

**Submission  
No 43**

## **THE ELECTRICITY OUTAGES AFFECTING FAR WEST NSW IN OCTOBER 2024**

**Organisation:** Australian Energy Regulator

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# AER Submission to the NSW Legislative Assembly Committee on Environment and Planning

The Australian Energy Regulator (AER) welcomes the opportunity to provide a submission to the New South Wales (NSW) Legislative Assembly Committee on Environment and Planning.

The AER is an independent decision-making body responsible for regulating wholesale and retail energy markets, and energy networks, under national energy legislation and rules. We regulate gas and electricity markets and/or networks in all states and territories of Australia, except Western Australia. We focus on ensuring a secure, reliable and affordable energy future for Australia as it transitions to net zero emissions. However, the core focus for the AER can be found in our purpose – to ensure energy consumers are better off, now and in the future.

Our submission outlines the AER's role and functions in relation to regulating electricity transmission and distribution networks, with a particular focus on our interactions with the network businesses that play a role in Far West NSW.

## 1 Regulation of electricity networks

We are responsible for the economic regulation of electricity transmission and distribution networks and gas transmission and distribution pipelines in all Australian jurisdictions except Western Australia. We do this by setting the maximum amount of revenue that price regulated energy networks can earn every five years and, annually, the price they can charge consumers for regulated services.

The regulatory framework for electricity distribution and transmission networks is set out in the National Electricity Law (NEL) and National Electricity Rules (NER).

Price regulated network business submit revenue proposals to us, usually every five years (reset process). We review these proposals and make decisions after considering factors including: the services proposed to be regulated, quality of engagement with customers, the prudence and efficiency of the proposed capital and operating expenditure, the projected demand for electricity, age of infrastructure, the impact on emissions, the financial costs, and network reliability and safety standards.

We implement the current regulatory framework in line with the NEL and NER, which specifies an incentive-based approach must be taken, as well as the schemes we must apply in regulating monopoly electricity and gas networks. This framework sets maximum revenues based on our assessment of forecast efficient costs. Once the maximum allowable revenue is set for the forthcoming regulatory control period, a network business that improves the efficiency of its inputs retains a portion of the benefits, with the majority of benefits shared with consumers.

The framework provides network businesses the opportunity to recover at least their efficient costs and an ongoing incentive for service providers to become more efficient over time. Consumers also benefit as efficient costs are revealed and this drives lower cost benchmarks in subsequent regulatory periods. By only allowing forecast efficient costs in our

approved revenues, we promote delivery of the National Electricity Objective and ensure consumers pay no more than necessary for the safe and reliable delivery of electricity.

The annual building block revenue for a network business for each year of a regulatory period is determined using a building blocks approach, which looks at key cost components:

- return on the regulated asset base or return on capital, to compensate investors for the opportunity cost of funds invested in this business
- depreciation of the regulated asset base or return of capital, to return the initial investment to investors over time
- forecast operating expenditure – the operating, maintenance and other non-capital expenses, incurred in the provision of network services
- forecast capital expenditure – the expenditure for building and maintaining the physical assets needed to provide standard control services
- revenue increments/decrements resulting from the application of expenditure and performance incentive schemes that allow network businesses to earn additional returns from increasing efficiency or service quality in the current regulatory period.
- estimated cost of corporate income tax.<sup>1</sup>

In recent years, network businesses have proposed resilience related expenditure as part of their revenue proposals and the AER has accepted the majority of proposed total resilience expenditure. For instance, the AER accepted 81% of the approximately \$400 million in total resilience-related expenditure proposed by NSW and Tasmanian network businesses in their 2024-29 revenue proposals.<sup>2</sup>

The regulatory framework also provides for uncertainty during the revenue determination, including contingent project applications and pass through event re-openers.

Contingent project applications are applications made by network businesses to amend their regulatory revenue determination to include the revenue required for a major network infrastructure project which has previously been flagged, but not yet committed to, in long-term investment plans. These include actionable projects in the Integrated System Plan, such as Victoria to New South Wales Interconnector West (VNI West) and HumeLink.

