Ausgrid

Hunter-Central Coast Renewable Energy Zone Network Infrastructure Project revenue proposal 2026-31

HCC REZ Reg Panel Report to the AER

Response to the AER's Preliminary Position Paper and Supplementary Appendix

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Introduction

This submission from the HCC REZ Reg Panel (Panel) is in response to the AER's August Preliminary Position Paper (PPP) including the Supplementary Appendix (SA) on Ausgrid's Hunter-Central Coast REZ network infrastructure project revenue proposal 2026-31 (Revenue Proposal). This submission builds on the feedback the Panel gave in our initial submission to the AER dated 30 May 2025; the public comments we made at the AER's Public Forum on 25 August 2025 and in meetings with Ausgrid on 4 September 2025 and the AER and Ausgrid on 5 September 2025.

In summary we strongly support the approach taken by the AER in its PPP and SA and the focus areas identified by the AER. In this submission we first offer some observations on engagement and transparency and accountability, and then we focus our substantive comments on the post determination Adjustment Events, which is the major focus of the PPP and SA.

1. Observations on Ausgrid's engagement

We agree with the AER and CCP assessment that Ausgrid's engagement both with the Panel and with local communities for the HCC REZ project was industry leading, open and constructive and met the expectations of the Better Resets Handbook. However, the Panel agrees with CCP that Ausgrid undersold this good engagement by failing to provide a detailed overview of its community and landowner engagement and the influence that the Panel had on Ausgrid's Revenue Proposal. Since the publication of the PPP and the SA, Ausgrid has continued engaging with the Panel and the AER on the Adjustment Events in a constructive and open manner.

Ausgrid continues to confirm that its largely brownfields design has resulted in far less community concern than other greenfields transmission projects. The Panel has previously observed that the technical solutions will use larger steel poles with significantly more conductor, so ongoing vigilance to potential community concern about adverse visual impact will be needed.

There has been widespread commentary about the Electricity Infrastructure Investment Act (EII Act) not including any obligations on EnergyCo, AEMO Services or network operators to undertake customer engagement[1]. Notwithstanding this Ausgrid chose to establish the Panel and to openly engage with us, a fact we have repeatedly and positively welcomed.

We are also aware that EnergyCo is present within the HCC community. We note its HCC Regional Reference Group (RRG) includes the regional mayors. From the published website information, subjects discussed at the RRG's meetings include the Hunter Transmission project, Newcastle port logistics, road upgrades, the HCC REZ, Ausgrid and the renewable proponents. One concern we have is that the RRG does not seem to be set up for customer challenge and fact finding and is more a regional impact mitigation body. We strongly support the recent recommendations for greater

[1] https://www.energy.nsw.gov.au/sites/default/files/2025-04/NSW-transmission-planning-review-Options-Paper-v2.pdf

consumer engagement, particularly by EnergyCo, from the farrierswier interim report for the NSW Transmission Planning review[2].

We welcome the AER's bottom-up review of the $24.1m community engagement and social licence fund (PPP at p.8). However on 5 September 2025 Ausgrid advised us that it has yet to engage further with the AER on these costs. We welcome the AER's confirmation (PPP at p.8) that the $5.3m social licence fund will only be approved if the AER determines that it is a prudent and efficient way to reduce risks to the successful delivery of the project. We note that the AER has repeated the need for Ausgrid to establish that the social licence spending should be targeted at the amount sufficient to advance social acceptance of the project (PPP at p.10).

Once these risks are identified by Ausgrid and the appropriate amount determined by the AER we would support the AER's decision to apply CESS to that capex in order to incentivise Ausgrid to deliver the social acceptance of the project as efficiently as possible. However, we remain very concerned that no specific risks have been identified by Ausgrid to date, that would justify the social licence fund nor the extent of community engagement capex in the Revenue Proposal.

