Australian Government

AUSTRALIAN ENERGY REGULATOR

Consultation paper

AER preliminary position on Transgrid's application to reopen the 2023–28 transmission revenue determination for Project EnergyConnect

September 2026

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Executive summary

This paper sets out our preliminary position on Transgrid's application to reopen its 2023–28 transmission revenue determination for Project EnergyConnect (PEC). Transgrid seeks $1.2 billion ($2022–23) in additional capital expenditure (capex) for the New South Wales component of PEC.

If we determine that a transmission network service provider's application has met all seven reopener criteria, we must then revoke the applicant's revenue determination and substitute a new revenue determination with adjusted expenditure allowances, under clause 6A.7.1(f) of the reopener clause.

Our preliminary position is that Transgrid has not met all the criteria in clause 6A.7.1(a) of the National Electricity Rules (NER) (reopener criteria). Based on the information before us, we are currently not satisfied that Transgrid has met clauses 6A.7.1(a)(1) (Criterion 1) and 6A.7.1(a)(6) (Criterion 6) of the NER.

For Criterion 1, our preliminary view is that Transgrid's proposed 'Contract Failure' event is not a valid reopener event. This is because it includes matters that had **not occurred** at the relevant time. We are seeking stakeholder views on reasonable control and foreseeability.

For Criterion 6, we recognise the importance of PEC. It is expected to benefit consumers and the market. These benefits include stronger interconnection, better access to renewable generation, improved reliability outcomes in South Australia and reduced islanding risk. However, in our preliminary view, Transgrid has not demonstrated that failing to deliver, or materially delaying, PEC would be likely to materially adversely affect the reliability or security of the relevant transmission system.

Our preliminary position, if made final, would not prevent Transgrid from recovering prudent and efficient PEC expenditure. Depending on the outcome of this application, any or all overspend not approved through the reopener can be assessed through ex post review as part of making Transgrid's 2028–33 revenue determination. Through that process, we can decide whether the overspend amount, or a portion of the overspend amount, should be included in the regulatory asset base (RAB). Transgrid may also propose to reduce any capital expenditure sharing scheme (CESS) penalty for PEC under our new capital expenditure incentive guidelines.

We invite submissions on our preliminary views about Transgrid's application. Stakeholders should read this paper as a consultation document, not as a draft or final decision. Our preliminary positions are based on the information currently available, including Transgrid's application and stakeholder submissions received to date. We are open to reassessing and changing our preliminary views after considering further submissions from stakeholders including Transgrid.

Submissions, and any further information from Transgrid, will inform our final decision.

Invitation for submissions

Transgrid and all interested stakeholders are invited to make a submission on our consultation paper – AER preliminary position on Transgrid's application to reopen 2023–28 revenue determination for Project EnergyConnect by **1 October 2026**.

We encourage stakeholders to make submissions on the consultation questions, including our preliminary positions on aspects of Transgrid's application. We will consider and respond to submissions received in our final decision.

We prefer electronic submissions to aerinquiry@aer.gov.au. We prefer all submissions be publicly available to facilitate an informed, transparent and robust consultation process. We will treat submissions as public documents unless otherwise requested. For further information on our use and disclosure of information, see the AER Information Policy and the AER Confidentiality Guideline.

We request parties wishing to submit confidential information:

- provide a non-confidential version of the submission in a form suitable for publication
- clearly identify the information that is the subject of the confidentiality claim, and why.

All non-confidential submissions will be placed on our website.

Please direct enquiries about this paper to aerinquiry@aer.gov.au.

We look forward to engaging with all stakeholders.

1 Introduction

On 13 February 2026, Transgrid applied to the Australian Energy Regulator (AER) to revoke and substitute its electricity transmission revenue determination for the 2023–28 regulatory control period. The application seeks to adjust total forecast capital expenditure (capex) approved for Project EnergyConnect (PEC) in our April 2023 final decision.[1] We refer to this as Transgrid's reopener application. The application was made under clause 6A.7.1 of the National Electricity Rules (NER).

Transgrid is seeking $1.2 billion ($2022–23) in additional capex for delivering the New South Wales (NSW) component of PEC. This is in addition to the $2.1 billion ($2022–23) already approved for PEC in our April 2023 final decision. Transgrid estimates this amendment to the 2023–28 determination would raise the maximum allowed revenue by $173 million ($, nominal) over the final year of the regulatory period. Transgrid states that this equates to an $18 bill increase for residential customers in 2027–28.

We published Transgrid's application on our website on 27 March 2026 following a thorough review of Transgrid's confidentiality claims. Subsequently, we published stakeholder submissions we received on Transgrid's reopener application.

1.1 Project EnergyConnect

PEC is a 900 km, 330 kV South Australia to NSW interconnector, with an added connection into Victoria. It runs between Robertstown in mid-north South Australia and Wagga Wagga in NSW, with an augmentation between Buronga and Red Cliffs in north-western Victoria. PEC is an actionable ISP project[2] that was determined to deliver net market benefits and support the energy market transition. PEC is expected to facilitate the transition to a lower carbon emissions future by providing connections in Renewable Energy Zones and to enhance security of electricity supply in South Australia.

1.2 The AER's role in a reopener

A capex reopener under the NER allows a network provider to apply to reopen part of an existing revenue determination during a regulatory control period where specified criteria are met. For transmission network service providers (TNSPs), these criteria are set out in clause 6A.7.1(a)(1) to (7) of the NER; we refer to them as the 'reopener criteria'.

A capex reopener assessment under clause 6A.7.1 of the NER is different to a typical forecast capex assessment under clause 6A.6.7, in which we generally assess whether proposed expenditure is prudent and efficient. For a reopener application, the threshold

1 AER, Transgrid – Determination 2023–28 – Final Decision, Australian Energy Regulator, 28 April 2023.

2 Actionable Integrated System Plan (ISP) projects optimise benefits for consumers if progressed before the next ISP. A transmission project (or non-network option) identified as part of the optimal development path and having a delivery date within an actionable window. Australian Energy Market Operator, 2026 Integrated System Plan, 25 June 2026, p. 138.

requirements in clause 6A.7.1 must be met before we consider whether any adjustment to forecast capex is appropriate.

1.3 Purpose of this consultation paper

Clauses 6A.7.1 (economic regulation of transmission services) or 6.6.5 (economic regulation of distribution services) of the NER do not require us to publish a draft decision or consultation paper before making a decision on an application by a network service provider to reopen a revenue determination.

Nevertheless, we have chosen to publish a consultation paper seeking further stakeholder input before making a determination on Transgrid’s application because clause 6A.7.1 of the NER raises complicated questions of legal interpretation and regulatory practice for which there are no precedents.

Our choice to publish a consultation paper in this matter should not be seen as setting a precedent that we will follow in future applications to reopen revenue determinations under either clause 6A.7.1 or clause 6.6.5 of the NER. We will consider the circumstances of the application and other matters we consider relevant before choosing whether to publish a consultation paper or similar document for a future application.

This consultation paper provides stakeholders with our preliminary assessment of Transgrid’s application to reopen its 2023–28 revenue determination for PEC. It sets out key aspects of the application and identifies areas where stakeholder feedback or additional information would assist our final decision.

Unless otherwise stated, our views in this consultation paper are preliminary and are based on the information currently available, including Transgrid’s application, Transgrid’s responses to information requests and stakeholder submissions received to date. We have set out these positions in chapter 2. We are open to reassessing and changing our preliminary positions after considering further submissions from stakeholders including Transgrid.

This paper is intended to support focused stakeholder engagement. We have outlined the issues and interpretation of the reopener criteria we consider most contentious or most likely to benefit from further testing. Stakeholders are encouraged to respond to the consultation questions and to provide evidence, analysis or practical examples that address our preliminary views.

Chapter 3 sets out the issues we consider require focused discussion and includes consultation questions to guide stakeholder submissions. Chapter 4 provides other considerations that have been raised in stakeholder submissions or are contingent on the outcomes of the issues set out in chapter 3.

Appendix A provides the full list of consultation questions.

