

# Explanatory Statement

Revenue determination guideline for NSW  
contestable network projects

August 2022

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# 1 About this document

## 1.1 Introduction

This explanatory statement accompanies the Australian Energy Regulator's (AER) final Revenue determination guideline for NSW contestable network projects (Guideline).

The AER exists to ensure energy consumers are better off, now and in the future. We are the economic regulator for electricity and gas networks in every state and territory in Australia except Western Australia. We regulate electricity networks under the National Electricity Law (NEL) and National Electricity Rules (NER) and natural gas pipelines under the National Gas Law and the National Gas Rules (NGR).

We are also a Regulator under the NSW Electricity Infrastructure Investment Act 2020 (EII Act) and regulations. A key function in this role is to apply a Transmission Efficiency Test and make revenue determinations for Network Operators authorised by the Consumer Trustee or authorised (or directed) by the NSW Energy Minister to carry out network infrastructure projects (under Part 5 of the EII Act). This function is the subject of the Guideline.

Section 38(5) of the EII Act requires the Regulator to publish guidelines on its website about the Transmission Efficiency Test to be used to calculate the prudent, efficient and reasonable capital costs of network infrastructure projects. Clause 47 of the EII Regulations also requires the AER to publish on its website guidelines about the exercise of its functions more broadly under Part 5 of the EII Act, which includes making (and remaking) revenue determinations. We have combined these two aspects into a guideline relating to contestable network infrastructure projects (this Guideline) and a separate guideline relating to non-contestable network infrastructure projects (which is being developed).

We published a draft Guideline in May 2022 and held an online public forum to allow stakeholders the opportunity to ask questions about the draft Guideline before submissions were due. We received six submissions on the draft Guideline, including one confidential submission.

A summary of the submissions received on the draft Guideline, and the AER's response, is in section 3 of this explanatory statement.

## 1.2 Role of the Guideline

A Network Operator may be selected to carry out a network infrastructure project in one of two ways:

1. Under a contestable process, a Network Operator is selected through a competitive assessment process conducted by the Infrastructure Planner.
2. Under a non-contestable process, a Network Operator is selected directly by the Infrastructure Planner.

A contestable process may also be used to select a person who will assist a Network Operator in carrying out a network infrastructure project.

The regulatory process varies significantly between the contestable and non-contestable processes. However, both processes provide consumer protections by seeking to limit the costs for carrying out network infrastructure projects to an efficient level. The contestable process

relies on the Infrastructure Planner conducting a competitive assessment process to reveal prudent, efficient and reasonable costs, while the non-contestable process is subject to a more typical regulatory assessment by the AER.

This Guideline focuses on how we will undertake our regulatory role under the contestable process. It discusses our assessment of the Infrastructure Planner's procurement strategy and competitive assessment process, and our approach to making a revenue determination for Network Operators based on the outcomes of the competitive assessment process (including how the Transmission Efficiency Test is applied under the contestable framework).

### **1.3 Next steps**

The final Guideline makes reference to three supporting guidelines that will apply to Network Operators under the contestable framework. These are the:

- EII Confidentiality guideline
- EII Cost allocation guideline
- EII Ring-fencing guideline.

These supporting guidelines will be established under the EII framework, but modelled on the confidentiality, cost allocation, and ring-fencing guidelines that apply to Transmission Network Service Providers under the NER. Modifications will be made to the NER equivalent guidelines to reflect differences between the EII and NER frameworks. The AER is developing draft guidelines for consultation.

The AER has also commenced work on its Revenue determination guideline for NSW non-contestable network projects. That guideline will cover the AER's application of the Transmission Efficiency Test and the exercise of its functions more broadly under Part 5 of the EII Act in respect of Network Operators selected by the Infrastructure Planner under a non-contestable process. The process will substantially replicate Chapter 6A of the NER that applies to the regulation of Transmission Network Service Providers. We will release our draft guideline on the non-contestable process for consultation later this year.

## 2 Overview of changes to the final Guideline

This final Guideline takes into account stakeholder submissions and engagement on our draft Guideline. We have also consulted with the NSW Office of Energy and Climate Change (OECC) and the Infrastructure Planner in developing the final Guideline.

