Network Infrastructure Projects Policy Paper: Consultation submission form

This form is to be used to provide feedback on a series of questions included in the Network Infrastructure Projects Policy Paper to help inform the development of the regulations. The Network Infrastructure Projects Policy Paper considers detailed policy options to support Part 5 of the *Electricity Infrastructure Investment Act 2020* (NSW) (EII Act).

Please see the Electricity Infrastructure Roadmap webpage for more information.

Consultation questions

You do not need to answer every question. Please answer the questions of interest to you.

Chapter numbers indicate the location of questions in the policy Paper.

Please make your submission by **5pm on Friday 12 November**.

Confidentiality and submissions

Providing submissions is entirely voluntary, is not assessable, and does not in any way include, exclude, advance or diminish any entity from any future procurement or competitive process regarding the Electricity Infrastructure Roadmap, or any other NSW programs.

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Your details

Submission type	☐ Individual ☒ Organisation ☐ Other Click or tap here to enter text.
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Stakeholder group	☒ Generation or storage infrastructure provider ☐ Electricity consumer or representative body ☐ Network infrastructure provider

	☒ Energy retailer ☐ Government or market institution ☐ Individual ☐ Other (please specify) Click or tap here to enter text.

Questions

Questions related to the guiding principles	
Question 1: Do you agree with the proposed guiding principles? Are there additional principles that should be considered?	The principles described in Table 1 of the policy paper are sound. We are supportive of the framework providing for contestability in the delivery of infrastructure. This should drive important efficiencies in the cost of investment as well as ongoing operational and maintenance expenditures, ultimately to the benefit of customers. An important element underpinning the legitimacy of any regulatory regime is transparency, and this should be added as a guiding principle. As per our response to Question 4, we recommend the Department set regulations that give stakeholders visibility and appropriate opportunities to provide meaningful input into the Infrastructure Planner's decision-making process. Other elements administered under Part 5 of the EII Act should similarly be considered. Generally with respect to the principle of "regulatory efficiency", and notwithstanding the EII Act provisions are already in place, it would be preferable to rely on the national framework as a default, with departures where this is demonstrably beneficial and necessary to achieve NSW policy goals. The Department is aware of the AEMC's review of national transmission planning and investment frameworks. Some of the key issues being raised and potentially addressed in this review (including the need to ensure timely investment, funding of early works, ensuring financeability and the role of contestability) overlap with the policy objectives listed by the Department and core elements of Part 5 of the EII Act. Pending NER changes to deal with these common issues, the Department may wish to consider, at a future date, administering its Roadmap via more selective derogations from the national framework rather than provide for a duplicative end-to-end process. Even without changes to the NER, the

	Department already appears minded to largely mirror and provide for integration into existing AER processes for revenue determinations. Managing even seemingly minor inconsistencies between NSW and national processes will involve material and avoidable administrative burden for affected parties.
Questions related to the classification of Renewable Energy Zone network infrastructure	
Question 2: What are your views on the proposed approach to defining classes of network infrastructure?	Alignment of NER asset definitions is an appropriate starting point. As noted by the Department, revenue and price regulation under the NER is based on service classifications. A focus on services rather than technologies is also a characteristic of other national regulatory changes currently on foot. The NSW regulations will involve distribution and transmission assets providing shared network services to entities inside each REZ, which we presume will be equivalent to prescribed/ standard control services under the NER. In this instance service classification does not appear to be necessary. For example, the Department does not appear to envisage REZ infrastructure being subject to 'lighter' forms of regulation, including for negotiated services, as exist under the NER. Regulation on the basis of asset types may cause some complications in drafting and administering transitional provisions. Specifically, a revenue determination made under the EII Act regulations ccovering both transmission and distribution assets, which is transferred to regulation under the NER, may need to be deemed as a certain asset type or service function, including the presence of any 'dual function assets'. Clear distinctions between and definitions need to exist for Class 3 (non-network) and Class 4 (system security) assets or services. The Department should also consider placing restrictions on licenced entities from owning and operating certain asset types and providing associated services. The EII Act and regulations should provide for ring-fencing of entities in the provision of network and non-network services, and in the ownership of shared use assets. For example, where Nework Operators elect to construct non-network assets, such as batteries, as part of an investment proposal under the EII Act, the use of these assets may have revenue or cost recovery implications in markets not subject to EII Act regulations. Assets or services relied on specifically for REZ purposes will

