CAPEX) and operating expenditure (OPEX) components used in estimations and final pricing as outlined below.

Detailed CAPEX breakdown in a standardised format

The NER should also require TNSPs provide a detailed breakdown of CAPEX charges in a standardised format. We consider that the AER could have a role in codesigning with industry a standardised CAPEX breakdown which could include categories such as:

- Site Establishment – including mobilisation and demobilisation costs
- Site investigations
- Concept design
- Detailed design development including “As builts”
- Procurement
- Transmission line construction (which identifies the contractor costs component)
- Substation/terminal station construction (which identifies the contractor costs component)
- State based levies
- Contingency/risk
- Indirects/overheads

We recommend that the AER leverage any work that may be undertaken by the Connection Reform Initiative in relation to improving the transparency of TNSP pricing.

O&M annuity

We consider that the operation and maintenance (O&M) annuity component warrants greater transparency as over the life of a project, these costs can be just as significant as the upfront capital cost. A clearer breakdown would help the Connection Applicant better understand the long-term cost drivers associated with their connection assets.

The AER should consult with industry (including TNSPs) about what further information could be provided on long term operational costs, including O&M activities, Asset Management overheads and financing costs.

1.4 Additional Information at Connection Enquiry Phase

We consider that NER 5.3.3 should be amended to require the TNSP to provide the following additional information at the Connection Enquiry phase

- a list of suppliers for contestable IUSA components and DNA components used by the TNSP (which can be used by the Connection Applicant to simplify procurement)

- a list of service providers for contestable works used by the TNSP and a list of design contractors used by the TNSP (which can be used by the Connection Applicant to simplify procurement)

  This will allow developers to tender for contestable connection works directly with service providers on the TNSP’s tender panel. We note that Western Power’s customer led “design and construction” model for greenfield works allows developers to tender its approved service providers directly.

- Known latent conditions on the NSP network that have the ability to materially increase costs, or delay, the construction of the connecting projects.

1.5 Other information needed to improve the efficiency of tenders for connection works

(a) Input into tender document or selection of tender offer

The TNSP uses a panel of approved service providers for the detailed design of IUSA components and DNA assets and for construction works. The TNSP prepares the tender documentation to obtain offers for non-contestable (and if applicable contestable services) and selects a preferred tenderer.

Developers have no visibility into the tender documentation. The developer should be provided with a summary of the document – this will enable the Connection Applicant to review key information such as the functional and technical specifications[13].

Developers also have no input into the process for selecting between tenders for (non-contestable and, if contestable works are awarded to the RESP, contestable) connection works from the TNSP panel and have no transparency over the different tender offers that are made.

More efficient outcomes could be delivered (resulting in significant cost savings) if developers have input into the selection of the tender offer and are given the opportunity to review, clarify and refine the different tender offers for the connection works. The developer will have assessment criteria for choosing a tender which is different to the TNSP's - a developer will assess a tender offer not only on the basis of price, but also the ability to undertake project works in a more timely, efficient and coordinated manner. For example, there can significant efficiencies from having a single supplier build a switching substation and the generator facility substation. As projects are built farther from city centres, significant efficiencies resulting from a reduction in mobilisation costs will also become more important.

Recommendations

The NER should require the TNSP to provide the Connection Applicant with a summary of the proposed tender documentation for non-contestable connection works, and the names of the panel service providers invited to tender, before the tender is issued to the TNSP's panel of service providers.

The NER should require TNSPs to provide Connection Applicants with the option to participate in the evaluation and selection of tender offers for TNSP connection works, including the ability to review, clarify and request refinements to tender submissions before a final offer is selected.

(b) Information to support direct tenders with NSP service provider panel

Even more efficiencies can result where the Connection Applicant can tender directly for contestable works with the TNSP's panel of service providers. This is because the Connection

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[13] For example, a TNSP could incorrectly undersize a DCA cable in their tender process and it may not be detected until the very last-minute leading to late changes and project delay as well as cost increases

Applicant takes a different view of risk to the TNSP and can negotiate lower prices by contracting risk with the supplier differently from the TNSP.

It is acknowledged that Connection Applicants can already contract directly with the TNSP panel. However, a Connection Applicant is more likely to do so if the TNSP offers a clear pathway as Western Power has done with its customer- led design and construct model for greenfield works. This is because it will reduce any concerns a Connection Applicant may have about prejudice to its future dealings with the TNSP if a non-RESP is chosen for the contestable work.

Recommendation

The TNSP should be required to provide the Connection Applicant with information reasonably requested about the tender for non-contestable works which would support more efficient outcomes if Connection Applicants were to tender with the panel directly eg information about the timing of the non-contestable tender and the panel members selected to participate in the tender.