Our draft guideline was produced on the basis of policy positions developed by the OECC and published at the same time as our draft Guideline.<sup>1</sup> The policy positions were indicative of the regulations the OECC expected to write to support the Guideline. Our final Guideline includes changes from the draft to reflect differences between the published policy positions in March 2022 and the final regulations made in July 2022 by the OECC to support the contestable framework.

The key changes from the draft Guideline are:

- 1. Additional wording to reflect that a competitive assessment process may be used to not only select a Network Operator but also to select a person who will assist a Network Operator in carrying out a network infrastructure project.**

Where a competitive process is used to directly select a Network Operator, we would generally expect all material components of a project to be agreed through the competitive process and be reflected in the Network Operator's revenue proposal. The AER, if satisfied that the competitive assessment process was genuine and appropriate, would presume the Transmission Efficiency Test had been met and make a revenue determination that reflected the outcome of the competitive process.

However, the EII Regulations provide for the situation where a competitive assessment process can be used to select a person who will assist a Network Operator to carry out a network infrastructure project. Where this is the case, the Network Operator's revenue proposal may contain additional components to those determined through the competitive process. These additional components may include, for example, costs associated with supporting (brownfield) work on a Network Operator's existing network assets or costs associated with managing the assets acquired through the competitive process.

Where a project includes components that have not been subject to a competitive assessment process, it may be appropriate for a Network Operator to submit separate revenue proposals for the contestable and non-contestable components of the project.

Where a revenue proposal contains both contestable and non-contestable components, the AER would be required to undertake a detailed review of the prudence, efficiency and reasonableness of the costs of the non-contestable components of the revenue proposal. The EII Regulations allow the AER an extended timeframe for making a revenue determination in these circumstances where there are matters of complexity for the AER to assess. The AER's approach to this review will be set out in our Revenue determination guideline for NSW non-contestable network projects.

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<sup>1</sup> OECC, *Regulatory framework for the Transmission Efficiency Test and Regulator's determinations for network infrastructure projects, Policy paper*, March 2022.

The impact of this change is reflected in our process for assessing a revenue proposal and making a revenue determination (sections 6 and 7 of the Guideline).

**2. A change in the test the AER must apply in determining whether it is satisfied with the competitive process.**

In the draft Guideline, we stated our intention to test whether a competitive process was likely to result in prudent, efficient and reasonable costs (based on our understanding of the OECC's policy positions and the requirements of the EII Act). The EII Regulations instead require the AER to be satisfied that a competitive process was 'genuine and appropriate'.<sup>2</sup> We do not consider this change in wording will have an impact on the factors we will consider in assessing a competitive assessment process. This is because the EII Regulations clarify that a genuine and appropriate competitive process results in the costs of carrying out a network infrastructure project being prudent, reasonable and efficient.

This change is reflected in the material in the Guideline on the AER's review of a competitive assessment process (section 5).

**3. Changes to the AER's evaluation criteria that we will apply in our assessment of the Infrastructures Planner's procurement strategy and competitive assessment process.**

The draft Guideline set out 10 evaluation criteria. The final Guideline consolidates these criteria into the following four higher level criteria:

- A sufficient level of competitive tension exists, such that a competitive outcome is likely to be achieved
- The competitive assessment process supports detailed, credible and compliant submissions from proponents
- Decision-making, governance and probity arrangements ensure a fair and rigorous process
- The outcome of the procurement process can be reflected in a revenue determination.

We made the change to make it clearer what our key considerations are when reviewing the Infrastructure Planner's procurement strategy and the competitive assessment process. We do not consider this change materially alters our approach to assessing the Infrastructure Planner's processes, as the more detailed criteria in the draft Guideline still inform the four higher level criteria in the final Guideline.

The restructured competitive assessment process evaluation criteria are set out in section 3 of the Guideline.

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<sup>2</sup> EII Regulations, cl. 45(5)(b).

