BUSINESS
NSW

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Ms Chirine Dada and Mr Andrew Pirie

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

Business NSW response to consultations ERC0348 Accommodating financeability in the regulatory framework and ERC0349 Concessional finance for transmission network service providers.

Dear Chirine and Andrew,

Business NSW is grateful for the opportunity to respond to the concurrent consultations underway on rule change proposals to reform transmission finance. This submission addresses both rule changes proposed by The Honourable Chris Bowen, Minister for Climate Change and Energy (ERC0348 and ERC0349). It also notes the proposal from Energy Networks Australia (previously ERC0365) is now considered part of ERC0348. As these proposals have overlapping implications, a combined submission allows for addressing the interactions between the proposals.

Concessional finance

Business NSW supports proposal ERC0349 Concessional finance for transmission network service providers. It is appropriate that Government Funding Bodies require consumers to benefit from concessionally financed transmission projects, and it is necessary that the Australian Energy Regulator be given permission to pass those benefits to consumers.

Business NSW considers it inappropriate that, without a change to the rules as proposed, energy consumers could effectively be asked to pay twice for transmission projects, first in their capacity as consumers and second in their capacity as taxpayers. It would also be inappropriate for transmission network service providers (TNSPs) to be able to bank the proceeds of concessional finance offered by Governments as profit accruing to shareholders.

Noting that Governments have committed significant quantities of concessional financing to support the delivery of transmission infrastructure, Business NSW considers that this rule change proposal be accepted with urgency.

Financeability

Business NSW has several questions regarding the rule change proposals related to financeability (both the original ERC0348 Accommodating financeability in the regulatory framework and Energy Networks Australia's consolidated rule change request). Until these questions can be answered by proponents or the Commission, Business NSW does not yet view these proposed rule changes as being supportable.

These questions are outlined below. We encourage the Commission to pursue further evidence from the rule change proponents, or to consider amendments to the proposals as suggested below, in order to resolve these issues and ensure that any changes to rules regarding financeability are in the best interest of all energy consumers, including business consumers of energy.

1. What is the size of the financeability gap?

The rule change proposals from The Honourable Chris Bowen, Minister for Climate Change and Energy (henceforth the Minister), and Energy Networks Australia (henceforth ENA), both assert that a problem exists, or will foreseeably exist, in regard to financeability of transmission networks, with particular emphasis on the financeability of Integrated System Plan (ISP) projects. However, neither proposal provides substantive evidence on the scale of this potential problem. As a result, it is impossible to evaluate the proportionality of the proposed responses, in the form of the rule changes requested. It is also impossible to evaluate the practical impacts on consumers, including the size and crucially the timing of costs which will ultimately be borne by them.

The ENA's proposal differs from the original ERC0348, by making the test of financeability transparent through a stated benchmark. However, it still does not propose to make transparent what is being tested – namely the holistic view of the TNSPs financial decision-making, and particularly the pricing of debt (and equity) which is made available to it in relation to specific ISP projects. Only with visibility over the true options available to TNSPs, not just industry averages or indexes, can consumers know whether the measures proposed are necessary or not.

We strongly encourage the Commission to seek further evidence, which can be published and so evaluated by consumers and their representatives, that demonstrates the scale of the alleged financeability problem for transmission in general, and for ISP projects in particular. It cannot be enough for TNSPs to simply assert that a problem exists in order for them to change the terms on which they are able to recover monies from consumers. Absent a more detailed evidence base that shows a problem that exists not just in theory, but in practice, and which demonstrates the size of that problem and its consequences for TNSPs, Business NSW cannot support the proposal.

2. What are likely to be the practical impacts of the proposed remedy?

As described by both the Minister and the ENA, improvements to financeability are pursued in large part by bringing forward in time a portion of the costs to be recovered from consumers. While the described intent is to keep the overall cost envelope for projects unchanged, alterations to timing do have impacts for consumers even when the overall cost quantum is unchanged.

Business NSW has specific concerns about costs being brought forward to a point in time when energy costs are already heightened due to a variety of market and policy factors. The burden of energy costs is already significant for businesses. Indeed, energy costs have been raised by NSW's businesses as a leading cost concern over recent quarters of Business NSW's Business Conditions Surveys.

Furthermore, businesses do not always have the luxury of being able to rely on future benefits to offset the impacts of current costs. On average, around 15% of Australian businesses cease trading each year. It will be of little comfort to a business being pushed to the brink of survival by rising energy costs that they will stand to benefit in two decades if this is long after they have ceased trading. Policymakers across the energy system need to be wary of measures which are designed to pull more costs from the future into the present. If this is the likely impact of this rule change, and the way it will be implemented by the AER, then it gives grounds for caution about the proposal.

3. Would the proposals alter TNSPs' incentives to pursue efficient financing?

Business NSW considers there to be a risk that moves in the direction of greater consideration of financeability in AER decisions could alter the incentives on TNSPs to pursue efficient financing in their consumers' interest. The more amenable the Regulator is to financeability-based arguments for increasing revenues, the greater the risk that TNSPs find it more rewarding to devote additional resources and efforts to getting favourable decisions from the Regulator than to explore all avenues for cost-effective financing. Any increase in cost of financing that this leads to will ultimately be borne by consumers.

