A consumer perspective on Transgrid's reopener Application for Project EnergyConnect

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Key message: Transgrid's Application to the AER to reopen the 2023-28 revenue determination seeking additional capex for the very large PEC overspend requires big thinking, a collective and thoughtful response and ultimately change from all parties. Transgrid's reopener and the foreshadowed ex post review may result in the AER approving significant additional capex for PEC. If that happens NSW electricity consumers will pay more for PEC for a very long time and will forgo other investments they could have made with that money to deliver similar outcomes for themselves at a lower cost, as there have been significant advancements in consumer energy resources (CER) which were unforeseen when AEMO originally approved PEC as an actionable project.

Structure

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Part 1: How did we get here?

The NEO must remain paramount during the rapid change of the energy transition

The National Electricity Objective (NEO) is:

> *"to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:*
> *(a) price, quality, safety, reliability and security of supply of electricity; and*
> *(b) the reliability, safety and security of the national electricity system; and*
> *(c) the achievement of targets set by a participating jurisdiction-*
> *(i) for reducing Australia's greenhouse gas emissions; or*
> *(ii) that are likely to contribute to reducing Australia's greenhouse gas emissions."*

The NEO should lead to a laser like focus from all participants in the energy system on these objectives and all trade-offs between these objectives must be based on

the context they are situated within. The current context is unique and is often described as unprecedented.

The extent and pace of policy, technology, supply chain and regulatory etc change is accelerating at a rate never before experienced. Transgrid describes the current extensive and rapid build out of new major transmission projects as part of the "*deep transition*"[1]. Therefore the regulatory institutions and the networks participating in the energy system need to be more active with each other rather than operating in silos.

The overarching legislative compact in the National Electricity Rules (NER) includes a foundational bargain that networks can recover their prudent and efficient costs (including a regulated return) from electricity customers in exchange for building, maintaining and running electricity networks on behalf of customers in a way that meets the NEO. It also assumes that if private equity cannot do this, they will go broke and consumers will not wear that risk.

The role of AEMO and the AER is to plan the energy system and protect customers from bearing risks that we are completely powerless and unable to manage. And where risks are not borne by the networks, the role of the AER in particular, is to mitigate customers' potential exposure from network overspends.

Transgrid's reopener Application focuses on both sides of this bargain first by arguing for the recovery of its prudent and efficient costs whilst at the same time focussing on benefits for consumers in the delivery of PEC, despite the massive overspend.

We acknowledge the complexity of the shared and overlapping institutional responsibility due to state and federal policies and politics, which in itself creates additional risk and uncertainty for consumers. As we have previously observed[2] there are overlapping and evolving changes in the Federal and State planning and policy frameworks for electricity generation and increasingly transmission and distribution. All the frameworks generally allocate costs to consumers on bills (mainly consumption) rather than on consolidated revenue, which is regressive. This has broader socio- economic implications.

The planning to include these policy changes is undertaken by AEMO in the Integrated System Plan (ISP) and regulated under the NER; and by EnergyCo for NSW and regulated under the Electricity Infrastructure Investment Act (2020) NSW as part of the NSW Roadmap framework. Institutional responsibility is even higher during the current context given the huge costs being incurred in building transmission infrastructure before future wholesale benefits from renewable generation can be realised.

We also acknowledge that this is not a simple task with, for example, the pressures on the supply chain and contracting market which have been exacerbated by urgent simultaneous domestic and international transmission and generation construction

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[1] We first encountered Transgrid using the term 'deep transition' in Transgrid's 2025 TAPR where the phrase is used several times

[2] 26 August 2025 submission to the AER in Transgrid's enabling CWO REZ revenue proposal at p. 5

and the failure of the original PEC Engineering, Procurement and Construction (EPC) contract.

We thank Transgrid for supporting us to make this contribution and being involved in what we intend as a constructive narrative.

PEC is a frontier transmission project

PEC is a unique transmission project as it touches multiple jurisdictions and the risks, costs and benefits are shared unevenly amongst electricity consumers in those jurisdictions. The route for the NSW portion of the transmission line involves more challenging topography than the South Australian portion, which has already been built by ElectraNet. This unevenness of risks, costs and benefits created tension, divisions and additional risk and consumers could argue that AEMO and the AER owed a higher duty to consumers in approving the PEC investment.

Compounding the risks and the increased responsibility on AEMO, the AER and Transgrid is the fact that PEC is Australia's largest electricity transmission project; the first major greenfields transmission project that has been built in Australia for many years; and the very first major greenfields project built by Transgrid.

The risks for consumers are even higher because of the uncertainty in energy markets and additional optionality that households and consumers have with new products and services they can invest in i.e. for the first time consumers have meaningful choice not to be connected to the grid and to invest in CER to generate, store and consume their own electricity.

We next consider AEMO, the AER and Transgrid's roles in approving and managing the investment and delivery of PEC.

AEMO's role

As the system planner AEMO's core responsibility was to identify the need for the project and provide reasonably accurate cost benefit analysis to justify making the project actionable in the ISP. AEMO initially identified the need for the project in the 2018 ISP. At that time it was called RiverLink. AEMO's market modelling for the 2018 ISP forecast a cost of $1.27b for the full project (both the ElectraNet portion of the line and the Transgrid portion). AEMO noted in footnote 48 of Appendix D to the 2018 ISP it had "*received recent information from ElectraNet following its RIT-T that indicates that the projected cost has increased to $1.5b following detailed investigations*."

AEMO's $1.27b indicative cost was +/- 50% accuracy[3].

PEC became actionable in the 2020 ISP. AEMO notes that PEC was expected to be completed by 2024-25. AEMO states (at p. 84): "*The implementation of this project is currently tracking ahead of schedule with commissioning targeted in stages between late 2022 and late 2023 followed by 12 months of testing*." The AER completed a 5.16.6 review for ElectraNet's RIT-T based on a total project cost of $1.53b on 24 January

[3] Appendix D AEMO 2018 ISP at p. 69

2020. However for the 2020 ISP the AER had not yet approved the contingent project applications (CPAs) from ElectraNet and Transgrid. AEMO's modelled costs increased for PEC in the 2020 ISP to a range of $1.39b - $2.58b and AEMO noted that the pending CPA was for $1.9b for the total project.

By 2021 the AER had approved total capex for PEC at $2.28b ($2017-18) being $457.4m for the ElectraNet portion of the line and $1.8179b for Transgrid's portion. This figure was outside AEMO's +/- 50% 2018 forecast but within the 2020 ISP range.

The story on AEMO's calculations of benefits for PEC is not straightforward. It is clear right from the outset in the 5.16.6 review concluded in 2020 that the AER believed there was a real risk that AEMO and ElectraNet had overstated the net benefits from the project. This review by the AER was completed at a time when the assumed total project cost was $1.53b. The key assumptions that were material to the estimated benefits of the preferred option in ElectraNet's RIT-T were:

- South Australian gas plant usage and retirements, and
- system security requirements, including the impact of system security obligations on the preferred option, the role of pumped hydro in addressing these requirements and the impact on the ranking of the credible options.

The net benefits of the PACR preferred option were mainly dependent on inputs and assumptions regarding future gas usage in South Australia. ElectraNet's PACR assumed minimum capacity factors (MCFs) for three South Australian gas plants (Osborne, Pelican Point and Torrens B). This assumption is material to the RIT-T analysis as it results in high levels of gas generation in South Australia in the base case which the proposed PEC interconnector then displaces to deliver most of the benefits. The MCFs adopted in the PACR deviated from the MCFs used in AEMO's ISP 2018 and were not included in the PADR.

