

Revenue Determination (Contestable)

Transgrid – Waratah Super Battery –
System Integrity Protection Scheme Service
component

Made under the Electricity Infrastructure
Investment Act 2020 (NSW)

December 2022

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Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601
Tel: 1300 585 165

AER reference: AER22005188

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Summary

On 14 October 2022, the NSW Minister for Energy (Minister) published an Order directing Transgrid as the Network Operator to carry out the Waratah Super Battery (WSB) project.¹ The WSB project aims to address an expected breach of the NSW Energy Security Target in 2025–26 by increasing power transfer capacity on transmission lines that connect generation in the northern and southern regions of NSW to Sydney, Newcastle and Wollongong.

The WSB project comprises the following contestable and non-contestable components:

1. A program of augmentations to existing transmission network lines and substation equipment (to be undertaken by Transgrid).
2. System Integrity Protection Scheme (SIPS) control and communications systems (to be developed and operated by Transgrid).
3. A SIPS Service to be provided by a battery energy storage system with minimum capacity of 700 megawatts (MW) / 1,400 megawatt hours (MWh) (to be undertaken by a service provider competitively procured by the Energy Corporation of NSW (EnergyCo)).²
4. Paired Generation Services (to be undertaken by a portfolio of generators competitively procured by EnergyCo).

EnergyCo, as the Infrastructure Planner for the WSB project, undertook a competitive assessment process during 2022 to select a party or parties to provide the SIPS Service to Transgrid. Transgrid has contracted with the successful tenderer (Akaysha Energy) to provide the SIPS Service for a period of up to 5.5 years. This determination relates to the amounts payable to Transgrid for the SIPS Service which, in turn, Transgrid will pay in full to Akaysha.

On 17 October 2022, Transgrid submitted a revenue proposal to the AER setting out the total amount it proposes to be paid (██████████ \$ nominal) for the SIPS Service component of the WSB project over the 5.5 year service period and the corresponding schedule of payments.³ It also proposed the adjustment events/mechanisms by which those payments could be adjusted over the term of the project.

This determination:

1. *Sets out our assessment of EnergyCo's competitive assessment process*

We have reviewed the competitive assessment process undertaken by EnergyCo against the requirements in our Revenue Determination Guideline for NSW Contestable Network Projects (Guideline) and consider that it was a 'genuine and

¹ See https://gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette_2022_2022-473.pdf.

² EnergyCo is a corporation constituted under the *Energy and Utilities Administration Act 1987 (NSW)* and is responsible for leading the delivery of Renewable Energy Zones (REZs) as part of the NSW Government's Electricity Infrastructure Roadmap.

³ We expect to receive revenue proposals from Transgrid relating to the other contestable and non-contestable components in 2023.

appropriate’ process.⁴ On this basis, we are able to adopt the outcomes from the competitive assessment process in our determination. Section 5 of this determination sets out why we consider the process was genuine and appropriate.

2. Confirms the total amount payable and schedule of payments to be made to Transgrid

We have verified that Transgrid’s revenue proposal is consistent with the contractual arrangements reached between Akaysha Energy and EnergyCo which was the outcome of the competitive assessment process. On this basis, our determination confirms a total amount payable to Transgrid of [REDACTED] (\$, nominal) over the 5.5 year contractual period. This determination also confirms the schedule of quarterly amounts to be paid to Transgrid and the dates on which those quarterly payments are to be made. This information is set out in section 6 and Appendix C.

3. Sets out the basis on which the schedule of payments may be adjusted

The amount payable to Transgrid is subject to adjustments that are approved by the AER during the period of the contractual arrangement. We have set out 12 adjustment events/mechanisms that are able to adjust the amount and timing of payments under the schedule of payments we have confirmed. These adjustment events/mechanisms are set out in Section 7 of this determination and are part of the contractual arrangements that Transgrid was required to enter into under the Ministerial Order.

Our determination commences on 1 July 2023 and is required to be remade every five years until the expiry of the contractual arrangements associated with the SIPS Service (and such additional time as may be required to allow for the recovery of any outstanding service payment adjustments).

The Scheme Financial Vehicle (SFV) is required to pay Transgrid, as the Network Operator, amounts set out in the schedule of payments on the dates confirmed in this determination. The costs associated with the SIPS Service, and the WSB project more broadly, are part of the total costs of the NSW Electricity Infrastructure Roadmap. The Roadmap is funded from amounts recovered from the NSW distributors through a jurisdictional scheme arrangement. The amounts are passed on to NSW electricity consumers via their electricity retail bills.

The AER strongly believes that consumers should be informed of the costs and benefits of network infrastructure projects that they are ultimately required to pay for. We consider that there is a discipline that transparency imposes and that NSW electricity consumers expect our determinations to provide this transparency for all contestable and non-contestable network infrastructure projects.

The AER has considered the confidentiality claims made by Transgrid in relation to its revenue proposal. We accept that the schedule of payments, detailed information about the adjustment mechanisms and some contextual information over which confidentiality is claimed should be redacted in the public version of our determination. However, we are of the view that the total and annual amounts payable to Transgrid for the WSB project should be published.

⁴ The term ‘genuine and appropriate’ is contained in Regulation 46(1)(a). Our Guideline sets out the criteria by which we assess whether a competitive assessment process was genuine and appropriate.

For this determination we have agreed to redact the total and annual amounts in the public version of the determination on the basis that we will publish the aggregate total and annual amounts payable for the SIPS Service and Paired Generation Services once we have made our determination for Paired Generation Services. We will also update these aggregate amounts should there be any adjustments to them over the term of the WSB project. We consider this provides the transparency required by consumers, while protecting the confidentiality of competitively sensitive information. We note that Transgrid and EnergyCo have agreed to the AER publishing the aggregate amounts.

