

15 May 2009

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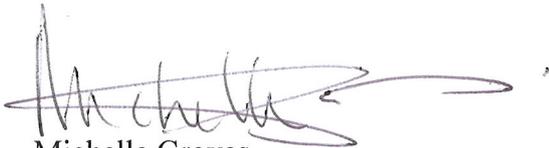
Dear John

**RE: Regulatory Investment Test for Transmission Draft Rule
(AEMC Reference ERC0077)**

Please find attached the AER's submission on the AEMC's regulatory investment test for transmission draft rule.

Please contact me if you have any questions in relation to the matters raised in our submission.

Yours sincerely



Michelle Groves
Chief Executive Officer



AER Submission

National Electricity Amendment (Regulatory Investment Test for Transmission) Rule 2009

Response to AEMC draft rule determination

15 May 2009

1. Introduction

The Australian Energy Regulator (AER) welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) draft determination concerning the regulatory investment test for transmission (RIT-T) rule change proposal.

The AER is responsible for producing the current regulatory test, upon which the draft rule is significantly based. The AER is also currently responsible for developing regulatory test application guidelines and is the dispute resolution body for regulatory test disputes.

The draft rule outlines significant roles for the AER. It is proposed that the AER develop the RIT-T and the regulatory investment test for transmission application guidelines (RIT-T guidelines). It is also proposed that the AER be responsible for considering disputes in relation to the application of the RIT-T; and undertake a periodic review of the appropriateness of certain RIT-T cost thresholds. These responsibilities mean that the AER has a particular interest in this rule change.

In the national planner review, the AER raised concern about the level of RIT-T detail proposed to be included in the National Electricity Rules (NER), arguing that it creates considerable inflexibility surrounding the operation of the RIT-T.¹ The level of RIT-T prescription proposed in the draft rule reflects the AEMC's recommendations in the national planner review. The AER remains concerned about the level of prescription proposed in the draft rule. The requirement for the AER to apply prescriptive principles in developing the RIT-T creates significant issues if there are problems with the drafting of these principles. Any errors of rule drafting will need to be addressed through the rule change process.

Despite the AER still having significant concerns regarding the overall level of prescription in the rules, the AER has focused its comments on the rule as drafted. Some of these comments, however, highlight the difficulties of an overly prescriptive approach.

The submission addresses issues in the order they appear in the draft rule. The submission comments on the following provisions:

- RIT-T principles and guidelines (clause 5.6.5B)
- transmission assets subject to RIT-T (clause 5.6.5C)
- identification of a credible option under the RIT-T (clause 5.6.5D)
- RIT-T procedures (clause 5.6.6)
- disputes in relation to the application of the RIT-T (clause 5.6.6A)

¹ See for example, AER (2008), *National transmission planning arrangements – response to AEMC draft report*, 30 May 2008, p. 10.

- determination that new large transmission asset satisfies RIT-T (clause 5.6.6AA)

The AER has also engaged Frontier Economics to assist in its consideration of the draft Rule. Frontier's report is attached to the submission. Frontier's report highlights a number of the major arguments outlined in this submission, but also provides further comments on the drafting of the rule. The AER encourages the AEMC to consider these proposed drafting amendments.

2. Comments on draft rule

2.1 Regulatory investment test for transmission (Clause 5.6.5B)

2.1.1 Amalgamation of regulatory test limbs

Under the current regulatory test, a transmission network service provider (TNSP) must choose whether to assess a project under either the reliability limb or the market benefits limb of the test. If a new investment option is required to meet reliability requirements in the NER or an applicable regulatory instrument, the option must minimise the costs of meeting those requirements. In contrast, a project assessed under the market benefits limb must maximise the expected net economic benefit to all those who produce, consume or transport electricity in the NEM.

The draft rule amalgamates the reliability and market benefits limbs of the current regulatory test and creates a single cost benefit assessment framework for all proposed investments. The AEMC noted in its determination that under the proposed RIT-T, a TNSP must investigate whether options designed to meet a reliability standard provide additional market benefits that justify a higher cost. Where the options do not have additional market benefits, the RIT-T would effectively become a 'least cost' test, which is analogous to the test applied under the reliability limb of the current regulatory test.

As stated in previous submissions to the AEMC's national transmission planning review, the AER supports integrating the two limbs of the regulatory test and considers that the AEMC has the balance right in the RIT-T.² Minimising net economic costs for reliability driven investments establishes a robust cost-benefit analysis framework for investment decision making.