2 Overview of the reopener criteria

Assessing Transgrid's capex reopener application involves the following. First, we must assess whether we are satisfied that Transgrid's application meets all 7 criteria specified in clause 6A.7.1(a) of the NER (reopener criteria). If we are not satisfied that the application meets all these criteria, we must reject the application.[3] Second, if we are satisfied that the application meets all the criteria, we must then determine the appropriate amount of additional capex to include in Transgrid's forecast capex allowance and make the consequential adjustments to the annual revenue requirement.

Table 2.1 summarises our preliminary positions, based on the information available at this stage, on each reopener criteria.

Table 2.1 Summary of our preliminary assessment of the reopener criteria

Reopener criteria	Our preliminary positions on the reopener criteria and key areas for stakeholder feedback
6A.7.1(a)(1) (Criterion 1) An event that is beyond the reasonable control of the TNSP has occurred during the regulatory control period and the occurrence of that event during that period (or of an event of a similar kind) could not reasonably have been foreseen by the provider at the time of the making of the revenue determination ('the **event**')	Our preliminary position is that Transgrid has not satisfied the following requirements: • Contract Failure is an **event** that has occurred • Contract Failure was beyond Transgrid's reasonable control • Transgrid could not have reasonably foreseen Contract Failure at the time of making the 2023–28 revenue determination. We are also seeking stakeholder views as to the date foreseeability should be assessed.
6A.7.1(a)(2) (Criterion 2)[a] No forecast capital expenditure was accepted or substituted by the AER for that period under clause 6A.6.7(c) or clause 6A.13.2(b)(4) and (5) (as the case may be) in relation to the event that has occurred	Our preliminary position is that Transgrid satisfies this criterion.
6A.7.1(a)(3) (Criterion 3) TNSP proposes to undertake capital expenditure to rectify the adverse consequences of the event	Our preliminary position is that Transgrid has proposed to undertake capex and is likely to have satisfied this criterion.
6A.7.1(a)(4) (Criterion 4)	We do not have a preliminary position as to whether Transgrid's application has met Criterion 4. It is possible that the proposed capex may not exceed 5% of the

[3] NER, clause 6A.7.1(e) provides that the AER may only revoke and substitute a revenue determination if it is satisfied the criteria in clause 6A.7.1(a) are met. It follows that if the AER is not satisfied that the criteria are met, the application must be rejected.

Reopener criteria	Our preliminary positions on the reopener criteria and key areas for stakeholder feedback
The total of the capital expenditure required during the regulatory control period to rectify the adverse consequences of the event: (i) exceeds 5% of the value of the [RAB] for the relevant [TNSP] for the first year of the regulatory control period, (ii) is such that, if undertaken, it is reasonably likely (in the absence of any other reduction in capital expenditure) to result in the total actual capital expenditure for that regulatory control period exceeding the total of the forecast capital expenditure for that regulatory control period as accepted or substituted by the AER in accordance with clause 6A.6.7(c) or clauses 6A.13.2(b)(4) and (5) (as the case may be)	value of the RAB in the first year of the regulatory control period.
6A.7.1(a)(5) (Criterion 5) [a] The TNSP can demonstrate that it is not able to reduce capital expenditure in other areas to avoid the consequence referred to in clause 6A.7.1(a)(4)(ii) without materially adversely affecting the reliability and security of the relevant transmission system	Our preliminary position is that Transgrid satisfies this criterion. Transgrid would not have been able fund the ICC contract by reducing capex in other areas without materially adversely affecting the reliability and security of its transmission system. A number of elements in Criterion 5 overlap with Criterion 6. We are consulting on these matters as part of Criterion 6.
6A.7.1(a)(6) (Criterion 6) A failure to rectify the adverse consequences of the event would be likely to materially adversely affect the reliability and security of the relevant transmission system	Our preliminary position is we are not satisfied that the impacts identified by Transgrid meet the threshold for materially adversely affecting reliability and security. We are also seeking stakeholder views on what is the relevant transmission system for the purpose of identifying material adverse effects on reliability and security.
6A.7.1(a)(7) (Criterion 7)[a] The event is not a pass-through event or a contingent project.	Our preliminary position is that the event is not a pass-through event or a contingent project.
6A.7.1(b)[a] An application referred to in paragraph (a) must not be made within 90 business	Our preliminary position is that Transgrid satisfies this criterion.

Reopener criteria	Our preliminary positions on the reopener criteria and key areas for stakeholder feedback
days prior to the end of a regulatory year.	
6A.7.1(f)(1)[a] The substituted revenue determination must only vary from the revoked revenue determination to the extent necessary: (1) to adjust the forecast capital expenditure for that regulatory control period to accommodate the amount of such additional capital expenditure as the AER determines is appropriate (in which case the amount of that adjustment will be taken to be accepted by the AER under clause 6A.6.7(c))	Given our overall preliminary position is that Transgrid has not satisfied the reopener criteria, we have not formed a view on the appropriate costs and are not required to adjust the forecast capex for Transgrid's 2023–28 regulatory control period. However, we consider that appropriate amount would mean the prudent and efficient amount to rectify the adverse consequences of the event. We are seeking stakeholder views on these matters in chapter 4.

[a] These criteria are not discussed in detail in this consultation paper as they are not designated focus issues.

3 Focus areas for consultation

In our assessment of the reopener criteria, we have identified Clause 6A.7.1(a)(1) (Criterion 1) and Clause 6A.7.1(a)(6) (Criterion 6) as two focus areas where our preliminary position is that Transgrid has not satisfied these criteria. Our findings on Criterion 1 and Criterion 6 also influence how we interpret some of the remaining aspects of the reopener criteria.

Criterion 1 requires an event beyond the reasonable control of a TNSP to have occurred that could not reasonably have been foreseen by the TNSP. Criterion 6 requires that a failure to rectify the adverse consequence of the event would be likely to materially adversely affect the reliability and security of the relevant transmission system. Stakeholder submissions have raised several issues about how the different elements in these criteria should be interpreted and applied. We are seeking further stakeholder engagement on our preliminary assessment of these issues.

3.1 Clause 6A.7.1(a)(1) (Criterion 1)

Clause 6A.7.1(a)(1) of the NER provides:

> an *event* that is beyond the reasonable control of the *Transmission Network Service Provider* has occurred during that *regulatory control period* and the occurrence of that *event* during that period (or of an *event* of a similar kind) could not reasonably have been foreseen by the provider at the time of the making of the *revenue determination* (‘the event’)

Clause 6A.7.1(a) concludes with the following passage:

> In this paragraph (a), a reference to an *event* includes a series of events or a state of affairs, which may include a greater than anticipated increase in demand.

Our preliminary position is that Transgrid has not satisfied Criterion 1. Determining whether Transgrid’s application satisfies Criterion 1 involves assessing the following:

- Is the event described by Transgrid an event that has occurred within the meaning of Criterion 1?
- Was the event beyond Transgrid’s reasonable control?
- What is the appropriate point in time for assessing reasonable foreseeability?
- Could the event reasonably have been foreseen?

3.1.1 Transgrid’s proposal

Transgrid defines the event as ‘Contract Failure’.

The Contract Failure is that:

- as the result of accumulation of circumstances that had adversely affected the contractor’s [Secure Energy Joint Venture] ability to deliver PEC, and

- based on information obtained by Transgrid between August and October 2023, which revealed that Elecnor Australia was in a precarious financial position and faced significant financial loses under the terms of the Engineering, Procurement and Construction (EPC) contract.[4]

Transgrid's Board recognised and accepted on 25 October 2023 that construction of PEC would not be completed by Secure Energy Joint Venture (SEJV) under the existing EPC contract and, if PEC were to proceed, an alternative arrangement to deliver under the EPC contract would be necessary.