The AER did a lot of sensitivity testing that resulted in the conclusion that the net benefits in the central scenario may be significantly lower (about $269 million rather than $924 million) using the alternative inputs and assumptions. The major factor is the MCFs. The AER concluded that (at p.7):

> "*We do not consider that the MCF assumptions adopted for SA gas plants in the SAET PACR are reasonable…Overall, the effect of these MCFs is to assume the amount of gas usage of South Australian gas generators in the base case state of the world. By removing the MCF's, gas usage by selected gas plants in South Australia in the base case is lower than modelled by ElectraNet. In turn the benefits of the interconnector are reduced as less gas is displaced by coal. It is therefore likely that the adoption of the MCFs significantly overstate the modelled benefits of the interconnector."*

Key to Electranet's approach was the adoption of AEMO's:

> "*… system security assumption used in the 2018 ISP, which required two synchronous generating units to be on Determination: South Australian Energy Transformation RIT-T 8 line at all times in South Australia in the absence of the interconnector. The SAET RIT-T further assumed that this two unit synchronous*

generator requirement ('two unit constraint') would be satisfied by gas plant in South Australia over the entire modelling period. The assumption that AEMO's two unit constraint would only be able to be met by the use of gas power plants is critical. This is because it forces gas plant to run at all times, resulting in higher gas usage and thereby adding costs in the base case[4]."

For this reason the AER considered whether it was reasonable to assume that two large synchronous gas units were needed online in SA at all times and for the life of PEC to satisfy system security in the absence of PEC and whether a non-network solution (pumped hydro) could contribute and lower the gas costs. The AER accepted the two unit constraint but did not agree with ElectraNet's argument it could only be supplied by gas. The AER's modelling concluded at p. 7:

"*Following the removal of the MCF gas-fired generation assumptions in South Australia, the additional modelling results from ElectraNet highlighted the impact of the system security assumptions on the net benefits of the preferred option. In examining the additional modelling results, we found that the overall benefit of the preferred option becomes negative if these system security assumptions are relaxed*."

Once the AER became aware that the forecast cost had increased from $1.53b to approx. $2b the AER required ElectraNet to assess if this constituted a material change of circumstances. Had the AER known at any stage of its reviews, that the project cost for PEC would increase from $2.1b to in excess of $4b it is possible that it may have concluded that the net benefits from PEC had been overstated by both AEMO and the networks and the cost benefit analysis against a total project cost of $3.6b for the NSW portion was no longer positive. Further putting in doubt the original modelling assumptions, AEMO has subsequently reduced the minimum requirement for large syn cons in South Australia from four to two in 2021 and again further to one in 2025[5].

The AER's role

In May 2021 the AER approved the additional revenue Transgrid could recover in the final decision in Transgrid's CPA for PEC. From the outset of the regulatory analysis and approvals involved in PEC, the AER noted that the route complexity and the preferred contracting format chosen by Transgrid would result in higher forecast capex for comparable transmission benchmarks. In the CPA final decision on 31 May 2021 the AER noted that Transgrid had been conducting a competitive tendering and procurement process since 2019[6]. The AER also noted at p.17: "*TransGrid is currently finalising the project design and regulatory approvals, and is expecting to execute a fixed price design and construct contract with its preferred contractor shortly, subject to this determination."*

The approved capex for the EPC contract at $1.24b ($2017-18) was nearly 70% of the total project capex approved by the AER.

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[4] SAER ElectraNet 5.16.6 review at pp 7-8

[5] Reduction of Minimum Synchronous generators in South Australia in August 2025 and South Australian Electricity Report November 2025

[6] AER Final Decision Transgrid Contingent Project EnergyConnect May 2021 at p. 17

In approving the prudency and efficiency of the capex the AER observed (emphasis added):

> *"We consider that the majority of TransGrid's forecast capex for transmission lines and substations is likely to reasonably reflect the efficient costs that would be incurred by a prudent operator. This is because:*
>
> - *TransGrid's forecast capex is the result of a comprehensive and competitive tendering process which means that the materials and construction costs have been market tested and reflect a realistic expectation of costs that can be delivered.*
> - *TransGrid's proposed scope of works that are reflected in the tendered costs is appropriate and reflects refinements in line route, cost-efficient design and construction techniques, and lower costs for large specialist equipment than TransGrid could achieve itself.*
>
> *Despite this, however, we note that TransGrid's forecast capex for transmission lines (which comprises the majority of the costs) are higher than some comparable benchmarks. Specifically, when we compare TransGrid's forecast capex per kilometre of line, it is higher than ElectraNet's component of Project EnergyConnect and higher than benchmarks from Jacobs' Transmission Line Cost Review that it undertook for ElectraNet.*
>
> *There are likely multiple reasons why TransGrid's costs are higher than comparable benchmarks, including the specific line route, line deviation, topographical and geotechnical issues, construction techniques, and other factors.*
>
> *One potentially important reason is TransGrid's project delivery model and contract it proposes to enter into with the successful tenderer. As noted, TransGrid proposes to enter into a fixed-price contract with a single supplier to design, procure and construct all of the required works. This is effectively a 'turn-key' project in which the contractor will procure all materials and equipment, construct the necessary infrastructure, and deliver the completed product to TransGrid. TransGrid's responsibilities will be limited to high level design, contractual oversight, regulatory approvals, land access, and integration.*
>
> *This is a conservative approach to contracting as it transfers the majority of risk to the contractor. This will provide cost certainty and reduce delivery risk for both TransGrid and consumers. However, it likely increases tendered costs because the contractor will instead bear procurement and construction risk. Alternative contracting approaches may lower tendered costs but would potentially increase TransGrid's own costs (including overheads and contract management) and risk.*
>
> *This may be reasonable where it efficiently balances risk such that the party most able to bear a specific risk should incur the costs. For Project EnergyConnect, this contracting model may be appropriate for TransGrid given that it is relatively inexperienced in delivering a project as large and complex as Project EnergyConnect. It may also have reduced TransGrid's own project delivery costs, when compared to alternative project delivery and contracting models.*
>
> *However, based on the information available to us, we are not able to identify the quantum of project risk held by the contractor and its forecast costs for specific items and responsibilities. This means we cannot effectively assess whether contractor risk is potentially driving higher transmission line costs, and how the quantum of risk is being shared between the contractor and TransGrid.*

We recognise that given the contracts were entered into following a competitive tender process, any risk premium included in the contracted prices will at least reflect the lowest efficient amount that the contractors are willing to bear. TransGrid's approach also in large part protects consumers from the risk of project cost overruns due to poor project delivery or unforeseen events. On balance, our view is TransGrid's tendered costs are likely to reasonably reflect the prudent and efficient costs required to deliver the project."

It is possible that the AER had insufficient information about the EPC contract in May 2021 to fully understand the risk allocation between Transgrid and the contractors as it was not yet finalised. However the AER had been a member of Transgrid's Observer Panel and had the opportunity to observe meetings of the specialist Evaluation Review Team, which reported internally to Transgrid's Tender evaluation panel[7]. Transgrid subsequently entered the EPC contract with the SEJV very quickly after the CPA final decision on 2 June 2021. The EPC contract must have been in largely final form at the time of the AER's 2021 decision – with final execution pending the AER's final determination.