	need to be appropriately identified and reserved for these purposes, otherwise subject to rigorous (although in reality, difficult to enforce) cost allocation arrangements. More broadly the Department should resolve the extent to which assets or services will be deemed to be within scope and necessary to execute REZ developments, even though they are not physically located inside the REZ geographical boundary. We are supportive of this in terms of ensuring least cost outcomes to customers however complexities may arise in the overlay of multiple regulatory and planning regimes. On a further and minor note, the proposed labelling of Class 3 assets as 'network infrastructure' is confusing given this class appears to exclusively cover non-network solutions.
Question 3: Are there any risks to the effective delivery of a REZ if the necessary system strength services are not included as a class of network asset under the EII Act?	We appreciate the Department may expect material benefits in coordinating system strength needs within REZ infrastructure development, including potential benefits from contestable provision. However our view is that the specific treatment of system strength needs in REZ developments may ultimately deliver limited value. At the same time it would introduce complexity in how this integrates with new obligations on TransGrid regarding system strength standards and cost recovery arrangements. There may also be benefits in allowing TransGrid to fulfil its requirements in terms of scale economies and through jurisdiction-wide coordation.
Question related to the funding and financing of preparatory activities and development works	
Question 4: Does the proposed method appropriately balance the transparency of costs recovered through the Scheme Financial Vehicle against the certainty needed to conduct preparatory activities and development works to deliver timely REZs?	The AEMC is currently reviewing how preparatory works affects options assessment and ultimately the timely delivery of needed network infrastructure. Rule changes notwithstanding, this will be a focus area of AEMO and TransGrid as they execute their existing planning roles under the NER, particularly the need for longer term planning and gaining of social licence for significant volumes of network investment in the coming decades. The Department may wish to clarify or at least be mindful of how such enhanced preliminary works, associated with REZ projects that are identified as 'Actionable' under the ISP, will relate to work by, and funding for, the Infrastructure Planner. This might include (possibly unlikely) cases of AEMO's ISP identifying network options or needs that do not accord

	with the scope or timing identified by the Infrastructure Planner, particularly for overbuilds or real options as flagged by the Department. Certainty of funding for preliminary works may only partially impact on the timely completion of projects. The process outlined by the Department appears to reflect an intention to speed up the process of options assessment by bringing this 'in house' to an independent planning body rather than project proponents. This would represent a step away from long-standing and trusted industry practice of open consultation, with associated rigour, around the estimation of costs and benefits of candidate investment options. One potential advantage in not openly disclosing net benefits calculations would be to avoid the prospect of proponents 'shadow pricing' their investments up to the level of expected benefits. However a major drawback is that it requires a very high degree of trust that the Infrastructure Planner, acting on behalf of customers, will only pursue options that deliver tangible and material benefits in the face of inherent market uncertainties. If consumers have no visibility of project justifications, and moreover if investments turn out to be inefficient or unnecessary, this may undermine the legitimacy of the broader Roadmap policy. Recent large transmission projects have attracted high degrees of scrutiny and resistance from some stakeholders given the costs and benefits of different options (including 'no investment' counterfactuals) have been finely balanced and dependent on variables or methods that involve considerable uncertainty. It is not clear how the process envisaged by the Department will address the need for transparent and robust consideration of options, including if projects are subject to significant cost increases as they pass through approval gates. The policy paper makes several general references to the Infrastructure Planner consulting with various stakeholders and planning bodies. Prescription around this consultation, for example in setting clearly defined steps and timelines, or to avoid wasteful duplication of issues already raised in the Trustee's IIO Report or in preparation of the ISP, will be important to streamline investment decisions. At the same time, decisions should reflect an appropriately robust and thorough process in order to gain social licence. The Department may also wish to consider thresholds for material cost increases that trigger a re-