2. Timely provision of commercial information

NER 5.2A.5(c) provides that a TNSP and a Connection Applicant must provide information (including commercial information) reasonably required by the other party that would facilitate effective negotiation for the provision of a negotiated transmission service **in a timely manner.** However, in practice, feedback received from multiple CEC developer members indicates it is not uncommon for Connection Applicants to only obtain an offer with the final price and other key commercial information around a month before the Connection Agreement is due to be signed. In addition, there is no uniform practice around TNSP providing estimates of prices earlier in the connection process.

We have made recommendations below to support the timely provision of commercial information:

(a) Amendments to NER 5.2A.6(b)(1) and (2)

Under NER 5.2A.6(b)(1), pricing information for negotiated transmission services (including changes in price) need only to be provided “on request” and there is no requirement to provide detailed pricing information. Under NER 5.2A.6(b)(2), there is no timeframe for responding to requests for more detailed information about costs.

Recommendation

The NER should be amended to require the NSP to provide a detailed breakdown of CAPEX and OPEX costs for negotiated transmission services as a matter of course, rather than only “on request[14]”.

The NER should permit the Connection Application to request the TNSP to provide further clarification of the pricing information in the CAPEX/OPEX breakdown in which case the TNSP

[14] See section 1.2 above regarding the codesign of a standardised format for providing the CAPX/OPEX breakdown

must provide the requested clarification in writing within 5 business days after receiving the Connection Applicant's request for further clarification[15].

(b) The validity period of tender offers needs to be longer

Background to tender process for connection works

The TNSP's tender process for the connection works typically occurs around four months before the connection agreement is due to be signed. Following the tender process, the NSP selects a preferred tenderer and obtains a final offer. However, the offer is generally subject to a relatively short validity period (less than three months), which is shorter than the validity periods commonly provided in other industries.

CEC developer members have advised that, once the TNSP has reviewed the selected tender offer, the Connection Applicant is left with only a limited period, in some cases as little as 20 Business Days, to assess and respond before the offer expires. This timeframe is particularly challenging because the final price for the TNSP connection works, together with other critical information such as construction schedules, milestones and completion dates, is not known until the offer is received.

The information contained in the tender offer has significant implications for the broader project, including the construction programs of the Connection Applicant's other contractors, Power Purchase Agreements, financial modelling and market modelling. Given the importance of this information, the time available to review and evaluate the selected offer is often insufficient.

The short validity period also weakens the Connection Applicant's negotiating position. If the Connection Applicant is unable to accept the TNSP's Offer to Connect before the tender offer expires, the TNSP may be required to retender the connection works. Apart from the cost for retendering (which is borne by the Connection Applicant and can be material), this creates a risk of project delays and exposes the Connection Applicant to potentially higher connection costs under a new tender offer.

Recommendation

NER 5.3.6(4)(ii) is amended so that the Offer to Connect remains open for 60 business days, unless otherwise agreed.

3. Alternatives pathways to resolve disputes

The AEMC has acknowledged that the arbitration mechanism in Part 8 of the NER has rarely been used and that the constraint that it is intended to impose on "any market power a NSP may otherwise seek to exert in negotiations" may not be working as effectively as it should: see page 30 of the Consultation Paper.

CEC developer members consider that arbitration would only be used as a measure of last resort and is not suitable to resolve disputes in a timely or cost-effective manner. New mechanisms are needed to constrain any market power a NSP may otherwise seek to exert in negotiations before arbitration is involved, as is common in other industries. In determining what additional mechanisms are needed, it should be recognised that Connection Applicants are

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[15] We have adopted the timeframe for responding to requests for clarification in 5.3.7A (h). We consider that the information to substantiate pricing for multimillion dollar projects should be readily available.

reluctant to make a complaint about a TNSP. Unlike other essential facilities, developers have to deal with the same TNSP on a repeat basis and multiple CEC developer members have voiced concern that making complaints may cause delays for the project they are working on and also affect future projects with the same TNSP.

Recommendation

We recommend that the AEMC consults on improved dispute resolution mechanisms, so that there is flexibility in achieving efficient negotiation outcomes and resolving disputes in a timely manner, in which arbitration exists primarily as the last-resort pathway.

Importantly, several of the pathways should enable projects to be scrutinised without the Connection Applicant making a formal complaint, and so without prejudice to its future dealings with the TNSP. As noted above, to comply with best practice as a regulator, it is important that the AER does not solely rely on self-reporting to detect non-compliances by the TNSP with the provisions of chapter 5 concerning the negotiations between the TNSP and the Connection Applicant and with chapter 6A of the NER.

3.1 Reviews initiated by the Connection Applicant

(a) Internal escalation mechanism

The NER should require the TNSP to provide an internal mechanism for escalating disputes to nominated senior managers (preferably reporting to ELT and/or the CEO), who are responsible for commercial and technical negotiations relating to connections. This would provide a mechanism for resolving disputes concerning:

- the negotiation of access standards and disputes
- the terms and conditions (including price) for providing non contestable and contestable works.
- contestable scope of works.