The AER also notes that clause 5.6.5B9B(b), which establishes the cost benefit analysis framework, has been amended since the draft rule was published in the national transmission planner final report.³ The AER considers that the new drafting is much clearer and supports these changes.

2.1.2 Option value

Under the draft rule amendments, the RIT-T must consider any additional *option value* gained or forgone from implementing that credible option with respect to the likely future investment needs of the market. The AEMC stated in its final report on

² AER (2008), *National transmission planning arrangements – response to AEMC draft report*, 30 May 2008, p. 8.

³ AEMC (2008), *National transmission planning arrangements – final report to the MCE*, 30 June 2008.

national transmission planning arrangements that this additional class of benefits would cover any benefits that the proposed project may have for future investments and that the inclusion of such benefits could facilitate a more strategic assessment of projects.⁴

As noted in previous submissions to the AEMC, the AER is concerned that there is potential that the concept of option value may be used inappropriately without clear direction in its meaning and application.

The draft rule provides that the additional option value should be included only to the extent that this value has not been included in any other classes of market benefits. The AER is uncertain what additional benefit the AEMC is attempting to capture by option value that is not already captured by the other classes of market benefits under the RIT-T and regulatory test. NEMMCO has similarly noted that its National Transmission Statement will not calculate an option value because there is insufficient clarity about the way that option value would be calculated and how the economic assessment would differ from that in the regulatory test.⁵

The proposed RIT-T and current regulatory test permit a TNSP to consider uncertainty in its scenario analysis. As noted in the Frontier Economics advice attached to this submission, the scenario approach allows for scenarios that may be unlikely but in which the market benefits of an option turns out to be very high. The results from this scenario can be assessed against other more likely scenarios.

The AEMC should provide greater guidance on what additional benefit the concept of option value is attempting to capture (beyond those benefits already considered in other classes of market benefits) and how a TNSP should quantify this class of benefit. Alternatively the rules should not *oblige* the AER to include this class of costs in the RIT-T. This could be achieved through removing clause 5.6.5B(c)(4)(viii). The AER could then consider the inclusion of this class of benefits under clause 5.6.5B(c)(4)(ix)(B).

2.1.3 Additional market benefits

Under the draft rule, the classes of market benefits which must be considered by a TNSP are specified in clause 5.6.5B(c)(4). A TNSP must consider any additional classes of market benefits which are specified in the RIT-T. In addition, under clause 5.6.5B(c)(4)(ix)(A), a TNSP may consider any classes of market benefits that are determined to be relevant by the TNSP and agreed to by the AER.

It is not clear why clause 5.6.5B(c)(4)(ix)(A) is necessary. TNSPs are provided with an opportunity to propose new classes of market benefits which are not included in the rules during the development of the RIT-T and RIT-T guidelines. TNSPs can demonstrate to the AER during this process that particular benefits should be included as market benefits in the RIT-T.

The AER is also concerned that it is not clear how this clause is intended to operate. The current drafting suggests that a TNSP can approach the AER on an ad hoc basis

⁴ AEMC (2008), *National transmission planning arrangements – final report to the MCE*, 30 June 2008, p. 47.

⁵ NEMMCO (2009), *NTS Consultation: Final Report*, 8 May 2009, p. 7.

for a determination that a new class of market benefit can be considered in the assessment of a particular project. While the AER considers that a TNSP's decision to include an additional class of market benefits should require approval from the regulator, the AER is concerned that this approach may lead to a disorderly and disjointed approach to creating new classes of market benefits.

Sufficient flexibility in creating new classes of market benefits is provided for in clause 5.6.5B(c)(4)(ix)(B). This clause allows the AER to include additional classes of market benefits in the RIT-T and provides for a much more strategic and complete approach to developing the RIT-T than the ad hoc approval process suggested in clause 5.6.5B(c)(4)(ix)(A). Providing for new classes of market benefits in the RIT-T also allows the AER to engage in more effective consultation on the proposed new class of market benefits.

2.1.4 Assessment of materiality of benefit

The AEMC noted in its determination that under the draft rule a TNSP is only required to consider *material* classes of market benefits. To exclude a particular class of market benefit from the assessment process, a TNSP would need to demonstrate why the particular class of market benefit does not need to be analysed.