1 Regulatory framework

1.1 Overview of the framework

The AER was appointed as a Regulator under the *Electricity Infrastructure Investment Act 2020* (EII Act) in November 2021.⁵ A key function for us under Division 3 of Part 5 of the EII Act is to apply a Transmission Efficiency Test (TET) and make revenue determinations for Network Operators selected to carry out⁶ network infrastructure projects. 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 (or a service provider who is assisting 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.

The regulatory process varies significantly between the contestable and non-contestable processes. 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 so that competition between market participants can reveal efficient costs. The non-contestable process is subject to a more typical 'building block' assessment, where the AER reviews the prudence, efficiency, and reasonableness of the components of a network operator's total revenue.

Under the EII Act, a network infrastructure project can be a Renewable Energy Zone Network Infrastructure Project (RNIP) or a Priority Transmission Infrastructure Project (PTIP).

1.2 Contestable processes

Under the EII framework the Infrastructure Planner may undertake a competitive assessment process to select a Network Operator (or a person to assist a Network Operator) to carry out all or part of a network infrastructure project. The Infrastructure Planner identifies the project options and selects the preferred 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 on the process.

In August 2022 we published our *Revenue Determination Guideline for NSW Contestable Network Projects* (Guideline) setting out how we undertake reviews of competitive

⁵ IPART has also been appointed as a Regulator to undertake certain functions under the EII Act.

⁶ Carrying out a network infrastructure project may include owning or leasing, constructing, financing, operating and/or maintaining assets.

assessment processes and the criteria we apply. We undertake reviews at two stages in the process:

1. At the start of the competitive process, we review whether the procurement strategy developed by the Infrastructure Planner is likely to result in a genuine and appropriate competitive assessment process.
2. After the competitive process has been completed and a Network Operator has been selected (or a person to assist the Network Operator), we decide whether we are satisfied that the process was genuine and appropriate.

To assist us in these reviews, we monitor the competitive assessment process through regular meetings with the Infrastructure Planner and we may also request to be an observer at procurement evaluation meetings.

1.3 Revenue determinations

Following a contestable process, a Network Operator is required to submit a revenue proposal to the AER setting out the amount it proposes to be paid for carrying out the network infrastructure project. The proposal must be consistent with the outcome of the competitive assessment process and the terms of any contractual arrangements it has entered into (or will enter into). Our Guideline sets out information requirements for a revenue proposal, our approach to assessing a revenue proposal, the timeline for making a determination, and the information our determination will contain.

Section 37 of the EII Act requires that in making a revenue determination for a Network Operator, we must take into account a number of principles, including that a Network Operator is entitled to the prudent, efficient and reasonable costs incurred in carrying out the infrastructure project. In summary our determination must include the:

- amount payable to a Network Operator – section 38(1) of the EII Act.
- components of the amount payable – section 38(2) of the EII Act.
- schedule of amounts required to be paid to the Network Operator and the dates on which the amounts must be paid – EII Regulation 52.

Under EII Regulation 51(1) our determination may also include provision for the adjustment of any amount included in the revenue determination.

If we are satisfied that the competitive assessment process was genuine and appropriate, we can presume the principles under section 37 of the EII Act have been met and we would expect to make a revenue determination consistent with the outcomes of the process. Once we have made a determination the SFV is required to pay the Network Operator in accordance with it.⁷

⁷ EII Act, s.39(1).

2 Waratah Super Battery project

2.1 Project context

Under the EII Act, a PTIP can be authorised or directed by the Minister if it is in response to a forecast breach of the NSW Energy Security Target and is in the public interest.⁸⁹ A PTIP is defined as a transmission infrastructure project that is located in NSW and is identified, or forms part of an infrastructure project identified in, the latest Integrated System Plan (ISP) published by Australian Energy Market Operator (AEMO).

In May 2022 AEMO, in its role as the Energy Security Target Monitor, identified a breach in the target in 2025–26, with this breach expected to extend through to 2030–31. This reflected recent changes in market circumstances, including the announcement by Origin Energy of the potential early retirement of its Eraring power station in 2025.

On 30 June, the 2022 ISP published by AEMO identified the Sydney Ring project (a project designed to reinforce electricity supply to Sydney, Newcastle and Wollongong) as an actionable NSW project, to be progressed urgently and with a latest date for delivery of July 2027. The 2022 ISP contained a combination of delivery options, including the WSB project as part of a staged delivery of the Sydney Ring project.¹⁰

On 2 August 2022, the NSW Energy Minister identified the WSB project as a PTIP under the EII Act and appointed EnergyCo as the Infrastructure Planner for the project.

2.2 Project overview

The WSB project aims to increase power transfer capacity on transmission lines that connect generation in the northern and southern regions of NSW to the load centres of Sydney, Newcastle and Wollongong. The WSB project consists of four components:

1. A program of augmentations to existing transmission network lines and substation equipment (to be undertaken by Transgrid).
2. System Integrity Protection Scheme (SIPS) control and communications systems (to be developed and operated by Transgrid).
3. A SIPS Service to be provided by a battery energy storage system with minimum capacity of 700 MW/1,400 MWh (to be undertaken by a service provider competitively procured by EnergyCo). This component of the WSB project is the subject of this determination.
4. Paired Generation Services (to be undertaken by a portfolio of generators competitively procured by EnergyCo).

In summary the four components work together in the following way:

- The network augmentations will increase the thermal ratings of specific transmission lines, allowing existing generation to transmit more energy to meet demand in the

⁸ Section 34(3) of the EII Act.

⁹ The Energy Security Target is firm capacity sufficient to meet maximum demand plus a reserve margin for each financial year. The reserve margin is the capacity of the two largest generators in NSW.

¹⁰ AEMO, *2022 Integrated System Plan*, 30 June 2022, p. 67.

Sydney, Newcastle, Wollongong region, following the reduction in supply within that region due to the potential early retirement of the Eraring power station.

