

Revenue determination guideline for NSW contestable network projects

August 2022

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Glossary

Term	Definition or extended form
AER	Australian Energy Regulator.
Competitive assessment process	The contestable process undertaken by the Infrastructure Planner to select a Network Operator for a Project or to select a person who will assist a Network Operator in carrying out all or part of a Project.
Concession period	Refers to the term of the contractual arrangement between the Infrastructure Planner and a Network Operator selected to carry out (which may include owning (or leasing), constructing, financing, operating and/or maintaining) a network infrastructure project under the EII Act in accordance with a Consumer Trustee authorisation or Ministerial authorisation or direction. A concession period may include options for extensions.
Consumer Trustee	A person or body authorised under section 60 of the EII Act to exercise the functions of the Consumer Trustee. The Consumer Trustee is required to act independently and in the long-term financial interests of NSW electricity consumers. AEMO Services Ltd has been appointed to undertake this role.
Contractual arrangement	Contracts that the Network Operator enters as required under the Consumer Trustee's authorisation or Minister's authorisation or direction. This includes contracts made between the Infrastructure Planner and the Network Operator for carrying out a network infrastructure project under section 63(4)(a) of the EII Act. Contractual arrangements may also encompass any contracts between the Network Operator and a service provider selected by the Infrastructure Planner through a competitive assessment process to assist the Network Operator to carry out all or part of a Project.
EII Act, the Act	<i>Electricity Infrastructure Investment Act 2020</i> (NSW).
EII framework	The EII Act and any regulations made under it.
Infrastructure Planner	A person authorised to exercise the functions of an infrastructure planner under section 63 of the EII Act. The Infrastructure Planner performs a range of planning and contracting functions. The Energy Corporation of NSW has been appointed to undertake this role for the five REZs specified in the EII Act.
NEL	National Electricity Law
NER	National Electricity Rules
Network Operator	Means a person who owns, controls or operates, or proposes to own, control or operate, network infrastructure under the EII Act.
NGR	National Gas Rules
OECC	Office of Energy and Climate Change within NSW Treasury.
Procurement rules	Rules set out in the Infrastructure Planner's procurement strategy for undertaking a competitive assessment process.
Procurement strategy	A strategy for undertaking a competitive assessment process.
Project, network infrastructure project	A REZ Network Infrastructure Project or Priority Transmission Infrastructure Project as defined under the EII Act.

Regulated activities	Activities for which a Network Operator is paid under a revenue determination under the EII Act, section 38(1).
Regulations	Any regulations made under the EII Act.
REZ	Renewable Energy Zone, being the geographical area of NSW and the infrastructure specified in a declaration by the Minister under section 19 of the EII Act.
Transmission Efficiency Test	The test to be applied to calculate the prudent, efficient and reasonable capital costs for development and construction of a network infrastructure project.

1 Introduction

1.1 Purpose of this Guideline

The AER will make revenue determinations for Network Operators selected to carry out¹ network infrastructure projects under the *NSW Electricity Infrastructure Investment Act 2020* (EII Act) and regulations.²

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.

In both cases, the Network Operator must be authorised by the Consumer Trustee, or authorised or directed by the Minister, before carrying out the network infrastructure project.

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

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).

A separate guideline applies in respect of our role under the non-contestable process.

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

Under the EII Act, network infrastructure projects can be Renewable Energy Zone (REZ) Network Infrastructure Projects or Priority Transmission Infrastructure Projects. In this Guideline, where we refer to a 'Project' or 'network infrastructure project' we are referring to either. Where the EII Act and regulations specify differences in processes for these types of network infrastructure projects, these differences are noted in this Guideline.³

1.2 Who are we?

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

¹ Carrying out a network infrastructure project may include owning or leasing, constructing, financing, operating and/or maintaining assets.

² Throughout this Guideline where we refer to regulations we are referring to the regulations made under the EII Act.

³ The key difference is that REZ Network Infrastructure Projects authorised by the Consumer Trustee require the Consumer Trustee to calculate a maximum capital amount. This is not required for REZ Network Infrastructure Projects directed by the Minister, or for Priority Transmission Infrastructure Projects authorised or directed by the Minister.

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 EII Act.⁴ 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 Minister to undertake network infrastructure projects (under Part 5 of the EII Act). This function is the subject of this Guideline. Other functions undertaken by us under the EII Act, which are not covered by this Guideline, include:

- making annual contribution determinations in relation to the Electricity Infrastructure Fund (Part 7 of the EII Act);
- approving a risk management framework developed by the Consumer Trustee (Part 6 of the EII Act); and
- being consulted on tender rules in relation to long-term energy service agreements (Part 6 of the EII Act).

1.3 Authority for this 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 (Transmission Efficiency Test guidelines). Clause 47 of the 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 include 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.

Any references in the EII Act or regulations to ‘transmission efficiency test guidelines’ and ‘guidelines published by the regulator under clause 47’ (or equivalent) should be taken to refer to this Guideline and our guideline relating to non-contestable network infrastructure projects.

The AER may amend this Guideline from time to time. Should we amend the Guideline, we will publish the proposed amendment on our website for a period of at least 20 business days. We are not required to consult on any amendments we consider to be minor or administrative.

1.4 Interaction with the National Electricity Rules

Chapter 6A of the NER sets the framework for economic regulation of transmission network service providers in the National Electricity Market, including the making of revenue determinations.⁵ The non-contestable framework under the EII Act substantially replicates Chapter 6A of the NER. However, being based on a competitive process, the contestable framework necessarily departs significantly from Chapter 6A of the NER. Key differences include:

- The focus for the Regulator in the EII framework is on reviewing whether the competitive assessment process was genuine and appropriate rather than on carrying out a detailed review of the components of a proposed revenue allowance.
- Where we are satisfied that the competitive process is genuine and appropriate, the AER’s determinations in the EII framework will reflect the amounts payable (including any potential mechanisms to adjust these amounts) in the contractual arrangement that has been

⁴ IPART has also been appointed as a Regulator to undertake certain functions under the EII Act.

⁵ The NEL and NER do not regulate revenue and prices for the carrying out of a network infrastructure project by a Network Operator.

negotiated and agreed to by the Infrastructure Planner and the successful proponent, until the end of the concession period.

- Network Operators in the EII framework are paid by the Scheme Financial Vehicle using monies collected through a Jurisdictional Scheme Obligation⁶ on the NSW electricity distributors rather than through the NER pricing arrangements.

We may develop supporting guidelines to be applied to Network Operators under the contestable framework in relation to specific issues. The regulations specifically require the AER to issue guidelines about the ring-fencing arrangements to apply to the regulated activities of a Network Operator.⁷ Section 8 of this Guideline indicates which supporting guidelines the AER intends to develop and apply to Network Operators under the contestable framework. To the extent appropriate, these guidelines will be consistent with equivalent guidelines made under Chapter 6A of the NER.