2. Observations on transparency and accountability

The NSW Roadmap aims for faster network build than under the NER. What is clear is this speed comes at the expense of the usual network due diligence and capex forecast accuracy now required by the AER for NER projects e.g. the AER's recent requirement for Marinus to take longer to produce an AACE Class 2 capex estimate[3] (-15% to + 20%) and expected by consumers who are exposed to the risk of cost overruns.

The impact of this fast timetable is that networks are unable to fully investigate capex risks. They have two options - put in a high capex estimate to cover unknown unknowns and push that risk on to customers through pass through rights under adjustment events. The result for Roadmap projects is that consumers are being left with significant capex risk under an increasing number of uncapped adjustment events negotiated between the network and EnergyCo without customers in the room to put their case of what risks they think they are best placed to bear.

This was the key outcome of the Commitment Deed negotiation between EnergyCo and Ausgrid for HCC REZ. Uncapped adjustment events resulted in considerable potential capex risk for NSW consumers. EnergyCo's response to consumer concerns is largely "trust us" that we are acting in consumer's long term financial interests despite the lack of consumer engagement; the ambitious project delivery time frames; and confidentiality restrictions being imposed on network operators. No matter the capex cost consumers bear it always seems to be that cost will be more than offset by lower wholesale prices sometime in the future.

[2] https://www.energy.nsw.gov.au/sites/default/files/2025-06/nsw-transmission-planning-review-interim-report.pdf

[3] https://www.aer.gov.au/industry/registers/determinations/marinus-link-intending-transmission-network-application/draft-decision; for a description of the AACE cost classes for transmission projects see https://web.aacei.org/docs/default-source/toc/toc_96r-18.pdf

The AER has acknowledged that Ausgrid's ability to conduct its usual due diligence was limited due to the confidentiality restrictions on the HCC RNI procurement process. The AER states: "*We consider that these circumstances significantly impacted Ausgrid's ability to estimate some of its costs in time for submission of its proposal*" (SA at p. 10).

Our initial submission to the AER raised many concerns about the lack of transparency and accountability in the Roadmap process including:

- Confidentiality is claimed so all the CBAs (AEMO Services IIO Report, Energy Co's IPRR and AEMO Services RNI Project Statement of Reasons) are just high-level summaries. This is in contrast with AEMO's development of the ISP which has significant transparency on modelling methodology, scenarios, assumptions and sensitivity analysis with stakeholder engagement an important part of every aspect.
- We sought a definition from the AER of 'reasonable' expenditure. We acknowledge the AER's response (PPP at pp 22-23). However, we still believe that reasonable expenditure can be whatever is needed to get network built quickly.
- Ausgrid could only get ~AACE Class 3 given their timetable under the Deed, hence the range of open ended Adjustment Events in its Revenue Proposal and the large potential exposure of consumers to pass through costs. We welcome the AER's focus on reducing the number and scope of the Adjustment Events in the PPP and SA.
- This is especially after the EII Act changes in late 2024 that mean the Maximum Capital Cost (MCC) is not in fact the MCC and we welcome the AER's commentary on the revised MCC (PPP at pp19-20).
- The AER is not allowed to test whether the Infrastructure Planner Fees (IP Fees) (28% of capex) are 'prudent, efficient and reasonable'. The Panel supports the AER pursuing more voluntary information from EnergyCo in July 2025 about the internal governance of the IP Fees and a breakdown of the activities being funded by the IP Fees (PPP at p.21). The AER states that it is reviewing the information provided by EnergyCo to the AER around the breakdown of the activities being funded by the IP fees. We do not understand why EnergyCo's IP Fees cannot be made public. They do not involve commercially sensitive project delivery information – instead they are EnergyCo's administrative and technical planning costs. We strongly urge the AER to seek full transparency of these costs especially as they are not reviewable for prudency, efficiency and reasonableness by the AER and there are several Adjustment Events that relate to these costs.