We suggest that details of this internal escalation mechanism be provided in the connection enquiry response, including contact information for a suitably senior point of escalation.

We consider that there will be a greater incentive for the TNSPs to resolve disputes internally if there are pathways for resolving disputes (other than by arbitration).

(b) AER high level review of non-contestable works

The AEMC should consult on a mechanism whereby Connection Applications can request the AER to undertake high-level reviews of non-contestable works offers, where Connection Applicants can demonstrate reasonable concern that proposed prices, terms and conditions are not fair and reasonable. To minimise impacts on project timelines, the review should be completed within a reasonable timeframe (e.g. 20 days) to be determined as part of the consultation.

The AER's review would not constitute a determination of the final price or contractual terms. Rather, it would provide an independent assessment of whether aspects of the offer warrant further consideration or revision.

Where the AER identifies preliminary concerns, the TNSP should be required to review the relevant aspects of its offer at its own cost and engage in further negotiations with the Connection Applicant to address those concerns. This may include revisiting pricing

assumptions, scope allocations, risk allocation provisions, contractual conditions or other matters identified by the AER.

This process would provide Connection Applicants with access to an independent and timely review mechanism in circumstances where they have no alternative supplier and limited ability to test whether the offer is efficient, while preserving the ability of the parties to negotiate a mutually acceptable outcome and avoiding undue delays to the connection process.

The AER should be well placed to undertake a high-level review of non-contestable works offers, as it has access to cost information:

- from Transmission Revenue Reset Reviews and other regulatory determinations. We note that the tools and skills needed for a high-level review are no different from those employed in the review of Transmission Revenue Resets and pass-through submissions for prescribed services.
- from other projects – notified by the TNSP or from periodic audits (as proposed in section A, 3.1 above)
- from the AEMO's transmission cost database[16] or such other database the AER may establish (as per 3.2(a) below).

It is expected that this review mechanism would be used only in exceptional circumstances. Connection Applicants would be conscious that requesting an AER review may delay acceptance of the Offer to Connect and a project reaching Final Investment Decision (FID) milestones. Further, Connection Applicants may be reluctant to escalate concerns regarding pricing or contractual terms to the AER given the ongoing and long-term relationship required with the relevant TNSP throughout the connection and delivery process on the current project and subsequent projects.

Recommendation

The AEMC should consult on providing the AER with a right of review of non-contestable works offers, where Connection Applicants have demonstrated reasonable concerns that the pricing, terms or conditions of supply are not fair and reasonable.

(c) Independent review for high value non-contestable works

The NER should provide an optional independent engineering review of high value (e.g. greater than 20 million dollars) non-contestable works estimates. This will help ensure that prices for non-contestable works are fair, reasonable and efficient.

The NER should require the AER to establish a panel of independent engineers who could undertake these kinds of reviews – noting that many consultants may already be engaged by the TNSPs. This will ensure that a review can be undertaken on a timely basis.

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[16] https://www.aemo.com.au/energy-systems/major-publications/integrated-system-plan-isp/2026-integrated-system-plan-isp/2025-26-inputs-assumptions-and-scenarios/transmission-cost-database

3.2 Other pathways for scrutinising TNSP conduct

We recognise that Connection Applicants may be reluctant to use the review mechanisms to raise issues which are specific to their projects (because of concerns about impacts, including delays, when dealing with the TNSP in relation to the specific project or future projects).

Recommendations

We have recommended below additional pathways for TNSP pricing and terms of supply for connection works to be scrutinised. CEC developer members consider that these pathways will support more balanced, efficient negotiations between the relevant NSP and the Connection Applicant on commercial and technical matters.

(a) Notification of project costs to the AER

The NER should require the NSP to notify the AER of the cost of non-contestable works for each of its projects. This will help the AER to build a data base of the costs for connection works can be used to facilitate timely reviews of the costs of non-contestable works.

It would be helpful if the AER could extend its database to include the costs for contestable works and the AEMC should consult on mechanisms that could facilitate this.

The AER could make information on project costs available AEMO (to add to its transmission costs calculator used for the ISP) and to the AEMC (to inform subsequent network regulation reviews).

(b) AER periodic audit

Consistent with the recommendation in section 5.1 in the response to Question 3 above and to ensure that the AER engages in best practice as a regulator for the reasons given in the response to Question 3 above, the NER should require the AER, or an independent consultant appointed by the AER, each year to undertake a periodic audit of project(s) undertaken by different TNSPs to determine if there has been compliance with the connection process under Chapter 5 and the transmission ring fencing guideline. This should only be in relation to projects that are now operational.

We consider that this is important given that developers are reluctant to lodge a complaint with the AER.

Periodic audits of projects will put the AER in the position to assess whether:

- the negotiation of access standards is fit for purpose and achieves outcomes which are consistent with promoting the NEO. We note that the NEM Connections Hub, a new online collaboration platform, will help facilitate such a review.