1.5 Questions on this guideline

We welcome questions on the operation of any aspect of this Guideline. However, where a question is from a party participating (or intending to participate) in an upcoming or current competitive assessment process, we will share any response provided to that party with the Infrastructure Planner so that the information can be provided to all parties involved in the process. Any questions relating to a competitive assessment process should be directed to the Infrastructure Planner.

Enquiries about this guideline should be directed to REZ@aer.gov.au.

⁶ AER, *Determination on jurisdictional scheme application in relation to NSW EII Act*, December 2021.

⁷ EII Regulations, cl.42.

2 Overview of the contestable framework

Under the EII framework the Infrastructure Planner may undertake a competitive assessment process to select a Network Operator for network infrastructure projects. The Infrastructure Planner may also undertake a competitive assessment process to select a person who will assist a Network Operator to carry out all or part of a network infrastructure project.⁸

The Infrastructure Planner identifies the project options and the preferred network project, sets the procurement strategy, conducts the competitive assessment process, evaluates the submissions, and selects a successful proponent. The AER has no direct role in these aspects. However, if the Infrastructure Planner intends to undertake a competitive assessment process, it must consult with the AER before and during the process and provide information to the AER if requested.

The AER has an important but discrete role in making a determination on the amounts to be paid to a Network Operator for carrying out a network infrastructure project. The determination must reflect the prudent, efficient and reasonable costs of carrying out a network infrastructure project.

Where the Infrastructure Planner conducts a competitive assessment process, and we are satisfied the process was genuine and appropriate, our determination can adopt the amounts payable to the Network Operator (and any mechanisms to adjust those amounts) as agreed between the Infrastructure Planner and Network Operator (or other service provider) through that process. This reflects the principle in the EII Regulations that a genuine and appropriate competitive assessment process results in the costs of carrying out a network infrastructure project being prudent, efficient and reasonable.⁹

We have developed evaluation criteria to guide our decision on whether we are satisfied a competitive assessment process is genuine and appropriate (section 3 of this Guideline). In making our decision, we will undertake reviews at two stages in the process:

1. At the start of the competitive process, we will review whether the procurement strategy developed by the Infrastructure Planner is likely to result in a genuine and appropriate competitive assessment process. Section 4 of this Guideline sets out information we would expect to see contained in a procurement strategy.
2. After the competitive process has been completed and a Network Operator (or other service provider) selected, we will decide whether we are satisfied that the process was genuine and appropriate. Section 5 of this Guideline sets out the information we expect to be provided to us by the Infrastructure Planner in its report at the conclusion of the competitive process, and how we intend to assess the process.

In addition to these reviews, the AER will monitor the competitive assessment process through consultation with the Infrastructure Planner and seek updates from it at key project milestones. We may also request to be an observer at the Infrastructure Planner's procurement evaluation meetings at both the Expression of Interest and Request for Proposal (or equivalent) stages.

A Network Operator selected through a competitive assessment process will submit a revenue proposal to the AER consistent with the terms of the contractual arrangement it has entered into (or will enter into) with the Infrastructure Planner.¹⁰ Where a competitive assessment process is for services to be provided to a Network Operator, the Network Operator will submit a revenue proposal

⁸ The competitive assessment process will generally be used for 'greenfield' projects that are separable from the existing transmission network.

⁹ EII Regulations, cl.46(1)(a).

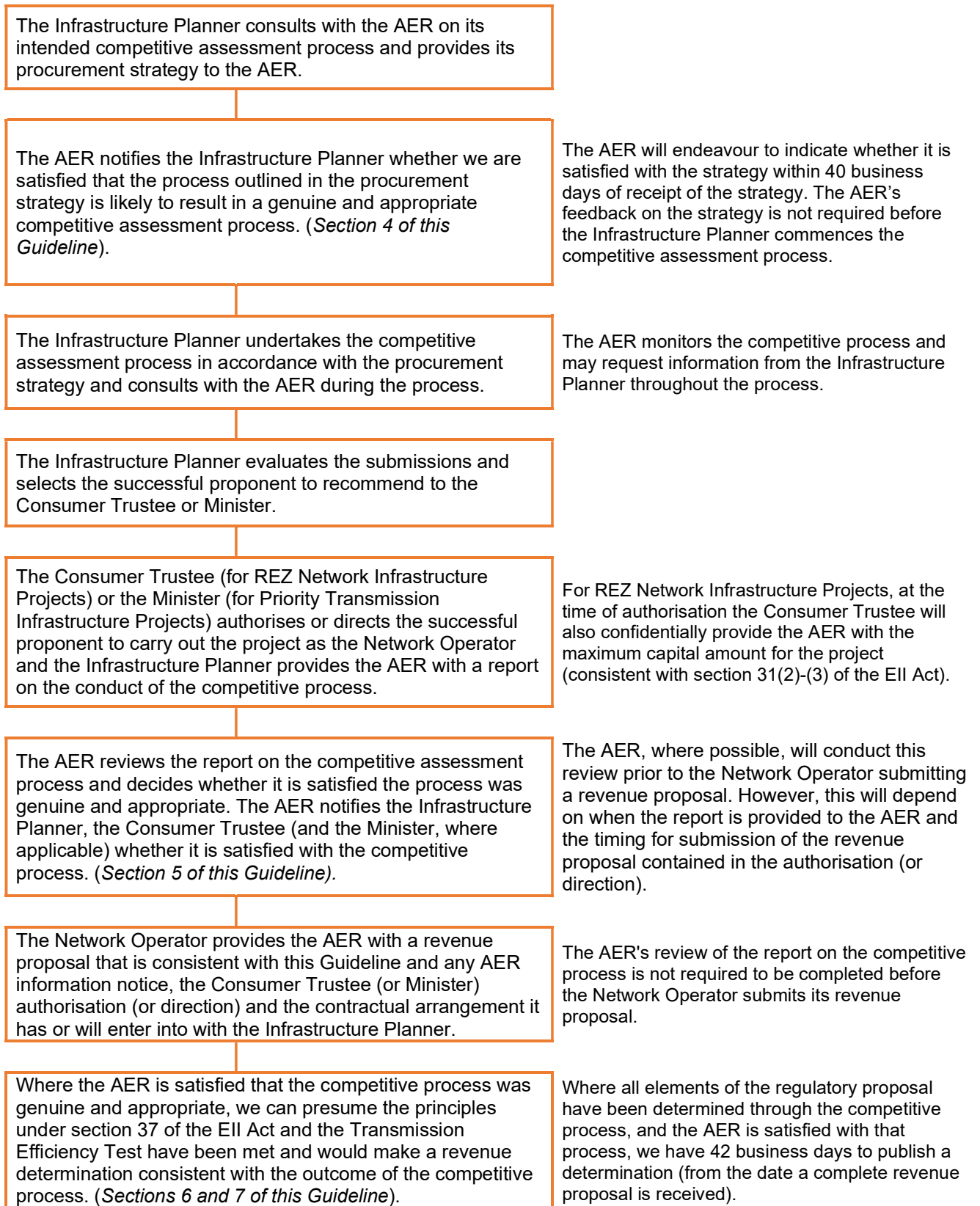
¹⁰ The contractual arrangement may not be finalised at the time the Network Operator submits its revenue proposal. In these circumstances, the AER would expect to receive a signed Commitment Deed (or equivalent) between the Infrastructure Planner and Network Operator (or other service provider), and a draft contractual arrangement.

to the AER consistent with the outcome of that competitive assessment process. Sections 6 and 7 of this Guideline set out our information requirements for a revenue proposal, our approach to assessing a revenue proposal (including the application of the Transmission Efficiency Test), our determination timeline and the information our determination will contain.