As seen from the extract of the AER's decision above, a key part of the AER's approval was to expressly endorse the concept (as opposed to the quantum) of a risk premium payable to the SEJV under the EPC contract. In the course of engagement with Transgrid last year on the draft reopener application, we asked Transgrid to identify how much risk premium was paid under the EPC Contract and the impact the EPC contract had on reducing Transgrid's own costs. On 21 November 2025 Transgrid replied to those questions:

"1. How much was the risk premium paid to the contractors for the EPC contract to shift risk to the contractor? The AER was unable to calculate it based on the information provided by Transgrid at that time

Transgrid Response

1. The precise amount of the risk premium paid to contractors under the EPC contract could not be determined from the tender responses, which is typical for this type of contract. Given that the contract was awarded as a fixed-price arrangement through a competitive tender, and there is no regulatory or commercial requirement for contractors to explicitly disclose how risk is priced, it is common for such costs to be embedded within broader commercial terms and cost structures. While an allowance was made for risk and opportunity—the majority of which was attributed to inclement weather—this would not be classified as a risk premium for the purpose of comparing a fixed price EPC contract with a cost-plus contracting model. It is reasonable to assume that a risk premium was incorporated to address the fixed price nature of the EPC contract, but the magnitude estimated by the contractor is not known.

[7] Attachment 2, Section 4.2 at pp 9-10

2. How much were Transgrid's costs reduced by the choice of the EPC contract?

Transgrid Response

2. Transgrid's costs were not initially priced and then discounted due to the contract type. Instead, the EPC arrangement was chosen to allocate delivery risk to the contractor, with pricing determined through a competitive tender process. While this approach may have influenced overall commercial outcomes, the contract type itself did not lead to a specific and quantifiable reduction in Transgrid's costs. However, Transgrid's costs would be expected to be lower for a successful EPC Contract relative to a contract type where Transgrid holds more risk, such as a construct only contract where Transgrid would be responsible for design and design management. Our view is that the AER was making that general observation, rather than suggesting that Transgrid had identified cost savings at that time."

This means that neither the AER nor Transgrid were aware how much the risk premium was. What is clear is that whatever the amount of the risk premium paid by consumers under the EPC contract, the EPC contract failed to effectively and commercially shift risks from Transgrid and consumers to the contractors. The AER offers no explanation in the final determination for why the AER had insufficient detail at that time about this critical EPC contract and the risk allocation between Transgrid and the joint venture. It is unclear what additional due diligence the AER did on the final EPC contract in the course of the 2023-28 revenue determination process to satisfy itself about the allocation of risk under this critical contract. Given the frontier nature of the project, Transgrid's acknowledged inexperience and the lack of local contracting experience in building major greenfields transmission projects, and the novel construction of guyed towers, which had never been constructed in Australia, it is unclear that the AER did everything that they could to discharge its responsibility between 2020-2023 to ensure that customers were adequately protected by the EPC contract[8]. For example why did the AER not use its usual approach of sending information requests to Transgrid until it had the information that it needed to enable it to form a view about the risk allocation and the implications of that allocation for the contractors and for Transgrid. Any confidentiality concerns could have been managed by the AER via its usual confidentiality processes.

In the Application Transgrid stresses on more than one occasion that the decision to enter the EPC contract was a commercial decision for Transgrid and its Board and is not the responsibility of any other party[9]. Transgrid goes so far as to say (emphasis added): "*For the avoidance of doubt, Transgrid made the commercial decision to enter into the EPC contract with SEJV, and it is not the AER's responsibility to advise on or approve contractual decisions.*[10]"

However, we think this statement misunderstands the responsibility the AER has on behalf of consumers in specific circumstances. In the same way that the NEO is not static and must be achieved in a changing environment, the AER needed to be

[8] There is no mention in the AER's final decision about the novel nature of the guyed tower construction in Australia. The AER refers to complexity of the work at p. 19. However this is in the context of other construction costs outside of the tenderer's bids

[9] Attachment 2 at p. 9

[10] Application at p. 16

nimble and ensure that the way it discharged its responsibilities in 2021 was appropriate to the context. In this case Transgrid's CPA for PEC involved a radical departure from Transgrid's historical operations both in scale, financial value and risk. Given Transgrid's inexperience and the risks involved in an EPC contract of that magnitude, the AER had to be confident that the contract appropriately allocated risk and there was capability within Transgrid to manage that risk. We believe the AER had a responsibility on behalf of customers to review the contract as thoroughly as it needed to in order to satisfy itself that consumers would be protected by the terms of the contract.

The AER relies on the competitive process conducted by Transgrid to procure the EPC contract, as justification for the discharge of its responsibilities. However, if the result of a market procurement process is a contract which is inadequate to protect consumers, whether it complies with domestic and international benchmarks or not, surely the AER has a role to express these concerns and ask a network to seek better protections. We acknowledge that the AER's role to review competitive procurement processes for ISP projects is less proscribed under the NER than under the Roadmap Framework for contestable processes. However the AER is all that stood as consumers' guardian between Transgrid entering the largest EPC contract it had ever negotiated and consumers paying for that contract and accepting the risk allocation on the terms negotiated.

In our view when approving the prudency and efficiency of the EPC contracting approach in 2021 the AER also had the burden on behalf of customers of not only reviewing the specific risk allocation and risk premium but critically the various enforcement arrangements in the EPC contract. These mechanisms included variations, penalty clauses, bonds, bank and parent guarantees etc. Otherwise how could the AER be confident that the EPC contract would protect Transgrid and by extension consumers from contractor overspend claims and/or poor performance. It was also public knowledge from the procurement process that the SEJV involved the subsidiary of a foreign entity (Elecnor Australia) meaning overseas enforcement of the EPC contract was probable in the event of material default.

The AER was also on notice from the SEJV from January 2023 that the principal JV partner "*..had material concerns concerning cost escalations in relation to the project which were, are, and will continue to be for some time beyond the actual and reasonable control of the contractor and we believe the TNSP to contain and unsustain (Unforeseeable costs).*"[11] The SEJV estimated the Unforeseeable costs claim at that time at approx. $250m. Transgrid notes[12] that the AER's final determination did not make any allowance to address SEJV's submission. In hindsight it is a missed opportunity that the AER does not discuss the merits of SEJV's submission in the overview nor in Attachment 5 capex of the final 2023-28 determination. Given the significance of the $250m claim at that stage in January 2023, it is surprising that the AER provides no insight into its decision not to accept the claim. This issue will be an important part of the AER's conclusions on what Transgrid knew about performance of the EPC contract in December 2022 and April 2023.

[11] 20 January 2023 letter from SEJV to the AER at pp 1-2
[12] Attachment 2 at p. 14

Transgrid's role

Transgrid's reopener Application sets out in great detail the background to the entry of the original EPC contract; Transgrid's contract management role for the EPC contract; the consequences of Clough's insolvency; the transfer of the SEJV responsibility to Elecnor Australia; the steps Transgrid took in 2023 once Elecnor Australia was having difficulty performing the EPC contract; the entry into the ICC contract; and what Transgrid did or did not know at critical dates. The AER will need to make many conclusions about Transgrid's conduct and knowledge as they are all relevant to whether Transgrid is justified in bringing the reopener Application within clause 6A.7.1 of the NER. We recognise that these decisions will be informed by legal advice obtained by all parties, so we make only a few high level observations in this section on Transgrid's role.