**4. Changes to the information requirements on the Infrastructure Planner to support the AER's review of the procurement strategy.**

We made these changes to recognise that, in practice, some information requirements included in the draft Guideline are unlikely to be available at the time the Infrastructure Planner submits its procurement strategy to the AER. For example, detailed minimum requirements with which participant to a competitive procurement process must comply may not be specified until closer to the release of documentation for the Request for Proposal (or equivalent) stage.

The final Guideline provides that, where requested information has not been finalised at the time the procurement strategy is produced, we would expect the Infrastructure Planner to set out how it will address the information requirements, including expected timeframes for developing relevant documents and processes.

These changes are reflected in section 4.2 of the Guideline.

**5. Changes to clarify that the AER's revenue determination will set out payments to the Network Operator for the entire concession period.**

Our draft Guideline stated that our revenue determination would set out the revenue a Network Operator was allowed to recover over the five-year regulatory period. Our final Guideline instead sets out that our revenue determination will include the Network Operator's allowed revenue for the entire concession period.

We made this change as it reflects that the contractual arrangements under a competitive assessment process will include expected payments to the Network Operator for carrying out the project for the full concession period. Including payments for the concession period in the revenue determination will provide greater certainty and transparency for all stakeholders.

**6. Removal of the requirement on the AER to take into account any opinion expressed by the Infrastructure Planner as to the adequacy of the competitive assessment process.**

This requirement had been identified as an anticipated regulation in the OECC's policy position paper,<sup>3</sup> but was not included in the published version of the regulations. The Infrastructure Planner's report on the competitive assessment process, that we are to review following the completion of the process, will inform our assessment of the adequacy of the competitive assessment process.

**7. Changes to reflect that the EII Regulations provide for the AER to publish a revenue determination, but not a revenue proposal from a Network Operator.**

The EII Regulations do not provide a function for the AER to publish revenue proposals. This reflects the policy position that it is not intended for consultation on the proposal to occur as part of the AER's revenue determination process, as the competitive market is being relied upon to produce an outcome that reflects prudent, efficient and reasonable costs for NSW electricity consumers.

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<sup>3</sup> OECC, *Regulatory framework for the Transmission Efficiency Test and Regulator's determinations for network infrastructure projects, Policy paper*, March 2022, p.24.



However, we are permitted to publish our revenue determination for a Network Operator, including the reasons for our decision.<sup>4</sup> The EII Regulations set out criteria for us to consider in deciding whether not to publish part of the revenue determination.<sup>5</sup>

The AER's intended approach to publishing a revenue determination is set out in section 6.5 of the Guideline.

**8. Clarification of the AER's ability to make adjustments to the schedule of payments set out in a revenue determination.**

The EII Regulations include a specific function for the AER to adjust amounts in a revenue determination.<sup>6</sup> The Guideline reflects the new function and sets out where an adjustment may occur within a regulatory period, or as part of a redetermination. Section 7.5 of the Guideline sets out our process for making adjustments to amounts in a revenue determination.

**9. Changes to the AER's proposed ring-fencing requirements.**

The EII Regulations include a function for the AER to issue a guideline about ring-fencing of the activities of a Network Operator.<sup>7</sup> The draft Guideline anticipated the AER publishing a Ring-fencing guideline, however the regulation sets out a function to do so and the specific matters the AER must address in developing our ring-fencing guideline. The Guideline wording has been amended to reflect the function as set out in the EII Regulations. We note that the ring-fencing guideline will be published as a separate supporting guideline.

**10. Changes to definitions and language for clarity and to make the Guideline consistent with the terminology in the EII Regulations.**

These changes do not materially change any requirements set out in the draft Guideline. For example, we changed 'procurement process' to 'competitive assessment process' and 'project deed' to 'contractual arrangement', and the definitions of both terms were changed to incorporate the potential for arrangements to select a person who will assist a Network Operator in carrying out all or part of a network infrastructure project.

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<sup>4</sup> EII Regulations, cl. 53(1)(a).

<sup>5</sup> EII Regulations, cl. 53(4).

<sup>6</sup> EII Regulations, cl. 51.

<sup>7</sup> EII Regulations, cl. 42.