Figure 1 illustrates the key processes for selecting a Network Operator under the contestable framework.¹¹

¹¹ The process illustrated in Figure 1 will also apply where a competitive assessment process is used to select a person who will assist a Network Operator in carrying out all or part of a network infrastructure project. The Network Operator will be selected and authorised through a separate process, but will provide the AER with a revenue proposal that reflects the outcome of the competitive assessment process.

Figure 1: Key processes for selecting a Network Operator under the contestable framework



3 Competitive assessment process evaluation criteria

In assessing whether a procurement strategy is likely to result in a genuine and appropriate competitive assessment process, or whether a competitive assessment process has been genuine and appropriate, we will apply the following evaluation criteria:

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

These evaluation criteria apply to both our assessment of the Infrastructure Planner's upfront procurement strategy and our review of the procurement process following its completion.

3.1 A sufficient level of competitive tension exists, such that a competitive outcome is likely to be achieved

The regulations require that a competitive assessment process must involve a request from the Infrastructure Planner for a binding bid from:

- a) two or more network operators proposing to carry out all or part of the project; and/or
- b) two or more persons who will assist network operators to carry out all or part of the project.

The contestable approach relies on competitive pressure from multiple proponents to produce prudent, efficient and reasonable outcomes. To achieve this, we expect at least two viable proponents to actively participate in the competitive assessment process until all material components of a project have been agreed.. The Infrastructure Planner's process should, therefore, support proponents to effectively participate in the procurement process until the successful proponent is selected.

We expect the Infrastructure Planner to undertake preliminary processes to:

- gauge the level of potential competition for provision of the project through a market sounding exercise;
- encourage market participants to make a submission and identify those potential participants who can genuinely undertake the Project; and
- identify whether any incumbent supplier has or is perceived to have any unfair advantage in the new procurement (and if so, take steps to address this).

3.2 The competitive assessment process supports detailed, credible and compliant submissions from proponents

Proponents must be provided sufficient information on the project and competitive assessment process to allow them to make detailed, credible and compliant submissions and allow all proponents an equal opportunity to participate in the process on the basis of transparent terms, conditions and requirements. The objectives of the evaluation process must also be clearly defined. We would expect that:

- the Project scope is identified and is sufficiently clear.
- procurement rules, processes and procedures provide transparency to potential proponents and reflect good industry practice.

- the timeframes for the process are reasonable and allow both incumbents and non-incumbents the opportunity to respond.
- minimum requirements with which submissions must comply are identified and are reasonable.
- submission evaluation criteria address the objectives in the EII Act, and information requested from proponents is clearly linked to the evaluation criteria.

3.3 Decision-making, governance and probity arrangements ensure a fair and rigorous process

Strong governance and probity arrangements are necessary to provide confidence in the outcome of the competitive assessment process. We would expect that:

- governance arrangements are clear and robust, and reflect a comprehensive risk-management assessment
- all participants are to be treated fairly (including through the management of any potential conflicts) in accordance with a probity plan implemented by an independent probity advisor
- the decision-making framework includes clear guidance on how any trade-offs between objectives are to be considered.
- the Infrastructure Planner's evaluation process is informed by analysis on the likely prudent, efficient and reasonable costs to carry out the Project.

3.4 The outcome of the competitive assessment process can be reflected in a revenue determination.

The AER must be able to reflect the outcome of the competitive assessment process in a revenue determination. To do this:

- the procurement strategy and the terms of the proposed contractual arrangement must be consistent with the EII Act and regulations.
- the outcome of the competitive assessment process should provide the AER with the information needed to make a determination under section 38 of the EII Act.
- any mechanisms in the contractual arrangement to adjust the revenue of the Network Operator over the concession period must be clearly specified so that they can be applied by the AER through our adjustment process.

4 Review of a procurement strategy

Where the Infrastructure Planner decides to undertake a competitive assessment process to select a Network Operator to carry out a Project (or to select a person to assist the Network Operator), the regulations require the Infrastructure Planner to consult with us.¹² The Infrastructure Planner must also provide the AER with any requested information about, or obtained from, the competitive assessment process.¹³ This section discusses our approach to reviewing the procurement strategy and our information requirements.

4.1 Approach

As part of its regulatory obligation to consult, we expect the Infrastructure Planner to develop and submit a procurement strategy to the AER before commencing a competitive assessment process. We will provide the Infrastructure Planner with our views on whether the procurement strategy is likely to result in a genuine and appropriate competitive assessment process, having regard to the evaluation criteria in section 3 of this Guideline.

The AER will engage with the Infrastructure Planner prior to the submission of the procurement strategy to discuss any issues or provide any clarifications regarding the AER's information requirements. We intend to apply the evaluation criteria and information requirements flexibly to reflect differences in project and procurement circumstances over time.

To support our review of a procurement strategy, we may engage an expert adviser to assist us. We may also seek additional information from the Infrastructure Planner to enable us to decide whether we are satisfied the proposed procurement strategy is likely to produce a process that is genuine and appropriate.

We will endeavour to notify the Infrastructure Planner as to whether we are satisfied with the procurement strategy within 40 business days after we receive it. We will inform the Infrastructure Planner if we expect to take longer than 40 business days to reach a position due to issues of particular difficulty or complexity.

If, following our review, we are satisfied with the procurement strategy, we will notify the Infrastructure Planner. If we are not satisfied with the procurement strategy, we will inform the Infrastructure Planner as to what aspects of the proposed strategy we are not satisfied with.

The Infrastructure Planner may commence a competitive assessment process prior to receiving a notification from the AER that we are satisfied the process is likely to be genuine and appropriate.

4.2 Contents of a procurement strategy

Based on our evaluation criteria described in section 3 of this Guideline, we would expect the Infrastructure Planner's procurement strategy to include the information set out below. Where this 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.

1. A description of the Project that is the subject of the competitive assessment process.
2. An overview of the process undertaken to identify the number of potential qualified proponents, including those not already participants in the market.

¹² EII Regulations, cl.45(4)(a).

¹³ EII Regulations, cl.45(4)(b).

