

Explanatory Statement

Amendments to Transmission Efficiency Test and
revenue determination guideline for
non-contestable network infrastructure projects
for non-network options

May 2026

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AER reference: **AER25012125**

Amendment record

Version	Date	Pages
01	29 May 2026	11

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1 Introduction

This explanatory statement relates to amendments to our [Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects](#) (Non-contestable Guideline) made under clause 47 of the *Electricity Investment Infrastructure Regulation 2021* (NSW) (EII Regulation). It sets out our reasons for the amendments we have made to the Non-contestable Guideline in accordance with clause 47C of the EII Regulation.

In March 2025, the AEMC finalised a rule change: [Improving the cost recovery arrangements for Transmission non-network options](#) (ICRA Rule). The ICRA Rule seeks to improve cost recovery certainty and timing flexibility for transmission network service providers (TNSPs) that implement a Non-network Option (NNO). As applied to Network Operators in NSW, the rule:

- creates a process by which a Network Operator can apply to the AER to adjust their network support payment allowance to account for a significant new or changed NNO project mid-regulatory period.
- enables the approval of a proposed payment methodology for a network alternative support payment for a NNO project.

NNOs include a range of technologies and services that can address identified network needs and provide alternatives to traditional ‘poles and wires’ investments. For example, a battery may be used to maintain network reliability in circumstances where a transmission line upgrade would otherwise be required. In some cases, NNOs can be delivered at a lower cost than network solutions. As technology improves and costs decline, NNOs have the potential to play an important role in the energy transition.

To give effect to the ICRA Rule, the AER published a [network alternative support payment guideline](#) (NER Guideline) under the National Electricity Rules (NER). The NER Guideline sets out what information must accompany an application; eligibility criteria or thresholds that apply before the AER will accept an application; the process and timeframes for the AER to make a determination, and relevant factors the AER must consider in respect of network alternative payments.¹

In 2021 the NSW Government appointed the AER to be a Regulator under the *Electricity Infrastructure Investment Act 2020* (NSW) (EII Act). As a Regulator, we aim to ensure that the EII regulatory framework remains fit-for-purpose and aligns, where relevant, with updates to the NER framework.

The intention of incorporating the ICRA Rule into the EII framework, is to:

- provide Network Operators certainty about the acceptability of long-term contractual arrangements
- avoid any uncertainty arising out of a prolonged cost-recovery arrangement

¹ NER Ch 6A Clause 6A.6.6A(e1).

- support Network Operators in their ability to commit to long-term non-network solutions particularly in situations which require a contractual agreement
- help promote lower-cost solutions and improve outcomes for consumers.

1.1 Scope of the review

This targeted review of the Non-contestable Guideline focuses on how we will incorporate the ICRA Rule into the EII Framework and, as far as reasonably practicable, make our Non-contestable Guideline consistent with Chapter 6A of the NER² for NNO projects that are implemented as part of an EII network infrastructure project.

To provide Network Operators with greater clarity on how NNO projects will be assessed under the EII framework, we have created a new Chapter 8 in the Non-contestable Guideline. Chapter 8 sets out the eligibility criteria and thresholds that a Network Operator must meet to make an application in relation to a NNO project. We have also updated Appendix A to the Non-contestable Guideline, which contains EII Chapter 6A, to be consistent with, as far as is reasonably practicable, the NER Chapter 6A provisions that give effect to the ICRA Rule.

These changes provide Network Operators and other stakeholders with guidance on:

- the information to be included in an application for an NNO determination³
- the eligibility criteria and thresholds that apply before we will accept an application for an NNO determination
- the process and timeframes for us to make a NNO determination
- the relevant factors we must consider in making a determination, and
- our approach to consultation, including pre-lodgement discussions.

We have also made some minor and administrative amendments to the broader Non-contestable Guideline.

1.2 Reasons for amending the Non-contestable Guideline

We undertook this targeted review to ensure that our Non-contestable Guideline is, as far as is reasonably practicable, consistent with Chapter 6A of the NER with respect to NNO projects under the EII framework.