1. Transgrid seeks to justify the choice of an EPC contract as being consistent with its BAU operations in 2020-2021: "*This type of contract was a market standard contract at that time. Furthermore, it had been a standard type of contract for Transgrid's BAU projects which the organisation was very experienced in managing, to deliver projects on time and within budget."*[13] However procuring civil works for the upgrade of a substation; the replacement of transformers or part of a line; or other BAU projects is not at all comparable in terms of risk profile to the construction of the NSW portion of PEC. The sheer step up in size, scale and dollars of the PEC investment called for a different approach. By way of comparison the AER approved capex for the EPC contract at $1.24b ($2017-18) is close to the combined repex and augex the AER approved for Transgrid in each of the 2018-23 and 2023-28 revenue determinations[14].

   Transgrid also points to the EPC contract being consistent with the terms expected from a general benchmark for competitive procurement processes at that time, as the justification for its approach as well as detailing the procurement process involving Expert Review Panels and observer panels. Transgrid's own Application highlights the shortcomings in Transgrid's BAU approach being extended to PEC. The clearest evidence is in the governance arrangements in place at the time. Attachment 5 is an excellent summary of what Transgrid believes is appropriate governance for major ISP and Roadmap projects. As Transgrid notes at p. 2 (emphasis added): "*With the introduction of PEC, which has a significantly higher project value and risk profile than any projects recently undertaken on transmission networks in Australia, Transgrid progressively developed its governance arrangements to respond to the specific needs of managing this critical major project."*

   Despite identifying the need for different management approaches caused by the scale of PEC, Transgrid did not seek an independent review of the governance structure for the newly established Major Projects division until after the Clough insolvency[15]. Transgrid notes that the unsuitability of the EPC contract for complex greenfields projects became apparent during the course of PEC: "*The*

[13] Attachment 2 at p. 8

[14] Based on advise from Transgrid to the Consumer Working Group on 13 February 2026: $1b repex approved in 2018-33 and $1.1b repex approved in 2023-28 and $500m augex approved in 2018-23 and $400m augex in 20223-28. All figures expressed in real $2028

[15] Attachment 5 at p. 2

market has now evolved such that EPC contracts are more the exception rather than market standard. In large part, this market evolution reflects the types of challenges faced on PEC."[16]

Transgrid has summarised the many additional risks it faces in the greenfields construction involved in PEC and other major ISP and Roadmap projects in its recent submission to the AER's Rate of Return – review discussion paper[17]. It is worth setting out Transgrid's own words in some detail about the increased risks faced by both investors and consumers in greenfields projects. For the purposes of this reflection and submission to the AER, we are interested in the construction risks that Transgrid refers to, more than their concerns about rewarding investors for those additional risks. The following extract from pp 15-16 (emphasis added) of Transgrid's own submission to the AER confirms why Transgrid's static BAU approach to procurement for PEC which continued its BAU largely brownfields operations and the slow governance improvements it put in place were inadequate to both deliver the PEC greenfields project and to protect consumer interests:

> "*Greenfield investments, by their nature, involve the development and construction of entirely new infrastructure, often in locations where there is limited existing asset base or operational history. This exposes investors and consumers to a range of risks that are either not present or are materially lower in brownfield or smaller projects.*
>
> *As set out in Appendix A, these risks include, but are not limited to, construction cost overruns, unforeseen delays, resourcing constraints, supply chain disruptions, planning approvals, land access and permitting challenges, and heightened interface risks with contractors and third parties. The scale, complexity and overlap of these projects amplify the probability and potential impact of such events, which are often correlated with broader macroeconomic factors, thus contributing to the systematic risk that the equity beta is intended to capture.*
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> *In contrast, brownfield projects—those involving expansion or refurbishment of existing assets—typically benefit from established site access, proven demand, and known regulatory and community environments. While all infrastructure projects face some degree of risk, the incremental risks associated with greenfield construction are both greater in magnitude and more difficult to mitigate, justifying a higher investment risk premium.*
>
> *While the regulatory framework offers certain risk mitigation tools for NSPs —such as risk cost allowances (where accepted by the AER), cost pass-through provisions, and capex reopeners—by design these mechanisms do not remove all risk for NSPs or consumers. Mechanisms such as the CESS and ex post review processes mean that NSPs continue to bear significant construction and project risks, particularly where these lead to actual costs exceeding forecast allowances. This risk exposure underscores the necessity for targeted compensation for greenfield construction risk.*
>
> *The scale and complexity of today's major greenfield projects are unprecedented in the Australian context. Unlike historical undertakings, these projects are being delivered in a rapidly evolving regulatory, legislative, and stakeholder landscape, with*

[16] Attachment 2 at p. 8

[17] Transgrid submission to the AER RORI review dated 19 December 2025 at pp 15-24

shifting community expectations and operational challenges that are not easily anticipated or addressed by drawing on past experience. Many of the residual risks faced by NSPs are fundamentally outside their control and are not adequately reflected in either the allowed rate of return or risk cost allowances.

As well as heightened construction risk, another key concern for investors in major greenfield projects is the extended period between when construction starts and when positive cash flows are realised. The regulatory framework, by design, often means that returns are deferred until well after project commissioning, increasing both the scale and duration of the financial commitment required from investors.

These risk profiles are heightened not only due to the scale and complexity of individual projects, but also because many projects overlap in approval, financing, and construction phases. The cumulative impact of these overlapping activities is not linear and can amplify risks for both investors and consumers alike.

While these concerns may appear to be confined to the investment community, it rapidly becomes a matter of significant consequence for consumers as well. If the regulatory settings make it unduly difficult to attract the necessary capital—particularly from global investors seeking opportunities that balance risk and return—there is a real risk that the delivery of critical infrastructure could be delayed or even derailed. This in turn could jeopardise timely progress on the energy transition and constrain the growth of electricity networks needed to support it, ultimately impacting reliability, affordability, and Australia's ability to meet its decarbonisation goals.

There is an obvious balance to be struck. While mechanisms like the CESS and ex post review allocate risks to investors, consumers remain exposed to risk of cost overruns—a risk that is especially pronounced for greenfield projects. Uncertainty around construction costs, materials, and labour can result in capex overruns that adversely impact consumer bills.

Seeking a regulatory framework that is sufficiently robust and adaptive to attract ongoing investment while targeting an equitable sharing of risk between investors and consumers is therefore not only in the interests of investors but is essential for delivering long-term benefits to consumers and the broader economy."

Another observation is that these greenfields project risks should be expressly identified by AEMO and EnergyCo and included in planning decisions and cost benefit analysis.