3. An overview of the pre-qualification and participant registration processes undertaken (or planned to be undertaken) and the outcome of those processes.
4. A summary of any analysis undertaken of the likely range of efficient, prudent and reasonable costs for carrying out the Project (for example, through use of industry benchmarks) and how these cost estimates will be used to inform the competitive process.
5. Whether any material components of the network infrastructure project are not intended to be established through the competitive assessment process.
6. An overview of the proposed evaluation process to select the preferred proponent, including:
 - a) the procurement rules;
 - b) the evaluation criteria to be applied in selecting the successful proponent;
 - c) the information to be requested from proponents;
 - d) the process the evaluation panel will follow to assess participants' submissions;
 - e) the qualifications and experience of the evaluation panel members, decision-makers and the independent probity adviser;
 - f) the process that is to occur to negotiate any variations to the proponents' final submissions; and
 - g) the process to be followed if a successful proponent is not able to be identified through the competitive assessment process.
7. An overview of information provision procedures and the approach to the treatment of confidential information.
8. A probity plan which includes processes to address:
 - a) known or potential conflict of interest issues and how they will be mitigated;
 - b) information asymmetries; and
 - c) any probity concerns raised by participants throughout the process.
9. An overview of the governance arrangements for the competitive assessment process, identifying:
 - a) the processes for approval of the procurement documents;
 - b) the process for the development of the evaluation report and recommendation;
 - c) those accountable for ensuring the procurement strategy is followed; and
 - d) the risk management framework for the Project.
10. A statement as to how the Infrastructure Planner considers the proposed procurement strategy complies with the requirements of the EII Act and regulations.
11. The timeline for the competitive assessment process showing the key milestones in the process.

4.3 Subsequent amendments to a procurement strategy

Our expectation is that the Infrastructure Planner will inform us of any subsequent material amendments it makes to its procurement strategy. We will assess any amendments proposed by the Infrastructure Planner against the evaluation criteria and procurement strategy information requirements in sections 3 and 4.1 of this Guideline.

5 Review of the competitive assessment process

To make a determination on the amounts to be paid to a Network Operator under the contestable framework, we will need to be satisfied that the competitive assessment process was genuine and appropriate. This section sets out how we intend to monitor the competitive assessment process, what information we expect to be included in a report to us on the competitive process from the Infrastructure Planner and how we intend to assess whether we are satisfied with the competitive process and the implications of that assessment for our determination.

5.1 Monitoring the competitive assessment process

We expect the Infrastructure Planner will conduct the competitive assessment process consistent with its procurement strategy. The competitive assessment process, which may vary across projects, is likely to include the following stages:

1. Market sounding to identify credible participants and the level of competition expected;
2. Pre-qualification and participant registration;
3. Expression of Interest;
4. Request for Proposal; and
5. Selection of the preferred proponent.

The AER may request information from the Infrastructure Planner about the progress of the competitive assessment process and the Infrastructure Planner's compliance with its procurement strategy. We expect to be provided with an opportunity to comment on the Expression of Interest and Request for Proposal (or equivalent) documents prior to them being issued to participants.

We also intend to monitor the competitive assessment process for a project through regular consultation with the Infrastructure Planner, including through seeking updates from it at key project milestones. We may also request to observe the Infrastructure Planner's evaluation process at both the Expression of Interest and Request for Proposal (or equivalent) stages.

5.2 Information to be contained in the report on the competitive process

To assist our review of the competitive assessment process, we will require the Infrastructure Planner to provide us with a report at the conclusion of the process. We would expect to receive the report prior to the Network Operator submitting its revenue proposal, and for the report to contain:

1. a description of the Project to be constructed
2. identification of the successful proponent
3. a summary of the approach to market, including any market sounding and Expression of Interest stages and the outcomes of those stages
4. a summary of each submission received in response to the Request for Proposal (or equivalent), including details of any late or non-conforming submissions
5. a description of the submission evaluation process followed, including:
 - a) the evaluation team and the use of any subject matter experts
 - b) the evaluation criteria
 - c) details of any conflicts identified and how such conflicts were managed

- d) identification of any issues of non-compliance by a proponent with the procurement rules and a summary of how any such issues were resolved
- 6. assessment and scoring, including completed scoring for each submission against each evaluation criterion
- 7. the outcome of the evaluation process, including the ranking of submissions, a summary of the strengths and weaknesses of each submission, results of any reference checks and identification of any substantial risks
- 8. a statement of reasons why the successful proponent was preferred with reference to the evaluation criteria, value for money analysis undertaken (including trade-offs in respect to price and risk)
- 9. a statement identifying any material amendments that have been made to the procurement strategy and whether the AER confirmed its satisfaction with each amendment
- 10. a summary of any material variations to be included in the contractual arrangement negotiated with the successful proponent compared to their final submission that was accepted and an explanation why each variation was adopted
- 11. the final submission documentation from the successful proponent
- 12. the contractual arrangement that has or will be entered into between the Infrastructure Planner and the successful proponent
- 13. a probity report, prepared by an independent probity advisor, that includes:
 - a) a summary statement confirming whether the probity plan was adhered to throughout the process by the Infrastructure Planner and that a fair and transparent process was conducted
 - b) a summary of the documents and evidence reviewed
 - c) an overview of the probity advisor's attendance at submission evaluation meetings and any other engagement in the competitive assessment process
 - d) detailed probity conclusions (with reference to evidence) regarding:
 - i) the approach to market
 - ii) communication with the market while the competitive assessment process was open and with participants during the evaluation
 - iii) evaluation of submissions
 - iv) negotiation processes
 - v) conflict of interest and confidentiality outcomes
 - vi) any complaints from the market or any probity breaches.

The AER may also request additional information from the Infrastructure Planner regarding the conduct of the competitive process or to more fully understand the outcome of the process.

5.3 Assessment of the competitive assessment process

To make a determination on the amounts payable to the Network Operator in reliance on the outcome of a competitive assessment process carried out under the contestable framework, we must be satisfied that the process was genuine and appropriate. In making this assessment, we will consider whether the competitive process:

- 1. was undertaken in accordance with the EII Act and regulations made under the EII Act;
- 2. was undertaken consistent with the Infrastructure Planner's procurement strategy; and

3. reflects our competitive assessment process evaluation criteria.

If, following our review, we are satisfied the competitive process was genuine and appropriate, we will make our revenue determination for the Network Operator consistent with the outcome of that process as reflected in the contractual arrangement. We will advise the Infrastructure Planner and Consumer Trustee (or the Minister, where applicable) whether we are satisfied with the competitive process.

Should we not be satisfied the competitive assessment process was genuine and appropriate, we will give written notice to the Infrastructure Planner stating the reasons why and give it the opportunity to respond. If, following the Infrastructure Planner's response, we are still not satisfied, we may decline to make a determination on the basis of the outcome of the competitive assessment process. In these circumstances we would consult with the Infrastructure Planner and Consumer Trustee on the approach for progressing the network infrastructure project. If, for example, the authorisation remains in place and we do not consider we can rely on the outcome of a competitive assessment process, we would need to consider whether to make our determination using the approach for non-contestable processes.

We may engage a consultant to assist us in our assessment of the competitive process, including reviewing the Infrastructure Planner's report and advising whether the procurement strategy has been followed.

6 Revenue determination process

Under the EII Act, the AER must determine the amount payable to Network Operators for network infrastructure projects. This section sets out the information a Network Operator must provide to the AER, the timeline for our determination and the contents of our determination where a competitive assessment process has been used to select a Network Operator (or a person who will assist a Network Operator) to carry out a network infrastructure project.