Transgrid has submitted that:

- An 'event', for the purposes of the reopener clause, is intended to be a broad concept that accommodates a variety of circumstances. The event definition under clause 6A.7.1(a)(1) must be interpreted having realistic regard to regulatory, commercial and contractual context.[5]
- 'Contract Failure' was not within its reasonable control in context of contractual, commercial and regulatory conditions, and risks associated with PEC delivery were with SEJV under the EPC contract.[6]
- 'Contract Failure' could not reasonably have been foreseen, and that reasonable foreseeability must be assessed at the time it submitted its revised proposal on 2 December 2022, in light of the relevant regulatory context.[7]

3.1.2 Reasoning for our preliminary views

3.1.2.1 What is the relevant event and has the event occurred?

An 'event' is a broad concept under clause 6A.7.1(a) of the NER. It includes a series of events or a state of affairs. However, Criterion 1 still requires an event to have occurred. We do not consider it covers events that have not yet happened. This means a hypothetical scenario, or a TNSP's view about what may happen in the future, cannot be included in an event definition for the purposes of Criterion 1.

As per our approach described above, we accept Transgrid's view that an event is intended to accommodate a variety of circumstances. However, Transgrid's Contract Failure event includes its projections on what may occur (or what was likely to occur) in the future. Specifically, our preliminary view is that the following parts of Transgrid's Contract Failure can be described as forming a series of events that 'have occurred':

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4 Transgrid, Project EnergyConnect - An application to reopen the 2023-2028 Revenue Determination - Transgrid - 20260213, AER, February 2026, p. 15; Transgrid, Attachment 6 - Rules Pre-conditions - Transgrid - 20260213, AER, February 2026, p. 4.

5 Transgrid, Attachment 6 - Rules Pre-conditions - Transgrid - 20260213, AER, February 2026, p. 5.

6 Transgrid, Attachment 6 - Rules Pre-conditions - Transgrid - 20260213, AER, February 2026, pp. 6–8.

7 Transgrid, Attachment 6 - Rules Pre-conditions - Transgrid - 20260213, AER, February 2026, pp. 8–12.

- the accumulation of circumstances that had adversely impacted the contractor's ability to deliver [Project EnergyConnect][8] (these included inflation, Australian infrastructure project density, floods in NSW, labour shortages and the insolvency of Clough)
- the information and analysis obtained by Transgrid between August and October 2023, which revealed that Elecnor Australia was in a precarious financial position and faced significant financial losses under the terms of the EPC Contract.[9]

In contrast, our preliminary view is that the following parts of the definition of Contract Failure are not described as an 'event' that 'has occurred':

- construction of the PEC would not be completed by SEJV under the existing EPC contract[10]
- if PEC were to proceed, an alternative arrangement to delivery under the EPC contract would be necessary.[11]

We consider that these aspects of Transgrid's Contract Failure event describe Transgrid's prediction, opinion or belief as to what may (or would be likely to or would be highly probable to) occur in the (then) future as a result of the events or state of affairs that had (already) occurred in combination with Transgrid's proposed or possible response to those events or that state of affairs.

For this reason, we are not satisfied that Transgrid's Contract Failure event meets the requirements of an event for the purposes of the reopener clause. It includes matters that had not occurred at the relevant time. On this basis, we are not satisfied that Transgrid has established a relevant event for Criterion 1.

We are seeking stakeholder views on whether Transgrid's Contract Failure event fulfils the requirements of an event under the reopener clause.

Consultation question

1. What are your views regarding whether Transgrid's Contract Failure fulfils the requirements of an event under Criterion 1 of the NER?

3.1.2.2 Was the event beyond Transgrid's reasonable control?

We consider that there are two elements to determining whether the event was beyond reasonable control. First, whether Transgrid was able to exercise its authority to control Contract Failure. Second, whether it was reasonable for Transgrid to do so having regard to factual circumstances and what a reasonable TNSP would do.

Based on the information currently before us, we are not satisfied that Transgrid has demonstrated that Contract Failure was beyond its reasonable control.

8 Transgrid, Attachment 6 - Rules Pre-conditions - Transgrid - 20260213, AER, February 2026, p. 5.

9 Transgrid, Attachment 6 - Rules Pre-conditions - Transgrid - 20260213, AER, February 2026, p. 5.

10 Transgrid, Attachment 6 - Rules Pre-conditions - Transgrid - 20260213, AER, February 2026, pp. 5–6.

11 Transgrid, Attachment 6 - Rules Pre-conditions - Transgrid - 20260213, AER, February 2026, pp. 5–6.

Transgrid submitted that Contract Failure was beyond its reasonable control because the EPC contract limited its ability to directly manage the day-to-day delivery of PEC. Under that contract, SEJV was responsible for delivering the project. Transgrid states that intervening in SEJV's delivery responsibilities or giving instructions beyond that contemplated in the EPC contract, could have exposed it to claims for extensions of time and additional costs, and may have affected its ability to enforce delay damages.

Transgrid submitted Contract Failure did not arise from deficiencies in the EPC contract or from its own project management. Rather, it says the event arose from an accumulation of circumstances outside its reasonable control, which became apparent between August and October 2023 and required its Board to assess and decide how to address the adverse impacts on PEC.

Our preliminary view is that a distinction should be drawn between two matters. The first is Transgrid's limited ability to direct or influence the day-to-day delivery of the project under the EPC contract. The second is whether Transgrid had reasonable control over contract management, risk monitoring, escalation, enforcement strategy, decisions about whether to call on security and about how to respond to warning signs that the EPC contract may not deliver the project as expected.

The way Transgrid has defined the event is relevant here. Transgrid defines Contract Failure by reference to its Board's recognition and acceptance that PEC would not be completed under the existing EPC contract and that an alternative delivery arrangement would be required. To the extent the event is defined by reference to Transgrid's own judgement or decision-making, the question remains about whether the event, as defined, can be said to have been truly beyond Transgrid's reasonable control.

Stakeholders have expressed different views on this issue. The JEC and AGL submitted that Transgrid has not demonstrated that the relevant circumstances were beyond its reasonable control, including that a prudent network operator may have taken different steps in managing the emerging risks.[12] Gavin Dufty and Louise Benjamin similarly questioned whether Transgrid's apparent failure to enforce the EPC contract supports a conclusion that Contract Failure was beyond its reasonable control.[13] They also submitted that difficulties enforcing offshore parent company guarantees were not unexpected and would have been apparent if the relevant contractual protections had been stress tested.

In contrast, ENA and Infrastructure Partnerships Australia supported Transgrid's position that the external factors affecting delivery were beyond Transgrid's reasonable control.[14] However,

12 AGL, AGL Energy - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026, pp. 2–4; JEC, Justice and Equity Centre - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026, pp. 13–15.

13 Gavin Dufty and Louise Benjmain, Gavin Dufty and Louise Benjamin - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026, p. 14.

14 ENA, Energy Networks Australia - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026; Infrastructure Partnerships Australia, Infrastructure Partnerships Australia - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026.

we note that Transgrid's defined event is not simply those external factors, but the point at which its Board recognised that PEC would not be completed under the EPC contract.

We are seeking stakeholder views on whether Contract Failure, as defined by Transgrid, was beyond Transgrid's reasonable control and whether there are further factual or contractual matters that should inform our assessment.

Consultation questions

2. How should we assess whether the event was beyond reasonable control?
3. Was the Contract Failure event beyond Transgrid's reasonable control? Please provide your reasons.

3.1.2.3 At what point is foreseeability assessed?

Criterion 1 provides that 'the event, or event of a similar kind, could not reasonably have been foreseen by the provider at the time of the making of the revenue determination'. This means any test for foreseeability should be applied at the point in time of making our revenue determination.

Our preliminary view is that the natural and ordinary meaning of the phrase '*at the time of the making of the revenue determination*' is the day we made our final decision on Transgrid's revenue determination. We also acknowledge that the NER require us to allow a reasonable amount of time to consult and have regard to stakeholder submissions in making our revenue determination.

Transgrid submitted that the relevant date for assessing reasonable foreseeability is 2 December 2022, when it was required to submit its revised revenue proposal for the 2023–28 regulatory control period.

We consider that if the date of foreseeability is any later than 2 December 2022, it is more likely that the Contract Failure event could have been reasonably foreseen. This is because it appears that Transgrid progressively knew more about the likelihood of the Contract Failure event. Therefore, to assess whether Transgrid has established whether the event was foreseeable, we must first determine a point in time when we should decide on foreseeability.

