

19 March 2026

Mr Scott Haig
Acting General Manager,
Renewable Energy Zones Branch, Networks Regulation
Australian Energy Regulator
GPO Box 3131
CANBERRA ACT 2601

By email: rez@aer.gov.au

Dear Mr Haig

Ausgrid's response to the AER's draft Non-disclosure Guideline 2026

Ausgrid is pleased to provide this submission to the Australian Energy Regulator's (**AER**) draft Non-disclosure Guideline – *Electricity Infrastructure Investment Act 2020* (NSW) (**EII Act**) (**ND Guideline**).

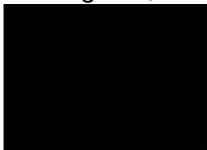
Ausgrid operates a shared electricity network that powers the homes and businesses of more than 4 million Australians living and working in an area that covers over 22,000 square kilometres from the Sydney CBD to the Upper Hunter.

Ausgrid welcomes a draft guideline to provide network operators with guidance on how to make non-disclosure claims under the EII Act. The ND Guideline provides a timely opportunity to assess what is working in other confidentiality guidelines, and what may need to be reformed, to enable better non-disclosure claims for future projects under the NSW Electricity Infrastructure Roadmap.

Overall, Ausgrid considers that the ND Guideline is satisfactory in guiding network operators on how to make non-disclosure claims under the EII Act. We have provided responses to the questions posed by the AER in section 6 of the explanatory statement to the ND Guideline (**Explanatory Statement**) in **Appendix 1** to this letter. We request that the AER consider these submissions as part of their review of the ND Guideline.

Please contact Emily Peachey, Regulatory Advisor, at [REDACTED] should you wish to discuss this submission further.

Regards,



Fiona McAnally
Head of Regulation

Appendix 1: Response to questions in section 6 of the Explanatory Statement to the ND Guideline

1. What changes could be made to improve our approach to dealing with claims of non-disclosure under the EII regulatory framework?

Identification of claims of non-disclosure

Section 2.3.1 of the ND Guideline states that “when submitting a revenue proposal, a network operator must identify specific information in the revenue proposal that it claims nondisclosure over”. However, there are no further details on how the AER would like this information identified, for example, whether highlighting is to be used, whether redacted ‘public’ and highlighted ‘confidential’ versions are to be provided, and how files are to be named.

Ausgrid recommends that guidance similar to that provided in section 3.3 of the AER’s Better Regulation Confidentiality Guideline (August 2017) (**2017 Confidentiality Guideline**) should be included in the ND Guideline, directing network operators to:

- in confidential versions of documents, highlight the confidential information in yellow shading.
- provide a public version of the documents which contain the confidential information. The public version must clearly identify the Information that the NSP wishes to claim is confidential by redacting or 'blacking out' that confidential information. Public versions must retain the same formatting and page numbers as the confidential version.
- ...
- for electronic documents, specify in the filename whether it is “public” or “confidential”.

2. What practical challenges might occur in applying the proposed approach in the ND Guideline, and how might they be addressed?

Pre-lodgement discussions

Section 3.1 of the Explanatory Statement outlines the AER’s “expectation that network operators engage in pre-lodgement discussions with us regarding any anticipated non-disclosure claims in their revenue proposal”. Ausgrid supports this approach, however, it seems in conflict with the AER’s statement in section 3.2 that:

Requiring network operators to address the factors in clause 53(6) of the EII Regulation when submitting their revenue proposal allows us to streamline our processes by being able to **have regard to non-disclosure claims at later stages of the process, such as the revenue determination stage.**

(emphasis added)

Clarification of this point would be helpful, as it is not clear how the expectation for pre-lodgement engagement in section 3.1 is intended to operate alongside the statement in section 3.2 that non-disclosure claims may be considered at later stages of the determination process.

Timing of publication

In section 3.3.2 of the ND Guideline, the AER states that:

We must also consult with the Infrastructure Planner before publishing a notice, reasons or schedule on our website, and we **must not publish this information until the Infrastructure Planner has notified us that financial close of the project has been reached.**

(emphasis added)

Ausgrid recommends clarification of this statement to account for situations where earlier disclosure may be required, including where the making of a revenue determination is a condition precedent to financial close.