For this reason, while Business NSW accepts that there is an in-principle case for the Regulator to consider financeability among the range of factors it balances in its decisions as per ERC0348, we also believe that the Regulator will need to apply a highly sceptical eye to any claims made by TNSPs on the basis of financeability. As we have seen with these proposals (see also Question 1), it is very easy for TNSPs to assert that they face a financeability problem, and in the absence of transparency over the actual financing options that TNSPs face, very difficult for consumers and their advocates to provide substantive rebuttal of those assertions.

4. Why is special treatment merited for costs related to biodiversity offsets?

Business NSW observes that the costs associated with biodiversity offsets are significant for many major transmission projects including ISP projects.

However, the legislation governing these costs, such as the *Biodiversity Conservation Act 2016* in NSW and other earlier legislation cited in the Minister's proposal, predates the development of any ISP projects. The existence of this legislation, its requirements, and the costs it thus entails, should not come as a surprise to ISP project proponents. It is therefore unclear to us why biodiversity related costs should be subject to different treatment from any other cost categories that account for a material proportion of overall costs.

The rule change proposal fails to describe adequately why biodiversity offsets should be given special treatment. Further, although it demonstrates the widespread possible cost implications across different projects, it does not demonstrate why those costs are uniquely detrimental to financeability in the context of multi-billion dollar projects. It is also unclear to us why it would be in consumers' interests to begin payments for an uncommissioned project that is not – at that point in time – delivering any benefits to them.

If the deemed benefits of biodiversity offsets are the improvements to biodiversity, as opposed to the enablement of the transmission project, then it is also not clear why this is a cost that should be borne by energy consumers. Biodiversity is a social benefit more appropriately allocated to the overall taxpayer base than to energy consumers.

Business NSW is open to the idea that it is possible the rule change requested by ERC0348 is justifiable. However, it does not view the evidence presented in the rule change proposal as being sufficient to substantiate that case.

Further issues relating to financeability.

Business NSW considers that, efficiently built, transmission projects identified in the ISP are likely to be beneficial to consumers. However, Business NSW is also growing increasingly concerned about proposals – and commentary – from AEMO and TNSPs implying that transmission projects are beneficial irrespective of changes to cost estimates.[1] While it may be granted, as the ENA cites AEMO

[1] https://www.aemc.gov.au/sites/default/files/2023-07/ENA%20rule%20change%20request%20-%209%20June%202023.pdf p.4. See for example claims such as "Transgrid's modelling shows that for every dollar spent on transmission, the benefit to consumers is more than two dollars." Ben Potter and Angela Macdonald-Smith, *Australian Financial Review*;
https://www.afr.com/policy/energy-and-climate/payoffs-to-farmers-doubled-to-secure-clean-energy-shift-20230620-p5dhyv

as saying in its rule change proposal, that spending a dollar on a particular ISP project will deliver more than $2 in benefits *at current cost estimates*, it does not hold that (as is strongly implied in the statement) spending two dollars will yield $4 in benefits, or that spending four dollars will yield $8 in benefits and so on. Benefits do not simply scale linearly with costs. On the contrary, if it costs $4 to still deliver only $2 in benefits, then the merits of the project must be reconsidered.

The financial collapse of transmission businesses would be in nobody's interest – not consumers, not TNSPs, not other system users. Some minimum requirement that TNSPs revenue be sufficient to keep them financeable is appropriate, and the AER should be permitted to consider that alongside the other factors it uses when making decisions. But Business NSW is concerned that assertions about financeability, being inherently challenging for consumers and the Regulator to scrutinise, risk becoming a blank cheque process for TNSPs to claim unjustified increases in revenue, or to counter their own failures to deliver transmission projects efficiently. Expanding TNSPs' recourse to financeability arguments in regulatory decisions risks misbalancing the regulatory process, allowing networks a basis to appeal any decision they dislike using an evidence base consumers cannot challenge, invariably leading to an insistence that consumers pay more. However, there are options, which could be considered as amendments to the existing rule change proposals or brought forth separately, which could mitigate that risk of imbalance.

The first option would be to impose a transparency requirement on any TNSP revenue request predicated on financeability. Only by fully opening up financing decisions to scrutiny could consumers be assured that an amount they are being asked to pay is necessary for the purposes it is intended for. A world in which TNSPs can simply point to a black box marked financeability and demand from consumers any sum they choose is unacceptable and must not be the end point for these reforms.

A second, more radical option, would be to allow the financeability reforms proposed here to apply only to projects which have been subject to contestability in the choice of developer. Greater use of competitive practices in the transmission arena would allow users greater confidence that additional payments are actually necessary for transmission projects to be built, rather than simply being necessary to compensate for the shortcomings of particular incumbent TNSPs.[2] As consultancy Nexa Advisory has recently shown, greater use of competitive procurement in transmission could also mitigate the need for concessional financing for ISP projects, reducing the urgency around rule change ERC0349.

Business NSW would welcome a rounded discussion about transmission financing reform. There is a risk, in the form of the two consolidated rule change proposals, that the AEMC facilitates a piecemeal approach to reform that fails to address underlying causes of problems and does not consider all the available options to resolve them.

If you have any questions about this submission or would like to discuss it further, please contact me at simon.moore@businessnsw.com

Yours Sincerely,

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[2] https://nexaadvisory.com.au/transmission-contestability-in-australia-enabling-the-clean-energy-transition/