

April 14, 2026

Submission to the Australian Energy Regulator

Draft Revenue Determination Guideline for NSW Non-Contestable Projects (March 2026)

Submitted by: Hydrostor**Date:** April 2026

1. Introduction

Hydrostor welcomes the AER's consultation on the Draft Revenue Determination Guideline for NSW non-contestable projects (Draft Guideline). We support the AER's objective of providing clarity and consistency in the assessment of costs recovered from consumers, particularly as the NSW framework increasingly relies on non-network options (NNOs) to deliver timely and efficient network support.

Hydrostor is a leading developer and operator of long-duration energy storage systems using its proprietary advanced compressed air energy storage (A-CAES) technology. Hydrostor's Australian operations are currently focused on delivering its advanced development, the Silver City Energy Storage Centre ("Silver City") in Broken Hill. Silver City was recently included in a ministerial direction from the NSW Minister for Energy, the Hon. Penny Sharpe MLC, whereby Transgrid was directed to enter into a network support agreement with the facility to provide back-up power to the Far West Region.

This submission focuses on the proposed application of the prudence and efficiency test to non-network options (NNOs), particularly in circumstances where the procurement of those services has been directed by the NSW Minister. Consistent with Hydrostor's previous regulatory submissions, this response focuses on ensuring that regulatory frameworks:

- remain aligned with government policy and statutory decision-making roles;
- support efficient procurement outcomes for consumers; and
- provide investment certainty for non-network proponents operating outside the regulated asset base.

2. Application of the prudence and efficiency test to ministerially directed projects

(Draft Guideline – Chapter 4: Prudence and efficiency assessment)

Hydrostor supports the continued application of a prudence and efficiency test to ensure that consumers pay no more than necessary for required services. We consider, however, that the Draft Guideline would benefit from clearer guidance on how that test should be applied where a project is being delivered in response to a ministerial direction.

In these circumstances, the decision to pursue a non-network option is not discretionary. The relevant network business is implementing government policy rather than making an autonomous

investment choice. Further, in issuing a direction under the *Electricity Infrastructure Investment Act 2020 (NSW) (EII Act)*, the Minister is required to be satisfied that the project is consistent with the objects of that Act. This includes consideration of system reliability and affordability, as well as the broader economic and social benefits of the project.

Accordingly, where a project proceeds pursuant to a ministerial direction, key questions relating to the appropriateness of the solution and its alignment with public interest outcomes have already been addressed through the statutory decision-making framework established under the EII Act. Hydrostor therefore encourages the AER to clarify that the application of the prudence and efficiency test in these circumstances should not re-examine whether an alternative solution (including a regulated network asset) would have been preferable.

Such an approach:

- respects the statutory role of ministerial directions and the assessments undertaken under the EII Act;
- avoids duplicating or re-running solution selection processes akin to a RIT-T; and
- provides regulatory certainty to network businesses and non-network service providers.

Clarifying this point would, in Hydrostor's view, support alignment between the Draft Guideline and the objectives of the EII Act, while enabling timely and policy-consistent delivery of network support services in the long-term interests of consumers.

3. Clarifying the appropriate cost benchmark for NNOs

(Draft Guideline – Chapter 4 and Chapter 5: Assessable costs)

Hydrostor welcomes the Draft Guideline's recognition that NNOs differ fundamentally from regulated network investments. We suggest, however, that further clarification is needed regarding the appropriate cost benchmark for prudence and efficiency assessments as the Draft Guideline appears to contemplate assessing the prudence and efficiency of a non-network option by reference to the cost of the underlying asset providing the service.

From a consumer perspective, the relevant cost is the cost incurred by the network business under the network support agreement. Consumers do not fund the construction, financing, or ownership of the non-network asset. Nor do they bear residual asset or delivery risk. Accordingly, the efficiency assessment should focus on the reasonableness of the network operator's decision to procure and call on the non-network service, rather than the internal costs or commercial structure of the non-network proponent.

Hydrostor therefore submits that:

- the prudence and efficiency test should focus on the reasonableness of the contracted service cost, having regard to the nature of the services procured, the network need being addressed, and the relevant policy context; and
- the assessment should not extend to evaluating the internal costs, asset configuration, or commercial arrangements of the underlying non-network asset.

This service-based approach is consistent with established regulatory practice for third-party service procurement and maintains a clear boundary between regulated network activities and competitive, unregulated service provision.

Assessing prudence and efficiency by reference to asset-level costs:

- goes beyond what is relevant or observable for the purposes of a regulated revenue assessment;
- risks second-guessing commercial outcomes reached through competitive or policy-directed procurement processes; and
- creates unnecessary uncertainty for proponents who are not regulated entities and do not recover costs through the building block framework.

The prudence and efficiency test should therefore be applied by reference to whether the contracted service cost is reasonable in light of the services being procured, the prudence and efficiency of the network operator's decisions that necessitated the service being called, and the policy context in which the procurement occurs.

4. Status of non-network proponents

(Draft Guideline – Chapter 2 and Chapter 4)

Hydrostor appreciates the AER's acknowledgment that proponents of NNOs are not regulated entities. We encourage the AER to reflect this more explicitly in the Draft Guideline's discussion of information requirements and assessment scope.

Non-network proponents:

- do not recover costs through the regulatory building block framework;
- are not subject to ongoing economic regulation by the AER; and
- operate under commercial contracts negotiated at arm's length.

Hydrostor submits that the AER's assessment should stop at the boundary of the regulated entity—namely, the prudence and efficiency of the network support agreement itself. Ensuring that the assessment framework does not impose de facto regulatory obligations on third-party providers will support innovation, competition, and efficient service provision—all of which are in the long-term interests of consumers.

5. Conclusion and suggested refinements

Hydrostor respectfully suggests that the AER further refine the Draft Guideline to clarify that, for ministerially directed non-contestable projects involving NNOs:

1. the existence of a ministerial direction is a relevant and material consideration in the prudence and efficiency assessment;
2. assessment should focus on the cost and terms of the network support agreement, rather than the cost of the underlying asset;
3. the AER will not undertake a de facto reassessment of alternative solutions; and

4. the distinct, non-regulated status of NNO proponents is clearly recognised.

Hydrostor would welcome the opportunity to engage further with the AER as the guideline is finalised.