### 3 Response to submissions

The AER's consideration of issues raised by stakeholders in submissions to the draft Guideline are set out in the table below.

Issue	Submission	Comment	AER response
AER contestable guideline	Ausgrid	The AER should consider consolidating contestable and non-contestable guidelines (may result in a more streamlined process, and avoid overlap and confusion).	We will consider whether it is appropriate to consolidate the contestable and non-contestable guidelines at a later stage, but it is not an immediate priority. We consider the scope for confusion from having separate guidelines to be small as the subject matter and processes outlined in each guideline are significantly different.
AER competitive assessment evaluation criteria	Essential ENA	The AER could improve the clarity and transparency of the procurement evaluation criteria by providing some examples (for example, how competitive tension will be maintained throughout competitive assessment process; and how the trade-offs between price, risk and revenue are being assessed).	We have considered the clarity and transparency of our procurement evaluation criteria. The final Guideline consolidates the evaluation criteria included in the draft Guideline to highlight the AER's key considerations in its review of a competitive procurement process.  We have not included specific examples of how the Infrastructure Planner may address the evaluation criteria. It is for the Infrastructure Planner to determine how it will best meet the evaluation criteria in its development and implementation of the competitive assessment process.
Competitive assessment	Transgrid Ausgrid	The Infrastructure Planner's assessment of a competitive assessment process should consider matters including: <ul style="list-style-type: none"> <li>any efficiencies identified by the Network Operator in developing its bid and its approach to securing further efficiencies during construction</li> <li>risk management</li> <li>how the Network Operator has engaged with stakeholders</li> <li>the Network Operator's proposed approach to network quality, reliability and safety.</li> </ul>	These matters are issues for the Infrastructure Planner to consider as part of its development of evaluation criteria for a competitive assessment process.  We consider the Infrastructure Planner's evaluation criteria should reflect the objectives in section 3 of the EII Act and the principles contained in s.37 of the EII Act. The matters suggested in submissions appear to directly relate to these objectives.  We will consider the Infrastructure Planner's evaluation criteria in our review of the competitive assessment process.

Supporting guidelines	APA	Agrees with proposed ring-fencing arrangements.	We will develop a supporting guideline addressing ring-fencing requirements set out in the EII Regulations. In developing the EII ring-fencing guideline we intend to seek alignment with the NER Transmission Ring-fencing Guideline (which is currently undergoing a review) to the extent appropriate.
	Ausgrid	Not clear why ring-fencing, cost allocation and confidentiality guidelines are required to apply to contestable projects.	The Guideline sets out the general purpose of these supporting guidelines. We will consult further with stakeholders on the specific requirements for these guidelines during their development.
	Ausgrid ENA	Supporting guidelines will need to be appropriately tailored and fit for purpose.  Ausgrid suggested that there may be a need for a guideline covering arrangements where a Network Operator goes into administration.	We agree that supporting guidelines will need to be tailored to work effectively under the EII framework.  In relation to arrangements where a Network Operator goes into administration, we are aware that regulations have been made that would enable the transfer of a network infrastructure project from a Network Operator to another Network Operator. <sup>8</sup> The mechanics of this process is expected to be set out in the contractual arrangements between the Infrastructure Planner and a Network Operator.
Compliance / enforcement	ENA	The AER should consider an appropriate compliance and enforcement regime for Network Operators as they become part of the backbone transmission system that must deliver a secure and reliable service for consumers. The regime should be sufficiently flexible to fit the variable REZ Network Operator role contemplated.	This issue is outside the scope of the Guideline.  It is expected that Network Operators will be required to register as transmission network service providers and be subject to relevant requirements that result from that registration.  Performance requirements for a Network Operator in carrying out a network project and its operation once commissioned (and any penalties for non-performance) will be set out in the contractual arrangements between the Infrastructure Planner and the Network Operator. The AER will reflect the outcomes from these contractual arrangements in its revenue determinations for the Network Operator.

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<sup>8</sup> Electricity Infrastructure investment Amendment (Miscellaneous) Regulation 2022 under the EII Act 2020.