2. Transgrid highlights many differences in approach between the EPC contract and the subsequent ICC Contract[18] in the Application. It describes the replacement protection arrangements as unprecedented in the Australian market. The implication from the discussion in Attachment 4 is that the ICC contract is now best practice for major transmission greenfields projects in Australia. The fact that the terms are so different to the original EPC contract reinforces the poor choice of contract at the time and the failure of both the contractors, Transgrid, the AER and AEMO to properly estimate the risks involved in an Australian greenfields project and Transgrid's lack of experience in managing those risks. The fact that Transgrid secured bank guarantees with a total value of 10% of the contract price

[18] See in particular Figure 3 on p. 6 of Attachment 4

as opposed to the usual market standard of 5%[19] is consistent with Transgrid realising the greater risks in the EPC contract. Transgrid also secured parent company guarantees. We question however the utility of these guarantees to protect Transgrid from poor performance by Elecnor Australia. In the Application Transgrid describes the difficulty of enforcing the parent company guarantee that it had secured from Elecnor Australia's parent company[20] in these terms:

> "*Transgrid contemplated how the parent company guarantee could be enforced. A parent company guarantee provided Transgrid with two possible courses of action, one being to seek performance and the other to seek payment. If Transgrid were to seek performance, whilst it would be legally possible to seek to enforce performance of the EPC contract with Elecnor Australia's parent company, this would not be practical, given that Elecnor Australia's parent company had no capacity to perform the works in Australia, other than via Elecnor Australia. The second course of action would be to seek payment, however, Transgrid needed to first seek recovery from Elecnor Australia. Given that Elecnor Australia had limited assets, it was almost certain that Transgrid would subsequently need to seek payment from Elecnor Australia's parent company. In both circumstances, there would be 'procedural hurdles' in attempting to enforce performance and/or secure proceeds and the requirement to pursue the matter through the courts in Australia and Spain. This process could take up to seven years.*
>
> *Transgrid concluded that attempting to enforce the EPC contract would lead to counterclaims and appeals from Elecnor Australia and Elecnor Australia's parent company, and for Elecnor Australia to either enter voluntary administration or abandon the project."*

These enforcement difficulties and hurdles are not a surprise and would have been immediately obvious to both Transgrid and the AER if either had stress tested these risk mitigations as part of their risk assessment of the EPC contract.

3. There is a tension within Transgrid's Application about the way it describes its role in administering the EPC contract on behalf of consumers. In Attachment 4 at p. 2 (emphasis added) Transgrid describes the fundamental difference between the ICC and EPC contracts in these terms:

> *"The ICC contract negotiated with Elecnor Australia differs fundamentally from the 'hands off' EPC contract and contains terms and conditions which are unique in the Australian market, as well as substantial protections for Transgrid, incentives for Elecnor Australia in relation to project delivery, and extensive changes to the management of the project."*

In other places in the Application[21] Transgrid argues that it did not adopt a '*hands off*' approach to its role as contract manager. Transgrid notes that when it became aware of project issues from January 2023 it chose to commit additional resources to monitor progress and requested additional information from the contractor. Irrespective of the extent to which Transgrid was resourced to supervise the original EPC contract, it is implicit in the social and legislative compact and ethical social corporate responsibility, that it would do so on behalf

[19] Attachment 2 at p. 10

[20] Attachment 3 at p. 7

[21] Application at p. 18 and Attachment 2 generally and at p. 16

of customers given the enormous original cost of the project and its own acknowledged inexperience in transmission builds of this scale.

4. Attachment 2 includes significant detail about the background to Transgrid's decision not to enforce the EPC contract by enforcing the parent company guarantee . At p. 22 Transgrid refers to "…*the protracted nature of legal action, of between 5-7 years to recover damages under the parent company guarantee*." As we noted above, this statement reflects the reality of the cost and time involved in major multi jurisdiction commercial litigation. However this reality would have been known to both Transgrid and the AER in 2021 when Transgrid accepted the terms of the EPC contract with one of the main protections for default being an off shore parent company guarantee. If the delay in enforcing the guarantee was always an impediment to its commercial value to Transgrid, we wonder why it was ever accepted in the first place. The fact that it has now been replaced by a liquid onshore $400m escrow account reinforces this. By Transgrid failing to enforce the EPC contract in overseas courts the contract has clearly failed in its purpose to protect consumers from overspends. We also question whether this failure to enforce the terms of the EPC contract means that the event is 'beyond Transgrid's reasonable control' as contemplated by Rule 6A.7.1(1).

5. At the same time as Transgrid was negotiating with Elecnor Australia, EnergyCo was running a competitive procurement process for the first major project for the NSW Roadmap with other competitive processes such as Hunter Transmission Project to follow. Transgrid's reputation for being able to deliver major transmission projects would potentially have been damaged by the collapse of the EPC contract and further delay to the delivery of PEC. It was and remains critical for the social licence and acceptance of both the ISP and the Roadmap framework that all parties have confidence in Transgrid's ability to deliver major ISP projects and the non-contestable, enabling and PNIP services required to underpin the successful roll out of the NSW Roadmap.

6. There is a great deal of discomfort amongst some TAC members, that the issues with the EPC contract and SEJV's poor performance were resolved by Transgrid with no transparency. Transgrid gives detail in Attachment 1 at p. 8 that it chose not to consult with TAC about its decision to enter into the new contract "…*due to the confidential and market sensitive nature of those processes and the potential for litigation."* We have some sympathy for Transgrid's position not to enter into discussions with the TAC about what it should have done once Transgrid was considering terminating the EPC contract and enforcement action including litigation against Elecnor Australia and its parent company. As we have previously observed[22] the TAC was not solely a group of consumers and customer advocates – it also included both industry, lending and commercial representatives. Even if Transgrid could have navigated the commercial sensitivities of the discussions, in our view the TAC would not have been able to give Transgrid a holistic and definitive consumer view as input into its decision making[23].

[22] Refer to note 2 above at pp 5-6

[23] Earlier this year Transgrid set up a dedicated Customer Advisory Group to replace the TAC. We commend Transgrid for taking this initiative

Transgrid also highlights in its Application (at p.iii) that it also chose not to consult with the AER about the new contract negotiations: *"Transgrid's Board (with the support of the shareholders) committed to the increased project costs of delivering PEC without first seeking assurance from the AER in relation to the cost recovery arrangements."* Transgrid states that the Board chose to do this to avoid delays.

We acknowledge in mid-late 2023 there was some ambiguity about the ability of the AER to conduct a targeted ex post review of ISP project capex. This uncertainty was impacting investor confidence. However that ambiguity should have been completely removed following the AEMC 1 August 2024 rule change. Even the name of the rule change - Managing ISP project uncertainty through targeted ex post reviews - confirms that its objective was to remove this uncertainty for investors. The AER subsequently amended its Capital expenditure Incentive Guidelines in August 2025 to give effect to this targeted review and to outline its discretion to waive CESS penalties in certain circumstances as part of those targeted reviews.

The most surprising aspect of Transgrid's decision not to consult with third parties about its decision to enter the ICC contract is the lack of engagement with AEMO. It is possible that this occurred behind closed doors but it is not referred to in the Application. Instead Transgrid refers to AEMO's 2024 ISP, we think to imply that AEMO's preference would have been for Transgrid to choose the option that delivers PEC at the earliest time, whatever the cost, provided there were some benefits. At p. 3 of the Application Transgrid states (emphasis added): *"In its 2024 ISP, AEMO made it clear that any delay in the delivery of actionable ISP projects, such as PEC, will compromise the most efficient path to maintain reliable and secure electricity supply as coal retires, and as such, all actionable projects should progress "as urgently as possible."*

7. Throughout the development of its Application Transgrid has engaged with the TAC. Several TAC members, including us, have given consistent feedback to Transgrid that we believe the PEC overspend should be the subject of a targeted ex post review consistent with the AEMC rule change. The ex post pathway was designed specifically for the PEC circumstances. We are disappointed that Transgrid does not have sufficient confidence in the new targeted ex post process to enable investors to recover prudent and efficient investments to deliver ISP projects. The effect of the reopener if successful will force the AER to engage with the same issue in 2 separate processes. The attractiveness to the shareholders of the reopener Application compared to the targeted ex post review is it will enable Transgrid to recover revenue more quickly, reducing the equity funding costs, as well as insulating the $1.142b against the AER's discretion to waive CESS penalties. We are uneasy that we have landed at this juncture because we do not believe that the regulatory compact was designed for this. The level of Federal and State political interventions were never considered to this extent and consumers being so closely intertwined to the energy system was never considered.