We have concerns about Transgrid's position because it may not fully reflect the way the revenue determination process operates in practice. Transgrid's position fails to acknowledge that, during the regulatory determination, network businesses can, and in practice often do, provide additional information through our information request processes and make submissions after submitting their revised proposals. Any additional information can be used in making our revenue determinations. For instance, Transgrid sent a letter to us on 3 April 2023 seeking to correct an omission from its revised regulatory proposal of $985.7 million as commissioned capex for PEC. This was considered and we incorporated it into Transgrid's 2023–28 final revenue determination. This suggests that we may reflect late submissions in Transgrid's 2023–28 final revenue determination.

We also consider that we may delay our final decision in certain circumstances. For example, we delayed Transgrid's 2018–23 final decision from 30 April to 17 May 2018.[15] However, in hindsight, it is difficult to know how we would have responded to additional PEC information close to the final decision date. It is also unclear whether that information would have justified delaying the decision.

Our preliminary view is that we are not satisfied with Transgrid's position. We have not reached a final view on the precise point at which foreseeability should be assessed. One option is to interpret the phrase "at the time of making the revenue determination" according to its natural and ordinary meaning. Based on this interpretation the relevant date would be on the day of our final revenue determination, 28 April 2023. We also acknowledge that the relevant date could be some weeks before 28 April 2023, allowing time to have regard to any submission before making the determination, and noting that in this instance we received a submission in early April.

We note stakeholder submissions on this issue. In particular, the JEC did not agree with Transgrid's proposed 2 December 2022 date and submitted that foreseeability should be assessed up to the date of our final decision on 28 April 2023.[16] AGL did not identify a precise date for the assessment but submitted that foreseeability should be considered by reference to the risks known when the regulatory approval and fixed price contract were in place. AGL identified flooding in the PEC construction area, labour shortages and elevated inflation following COVID-19 as risks that were known or well-established at the relevant time.[17]

We are interested in stakeholder views on the appropriate approach, including what date should be used for assessing foreseeability.

3.1.2.4 Could the event reasonably have been foreseen?

We consider the following principles apply to assessing whether the Contract Failure event was reasonably foreseeable by Transgrid. We consider foreseeability should be decided by assessing:

1. the foreseeability of that event or of an event of a similar kind
2. the foreseeability of the event prospectively, not with hindsight in light of the event that actually occurred
3. the foreseeability of the event from the perspective of a reasonable TNSP in the position of Transgrid
4. the foreseeability of the event such that it does not necessarily depend on the probability or improbability of a given occurrence

Transgrid submitted that Contract Failure could not reasonably have been foreseen during the revenue determination process. Transgrid also stated that the test should not be applied

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15 We delayed our revenue determination to have regard to the stakeholder interest in Transgrid's Powering Sydney's Future project.

16 JEC, Justice and Equity Centre - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026, pp. 15–16.

17 AGL, AGL Energy - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026, pp. 2–4.

by asking whether the risk was theoretically possible to anticipate. Rather, it said the question is whether a prudent and efficient TNSP, during the revenue determination process, would have realistically expected to incur the relevant capex during the forthcoming regulatory period.

We consider that Transgrid's approach to assessing whether the event could have been reasonably foreseen is similar to the test we have applied. However, based on the information provided, Transgrid has not established that the Contract Failure event could not reasonably have been foreseen.

To assist stakeholders in commenting on the appropriate timing and application of the foreseeability test, we have set out a timeline of key events and information that arose between Transgrid's revised revenue proposal on 2 December 2022 and our final revenue determination on 28 April 2023. We are interested in stakeholder views on whether, and to what extent, this information should be relevant to assessing whether Contract Failure could reasonably have been foreseen.

The timeline appears on the following page.

Figure 3.1 Timeline of events for PEC

September 2022	Flooding in regional NSW and natural disaster declared
October 2022	Transgrid became aware of Clough financial issues
2 December 2022	**Transgrid's proposed date for reasonable foreseeability** Transgrid submitted its revised revenue proposal and sought CESS suspension for large project due to financial concerns
December 2022	Clough entered voluntary administration and Transgrid became aware of SEJV's productivity challenges
January 2023	Transgrid noted issues in the EPC contract had begun to emerge
20 January 2023	SEJV made a submission noting financial pressures independent of Transgrid[†]
March 2023	Elecnor forecast losses, including claims beyond the EPC contract provisions
3 April 2023	Transgrid wrote to the AER correcting deferred capex for PEC, citing broader conditions and changes to capex timing
24 April 2023	Elecnor SA confirmed it would not financially support Elecnor Australia, which was losing least $400 million delivering PEC
28 April 2023	The AER made and published its final revenue determination

Note:

[†] Secure Energy, SecureEnergy - Submission - 20 January 2023, AER, 20 January 2023.

This timeline indicates that further information became available during the revenue determination process about contractor financial stress, productivity challenges and the potential strain on the EPC contract.

The timeline also raises a question about whether a reasonable TNSP, in Transgrid's position, ought to have foreseen a material risk of contractor non-performance, under a fixed-price contract. We recognise that this assessment may involve commercial, contractual and project delivery judgement.

Stakeholders expressed different views on foreseeability. The JEC and AGL submitted that a number of the underlying risks were known or well-established, including flooding risks in the PEC construction area, labour shortages and elevated inflation following COVID-19. They also raised the question of whether, if those risks were foreseeable, the cumulative risk that they could place strain on the contractor and contribute to contract failure was also reasonably foreseeable.[18]

ENA takes a different view. It submitted that the relevant factors combined in an unprecedented and unforeseeable manner, and that the regulatory framework should be capable of responding where unforeseen and uncontrollable events cause material cost overruns.[19] However, we note that this broader submission may also raise questions about the appropriate role of other mechanisms, such as cost pass-throughs, depending on how the relevant event and expenditure are characterised.

Consultation questions

4. At what point in time should we assess reasonable foreseeability? Is it appropriate for us to assess reasonable foreseeability on the date of our final revenue determination or on an earlier date? Please provide your reasons.
5. What is your view on whether the Contract Failure is an event that Transgrid could reasonably have foreseen?
6. How should we assess whether an event could reasonably have been foreseen by a TNSP under Criterion 1?

3.2 Clause 6A.7.1(a)(6) (Criterion 6)

The NER 6A.7.1(a)(6) (Criterion 6) states:

> 'a failure to rectify the **adverse consequences** of the event would be likely to **materially adversely affect the reliability and security** of the **relevant transmission system**.'

Our preliminary position is that we are not satisfied Transgrid's application has met the requirements of Criterion 6. We acknowledge that there would have been adverse consequences if PEC was delayed or not constructed. However, these adverse

18 JEC, Justice and Equity Centre - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026, pp. 13–18; AGL, AGL Energy - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026, pp. 3–5.

19 ENA, Energy Networks Australia - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026.

consequences relate to benefits that do not arise, which differs from materially adversely affecting the reliability and security of the relevant transmission system.

We have separated our assessment into the following elements:

- what are the **adverse consequences** of the Contract Failure
- how should we interpret **likely to materially adversely affect reliability and security**
- does this criterion require Transgrid to establish consequences to either **reliability or security**, or to **reliability and security**
- does **the relevant transmission system** include the South Australian network.

We have discussed each of these elements below.

For the purposes of assessing Criterion 6, this section assumes that Contract Failure has occurred under Criterion 1.

3.2.1 Transgrid's application

Transgrid submitted that the adverse effect on reliability and security should be assessed on a forward-looking basis by having regard to the impact of failing to rectify the consequences of the event on the transmission system as required to be built to meet the National Electricity Market (NEM) reliability standard and to ensure operation of the system within the required technical limits. Transgrid also submitted that this criterion does not require that an imminent issue on the reliability and security of the network exists at the time of the event.

Transgrid noted consequences of the Contract Failure, if unremedied, are that PEC is not delivered and the rectification that maximises consumer benefits is a new contract where it is delivered.