In deciding to undertake a targeted review of the Non-contestable Guideline, we also considered a [request](#) from NSW DCCEEW to incorporate the ICRA Rule into the EII

² EII Regulation, clause 47A(3)(b).

³ Section 8.1 of the Non-contestable Guideline states that determinations made by the AER in relation to an adjustment of a network alternative support payment allowance or an approval of a payment methodology for a NNO project are collectively referred to as a 'NNO determination'.

framework, along with a similar request made by Transgrid in its [submission to our 2025 review of the Non-Contestable Guideline](#).

Following the completion of this targeted review, we intend to commence a broad review of the Non-contestable Guideline later in 2026 which will consist of an assessment of all sections of the Non-contestable Guideline, as well as a period of public consultation on any proposed changes. The purpose of the review will be to ensure that the Non-contestable Guideline remains current and reflects recent legislative amendments to the EII framework and the national framework, as well as our recent experience in making non-contestable revenue determinations.

1.3 Authority to amend the Non-contestable Guideline

We may amend our Non-contestable Guideline from time to time. Clause 47A of the EII Regulation requires the regulator to prepare and publish guidelines for non-contestable revenue determinations. It identifies matters in Chapter 6A of the NER that must also be included in our Non-contestable Guideline.⁴

Under the EII Regulation we are required to ensure our Non-contestable Guideline (which includes Appendix A EII Chapter 6A):

- sets out how a non-contestable revenue determination will be made by us, including how we will make a determination for a contestable augmentation; and
- as far as is reasonably practicable is consistent with NER Chapter 6A.⁵

1.4 Public consultation process

On 13 March 2026, we published the draft amendments to our Non-contestable Guideline on our website for a public consultation period of 20 business days. The public consultation period closed on Tuesday 14 April 2026. We received 3 written submissions during the consultation period from Transgrid, Hydrostor and Save our Surroundings Riverina.

Submissions received by Transgrid and Hydrostor provided feedback on the proposed amendments to the Non-contestable Guideline. Our response to key issues raised in these submissions is in section 2.

The submission received from Save our Surroundings Riverina raised several matters related to the broader network investment framework. We consider that the submission was outside the scope of this targeted review as it was not directly relevant to how we would exercise our functions in making a non-contestable revenue determination under the EII Act.

⁴ These matters are set out in clause 47A(4) of the EII Regulation and include the building block approach, RAB, return on capital, depreciation, estimated cost of corporate income tax, forecast capex/opex, reopening for capex, network and cost pass throughs. Matters to be excluded from the Guideline are set out in clause 47A(5) of the EII Regulation.

⁵ EII Regulation, clause 47A(3).

2 AER response to key issues raised in submissions

In finalising our amendments to the Non-contestable Guideline, we considered the stakeholder submissions received from Transgrid and Hydrostor in response to our proposed amendments.⁶ Both these submissions provided feedback as to how the draft Non-contestable Guideline could be clarified prior to finalisation. Where relevant, we have made changes to address this feedback.

This section sets out key issues raised by Transgrid and Hydrostor and our response, including where we have made amendments to the draft Non-contestable Guideline.

2.1 Terminology: ‘Non-Network Option project’

In its submission, Transgrid raised concerns that the draft Non-contestable Guideline suggested that *multiple NNO components [can] be included in a single application only where they form part of a single contract*. Further, that *requiring separate applications for each contract increases administrative burden and may prevent projects from meeting the materiality threshold*. Transgrid submitted that in practice, it is *unlikely that multiple NNO projects would be delivered under a single contract*.

Transgrid recommended that we provide clarification of the use of the term ‘NNO Component.’

We acknowledge that the use of the term ‘NNO component’ in the draft Non-contestable Guideline lacked clarity. Our intention was that the term ‘NNO component’ referred to the NNO part of a network infrastructure project that is required to meet a specified need in the authorisation, rather than a part of a NNO itself. For clarity, we have removed the use of the term ‘NNO component’ in the final Non-contestable Guideline and instead referred only to a ‘NNO project.’