	assessment of options, as per the rule change currently before the AEMC. In terms of transparency and cost recovery of development works, the Department should consider setting a clear boundary between what is spent by and accountable to the Infrastructure Planner, and works that are to be undertaken by Network Operators, noting the benefits of subjecting the latter to contestability. The Department has identified examples of development works including purchasing of options for easements, and other categories could be prescribed according to their role in the process, for example the 'public good' of site and market testing that results in more accurate cost estimates feeding into options assessment.
Question related to the funding and financing of preparatory activities and development works	
Question 5: What information relating to network options do Long-Term Energy Service Agreement and access right tender participants require to provide sufficient certainty and confidence to participate in the bid processes?	The policy paper's deliberations on this issue generally appear sound, including the general principle that network options be specified in fine detail and not subject to change as far as possible between Preliminary and Final recommendations to the Trustee. Parties connecting to the REZ will require clarity and certainty on technical and siting details to the extent it allows them to determine the scope of their own assets, including if and where they can 'cut in' to REZ assets. The Department should clarify whether the joint tendering of LTESAs and network options (where the latter is contestable) will apply to within-REZ generation only, or whether LTESAs for non-REZ generation and storage investment (to the extent they are necessary for optimal REZ development) will also take place alongside network tenders. We understand the Department is yet to consult on the LTESA tender process and also REZ access arrangements. Foresight of network specifications will be critical for LTESA bidders but they will also need a clear understanding of likely connecting generation, storage and load to determine how hosting capacity will be utilised, the prospects of congestion and hence the value of obtaining any access rights.
Question 6: What eligibility criteria should apply for Network Operators that may be authorised to carry out a REZ network infrastructure project?	In order to maximise the benefits of contestability, the Department should aim to allow more developers where they can genuinely deliver projects at lower costs than the incumbent. As per our response to Question 2, it will be important to consider the ownership structure of

	competing parties and institute appropriate ring-fencing arrangements.
Question 7: What factors should be considered by the Consumer Trustee in recommending that the Minister direct, and by the Minister in directing, a Network Operator to carry out a REZ network infrastructure project under the EII Act?	Provided the framework can allow appropriate cost recovery for clearly specified network options (and we consider the proposed revenue determinations would do this) there does not appear to be a need to compel network owners (including the incumbent) to construct projects. If the Department is minded to make regulations around sections 32 and 34 of the EII Act it should ensure cost recovery would be equivalent to regulatory determinations. This would avoid incentives for prospective network operators to 'hold out' for increased revenues under a Ministerial direction. Regulations should also consider the sequencing of events leading to a Ministerial direction and obligations taking effect, for example issues might arise due to disagreement over the revenue adequacy of a regulatory determination. This could include because of a material change in costs since preceding decision gates, as noted above in our response to Question 4. The policy paper indicates that any 'directed' network operator be "paid appropriately" and how this is to be determined should be prescribed. It is also not clear why section 31(2) does not provide for a maximum amount to be placed on 'directed' projects. Section 39(3) also appears relevant in terms of sequencing of regulatory determinations and obligations on directed operators.
Questions related to the Transmission Efficiency Test and the Regulator's determination	
Question 8: How can consumer and stakeholder input be considered in the TET and revenue determination processes?	As per our response to Question 4, it would seem more important to ensure appropriate stakeholder input in the Infrastructure Planner's recommendations to the Trustee. These recommendations, not the Transmission Efficiency Test, effectively replace the RIT-T so warrant appropriate scrutiny. Once this process has resulted in an identified need and network solution (and market tested the cost of this through any competitive tendering), the Regulator's determination process (including capex under the TET) could follow consultation as per the requirements under Chatper 6A. Following our response to Question 9, public input to the Regulator's process could be truncated, particularly where investments have been subject to tender and the scope for regulatory discretion is minimised.
Question 9: Is clarification required with regard to the	The Department should clarify the extent to which the network operator and Regulator have discretion to

principles to be taken into account by the Regulator and the Objects of the Act, and are there any additional principles that should be considered by the Regulator?	apply these principles and objects in terms of the project scope once this has been determined by the Infrastructure Planner and Trustee. Our understanding is that the TET and revenue determination deals primarily with the efficiency (i.e. how much a project should cost) rather than prudence (i.e. scope, timing etc) of an investment. Any changes in the scope of the project that is presented to the Regulator, for example to accommodate sustainability, community support, local employment etc may ultimately be in accordance with the EII Act objectives but would invalidate the preceding process, including the 'safety net' maximum project value set by the Trustee under section 31(2) of the EII Act. If anything, the role of principles and Act objectives should be minimised in accordance with the Regulator's task, which is merely to establish a regulated revenue stream on the basis of capital works determined (and if tendered, priced) according to the process administered by the Infrastructure Planner and the Trustee.
Question 10: What views do you have on these elements and is there any other guidance that should be included in the TET Guidelines to be developed by the Regulator?	The elements listed on page 34 of the policy paper appear appropriate and the Regulator should retain discretion to describe other matters in its guidelines as it sees fit.
Question 11: Should financeability concerns be addressed in the NSW framework?	As noted by the Department, the recent rule change proposals from TransGrid and ElectraNet were not accepted however the AEMC is considering this issue more broadly. We encourage the Department to provide for consistency in any NER treatment and expect this will ultimately rest within the discretion of the Regulator. Morevoer, it seems likely that revenue determinations for REZ developments would reflect project financing structures hence avoiding issues associated with RAB financing benchmarks, as cited recently by the TNSPs.
Question 12: What views do you have on these elements and is there any other guidance that should be included in the Guidelines regarding the revenue determination to be developed by the Regulator?	The Regulator should have discretion to rely on guidelines published for the same purposes under the NER.
Question 13: Are there any elements of the AER's approach to assessing and setting	The AER's approaches should be generally appropriate and we expect NSW regulations will not need to be as prescriptive as in the NER to ensure consistency across