Transgrid considered that PEC provides reliability and security benefits and failing to complete PEC would materially adversely affect reliability and security of the NEM.[20] Transgrid engaged an engineering consultant, GHD, to comment on reliability and security issues. Specifically, Transgrid and GHD considered that failure to deliver PEC would lead to the following:

- **Compromised Electricity Statement of Opportunities (ESOO) reliability**, as the failure to complete PEC would result in ESOO reliability being further compromised.
- **South Australian reliability gap in 2026**, where South Australia's reliability would fall below AEMO's reliability standard.
- **Reduced NSW transfer capacity**, because without PEC, the ability of the NSW system to maintain reliability by leveraging additional supply from neighbouring regions would be compromised.

[20] Transgrid, Attachment 6 - Rules Pre-conditions - Transgrid - 20260213, AER, February 2026, pp. 19–21.

- **Compromised system security**, because PEC will elevate fault levels in South West NSW,[21] which will strengthen the grid's capacity to meet minimum fault level requirements and enhance overall system security. Without PEC or other rectification, other sources of system security will need to be sought.

Transgrid also stated that because PEC is an interconnector between NSW and South Australia, the impacts in both those regions need to be considered. The 'relevant transmission system' is the transmission systems of South Australia and NSW, as this condition is concerned with where the adverse consequences of the event fall.

3.2.2 AEMO's view

We sought AEMO's view on the implications of PEC for system security and reliability in NSW and South Australia. AEMO stated that:

- The ESOO shows a material improvement in forecast South Australian reliability as capacity is released for PEC stage 2 and that PEC can mitigate reliability risks arising from retirement of Torrens Island B and Osborne Power Stations.[22]
- The key benefit to security is to reduce the likelihood of South Australia becoming electrically islanded from the rest of the NEM following non-credible loss of an interconnector. A non-credible loss of the interconnection between South Australia and the rest of the NEM could trigger the operation of emergency frequency control schemes, under-frequency load shedding or over-frequency generation shedding, which could cause major disruptions to South Australian customers.[23]
- It has not undertaken reliability or security analysis on a scenario where PEC is materially delayed or not built.[24]

3.2.3 Reasoning for our preliminary view

3.2.3.1 Adverse consequences of the Contract Failure

Our preliminary view is that Transgrid not being able to deliver the economic benefits of PEC, due to the Contract Failure event, is not an adverse consequence on reliability or security within the meaning of Criterion 6.

Transgrid's modelling forecast that its option to recontract with SEJV would provide $2,387 million ($2022–23) in net benefits to consumers. This was the highest estimated net benefit from the 8 options Transgrid identified.

We acknowledge that PEC is a significant project under the ISP and is expected to deliver benefits to consumers. However, our preliminary view is that any adverse consequences

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21 For clarity, Transgrid's use of the phrase 'elevate fault levels' in its application refers to an improvement in the underlying system performance, where the system will have an improved ability to withstand faults without disruption to the provision of network services.

22 AEMO, AEMO letter to Clare Savage AER RE - System security and reliability in relation to Project EnergyConnect 2026.06.01, AER, 1 June 2026, p. 1.

23 AEMO, AEMO letter to Clare Savage AER RE - System security and reliability in relation to Project EnergyConnect 2026.06.01, AER, 1 June 2026, p. 1.

24 AEMO, AEMO letter to Clare Savage AER RE - follow up advice on system security and reliability in relation to Project EnergyConnect 2026.06.26, AER, 26 June 2026, p. 1.

should be considered along with the rest of Criterion 6. That is, a failure to rectify the adverse consequences of the event would be likely to materially adversely affect reliability and security of the transmission system.

When considering Criterion 6 as a whole, customers not receiving the economic benefit of a project does not, in our preliminary view, constitute an adverse effect on reliability and security. We consider there needs to be likely adverse consequences on reliability and security, as those terms are properly understood.

AGL noted concerns in its submission that the rules make a distinction between an event and its 'adverse consequences' and that contract failure was an adverse consequence. This creates the risk of an event being defined by its outcome rather than by an external occurrence.[25]

We acknowledge AGL's concerns. Transgrid's application is based on a counterfactual that PEC would not have been completed if Transgrid had not remedied the event with a new contract. This is complex as the Contract Failure event includes elements of Transgrid's decision-making and whether that has occurred. This results in an overlap between the event, the failure to rectify the adverse consequences of the event and the rectification.

Notwithstanding the issues we have identified with the event in section 3.1.2, for the purposes of assessing Criterion 6, we have assumed that if Contract Failure was not remedied, then there would be an adverse consequence because the construction of PEC would not be delivered under the EPC contract. This would mean that consumers would not receive the full benefits of PEC being constructed on time. However, as noted above, we do not consider this adverse consequence relates to the rest of Criterion 6.

We have not assessed the quantum of the benefits that PEC is expected to provide because the status of PEC as an actionable ISP project is not related to our assessment of Criterion 6.

3.2.3.2 Likely to materially adversely affect reliability and security

Our preliminary position is that we are not satisfied the reliability and security impacts identified by Transgrid are (or, if the Contract Failure was unrectified, would have been) likely to materially adversely affect the reliability and security of the relevant transmission system.

We consider this part of Criterion 6 includes several related elements that have distinct meanings but must be considered together. These elements include an assessment of what is an adverse effect combined with materiality and likelihood considerations.

As set out in section 3.2.1, Transgrid has identified several reliability and security impacts. We consider Transgrid has not identified specific reliability and security standards that will no longer be met if PEC is not delivered. Rather, Transgrid has identified overall impacts on security and reliability if PEC had not been delivered relative to the level of reliability and security if PEC were to be delivered. We also note that Transgrid's application implicitly assumes that the impacts are material and likely to occur.

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25 AGL, AGL Energy - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026, p. 2.

Assessment methodology

Our framework for assessing this element is to undertake a step-by-step assessment of each security and reliability impact identified by Transgrid and consider whether the following has been satisfied:

- Is the impact an adverse effect on reliability and security?
- Is the impact likely to occur?
- Is the combined impact of likely adverse effects material?

After assessing each element, if required, we will then consider whether the combined impacts identified by Transgrid would overall materially adversely affect reliability and security. To begin our assessment, we have applied the following definitions for reliability and security:

- **Reliability** is defined in the NER to mean '[t]he probability of a system, device, plant or equipment performing its function adequately for the period of time intended, under the operating conditions encountered.'[26] Based on this, an electricity transmission network is reliable if it is probable that it will continue to perform the functions of a transmission network adequately over its service life under the expected operating conditions. Therefore, an 'adverse effect' to the reliability of a transmission network occurs if it becomes less likely to perform its functions adequately over its service life under the expected operating conditions.
- **Security** is not defined in the NER. We have developed a definition considering the NER definitions of power system security, secure operating state and satisfactory operating state, and the Reliability Panel's Reliability and Security Frameworks Explanatory Statement.[27] We consider network security is the ability of the electricity transmission network to operate within its technical limits and to withstand credible network contingencies while maintaining the key system parameters (including frequency, thermal loadings, voltages, fault levels and network stability) within operational boundaries, and enabling the power system to remain in, or return to, a secure operating state. Based on this, an 'adverse effect' to the security of a transmission system occurs when it becomes less likely to maintain key system parameters within operational boundaries, or key system parameters are less likely to maintain within, or return to within, operational boundaries if the system is subjected to a credible contingency event.

Once we have identified whether the individual reliability and security impacts identified by Transgrid meet our definition of an 'adverse effect', we assess the combined impact to determine whether it is material.

Our second consideration is to determine whether the adverse effect on reliability and security was likely to occur if the consequences of the event (Contract Failure) were not rectified. We have considered likelihood of submitted adverse reliability/security effects on a

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[26] NER, Chapter 10 Glossary.

[27] Reliability Panel AEMC, Reliability and Security Frameworks in the NEM – An Explanatory Statement – Final Report, Australian Energy Market Commission, 21 May 2026.

case-by-case basis, taking into account the individual likelihoods of each impact and the overall likelihood.

Our third consideration, where Transgrid has established one or more adverse effects on reliability and security that were likely to occur, is whether the combined likely adverse effects constituted a 'material adverse effect'. We consider a material adverse effect would occur if a failure to rectify the adverse consequences of the event would be likely to have:

- a **significant adverse effect** on the reliability and security of the relevant transmission system
- considered **as a whole**, on a **forward-looking basis**.

