



Letter from Matthew ■ Brooks

28 September 2026

To: The Australian Energy Regulator (AER)

Email: aer inquiry@aer.gov.au.

AER preliminary position on Transgrid's application to reopen the 2023-2028 transmission revenue determination for Project Energy Connect

Introduction

My interest in the AER's preliminary position on Transgrid's application arises from its relevance to my independent research into energy policy and planning, particularly the economic regulation of monopoly network service providers.

Regarding publication, I do not request any redactions and consent to my submission being published in full, including my name and contact details.

Executive Summary

At the outset, I wish to acknowledge my respect for Transgrid and its staff.

I support the AER's preliminary position on Transgrid's application. The AER published that preliminary position on 1 September 2026 and invited submissions by 1 October 2026.

Clause 6A.7.1 establishes a series of requirements that must be satisfied before a revenue determination may be reopened. Relevantly, these include an event beyond the TNSP's reasonable control that could not reasonably have been foreseen, proposed capital expenditure to rectify its adverse consequences, and the specified consequences for reliability and security.

Accordingly, the fact that PEC remains economically beneficial does not itself establish an entitlement to reopen the determination. The relevant question is whether the requirements of clause 6A.7.1 are satisfied on the evidence.

In my view, the principal difficulties with the application are:

1. the evidence must establish that the **event itself**, rather than the contributing external circumstances, was beyond Transgrid's reasonable control;
2. Criterion 1 expressly captures an event "of a similar kind", making the foreseeability inquiry broader than whether the precise Contract Failure could have been predicted;
3. Criterion 6 requires the statutory consequences for "**reliability and security**", not merely loss of economic benefits; and
4. clause 6A.7.1(a)(3) expressly refers to capital expenditure that the TNSP "**proposes to undertake**", creating a substantial textual issue concerning expenditure already incurred.

Questions 1–3: Event and reasonable control

The starting point should be the language of Criterion 1.

Clause 6A.7.1 expressly provides that an "event" may include **a series of events or a state of affairs**. The application therefore cannot be rejected merely because Contract Failure comprises accumulated circumstances rather than a single occurrence.

The stronger issue is whether the identified event satisfies the separate requirement of being "**beyond the reasonable control**" of Transgrid.

That formulation requires attention to reasonable control, not absolute control. Accordingly, the fact that Transgrid could not control particular external circumstances does not necessarily establish that the resulting Contract Failure was beyond its reasonable control.

It is agreed that the floods, pandemic and labour shortages identified in the Transgrid application were beyond their control, however the failure of the key contract for PEC is a different matter and deserves careful analysis.

The AER should distinguish carefully between:

- external causes or contributing circumstances;
- the contractual and commercial consequences of those circumstances; and
- the extent to which those consequences could reasonably have been mitigated through procurement, contractual protections, counterparty monitoring and contract administration.

The relevant question is therefore not whether Transgrid could prevent every contributing circumstance, but whether it has demonstrated that the claimed **event**, as properly identified, remained beyond its reasonable control.

On the presently available evidence, I do not consider that burden has been sufficiently discharged.

Questions 4–6: Foreseeability

Criterion 1 contains an important additional qualification that should receive greater emphasis.

It does not ask only whether the precise event was foreseeable. It expressly asks whether the occurrence of **that event “or of an event of a similar kind”** could reasonably have been foreseen at the time the revenue determination was made.

This language materially broadens the inquiry.

It is therefore unnecessary to establish that Transgrid should have predicted the precise timing, contractual mechanism or sequence culminating in Contract Failure. The appropriate question is whether a prudent TNSP could reasonably have foreseen an event of a similar kind arising from the circumstances then known.

This distinction is important because otherwise Criterion 1 could effectively be satisfied whenever the precise manifestation of a recognised project risk differed from what had previously been anticipated.

The AER should therefore examine the relevant risks prospectively and collectively rather than ask whether the exact Contract Failure that subsequently occurred was predictable.

Questions 7–10: Criterion 6

Criterion 6 should likewise be applied according to its actual statutory language.

Clause 6A.7.1(a)(6) requires that 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”**.

This creates several distinct requirements:

- there must be adverse consequences of the qualifying event;
- failure to rectify those consequences must produce the relevant effect;
- that effect must be **likely**;
- it must be **materially adverse**; and
- it must concern **reliability and security** of the relevant transmission system.

Accordingly, demonstrating that PEC provides significant market, economic or future system benefits does not, without more, establish Criterion 6.