- the pricing and terms and conditions of supply for connections works are fair, reasonable and efficient in accordance with Chapter 5 of the NER.

- the developer has been given adequate information on a timely basis to be able to negotiate effectively with the TNSP

- the transmission ring-fencing guideline have been complied with (rather than solely relying on self-reporting of breaches).

The requirement for the AER to undertake a periodic audit:

- is consistent with AER current practice of auditing retailers for compliance with retail rules[17]
- is not onerous as a TNSP will not be audited every year and only a selection of projects would be audited
- will encourage developers to use third parties for contestable services where this is the lower cost option, resulting in lower consumer prices.

(c) Other pathways

Annual Survey

The NER could require the AER to undertake an anonymous survey which provides the opportunity for developers (and where applicable other parts of industry) to provide feedback on issues such as:

- whether the negotiation of access standards is resulting in outcomes which are inconsistent with the National Electricity Objective
- whether a TNSP has been effectively complying with the ring-fencing guideline
- barriers to choosing a non-RESP to provide contestable services
- barriers to the negotiation of contestable and non-contestable services – for example, whether the quote for non-contestable and, if applicable, contestable services are unbundled and sufficiently transparent to permit effective commercial negotiation
- whether existing waivers to the transmission ring-fencing guideline should be revoked (and the reasons why)
- whether confidential information may have been accessed by, or disclosed to, the RESP
- best practice adopted by TNSPs.

The feedback may raise issues which could be dealt with quickly and efficiently by a compliance letter or some form of guidance note. If concerns are raised in the feedback, the AER could also use this information to inform its compliance and enforcement priorities and its periodic reviews of projects (as proposed in section 3.1 above).

Complaints line

As discussed above, a complaints line is another pathway for raising concerns with the implementation of Chapter 5 obligations on an anonymous basis. As with the ACCC complaints line, there should be the option for the developer to include their contact details so that the AER can follow up on the complaint made.

Limitations

As discussed above, there are limitations in using information provided to the AER on an anonymous basis. For this reason, it is important that the AER is required to undertake periodic audits as the primary tool for ensuring there is compliance with the chapter 5 obligations relating to negotiations between the TNSP and the Connection Applicant and the ring-fencing guideline.

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[17] We note that the AER has been given specific powers to carry out or require compliance audits under section 275 and 276 of the National Energy Retail Law

4. Role of AER in driving best practice amongst TNSPs

We recommend that the AER use the information it proactively obtains through reporting on project costs, periodic audits or surveys/complaint lines to drive best practice among TNSPs. The AER could do this by:

- publishing reports which outline best practice, or differing practices among TNSPs – this could incentivise TNSPs to follow best practice
- issuing compliance letters e.g. clarifying a preferred interpretation of a NER clause which promotes the NEO[18]. or guidance outlining the AER's expectations in the implementation of the rules. This can change current TNSP practices more quickly than pursuing a rule change or an enforcement action[19].

5. Other improvements to connection and access

The regulation of TNSP market power when negotiating with the Connection Applicant under Chapter 5 of the NER relies on high level economic principles (which are difficult to apply or even enforce) and there are either no civil penalty provisions or only Tier 2 or 3 civil penalty provisions for a breach.

By contrast, there are higher penalty provisions for a breach of the transmission ring-fencing guideline and competition laws, both of which deter and address potential misuse of TNSP market power.

Recommendation

We recommend a review of the civil penalty provisions applicable to TNSPs under Chapter 5 of the NER to ensure that the TNSP is sufficiently incentivised to comply with its obligations under Chapter 5.

We recommend that the AER or the AEMC considers whether guidance is needed on the application of negotiating principles for negotiated transmission service under Schedule 5.11 of the NER or other high-level concepts such as requiring pricing to be fair, reasonable and efficient.

B. Changes needed to the framework for negotiating access standards

In section 1, we recommend changes to the access standard negotiation process to:

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[18] The NEL explicitly states that the interpretation of the NER that will best achieve the purpose or object of the NEL is to be preferred to any other interpretation: Clause 7(1) of Schedule 2 to the NEL

[19] CEC asked the AER to issue a compliance letter to change TNSP behaviour in implementing of the detailed design requirements for contestable IUSA requirements and DNA assets at page 6 of the Jan 2025 submission on the Guideline

The lack of transparency in TNSP pricing was raised earlier by the CEIG: see page 17 of its Explanatory Statement on the Guideline. We consider that a compliance letter could have provided guidance on the level of detail and the level of unbundling needed when proving pricing for contestable and non-contestable services.

- address the current imbalance in the negotiating position of the NSP and the Connection Applicant
- facilitate a process which is time efficient and reduces costs, without compromising power system security and operability
- supports engineering judgement to achieve outcomes which are consistent with the National Electricity Objective.

In section 2, we recommend that the AEMC consult on whether the AAS target remains fit for purpose and can ensure that the significant amount of new renewable generation and energy storage forecast by the ISP to connect to the power system can do so in a timely manner and at the lowest cost to consumers.