- The SIPS Service provided by the WSB will make it possible to operate specific transmission lines which transfer electricity from the northern and southern regions of NSW to the Sydney, Newcastle, Wollongong region at a higher thermal rating than would normally be the case. This will allow existing generation to transmit more energy to meet demand in the region.
- The SIPS control and communications system will detect any contingency event which restricts the transfer of electricity from the northern and southern regions of NSW to the Sydney, Newcastle, Wollongong region and direct the WSB to discharge electricity into the network within that region.
- To maintain balance between supply and demand, the SIPS control and communications system will also send a signal to paired generators to reduce their output, thereby preventing overloading of the transmission lines.

2.3 Ministerial direction

Pursuant to section 32(1)(b) of the EII Act, on 14 October 2022 the Minister published an Order directing Transgrid, as the Network Operator, to carry out the WSB project.¹¹ The Minister was satisfied that the direction¹² was consistent with the objects of the EII Act on a number of grounds, including:

- The WSB project was identified as part of an actionable NSW transmission infrastructure project (comprising the northern part of the Sydney Ring project) within the 2022 ISP. As such, the WSB project was considered a PTIP for the purposes of the EII Act.
- The successful on-time delivery of the WSB project is critical to the affordability, reliability, security and sustainability of electricity supply in NSW, given the potential closure of the Eraring power station in 2025.
- Transgrid operates the existing transmission network, of which the WSB project will be an integral part.

Transgrid must carry out the WSB project in accordance with the direction, including that the SIPS Service:

- is a service capable of providing a guaranteed continuous active power capacity of at least 700 MW and a guaranteed useable energy storage capacity of at least 1400 MWh.
- is to be provided by a party selected by the Infrastructure Planner pursuant to a competitive assessment process.

¹¹ The Ministerial order was published in the NSW Government Gazette on 14 October 2022 - see https://gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette_2022_2022-473.pdf.

¹² The direction ensures that the delivery of the WSB project is supported by the statutory enforcement regime in section 35 of the EII Act.

- will be provided through the construction and operation by a service provider of a battery located at the former Munmorah power station site.

The direction also requires Transgrid to:

- enter into specific contractual arrangements to carry out the WSB project (section 3.3 of this determination contains information on the contractual arrangements).
- complete the planning, design and construction stages of the WSB project by the relevant dates specified in the Delivery Plan (section 5 of the direction)
- lodge a revenue proposal with the AER within one business day after the date on which it enters into the Network Operator Deed.

2.4 Other WSB revenue determinations

The Minister's direction authorises Transgrid, as the Network Operator, to carry out the WSB project and allows the AER to make a revenue determination under Division 3 of Part 5 of the EII Act.¹³ However, Transgrid is not obliged to carry out the WSB project in accordance with the Minister's direction until the AER makes its determination.¹⁴

This determination is made in response to a revenue proposal from Transgrid on the SIPS Service component of the WSB project. We expect to receive from Transgrid separate revenue proposals relating to the:¹⁵

- Paired Generation Services component based on a competitive assessment process
[REDACTED]
- SIPS control and network augmentation (non-contestable) components of the project (required to be submitted to the AER on 31 March 2023). This proposal will contain contract management and administration costs related to the SIPS Service and the Paired Generation Services.

¹³ Under section 36(1) of the EII Act, Division 3 of Part 5 only applies to Network Operators subject to an authorisation. An 'authorisation' is defined in section 36(4) to include a direction given by the Minister under section 32 to carry out a PTIP.

¹⁴ EII Act, s.39(3).

¹⁵ Transgrid, *Waratah Super Battery Project 2023-2028, Revenue Proposal, System Integrity Protection Scheme (SIPS) Service*, Revised - 23 November 2022, p.10.

3 SIPS Service

3.1 The service

The SIPS Service involves the construction and operation of a battery energy storage system capable of delivering guaranteed power and storage capacity. In a network contingency event, the battery will have the capacity to supply up to 700 MW for up to two hours (that is, 1,400 MWh in total).

During the procurement process EnergyCo considered the SIPS Service operating in the following three modes of service:

1. Fixed core service
2. Sculpted core service
3. Seasonal sculpted core service.

All three modes allow the WSB project to meet its purpose of providing additional transmission capacity and, when required, additional energy (in conjunction with other aspects of the project). However, after undertaking technical studies, EnergyCo concluded that the Seasonal Sculpted Core Service mode of operation would deliver the highest benefit for NSW consumers. This was primarily because battery capacity that is not needed for SIPS Service purposes can be put to productive use as a low-cost source of electricity supply, increasing competition and reducing reliance on higher cost generation.

The Seasonal Sculpted Core Service mode of operation during the extended summer period has a daily profile of continuous active power capacity (MW) and useable energy storage capacity (MWh) allocation to the SIPS Service comprising:¹⁶

- at least 700 MW and 1400 MWh of battery capacity reserved for SIPS Service between 5am and sunset, when power system demand and paired generation availability levels are relatively high.
- at least 500 MW and 1000 MWh of battery capacity reserved for SIPS Service between sunset and 2am, when power system demand and paired generation availability levels are relatively lower.
- at least 300 MW and 600 MWh of battery capacity reserved for SIPS Service between 2am and 5am, when power system demand is at its lowest.

EnergyCo concluded that sculpting is appropriate as there is a higher likelihood of transmission line disturbances occurring during the extended summer period to which the SIPS Service will be required to respond, caused by events such as bush fires and storms. As a result, the battery energy reserved for the SIPS Service varies depending on the time of

¹⁶ Transgrid, *Waratah Super Battery Project 2023-2028, Revenue Proposal, System Integrity Protection Scheme (SIPS) Service*, Revised – 23 November 2022, pp.20-21.

the day and season (with a high level of battery energy reserved for the extended summer period). The remaining energy is expected to be free for energy arbitrage.¹⁷

3.2 Competitive procurement of the service

3.2.1 Process

EnergyCo commenced a competitive assessment process for the SIPS Service in March 2022 and completed it in October 2022. The process involved market sounding, an expression of interest (EOI) stage, and an invitation to tender (ITT) to shortlisted applicants for each of the three service mode profiles set out in section 3.1.