We believe the review of roles above demonstrates that there is shared responsibility between AEMO, AER and Transgrid, who were all tasked with acting on behalf of

consumers under the NEO, for the circumstances that led to the EPC contract failure and the resultant PEC overspend.

This collective responsibility for outcomes, means there needs to be collective accountability for the solution, in this case for the PEC overspend, as there are long term and lasting implications for future transmission projects. We believe it would be a highly counterproductive outcome in this legal process initiated by Transgrid's Application for each of AEMO, the AER and Transgrid to conclude that they have each appropriately discharged their responsibilities to protect consumers from overspends and that it is just an unfortunate happenstance that Transgrid's costs have increased by in excess of 75% from $2.121b ($2022-23) to $3.6b ($2022-23).

However the political reality appears to be that if PEC is allowed to fail (practically or commercially) this would cast doubt on AEMO as the system planner, the AER as the regulator of monopoly infrastructure and in the future it may undermine the private capital needed to fund the transition. This reality is inconsistent with the regulatory compact that contemplates that failure should be allowed to occur.

Part 2: The AER's decision will have long lasting and significant implications

This reopener Application will set an important and significant precedent for future overspends for major projects. Transgrid's decision to renegotiate the EPC contract rather than terminate and enforce it, has serious consequences for future contracts. The AER needs to be aware that if it allows Transgrid to recover most of the costs under the renegotiated ICC contract that this may embolden other contractors and guarantors on major transmission builds to threaten repudiation and run the risk that the terms of the original contract will not be enforced. This may be the case because these projects are too big to fail and the risk private equity faces in recovering its investments is reduced.

We are looking for a state of reflection and accountability from AEMO, the AER and Transgrid about the challenges and failings that PEC has revealed to ensure that this outcome never happens again. All participants must benefit from informed and honest learnings. An open and reflective process would:

- underpin accountability (including from government institutions);
- build trust with consumers and other parties;
- strengthen support for the legislative compact and social licence for the transition;
- ultimately underpin a smoother energy transition which is in the long term interests of consumers; and
- acknowledge the assumption in the regulatory compact in the NEO that private equity can fail and consider whether major project failure undermines planning and regulatory institutions meaning some projects are too big to fail; which was unforeseen in the original drafting of the law and rules.

This reflective approach should apply not just to Transgrid and the AER within the legal guardrails of the Application, but ideally invites a broader and collective and informed response – driven by the AER.

We accept that customers will pay a price (either in the reopener or ex post review or both) for the failures in delivering this first transmission project. What is not yet clear is what customers' dividend is for this price in the terms of learnings, and future proofing and improvements in the process in the long term interests of consumers.

All parties need to be mindful of the bill impacts of the additional revenue Transgrid is seeking and the opportunity costs of reallocating capital to this already marginal project. Increasing bills for decades for the increased cost of PEC, will take away opportunities for consumers, particularly business consumers, to spend their decreasing resources on investments that might improve their business objectives. Transgrid has calculated that the inclusion of $173 m in Transgrid's revenue for 2027-28 translates to an increase of approximately $18 per residential customer[24]. However, when you look at the magnitude of these potential cumulative costs over the asset lives, this might be the choice between a solar system or a battery. Given the context and the enormous pressure on bills from paying for the old transmission system while budling the new system, the opportunity cost is even higher and the options for consumers are greater further undermining the need for as much transmission.

Another lost opportunity from the inadequate forecasts, poor contract choice and the failed EPC contract is that alternative solutions to sure up the South Australian grid may have emerged to be approved and actioned by AEMO. For example had the AER known in 2021 that the cost of PEC was in excess of $4b as opposed to $2.1b it is not certain that it would have approved the PEC investment. AEMO may have found alternative solutions to the services needed, predominantly in South Australia, for $4b.

Part 3: How to get the best for customers from this difficult situation

Our focus now is on achieving two broad outcomes; firstly a fair allocation of the cost overrun between all parties, including consumers through their electricity bills and governments through consolidated revenue. Secondly and in many cases more importantly, our focus is on calling for a clear dividend for customers in broader learning and changes to the planning policy and regulatory framework so future investment and outcomes are better for consumers, businesses and the broader community.

AEMO, the AER and Transgrid each have an opportunity to remediate the negative impact on trust that all parties have created in this difficult situation. Some possible reflective responses include:

- If major transmission builds like PEC are too big to fail, then all parties need to be open and clear with consumers and their representatives about this. This would result in a changing regulatory compact with different and additional regulatory and other mechanisms to ensure success for all parties.

[24] Application at p. 32

- AEMO should do a thorough transparent post implementation review on its approach to forecasting the cost, benefits, risks and delivery of PEC to ensure greater confidence in forecasting and deliverability of major actionable ISP Projects.

- We encourage AEMO and the AER to take up Transgrid's constructive offer to undertake a comprehensive review. On p. 8 of Attachment 1 Transgrid makes this offer which is clearly in customers interests:

  > *" Nevertheless, in delivering PEC, which is part of the first wave of new investment in the NEM backbone for many years, Transgrid recognises that valuable lessons can and should be learned. Transgrid welcomes the opportunity to undertake a comprehensive learning exercise in conjunction with other organisations, such as the AER and AEMO, and other network service providers."*

  We recommend that EnergyCo and VicGrid also be included as part of the PEC learning review.

- PEC is unlikely to be the only major transmission (generation or storage) project that runs late. VicGrid has already rescheduled its portion of VNI West. One of the key lessons from PEC is the need for all system planners to have a plan B and to build more buffer into the planning system. This back up planning will enable networks to have more viable options available to them when faced with serious implementation challenges. Transgrid notes in its Application[25] PEC's status as an actionable project as a consideration regarding value secured by project continuity.

  In the end PEC is likely to be commissioned and functional in mid 2027 which is a 3 year delay from the forecast date in the 2020 ISP of 2024-2025. Faced with this delay South Australia has been forced into contingency planning including considering seeking extensions to the mothballing of local peaking plants. Building contingencies for delay into the planning would enable more orderly transition and would increase trust provided these arrangements are made transparent.

- We are aware that EnergyCo is including back up plans in its Roadmap planning. The most obvious buffer has been the extension of the retirement of Eraring which has become the Plan B for delays in both renewable generation and system strength. Another approach has been the inclusion of liquidated damages clauses in Roadmap contracts. This is an effective but expensive option and we wonder if there might not be other ways to create commercial incentives for on time delivery. There are recent media reports[26] that EnergyCo may have made confidential arrangements with some generators intending to connect to CWO REZ for EnergyCo to cover interest and other costs if there are delays to construction. Again the lack of transparency around any such arrangements reduces confidence that the transition is being carefully managed on consumers' behalf.

[25] Attachment 3 at p. 5

[26] https://www.afr.com/policy/energy-and-climate/taxpayers-wear-300-million-risk-of-nsw-green-transition-delay-20260417-p5zor9

- An alternative transparent approach to deal with delay in building the new transmission with less government subsidy, would be to build out the latent capacity in the DNSP sub transmission networks. This is opportunity 1 in the recently published DSP Opportunities Report[27]. Opportunity 1 focuses on distribution connected wind and solar generation combined with the distribution connected storage at the zone substation level. The 3 NSW networks have been urging AEMO and EnergyCo to take up this opportunity to "de-risk the transition to renewable energy". As the DNSPs have observed one of the key benefits of the DSP is that it will "buy 2-5 years" buffer for the roll out of transmission investment. AEMO's 2026 ISP will include planning at the distribution level for the first time but AEMO's distribution modelling capability is at a very early stage and is far from optimising the opportunities in the distribution networks in the medium term.