The AER agrees that TNSPs should only consider material classes of market benefits when assessing projects under the RIT-T. Quantifying all classes of market benefits could impose an additional burden on TNSPs which is disproportionate to the size and scale of the potential market benefit. The AER also agrees that parameters should be set around the ability of network businesses to limit the analysis of market benefits.

However the AER is concerned that the draft rule may overly restrict the TNSPs ability to exclude classes of market benefits which are not material. Under clause 5.6.5B(c)(6) a TNSP must consider all classes of market benefits as material unless it can show that:

- a particular class of market benefit will not affect the outcome of the assessment of each credible option, or
- the cost of undertaking the analysis to quantify the market benefit is disproportionate to the scale, size and potential benefits of each credible option being considered.

It is difficult to envisage how a TNSP can demonstrate either of these requirements without actually undertaking the analysis. The AER considers that the level of analysis a TNSP should undertake to quantify a class of market benefits should be proportionate to the expected significance or materiality of the benefit on the outcome.

2.2 Transmission assets subject to RIT-T (Clause 5.6.5C)

Under the draft rule TNSPs must apply the RIT-T to any transmission investment option unless the project falls within the categories in clauses 5.6.5C(a)(3)–(11). Investments excluded under these clauses include projects where:

- the estimated capital costs of the most expensive option to address the identified need is less than \$5 million
- the proposed investment concerns maintenance or replacement and is not intended to augment the network
- the proposed investment is a reconfiguration which costs less than \$5 million or does not materially affect network users
- the proposed investment is urgent and unforeseen.

2.2.1 Cost threshold

The AEMC noted in its national transmission planner final determination that the \$5 million cost threshold “reflects an appropriate balance between the regulatory burden placed on TNSPs and ensuring that transmission investments proceed in a timely manner”.⁶

The AER agrees with this assessment. The current threshold at which a regulatory test assessment is required is \$1 million, with a full public consultation process required for projects valued over \$10 million. Increasing the threshold from \$1 million to \$5 million will provide an appropriate threshold and enhance planning and consultation processes for those projects which are more likely to affect the transmission network.

The AER notes that under the draft rule, the cost thresholds will be reviewed every three years which provides the opportunity to amend thresholds if the chosen levels prove to be inappropriate.

2.2.2 Reconfigurations

Under the proposed rule, a reconfiguration investment is not subject to the RIT-T if the TNSP reasonably estimates that the investment has an estimated capital cost of less than \$5 million or has no material impact on network users. This drafting has changed from the draft rule published in the national transmission planner final report, which only excludes reconfiguration investments which the TNSP estimated to have a capital cost of less than \$5 million.

The AER is uncertain how a TNSP is to apply this proposed threshold for reconfiguration investments. The current drafting suggests that a TNSP can exclude a reconfiguration project from assessment under the RIT-T (even if its estimated cost is greater than \$5 million) if it has no material impact on network users. It is unclear how a TNSP should determine whether a reconfiguration has material impacts on network users and why a different cost threshold is required for these assets. The current drafting of this clause should be revised to remove the reference to material impacts on network users.

2.2.3 Urgent and unforeseen projects

As noted in earlier submissions to the AEMC’s national transmission planner review, the AER considers that it is unnecessary to exempt urgent and unforeseen projects

⁶ AEMC (2008), *National transmission planning arrangements – final report to the MCE*, 30 June 2008, p. 49.

from the RIT-T as it is very rare for a project to fall within this category.⁷ This type of exemption could also create gaming opportunities for TNSPs. Given this, the exemption should be clearly defined.

While the draft rule exempts urgent and unforeseen projects from being subject to the RIT-T, this exemption only applies to reliability driven investments where:

- the investment must be operational within six months
- the event causing the identified need was not reasonably foreseeable and was beyond the control of the TNSP
- failure to address the identified need is likely to materially adversely affect the reliability and security of the network.

The AER supports these limitations as it ensures that TNSPs cannot exclude projects from analysis under the RIT-T due to errors or deficiencies in the TNSP's network planning arrangements and demand forecasting. These limitations also restrict any gaming opportunities created by an urgent and unforeseen projects exemption.

2.3 Identification of a credible option (Clause 5.6.5D)

The draft rule prescribes a number of matters that a TNSP must consider “without bias” when identifying credible options. While it is important that a TNSP should not bias projects based on things such as energy source, technology and ownership, the AER is uncertain as to how the “without bias” qualifier is intended to apply to:

- whether the credible option has a proponent (clause 5.6.5D(b)(7)), or
- any other factor which the TNSP reasonably considers should be taken into account (clause 5.6.5D((b)(8)).

