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Thursday, 15 October 2026

Ms Clare Savage
Chair
Australian Energy Regulator
Level 17 Casselden
2 Lonsdale Street
MELBOURNE VIC 3000

Dear Clare,

Project EnergyConnect – AER’s Consultation Paper

Transgrid welcomes the opportunity to respond to the AER’s consultation paper on our Application to reopen the 2023–28 transmission revenue determination for Project EnergyConnect (**PEC**). As the AER acknowledges in its consultation paper, the AEMC introduced the reopener provisions in 2006 with the express intention of ensuring that a revenue determination could be reopened if an unforeseen and uncontrollable event occurred that exposed consumers to the risk that an important network investment may be deferred. While the reopener provisions are not commonly used, they are an essential element of the regulatory framework. Accordingly, they must be applied to give effect to the AEMC’s intention, and in a manner that will (or is likely to) contribute to the achievement of the National Electricity Objective.

Transgrid is concerned that the AER’s proposed application of the reopener provisions, as set out in the consultation paper, is inconsistent with the AEMC’s intention in introducing those provisions and the National Electricity Objective. The AER’s proposed application would also have the effect of incentivising TNSPs to act in a way which would detrimentally affect consumers and investment in Australian energy infrastructure, including as follows:

- TNSPs will be incentivised to delay taking action in response to complex events until there is a potentially catastrophic end point, with consumers facing adverse consequences from higher project costs and longer delays to major projects. This incentive arises from the AER’s preliminary position that the *‘TNSP’s view of what may happen in the future cannot be included in an event definition’*.
- TNSPs will be incentivised to minimise capital expenditure in response to an event until a reopener Application is lodged, with consumers facing adverse consequences from higher project costs and longer delays resulting from delayed capital expenditure. This incentive arises from the AER’s preliminary position that *‘only capex yet to be undertaken at the time of a reopener application could be added to the applicant’s capex forecast’*.
- TNSPs will be incentivised to make late submissions in a revenue determination up to the date the AER publishes its final decision, which will undermine the mandated Rules process for revenue determinations and effective stakeholder consultation, to the detriment of consumers. This incentive arises from the AER’s position that *‘the relevant date for assessing foreseeability is the day of our final revenue determination’*.

- TNSPs will be incentivised to defer delivery of projects that materially reduce reliability and security risks to the network and end users, relying on market responses to address these risks, regardless of the detriment to consumers as additional costs are incurred to deploy less efficient solutions. This incentive arises from the AER's preliminary position that the projected reliability and security gaps if PEC did not proceed are *'unlikely to be realised because other mechanisms will activate to ensure that there are no adverse effects on reliability'*, and mechanisms including *'emergency under frequency load shedding'* could be deployed to address security shortfalls.

From a market and industry-wide perspective, Transgrid is mindful that the successful delivery of the energy transition at the lowest cost to consumers depends on investors regarding the regulatory framework in Australia as stable and low risk. We are concerned that the outcomes of the AER's proposed approach to the reopener provisions, as summarised above, would not serve the long-term interests of consumers or promote the National Electricity Objective.

In contrast, the long-term interests of consumers would be promoted by the AER applying the reopener provisions as they were intended to operate by the AEMC, and by responding positively and objectively to Transgrid's Application, which is further explained and supported by the additional evidence provided in this submission.

A further important context for the AER's reconsideration of Transgrid's Application is that PEC has now been successfully delivered as a result of the very significant efforts by Transgrid in response to Contract Failure, which occurred almost 3 years ago. While it is disappointing that the event the subject of Transgrid's Application has meant that PEC could not be completed within the capital expenditure allowance set in May 2021, it has been delivered at costs that compare extremely favourably with other major transmission projects. While projects such as HumeLink, VNI West and Western Renewables Link are expected to cost in the range of \$13-\$17 million per route kilometre, PEC will be delivered at approximately \$5.5 million per route kilometre.

While project benchmarking has its limitations, the significant achievement in delivering PEC at a fraction of the cost of other major transmission projects provides important context for the Application and the quality of Transgrid's decision-making in response to Contract Failure.

In particular, if Transgrid had enforced the EPC contract to the point where the project stalled and legal proceedings commenced, consumers would be facing a substantially higher cost and a significantly delayed project. As explained in the Application, Transgrid's assessment of the options in response to Contract Failure and its decision to maintain project continuity have contributed to a positive overall outcome for consumers.

Now that PEC has been delivered, it would be timely and appropriate for the AER to fully assess the reopener Application so that the costs of the investment can be included in the regulatory asset base as soon as practicable.

Closing comments

While the AER has observed in its consultation paper that the reopener provisions raise *'complicated questions of legal interpretation and regulatory practice for which there are no precedents'*, Transgrid remains of the view that the correct application of the reopener provisions results in the AER allowing Transgrid's Application.

To further assist the AER, Transgrid has obtained opinions from experienced senior legal counsel, Neil Young KC and Tom Clarke, as well as Charles Popple, former AEMC Commissioner and Chair of the Reliability Panel, to grapple with the legal and regulatory issues raised in the consultation paper. These opinions are provided with Transgrid's submission to the AER's Information Request #005 and a supplementary letter from GHD concerning the material adverse reliability and security effects which would be felt by industry and

consumers if PEC was not delivered. Transgrid has engaged with AEMO and provided a copy of the GHD letter. AEMO confirmed that it did not have any concerns or issues with GHD's analysis and that there were no misquotes of AEMO's reports or material in the GHD letter.

Transgrid welcomes the opportunity to work constructively through the issues raised in the consultation paper and this submission. We remain committed to assisting the AER in reaching a decision that applies the reopener provisions in a practical and effective way, supports efficient outcomes for consumers, and provides appropriate confidence for the investment needed to deliver actionable ISP projects and support the energy transition.

If you would like to discuss this submission in further detail, please do not hesitate to contact me.

Yours sincerely,



Brett Redman
Chief Executive Officer