- We acknowledge Transgrid stepped up after the failure of the EPC contract and now has significant detailed experience about prudent major project contract and project management. This learning is included in the overview of Transgrid's new governance arrangements set in Attachment 5. We believe this information and experience can inform AER guidance for all TNSPs on minimum oversight requirements for major projects irrespective of the nature of the construction contract approved. Ultimately the cost to Transgrid reputationally and financially is far greater when contracts fail. We have observed the impact of poor governance of contracts and we believe that it should be baked into the cost of projects by the AER, irrespective of the contract format chosen.

- Similarly we are very surprised that the AER did not put adequate mid project governance checks in place as part of the original approval, given that PEC was the first transmission project it had approved in decades and it was aware of Transgrid's inexperience and it was directly aware of cost overruns from SEJV's January 2023 letter. This would offer situational awareness and adaptability as the operating and or regulatory environment changes. The AER could consider including this as a condition of approval for all future ISP project CPAs.

- There is an opportunity for the AER to step up and accept its share of responsibility for this outcome and to drive a collective solution which reflects a fair and appropriate allocation of the costs. This would address/redress the possible detrimental outcome where NSW electricity customers are currently being asked by Transgrid to cover $1.37b or in excess of 90% of the PEC overspend (assuming that the shareholders bear $130m following the reopener and the ex post review).

- This conversation needs to include the possibility of Governments taking a more active role in cost allocations and risk sharing, including a portion of the costs being recovered by consolidated revenue, the rewiring the Nation Fund or other measures other than NSW electricity bills.

[27] NSW Distribution System Plan

- Transgrid's focus by lodging the reopener Application appears to be favouring the short-medium term interests of its shareholders rather than the long term interests of consumers and the NEO. We need to better understand why private equity prefer a reopener and why it is more favourable than ex post - it would appear that shareholders believe a better outcome can be achieved through the reopener. Transgrid is proposing that a fair allocation of the $1.507b overspend is for Transgrid to bear only $130m (being CESS penalties of approx. $115m and financing costs which Transgrid cannot otherwise recover under the regulatory framework) and for $1.37b of the overspend to be borne by NSW electricity customers. We do not agree that this allocation has been shaped by sufficient reflection by Transgrid's shareholders of Transgrid's conduct and contribution to the outcome and why this justifies not choosing the ex post pathway for the full overspend.

- The AER now has an opportunity to consider the first meaningful reopener under the NER and the first targeted ex post review of an ISP project. We encourage the AER to ensure that the ex post pathway is adequate to meet shareholders' and consumers' needs as intended by the AEMC. If it is not, then any shortcomings need to be addressed urgently.

- As far as we are aware Transgrid did not consult with AEMO once it became aware of the emerging evidence of the PEC EPC contract failure. Transgrid refers to the perceived urgency of delivering PEC, the commercial in confidence nature of the EPC contract, and potential financial exposure to Transgrid's shareholders. The analysis from Transgrid of some of the options it considered in Attachment 3 such as finding new contractors; pausing the contract and engaging in litigation have demonstrated that in reality there are no off ramps from major ISP projects even after they face significant delivery obstacles. We suggest AEMO build an off ramp into its actionable projects processes to look for alternatives in consumers' long term interests where projects face difficulties, even for those projects that are designated as too important to fail.

  In the case of PEC if Transgrid had been required to consult with AEMO greater weight may have been placed on deferring completion of the full project at that time. This is possible given the benefits of PEC have reduced over time in light of the number of gas turbines to be retired in South Australia. It is also possible that alternative technologies might have emerged to provide grid stability to South Australia. We believe that as part of the regulatory framework AEMO should be required to consider whether deferring a project until later is in the long term interests of consumers, even though it might be more expensive in the long run to complete a project. There may also be value in reprioritising committed resources to other projects in the interim during that review. This may require a reopener to reallocate revenue or remove it where it is no longer required for a specific project.

- In light of the shortcomings of the risk shifting approach approved by the AER in PEC, it is essential going forward that the AER provides guidance about potential consumer input into risk allocation in future major projects. We know there are supply constraints and less appetite in the contracting market post PEC for

contractors to accept risks, which are now being borne by consumers without our input and knowledge.

- The AER could also provide insights about future rule changes and governance of contracts in major projects for the benefit of all future transmission and sub transmission builds nationally.

Part 4: Some specific observations on the reopener Application

1. The purpose of the reopener rule change made by the AEMC in 2006 was to target unforeseeable 'shipwreck' style events. In its submission in September 2006[28] to the AEMC opposing the need for the rule change the AER's understanding of the application of the rule was (at p.23): "*that the reopener provision is intended to target material unanticipated events beyond the TNSP's control, such as a natural disaster*."

2. The 'event' included in Transgrid's Application and the extent to which it comes within the letter and purpose of clause 6A.7.1 of the NER is the core legal issue that the AER will need to decide. We recognise that this will be resolved by reviewing several legal opinions. We do not intend by these comments to offer our own legal opinion. Instead we hope that our observations will be useful to inform the AER, AEMO and Transgrid of a consumers' perspective on the outcome of the AER's decision.

   In our opinion the definition of the Event Transgrid included in 2.1.1 of Attachment 6 to the Application is circular. The event refers the reader to "*an accumulation of circumstances that had adversely impacted the contractor's ability to deliver PEC*." The reader is then referred to other Attachments for a detailed description of those circumstances, some of which include:

   - inflation of materials and labour
   - skilled labour shortages, delayed visa approvals and concentration of infrastructure and energy projects in Australia
   - the Clough voluntary administration which impacted project management systems and required the transfer of labour agreements, and
   - major New South Wales severe flooding events.

   Each of these 4 circumstances appear to be very typical variation or force majeure events that would be covered in a prudently negotiated EPC contract, precisely because the risk of them occurring would be foreseeable to the contractor. In fact given the additional risk being accepted by the contractor under the EPC contract for the scale of PEC, this is more likely to have been the case. In several places in Attachment 2 Transgrid refers to the fact that it believed these circumstances could be managed under the EPC contract. This is consistent with a conclusion that each of these 4 risks were addressed in the EPC Contract

[28] AER submission dated 15 September 2006 to AEMC draft National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006

provisions, even if the risks had been underestimated by the contractor. We highlight the following to support this view:

- In relation to materials and labour and supply constraints Transgrid notes at p. 9:

  "The price agreed by the contractor and project owner for an EPC contract at the outset is often higher than other contractual structures due to the project risks assumed by the contractor, which typically include design errors, supply chain disruptions, the cost of labour and materials, and most schedule delays."

- In relation to the Clough insolvency Transgrid refers at p. 11 to the standard Joint venture contractual term for the remaining JV partner to fulfil SEJV's liability. It further refers to the standard hand over post insolvency in these terms:

  "In December 2022, Clough Limited entered into voluntary administration.7 In mid-December 2022, in accordance with Elecnor Australia's obligations under the EPC contract, Elecnor Australia gave notice to Transgrid that it would fulfil SEJV's obligations under the EPC Contract, taking full operational and financial control of SEJV, as well as sole liability and responsibility for the delivery of the project."