The AER considers that the “without bias” qualifier should not apply to either of these factors and instead these should just be factors that the TNSP must consider.

It is also unclear how clauses 5.6.5D(b)(7) and 5.6.5D(c) are intended to interact with clause 5.6.6(1). Clause 5.6.6(1) provides that a TNSP can only elect to proceed with a transmission investment to meet a reliability augmentation if the preferred option has a proponent.

2.4 Regulatory investment test for transmission procedures (Clause 5.6.6)

Clause 5.6.6 sets out a detailed project specification and project assessment process.

All projects subject to a RIT-T assessment will be required to undertake a project specification process. It is proposed that the TNSP must prepare a project specification report including:

⁷ See for example AER (2008), *National transmission planning arrangements – response to AEMC draft report*, 30 May 2008, pp. 7 – 8.

- a description of the identified need, such as a need to meet relevant reliability requirements
- technical characteristics of the identified need that a non-network option would be required to deliver, such as size of load reduction or additional supply
- detailed description of all possible credible options that address the identified need
- for each possible option, detailed information such as technical characteristics, classes of market benefit that could be material, estimated construction timetable, and total indicative costs (to the extent practicable)

The TNSP is then required to publish a project assessment draft report (with some projects exempted from this stage) and a project assessment conclusions report which identify the preferred option.

The AER supports this detailed project specification and assessment process as it helps ensure that key inputs into project specification and assessment are subject to detailed consultation, thereby improving the identification of alternative options.

The AER also has some comments on some specific provisions in clause 5.6.6.

Clause 5.6.6 (g) – (h) provides that the TNSP must allow 12 weeks for submissions on the credible options presented and the issues addressed in the project specification consultation report. The AER considers that this is an appropriate amount of time to provide for significant responses to the project specification report and for the submission of considered and credible alternative options. Similarly, the 30 business days allowed for comment on the project assessment draft report appears appropriate.

Clause 5.6.6(r) allows for a meeting between TNSPs and interested parties following the release of a project assessment draft report. It is not clear how the discretion afforded to the TNSP to meet with an interested party if the TNSP “considers that the meeting is necessary or desirable” would be exercised. It is also not clear why the opportunity to request a meeting is limited to those parties which meet the definition of interested party in chapter 10, rather than the broader category of registered participants, AEMO and interested parties with whom consultation is required elsewhere in clause 5.6.6.

2.5 Disputes in relation to the application of the RIT-T (Clause 5.6.6A)

Clause 5.6.6A(a) permits disputes to be raised with the AER in relation to the application of the RIT-T. The AER has 40 days to complete a dispute resolution process, with the ability to extend this timeframe by up to 60 days for disputes involving complex issues. A ‘stop the clock’ provision for seeking additional information is also included in the draft rule.

The AER considers that these provisions improve on the regulatory test dispute resolution arrangements currently in the NER. The current regulatory test dispute resolution arrangements provide for 30 business days to resolve reliability disputes and 120 business days for market benefits disputes.

However, it is quite possible that a reliability dispute could raise complex issues and the 30 day dispute resolution process would be a significant challenge. The proposed arrangements establish the complexity of the dispute rather than the basis for the dispute as the determining factor in whether a dispute timeframe can be extended.

The AER supports the approach adopted in the draft rule. It appears to provide a flexible framework, allowing for the speedy resolution of disputes, coupled with an ability to extend dispute timeframes where matters are particularly complex.

2.6 Determination that new large transmission asset satisfies RIT-T (Clause 5.6.6AA)

2.6.1 AER determination that new large transmission asset satisfies the RIT-T

Under clause 5.6.6AA(a), the TNSP may request that the AER make a determination as to whether the investment satisfies the RIT-T, but only where an investment is not a reliability augmentation and the conclusion in a ‘project assessment conclusions report’ is not in dispute.

It is not clear why a TNSP would seek a determination from the AER under this provision. Given the clause only applies where the project assessment conclusions report is not in dispute and the economic regulatory regime does not provide for an ex post review of a TNSP’s capital expenditure program, such a determination would have no practical effect. The AER believes that this provision should be removed.

2.6.2 Cost determinations

Under clauses 5.6.6AA(d) – (f), if the AER engages a consultant to assist it in determining that a project satisfies the RIT-T, it may make a costs determination specifying the proportion of costs that should be borne by each party to a dispute.