In all these cases we recognise that the AER's leverage is limited by its role as set out in the EII Act. Nevertheless it can push EnergyCo and networks to at least provide increased transparency and accountability and we strongly support the AER's efforts to do just that regarding the Adjustment Events as set out in the SA. We agree with the AER that there is a strong public interest case for disclosure of information on the adjustment mechanisms (SA at p.7). The AER notes:

> "*Transparency is vital to preserving confidence in the regulatory framework and social licence. In this case the importance is heightened because the*

adjustment event mechanisms go to the allocation of risks and costs between the network operator and consumers."

As we noted in our initial submission and above, the lack of transparency in Roadmap processes and increasing costs have been undermining consumer confidence that the Roadmap is indeed 'in the long-term financial interests of NSW electricity customers'.

We are pleased to see Ausgrid and EnergyCo agreeing to drop their confidentiality claims on the Adjustment Events for the HCC REZ Revenue Proposal. We look forward to the AER applying a similar approach to transparency in the Transgrid CWO REZ enablement revenue proposal. In section 4 below we encourage the AER to update its TET & Revenue determination guideline for non-contestable network infrastructure projects (non-contestable Guideline) to ensure that in future Roadmap revenue proposals there will be very, very limited, targeted and justifiable confidentiality claims for post determination adjustment events.

3. Observations on the Adjustment Events

3.1 EnergyCo Contractual compliance events

Table 2 of the SA sets out 7 EnergyCo contractual compliance events. We have summarised our understanding of the AER's approach in the PPP and SA to these Adjustment Events in the following table:

Event	AER preliminary position	Panel comment
1. Regulatory requirements	Not related to IP Fees so AER will apply prudency, efficiency and reasonableness test (PER test) before including any costs impact in the revenue determination	Costs relating to a change in law resulting from NSW Govt policy
2. DSP Change Adjustment	Part 1 Not related to IP Fees so AER will apply the PER test before including any costs impact in the revenue determination Part 2 Approved as AER has no role in assessing the prudency, efficiency and reasonableness of IP Fees or adjustments to the IP Fees	Part 1 IP can issue an order to change the works to be carried out by Ausgrid Part 2 are the IP Fees relating to the change order
3. DSP Delay adjustment	Not related to IP Fees so AER will apply PER test before including any costs impact in the revenue determination	Ausgrid pays the LDs immediately to the IP and later recovers the revenue. This is the LDs mechanism which then reduces Ausgrid's revenue.
4. DSP IP Fee Adjustment	Approved as AER has no role in assessing the prudency, efficiency and reasonableness of IP Fees or adjustments to the IP Fees	This is increase/decrease to IP fees
5. Reduction in IP Fee due to reduced technical Services payments	Approved as AER has no role in assessing the prudency, efficiency and reasonableness of IP Fees or adjustments to the IP Fees	This relates to IP Fees and reduced technical services Payment mechanism
6. Force majeure Event under contractual arrangements with the Infrastructure Planner	Not related to IP Fees so AER will apply PER test before including any costs impact in the revenue determination. AER proposing highest level of scrutiny	Project deed force majeure event
7. Actions by the Infrastructure Planner	Unclear as this involves payments due to breach by the IP and complying with directions	AER to confirm if this relates to IP fees or is subject to the PER test at the time of the claim noting that it excludes costs that Ausgrid can avoid or mitigate

We look forward to the AER confirming its role in reviewing Event 7. The detail in this table reinforces our serious concerns about the inability of the AER to review the IP Fees, either as part of the initial determination or under the Adjustment Events.

3.2 Procurement induced cost uncertainty events

The AER's approach for these 7 adjustment events differentiates between those events that are truly beyond Ausgrid's control and those events which Ausgrid can influence over time. The AER identified 3 of the 7 Procurement induced cost uncertainty Adjustment Events (Events 1, 4 and 5) that it believed are at least partially within Ausgrid's control and which could be subject to a delayed forecasting or cap approach.