Where a Network Operator has been authorised or directed to undertake a Project, it must provide information to the AER about the proposed amounts payable to the Network Operator for carrying out the Project (a revenue proposal). The revenue proposal must be prepared consistent with this Guideline and any other requirements notified by the AER. The authorisation or direction will indicate the date by which this information is required to be provided to the AER.

We do not expect Network Operators to undertake pre-lodgement stakeholder consultation on their revenue proposal where all components of revenue have been established through a competitive assessment process. This is because the policy intent of the contestable framework is that the competitive market is being relied upon to produce an outcome that reflects prudent, efficient and reasonable costs for NSW electricity consumers.

We expect most network infrastructure projects progressed under the contestable approach to result in all material components of the project being established through the competitive assessment process. However, there may be network infrastructure projects that include a contestable process to determine most (but not all) components of revenue. Where any components of revenue have not been established through a competitive assessment process, we may require a network operator to consult with stakeholders on those components. Where a project includes material components that have not been subject to a competitive assessment process, it may be more appropriate for a Network Operator to submit separate revenue proposals for the contestable and non-contestable components of the project.

A Network Operator should contact the AER prior to submitting a revenue proposal to clarify expectations around the contents of the revenue proposal and any consultation required to be undertaken.

6.1 Contents of a revenue proposal

A revenue proposal from a Network Operator must:

1. include a statement of whether the Network Operator's revenue proposal is consistent with the contractual arrangement¹⁴ and the Consumer Trustee's (or Minister's) authorisation (or direction) and, if it is inconsistent, identify and provide reasons for the inconsistency.
2. identify any parts of the revenue proposal the Network Operator claims to be confidential and the grounds for the confidentiality claims in accordance with the AER's Confidentiality Guideline (see section 8.1 of this Guideline).
3. include the total revenue proposed to be paid to the Network Operator for carrying out the Project for the term of the concession period, including a break-down of the total revenue into its components (as set out under section 38 of the EII Act).¹⁵

¹⁴ The contractual arrangement may not be finalised at the time the Network Operator submits its revenue proposal. In these circumstances, the AER would expect a Commitment Deed (or equivalent) to be in place between the Infrastructure Planner and Network Operator (or other service provider), and a draft contractual arrangement to have been developed.

¹⁵ EII Act, s. 38(2).

4. include a schedule of payments setting out quarterly amounts proposed to be paid to the Network Operator by the Scheme Financial Vehicle for carrying out the project, and the methodology by which these quarterly amounts are to be calculated from the total revenue.
5. include a formulaic description of any mechanisms that will be used to adjust the revenue proposed to be paid to the Network Operator and the schedule of payments within the concession period (for example, to adjust payments for actual inflation or movements in the wage price index). For each mechanism, provide:
 - a) a description of the components to be adjusted
 - b) the timing of the adjustment for each component, or relevant trigger event
 - c) a detailed explanation of the proposed method of indexation, escalation or adjustment
 - d) identification of the authoritative source (or sources) of indices or data to be used for any indexation, escalation or adjustment.
6. identify any components of the revenue proposal that were not set through a competitive assessment process and, where that is the case, provide supporting information for those components consistent with the requirements set out in the AER's guideline for non-contestable network infrastructure projects or as notified by the AER. We note that in most cases we expect all material components of the project to be established through the competitive assessment process.
7. include any amounts a Network Operator is required to pay to meet regulatory requirements or to pay the Infrastructure Planner under a contractual arrangement, and how those costs have been treated in calculating the total revenue amount and schedule of payments. These costs are expected to include the costs of early development works, preparatory activities and project management undertaken by the Infrastructure Planner (including land, easements, project development work, client delivery and related costs) that are to be passed through to the Network Operator.
8. include for all financial values the dollar terms in which the amounts are presented
9. include a statement that provides a summary of the scope and terms of the Consumer Trustee's (or Minister's) authorisation (or direction), including the network infrastructure project to be carried out.
10. for each determination after the initial determination, a comparison of the Network Operator's proposed schedule of payments with the current approved schedule of payments (including a description of how any revenue adjustment mechanism has been applied).

A revenue proposal must also comply with the requirements of, and contain or be accompanied by, such information as is required by an AER information notice or AER guidelines published under clause 47 of the regulations, including this Guideline.¹⁶

6.2 Treatment of confidential information

A Network Operator may include commercially sensitive information as part of its regulatory proposal. However, it must submit information in compliance with the AER's Confidentiality Guideline (see section 8.1 of this Guideline). Consistent with that guideline, a Network Operator should:

- discuss its approach to confidential information with the AER prior to lodging the revenue proposal so that any issues can be addressed prior to submission

¹⁶ EII Act, s. 38(7) and EII Regulations, cl. 48.

- submit a confidentiality template and a notice setting out the proportion of material claimed to be confidential and the reasons for that claim.

Notwithstanding the above, the AER will publish our determination in accordance with clause 53 of the regulations.

6.3 Timeline for our determination

A determination process commences when the Network Operator submits a revenue proposal to the AER that contains all information we require to make our determination (as set out in this Guideline or advised through an information notice). Where all aspects of a revenue determination have been established through a competitive assessment process, we will have a period of 42 business days to publish our determination.¹⁷ A competitive assessment process to select a Network Operator is generally expected to establish all elements of our revenue determination. However, there may be circumstances where a competitive assessment process does not establish all elements of our revenue determination. For example, where a competitive process is used to select a person to assist a Network Operator in carrying out a network infrastructure project, the Network Operator will likely have its own costs in addition to those established through the competitive process.

If any element of the revenue proposal has not been set by the competitive assessment process, we will assess that component in accordance with our standard assessment approaches, as set out in our guideline dealing with non-contestable network infrastructure projects. For these determinations, if we consider there are issues of complexity in assessing a non-contestable component, we may extend the timeframe by an additional 42 business days.¹⁸ We will notify the Network Operator in writing if we elect to extend the timeframe for making a revenue determination.

If we fail to make a revenue determination within the required timeframe, we must prepare a report for the Minister setting out the reasons for the delay and the date by which we expect to make the revenue determination.¹⁹ A Network Operator is entitled to recover reasonable costs incurred as a result of any delay.²⁰ These costs will be included in the Network Operator's revenue determination. In assessing reasonable costs, we can take into account whether the Network Operator contributed to the delay.²¹

6.4 Contents of our revenue determination

Given the differences between the NER framework and the EII contestable framework, our revenue determination will be shorter and address a much narrower range of issues. Our determination will include as a minimum:

- whether we are satisfied that the competitive assessment process was genuine and appropriate, and an overview of the AER's process and considerations in reaching that decision
- the duration of the concession period
- the revenue for the concession period, broken down into its components (as set out under section 38 of the EII Act)

¹⁷ EII Regulations, cl. 50(1)(a).

¹⁸ EII Regulations, cl. 50(2).

¹⁹ EII Regulations, cl. 50(3).