We note that the submissions referenced below from both Transgrid and Hydrostor refer to the draft terminology ‘NNO component’.

2.2 Materiality threshold

We have clarified several aspects of the materiality threshold in response to submissions, which raised queries about what a single application for a NNO determination may relate to, and which elements of the application the materiality threshold applies to.

Transgrid submitted that the draft Non-contestable Guideline should be consistent with the NER Guideline and *allow applications for portfolios of NNO projects comprising multiple contracts*. It noted that it is unlikely that a single contract would be used for a NNO project. Transgrid further stated that *where one or more contracts are entered into to meet a single identified need in a priority network infrastructure project, they should be assessable through*

⁶ EII Regulation, clause 47C.

a single application, with the materiality threshold applied to the total expected cost of meeting that need.

In response to the submissions, we have updated section 8.2 of the final Non-contestable Guideline to clarify that:

- a single application for an NNO determination may be made for a standalone service contract or a portfolio of service contracts that will service one or more NNO projects, provided those NNO projects partly or wholly address the defined scope of the NNO for a network infrastructure project that a Network Operator has been authorised to carry out, and;
- if a single application is made for several NNO projects, each NNO project must meet the eligibility criteria and materiality threshold.

The terminology used to express the materiality threshold has also been updated at section 8.4 of the final Non-contestable Guideline to reflect the above position. The materiality threshold is now expressed as: *The total value of the contracts to service each NNO project that forms part of the application for a NNO determination, must be valued at \$5 million or more.*

We have also included guidance that we will review the materiality threshold as part of future reviews of this Non-contestable Guideline to determine if any adjustments are required to maintain its appropriateness as a cost threshold for financially significant NNO projects.

2.3 NNO determinations prior to the submission of a revenue proposal

Transgrid encouraged the AER to consider allowing applications for a NNO determination on associated expenditure prior to the submission of a revenue proposal, namely expenditure for a proposed payment under a draft contract. Transgrid submitted that the ability to seek a prior determination on whether the associated expenditure is likely to be assessed as prudent, efficient and reasonable if incurred, would *materially improve regulatory certainty, support informed investment decisions and reduce the risk of misalignment between methodology approval and a subsequent ex post expenditure assessment.*

We note that the NER Chapter 6A does not provide for the AER to make determinations on payment methodologies or proposed network alternative support payments prior to the submission of a revenue proposal. As noted above, we are required to, as far as is reasonably practicable, make our Non-contestable Guideline consistent with Chapter 6A of the NER. Consistent with this obligation, we have not amended our Non-contestable Guideline to allow Network Operators to seek a determination on *expenditure* prior to the submission of a revenue proposal.

However, the final Non-contestable Guideline does allow the AER to make a determination on a proposed *payment methodology* prior to the submission of a revenue proposal. We acknowledge that allowing this results in the Non-contestable Guideline being inconsistent with NER Chapter 6A. While not reflected in NER Chapter 6A, we consider that allowing for a prior determination on a payment methodology should be permitted because it addresses the

key difference between projects under the EII and NER frameworks, that EII projects are stand-alone projects and require an initial revenue determination to be made.

Furthermore, if prior determinations on methodology are not permitted, the first opportunity a Network Operator has to apply for a payment methodology determination would be as part of the initial revenue proposal. This means that the earliest a Network Operator could receive a determination on a payment methodology is 6 months after submitting its revenue proposal, reflecting the period within which the AER has to make a non-contestable revenue determination. Therefore, allowing prior determinations on payment methodology may expedite NNO projects which is particularly important for those NNO projects with long lead times. Enabling NNO projects to proceed more quickly also supports the intent of the ICRA Rule to improve cost recovery certainty and timing flexibility for Network Operators when implementing an NNO project.