EnergyCo provided us with a procurement report on 12 October that describes the competitive assessment process undertaken and outcome achieved. The report contains the information required under section 5.2 of our Guideline, including the procurement strategy, the evaluation report and the probity report on the evaluation process. We also observed the competitive assessment process undertaken by EnergyCo. Our review of the process and the implications of that review for this determination are set out in section 5.

3.2.2 Outcome

Following its evaluation process, EnergyCo selected Akaysha Energy (Akaysha) as the successful tenderer for the SIPS Service. Akaysha will be responsible for the construction and operation of at least 700 MW/1,400 MWh of battery capacity and provision of the SIPS Service for a 5.5 year term. Akaysha is required to provide the seasonal sculpted core service, but Transgrid may, with a period of notice, require Akaysha to provide the fixed core service.

Akaysha intends to build a 850 MW/1,680 MWh battery at the former Munmorah power station site (the capacity of the battery above EnergyCo's requirements is free to be used by Akaysha for energy arbitrage). The final contracted price negotiated by EnergyCo with Akaysha is an initial service charge of [REDACTED]

3.3 Contractual arrangements

Transgrid, as the Network Operator for the WSB project, is required to enter into the types of contractual arrangements to carry out the project as set out in Schedule 1, clause 3 of the Minister's direction. In relation to the SIPS Service:

- Transgrid and EnergyCo have entered into the Network **Operator Deed** which sets out certain rights and responsibilities of each party in respect of the carrying out the WSB project.

¹⁷ Transgrid, *Waratah Super Battery Project 2023-2028, Revenue Proposal, System Integrity Protection Scheme (SIPS) Service*, Revised - 23 November 2022, p.21.

¹⁸ Transgrid, *Waratah Super Battery Project 2023-2028, Revenue Proposal, System Integrity Protection Scheme (SIPS) Service*, Revised – 23 November 2022, pp.22 and 31.

- Transgrid and Akaysha¹⁹ have entered into the **SIPS Service Agreement**. This agreement requires Transgrid to procure the SIPS Service from Akaysha on specified terms and conditions.
- Transgrid and the SFV will enter into a **Payment Deed** to facilitate payments from the SFV to Transgrid in accordance with determinations made by the AER in relation to the SIPS Service. The payment deed is expected to be executed soon after this determination is made.²⁰

¹⁹ The Akaysha entity entering into the agreement is Munmorah Battery ProjectCo Pty Ltd.

²⁰ Transgrid, *Waratah Super Battery Project 2023-2028, Revenue Proposal, System Integrity Protection Scheme (SIPS) Service*, Revised – 23 November 2022, pp.11-12.

4 Transgrid’s revenue proposal

4.1 Compliance with requirements

On 17 October 2022, Transgrid submitted its revenue proposal to the AER for a contestable revenue determination. Transgrid stated that its proposal only relates to the procurement of the SIPS Service and that its revenue proposal complies with the:

- requirements of the AER’s Guideline
- requirements of information notices issued by the AER to it
- Minister’s direction relating to the WSB project
- contractual arrangements it has entered into with EnergyCo and the SIPS Service provider (Akaysha).

As part of its proposal, Transgrid set out where each requirement is addressed in the revenue proposal and associated attachments. Based on our review of Transgrid’s revenue proposal we found that, overall, it was compliant with the above requirements. However, we did identify issues with the clarity of the adjustment events/mechanisms that set out the circumstances where the amounts payable under our determination can be adjusted, and the described approach for determining the adjusted amounts. In response Transgrid revised and resubmitted its revenue proposal on 23 November.²¹

We note that neither the EII Act or the EII Regulations permit us to publish a Network Operator’s revenue proposal.

4.2 Key elements of the revenue proposal

4.2.1 Review of the competitive assessment process

Transgrid’s revenue proposal requests that we make our determination based on the outcomes of the competitive assessment process undertaken by the Infrastructure Planner for the SIPS Service.

Our Guideline states that if we consider the competitive assessment process to be ‘genuine and appropriate’, we would expect to adopt the outcomes of the process in our determination.²² Our Guideline includes the criteria we consider in assessing whether the process is genuine and appropriate.

Section 5 of this determination contains our assessment of whether the competitive assessment process undertaken for the SIPS Service was genuine and appropriate and the implications of that assessment.

²¹ Transgrid, *Waratah Super Battery Project 2023-2028, Revenue Proposal, System Integrity Protection Scheme (SIPS) Service*, Revised – 23 November 2022.

²² AER, *Revenue Determination Guideline for NSW Contestable Network Projects*, August 2022, p. 6.

4.2.2 Total revenue and schedule of payments

The EII Act and EII Regulations require our determination to include:

- *The amount payable to a Network Operator*

The revenue proposal sets out a total amount payable of [REDACTED] (\$ nominal) for the 5.5 year period covered by the contractual arrangements (based on the seasonal sculpted core service).²³

- *The components of the amount payable*

Transgrid indicates that the amount payable is all operating expenditure and does not contain any capital expenditure.²⁴

- *The schedule of amounts required to be paid to the Network Operator and the dates on which the amounts must be paid*

Transgrid states that the schedule of payments (shown in Table 10 of its proposal):

- are derived as quarterly instalments based on the yearly service charge for the seasonal sculpted core service;
- correspond to the term of the SIPS Service Agreement;



Our assessment of the above matters is set out in section 6 of this determination.

4.2.3 Revenue adjustments

The EII Regulations state that our determination may also include provision for the adjustment of any amount included in the revenue determination. Section 6 of Transgrid's revenue proposal sets out adjustments that may be made to the schedule of payments, should certain triggers occur. Transgrid states that each proposed adjustment event/mechanism reflects an equivalent adjustment provision in the SIPS Service Agreement (which it was required to enter into under the Minister's direction). Transgrid's revenue proposal lists nine Service Charge Variation Events and three adjustment mechanisms. The specific adjustments and our review of them is set out in section 7 of this determination.