1. Justification for requiring higher performance/AAS target

1.1 The process for negotiating access standards is imbalanced

When a Connection Applicant proposes a negotiated access standard (NAS), NER 5.3.4A(b1) requires that the proposal is as close as practicable to the automatic access standard having regard to:

- the need to protect the plant from damage;
- power system conditions at the location of the proposed connection; and
- the commercial and technical feasibility of complying with the AAS with respect to the relevant technical requirement (AAS target).

If the NSP and AEMO (in respect of AEMO advisory matters) decides the proposed NAS is not suitable, a negotiation begins with the NSP and AEMO regarding a suitable NAS (prior to formally rejecting the proposed NAS in accordance with NER 5.3.4A(d) and (e)).

NER 5.3.4A(b2) requires the Connection Applicant to provide reasons and evidence to the NSP and AEMO as to why they consider the proposed NAS is appropriate. In contrast, NER 5.3.4A does not require the NSP nor AEMO to provide reasons and evidence as to why:

- the proposed NAS in their view is not suitable and that an alternative NAS requires evaluation.
- additional studies and modelling are required to support the proposed or alternative access standard
- a capex solution is necessary having regard to the power system performance at the proposed point of connection.

The negotiation process is also imbalanced since the NSP access to network information to which the proponent is not privy, including the wide area model[20].

[20] AEMO has restricted access to EMT models of the power system and does not permit Connection Applicants to access the model outputs from EMT models of other plant in the power system. This information asymmetry makes it difficult and inefficient for Connection Applicants to diagnose performance and modelling issues, which is necessary to tune controllers properly and establish performance standards.

1.2 5.3.4A Fact Sheet

As part of Phase 1 of the Connection Reform Initiative, it was agreed that AEMO would codesign a guidance note for negotiating access standards. Key outputs of the guidance note were intended to include:

> Setting out a process whereby members justify their proposed NAS and NSPs and AEMO justify requiring higher performance/AAS target.

The Connection Reform Initiative decided to codesign a guidance note in order to achieve behavioural change in a more timely manner than pursuing a rule change. However, it was recognised that a rule change may still be needed after the guidance note was prepared.

A focus group with representatives from industry provided feedback on two draft versions of a guidance note. AEMO has subsequently turned it into a shorter Fact Sheet, which has recently been published.

The Fact Sheet outlines high level negotiations principles:

> "The following principles should be applied during the negotiation process to support more efficient, evidence based and collaborative negotiations between Connection Applicants, NSPs and AEMO.
>
> • **Evidence-based negotiations**: High-quality, targeted evidence should be provided to support efficient and timely decision-making. Connection Applicants should provide clear justification for a proposed NAS, while NSPs and AEMO should provide clear reasons when a proposal is unsuitable and identify pathways for the Connection Applicant to address concerns."

The Fact Sheet also states that that "NSPs and AEMO will assess a proposed NAS using a structured, evidence-based, and proportionate approach".

We believe the Fact Sheet provides an improvement on current arrangements but there is scope for further improvements and clarity through complementary measures that can promote certainty that NSPs and AEMO will provide **evidence-based written** reasons **to** the Connection Applicant **at the time** that they indicate that the NAS is unsuitable and an alternate NAS requires evaluation. There is also scope for clarifying what matters should be addressed when providing reasons.

1.3 Need for a rule change

We believe that a rule change can complement the Fact Sheet, which can:

- provide certainty that, during the negotiation period, the NSP (and AEMO) will justify requiring higher performance/AAS target
- ensure there is regulatory consistency between:
    - 5.3.4A(b1) and (b2) and 5.3.7A(g) which requires AEMO or the Network Service Provider to provide written reasons when requesting additional data and information from the Connection Applicant at R1 and permits the Connection Applicant to seek further clarification under 5.3.7A(h)(1)
    - assessment process under 5.3.4A and under the R1 Capability Assessment Guideline (which contemplates that there should be a fit purpose assessment).

Recommendation

We consider that there is a need for a rules-based obligation which requires the NSP and AEMO to provide evidence-based reasons in writing to the Connection Applicant as to why the NAS proposed under NER 5.3.4A(b1) is not suitable and an alternative NAS requires evaluation.

The evidence-based reasons must be provided at the same time as the NSP advises the Connection Applicant that the proposed NAS is not suitable, and an alternative NAS requires evaluation.

We consider that the NER should outline the matters that should be addressed by the evidence-based reasons. We recommend that the AEMC should consult on this issue but suggest that the reasons and evidence provided by the TNSP should at least:

- identify specific concerns AEMO and the NSP may have with reference to specific parts of the performance standards
- identify how the proposed NAS would create an adverse impact on power system security supply or achievement of system standards, or on the quality of supply for other Network Users
- confirm the materiality of the impact of the plant on the power system
- confirm that there is a network need for additional capital equipment having regard to the power system performance at the proposed point of connection or for further tuning required to achieve a higher performance
- confirm the higher performance standard is providing material value to the power system, for example, in terms of future hosting capacity, reduced cost to consumers (via avoided investment for future network upgrades) or improvement in system reliability, and this is commensurate to the costs and engineering effort required in delivering that benefit
- confirm that there is reasonable headroom to accommodate small design changes that may occur during detailed design of the plant.