In response to publication of the PPP and SA, Ausgrid has constructively engaged with the AER and with the Panel on this issue and these 3 Events. On 4 September 2025 Ausgrid shared a draft with the Panel of its own delayed capex forecast adjustment mechanism for Events 1 and 4. Ausgrid is proposing that part of Event 5 will be removed and instead included in the initial capex forecast. We have set out our understanding of the AER's approach in the PPP and SA to Procurement induced cost uncertainty events and Ausgrid's response in the following Table:

Event	AER preliminary position and SA	Ausgrid response
1. Unavoidable change in contractor costs	Partially within Ausgrid's control. AER concerned with high probability and potential impact. Ausgrid estimate for max claim was +50% increase. Cap would be too high and would be a theoretical cap only so would not operate as an incentive. AER says there is a greater level of uncertainty than at same stage for Waratah Super Battery (WSB). AER considering a max cap individual or aggregate or a delayed capex forecast. AER proposing highest level of scrutiny	Ausgrid accepts a delayed capex forecast adjustment linked to a milestone rather than a date. Ausgrid's proposed trigger milestone is "Response to final designs by Contractor/s". Ausgrid will lodge one delayed capex forecast adjustment proposal (DCFA) within 3 months of the trigger milestone and will use its best endeavours to lodge this with the AER by 28 March 2027. The adjustment event will expire from the date of lodgement of the DFCA. AER will go through its usual 42 business day review and approval process. Once the revised forecast is approved, that portion of the approved capex from the DCFA will be subject to a modified CESS. Ausgrid's proposed modified CESS for the revised forecast capex relating to the expiring adjustment events is: • Underspend 0-15%: 50:50 (equal share between Ausgrid and customers) • Underspend >15%: 0:100 (all benefits to customers) • Overspend (all levels): Standard 30:70
2. Contractor force majeure	Outside Ausgrid's control and AER will apply the PER test	The Panel discussed with Ausgrid the 3 conditions the AER imposed on the contractor force majeure adjustment event in the WSB determination:

		1. The costs are not covered by an existing insurance policy or adjustment mechanism. 2. Transgrid has informed EnergyCo of the Force Majeure event consistent with the requirements of the Network Operator Deed. 3. The Force Majeure event is declared in accordance with the terms of the construction contract. Ausgrid confirmed that these conditions are already covered by the HCC REZ Commitment and Project Deeds.
3. Enabling activities	Outside Ausgrid's control as they are determined by Transgrid. AER will approve this event and will apply the PER test	Ausgrid believes this should remain uncapped
4. Unavoidable Design change	<u>Partially within Ausgrid's control</u>. AER considers the probability less likely to occur than events 1 and 5. Ausgrid estimate for max claim amount was class 5. AER considering a max cap individual or aggregate or a delayed capex forecast and will apply the PER test. AER proposing highest level of scrutiny	Ausgrid proposes the same delayed capex forecast adjustment as for Adjustment Event 1
5. Land Acquisition and Planning costs	<u>Partially within Ausgrid's control</u>. AER concerned with high probability and potential impact. Ausgrid estimate for max claim was +50% increase. AER proposing highest level of scrutiny	Clause (i) of the Land Acquisition and Planning Costs adjustment event will be removed Clauses (ii) and (iii) will remain as an uncapped adjustment event
6. Unforeseen Artefacts, Native Title Claims or Contamination	Outside Ausgrid's control. AER to confirm that it will apply the PER test	Ausgrid believes this should remain uncapped
7. Delay in execution of contractual arrangements	Outside Ausgrid's control. AER will approve this event and will apply PER test	Ausgrid believes this should remain uncapped

Panel's response on events 1 and 4

Timing of the trigger for any delayed capex forecast mechanism will be key as the CESS (modified or unmodified) will only apply once any additional revenue is added to the determination. The Panel supports triggers being linked to a milestone rather than a date. However, the AER needs to consider the right balance between delay and forecasting risk. We believe that the balance of timing and certainty should favour consumers, which would favour an earlier trigger. If there is residual risk for Ausgrid at the time of the reopening, then CESS will create incentive to mitigate that risk.