Assessment of Transgrid's submitted impacts

In this section we set out our findings for each impact on security and reliability identified by Transgrid against our assessment approach.

Overall, our preliminary view is that an impact consisting solely of potential or likely increase in the cost of maintaining reliability and security, does not constitute an adverse effect on reliability and security, as we have defined it. Likewise, the potential or likely loss of reliability and security improvements, alone, is insufficient to satisfy Criterion 6. Transgrid has identified several reliability and security benefits of PEC. But Transgrid not being able to deliver the benefits of expected reliability and security above the standards set out in the NER or by the Reliability Panel is not the same as an adverse effect within the meaning of Criterion 6.

Compromised ESOO reliability

We do not agree with Transgrid's assertion of compromised ESOO reliability. We note AEMO and GHD have not identified any specific adverse reliability impacts if PEC is not delivered. We also note that AEMO identified an improvement to ESOO reliability as capacity gets release from PEC stage 2. We consider the potential loss of this improvement does not meet our definition of an adverse effect on reliability.

AEMO assesses future reliability adequacy in its annual ESOO. A reliability gap can arise in an AEMO forecast if there is insufficient supply within a region and from neighbouring regions to meet demand plus a reserve margin. This forecast is designed to inform the market and elicit a response to this gap and if a market response is not forthcoming then AEMO triggers reliability backstop arrangements, such as the Retailer Reliability Obligation.

This means that, even without PEC, reliability gaps forecast in the ESOO are unlikely to be realised because other mechanisms will activate to ensure that there are no adverse effects on reliability.

Even if a failure to rectify the Contract Failure was likely to lead to a forecast reliability gap in the ESOO, as submitted by Transgrid, this would not have meant the NSW or South Australian transmission systems would have become 'less likely to perform [their] functions adequately over [their] service [lives] under the expected operating conditions.'

South Australia reliability gap in 2026

We do not consider this submitted impact was a likely adverse impact on reliability.

At the time of the Contract Failure, there may have been a theoretical concern that a failure to complete PEC would have resulted in a reliability gap in South Australia in 2026. However, given AEMO's processes to forecast reliability gaps and elicit market responses, there was no reasonable basis to expect that this would have resulted in the South Australian transmission system becoming less likely to perform its functions adequately as expected.

This is illustrated by what happened in the following period. The 2025 ESOO published in August 2025 notified of a reliability gap in 2026. AEMO highlighted one driver of this gap was the retirement of Torrens Island. AEMO stated 'While the official closure date of 30 June 2026 was applied in this ESOO, on 13 August 2025 AGL reported an in-principle agreement with the South Australian Government to extend the operation of Torrens Island B for two years. Should such an extension become formalised, no reliability gaps would be forecast in these years'.[28] GHD's analysis acknowledged the 2025 ESOO update published in October 2025, which stated, *'*shows that reliability shortfalls predicted in the 2025 ESOO has been addressed through the delayed retirement of Torrens Island B'.[29]

This is consistent with AGL's submission, which noted that its retirement of Torrens Island B is tied to the commercial operation of PEC, so the potential reliability scenario identified by Transgrid is likely to be overstated.[30]

Reduced transfer capacity to NSW

We do not consider Transgrid's submitted impact constitutes an adverse effect on reliability. It is true that a failure to complete PEC would have reduced transfer capacity between the NSW and South Australian transmission systems. However, if reduced transfer capacity did eventuate, it would not have resulted in the transmission system of NSW and South Australia becoming less likely to perform its functions adequately over its service life under expected operating conditions.

As discussed above, AEMO assesses future reliability adequacy for all regions in its annual ESOO. This includes consideration of supply within a region and from neighbouring regions.

Compromised system security

We consider PEC elevating fault levels in South West NSW, which would improve system strength and enhance overall system security, reflects an improvement to system security. The absence of these benefits would not mean the NSW transmission system would become less likely to maintain key operational parameters within required boundaries.

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28 Australian Energy Market Operator, 2025 Electricity Statement of Opportunities, August 2025, p. 4.

29 Transgrid, Appendix 6a - Statement of facts - reliability and security impacts - GHD - 20251212, AER, 12 December 2025, p. i.

30 AGL, AGL Energy - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026, pp. 6–7.

This is consistent with AEMO's letter, which noted that 'Included in the commissioning of PEC stage 2 are synchronous condensers which are expected to improve system strength in NSW.'[31]

If system security were adversely affected, this would be identified by AEMO, which identifies any gap in forecast local system strength as part of the annual declaration of system strength requirements under 5.20C.1 of the NER. This triggers processes to rectify system strength issues. Further, there are mechanisms in place in NER clause 11.143.18 that allow for a system strength contingent project.

South Australia becoming electrically islanded

AEMO also identified a key benefit of PEC is to reduce the likelihood of South Australia becoming electrically islanded from the rest of the NEM following a non-credible loss of an interconnector.[32]

To better understand this issue, it is important to understand that the market is designed to only manage the impact of a credible contingency (such as the loss of a single line or single generator or single large load). Considering only credible contingencies defines the 'technical envelope' within which generation is dispatched and the market and power system operated. The technical envelope represents the operating limits applied to each element of the power system. AEMO operates the market using network constraints that ensure the power system is operated within this technical envelope to ensure that load shedding does not occur for a credible contingency.[33]

A non-credible contingency can include 2 near simultaneous credible contingencies.[34] If this were to occur, the power system is not expected to remain in a secure operating state using normal market mechanisms. Emergency control schemes, such as emergency under frequency load shedding, are required to prevent the power system from collapsing.[35]

Managing security in an island is achievable as AEMO currently manages this. It is also not the case that PEC will prevent the adverse effects of a non-credible contingency if one were to occur. The non-credible loss of either of the Heywood interconnector or PEC may also trigger the automatic operation of load shedding. We consider consumers may be better off with PEC reducing this likelihood. However, this is an economic benefit of PEC. The absence of PEC would not make the South Australian transmission system less likely to maintain key operational parameters within required boundaries.

31 AEMO, AEMO letter to Clare Savage AER RE - System security and reliability in relation to Project EnergyConnect 2026.06.01, AER, 1 June 2026, p. 1.

32 AEMO, AEMO letter to Clare Savage AER RE - System security and reliability in relation to Project EnergyConnect 2026.06.01, AER, 1 June 2026, p. 1.

33 Reliability Panel AEMC, Reliability and Security Frameworks in the NEM – An Explanatory Statement – Final Report, Australian Energy Market Commission, 21 May 2026, pp. 4–5, 22–23.

34 Reliability Panel AEMC, Reliability and Security Frameworks in the NEM – An Explanatory Statement – Final Report, Australian Energy Market Commission, 21 May 2026, pp. 4–5, 22–23.

35 Reliability Panel AEMC, Reliability and Security Frameworks in the NEM – An Explanatory Statement – Final Report, Australian Energy Market Commission, 21 May 2026, pp. 4–5, 22–23.

Consultation questions

7. Do stakeholders agree with our definition of reliability and security, and our definition of adverse effect on reliability and security? Please provide your reasons.
8. What are stakeholders' views on how 'likely' and 'materially' should be interpreted?
9. Has Transgrid made out that a failure to rectify the adverse consequences of the Contract Failure would have been likely to materially adversely affect the reliability and security of transmission systems in NSW or South Australia? Please provide your reasons, including your views on how we should assess this question.

3.2.3.3 Reliability and security, or reliability or security

Criterion 6 refers to 'materially adversely affect the reliability **and** security of the relevant transmission system'. The plain and ordinary meaning of this phrase arguably requires a likely adverse effect that both reliability and security be materially adversely affected.

Hypothetically, it may be possible for an event to occur that materially affects either reliability **or** security but not both. An electricity transmission network can be secure but not reliable, though a reliable network will usually be secure.

We consider this issue has no practical implication on our overall preliminary position because the impacts identified by Transgrid do not materially adversely affect security and reliability.