Consistent with NER 5.3.7A(h)(1), we recommend that the Connection Applicant should have the right to request that AEMO or the Network Service Provider provide further clarification of its request for the Connection Application to evaluate an alternative performance standard (including its request for additional modelling and studies or for capex solutions), in which case AEMO or the Network Service Provider (as relevant) must provide the requested clarification within 5 business days after receiving the Connection Applicant's request for further clarification.

Benefits

In doing so, the NER will ensure there is a more "balanced" negotiation process where both parties need to justify their position. This will promote the NEO, and complement the Fact Sheet, as it will help ensure that:

- not only the Connection Applicant, but TNSPs and AEMO, produce high quality supporting evidence for a suitable access standard or for additional studies and modelling
- TNSPs and AEMO apply engineering judgement rather than requiring the AAS as a default position (which may not result in the best outcome for the power system, and can be unsuitable for, or even detrimental to, the network). We also note that engineering judgement can reduce the need to retune plants.

- the Connection Applicant understands what needs to be done to improve the performance of the plant if it is needed
- access standards are agreed that support efficient investment outcomes in the NEM, while ensuring power system security and quality of supply are not adversely affected
- engineering effort and costs to meet the higher standard are commensurate with the potential impact of the plant on the power system and other network users and with the additional value being delivered to the power system by the higher performance standard.

4 Harmonic Data

The harmonic impedance data and harmonic emission allocation the TNSPs provide often do not make clear how they have been determined and are (at least in some cases) only provided after lodgement of Connection Applications. We understand that this information is needed at an early stage in the preparation of Connection Applications and is typically readily available to TNSPs.

Recommendation

We recommend that TNSPs be required early in the connection process to:

- make available relevant harmonic impedance data and provide harmonic emission allocation
- outline the methodologies for determining the network harmonic impedance polygons and harmonic emission allocation, including assumptions made. The assumptions should include information linking the harmonics impedance data to the network operating scenarios.

We consider that this will promote the NEO as it will allow:

- the Connection Applicant to make better decisions as to how to address harmonic issues and incorporate it in their early design and/or planning approval work
- better consideration of non-capex solutions to harmonics, rather than installing harmonic filters in the network (which may in the long term not result in the best outcomes for the power system and may cumulatively have negative impacts on the power system)
- transparency as to how the harmonic polygon and allocation have been determined.

5 Review into whether the AAS target is fit for purpose

The CEC has received feedback from members that the requirement for the Connection Applicant to propose a negotiated access standard that is as close as practicable to the corresponding automatic access standard (**AAS target**) under NER 5.3.4(b1):

- may not support efficient investment in the NEM as it may lead to:
    - unnecessary CAPEX where there is no clear power system need
    - additional tuning for marginal incremental benefits
    - additional engineering time – to demonstrate optimisation for marginal incremental benefits or unfeasible/unlikely scenarios
- can result in a GPS that is not suitable for, or even detrimental to, the power system
- does not leave headroom between R0 and R1 – making GPS renegotiations at R1 more likely.

We outline below some of the challenges of the AAS target that may not be able to be addressed without a rule change.

- NER 5.3.4A(b1) results in a process which inherently adds substantial time, effort, complexity and cost to navigating the grid connection process. The requirement that the plant's performance be as close as possible to the AAS implies an obligation on the plant to prove that it has provided not just "sufficient", but the "best" possible performance that can be achieved for the hardware. Given the enormous number of parameters that can be changed in site controllers, and the fact control logic is software based, and hence flexible, this can lead to extremely long, iterative stages of trying to "optimise" performance to achieve that "best" possible performance before the NSP/AEMO will consider a negotiated access standard which may be more appropriate for the power system at that location.
- Due to the already-limited engineering resources in the industry, the additional engineering time required for the connection process also results in a bottleneck for how many new renewable energy plant can obtain connection approval and start construction each year, slowing down the energy transition. This has negative impacts on consumer prices, power system reliability and emission reduction targets, again contrary to the NEO.
- With the AEMO ISP predicting a substantial increase in renewable projects coming through the system, these bottlenecks will only increase. To be able to facilitate the grid connection process for these projects with the limited engineering resource available, there needs to be the ability for NSPs and AEMO to accept a performance that is "technically acceptable" without needing to undertake an optimisation process to try to make it "as close as possible to the automatic access standard" where the benefits of doing so are limited (e.g., small projects, or projects in strong parts of the grid, or where the issues have low impact or materiality).
- The lack of justification for requiring a higher performance has already been discussed above. This lack of a clear obligation for the NSPs to provide justifications can mean that decisions are made without considering the costs vs benefits of requiring a higher performance closer to the AAS.
- We note that the automatic access standards have in some instances been changed by the AEMC in the *Improving the NEM access standards- Package 1* rule change to align them with best power system performance needs. This should not be used as an excuse for not requiring the exercise of engineering judgement in the application of NER 5.3.4A(b1). We note that even the revised AAS may not be optimal in all locations and circumstances, and that the revised standards may not always achieve the best outcome for the power system operation and performance due to rapid changes in technology and the power system.

