

17 November 2025

CWO REZ Team
Australian Energy Regulator
By email: REZ@aer.gov.au

Dear CWO REZ team,

CWO Enabling Project – Preliminary position paper

The Justice and Equity Centre (JEC) welcomes the opportunity to respond to the Australian Energy Regulator's (AER) preliminary position paper on the Enabling Central-West Orana (CWO) Renewable Energy Zone (REZ) Network Infrastructure Project (the preliminary position paper).

JEC strongly supports the approach the AER has taken to Transgrid's revenue proposal and its decision to focus on the issues it has.

The CWO REZ is the first in a series of critical Roadmap projects intended to deliver an efficient, affordable and reliable energy transition for NSW energy consumers. Effective oversight by the AER is critical to ensuring the best outcomes for NSW consumers. In this context we commend the investment of AER staff time observing Transgrid Advisory Council (TAC) meetings regarding the revenue proposal and the appointment of an independent advisor to observe and evaluate Transgrid's engagement with the TAC.

As the first Roadmap project, investment of greater attention and resources to examine the CWO may be needed to identify and develop positions on newly arising issues of material concern to consumers interests. The apparent degree of disagreement the AER has with Transgrid's proposal indicates the level of engagement and scrutiny applied in this case is both appropriate and necessary. It also suggests it is strongly in consumers' interest that such levels are maintained and applied to all Roadmap and Integrated System Plan (ISP) projects going forward to ensure scrutiny is commensurate with complexity and scope for consumer impact.

We note that important ambiguities concerning the interaction of Roadmap projects regulated under the *Electricity Infrastructure Investment Act 2020* (NSW) and ISP projects regulated under the National Electricity Rules (NER) remain. Key among these is the definition of the 'base case' against which the financial impacts of Roadmap projects on network businesses are judged. We support the AER's treatment of these issues, in particular the decision not to pre-empt future regulatory decisions in the definition of the base case.

We note our limited ability to assess the prudence of Transgrid's proposal as a whole or of the specific elements we discuss below. This is in substantial part due to Transgrid's earlier

decisions during stakeholder engagement not to disclose specific information on the grounds of confidentiality and commercial sensitivity. Accordingly, we support the AER's robust examination of the prudence and efficiency of the proposal, and their preliminary positions regarding financeability, CESS modifications and adjustment mechanisms.

We agree with the concerns the AER cites in terms of the appropriateness of the proposal elements themselves and in terms of Transgrid's failure to adequately engage consumer advocates on these issues to ensure the proposals are meaningfully influenced by the consumer stakeholders on the TAC.

We commend and support the report written by Helen Bartley in her role as CCP35 representative. We concur with her perceptions of the workings of the TAC and consider the concerns she raises to be well-founded.

In addition to these broad positions, we make specific comments on select focus issues identified in the preliminary position paper below.

Regulatory depreciation and financeability.

The JEC supports the AER's preliminary position on Transgrid's proposals for accelerated depreciation.

We have not seen no adequate demonstration or evidence that the CWO REZ enabling network infrastructure project constitutes a financeability issue for Transgrid or that it would be in consumers' interests to alter the depreciation rates for certain asset classes. Given the impact on increased costs for NSW consumers, the bar to demonstrate such a need should be commensurately high.

We confirm the assessment that Transgrid's engagement with the TAC on the issue of financeability was inadequate, and not capable of supporting Transgrid's proposal. We concur with CCP35's assessment that discussion of the decision to apply for financeability considerations during meetings with the TAC was conducted on an inform basis only. As such, it cannot be regarded as in any way as resulting from meaningful engagement with, or being supported by consumers.

We also do not consider it appropriate to effectively pre-empt a regulatory decision, as Transgrid appears to do here in the production of a financeability claim. If the processing of the Project EnergyConnect (PEC) overspend and the related CESS decision create a financeability issue, this should then be managed if and when such an issue arises. It should not be pre-empted in the regulatory decisions associated with the CWO REZ.

We support the AER's interpretation and application of the Clean Energy Finance Corporation's (CEFC) 'do no harm' requirement.

Capital expenditure

We support the AER's preliminary position to exclude Transgrid's pre-period capex. We agree it is appropriate for the AER to assume the Infrastructure Planner Fees (IPF) are paid according to Transgrid's contract with EnergyCo.

We make no comment on the prudence or reasonableness of the capex elements of the proposal and support the AER undertaking a robust assessment.

Capital Expenditure sharing scheme (CESS)

The JEC supports the AER's preliminary position on Transgrid's proposal to apply a modified CESS.

We have consistently argued that while imperfect, the CESS is a crucial protection for consumers in a relationship in which they suffer a substantial and structural information asymmetry. We have consistently argued against recent changes to enable adjustments to the CESS. Determination of which elements of over- and under-spends are born of circumstances outside a given network service provider's control is generally very difficult and this was key design element of the CESS in the first place. Incentivising network businesses to maximise the efficiency of their investments in such a context is extremely important.

The complexity or size of a project does not (or should not) impact this logic. The argument for an adjusted CESS must be framed in terms of consumer interests. The only possible proposition is that the risk of a very large CESS payment is such that consumers' interests would be better served by shouldering a greater proportion of the overspend so as to avoid the increased premium paid to network businesses for managing risk on their behalf. Given the information asymmetry, the instances when this could be the case are very difficult to identify for consumers, with the risks of overpaying very high. The bar for establishing such a proposition should therefore also be very high.

We have not seen sufficient demonstration from Transgrid to establish such a proposition. We agree with the assessment that efforts to demonstrate the validity of this proposition to the TAC were also limited, and that Transgrid cannot justify a contention that their proposal is supported by consumers.

Finally, as the AER correctly notes, the possibility of adjustment mechanisms in the EII framework further reduces forecasting risks. We would add, however, that this is only the case from the perspective of the network business. From the consumer's perspective the possibility of increased costs and (as the AER notes) reduced incentive for network business to pursue savings is only made more likely. Overall, these circumstances stack the deck against consumers capacity to ensure that investments made on their behalf are prudent and efficient.

For these reasons, we do not support the adjustment of the CESS for this project.

Revenue adjustment mechanisms

We generally support the AER's preliminary positions on Transgrid's proposed adjustment mechanisms.

We draw particular attention to biodiversity offsets line item, estimated at \$15 million.

We have supported Transgrid's position in TAC meetings that these are best treated as a pass through given the limited control Transgrid has over them. However the AER suggests in

the preliminary position paper that this may understate the degree of input Transgrid has in acquitting its offset liabilities.

We are not able to offer further perspective except to note there is too little information regarding the basis of the estimate – \$15 million for offsets in a project that is to our knowledge entirely on brownfield sites – or on the degree to which Transgrid can manage the item.

We welcome the opportunity to meet with the AER and other stakeholders to discuss these issues in more depth. Please contact me at mlynch@jec.org.au regarding any further follow up.

Yours sincerely

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