Our preliminary position on this part of the clause is to not require an adverse effect on both reliability and security. Rather, we consider the criterion will be satisfied if a failure to rectify the adverse consequences of an event would be likely to materially adversely affect the reliability **or** security of the relevant transmission system. We consider that our approach is consistent with AEMC's rule determination that stated that the reopener clause would allow a revenue determination to be reopened where an event occurred and, 'in response to that event, the TNSP must invest in a project without which network reliability or system security would be compromised'.[36] Having regard to this context, our preliminary position is that a better interpretation is to allow a reopener where either a material adverse effect on the reliability or a material adverse effect on the security of the relevant transmission system is established.

However, we recognise the significance in departing from the strict wording as set out in the NER and seek stakeholder feedback on this issue.

Consultation question

10. What are stakeholders' views as to whether we should interpret Criterion 6 to mean that TNSPs are required to establish adverse effects to reliability **and** security, or reliability **or** security?

[36] Australian Energy Market Commission, Rule determination – National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006 No. 18, November 2006, p. 61.

3.2.3.4 Relevant transmission system

Criterion 6 refers to the 'relevant transmission system'. The plain and ordinary meaning of Criterion 6 suggests that the relevant transmission system is the transmission system operated by Transgrid. In which case, the relevant transmission system means only the NSW transmission system.

If we were to apply this interpretation, the impacts identified by Transgrid relating to South Australia in section 3.2.3.2 would not be included in our assessment of Criterion 6.

In developing our preliminary position, we have applied Transgrid's proposal, which includes both NSW and South Australia. Transgrid noted that PEC is an interconnector between NSW and South Australia, so the impacts in both regions need to be considered.[37]

Our preliminary position is that since PEC is a cross-jurisdictional project, this should be factored into considering whether this should be part of Transgrid's relevant transmission system. This is because the 'relevant transmission system' includes connected transmission systems affected by a reopener event. We also consider the multiple transmission system interpretation would be more consistent with the purpose of the reopener clause and would better achieve the National Electricity Objective, which considers the national electricity system.

We consider if there is a significant event that would materially adversely affect the reliability and security of a connected transmission system, the relevant TNSP should participate in addressing it. This recognises the greater interconnected nature of the transmission system compared with when the reopener provision was first introduced.

We are seeking stakeholder views on how we should interpret the term 'relevant transmission system'.

Consultation questions

11. Do stakeholders consider relevant transmission system in Criterion 6 includes that of South Australia and NSW, or only NSW? Please provide your reasons.

[37] Transgrid, Attachment 6 - Rules Pre-conditions - Transgrid - 20260213, AER, February 2026, p. 19.

4 Other matters for stakeholder feedback

Stakeholders raised a matter relevant to our preliminary assessment of Transgrid's reopener application that extend beyond the focus areas of this consultation paper. This relates to the operation of the reopener criteria, particularly Criterion 3, Criterion 4 and clause 6A.7.1(f). This chapter outlines relevant stakeholder submissions, sets out our preliminary views and seeks further feedback on key issues relating to the interpretation and application of the criteria.

4.1 Proposed expenditure vs past expenditure

The JEC, in its submission to Transgrid's reopener application, raised several questions about capex reopeners under the NER. The JEC submitted that the prospective nature of the reopener clause 'only allows the AER to reopen a revenue determination for proposed future capital expenditure, not prior spending (including cost overruns)'.[38] Specifically, the JEC stated:

> NER Clause 6A.7.1(a)(3) and the words 'proposes to undertake' makes clear that the application must concern future expenditure proposed to respond to the event. It does not concern expenditure that has already taken place.
>
> Further consideration of the criteria requires assessment of that future looking expenditure – Clause 6A.7.1(a)(4) requires an assessment of the 'likely' impact of the required additional expenditure 'if undertaken'. Clauses 6A.7.1(a)(5) and (6) also explicitly look forward in time, not backwards.
>
> This operation of the Reopener Rule is consistent with the broader regulatory framework. The revenue determination process allows networks to make projections of their anticipated spending over the following 5-year period and seek prior AER approval for this forecast spending and their proposed tariff structures. This is forward looking to ensure there is a robust check on proposed spending before consumers are expected to bear the cost.[39]

If accepted, the JEC's submission could have implications for Transgrid's reopener application and for the operation of the capex reopener clauses in chapters 6 and 6A of the NER. In particular, the JEC's submission on proposed expenditure may affect our assessment of Criterion 3, Criterion 4, and, if all the reopener criteria are satisfied, the amounts that may be added to a reopened revenue determination under clause 6A.7.1(f) of the NER. We discuss these potential effects below.

38 JEC, Justice and Equity Centre - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026, p. 4.

39 JEC, Justice and Equity Centre - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026, p. 7.

4.1.1 Implications for Criterion 3

Criterion 3 requires that the 'TNSP proposes to undertake capital expenditure to rectify the adverse consequences of the event'. The JEC submitted that Transgrid's application does not satisfy Criterion 3, because the costs sought by Transgrid are 'not capital expenditure Transgrid proposes to undertake, but rather is capital expenditure already incurred'.[40] The JEC noted that while, on the date of its application, 'Transgrid may owe outstanding amounts under the ICC Contract… these are not proposed capital expenditure, rather they are already committed or expended costs.'[41]

We acknowledge the JEC's submission stating that the reopener criteria make it clear the application only concerns future expenditure. The JEC's 'proposed expenditure' submission goes to the heart of capex reopeners under chapters 6 and 6A of the NER. There are legitimate arguments for and against the JEC's view.

In the AEMC's rule determination, it explained that the reopener clause 'is intended to overcome the incentive for a TNSP to defer major vital investment'.[42] It can be argued that the JEC's 'proposed expenditure' view would frustrate this objective. Under the JEC's view, network service providers are required to get regulatory approval under an ex-ante capex reopener provision before making new expenditures responding to a reopener event. Where vital investments are deferred until a network service provider receives regulatory approval, it can reasonably be argued that the AEMC's goal would be frustrated.

On the other hand, the plain and ordinary meaning of several key words and phrases the AEMC chose to include in the reopener clause are consistent with it being an ex-ante mechanism. As highlighted by the JEC, these phrases include 'proposes to undertake', 'would be likely to' and 'if undertaken'. Rejecting the JEC's view requires that words be added to or substituted in the reopener clause. For example, Criterion 3 would need to be amended to read 'the Transmission Network Service Provider **has undertaken or** proposes to undertake capital expenditure to rectify the adverse consequences of the event'. Further, the intention of the AEMC to overcome the incentives for TNSPs to 'defer' vital investments could be understood in the context of the regulatory control period. Without capex reopeners, the deferral period could otherwise be up to 5 years.

Even if Criterion 3 is understood as excluding capex incurred prior to the reopener application, it does not necessarily follow that Transgrid's application would fail to satisfy Criterion 3. It appears that expenditure to rectify the Contract Failure, where it had not been incurred by the date of Transgrid's application, may constitute expenditure that Transgrid 'proposes to undertake'. This may be the case even where Transgrid was already contractually committed to undertake that expenditure. Companies can and often do choose not to make expenditures to which they are committed under contract.

40 JEC, Justice and Equity Centre - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026, p. 7.

41 JEC, Justice and Equity Centre - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026, p. 8.

42 Australian Energy Market Commission, Rule determination – National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006 No. 18, November 2006, p. 61.

Our preliminary view is that Transgrid's application would satisfy Criterion 3, as long as some expenditures to rectify the Contract Failure remained to be incurred on the date of the application. However, this is a finely balanced conclusion. We will carefully consider stakeholder submissions on this issue before arriving at our final position.

4.1.2 Implications for Criterion 4

Criterion 4 requires that the total of the capex required during the regulatory control period to rectify the adverse consequences of the event exceeds 5% of the value of the regulatory asset base for the relevant TNSP for the first year of the relevant regulatory control period. This criterion sets out the capex threshold that a TNSP must establish to support its reopener application.

It is possible the interpretation of Criterion 3 has implications for Transgrid's application under Criterion 4, particularly the materiality threshold.

If capex incurred in relation to the event prior to the reopener application should be excluded for the purposes of Criterion 3, consistency with the interpretation of Criterion 4 would suggest that only capex that had yet to be undertaken by Transgrid on the date of its application would count towards the 5% of regulatory asset base value materiality threshold. This is however, only one consideration relevant to the interpretation of this criterion.