For example, in the recent Hunter Central Coast Renewable Energy Zone Network Infrastructure Project (**HCC RNIP**) revenue determination, a determination from the AER was required for Ausgrid to obtain approval under the *Government Sector Finance Act 2018* (NSW) (**GSF Act**), and that approval was required to reach financial close. It was eventually determined that the best way forward was for the AER to publicly disclose that a decision had been made, without providing details, enabling approval under the GSF Act, the reaching of financial close, and finally, enabling the AER to publish the revenue determination. Therefore, a clear outline of the process to be followed in like circumstances would be beneficial.

Attachment B – Capturing claims across a revenue proposal as a whole

Ausgrid understands that the AER intends for network operators to fill out one row in the ‘Non-disclosure notice’ set out in Attachment B of the ND Guideline. This interpretation arises because the column heading refers to the ‘proposal title’, as opposed to ‘document title’, which suggests the template is intended to capture confidentiality claims at the level of the revenue proposal as a whole. The AER’s stated intention to compare the claims made in different proposals would lend itself to this interpretation.¹ If that is the case, Ausgrid recommends deleting the multiple empty rows currently in Attachment B and providing more explicit guidance.

Attachment B – pages containing information subject to a non-disclosure claim

Attachment B of the ND Guideline requires network operators to:²

specify the number of pages in their revenue proposal that contain a non-disclosure claim and the number of pages which do not. Where applicable, we will also compare the proportion of the revenue proposal that is subject to non-disclosure with the level of non-disclosure claimed by other network operators in their revenue proposals and publish this comparison on our website alongside attachments A and B.

Our primary position is that comparing the proportion of a revenue proposal that is subject to claims of non-disclosure with the level of non-disclosure claimed by other network operators may not provide a reliable basis for comparison and therefore should be reconsidered. The above method requires pages with limited non-disclosure claims (e.g. one number) to be counted as a whole page for the purpose of Attachment B. This practice may unintentionally overstate the volume of non-disclosure claims that appear to be made by a network operator.

More broadly, comparison of non-disclosure claims between network operators and between projects may produce misleading outcomes in certain circumstances. For example, a single confidential contract of significant length could result in a relatively large number of pages being captured in the comparison, even where the underlying claim is straightforward and well justified. In this context, Ausgrid considers that the focus should be on the merits of the claim made for non-disclosure by a network, not the quantity of claims.

¹ ND Guideline, p 10 s 2.3.2; Attachment B.

² Explanatory Statement, s 3.2 p 6.

Our alternative position would be:

- for one additional column (new column 2) to be added to Attachment B, being “Number of pages that contain information subject to a non-disclosure claim and are proposed to be fully redacted”. This would likely indicate the number of pages that are not to be disclosed due to more global confidentiality reasons i.e. a contract or pricing methodology; and
- for the next column heading to be amended to “Number of pages that contain information subject to a non-disclosure claim and are proposed to be only partially redacted”. This would likely indicate the number of pages with targeted information not to be disclosed due to more discrete confidentiality reasons i.e. a specific price or date.

If these numbers of pages are accepted by the AER as representing justified claims of non-disclosure and published, the AER should include guidance that stakeholders should consider these figures, and any comparison of these figures between proposals, as reflecting only justified claims of non-disclosure and not a reflection of a lack of access to necessary information.

3. What additional circumstances might be considered alongside the non-exhaustive list of considerations that we may take into account when assessing:

- **public interest considerations for and against disclosure of information**
- **whether the information is confidential or commercially sensitive**
- **the effect of publishing the information on future competitive assessment processes.**

Ausgrid notes that disclosure of information is a key concern for stakeholders. This was demonstrated recently through the views of our regulatory panel for the HCC RNIP (**Panel**). A key theme raised by the Panel was that lack of disclosure of information compromises the ability of consumers to have confidence that investments under the EII Act are being made in the long term interest of consumers.³ We encourage the AER to consider the Panel’s views on confidentiality and transparency outlined in their submissions on our HCC REZ regulatory proposal and the AER’s preliminary position paper to aid in the AER’s consideration of any additional circumstances that should be considered when assessing non-disclosure claims.⁴

4. What feedback do you have on the appropriateness of the Non-disclosure claim template at Attachment A of the ND Guideline?