²³ Transgrid, *Waratah Super Battery Project 2023-2028, Revenue Proposal, System Integrity Protection Scheme (SIPS) Service*, Revised – 23 November 2022, p. 30.

²⁴ Transgrid, *Waratah Super Battery Project 2023-2028, Revenue Proposal, System Integrity Protection Scheme (SIPS) Service*, Revised – 23 November 2022, section 3 on p. 25.

5 Review of the competitive assessment process

5.1 Regulatory framework

The EII Regulations allow the Infrastructure Planner to undertake a competitive assessment process to select a Network Operator, or a service provider to assist a Network Operator, to carry out all or part of a network infrastructure project.²⁵

In making a revenue determination under the EII Act, the EII Regulations allow the AER to rely on and adopt information provided by the Infrastructure Planner if:

- the Infrastructure Planner obtained the information from a competitive assessment process, and
- the regulator is satisfied that the competitive assessment process was genuine and appropriate.²⁶

The EII Regulations prescribe a set of principles that a genuine and appropriate competitive assessment process can be considered to produce. Specifically, clause 46(1)(a) indicates that a genuine and appropriate competitive assessment process:

- results in the cost of carrying out an infrastructure project being prudent, efficient, and reasonable, and
- provides incentives to promote economic efficiency, and
- results in revenue for the ongoing ownership, control and operation of the infrastructure project being commensurate with the regulatory and commercial risks.

These principles mirror the principles in section 37(1) of the EII Act, which we must take into account in exercising our functions under Part 5 (Division 3) of the EII Act.

On this basis, if we are satisfied that a competitive assessment process is genuine and appropriate, we may consider the outcomes of the process are consistent with the principles set out in EII Regulation 46(1)(a) (and section 37(1) of the EII Act), and we may adopt those outcomes in our determination.

5.1.1 Infrastructure Planner to consult and provide information

The EII Regulations require the Infrastructure Planner to consult with us and provide us with information about and obtained from the competitive assessment process both before and during the process.²⁷ Our Guideline sets out specific information for the Infrastructure Planner to provide to us and processes to facilitate AER staff to observe the competitive assessment process. The Infrastructure Planner must:

- consult with the AER and provide us with a procurement strategy. Information that must be included in a procurement strategy is set out in section 4.2 of our Guideline. We notify the Infrastructure Planner whether we are satisfied that the process in the

²⁵ EII Regulation 45.

²⁶ EII Regulation 45(5).

²⁷ EII Regulation 45(4).

procurement strategy is likely to result in a genuine and appropriate competitive assessment process.

- allow the AER to monitor the competitive assessment process, request information and observe key meetings.
- provide the AER with a procurement report on the conduct of the competitive assessment process. Information that must be included in a procurement report is set out in section 5.2 of our Guideline. We assess the procurement report in making our assessment of whether a process was genuine and appropriate.

5.2 The competitive assessment process and our role

EnergyCo commenced a competitive assessment process to select a SIPS Service provider in March 2022 and the process concluded in October 2022. EnergyCo's process was undertaken in four stages:

1. EnergyCo undertook a market sounding stage to test the market's appetite to participate in a potential procurement process. We reviewed the market sounding briefing material and attended a market forum as an observer.
2. EnergyCo proceeded to an EOI stage, in which applicants submitted preliminary information on their capability to provide the SIPS Service, and indicative pricing. EnergyCo assessed EOI submissions and shortlisted applicants. We reviewed a procurement strategy, including key project documentation for the EOI phase, and observed evaluation panel meetings.
3. EnergyCo issued an ITT to shortlisted applicants, assessed responses, and selected a preferred SIPS Service provider. We observed evaluation panel meetings and reviewed key project documents throughout the ITT phase, including a procurement report at the end of the process.
4. EnergyCo and Transgrid separately contracted with the preferred SIPS Service provider (Akaysha).

Further details on the process and our monitoring of it are set out at **Appendix A**. A listing of information provided to us by EnergyCo as part of their procurement report and procurement strategy is set out at **Appendix B**.

5.3 Assessment of the competitive assessment process

Our Guideline sets out our approach to reviewing a competitive assessment process to determine whether the process was genuine and appropriate. We assess whether the competitive assessment process:

1. was undertaken in accordance with the EII Act and EII Regulations,
2. was undertaken consistent with the Infrastructure Planner's procurement strategy, and
3. reflects our competitive assessment evaluation criteria.²⁸

Below we set out our assessment of whether the competitive assessment process EnergyCo undertook for the SIPS Service was genuine and appropriate against the above elements.

²⁸ AER, *Revenue determination guideline for NSW contestable network projects*, August 2022, s. 5.3, pp.14-15.

5.3.1 Consistency with the EII Act and EII Regulations

We consider the competitive assessment process undertaken by EnergyCo to be consistent with the requirements of the EII Act and the EII Regulations.

- The EII Regulations provide for the Infrastructure Planner to make a recommendation to the Minister about a PTIP, including in relation to procurement.²⁹ EnergyCo made a recommendation to the Minister in early October 2022 in relation to the WSB project.
- The EII Regulations allow the Infrastructure Planner to carry out a competitive process in relation to a PTIP for which it is appointed.³⁰ EnergyCo was appointed the Infrastructure Planner for the WSB project on 2 August 2022.
- The EII Regulations require that the Infrastructure Planner must request binding bids from two or more proponents.³¹ EnergyCo received binding bids from more than two proponents.
- The EII Regulations require the Infrastructure Planner to develop eligibility criteria and a selection process.³² EnergyCo developed eligibility criteria and a process to select a SIPS Service provider through a competitive process.
- The EII Regulations require the Infrastructure Planner to consult with the regulator and provide the regulator with information about and obtained from the competitive assessment process.³³ EnergyCo consulted with the AER through regular meetings, responded to requests for information, and facilitated staff joining all EOI and ITT evaluation panel meetings as observers. EnergyCo also provided us with information about the process and the outcomes of the process consistent with the requirements in our Guideline.