			The Infrastructure Planner will also be able to enforce any minimum requirements contractually.
Consultation	ENA	The regulations should require the AER and others to undertake public consultation and to say how the key feedback has been taken on board. The cost, risk, and timing trade-offs being made should be transparent and subject to a 'no surprises' approach for all stakeholders.	<p>This issue is outside the scope of the Guideline.</p> <p>The EII Regulations establish the power for the AER to publish a revenue determination, including any reasons for our decision.<sup>9</sup> The regulations also set out a number of considerations for the AER to take into account in deciding whether not to publish any component of a revenue determination.<sup>10</sup></p> <p>The AER has no function to publish a revenue proposal based on the outcome of a contestable assessment process, and therefore is unable to undertake public consultation in making a revenue determination.</p> <p>It is anticipated that the EII Regulations related to non-contestable processes will substantially reflect arrangements under Chapter 6A of the NER, including in respect of consultation requirements.</p>
	ENA	An independent and representative Consumer Challenge Panel to sit across the Infrastructure Planner, Consumer Trustee and AER decision making processes.	<p>This issue is outside the scope of the Guideline.</p> <p>A specific function for a Consumer Challenge Panel would need to be included in the EII Regulations.</p>

<sup>9</sup> EII Regulations, cl. 53(1)(a).

<sup>10</sup> EII Regulations, cl. 53(4).

Consultation	APA	<p>The Guideline should recognise that it will be difficult to undertake meaningful stakeholder consultation on any components of a network operator revenue proposal that have not been established through a contestable assessment process (because there are likely to be few material issues not established through the contestable process and there are short timeframes under the framework).</p>	<p>We agree that consultation on elements of a revenue determination not established through a contestable assessment process will be challenging.</p> <p>However, we consider it is necessary for all material proposed costs to be subject to an assessment as to their prudence, efficiency and reasonableness. Where a non-contestable approach has been used to establish the cost of an element of a revenue proposal, this will generally require public consultation.</p>
Efficiency of upfront costs / Infrastructure Planner's early work costs	ENA Essential	<p>The Infrastructure Planner's costs could be substantial and include preparatory and early works, community engagement and land access/acquisition. A robust and independent process is needed to ensure these costs are prudent and efficient. Transparency regarding expenditure by the Infrastructure Planner and the efficiency of that expenditure is imperative to prompting the long-term financial interests of consumers.</p> <p>Submissions acknowledged that these costs were not able to be reviewed by the AER.</p>	<p>This issue is outside the scope of the Guideline.</p> <p>The Infrastructure Planner's project costs will be subject to assurance processes outside of the AER's revenue determination process to ensure they properly relate to the relevant project.</p> <p>The EII Regulations require the AER to apply the principle that a Network Operator is entitled to recover payments required to be made by the Network Operator to the Infrastructure Planner under a contractual arrangement. It is expected such payments will include the Infrastructure Planner's project costs and they will not be assessed by the AER but rather added to the Network Operator's revenue requirement.</p>
Incentive framework	ENA	<p>The AER's draft Guideline contains no clear incentive framework to discipline capital or operating expenditure. The AER should consider the incentive framework in its regulatory determination and ensure that it is appropriate and transparent.</p>	<p>The EII Act contains the principle that 'incentives should be given to network operators to promote economic efficiency' (s.37(1)(b)). The AER must take into account the principles specified in the EII Act in exercising its functions.</p> <p>Under a competitive assessment process, any incentive arrangements applicable to a Network Operator will form part of the contractual arrangements negotiated between the Infrastructure Planner and the successful tenderer through the competitive assessment process. EnergyCo will be responsible for administering the incentive arrangements, and the AER will apply the outcomes of the incentive arrangements through a revenue determination.</p>