However, the AER is only allowed to make a determination that a project satisfies the RIT-T under clause 5.6.6AA where the project is not in dispute. The AER believes that there may be an inadvertent drafting error in relation to this provision. The AER believes that this clause may have been intended to allow a cost determination for all disputes in relation to the application of the RIT-T under clause 5.6.6A, rather than for determinations that a project satisfies the RIT-T under clause 5.6.6AA.

The AER supports the inclusion of a broader ability to make cost determinations for disputes in relation to the application of the RIT-T under clause 5.6.6A.

Draft RIT-T Rule drafting

NOTE FOR THE AUSTRALIAN ENERGY REGULATOR

This note comments on the *Draft National Electricity Amendment (Regulatory Investment Test for Transmission) Rule 2009* (Draft Rule) published by the AEMC.

This note provides comments on clauses in the order in which they appear in the Draft Rule.

5.6.5B Regulatory investment test for transmission

Clause (b)

This clause twice refers to “reliability augmentation”, but the meaning of this expression in the Rules is restricted to a transmission network augmentation. Presumably, a “credible option” or a “preferred option” may be a non-network augmentation option. Indeed, a key purpose of the RIT-T is to identify non-network options that are superior to the proposed network option. There may also be network options (such as network support and control services) that cannot properly be classed as “augmentations”.

Therefore, it would be worthwhile to rephrase (ii) as follows:

if the relevant *identified need* is to meet the minimum *network* performance requirements set out in schedule 5.1 or in relevant legislation, regulations or any statutory instrument of a *participating jurisdiction*, minimises the net economic costs

Similarly, the later part of the clause should be rephrased as follows:

For the avoidance of doubt, the *regulatory investment test for transmission* may identify a *preferred option* that has a negative value where the relevant *identified need* is to meet the minimum *network* performance requirements set out in schedule 5.1 or in relevant legislation, regulations or any statutory instrument of a *participating jurisdiction*.

Clause (c)(1)

This clause creates some ambiguity by setting up the cost-benefit analysis to compare the state of the world (SOTW) with a credible option in place against a SOTW in which “no option is implemented.” However, the base case SOTW should presumably include private generation and DSM projects that participants find it worthwhile to develop on the basis of market signals.

It appears that the current drafting is seeking to ensure that the SOTW with the relevant credible option in place is compared against a SOTW in which no project is undertaken by, on behalf of, or pursuant to an agreement with the TNSP. If this is the intent, it is a reasonable approach, but the drafting needs to clarify that market-driven projects of any type should be incorporated in the relevant base case. The ambiguity could be resolved by rewording (c)(1) as follows:

be based on a cost-benefit analysis that is to include an assessment of reasonable scenarios of future supply and demand if each *credible option* were implemented

compared to those where no option is implemented by, on behalf of or pursuant to an agreement with a *Transmission Network Service Provider* to meet the relevant *identified need*;

Clause (c)(4)

This clause refers to “net economic benefits” in the first line. However, this clause does not deal with the costs of the relevant option (this is dealt with in (c)(8)), so the use of “net” could be misleading.

It is suggested that the first part of this clause be deleted, so that it begins with the words, “require the *Transmission Network Service Provider* to consider...”. This would be consistent with the way in which the requirement on TNSPs to quantify costs in clause (c)(8) is set out.

Clause (c)(4)(v)

There appears to be no good reason why market benefits should be restricted to changes in transmission losses, so “*transmission*” should be replaced with “*network*”.

Clause (c)(4)(viii)

This clause refers to “option value” while clause (f)(6) requires the AER to draft guidelines and worked examples for valuing option value. However, no definition for “option value” is provided, so it is unclear to what this term refers.

If the intent is to require or allow the application of a **real options approach** to the assessment of “credible options”, the AEMC should note such an approach may not be easily applicable to accounting for uncertainty under the RIT-T. For example, applying real options to electricity projects may be difficult because of the skewed (as opposed to normal) nature of the distribution of electricity prices and the non-storability of electricity. Also, the use of a scenario approach in the RIT-T offers many of the same benefits (albeit in a more rough-and-ready way) to real options by allowing for scenarios that may be unlikely but in which the market benefits of an option turns out to be very high. The results from any given scenario can then be weighed up with other scenarios as part of the overall assessment.

