

AER Preliminary Position on Transgrid's Application to Reopen the 2023–28 Transmission Revenue Determination for Project EnergyConnect - Submission

When the regulator is forced to take its own monopoly network operator to court for systemic failures, it proves the entire system lacks honesty and is broken beyond repair.

AER expects the public to blindly accept new trigger thresholds for a network that is literally being sued by the government for failing to meet basic compliance standards.

An immediate moratorium on all of Predatory TransGrid's flawed experimental failures is essential as they are definitely not acting in Australia's best interests or for the greater good.

Responses to the AER's 12 Consultation Questions

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

No.

Transgrid's "Contract Failure" should not be accepted as a sufficiently defined qualifying event under Criterion 1.

The AER's own preliminary position is that Transgrid has not demonstrated that the proposed Contract Failure is a valid event, including because Transgrid's definition incorporates matters that had not occurred at the relevant time.

The NER requires an event to have occurred; a future or hypothetical consequence cannot simply be incorporated retrospectively into the event.

The extraordinary circumstances surrounding PEC make strict scrutiny essential.

This is a totally unnecessary, CCP reliant, RenewaBULL interconnector involving critical electricity infrastructure, outrageous cost escalation and an enormous additional claim against consumers.

It should not be possible to construct a broad retrospective "Contract Failure" encompassing a series of commercial, contractual and project-management consequences and then transfer the resulting financial exposure to captive consumers.

The AER should require Transgrid to identify, separately and precisely:

- each alleged event;
- when it occurred;
- what Transgrid knew at the time;
- what Transgrid did in response;
- what expenditure directly resulted;
- what expenditure remains prospective; and
- why each consequence was unavoidable.

Until that causal chain is factually demonstrated, Criterion 1 has not been established.

2. How should we assess whether the event was beyond reasonable control?

The test should be applied to **Predatory Transgrid** as it **has consistently failed to be a prudent, competent and efficient regulated transmission business**, not merely to the contractor whose financial difficulties ultimately affected project delivery.

The fact that a contractor may encounter financial or commercial difficulties does not automatically make the consequences beyond Transgrid's reasonable control.

The assessment should examine Transgrid's:

- contractor selection and due diligence;
- financial-risk assessment;
- EPC contract structure;
- allocation of project risks;
- performance monitoring;
- contractual protections;
- contingency arrangements;
- intervention and mitigation;
- procurement decisions;
- governance and oversight; and
- decisions once warning signs emerged.

This is particularly important because Transgrid says its Board recognised on **25 October 2023** that the PEC construction would not be completed by the existing Secure Energy Joint Venture under the existing EPC arrangement.

The regulator must therefore distinguish between an event genuinely outside Transgrid's reasonable control and consequences arising from **risks that a sophisticated regulated monopoly should have identified, managed or mitigated**.

Foreign ownership and strategic relationships do not themselves prove that an event was within Transgrid's control. But they make **ownership, governance, decision-making and supply-chain transparency relevant matters for investigation**, particularly because PEC involves critical national infrastructure.

3. Was the Contract Failure event beyond Transgrid's reasonable control?

Transgrid has not demonstrated this sufficiently.

The AER should maintain its preliminary position forever as Predatory Transgrid cannot provide compelling evidence establishing that the relevant failure was genuinely beyond its reasonable control.

A contractor's financial distress cannot simply be converted into a consumer liability.

The AER should investigate whether Transgrid:

1. properly assessed the contractor's financial capacity;
2. adequately allocated and monitored risk;
3. received warnings before the eventual failure;

4. had contractual remedies available;
5. could have intervened earlier;
6. could have mitigated the consequences;
7. could have structured the project differently; and
8. made prudent decisions after the contractor's difficulties became apparent.

There is an additional transparency issue.

ElectraNet, the South Australian PEC proponent, confirms that **45.89% of ElectraNet is owned by State Grid International Development Asia and Australia Holding Company Limited, the international arm of the State Grid Corporation of China.**

That makes it entirely reasonable to require full disclosure of the governance, contractual, financing, technology and procurement relationships surrounding this interconnector.

The AER should not approve additional consumer funding while material questions concerning project governance and strategic infrastructure ownership remain unanswered.

4. At what point should reasonable foreseeability be assessed?

The appropriate date should be the date of the **AER's final 2023–28 revenue determination**, rather than allowing Transgrid to select an earlier date that produces a more favourable hindsight position.

The relevant question is what a prudent TNSP could reasonably have foreseen when the regulatory decision was actually made.

Transgrid argues for 2 December 2022, when it submitted its revised proposal.