²⁰ EII Regulations, cl. 46(b)(iii).

²¹ EII Regulations, cl. 46(2).

- the schedule of quarterly payments (including their timing) to be made by the Scheme Financial Vehicle to the Network Operator and the methodology to calculate the schedule of payments
- any mechanisms which are to apply to adjust the revenue and schedule of payments within the concession period
- the capital costs associated with development and construction of the Project consistent with the Transmission Efficiency Test
- the costs of payments required to be made by a Network Operator to the Infrastructure Planner under a contractual arrangement and to meet any regulatory requirements imposed on the Network Operator
- the date the determination commences and the date we expect to remake our determination.

6.5 Publishing a revenue determination

The AER must publish a revenue determination on its website as soon as reasonably practicable following our decision.²² We must consult with the Infrastructure Planner and the Consumer Trustee before publishing.

We may decide not to publish part of a revenue determination if satisfied it is not appropriate, taking into account:

- the public interest,
- the extent to which publishing the part of the revenue determination would disclose information that is confidential or commercially sensitive, and
- the effect of publishing the part of the revenue determination on future competitive assessment processes.²³

In deciding which components of the revenue determination to publish, the AER will consider any confidentiality claims made by the Network Operator under the process outlined in section 6.2 of this Guideline. We will notify the Network Operator if we intend to publish material the Network Operator considers confidential and provide an opportunity for the Network Operator to respond.

6.6 Subsequent determinations

We are required to remake a determination once every five years or as directed by the Consumer Trustee. We may also review and remake a determination at any time, subject to the regulations.²⁴ We would generally only expect to revoke or amend our revenue determination outside the five-year requirement where this is provided for in the contractual arrangement (including to apply a revenue adjustment as set out in section 7.5.2 of this Guideline), where a material error, misdescription or miscalculation has been identified, or to correct an error resulting from the provision of false or materially misleading information.²⁵

Where we have made a previous revenue determination in accordance with the outcomes of a competitive assessment process, we will act consistently with the outcome of that process in

²² EII Regulations, cl. 53(1).

²³ EII Regulations, cl. 53(4).

²⁴ EII Act, s. 40.

²⁵ Where the AER intends to remake a determination due to error, we must consult with the Network Operator, Consumer Trustee, Infrastructure Planner and any other person we consider appropriate (EII Regulations, cl. 54(2)).

remaking the determination for the duration of the concession period.²⁶ For clarity, in remaking a determination, we would expect to include in that determination the amounts (and the components those amounts are comprised of) payable to a Network Operator for each remaining year of the concession period consistent with those contained in the contractual arrangement. We will not reassess whether a competitive assessment process was genuine and appropriate as part of the process of remaking a revenue determination.

We expect revenue proposals for subsequent determinations (based on a competitive assessment process) to be provided to the AER at least 63 business days prior to the expiry of an existing determination. We will have a period of 42 business days (from the date we receive all relevant information from the Network Operator) to publish subsequent determinations.

6.7 End of priced concession period

At the end of the concession period priced in the contractual arrangement, regulatory arrangements for a network infrastructure project may transition from the contestable framework to the non-contestable framework. The non-contestable framework is based on a modified version of Chapter 6A of the National Electricity Rules, which governs the economic regulation of prescribed transmission services. The non-contestable EII framework requires the AER to assess each component of a revenue proposal (for example, return of capital, return on capital and operating expenditure) and make a determination on the revenue requirement for each five-year regulatory period. The regulatory arrangements for non-contestable network infrastructure projects are set out in a separate AER guideline.

A key aspect in transitioning a network infrastructure project to the non-contestable framework is to establish a closing asset base at the end of the concession period in the contractual arrangement. This closing asset base will inform the payment to the Network Operator at the end of the concession period (if the contractual arrangement provides for ownership of the Project to transfer to another party). The AER will also take the closing asset base into account in establishing the opening asset base (to calculate the return on and return of capital elements of the annual revenue requirement) for its first determination where a network infrastructure project has transitioned from the contestable regulatory framework to the non-contestable framework.

The contractual arrangement should include the value of the closing asset base at the end of the concession period or a methodology for establishing it (for example, to account for additional investment over the concession period).²⁷ We will take this value or methodology into account in establishing the opening asset base for the first determination where a network infrastructure project has transitioned from the contestable regulatory framework to the non-contestable framework. We expect that this value or methodology will be based on the principle that capital costs can only be recovered once from consumers.

²⁶ EII Regulations, cl. 51(4).

²⁷ The Infrastructure Planner may undertake a condition assessment of the asset prior to the end of the concession period. This assessment may result in the Network Operator making a rectification payment.

7 AER's assessment approach

This section sets out our intended approach to assessing a revenue proposal, including application of the Transmission Efficiency Test and the determination of the amounts payable to the Network Operator.

7.1 Compliance review of the revenue proposal

Upon receipt of a revenue proposal from the Network Operator we will check if the proposal complies with the requirements set out in section 6.1 of this Guideline and any information notices issued to the Network Operator by the AER.

If we identify any material deficiencies we may require the Network Operator to submit additional information to address any identified deficiencies. If this occurs, the period for the AER to make a determination will not commence until the additional information is received.

If we do not identify any material deficiencies we will proceed to examine whether the revenue proposal (including the timing of payments):

- is consistent with the outcomes of the competitive assessment process.
- is consistent with the contractual arrangement and the relevant Consumer Trustee's (or Minister's) authorisation (or direction). We will consult with the Infrastructure Planner and Consumer Trustee in making this assessment.
- complies with the EII Act and regulations.

7.2 Consultation on the revenue proposal

The EII Regulations do not provide a function for the AER to publish revenue proposals. Therefore, we do not intend to undertake consultation on proposals. This is because the policy intent of the EII framework is that, where all aspects of a revenue proposal have been based on the outcome of a competitive assessment process, the competitive market is being relied upon to produce an outcome that reflects prudent, efficient and reasonable costs for NSW electricity consumers.

For this same reason, we will not publish a draft determination. However, as required by the EII Act the AER will inform a Network Operator of any material issues being considered before making our determination.²⁸ This obligation is consistent with the AER's 'no surprises' approach to its regulation of network service providers under the NER. We are also required to consult with the Infrastructure Planner and the Consumer Trustee before making a determination.²⁹

We expect that, in most cases, all material components of the project will be established through the competitive assessment process. However, where material elements of a revenue proposal have not been determined through a competitive assessment process, the AER intends to undertake targeted consultation on those aspects with stakeholders before making its determination. It is noted that such a consultation would exclude any amounts a Network Operator is required to pay to comply with a regulatory requirement or to pay the Infrastructure Planner under a contractual arrangement (for example, in the latter case, the cost of early development works, preparatory activities and project management undertaken by the Infrastructure Planner). This is because the regulations include a principle that the Network Operator is entitled to recover these costs.³⁰

²⁸ EII Act, s. 37(1)(d).

²⁹ EII Regulations, cl. 49.

³⁰ EII Regulations, cl. 46(1)(b).