It is suggested that this clause be deleted in the absence of expert supporting analysis and evidence. As it currently stands, TNSPs are obliged to assess “option value” without knowing what it means and even if they have accounted for uncertainty through an alternative approach.

Clause (c)(6)

It is unclear how the TNSP could ‘show’ that (iii) a particular class of benefits will not affect the analysis, without actually doing the analysis or (iv) the cost of undertaking the analysis is disproportionate, without, again, ascertaining the size of the relevant benefit. Perhaps this should be softened so that the TNSP is only obliged to consider a class of potential benefits as relevant if at least one participant considers it to be material and provides sufficient supporting evidence such that a reasonable TNSP would take account of the benefit.

For example:

Require a *Transmission Network Service Provider* to consider those classes of market benefits as material as would a *Transmission Network Service Provider* acting reasonably based on the evidence available to, or provided to, that *Transmission Network Service Provider*.

Clause (c)(7)

This clause again refers to a “reliability augmentation” when it should refer to:

a *credible option* that is intended to satisfy minimum *network* performance requirements set out in schedule 5.1 or in relevant legislation, regulations or any statutory instrument of a *participating jurisdiction*

Further, as such options are not explicitly ‘required’ to deliver any market benefits at all and the standards are not couched in terms of a certain level of market benefits, it is unclear what is meant by “the minimum standard required by a *reliability augmentation*”. The only sensible way in which this clause could be interpreted is if the “minimum standard” referred to the level of market benefits delivered by the *least-beneficial option* that met the standard. However, this would effectively still require the market benefits of all options to be calculated to determine which option had the smallest market benefits.

For these reasons, this clause should be deleted.

Clause (f)(3)

It is not clear why this clause is required. There is only one other reference to externalities in the whole of the Draft Rule (clause 5.6.6A(b)(1)) and it is not clear why that is required either.

Clause (f)(6)

This clause also refers to “option value”, a term that should be removed, especially given the presence of clause (f)(8), which deals with the treatment of uncertainty and risk and would allow for a real options approach to be employed if and when the AER considers it appropriate.

Clause (f)(9)

This clause refers to “reliability augmentation” and should refer instead to “credible option”. This clause also interacts with 5.6.5D(b) – see comments below.

5.6.5C Transmission assets subject to the regulatory investment test

Clause (a)(11)

This clause should refer only to those investments whose costs are recovered totally through negotiated service charges, as there may be assets that provide both prescribed and negotiated services that should not be exempted from the RIT-T.

5.6.5D Identification of a credible option

Clauses (a) and (b)

These clauses could be combined to improve clarity. For example, while clause (a) refers to options generally, clause (b) for some reason only refers to “transmission investment options”. Instead, the substance of clause (b) could be added to clause (a) as follows:

A *credible option* is an option (or group of options) that:

- (1) addresses the *identified need*;
- (2) is (or are) commercially and technically feasible; and
- (3) can be implemented in sufficient time to meet the *identified need*, taking into account...

Clauses (b) and (c)

The intent of clause (b) is unclear. Specifically, it is unclear whether the AEMC wishes the TNSP to have regard to the matters in (1)-(8) in determining whether an option is a “credible option” or whether the AEMC wishes the TNSP to disregard these matters.

One reading of clause (b) is that the TNSP is to have regard to the matters in (1)-(8) in determining whether a given option should be classed as a “credible option”. Under this interpretation, there is no need to use the expression “without bias” in this clause prior to (4). It is implied in any obligation on the TNSP that it behaves reasonably and without bias.

At the same time, clause (c) (see also below) states that lack of a proponent itself does not prevent a potential option from being considered a “credible option”. This would appear to conflict with the above interpretation of (b).

If, on the other hand, the AEMC’s intent is that the TNSP is to disregard the (b)(1)-(8) matters in deciding whether an option is a “credible option”, this could place those TNSPs subject to deterministic reliability standards in a difficult position. This is because they may not be confident that an option that dominates a transmission augmentation under the RIT-T will actually proceed. Such TNSPs could be in a position where they are not able to proceed with a transmission augmentation and yet cannot rely on a non-network option going ahead, leading them to potentially breach their statutory or regulatory obligations.