As the AER is seeking views on this issue,

the assessment should include information reasonably available at the relevant time concerning:

- contractor financial health;
- construction risks;
- procurement risks;
- supply-chain risks;
- contractual risks;
- cost escalation;
- project complexity;
- alternative delivery arrangements;
- and risks associated with PEC's design and implementation.

A regulated monopoly should not be permitted to rely on an artificially early date to exclude information that was available before the AER actually determined the revenue allowance.

5. Could the Contract Failure reasonably have been foreseen?

On the evidence presently available, Transgrid has not established that it could not reasonably have been foreseen.

The AER records that Transgrid's Board recognised in October 2023 that the existing contractor would not complete PEC under the existing EPC arrangement.

That does not prove the eventual failure was foreseeable in December 2022.

But neither does it establish that it was unforeseeable.

The AER should demand documentary evidence concerning what Transgrid knew about:

- the contractor's financial condition;
- projected losses;
- contractual exposure;
- construction performance;
- supply-chain problems;
- cost escalation;
- and emerging delivery risks.

The AER should also examine whether the risks were of a **similar kind** to risks that a competent TNSP should reasonably have anticipated, rather than asking only whether the precise eventual sequence of events could have been predicted.

6. How should foreseeability be assessed?

Foreseeability should be assessed objectively against the information reasonably available to a prudent TNSP at the relevant decision date.

The test should not be:

Could Transgrid predict this exact chain of events?

It should be:

Could a competent transmission network service provider reasonably have anticipated an event of this kind and made appropriate contractual, financial and project-management provision for it?

That requires consideration of the project's known risks, including contractor solvency, construction complexity, procurement, supply chains, contractual dependencies and cost escalation.

It should also include material information concerning the strategic environment in which PEC was being developed.

This does **not** mean that Chinese ownership automatically establishes foreseeability.

It means that the AER should not artificially restrict the evidence available to it when examining the prudence and foreseeability of risks associated with critical electricity infrastructure.

Criterion 6 — Reliability and Security

7. Do stakeholders agree with the AER's definition of reliability and security and adverse effect?

Only with an important qualification: the definition of security should be sufficiently broad to encompass the resilience and security of critical electricity infrastructure.

Electricity-system security cannot sensibly be reduced to whether electricity is flowing through a transmission line under normal conditions.

For critical infrastructure, security should also encompass the ability of the system to withstand:

- equipment failure;

- extreme weather;
- cyberattack;
- supply-chain disruption;
- component defects;
- loss of critical technology;
- communications failures;
- operational contingencies;
- geopolitical disruption;
- and failures of interconnected infrastructure.

This is particularly relevant where an interconnector becomes an increasingly incorporated component of the NEM.

The AER itself foolishly promotes PEC as a reliable, affordable, safe, secure interconnector between NSW and South Australia despite the glaringly obvious detrimental consequences of CCP reliance and control that completely compromises Australia's Electricity Grid.

The AER should therefore require evidence rather than accepting general claims that PEC necessarily increases security.

A network can acquire new dependencies as well as new capabilities.

The AER should assess both.

8. How should "likely" and "materially" be interpreted?

The words should require **credible, evidence-based and quantitatively supported conclusions**, rather than broad assertions about the strategic importance of PEC.

"Likely" should mean more than theoretically possible.

"Materially" should mean a genuinely significant adverse consequence, not a marginal or speculative effect.

Transgrid should therefore be required to provide transparent modelling showing:

- the relevant counterfactual;
- the probability of the alleged adverse event;
- the magnitude of the consequence;
- the duration;
- the affected geographic area;
- alternative means of maintaining reliability/security;
- and the incremental benefit attributable specifically to the additional expenditure claimed.

The AER should also test whether claimed security benefits are offset by new dependencies or vulnerabilities.

In particular, the regulator should require appropriate assessment of:

- critical component provenance;
- cybersecurity;
- communications and control systems;
- foreign supply-chain dependence;
- equipment certification;

- redundancy;
- and the consequences of failure of PEC itself.

9. Has Transgrid established that failure to rectify the Contract Failure would likely materially adversely affect reliability and security in NSW or South Australia?

No.

This is the strongest basis for rejecting the reopener.

The AER's preliminary position is already that Transgrid has not demonstrated that failure to deliver, or materially delaying, PEC would likely materially adversely affect the reliability or security of the relevant transmission system.

Transgrid should not be permitted to substitute broad statements about the benefits of PEC for proof that the **specific additional expenditure claimed under the reopener is necessary to avoid a qualifying material adverse effect**.

There is a further reason for demanding rigorous analysis.

PEC is an interconnector involving a company in which **State Grid Corporation of China's international arm owns 45.89% of ElectraNet**. ElectraNet itself confirms this ownership.