Document name or identification number, page and paragraph number

Ausgrid recommends that the AER makes it clear in the first column of Attachment A or elsewhere in the ND Guideline that network operators do not need to separately identify every word or phrase that is the subject of a claim of non-disclosure on distinct rows of Attachment A. Rather, network operators can make a claim over a group of information in a document that has the same reasons for non-disclosure, and list the locations of the information in the first column of the row in Attachment A.

³ Louise Benjamin, Mark Grenning and Mike Swanston, [‘Ausgrid Hunter-Central Coast Renewable Energy Zone Network Infrastructure Project HCC REZ Reg panel Report to the AER’](#) (30 May 2025) (**Panel Report on Regulatory Proposal**), p 1.

⁴ Panel Report on Regulatory Proposal, for example, on p 1 and in s 1.1, 1.2, 2, 3.1.3, 3.2.3, 4.2.2, 4.3.1, 5.5, appendix A, D and H; Louise Benjamin, Mark Grenning and Mike Swanston, [‘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’](#), (10 September 2025), for example, in s 2 and 4.

Paragraph number

In recognition that not all documents have paragraph numbers, Ausgrid submits that the first column of Attachment A to the ND Guideline should read “Document name or identification number, page and, **if applicable**, paragraph number”.

Categories of confidential information

The table in Attachment A of the ND Guideline does not include a column in which network operators are required to identify a recognised confidentiality category that the information falls in. This requirement was included in the AER’s confidentiality template for the 2017 Confidentiality Guideline.⁵

Ausgrid agrees with the AER’s reasoning for the inclusion of these categories in the 2017 Confidentiality Guideline that requiring network operators to select a confidentiality category would assist networks in identifying the types of information that may be able to be withheld from disclosure, reducing unnecessary confidentiality claims.⁶ While the ND Guideline references the confidentiality categories in the 2017 Confidentiality Guideline as examples,⁷ this approach provides less practical guidance for networks when assessing whether information should be withheld from disclosure. Reintroducing a requirement for networks to identify the relevant confidentiality category would assist networks in applying the guideline in a more structured and consistent way.

If formal categories are not provided, guidance on the types of information that may be withheld from disclosure would be useful.

Confidential or commercially sensitive information

Section 4.3 of the ND Guideline states that “the network operator must clearly specify which information is ‘confidential’ and which information is ‘commercially sensitive’, and why”. Ausgrid submits that Attachment A does not reflect this requirement clearly. This could be achieved by separating the current fifth column into two columns, to clearly distinguish claims that information is confidential, commercially sensitive or both.

If a single column is retained, as information can be both commercially sensitive and confidential, Ausgrid recommends that ‘and/’ be added to the following: “Reasons for nondisclosure relating to confidential **and/or** commercially sensitive information” and instructions to specify whether information is commercially sensitive, confidential or both included.

Time period that information is commercially sensitive

Section 4.3.2 of the ND Guideline states that the AER “expect network operators to clearly identify the relevant time period in which it considers the information remains commercially sensitive”. This is not clear in Attachment A. Ausgrid recommends that a note be added to the current fifth column to the effect of “please specify the relevant time period in which the information remains commercially sensitive”.

Information provider

Attachment A to the ND Guideline requires network operators to identify the “Detriment the information provider may incur”, however, the meaning of ‘information provider’ is unclear. Ausgrid submits that a definition of

⁵ 2017 Confidentiality Guideline, Attachment A, fourth column of table.

⁶ AER, ‘Better Regulation Explanatory Statement Confidentiality Guideline’, (November 2013), s 6.3.1, p 26.

⁷ ND Guideline, s 4.3.

'information provider' should be included in the ND Guideline, for example, the definition included in the glossary to the 2017 Confidentiality Guideline.