7.3 Application of the Transmission Efficiency Test

Before making a revenue determination under section 38 of the EII Act we are required to apply the Transmission Efficiency Test to assess a Network Operator's proposed capital costs for development and construction of a Project.³¹ In doing so we must be satisfied that the capital costs proposed by the Network Operator are 'prudent, efficient and reasonable'.

Under the contestable approach the capital costs of a Project will be determined through a competitive assessment process. The regulations require the AER to apply the principle that a genuine and appropriate competitive assessment process results in the costs of carrying out an infrastructure project being prudent, efficient and reasonable.³²

Therefore, where the AER is satisfied that a competitive assessment process was genuine and appropriate (based on an assessment of the procurement strategy and competitive assessment process consistent with sections 3, 4 and 5 of this Guideline), we will consider the capital costs established through the competitive assessment process to have met the requirements of the Transmission Efficiency Test.³³

For REZ Network Infrastructure Projects, the AER must also ensure the Network Operator's proposed capital costs do not exceed any maximum capital amount for the Project³⁴ as advised by the Consumer Trustee. The Consumer Trustee must notify the AER of the maximum capital amount once it has authorised the Network Operator. If the Network Operator's proposed capital costs exceed the maximum capital amount, we will inform the Consumer Trustee, Infrastructure Planner and Network Operator that we are not able to make a determination on the basis of the outcome of the competitive assessment process.

7.4 Determination of the amount payable to the Network Operator

In determining the amount payable to a Network Operator, we are required to take into account the objectives of the EII Act and the following principles contained in section 37 of the Act:

- A Network Operator is entitled to recover the prudent, efficient, and reasonable costs incurred by the Network Operator for carrying out the network infrastructure project.
- Incentives should be given to Network Operators to promote economic efficiency.
- A Network Operator is entitled to revenue for the ongoing ownership, control and operation of a network infrastructure project that is commensurate with the regulatory and commercial risks to the Network Operator.
- Any other principles set out in the EII Regulations.

The regulations set out additional principles that allow the AER to rely on the outcome of a competitive assessment process for a network infrastructure project to meet the principles in

³¹ EII Act, s. 38(4).

³² EII Regulations, cl. 46(1)(a)(i).

³³ The AER can rely on and adopt the outcome of a competitive assessment process if it is satisfied the process was genuine and appropriate (EII Regulations, cl. 45(5)).

³⁴ Once the Consumer Trustee has authorised the Network Operator it must provide the Regulator with the maximum amount for the prudent, efficient and reasonable capital costs for development and construction of the REZ Network Infrastructure Project that may be determined by the Regulator. The maximum capital amount does not apply to Priority Transmission Infrastructure Projects in either the contestable or non-contestable frameworks under the EII Act.

section 37 of the Act.³⁵ Therefore, where we are satisfied that the competitive assessment process was genuine and appropriate, we expect to adopt in our revenue determination the amounts payable to the Network Operator consistent with the contractual arrangement. However, as noted in Section 4 of this Guideline, if we are not satisfied we would not accept a revenue proposal and decline to make a revenue determination on the basis of the outcome of the competitive assessment process. In these circumstances we would consult with the Infrastructure Planner and Consumer Trustee on the approach for progressing the network infrastructure project. If, for example, the authorisation remains in place and we do not consider we can rely on the outcome of a competitive assessment process, we would need to consider whether to make our determination using the approach for non-contestable processes.

The regulations also require us, in making a revenue determination, to take account of the principle that a Network Operator is entitled to recover specified costs that are imposed on the Network Operator related to, but not the outcome of, a competitive assessment process:

- prudent, efficient and reasonable costs incurred by the Network Operator in complying with a regulatory requirement,³⁶
- payments required to be made by the Network Operator to the Infrastructure Planner under a contractual arrangement, if the network operator was required to enter the contractual arrangement under the relevant authorisation, and
- reasonable costs, as assessed by the regulator, incurred by the network operator if the regulator fails to make a revenue determination within the relevant timeframe.

7.5 Adjustment of a revenue determination

Approaches to cost variations and risk allocation are matters that potential Network Operators (or persons assisting a Network Operator in carrying out a network infrastructure project) will compete on as part of the competitive assessment process. Where we are satisfied that the competitive process was genuine and appropriate, our revenue determination will facilitate adjustments to the revenues where these adjustments are set out in a contractual arrangement that has been agreed between the Infrastructure Planner and the successful proponent.³⁷

Where some components of the revenue determination are set through a non-competitive assessment process, the AER may include revenue adjustments related to these components. The AER's approach to adjustments of these components is set out in our guideline for non-contestable network infrastructure projects.

Adjustments of a revenue determination may occur separate from or as part of a redetermination.

7.5.1 Adjustments not requiring a redetermination

The following sets out our process for making adjustments to a Network Operator's revenues separate from the redetermination process, based on adjustments set out in the contractual arrangement (and reflected in our revenue determination). These adjustments do not constitute a remaking of our determination but will result in an updated schedule of payments.

1. *Network Operator submits to the AER proposed revenue adjustments, adjusted revenue and an adjusted payment schedule for the concession period* – The information must be submitted by a specified date prior to the date the adjusted revenue will apply.

³⁵ EII Regulations, cl. 46(1).

³⁶ 'Regulatory requirement' is defined in cl. 46(3) of the EII Regulations.

³⁷ EII Regulations, cl. 51(3)(b).

2. *Network Operator's revenue adjustment proposal must include evidence supporting the proposed adjustments* – This evidence would include details of inputs into the revenue adjustment mechanism and any supporting information, including notification from the Infrastructure Planner of the amounts of any agreed variations and their consistency with the contractual arrangement. We may also seek independent confirmation from the Infrastructure Planner.
3. *AER undertakes a compliance check and notifies the Network Operator whether we agree with the proposed revenue adjustments, adjusted revenue and an adjusted payment schedule for the concession period* – We would review the Network Operator's proposal and undertake a compliance check against the relevant revenue adjustment provisions contained in the contractual arrangement (and reflected in our determination). We would advise the Network Operator whether we agree with the proposed revenue adjustments, require further information or require the Network Operator to amend and resubmit its proposal. We may amend the proposal if the Network Operator fails to submit an amended proposal that meets our requirements. Once we have approved the revenue adjustment proposal, we would advise the Network Operator and publish the adjusted revenue and payment schedule for the concession period.

Unless otherwise specified in the contractual arrangement, we would expect to make revenue adjustments annually from the commencement of the concession period. For annual adjustments, we expect Network Operators to provide all relevant information required for the AER to assess the proposed adjustment at least 63 business days prior to the start of the annual period in which the adjusted revenue will first apply.

The contractual arrangement may specify a trigger event which requires the AER to assess a proposed revenue adjustment outside of the annual process. A Network Operator must provide the AER with the relevant information to assess proposed adjustment as soon as practicable following the trigger event. Where the AER approves a revenue adjustment, the adjusted revenue will apply from the start of the next full quarter (unless otherwise specified in the contractual arrangement).

We will endeavour to make revenue adjustment decisions within 42 business days of receipt of the revenue adjustment proposal.