We acknowledge that AEMO through the Fact Sheet is attempting to address these issues. However, it is unlikely that the non-binding fact sheet will be able to do so effectively on its own and there remains uncertainty as to the extent to which TNSPs will comply with the fact sheet.

Recommendation

We consider that the AEMC as part of its Electricity Network Regulation Review should consult on whether:

- the AAS target is fit for purpose and will enable the significant amount of new renewable generation and energy storage forecast by the ISP to connect to the power system in a timely manner and at the lowest cost to consumers
- the wording in NER 5.3.4A(b1) needs to be amended i.e. the AEMC should consider changes to the wording that requires a proposed access standard to be "as close as practicable" to the automatic access standard and changes to the reference to "commercial and technical feasibility" which allows engineers to push for the AAS without considering the commercial impacts on a project and whether the additional costs outweigh the benefits
- guardrails are needed when applying the AAS target e.g. limiting a higher performance or AAS where it results in additional CAPEX unless the TNSP or AEMO can demonstrates that

there is a network need having regard to the power system performance at the proposed point of connection.

In assessing whether amendments are needed to 5.3.4A(b1), the AEMC should also consider the *Security Framework Enhancements* rule change which is considering removing barriers to retuning. This is because an improved retuning framework will remove the need for engineers to push for the AAS and for the Connection Applicant to provide justifications as to why it is not possible and allow engineers to focus on what the network needs right now.

Other comments - Network information

The AEMC as part of the Electricity Network Regulation Review should consult on what information the TNSPs should be required to make available on their websites to assist the connection process and to improve system planning, including on what information could be provided on a real time basis.

Information that TNSPs could make available includes:

- transmission network diagrams
- transmission line diagrams for Planned Transmission Projects[21]
- as soon as practicable after a TNSP achieves FID for a major transmission project and/or augmentation, a TNSP's best estimate of limit equations for that project and all material changes likely to be caused by the planned transmission project to other limit equations for existing and committed generation and transmission projects
- other network data including line ratings, preliminary substation layouts for proposed transmission lines and substations
- information about network congestion, including past binding constraints and forecasts of network congestion in the medium term
- information about line ratings in real time
- real time operational information on outages.

The CEC has tried to obtain some of this information under section 3.7A(n) and (o) of the NER through Congestion Information Resource guideline reviews[22] (which only occur every three years) but with very limited success. For this reason, we are seeking for more information to be made available via amendments to the NER.

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[21] Planned transmission projects should include:
- network elements that are forecast to be operational prior to the issue of the next routine Transmission Network Diagram update
- considered projects (as defined in the NER) as well as actionable and committed projects as defined by AEMO
- projects that have had funding approval and/or a firm date for construction and commissioning is announced (which means that at least the preliminary design for the project has been completed and basic information such as network capacity would be available).

For clarification, network elements which are for planned transmission projects that are not fully operational could be shown as either a dotted or as a highlighted element on transmission network diagrams.

[22] See CEC submission dated May 2025 and CEC submission dated January 2025

Schedule - Limitations of reporting obligations under 6.2.1 of Transmission Ring-Fencing Guideline (Guideline)

The limitations of the reporting obligations under the Guideline are considered below. A more detailed analysis of the limitations can be found in CEC's Jan 2025 submission.

Reporting obligations only enable limited insights into contestability

Clause 6.2.1(vi) and (vii) of the Guideline requires reporting on the total number of connection applications received by a TNSP in that calendar year that include connections electricity services solely provided by a RESP and by a person other than a RESP.

The only insight the AER can derive from this limited information is whether a non-RESP provided any contestable electricity services during the previous calendar year.

Time taken to complete projects

6.2.1 of the Guideline also requires TNSPs to report information on the **time taken to complete projects**. In particular, clause 6.2.1(viii) and (xi) requires reporting on the average time (in business days) between the initial receipt of the application for connection and the commissioning of the connection in two scenarios – where a RESP solely provides contestable electricity services and where a non-RESP provides contestable connection services.

However, reporting only aggregate average timeframes is unlikely to provide the AER with sufficient information to identify whether discriminatory conduct has occurred, or, if it has occurred, the stage of the connection process at which it arose.