A cost pass through mechanism recognises that a network business may be exposed to material cost changes beyond its control. Cost pass through events, when approved, allow the business to recover costs that were not built into its revenue determination, or return costs that it will no longer incur.<sup>3</sup>

During the regulatory period, a network business can apply to pass through to its customers, in the form of higher or lower network charges, certain material changes in its costs caused

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<sup>1</sup> AER, [Overview, Final decision – Transgrid transmission determination 2023–28](#), April 2024, p. 16.

<sup>2</sup> AER media release on the final decisions for electricity network businesses for the 2024-29 regulatory period, 30 April 2024, <https://www.aer.gov.au/news/articles/news-releases/final-revenue-decisions-balance-affordability-and-required-investment>.

<sup>3</sup> AER, [NSP Explanatory note – Return on Assets](#), 2023, p. 2.

by pre-defined exogenous events. The NER specifies these pre-defined exogenous events, which include regulatory changes, tax changes and changes to network service standards.<sup>4</sup>

In addition to these prescribed events, a network business can also nominate other pass through events in their revenue proposal for a regulatory period.<sup>5</sup> All network businesses have nominated a natural disaster event as a cost pass through event, meaning businesses are able to apply to recover material costs incurred as a result of responding to natural disaster events such as storms, floods and bushfires. Since 2020, the AER has received 17 such applications, representing total costs of approximately \$469 million across the National Energy Market.

The AER's role is to assess the efficiency of the network businesses' decisions and actions in relation to these events, and ensure consumers pay no more than necessary for network restoration and recovery costs.

## 1.1 AER's role in energy system planning

The AER has a defined role in transmission and energy system planning as outlined in the NER. Our responsibilities include establishing and maintaining guidelines, such as the Cost-Benefit Analysis (CBA) and Regulatory Investment Test for Transmission (RIT-T) application guidelines.

The NER require network businesses like Transgrid to conduct cost-benefit analyses before making significant investments. Our guidelines ensure that network providers assess a range of credible options that could address an identified need in the electricity network, and that network providers select the option that maximises the positive net economic benefits to the market. However, in the instance of a transmission RIT-T that meets a reliability need, the net economic benefit can be negative.

Transgrid operates the high voltage electricity transmission network in New South Wales and the ACT, including the 220 kV transmission line, Line X2, that supplies Broken Hill. During outages of Line X2, backup power is supplied by two diesel-fired turbines, which up until 2018 were owned by Essential Energy.

In late 2018, Essential Energy announced plans to divest these diesel-fired turbines. This decision prompted Transgrid to initiate a RIT-T process in November 2019 to evaluate options for maintaining a reliable power supply to Broken Hill.

Transgrid completed its RIT-T for Broken Hill in May 2022. The preferred option involves the continuing use of the existing diesel turbines to provide the required reliability of supply to Broken Hill in the near term, with Transgrid entering into a network support agreement with Hydrostor, to provide the longer-term reliability solution via a compressed-air energy storage facility.

The AER notes that the Australian Energy Market Commission is currently consulting on a rule change proposal to improve the cost recovery arrangement for transmission non-

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<sup>4</sup> NER r. 6A.7.3(a1)(1)–(4).

<sup>5</sup> NER, r. 6A.7.3(a1)(5).

network options.<sup>6</sup> This would further support network businesses to consider alternatives such as batteries to meet network reliability requirements instead of building additional transmission lines. The costs of contracting with providers of these non-network solutions are treated as operating expenditure under the regulatory framework.

## 2 October 2024 events

The AER has jurisdiction to regulate and enforce compliance with obligations under national energy laws. Our jurisdiction covers a number of sectors of the national energy market, including:

- The relationships energy retailers and distributors have with their customers in competitive retail markets, and those of alternative energy providers operating under retail and network exemptions.
- The provision of monopoly transmission and distribution network services to customers and other market participants, and network planning requirements on service providers and the Australian Energy Market Operator (AEMO).
- Participants in competitive wholesale markets for electricity and gas, including obligations on AEMO in handling the day-to-day operations of those markets.