5.3.2 Consistency with the procurement strategy

We consider the competitive assessment process undertaken by EnergyCo was consistent with the procurement strategy provided to the AER by EnergyCo on 3 June 2022. Our review of the process found that EnergyCo followed its procurement strategy in respect of all major elements, including:

- the market sounding and invitation process,
- the EOI and ITT evaluation and shortlisting processes,
- the approach to interactions and negotiations with proponents,
- the management of conflicts and probity concerns, and
- the decision-making process and recording of information.

²⁹ EII Regulation 43(2)(b).

³⁰ EII Regulation 45(1).

³¹ EII Regulation 45(2).

³² EII Regulation 45(3).

³³ EII Regulations 45(4).

5.3.3 Consistency with the competitive assessment evaluation criteria

Our Guideline sets out four high-level evaluation criteria and several sub-criteria we use to assess whether the competitive assessment process was genuine and appropriate.³⁴ Our assessments against our evaluation criteria are set out below.

Evaluation Criteria 1: Sufficient competitive tension exists such that a competitive outcome is likely to be achieved.

We consider competitive tension was maintained throughout the competitive assessment process and that a competitive outcome was achieved. In assessing this evaluation criterion, we considered whether the Infrastructure Planner's overall process supported proponents to effectively participate in the competitive assessment process until the successful proponent was selected. Below we set out our analysis against the relevant sub-criteria in our Guideline.

- EnergyCo undertook robust market sounding and registration processes to gauge the level of potential competition for the provision of the SIPS Service and allowed sufficient time for the market to become aware of the project. 343 participants registered for an online market forum on 31 March. 151 organisations registered with EnergyCo to receive EOI documentation. The market sounding process confirmed strong interest from credible and experienced service providers.
- Preliminary processes undertaken by EnergyCo to encourage market participants to make a submission and identify those potential participants who could genuinely undertake the project were appropriate. EnergyCo was able to attract a large number of high-quality EOI responses that resulted in a shortlist of credible proponents to progress to the ITT stage. EnergyCo:
 - received 151 registrations of interest and released the EOI invitation to 124 parties.³⁵
 - received 42 EOI responses from 30 separate organisations. 27 EOI applicants proceeded to a full evaluation. Three applicants did not meet EnergyCo's mandatory criteria and were not assessed further.
 - assessed nine EOI applicants as 'adequate' or above and a subset of the highest scoring EOI applicants were shortlisted to progress to the ITT stage.
- EnergyCo established appropriate processes to identify whether any incumbent supplier had, or was perceived to have, any unfair advantage in the procurement, and, if so, to address this.
- At least two viable proponents actively participated in the competitive assessment process until all material components of the project were agreed.³⁶ Based on our monitoring and review of the ITT process, we consider that shortlisted applicants that proceeded to full evaluation provided credible and competitive bids. We also note that negotiations with the successful tenderer (Akaysha) were undertaken under competitive tension.

³⁴ We also use the criteria to assess whether a procurement strategy is likely to result in a genuine and appropriate competitive process at the outset of a competitive assessment process.

³⁵ EnergyCo screened out organisations that were not capable of providing a battery service (for example, media organisations).

³⁶ AER, [Revenue determination guideline for NSW contestable network projects](#), August 2022, s. 3.1.

Evaluation criteria 2: The assessment process supports detailed, credible, and compliant submissions from proponents

We consider that proponents were provided with sufficient information to allow them to make detailed, credible, and compliant submissions. Below we set out our analysis against the relevant sub-criteria in our Guideline.

- EOI and ITT documents released to proponents were comprehensive and set out clear and detailed project scopes covering technical engineering, commercial, legal, and regulatory requirements and responsibilities.
- Procurement rules, processes, and procedures were clearly set out in EOI and ITT documentation released to potential bidders and were appropriate for an engagement of this type. Proponents were provided opportunities to seek clarification in a transparent and fair manner. The process provided proponents with an equal opportunity to participate in the process on the basis of transparent terms, conditions and requirements.
- Timeframes for the process were reasonable and allowed participants to respond. Following a six-week market sounding process, participants had four weeks to submit an EOI response. Shortlisted tenderers had eight weeks to submit ITT responses.
- Returnable schedules were clearly linked to the evaluation criteria set out in the EOI and ITT documents.

Evaluation criteria 3: The decision-making, governance and probity arrangements ensure a fair and rigorous process

We consider the decision-making, governance, and probity arrangements supported a fair and rigorous competitive assessment process. Below we set out our analysis against the relevant sub-criteria in our Guideline.

- Governance arrangements were clearly set out in the evaluation plan. We consider that the governance arrangements supported the independence of the evaluation panel and facilitated the provision of recommendations to the decision-maker without interference.
- Probity arrangements were appropriate. An independent probity advisor was consulted throughout the EOI and ITT evaluation processes, attended all meetings with proponents, and the advice of the probity advisor was accepted when provided. Probity issues were resolved to the satisfaction of the probity advisor.
- EnergyCo's evaluation process was informed by analysis on the likely prudent, efficient, and reasonable costs to carry out the SIPS Service. EnergyCo undertook an initial assessment of prices obtained from a number of recent battery service procurement processes. EnergyCo also used EOI responses to establish initial benchmark prices for the SIPS Service. Final prices agreed in contractual arrangements with Akaysha were within a reasonable range of those benchmarks.

Evaluation criteria 4: The outcomes of the competitive assessment process can be reflected in a revenue determination.

We are satisfied that the outcomes from the competitive assessment process can be reflected in this revenue determination. Below we set out our analysis against the relevant sub-criteria.