To enable monitoring of compliance with the Guideline, TNSPs would need to provide the following additional Information about the time taken to complete projects where the non-RESP provides contestable electricity services at a more granular level, broken down by:

- project: reporting based on aggregated averages may mask discriminatory conduct occurring at particular stage of individual projects. Timeframe information should therefore be reported on a project-by-project basis and updated annually until commissioning, recognising that many projects span multiple calendar years.
- technology types[1]: the time frames for projects vary significantly by technology type e.g. wind projects take much longer than other projects
- stages - potential discriminatory conduct varies between the different stages outlined below:
    - Stage 1 - Enquiries Stage: from connection enquiry to the lodgement of the Connection Application[23]

[23] Stage 1 would capture if a TNSP is engaging in conduct, following a connection enquiry but before a connection application is made, which materially lengthens a Project's timeline - for example, if the TNSP favours its RESP by imposing different or more onerous requirements in relation to a Connection Application where a RESP does not provide contestable services (without objectively justifiable reasons) – eg more onerous detailed design requirements for IUSA components and DNA assets which need to be assessed prior to a consideration of the remainder of the Connection Application.

- Stage 2 - Connection Application Stage: from lodgement of the Connection Application to issue of 5.3.4A letters [24]
- Stage 3 - Contract Execution: from the issue of 5.3.4A letters to the execution of Connection related Agreements and issuance of an Offer to Connect[25]
- Stage 4 - Project Delivery Stage: from the Notice to Proceed with the design and construction of non-contestable assets (or the signing of Connection related Agreements) to the completion of the construction and commissioning of those assets[26]

Metrics other than project timelines are not reported on

The time taken to complete projects is only one metric for assessing if discriminatory conduct has occurred. To be in a position to detect discriminatory conduct, in relation to each project, the TNSP would need to report if:

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[24] Stage 2 is aimed at capturing whether there have been unreasonable delays resulting from the TNSP reviewing **and approving** the detailed design drawings of the contestable IUSA or DNA submitted with the Connection Application before it will proceed with the review of the other parts of the Connection Application. CEC recommends that the NER is amended to remove this risk.

The AEMC at page 16 of its Final Determination on Expanding the transmission ring-fencing framework (**Final Determination**) acknowledged that the TNSPs may unreasonably delay the provision of an offer to connect through this review process and "a connecting party … cannot be confident that delays are a result of legitimate reasons or a result of discriminatory conduct".

[25] Stage 3 is aimed at capturing whether the timeframe in negotiating the entire suite of Connection related agreements (which includes Project Agreement, Connection Agreement, Co-ordination Deeds and Operation and Maintenance Agreements) is longer when a non-RESP is chosen for contestable works than when the RESP is chosen for contestable works. This information is important as there are no timeframes within which the TNSP and the Proponent must negotiate and enter into the Connection related Agreements and the TNSP may prioritise projects to which its RESP provides contestable services. A very relevant statistic is the time taken to negotiate agreements to provide the non-contestable assets depending on whether the RESP has been chosen to provide contestable services or not.

[26] Stage 4 is aimed at capturing whether the timeframe for the TNSP to undertake project works involving the building of a non-contestable asset (including non-contestable IUSA such as a circuit breaker in the substation or DNA secondary systems), and interface works (also known as cut-in works) is longer when the RESP has not been chosen for contestable works than when the RESP has been chosen for contestable works.

There is the potential for the TNSP to preference its own projects and those projects which have selected its RESP to provide contestable services in terms of the timing and costs of the "cut-in" to the shared network. CEC industry members have expressed concern that the TNSP can hold up the completion of a project in failing to provide contestable services in a timely manner. There are no or limited liquidated damages payable by the TNSPs and as a result the TNSP can theoretically delay a project with no or limited contractual consequences to them.

- it imposes costs, risk allocations[27], terms and conditions, and project timelines for projects where the RESP provides contestable services which are different from those where the TNSP does not provide contestable services, and if so, the reasons why[28].
- the costs[29], project scope[30], risk allocations, and terms and conditions, for providing non-contestable transmission services, GPS requirements or the project's timeline, became less favourable for the proponent after the TNSP was advised that its RESP would not be providing contestable services, and if so, details of the change and the reasons for the change.

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[27] TNSPs have the ability to offer preferential risk allocations if the RESP provides contestable services, leveraging the lower risk profile of their regulated asset base.

[28] This would capture potential conduct such as TNSPs:
- informing Proponents at the initial Project stage that projects will take longer and cost more if contestable services are provided by a non-RESP
- waiving certain provisions and costs in their Connection Agreement only if the RESP provides the contestable services
- offering early procurement of long lead time items (for example transformers) only if the RESP provides the contestable services.

[29] One of the key concerns reported by developer members is that when a 'bundled' offer becomes a 'negotiated only' scope, then the price for the negotiated scope increases.

[30] An example of an increase in project scope is if a bay extension is only required after TNSPs have been advised of their unsuccessful proposals for contestable services.