Further, this interpretation would raise serious questions about the implications of the likely operational performance of different options. For example, a wind generation solution is unlikely to offer the same predictability and reliability of supply as a network or thermal generation option. Yet if this cannot be taken into account by the TNSP, an inefficient or unreliable outcome could arise. Therefore, it is submitted that the following be inserted after part (8):

, except in so far as this is reasonably considered likely to affect the actual or potential performance of the option;

Once again, however, there are problems with this interpretation of clause 5.6.5D(b). If the presence or absence of a proponent is meant to be disregarded, then it is unclear why clause 5.6.5B(f)(9) requires the AER to develop guidelines as to whether a person is sufficiently committed to a “reliability augmentation” to be characterised as a proponent for the purposes of 5.6.5D(b)(7). There is no need for such guidelines if the presence or absence of a proponent is irrelevant to the way in which that project is treated in the RIT-T process.

Either way, the AEMC should clarify its intent.

It is also not necessary in this clause to refer to situations where the RIT-T is not applied, namely those projects undertaken for the purposes set out in clauses 5.6.5C(a)((3)-(11). It goes without saying that if the test does not need to be applied in these cases, there is no need to identify “credible options”.

Clause (c)

This clause is unnecessary regardless of the correct interpretation of clause (b) above – it either potentially contradicts with or reinforces clause (b)(7). The main priority is to clarify the meaning of (b).

5.6.6 Regulatory investment test for transmission procedures

Clause (c)(2)

This clause again refers to a “reliability augmentation”. We submit that the same language used in 5.6.5C(a) to describe “identified need” should be used instead. After all, the TNSP may seek to implement a non-network augmentation option to satisfy a reliability requirement (for example, an option involving the provision of reactive support).

Clauses (c)(5) and (6)

The intended role of these clauses is unclear. Presumably the whole purpose of the project specification consultation report is to elicit from the market information about available options that is not known to the TNSP. It is also not clear how the TNSP is meant to have information about these other options prior to releasing the project specification consultation report so as to satisfy the requirements in these clauses. All that the TNSP should be required to provide is the details in part (3) regarding the technical characteristics of the required solution.

In any case, there is no need to preface references to “credible option(s)” with “possible”.

Clause (1)

This clause is confusing because it suggests that a proponent is necessary for a “transmission investment which is a reliability augmentation”. However, any such investments would presumably always have a proponent – the TNSP. Rather, it is non-network options that may lack a proponent even though they are commercially and technically feasible.

In addition, the reference to “reliability augmentation” once again inappropriately restricts the application of this clause to transmission network augmentations.

The meaning of this clause needs to be clarified in a manner that is consistent with any clarification made to 5.6.5B(f)(9) and 5.6.5D(b) and (c).

Clause (x)(3)

This clause implies that there may be investments that aim to satisfy a reliability-driven “identified need” but do not provide material market benefits. This is problematic as even deterministic reliability standards are ultimately driven by the need to serve load under contingency conditions. Therefore, it would be hard to believe that conditions would arise in which an option was required to meet a reliability standard but provided no material market benefits.

5.6.6A Disputes in relation to application of regulation investment test [sic]

Clause (a)(2)

This clause should not refer to “reliability augmentation” and should instead be reworded as follows:

The basis on which the *Transmission Network Service Provider* has classed the *identified need* as being the meeting of the minimum *network* performance requirements set out in schedule 5.1 or in any relevant legislation, regulations or any statutory instrument of a *participating jurisdiction*;

Clause (f)(2)

This should be amended to refer to the “preferred option” having been given an inappropriate “identified need” by the TNSP.

5.6.6AA Determination that new large transmission asset satisfies regulatory test for transmission

Clause (a)

It is not clear why a TNSP would or should need to seek a determination from the AER as to whether a preferred option satisfies the RIT-T if the conclusions report is not in dispute. What is this provision intended to achieve?

Again this clause refers to “reliability augmentation”. A “preferred option” may be motivated by the need to address a reliability-based “identified need”, without necessarily being an “augmentation” under the Rules.

6A.6.6 Forecast operating expenditure

AND

6A.6.7 Forecast capital expenditure

New clause (e)(11)

It is still not clear how these changes promote welfare-increasing market benefits investment or behaviour. There is still nothing clear in the operating or capital expenditure objectives to make pursuit of market benefits – say, in terms of reducing the cost of supply – an objective for TNSPs’ decisions. The reference to “efficient costs” in (c)(1) could be read as referring to undertaking an investment or other decision in a cost-effective way rather than choosing investments or operational changes on the basis that they may reduce the costs of dispatch or future investment.