- In relation to the NSW floods Transgrid stated at p. 15:

  "Construction at the affected sites was only able to recommence in February 2023. Notwithstanding the delays caused by the severe weather and flooding events, delays of that nature are not unusual in the context of large, complex infrastructure projects."

3. Transgrid's argument rests on whether the accumulation of these 4 circumstances, some or all of which were foreseeable, and some of which may not individually meet the materiality threshold is sufficient to satisfy Clause 6A.7.1(a)(1). In our view this would seem to be outside the purpose of the rule change where the focus in the AEMC's final rule change decision and the submissions it received were on the concept of material shipwreck natural disaster type events.

   We note that the AER shared our concern about the potential for this interpretation in its submission in 2006 to the AEMC. At p. 23 the AER stated:

   "However the intent of limiting the reopener provision to material events beyond the TNSP's control is not reflected in the drafting of the final paragraph in clause 6A.7.1(a). This paragraph recognises that a reopener event could include "a series of events or a state of affairs". This will enable a TNSP to seek to re-open a revenue cap by combining a number of events, none of which would qualify as a reopener in their own right under clause 6A.7.1(a)(4). This defeats the purpose of the materiality threshold proposed by the AEMC in the Draft Rules. Further, the reference that an event may include a "state of affairs" implies a focus on outcomes rather than a focus on an event beyond the control of the TNSP that could not reasonably have been foreseen."

Regrettably the AEMC did not respond in its final decision in November 2006[29] to this concern raised by the AER and it did not change the drafting in the final paragraph of Clause 6A.7.1(a)(4). It is unclear if this is because the AEMC did not share the AER's interpretation of the clause or if it was comfortable that an accumulation of events, some of which were foreseeable and/or not material, could be sufficient to satisfy clause 6A.7.1.

4. Figure 8 on p. 27 of the Application provides a simplified approach of how Transgrid has calculated the $1.122b reopener costs. Our review of the capex reopener methodology in Attachment 7 has not revealed any consideration of crediting the unquantified risk premium paid by customers under the original EPC contract[30]. If the AER finds that Transgrid's Application is within the NER, then we believe the AER should estimate this risk premium and it should be credited against the reopener costs. If this is not possible as part of the reopener process then we request that it is credited against the additional active client costs Transgrid intends to include in the ex post review.

5. Transgrid has sought to justify the positive benefits of PEC at the new inflated cost of $3.6b using net market benefit analysis as it says this is the approach used in a RIT-T. This approach would allow the $2.1b to be ignored and only the incremental $1.5b costs are included in the analysis. Apart from the fact that the mid project timing differs markedly from the ex-ante RIT-T process, the obvious flaws in using net benefit analysis is that it disguises cost underestimations and enables optimistic revenue projections. A similar net market benefit approach is being used in the ongoing justification for Snowy Hydro. We are unsure how this approach is in consumers' interests, unless we transparently move to an environment where some projects are identified as too critical to fail. As we mentioned above there were concerns even in 2020 that AEMO had used optimistic benefits analysis based on incorrect assumptions to justify its decision to make PEC an actionable project. We need an agreed and robust benefits assessment framework going forward rather than a choose your preferred modelling approach.

6. Transgrid has sought feedback from the TAC on Attachment 1 (which summarises Transgrid's engagement with the TAC) on at least 2 occasions to ensure that TAC feedback in the various meetings is accurately captured. In the final 26 November 2025 meeting (summarised on pp 21-24 of Attachment 1) we raised the possibility that Transgrid's approach of pursuing both a reopener application followed by an ex post review for the total $1.5b overspend could result in AER decisions that collectively allow Transgrid to recover all of the $1.5b other than approx. $20m in shareholder equity funding costs. We were concerned this outcome could eventuate if the AER exercised its discretion under the revised CESS guideline to waive all CESS penalties on the approx. $365m.

[29] AEMC Rule determination National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006 No 18 dated 16 November 2006

[30] Instead attachment 7 at pp 14-15 focusses on the $47m risk premium paid to Transgrid and why that should not be credited

On 17 December 2025 Transgrid sent us the minutes of the November meeting together with the updated version of Attachment 1[31]. Transgrid's minutes include the following statement at p.6 (emphasis added):

> "*Transgrid's estimate of net shareholder exposure is approximately $130 million in this period, encompassing CESS penalties and equity financing costs.*
>
> *It was noted that Transgrid is not seeking to recover the full overspend in the reopener: the working position remains $1.132 billion via reopener with approximately $364 million to be considered via ex post processes. The CFO confirmed Transgrid has not sought relief from CESS for the additional ~$300 million outside the reopener and acknowledged AER discretion to reduce (but not increase) CESS penalties under updated guidance."*

The reason we pressed this issue with Transgrid is because we believe that the revised regulatory framework has an appropriate pathway for Transgrid to recover the prudent and efficient overspend for PEC via the newly amended targeted ex post pathway. If the AER were able to review the $1.5b overspend as part of that targeted ex post review, it could make a holistic decision about the fair allocation of these costs, including via CESS penalties.

7. Several TAC members, including both of us, have consistently raised significant affordability concerns with Transgrid, driven by the current context, during our engagement on the draft reopener application. Transgrid states its response to our affordability concerns is the shareholders decision to carry the equity funding costs of $50m until the conclusion of the ex post review. We asked several times for the bill impact of this gesture from the shareholders and on 27 February 2026 Transgrid advised the affordability impact of delaying the recovery of the $50m active client costs was approx. $1 per residential customer per year for 5 years (FY 29-FY33) and approximately $8 per small business customer per annum for those 5 years[32]. This is not a meaningful response to the depth of the affordability concerns that were expressed. To bridge this perception gap we recommend greater transparency around short and long term bill impacts as costs increase.

   As Transgrid points out in table 8 of the Application the bill impact of PEC will not be felt only for the next 5 years but over the full life of the assets. Table 8 shows

[31] We note that Transgrid appears to have changed the final language on this point on p.18 of Attachment 1 prior to lodgement with the AER

[32] The 27 February answer from Transgrid included the following details: *"The CESS penalty for the Reopener application is expected to make up approximately $115 million of the total $130 million net cost to shareholders. This $115 million penalty will apply over a relatively short period of time, being 5 years, through the next regulatory period, rather than having an enduring impact on customer bills. For residential customers in NSW, the estimated value of the financial penalty that Transgrid is exposed to equates to approximately $13 per residential customer or approximately $3 per customer per annum for the FY29-FY33 period. Of the total $13 impact to a residential customer, approximately $1 per customer is attributable to the $50 million that Transgrid is not claiming in relation to the active client costs. Please note that these estimates are indicative and the final impact will depend on the AER's assessment of the reopener Application and any subsequent ex post review. Additionally, the equivalent total bill impact for small business customers is approximately $40 or approximately $8 per small business customer per annum."*

the bill impacts for 27 years for the total cost of PEC as between $15-20 per annum for residential customers. It is unclear what proportion of this relates to the overspend of $1.5b but presumably it is close to half, which in the context of rapidly rising transmission and distribution costs may have been better spent by customers on investing in their own CER to help manage their electricity bills.

Monopoly transmission and distribution companies need to have richer and more open conversations with consumers and their representatives as costs change so consumers fully understand the implication of these changes relative to their own households and businesses and the value that they derive from the broader monopoly networks. This would be another positive outcome from a collective reflection on the delivery of Australia's first major transmission project.