The AER's Compliance and enforcement policy sets out how we approach our roles and functions in monitoring, investigating and enforcing compliance with the national energy laws and rules.<sup>7</sup> The goal of our compliance and enforcement work is to ensure that important protections are delivered and rights are respected. Consumers are at the heart of our work, and we focus on delivering our objectives of affordable energy and satisfied consumers; a secure electricity and gas system; a reliable and low emissions electricity and gas supply; effective development of open and competitive markets; and efficient and timely investment in networks.

Our approach to compliance and enforcement aims to both foster compliance and address non-compliance, with a focus on the prevention of harm. We have discretion in how we approach compliance and enforcement, using a combination of tools that we consider will deliver the best outcome for consumers and the market. These include using education and guidance materials, administrative actions, regulatory waivers where available, infringement notices, court enforceable undertakings and civil proceedings.

We focus on enforcing compliance with the energy laws and rules in the wholesale, networks and retail sectors and take appropriate action when required. Our compliance and enforcement activities are a key regulatory tool to protect energy consumers, build trust with the community and keep the energy system stable and secure during the transition.

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<sup>6</sup> Australian Energy Market Commission (AEMC), Rule change on improving the cost recovery arrangements for Transmission non-network options, <https://www.aemc.gov.au/rule-changes/improving-cost-recovery-arrangements-transmission-non-network-options>

<sup>7</sup> AER, *AER Compliance and Enforcement Policy*, July 2021, <https://www.aer.gov.au/system/files/AER%20Compliance%20and%20Enforcement%20Policy%20July%202021.pdf>; <https://www.aer.gov.au/publications/reports/corporate/aer-compliance-enforcement-policy>

On 28 October 2024, the AER announced an investigation into the power system events that affected transmission infrastructure supplying Broken Hill and surrounding areas.<sup>8</sup> The investigation is focussed on whether there have been any potential breaches of the NER. The AER does not generally comment on the status of current investigations.

## 2.1 National Electricity Rules

The NER require transmission and distribution networks to ensure their systems and infrastructure are properly operated and maintained, including by using good electricity industry practice and undertaking compliance programs to ensure reliable operation and adherence to performance requirements.

Chapter 4 provides the framework for achieving and maintaining a secure power system and specifies the conditions under which AEMO can intervene in the processes of the spot market and issue directions to registered participants in order to maintain or re-establish a secure and reliable power system.

Chapter 5 regulates the connection to, and the planning and expansion of, the power system. For example, clause 5.2.3(e1) requires a network business to arrange for specific obligations and standards to be met in respect of its network. Clause 5.2.3(f) requires a network business to comply with applicable regulatory instruments.

Chapter 10 of the NER defines “applicable regulatory instruments” to include all laws, regulations, orders, licences, codes, determinations and other regulatory instruments, which apply to Registered participants, including (for NSW):

- (a) the *Electricity Supply Act 1995*;
- (b) all regulations made and licences issued under the *Electricity Supply Act 1995*;
- (c) the *Independent Pricing and Regulatory Tribunal Act 1992*;
- (d) all regulations and determinations made under the *Independent Pricing and Regulatory Tribunal Act 1992*;
- (e) all regulatory instruments applicable under the Licences; and
- (f) *Commercial Arbitration Act 2010*.

On 24 October 2024, IPART announced an investigation into the safety and reliability of transmission infrastructure supplying Broken Hill and surrounding areas.<sup>9</sup> The AER and IPART investigations are running concurrently with some overlap. For example, IPART is investigating whether there has been a breach of regulatory obligations, including the *Electricity Supply Act* or Transgrid’s licence. The AER is investigating conduct relating to provisions in chapter five of the NER. Both regulators are cooperating to undertake the investigations as efficiently as possible.

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<sup>8</sup> AER media release on its investigation into the Broken Hill power system event can be accessed here - <https://www.aer.gov.au/news/articles/news-releases/aer-investigating-broken-hill-power-system-event>.

<sup>9</sup> Information on IPART’s investigation into the Broken Hill tower failures and power outages including the Terms of Reference for the investigation are available at <https://www.ipart.nsw.gov.au/broken-hill-tower-failures-and-power-outages>.