- EnergyCo's procurement strategy and the terms of the proposed contractual arrangement are consistent with the EII Act and EII Regulations.
- The outcome of the competitive assessment process, namely the total amount payable and the schedule of payments, can be reflected in a determination made under section 38 of the EII Act.
- After being provided with a number of clarifications by Transgrid, we are satisfied that the events/mechanisms in the contractual arrangements to adjust the amounts payable to the Network Operator can be applied by us through our adjustment process.

5.4 Overall conclusion on process

Based on our review of the competitive assessment process undertaken by EnergyCo to select a SIPS Service provider, we are satisfied that the process was genuine and appropriate. We therefore consider that the outcomes from the competitive assessment process can be reflected in this determination. Sections 6 and 7 of this determination set out the key outcomes from the competitive assessment process we have adopted.

6 Total revenue and schedule of payments

6.1 Regulatory framework

The AER is required to determine the amount payable to a Network Operator subject to an authorisation and the components of that amount payable.³⁷³⁸ The EII Regulations also require us to set out the total amount payable in a schedule of payments to a Network Operator, including the date on which each amount must be paid.³⁹ If the determination is being made as a result of a competitive assessment process the schedule must correspond with the term of the contractual arrangements that the Network Operator was required to enter into as a result of the authorisation.⁴⁰

In undertaking our functions, we are required to take into account the principles in the EII Act and EII Regulations. Section 37(1) of the EII Act requires us to take into account the following principles when determining the amount payable to a Network Operator:

- (a) a Network Operator is entitled to recover prudent, efficient and reasonable costs incurred by the Network Operator for carrying out the network infrastructure project,
- (b) incentives should be given to Network Operators to promote economic efficiency,
- (c) the Network Operator is entitled to revenue for the ongoing ownership, control and operation of an infrastructure project that is commensurate with the regulatory and commercial risks to the Network Operator,
- (d) a Network Operator is entitled to be informed of any material issues being considered by the regulator,
- (e) other principles prescribed by the regulations.

EII Regulation 46(1)(a) prescribes that a genuine and appropriate competitive assessment process can be taken to satisfy these principles. That is, the outcome of the process:

- (a) results in the costs of carrying out an infrastructure project being prudent, efficient and reasonable, and
- (b) provides incentives to promote economic efficiency, and
- (c) results in revenue for the ongoing ownership, control and operation of the infrastructure project being commensurate with the regulatory and commercial risks.

The EII Act also requires the AER to assess the capital costs proposed by the Network Operator, to ensure they are prudent, efficient, and reasonable. This is done by applying the Transmission Efficiency Test (TET). For this process, to procure a provider of the SIPS Service, the outcome does not include any capital expenditures, only operating expenditures in the form of SIPS Service payments, therefore the TET is not applicable.

³⁷ Sections 38(1) and (2).

³⁸ An 'authorisation' is defined in section 36(4) of the EII Act to include a direction given by the Minister under section 32 to carry out a PTIP.

³⁹ EII Regulation 52(1).

⁴⁰ EII Regulation 52.

6.2 Transgrid's revenue proposal

Transgrid's revenue proposal contains a total revenue requirement (amount payable) of [REDACTED] (\$, nominal) over the 5.5 year period covered by the SIPS Service Agreement. This amount payable is based on the SIPS Service provider delivering the seasonal sculpted core service.⁴¹

Transgrid considers this amount to be operating expenditure, as it relates to payments it must make to Akaysha for the provision of the SIPS Service. Table 1 shows the total amount payable proposed by Transgrid over the term of the SIPS Service Agreement, broken down annually.

Table 1: Total and annual amounts payable – seasonal sculpted core service (\$m, nominal)

Year	2023–24	2024–25	2025–26	2026–27	2027–28	2028–29	2029–30	2030–31	Total
Amount	-	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

These annual amounts payable reflect:

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Transgrid has also included in its revenue proposal a schedule of payments it proposes to be paid over the 5.5 year period in relation to the seasonal sculpted core service. **Appendix C** of this determination sets out its proposed schedule of payments.

Transgrid indicates that each quarterly payment amount has been calculated as one quarter of the relevant annual service charge applying in that quarter, adjusted for the proportion of the quarter in which the service is forecast to be provided. It has also proposed that the schedule of payments be subject to the adjustments discussed in section 7 of this determination.

Transgrid's revenue proposal recognises that it may, during the service period, request the SIPS Service provider to change service mode from a seasonal sculpted core service to a fixed core service. Transgrid has therefore also set out the schedule of payments for a fixed core service, which reflect a higher annual service charge of [REDACTED] (also set out in **Appendix C**).

If Transgrid provides notice to the SIPS Service provider to change to the fixed core service, this will constitute an adjustment event and the schedule of payments would be adjusted to reflect the quarterly amounts payable for the fixed core service from the date of the change.

⁴¹ Transgrid, *Waratah Super Battery Project 2023-2028, Revenue Proposal, System Integrity Protection Scheme (SIPS) Service*, Revised - 23 November 2022, table 9, p 30.

6.3 AER assessment

Based on our review of the competitive assessment process for the SIPS Service component of the WSB project and for the reasons outlined in section 5 of this determination, we are satisfied that the competitive assessment process was genuine and appropriate.

We also confirm that the total amount payable and schedule of payments proposed by Transgrid in its revenue proposal (for the seasonal sculpted core service and the fixed core service) are consistent with the contractual arrangements resulting from the competitive assessment process undertaken by EnergyCo. Transgrid has also confirmed, via a statutory declaration, that the information contained in its revenue proposal is consistent with the contractual arrangements.

Given this assessment, we consider Transgrid's revenue proposal is consistent with the principles in section 37(1) of the EII Act.