Separately, China's State Grid and Malaysia's Tenaga Nasional Berhad have publicly pursued cooperation involving grid technology and regional interconnection in the context of the ASEAN Power Grid.

Therefore, it is entirely reasonable to demand that **national-security, cybersecurity, ownership, supply-chain and strategic-dependency risks be assessed alongside claimed reliability benefits**.

The AER should not assume that greater interconnection automatically means greater security. It must demonstrate it.

10. Should Criterion 6 require reliability and security, or reliability or security?

The AER should **not broaden the reopener test beyond what the NER permits merely to facilitate Transgrid's application**.

The wording of Criterion 6 refers to a material adverse effect on "the reliability and security" of the relevant transmission system.

If the AER considers that "or" is the legally correct interpretation, that interpretation must be based on the NER and its proper legal context — not on a desire to make Transgrid's case easier to establish.

In either event, the threshold must remain substantial.

A finding that PEC provides some reliability or security benefit should not be confused with establishing that **failure to rectify the Contract Failure would likely materially adversely affect the system**.

Those are different propositions.

The AER should therefore retain a high evidentiary threshold and require Transgrid to demonstrate the specific material adverse consequence contemplated by Criterion 6.

11. Does the relevant transmission system include South Australia and NSW, or only NSW?

It should include both NSW and South Australia — but this should increase scrutiny rather than automatically strengthen Transgrid's case.

PEC is inherently cross-jurisdictional.

The AER itself notes that PEC is an interconnector between NSW and South Australia and says the cross-jurisdictional nature of the project supports considering connected transmission systems.

If the AER considers the broader connected system, it must assess **both benefits and risks across that system.**

It should therefore examine:

- NSW reliability;
- South Australian reliability;
- interconnector dependence;
- system-security consequences
- treacherous reliance on CCP's State Grid Corporation of China (ElectraNet) and Tenaga Nasional Berhad (Dinawan/Spark Infrastructure's Spark Renewables)
- contingency arrangements;
- transmission-loop effects;
- cyber risks;
- equipment failure;
- supply-chain vulnerabilities;
- and the consequences of PEC itself becoming unavailable.

The broader the relevant transmission system, the greater the obligation to conduct a genuinely comprehensive security assessment.

Transgrid should not be permitted to invoke the benefits of national interconnection while ignoring the risks created by increased interdependence.

12. Should the reopener apply to committed proposed capex, recovery of past capex, or both?

It should not be used to retrospectively socialise Transgrid's past cost overruns.

This is an exceptionally important distinction.

The AER itself acknowledges that the wording of the NER contains forward-looking expressions including "**proposes to undertake**", "**would be likely to**" and "**if undertaken**", and recognises legitimate arguments that the reopener is an ex-ante mechanism.

The AER also notes that the majority of Transgrid's claimed \$1.2 billion may already have been incurred and that \$457 million represents 5% of Transgrid's 2023–24 RAB.

Therefore:

- past expenditure should not automatically qualify;
- already-incurred cost overruns should not be converted retrospectively into approved forecast capex;
- committed expenditure should not automatically qualify merely because Transgrid has contractual obligations;
- only genuinely prospective expenditure satisfying all applicable criteria should be considered;
- and any expenditure ultimately considered for inclusion must be rigorously assessed for prudence, efficiency, necessity and compliance.

The AER should also require a **complete breakdown of the \$1.2 billion**, identifying:

1. expenditure already incurred;
2. expenditure contractually committed;
3. expenditure yet to be committed;
4. expenditure yet to be undertaken;
5. the purpose of each expenditure item;
6. the contractor/supplier receiving it;
7. the contractual basis;
8. the engineering justification; and
9. the evidence that the expenditure is necessary.

The AER should not approve a retrospective mechanism by which a regulated monopoly can make expenditure decisions first and seek to transfer the resulting financial consequences to captive consumers afterwards.

Overall conclusion

The AER's own preliminary position is that Transgrid has **not demonstrated Criteria 1 and 6**, and the AER must reject the reopener if all seven criteria are not satisfied.

The documented **45.89% State Grid ownership of ElectraNet** absolutely warrants **greater scrutiny of ownership, governance, strategic dependency, cybersecurity, procurement, technology and national-security risks** when the AER is being asked to approve another approximately \$1.2 billion of consumer-funded expenditure.

The AER should therefore require evidence, not assumptions.

No automatic cost recovery.

No retrospective socialisation of overruns.

No vague definition of "Contract Failure".

No unsupported assertion that more interconnection automatically means more security.

No exclusion of foreign ownership, cybersecurity and supply-chain risks from the security assessment.

And no reopening of the revenue determination unless every NER criterion is demonstrably satisfied.

As all seven reopener criteria have clearly not been met by Predatory TransGrid, AER must reject the application.