			We note that the AER’s revenue determination guideline for NSW non-contestable network projects will include an incentive framework to discipline capital and operating expenditure.
Regulations	ENA	ENA welcomed OECC’s intent to recommend regulations clarifying the meaning of ‘competitive’ in relation to competitive procurement to guide the AER’s assessment of the competitive procurement strategy and assessment of bids undertaken by the Infrastructure Planner. It also considered that the regulations should provide clarity for industry and consumers around when something is and is not contestable.	<p>The EII Regulations provide the Infrastructure Planner the option to use a competitive assessment process for selecting a Network Operator (or a person who may assist a Network Operator) (cl.43(2)). The draft <a href="#">Network Authorisation Guidelines</a> published by the Infrastructure Planner and Consumer Trustee sets out criteria for the Infrastructure Planner to consider in assessing the feasibility of a competitive assessment process.</p> <p>The EII Regulations set a minimum requirement for a competitive assessment process, in that it must involve a request from the Infrastructure Planner for a binding bid from more than one Network Operator (or person who will assist a Network Operator) (cl.45(2)).</p>
	APA	If the AER is satisfied that the tender process has been competitive, and the network operator’s revenue proposal is consistent with that outcome, the regulations should provide that the AER will approve the revenues set out in the Project Deed. This approach will reduce regulatory risk and generate competitive price outcomes.	<p>The EII Regulations include a principle that the AER must apply in making revenue determinations, being that a genuine and appropriate competitive assessment process:</p> <ul style="list-style-type: none"> <li>• results in the costs of carrying out an infrastructure project being prudent, efficient and reasonable, and</li> <li>• provides incentives to promote economic efficiency, and</li> <li>• results in revenue for the ongoing ownership, control and operation of the infrastructure project being commensurate with the regulatory and commercial risks.</li> </ul> <p>Our guideline reflects this principle by stating we expect to adopt the outcome of a competitive assessment process in our revenue determination where we consider the competitive process was genuine and appropriate.</p>

Regulations	APA	APA requested that, if the Infrastructure Planner considers that there are non-contestable issues that may be included in a revenue proposal, a materiality threshold be included in the Regulations to ensure that the AER only conducts a standard assessment process for the non-contestable elements in exceptional circumstances.	<p>It is a matter for the Infrastructure Planner to determine which elements of a project are determined through the competitive assessment process.</p> <p>The AER is required to assess the prudence, efficiency and reasonableness of the cost of any components not determined through a competitive process.</p> <p>It may be appropriate for the Infrastructure Planner to require a Network Operator to submit separate revenue proposals for the contestable and non-contestable components of the project. This is particularly the case where a competitive assessment process is used to select a service provider to assist a Network Operator (as these projects are more likely to contain material non-contestable components).</p>
	APA	To ensure that bids are as informed and competitive as possible, any guidelines and regulations should ideally be finalised prior to final bids being lodged. Given their importance, consultation on draft guidelines and regulations is also appropriate.	We agree that any relevant guidelines and regulations should be finalised prior to final bids being lodged. We have therefore sought to finalise our Guideline as soon as possible after the regulations relating to our guideline were gazetted (final EII Regulations relating to contestable projects were gazetted on 15 July 2022). We also note that we have consulted on our draft guidelines in developing our final guidelines.
	APA	Given the potential overlap between obligations set out in the Project Deed, NSW Licence Conditions and National Electricity Law (NEL), we encourage the NSW Government to clarify and engage further with stakeholders on the regulatory governance framework for NSW REZ network operators.	This issue is outside the scope of the Guideline.
Revenue adjustments	APA	Subsequent revenue determinations must be able to accommodate changes that operate through the Project Deed (including amendments) or may be agreed between the Network Operator and Infrastructure Planner.	The AER's revenue determination for a contestable network infrastructure project will reflect the contractual arrangements agreed between the Infrastructure Planner and Network Operator (or a person assisting the Network Operator) through a genuine and appropriate competitive assessment process. Our revenue determination will set out revenue for a Network Operator for the full concession period.