The Panel believes that all triggers for delayed capex forecast mechanisms should include the following conditions:

- Ausgrid to present evidence of engagement with consumers on how it has satisfied the trigger. In Ausgrid's case this could be met by engagement with its Customer Consultative Committee;
- mitigations Ausgrid has taken to reduce the forecast costs; and
- independent verification that the forecast revenue is at least AACE class 2 accuracy following the AER's recent Marinus decision.

Ausgrid's proposed delayed forecast mechanism seeks to delay the revenue forecast until the Transmission Lines subcontractor submits its final costs, thereby increasing its forecasting accuracy. If the AER accepts this date then the AER could consider increasing the AACE class accuracy required to class 1.

In order to reduce the impact of the delay on its incentive to reduce forecast costs, Ausgrid has proposed a modified CESS which favours consumers for any underspend. Whilst we welcome the modified CESS for underspends Ausgrid has proposed no modification to the CESS for overspends. If Ausgrid is required to submit a forecast at AACE class 1 level then this would reduce the accuracy variation in the low range to -3% to -10% and to +3% to +15% in the high range[4]. We do not understand why Ausgrid's modified CESS proposal cannot also apply to the high range accuracy so that for overspends above 15% Ausgrid's share is greater than 30%.

To reduce the delay and the need for a modified CESS, the AER could reopen the determination for some aspects of the Event at a specific date earlier than December 2026, then reduce the scope of the Adjustment Event to much narrower circumstances. In that case the remainder of the forecast could be subject to a second delayed capex forecast mechanism or a cap.

[4] https://web.aacei.org/docs/default-source/toc/toc_96r-18.pdf

The Panel believes that the level of AER scrutiny should be high for these 2 events, especially as this would be the first time that the AER had employed either a delayed forecast or cap mechanism.

Panel's response on event 5

We welcome Ausgrid's agreement to the forecast land acquisition costs being included in the determination. However, we are concerned that there is no cap on the remaining costs in clauses (ii) and (iii). Accordingly, we recommend that in addition to the AER applying the PER test, it also requires evidence from Ausgrid of its efforts to mitigate these costs, which are largely expected to arise from legal challenges and regulatory notifications.

Panel's response on events 2, 3, 6 and 7

These 4 adjustment events are outside Ausgrid's control and the AER has already indicated that it intends to approve each of them. We understand that the AER will apply the PER test (although this is not clear in the PPP for Event 6).

In relation to Event 3 Enabling Activities we note the very substantial increase between Ausgrid's estimate of these costs of $1.3m and Transgrid's estimate of $4.9m (PPP at p. 8). The AER notes it "…*will update the 'enabling activities' capex component to reflect the latest forecast in our final determination*" (PPP at p.8). In circumstances where Transgrid is the monopoly supplier for enabling activities, we believe it is essential for the AER to first carefully review the prudency, efficiency and reasonableness of Transgrid's estimate before including it in Ausgrid's allowed revenue.

It is not clear if Event 3 will expire on the making of the AER's final determination or if Transgrid will be able to continue to pass through additional costs for the enabling activities during the construction of the HCC REZ project. If the Adjustment Event does not expire then we believe that the AER should impose a maximum cap as part of the final determination. We also seek the AER's advice on whether there are any incentive schemes that would apply to Transgrid's expenditure to incentivise Transgrid to reduce these costs.

We urge the AER to clearly indicate in its final determination that it intends to apply a high level of scrutiny to future claims by Ausgrid under the Adjustment Event 3 and to similar enabling activity costs in future Roadmap projects. We also encourage the AER to pursue any interventions that would reduce Transgrid's monopoly supplier power for the provision of enabling services.

Under NER cost pass through processes these 4 unavoidable events are subject to a 1% Maximum Allowed Revenue (MAR) threshold for cost pass through claims. This puts maximum incentive on networks to find ways to manage and mitigate these costs as they are incurred, as the costs may be below the MAR threshold, requiring the network to absorb them.

By contrast, under Roadmap processes there is no minimum which we understand has led the AER to consider a materiality approach in its reviews (SA at p.13). This reduced level of scrutiny cannot possibly be in customers' long term interests.