For Question 10, I would retain the words used by the Rule, “**reliability and security**”, rather than substitute “reliability or security”, unless the AER identifies a sufficient interpretative basis for doing so.

Question 12: Past expenditure

Clause 6A.7.1(a)(3) requires that the TNSP “**proposes to undertake capital expenditure to rectify the adverse consequences of the event**”.

The words “proposes to undertake” are prospective. They should be given substantive meaning.

Expenditure already incurred when the application is made cannot readily be described, in ordinary language, as expenditure the TNSP still “proposes to undertake”.

The surrounding provisions reinforce the prospective language. Clause 6A.7.1(a)(4) concerns expenditure which, “**if undertaken**”, is reasonably likely to produce specified consequences for actual capital expenditure.

The AER should therefore distinguish carefully between:

1. expenditure already incurred;
2. expenditure contractually committed but not yet incurred; and
3. genuinely proposed future expenditure.

At minimum, the statutory text creates a substantial obstacle to treating the reopener as a general mechanism for retrospective recovery of expenditure already undertaken.

Additional Comments

In addition to my responses to the consultation questions, I have the following comments.

1. The reported Market Benefits of PEC

Transgrid reports Gross Market Benefits of \$4.2 billion and Net Market Benefits of \$964 million (present value). These estimates are derived from modelling undertaken during 2024 (see below for EY's limitations and reservations) . Given the significance of these benefits to the proposition that consumers remain better off notwithstanding the substantial increase in project costs, the AER should test whether subsequent changes in key modelling assumptions, project timing and inter-project dependencies have materially affected the estimated benefits.

Accordingly, Transgrid should be required to **update the PEC market-benefit modelling using the assumptions and inputs in the 2026 ISP and IASR, together with current project timings and dependencies, and disclose the resulting Gross and Net Market Benefits before the AER reaches its final decision.**

This would provide the AER and stakeholders with a **like-for-like, contemporary assessment of whether PEC remains net beneficial at its current forecast cost**, rather than requiring that conclusion to rest on modelling undertaken in 2024.

Extract from the EY letter to Transgrid February 2025.

"Our conclusions are based, in part, on the assumptions stated and on information provided by Transgrid on and before 24 November 2024. The modelled outcomes are contingent on the collection of assumptions as agreed with the Client and no consideration of other market events, announcements or other changing circumstances are reflected in this Report. Neither Ernst & Young nor any member or employee thereof undertakes responsibility in any way whatsoever to any person in respect of errors in this Report arising from incorrect information provided by Transgrid."

Those qualifications do not establish (sufficiently or necessarily) that the 2024 modelling is unreliable. They do, however, reinforce the case for testing whether material changes in assumptions, market developments, project timing or dependencies since the modelling was undertaken affect the benefits now relied upon.

2. Market benefits should not be treated as project contingency

Gross and Net Market Benefits serve a fundamentally different purpose from project funding or contingency. They are modelled estimates of the economic benefits expected to arise from an investment; they are **not cash flows available to Transgrid, nor a reserve against which project cost overruns can be absorbed.**

The fact that modelled benefits may continue to exceed increased project costs should therefore not, of itself, establish that those additional costs are prudent, efficient or recoverable from consumers.

The AER should maintain a clear analytical separation between (i) whether PEC continues to deliver positive net market benefits and (ii) whether the additional expenditure for which Transgrid seeks recovery satisfies the relevant regulatory requirements.

Using residual market benefits as an implicit tolerance for escalating project costs would risk conflating the economic case for the investment with the separate regulatory question of whether additional expenditure is recoverable from consumers.

Conclusion

The decisive issue is not whether PEC should be completed, whether it remains economically beneficial, or whether Transgrid encountered difficult external circumstances.

The issue is whether Transgrid has established the conditions that the NER makes prerequisites to reopening its revenue determination.

Those requirements should be applied individually and cumulatively. Failure to establish any necessary criterion is sufficient to prevent reliance on the reopener mechanism, irrespective of PEC's wider economic merits.

PEC can simultaneously remain economically worthwhile and yet fail to satisfy the regulatory test governing recovery of additional expenditure.

However, before relying upon PEC's continuing economic benefits in reaching its final decision, the AER should require a contemporary assessment of Gross and Net Market Benefits using current assumptions, project timings and dependencies.

Positive net market benefits are not a regulatory licence for cost escalation.

For those reasons, I support the AER's preliminary position.

Yours sincerely,



Matthew Brooks

Email: 

Mobile: 