			Subsequent determinations will maintain this initially set revenue, subject to any adjustments provided for in a revenue adjustment mechanism set out in the contractual arrangements and reflected in our revenue determination.
Revenue determination process	ENA	There should be consideration of aligning the regulatory control period setting, the timing of regulatory determinations and the contribution determination process with Distribution Network Service Provider annual tariff proposals. Alignment will avoid unnecessary hold back of costs.	<p>A Network Operator will be paid by the Scheme Financial Vehicle (SFV) in accordance with the schedule of quarterly payments included in an AER revenue determination. The regulatory control period and the timing of regulatory determinations under the EII Act do not directly impact on NSW Distribution Network Service Providers.</p> <p>Recovery of monies paid by the SFV to a Network Operator will occur through the contribution determination. NSW Distribution Network Service Provider tariff proposals will need to reflect the contribution determination, and so it is important for these processes to be aligned. The timing of these processes will be addressed in the AER's final Contribution determination guideline, which is to be published later this year.</p>
	APA	To ensure that the AER determination process does not delay Financial Close, we support a firm 40 business day timeframe for the AER determination process.	Where all matters are established through a contestable process, we are required to make a determination within 42 business days (cl.50(1)(a) of the EII Regulations). The EII Regulations allow us to extend the timeframe by a further 42 business days if there are non-contestable elements that need to be assessed and we consider they involve matters of complexity (cl.50(2)).
Risk management	ENA	The risk management framework the Infrastructure Planner uses to manage the contract risks, and reliability and system security needs, should be clear in the procurement assessment report covering both the construction phase and future operations.	<p>We expect the Infrastructure Planner to address management of project risks for both the construction and operation stages in its procurement strategy and its report on the competitive assessment process.</p> <p>The contractual arrangements between the Infrastructure Planner and the Network Operator should set out risk-sharing arrangements between the parties for the concession period.</p>



Risk management	ENA	The Infrastructure Planner's assessment of the vendor's risk management strategy should form part of the assessment report so that risks are best managed by those who can control them and the cost sharing arrangements with consumers is clear.	We expect the Infrastructure Planner's evaluation criteria to consider each proponent's risk management and sharing arrangements. We specifically require the Infrastructure Planner's procurement report to set out any trade-offs made in respect to price and risk in selecting a proponent.
Transparency	ENA APA Transgrid	The Infrastructure Planner's procurement strategy and procurement assessment report should be public and indicate how the complex trade-offs between price, risk and revenue are being assessed.  APA supported the AER publishing all documentation relating to the procurement process on its website, subject to any confidential information, or information that could jeopardise a fully contestable procurement process, being withheld.	This issue is outside the scope of the Guideline.  The AER is required to publish a revenue determination, including any reasons for our decision (cl.53(1) of the EII Regulations). We have no function to publish any other material related to a competitive assessment process.  We may decide not to publish parts of a revenue determination where this would be in the public interest, to avoid disclosing confidential or commercially sensitive information, or where it may impact on future competitive assessment processes (cl.53(4) of the EII Regulations).
	ENA	There is little transparency on how decisions are made regarding the project options, procurement assessment and selection, the cost benefit analysis and the AER's revenue determination.	The draft <a href="#">Network Authorisation Guidelines</a> set out the roles of the Infrastructure Planner and Consumer Trustee in scoping and approving network infrastructure projects, including consulting with stakeholders. We agree that this process should be transparent and apply a clear cost benefit assessment.  The AER's revenue determination will reflect the contractual arrangements between the Infrastructure Planner and Network Operator where they have been established through a genuine and appropriate competitive assessment process. The Guideline sets out our process for determining whether a competitive assessment process was genuine and appropriate (section 5).  We will publish our views on the competitive assessment process as part of our revenue determination.

	APA Transgrid	Seek greater clarity from the AER about what information it would expect to publish on the Network Operator's Revenue Proposal and in the AER's revenue determination.	<p>Section 6 of the Guideline sets out the information we expect to be contained in a Network Operator's revenue proposal and in our revenue determination.</p> <p>We do not have a function to publish the revenue proposal as part of our revenue determination process.</p> <p>The AER is required to publish a revenue determination, including any reasons for our decision (cl.53(1) of the EII Regulations).</p> <p>We may decide not to publish parts of a revenue determination where this would be in the public interest, to avoid disclosing confidential or commercially sensitive information, or where it may impact on future competitive assessment processes (cl.53(4) of the EII Regulations).</p>
Transfer to the NER regime	ENA	There should be consideration of establishing the framework as to how future transition arrangements can be simpler.	This issue is outside the scope of the Guideline.