We strongly encourage the AER to work with EnergyCo on ways to decrease consumer exposure to these truly unavoidable events under the Roadmap framework. Currently there is no cap, no incentive scheme, no threshold and 'reasonable' costs are allowed. Could any of these risks be resolved by a different contractual mechanism during the Project Deed negotiations? Or can unavoidable events such as 6 or 7 have an expiry date?

Finally the Panel believes that there are protections that could be borrowed from NER cost pass through claims into the Roadmap framework. For example:

- obligation for networks to insure for these events;
- mitigation steps other networks have taken in similar circumstances; and
- a threshold could be included for future projects - 1% of project revenue or a maximum aggregate cap of 15% of project revenue for all adjustment events (based on AACE class 2).

4. Other matters for the Final Determination and the AER's Guideline

We hope that the positive example set by Ausgrid in its consumer engagement on HCC REZ will provide an incentive to other networks to follow their example, whether they are seeking to construct a future contestable or non-contestable REZ. The AER could influence this by making its expectations clearer in the non-contestable Guideline for the type and level of customer engagement it expects.

This is even more important given further recent amendments to the EII Act designed to support faster build. These amendments extend the NSW Minister's powers to enable them to direct priority network infrastructure projects to commence, even before the AER has made a revenue determination (sec 35A EII Act). This reinforces the need for meaningful consumer engagement in the limited time available and more intervention to reduce the risk of open cost pass throughs being shifted to customers via adjustment events.

We make 3 additional recommendations for next steps:

First, we encourage the AER to apply the same approach to transparency and deferred capex forecast and cap mechanisms to Transgrid's CWO REZ enabling revenue proposal as they apply to the HCC REZ Revenue Proposal.

Second, we recommend that the AER review its non-contestable Guideline to reflect the AER's learnings from the HCC REZ and CWO REZ enabling revenue determinations.

We do note that the AER has recently published for consultation an update to this non-contestable Guideline to cover its approach to hybrid revenue determinations i.e. where projects combine both contestable and non-contestable components[5]. The Explanatory Statement accompanying those changes highlights the importance of:

- stakeholder engagement as part of the revenue determination process, and
- ensuring the regulatory processes and decisions are undertaken in an open and transparent manner that facilitates stakeholder engagement.

On the latter the AER (at pp 46-47) :

> *"…expect all parties will seek to provide stakeholders with as much information as possible on both the contestable and non-contestable components of a hybrid project. It therefore follows that we expect narrowly confined confidentiality claims over the elements of a hybrid revenue proposal."*

We look forward to further amendments to the AER's non-contestable Guideline following the conclusion of the HCC REZ and CWO REZ enabling revenue determination processes. In addition to more explicit expectations on consumer engagement and transparency of adjustment events, the revised non-contestable Guideline could require networks to identify in their revenue proposals those adjustment events that are partially within their control and a timeline and mechanism for when delayed forecasts will be possible. This would put the AER in a better position in the limited time it has to prepare its PPP to develop more precise delay or cap mechanisms.

Finally, the Panel encourages the AER to be even bolder in the Ausgrid HCC REZ final determination on behalf of NSW electricity customers. The AER could signal a future intention to pursue more transparency, ex post reviews, caps, thresholds, delays and expiry dates on more adjustment events and even refusal of adjustment events that EnergyCo and network operators should be able to manage upfront during the tender/negotiation phase rather than by shifting risks to consumers.

We commend Ausgrid for setting up the Panel when they were not required to and for their genuine and open engagement with us. We thank the AER staff for their patient support of the Panel's role. We have benefited greatly from all of our interactions with the AER team and we are heartened by the progress being made on behalf of NSW electricity customers in the AER's PPP and SA. As we said at the Public Forum this is a great first step!

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[5] https://www.aer.gov.au/industry/registers/resources/reviews/2025-review-revenue-determination-guideline-nsw-non-contestable-projects