Transgrid's application proceeds on the basis that past expenditures, from the date of the Contract Failure event are recoverable under the reopener clause. Accordingly, Transgrid does not specify how much of the $1.2 billion it seeks had been incurred on the date of its application and how much was yet to be spent. However, we agree with the JEC that it is a reasonable assumption that the majority of those costs may have already been incurred by Transgrid.[43] According to Transgrid's application, 5% of its regulated asset base value for 2023–24 is $457 million.[44] It is possible that the costs yet to be incurred by Transgrid may be lower than the 5% materiality threshold. In which case, Transgrid's reopener application may not satisfy Criterion 4.

We have not arrived at a preliminary view on this issue. We will carefully consider any additional information provided by Transgrid and stakeholder submissions before arriving at our final position.

4.1.3 Implications for cost recovery under paragraph (f)

If we determine that a TNSP's application has met all 7 reopener criteria, we must then revoke the applicant's revenue determination and substitute a new revenue determination with adjusted expenditure allowances, under clause 6A.7.1(f) of the reopener clause.

Under paragraph (f), we would adjust the capex forecast 'to accommodate the amount of such additional capital expenditure as the AER determines is appropriate (in which case the

43 JEC, Justice and Equity Centre - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026, pp. 7–8.

44 Transgrid, Attachment 6 - Rules Pre-conditions - Transgrid - 20260213, AER, February 2026, p. 15.

amount of that adjustment will be taken to be accepted by the AER under clause 6A.6.7(c))'.[45]

Based on our preliminary position on the interpretation of Criterion 3 and Criterion 4, we consider only capex yet to be undertaken at the time of a reopener application could be added to the applicant's capex forecast.

We have not undertaken this assessment for Transgrid's reopener application because our preliminary position is we are not satisfied that Transgrid's application meets the reopener criteria. We are seeking further views from stakeholders on our assessment approach.

Consultation question

12. What are stakeholders' views on whether the reopener criteria should apply to committed proposed capex, recovery of past capex, or to both? Please provide your reasons.

45 NER, clause 6A.7.1(f)(1).

5 Next steps

We invite stakeholders to provide submissions on this consultation paper by 1 October 2026. We will consider submissions received, together with any further information received from Transgrid, to inform our ongoing assessment and final decision.

In parallel with this consultation process, we are seeking further information from Transgrid on matters relating to our preliminary views. Our final decision is due within 40 business days of receiving Transgrid's response to this request.[46]

We will assess whether Transgrid's response and stakeholder submissions raise any complex or material issues requiring further consideration. If additional time is needed, we may extend the publication date by up to 60 business days.[47] In that event, we will provide written notice to Transgrid no later than 10 business days before the applicable deadline and we will update stakeholders through our website.

Our preliminary position, if made final, would not prevent Transgrid from recovering prudent and efficient PEC expenditure. We have discussed this below.

5.1 Ex post review process

Regardless of the decision we make on Transgrid's reopener application, Transgrid will be able to recover its prudent and efficient PEC expenditure. The outcome of this application determines the extent of Transgrid's PEC overspend and the amount subject to potential prudency and efficiency adjustments and incentive scheme payments. This will be a part of the process in making Transgrid's 2028–33 revenue determination.

As noted in Transgrid's application, the PEC capex overspend would trigger an ex post review. [48] Transgrid's proposed reopener capex is $365 million ($2022–23) less than its total increase in capex forecast for PEC.[49] If the reopener application is accepted, $365 million ($2022–23) could be subject to ex post adjustments in Transgrid's 2028–33 revenue determination. Any, or all, of the $1.2 billion ($2022–23) PEC capex overspends not approved through the reopener could also be subject to an ex post adjustment following our assessment of PEC prudency and efficiency. An ex post adjustment would result in the capex being excluded from the RAB and Transgrid would bear the full cost of the ex post adjustment.

The 2025 capital expenditure incentive guidelines set out our approach for undertaking a targeted ex post review. These guidelines enable Transgrid to propose to modify the application of the CESS for PEC capex. This mechanism allows us to take a holistic view of prudency and efficiency as part of our 2028–33 determination to determine the reasonable

46 NER, clause 6A.7.1(c)(2).

47 NER, clause 6A.7.1(f1).

48 Transgrid, [Project EnergyConnect - An application to reopen the 2023-2028 Revenue Determination - Transgrid - 20260213], AER, February 2026, p. 26.

49 Transgrid, [Project EnergyConnect - An application to reopen the 2023-2028 Revenue Determination - Transgrid - 20260213], AER, February 2026, p. 26.

sharing of the capex overspend between Transgrid and its customers after the capex has been incurred.

Some stakeholders considered that the ex post review and CESS is the appropriate framework to assess Transgrid's PEC overspend, instead of a reopener mechanism.[50] We cannot replace the reopener assessment with an ex post review and CESS assessment. A reopener serves a different purpose that extends beyond the prudency and efficiency of a typical capex assessment. We are required to determine Transgrid's application by applying the criteria in Clause 6A.7.1(a).

50 Gavin Dufty and Louise Benjmain, Gavin Dufty and Louise Benjamin - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026, p. 24; JEC, Justice and Equity Centre - Submission - Transgrid's application to reopen capex - Project EnergyConnect - April 2026, AER, April 2026, p. 9

A Full list of consultation questions

#	Relevant clause	Consultation questions	Section reference
1	6A.7.1(a)(1)	What are your views regarding whether Transgrid's Contract Failure fulfils the requirements of an event under Criterion 1 of the NER?	3.1.2.1
2	6A.7.1(a)(1)	How should we assess whether the event was beyond reasonable control?	3.1.2.2
3	6A.7.1(a)(1)	Was the Contract Failure event beyond Transgrid's reasonable control? Please provide your reasons.	3.1.2.2
4	6A.7.1(a)(1)	At what point in time should we assess reasonable foreseeability? Is it appropriate for us to assess reasonable foreseeability on the date of our final revenue determination or on an earlier date? Please provide your reasons.	3.1.2.3 – 3.1.2.4
5	6A.7.1(a)(1)	What is your view on whether the Contract Failure is an event that Transgrid could reasonably have foreseen?	3.1.2.4
6	6A.7.1(a)(1)	How should we assess whether an event could reasonably have been foreseen by a TNSP under Criterion 1?	3.1.2.4
7	6A.7.1(a)(6)	Do stakeholders agree with our definition of reliability and security, and our definition of adverse effect on reliability and security? Please provide your reasons.	3.2.3.2
8	6A.7.1(a)(6)	What are stakeholders' views on how 'likely' and 'materially' should be interpreted?	3.2.3.2
9	6A.7.1(a)(6)	Has Transgrid made out that a failure to rectify the adverse consequences of the Contract Failure would have been likely to materially adversely affect the reliability and security of transmission systems in NSW or South Australia? Please provide your reasons, including your views on how we should assess this question.	3.2.3.2
10	6A.7.1(a)(6)	What are stakeholders' views as to whether we should interpret Criterion 6 to mean that TNSPs are required to establish adverse effects to reliability **and** security, or reliability **or** security?	3.2.3.3
11	6A.7.1(a)(6)	Do stakeholders consider relevant transmission system in Criterion 6 includes that of South Australia and NSW, or only NSW? Please provide your reasons.	3.2.3.4

#	Relevant clause	Consultation questions	Section reference
12	6A.7.1(a)(3), 6A.7.1(a)(4) & 6A.7.1(f)	What are stakeholders' views on whether the reopener criteria should apply to committed proposed capex, recovery of past capex, or to both? Please provide your reasons.	4.1.3

Glossary

Term	Definition
AER	Australian Energy Regulator
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
capex	Capital expenditure
CESS	Capital expenditure sharing scheme
EPC	Engineering, procurement and construction
ESOO	Electricity Statement of Opportunities
ISP	Integrated System Plan
NER	National Electricity Rules
PEC	Project EnergyConnect
RAB	Regulatory asset base
SEJV	Secure Energy Joint Venture
TNSP	Transmission network service provider