regulated revenue requirements which should be modified or added to when considering the framework that will be applied under the EII Act in NSW?	the two regimes. This includes the discretion to apply or modify incentive schemes in individual revenue determinations as appropriate.
Question 14: What do you think about an incentive scheme to ensure the availability of projects and the timely connection of generators to a REZ by Network Operators? How could that be designed?	This is an important element in the regulatory design which warrants careful attention. The Department's guiding objectives here relate to the timely delivery of assets for both the network infrastructure as well as for connecting storage and generation. Incentive frameworks applied under the NER generally reward network businesses for delaying project spending and commissioning relative to forecasts. The appropriateness of these incentives for large transmission investments (including for REZs) are being reviewed by the AEMC. Subject to this review, we consider the Regulator should be given discretion on the application of its incentive mechanisms to assess whether delayed or accelerated investment timing, relative to that determined in planning approvals, should be penalised or rewarded. This may, for example, warrant an ex post review in light of changes in market circumstances, or in a more rigid sharing of risk via a pure ex ante approach. Customer and other stakeholder input should be sought. Any separate incentive mechanism around the timely connection of new generation and project availability should be calibrated relative to impacts on end-use customers, for example, changes in wholesale prices from new generation coming online. As noted above this is somewhat dependent on connecting parties being able to execute and operate their projects in a manner as outlined in their LTESA tenders. The calibration of incentives should involve standard considerations around sharing of benefits for outperformance between customers and parties making REZ investments, as well as penalties/ symmetry in how incentives are applied. It will also be important to distinguish the role of the Network Operator from TransGrid as the system operator, and potentially other parties, that might affect the connection process and network availability. Ultimately the operation of incentive mechanisms needs to be as clear as possible up front, particularly for prospective network operators bidding for contestable

	works, as it will affect the sharing of risk for cost changes that will arise as projects are executed.
Questions related to reviewing a revenue determination	
Question 15: Do you agree there should be limited circumstances in which the Consumer Trustee directs the Regulator to review and remake a revenue determination outside of the five-yearly cycle?	The EII Act should be amended to give the Regulator the discretion to set the length of regulatory determination periods. This will enable it to align the timing of concurrent NSW determinations made under the NER, or to stagger them, in order to minimise admistrative costs.
Question 16: Do you agree with the proposed circumstances that the Regulator may adjust a revenue determination during the five-yearly cycle?	Provisions for the automatic adjustment of and reopening determinations as per chapter 6A should form part of the revenue determination to the fullest extent possible, such that network operators have a clear understanding of expected cashflows and regulatory risks are minimised. As with incentive mechanisms, prospective network operators will need to have clarity on these factors when submitting bids in earlier planning and approval stages.
Question 17: Is there a need to clarify the process for transitioning of assets between the NSW and national frameworks?	Yes this should be clearly prescribed both in NSW regulations and under the NER. For the avoidance of doubt, the decision to transition should be 'one way' in order to avoid projects 'cherry picking' any differences between the regimes.
Question 18: Is there a need to clarify the circumstances by which a transfer of network infrastructure from a Network Operator to another person may occur under the EII Act?	No response.

Supporting information

If you have additional information you would like to provide to support your views, please provide it here. If you have additional documents to provide to support your views, please email it with your submission.	

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Please indicate your publication preferences (select one option only).

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- the Clean Energy Finance Corporation or the Australian Renewable Energy Agency or distribution network service providers
- the entities appointed or to be appointed under the EII Act (Consumer Trustee, Financial Trustee, Scheme Financial Vehicle and Regulator).

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- the Clean Energy Finance Corporation or the Australian Renewable Energy Agency or distribution network service providers
- the entities appointed or to be appointed under the EII Act (Consumer Trustee, Financial Trustee, Scheme Financial Vehicle and Regulator).

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