

Our Ref: 3167634
Contact Officer: Scott Hall
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Dear Ms Collyer

Re: Early application of the transmission Service Target Performance Incentive Scheme (ERC0421)

The Australian Energy Regulator (AER) welcomes the Australian Energy Market Commission's (AEMC) draft determination and preferred draft rule to permit the application of an amended Service Target Performance Incentive Scheme (STPIS) during a regulatory control period, rather than only at the commencement of a transmission network service provider's (TNSP) next regulatory control period. This is consistent with the substance of the rule change request that we submitted on 14 August 2025.

As the AEMC is aware, on 17 April 2025, following an extensive review, we published version 6 of the STPIS. However, under the National Electricity Rules (NER) as they presently stand, version 6 can only be applied as part of a TNSP's next revenue determination. In practical terms, that framework unnecessarily delays the implementation of improvements that have already been developed through consultation, tested through regulatory review, and found to be preferable.

In principle, we support the preferred draft rule because it would:

- increase our ability to respond to changing circumstances by allowing a revised STPIS to be applied during a TNSP's regulatory control period, including enabling version 6 of the STPIS to be applied during current regulatory control periods; and
- require us to consult on how a revised STPIS should be applied during a regulatory control period when conducting a review of the STPIS.

However, we consider the following aspects of the preferred draft rule, warrant further consideration:

- the amended network capability component (NCC) in version 6 of the STPIS should in our view, in principle, be capable of early application

- the proposed process for reopening and amending revenue determinations to substitute unrounded loss of supply parameter targets should not be necessary and so we consider this process would be disproportionate and procedurally inefficient, given the amendments are mechanical and administrative in nature; and
- in our view it should neither be necessary nor desirable to impose any further limitations or safeguards on the enduring power to apply a revised STPIS during a regulatory control period, given the existing statutory, regulatory and administrative law frameworks already provide an appropriate discipline on the exercise of that power.

Early application of the network capability component

Our rule change request was in part to enable version 6 of the STPIS to be applied as soon as possible. Version 6 includes amendments to the NCC. However, the preferred draft rule would not permit the application of the amended NCC during the TNSPs' current regulatory control periods.

The NCC is intended to provide incentives for TNSPs to identify low-cost investments that materially improve transmission capability at times when it is most needed. Under the current STPIS, the NCC requires a TNSP to prepare a network capability incentive parameter action plan (NCIPAP) every five years as part of its revenue proposal. We considered that this requirement is administratively burdensome and gives rise to unnecessary duplication.

Under version 6, the amended NCC removes the requirement for a separate NCIPAP and instead relies on the identification of relevant projects through the TNSP's transmission annual planning report (TAPR). This amended approach has several advantages. In particular, it:

- removes duplicative processes between the NCIPAP and Transmission Annual Planning Reports, thereby reducing administrative burden and costs for TNSPs
- improves flexibility by allowing TNSPs to propose projects annually (rather than every five years as part of a regulatory reset process); and
- provides greater certainty in relation to incentive payments.

The AEMC has expressed concern about the administrative complexity of applying the amended NCC during regulatory control periods already underway, particularly where NCIPAPs are already in place. We acknowledge that early implementation of the amended NCC is administratively more complex than the early application of the other components of the STPIS.

We also consider that administrative complexity should be viewed as a practical implementation issue, rather than a reason in principle to not apply early application of the amended NCC. In other words, we consider the fact that the amended NCC may require a more tailored transition does not mean it should be excluded from early application.

That said, early implementation of the amended NCC would benefit from further engagement with TNSPs to ensure any transitional arrangements are workable and proportionate. In any event, deferring commencement of the amended NCC until a TNSP's next regulatory control period is likely to have limited practical effect, given the current STPIS already allows TNSPs some flexibility to vary their NCIPAP during a regulatory control period.

Accordingly, while we maintain that the amended NCC should, in principle, be capable of early application, we acknowledge, as a practical matter, the AEMC's proposed position not to include the NCC in the immediate early application of version 6 of the STPIS. If this position is maintained, we consider it important that the final rule and final determination make clear that the exclusion of the NCC reflects transitional implementation considerations, as opposed to being inherently unsuitable for early application.

Amendment of loss of supply parameter targets

The preferred draft rule also proposes that we reopen the relevant TNSPs' revenue determinations in order to amend the 'loss of supply' parameter targets so that they align with the service component of version 6 of the STPIS from 2026-27. On that approach, the process for revoking and substituting those aspects of the relevant revenue determinations would need to be completed before 30 June 2026.

Although the AEMC has proposed a transitional rule intended to recognise consultation undertaken by the AER with the TNSPs prior to the making of the final rule, we consider that revoking and substituting an amended revenue determination is unnecessary. There are two reasons for this.

First, we have already consulted on this issue as part of our recently completed STPIS review. Second, the relevant amendments are mechanical and administrative in nature only involving the substitution of unrounded target values in place of rounded values.

We consider that formally reopening and varying each relevant revenue determination would be disproportionate to the nature of the change being made. We also consider this approach would also introduce unnecessary procedural complexity, and create timing risk, despite there being no substantive policy reconsideration involved.

In our view, a more efficient and proportionate approach would be for the final rule itself to specify the relevant unrounded target values for each affected TNSP. That approach would avoid unnecessary process, while still giving full effect to the intended outcome. It would also better reflect the fact that the relevant change is not evaluative or discretionary in character but merely gives accurate administrative effect to the service component as settled under version 6 of the STPIS.

Enduring ability for the AER to apply a revised STPIS during a regulatory control period

We support an enduring mechanism that permits the early application of a revised STPIS, together with a requirement for us to consult, as part of a STPIS review, on whether early application should occur and on the arrangements that should apply.

The AEMC has invited submissions on whether any limitations or safeguards should be imposed on the AER in respect of the early application of future STPIS revisions before the end of a regulatory control period. In our view, additional limitations or safeguards are not necessary.

The AER's exercise of its powers is already subject to and guided by the existing statutory and regulatory framework, including:

- the national electricity objective (NEO)
- the revenue and pricing principles
- the consultation procedures

- the STPIS principles in the NER; and
- established principles of good regulatory practice, including the promotion of incentive-based regulation in a manner that advances the objectives of the STPIS.

In addition, we would also be subject to the ordinary requirements of administrative law in the exercise of any such power. Those constraints include the obligation to act reasonably, for a proper purpose, having regard to relevant considerations, and consistently with any applicable requirements of procedural fairness.

Taken together, we consider these existing disciplines provide an appropriate and sufficient framework for the exercise of the discretion. They ensure that any decision to apply a revised STPIS early would be transparent, consultative, and directed to furthering the achievement of the NEO. Additional prescriptive safeguards are therefore considered to be unnecessary.

Indeed, there is a real risk that layering further ex ante limitations onto the power would undermine the purpose of the rule change. The object of the proposed reform is to enable the timely implementation of STPIS improvements where appropriate. That objective could be undermined if the discretion were constrained by additional procedural or substantive hurdles beyond those already imposed by the existing legal and regulatory framework.

For those reasons, we support an enduring ability to apply a revised STPIS during a regulatory control period, subject to the existing statutory, regulatory and administrative law constraints, and do not consider further limitations or safeguards to be warranted.

Please contact Scott Hall, Director Network Monitoring ([REDACTED]) if you have any queries.

Yours sincerely

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Ms Kami Kaur

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Sent by email on: 01.04.2026