In contrast to our position to allow for a prior determination on payment methodology, our position on prior determinations for expenditure for proposed network alternative support payments is that it is reasonably practicable to maintain consistency with NER Chapter 6A. This is because, a prior determination on expenditure is likely to provide limited additional certainty to Network Operators over a prior payment methodology assessment. We have clarified this at sections 8.5.1 and 8.5.2 of our Non-contestable Guideline where we provide additional guidance on how we will assess applications for both payment methodology and expenditure.

A prior determination on expenditure would also duplicate the detailed assessment undertaken at the initial revenue proposal stage. That is, were we to allow applications for expenditure determinations prior to an initial revenue proposal, practically we would be running two similar assessment processes within a very short timeframe. As such, given the short timeframe between a prior methodology determination and a revenue proposal being submitted, we consider that it is reasonable to conduct the assessment of the expenditure for a network support agreement as part of the overall revenue determination being sought by the Network Operator.

Transgrid also referenced an AER determination made in 2025 on both expenditure and methodology for a draft system strength network support (SSNS) payment contract with Snowy Hydro.⁷ However, we consider that this determination is not directly comparable to the current review as the Snowy Hydro determination was made under the NER framework and relates to SSNS payments which are not covered under the EII framework.

2.4 Prudency, efficiency and reasonableness following Ministerial directions

Hydrostor requested guidance on how the 'prudency and efficiency' test should be applied for projects that arise from a ministerial direction. We have made two amendments in

⁷ [Determination - Transgrid and Snowy Hydro System security network support payments and payment methodologies](#), 28 November 2025, p.9.

response to Hydrostor's request. Firstly, we have added a reference to the definition of 'authorisation' in section 36A of the EII Act which includes a direction given by the Minister.

Secondly, we have provided further guidance on our assessment processes at section 8.5 and section 8.6.2. These sections detail how we assess prudence, efficiency and reasonableness for both a proposed payment methodology and proposed expenditure and includes a hypothetical scenario as an example. We also note that Table 7 states: *A key consideration in assessing prudence is evidence that the NNO project being considered is within the scope of an authorisation that a Network Operator is subject to.*

2.5 NNO proponents

In its submission, Hydrostor requested that the Non-contestable Guideline expressly state that NNO proponents are not regulated entities and that they:

- 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.

Whilst we agree with Hydrostor's submission, we have not amended the Non-contestable Guideline to reflect this request. This is because EII Chapter 6A contained in Appendix A to the Non-contestable Guideline (EII Chapter 6A), contains definitions of *network alternative support payment* and *network alternative support payment allowance* which NNO projects relate to. These definitions state that these are payments made by or for a Network Operator. In addition, clause 6A.5.4 of EII Chapter 6A provides that the building blocks approach is a requirement for a Network Operator.

We also note that under section 36(1A) of the EII Act, the determination powers of the AER are expressly limited Network Operators that are subject to an authorisation.

Given the above provisions, we do not consider it is necessary to expressly list entities that are not 'regulated entities' for the purposes of determinations made by the AER in relation to NNO projects.

2.6 Other minor amendments

We have also made some minor and administrative amendments throughout the Non-contestable Guideline for readability and clarification. These include correcting typographical errors and removing an incorrect reference to clause 6A.7.2A of EII Chapter 6A in Tables 5 and 10 of the Non-contestable Guideline.

Glossary

Term	Definition
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
EII	Electricity Infrastructure Investment
EII Act	<i>Electricity Infrastructure Investment Act 2020 (NSW)</i>
EII Regulation	<i>Electricity Infrastructure Investment Regulation 2021 (NSW)</i>
NER	National Electricity Rules
Network Operator	Has the meaning given to that term in the EII Act
Non-contestable Guideline	The AER's <i>Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects</i>
NNO	Non-network option
NSW DCCEEW	New South Wales Department of Climate Change, Energy, the Environment and Water
Regulator	A person or body appointed as a regulator under section 64 of the EII Act. The AER has been appointed as a Regulator for the purposes of Part 5 of the EII Act
TNSP	Transmission network service provider