7.5.2 Adjustments requiring a redetermination

We expect all revenue variations to be set out in the contractual arrangement. Most of these variations will be assessed through the (typically annual) revenue adjustment process discussed above. However, there may be other types of revenue variations allowed for in a contractual arrangement that are undertaken less frequently.

The assessment of these revenue variations may instead occur as part of the remaking of a determination. The AER may remake a determination before the end of the five-year cycle to assess a proposed revenue adjustment. The AER's process for assessing these variations will be largely the same as for adjustments set out in section 7.5.1 of this Guideline, but will be aligned to the timing of remaking a revenue determination.

8 Application of supporting guidelines

This section sets out the supporting guidelines that apply to Network Operators under the contestable framework.

The framework for contestable network infrastructure projects relies on a competitive assessment process to establish the amounts payable to the Network Operator. This is different from the process we undertake to set network business' revenues under the NER, which involves a detailed review of individual components of a Network Operator's proposed revenue and the application of a range of different AER guidelines. Consequently, the subject matter of only a limited number of guidelines that exist under the NER are relevant to contestable network infrastructure projects. This subject matter will be addressed under the EII framework by the:

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

These supporting guidelines will be modelled on the confidentiality, cost allocation, and ring-fencing guidelines that apply to transmission network service providers under the NER, with modifications to reflect differences between the EII and NER frameworks.

For the avoidance of doubt:

- Supporting guidelines introduced under the EII framework will not alter the application of NER guidelines to network service providers in their capacity as network service providers under the NER.
- We will amend or update guidelines that apply to network service providers under the NER in accordance with the NER. When we amend the confidentiality, cost allocation, or ring-fencing guidelines under the NER, we will also consider whether amendments need to be made to the supporting guidelines under the EII framework.
- Where we amend a supporting guideline, we will allow a reasonable period between publishing those amendments and the time by which a Network Operator must comply.

8.1 Confidentiality

Section 47 of the EII Regulations requires the AER to publish guidelines on its website about the exercise of our functions under Part 5 of the Act, including making a revenue determination. The EII Confidentiality guideline will set out handling of confidential information in relation to:

- a Network Operator's revenue proposal, which is required for the AER to make a revenue determination under section 38(1-4) of the Act.
- a Network Operator's responses to any information notices issued by the AER under section 38(7) of the Act.
- any other information provided by the Network Operator that is necessary for the AER to perform its functions.

The Confidentiality guideline will also set out how Network Operators should submit confidentiality claims to the AER and our process for considering confidentiality claims.

8.2 Cost allocation

The AER's EII Cost allocation guideline, developed under clause 47 of the EII Regulations, will set out how a Network Operator must allocate and attribute costs between regulated activities provided under the EII framework (and further between different network infrastructure projects for which the Network Operator carries out regulated activities), and other regulated and unregulated services that the Network Operator or its affiliated entities may provide.

The EII Cost allocation guideline will require the Network Operator to prepare and maintain a cost allocation methodology that governs the Network Operator's internal accounting, the way it prepares information that it submits to the AER. Cost allocation and attribution is also used to support the EII Ring-fencing guideline (discussed below) to address the risk that a network business may use regulated revenues under the EII framework to cross-subsidise other activities.

A Network Operator will also be required to:

- be able to demonstrate the application of the cost allocation methodology
- commission an audit of the application of the cost allocation methodology, when required to do so by the AER, and
- publish an approved cost allocation methodology on the Network Operator's website.

A Network Operator will also be required to amend an approved cost allocation methodology, where the amendment is required by the AER to take into account any change to the EII Cost allocation guideline.

Some Network Operators or their affiliated entities may also be a registered distribution network service provider or transmission network service provider under the NER and would have a pre-existing NER cost allocation methodology. As set out in the EII Cost allocation guideline, these Network Operators will have the option of either creating a separate cost allocation methodology to cover services provided under the EII framework or updating their NER cost allocation methodology to meet the requirements in the EII Cost allocation guideline.

8.3 Ring-fencing

Clause 42 of the EII Regulations require the AER to issue guidelines for Network Operators covering a range of matters relating to ring-fencing.

The purpose of ring-fencing regulated activities from other activities or services is to protect the efficiency of regulated activities and the competitiveness of markets for other activities or services. Ring-fencing does this by preventing a Network Operator from:

- discriminating in favour of their related parties to disadvantage competitors operating in these markets; and
- using revenue earned from regulated activities to cross-subsidise contestable activities or services.

To achieve these objectives, the EII regulations require that the EII Ring-fencing guideline must address:

- legal separation of the entity through which a Network Operator conducts regulated activities from any other entity through which it conducts business.
- establishment and maintenance of consolidated and separate accounts for regulated activities and other activities conducted by the Network Operator.
- limitations on the flow of information from or within the Network Operator, if there is potential for a competitive advantage or disadvantage to arise.

The EII Regulations also require the AER to:

- set standards about the legal and functional separation of the regulated activities of a Network Operator from other activities of the Network Operator
- monitor compliance by Network Operators with the standards.

Details of these obligations will be set out in our EII Ring-fencing guideline.

9 Information notices

9.1 Information requirements for revenue determinations

The EII Act allows the AER to issue written notices to Network Operators requiring them to provide information that we need to make a revenue determination.³⁸ Those provisions require that Network Operators must comply with any information notice issued by us, unless they have a lawful excuse.³⁹ The EII Regulations also indicate that the Network Operator must give the AER information about the proposed amounts payable to the Network Operator for carrying out a Project that the regulator reasonably requires to exercise our functions under Part 5 of the EII Act. The Network Operator must prepare this information in accordance with this guideline, any supporting guidelines under the EII framework, and any other requirements notified by the AER to the Network Operator.⁴⁰

Before issuing an information notice, we will engage with the relevant Network Operator. This may include issuing a draft information notice and allowing time for the Network Operator to provide feedback on the draft notice. The information notice would, as a minimum, include the information contained in section 6.1 of this Guideline but may also include other information requirements. For example, the information notice may also request information to allow the AER to assess any components of a revenue proposal that have not been determined through a competitive assessment process. Where relevant, information provided in response to a notice may be required to be subject to independent assurance (audit or review) and accompanied by a statutory declaration regarding the information provided.

We may also use information notices or voluntary requests for information during our review of a revenue proposal to obtain additional information where such information is required to assist us in making our revenue determination.

9.2 Information requirements for compliance monitoring

The AER may issue notices to Network Operators to provide us with information as required throughout a concession period. We are likely to use this information to monitor a Network Operator's compliance with any requirements imposed on the Network Operator under a revenue determination, including cost allocation and ring-fencing requirements.

Before issuing an information notice, we will engage with a Network Operator regarding our information requirements. Where relevant, this information will be required to be subject to independent assurance (audit or review) and accompanied by a statutory declaration regarding the information provided.

³⁸ EII Act, s. 38(7)-(8).

³⁹ EII Act, s. 38(9).

⁴⁰ EII Regulations, cl. 48(1)-(3).