6.4 AER determination

6.4.1 Total amount and components

Based on our assessment of the competitive procurement process and Transgrid's revenue proposal, we determine that the total amount payable to Transgrid is [REDACTED] (\$, nominal) over the 5.5 year contractual period. This total amount payable relates to the provision of the seasonal sculpted core service by the SIPS Service provider.

As the amounts payable to Transgrid under this determination are service charges to the SIPS Service provider, we consider that the entire amount is operating expenditure and cannot be broken down into any of the other components listed in clause 38(2) of the EII Act (for example, return on capital or return of capital).

6.4.2 Schedule of payments and payment dates

Appendix C sets out our determination on the schedule of payments to Transgrid over the 5.5 year contractual period. The quarterly amounts are to be paid to Transgrid by the SFV in accordance with the dates specified in table 2. We note that the amounts to be paid to Transgrid and the dates these payments are to be made are consistent with Transgrid's revenue proposal and the SIPS Service Agreement.

Table 2: Payment dates for quarterly payments to Transgrid

Contract quarter	Payment date
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

7 Revenue adjustments

7.1 Regulatory framework

Our revenue determination may include provision for the adjustment of any amount in the schedule of payments, including the timing or circumstances of when an adjustment must be carried out.⁴² All adjustments must be carried out in accordance with our Guideline and, for a revenue determination made as a result of a competitive assessment process, any adjustment provisions must be consistent with the contractual arrangements the Network Operator entered into as required under the relevant authorisation.⁴³

Our Guideline sets out our process for assessing annual adjustment proposals from a Network Operator, including the timing of those proposals and our assessment decisions. Section 3.4 of our Guideline also states that, for us to be able to reflect the outcome of the competitive assessment process in a revenue determination, any adjustment mechanisms in the contractual arrangement must be clearly specified so that they can be applied by us through the annual adjustment process.

7.2 Transgrid's revenue proposal

The amount payable and schedule of payments in **Appendix C** of this determination reflect forecasts of key financial parameters (for example, foreign exchange rates) and assumes that the WSB project will be undertaken in accordance with the planned project milestones, operational requirements and performance targets contained in the contractual arrangements. Transgrid's proposal contains adjustments that provide for changes to the schedule of payments to reflect outcomes that vary from these forecasts and assumptions.

Transgrid's proposal sets out nine Service Charge Variation Events⁴⁴ and three adjustment mechanisms that would adjust the amount of service payments to be made by Transgrid to the SIPS Service provider, and consequently the amounts Transgrid must be paid by the SFV.⁴⁵ Transgrid notes that each adjustment is specified in the contractual arrangements resulting from the competitive assessment process. A summary of each of the proposed adjustments is set out below.

The SIPS Service Agreement provides that each of the following will be a Service Charge Variation Event:

1. Change in foreign exchange rate –

Payment amounts will be adjusted to reflect any difference between the AUD/USD exchange rate at the date of Contract Close and the forecast exchange rate included in the contractual arrangements.

2. Alternative Service Period Reduction –

⁴² EII Regulation 51(1),(2)(a).

⁴³ EII Regulation 51(2),(3).

⁴⁴ Transgrid noted that capitalised terms in the description of the adjustment events which are not defined in their revenue proposal have their meaning provided in the SIPS Service Agreement.

⁴⁵ See Transgrid, *Waratah Super Battery Project 2023-2028, Revenue Proposal, System Integrity Protection Scheme (SIPS) Service*, Revised – 23 November 2022, table 13, pp. 39-47 and Attachment E.

Payment amounts will be reduced by an amount equal to a specified percentage of any Net Operating Surplus earned during an Alternative Service Period where the SIPS Service is operating on a merchant basis.

3. **Performance Guarantees not met –**

Payment amounts will be reduced if the SIPS Service provider fails to meet a Performance Guarantee for a Contract Year. Performance guarantees relate to power and storage capacity targets, and the provision of energy when requested by Transgrid.

4. **Failed Performance Test –**

Payment amounts may be reduced if a Performance Test relating to Guaranteed Power and Storage Capacity is failed on multiple occasions, indicating the guaranteed service levels cannot be provided.

5. **Material Impairment Event –**

Payment amounts may be reduced if there is a Material Impairment Event that results in less than a specified percentage of the Guaranteed Power and Storage Capacity being available.

6. **Capacity reinstated –**

If payment amounts have been reduced due to the failure of multiple Performance Tests (Service Charge Variation Event 4) or due to a Material Impairment Event (Service Charge Variation Event 5), the full payment amount will be reinstated from the date the SIPS Service provider shows evidence that the Guaranteed Power and Storage Capacity requirements are being met.

7. **Agreed Modification –**

Payment amounts will be increased or reduced to reflect any costs or savings from a modification agreed between Transgrid and the SIPS Service provider.

8. **Change in Law –**

Payment amounts will be increased or reduced to reflect a Change in Law that results in a Net Financial Effect greater than a specified percentage of the service charge.

9. **Force Majeure Event –**

Payment amounts will be reduced if a Force Majeure Event totally or partially prevents the SIPS Service provider from providing the Service.

Transgrid's proposal also contains the following adjustment mechanisms:

1. **Change to Fixed Core Services –**

Payment amounts will be adjusted to reflect a change from a seasonal sculpted core service to a fixed core service.

2. **Delay in achieving Commercial Operation –**

Payment amounts will be reduced if there is a delay in achieving Interim Commercial Operation or Commercial Operation.

3. **Extension of the Service Period End Date for a Munmorah Site Delay –**

Payments amounts will be extended to reflect an extension of the Service Period End Date resulting from a Munmorah Site Delay that constitutes an Extension Event.

Carry over amounts for adjustment events/mechanisms only apply to the Alternative Service Charge Reduction (clause 7.4(c)) and Performance Guarantees (Schedule 4, clause 6.4(b)) adjustments as per the relevant clauses in the SIPS Service Agreement. For all other adjustment events/mechanisms, there is no provision in the SIPS Service Agreement for carrying over amounts from one period to another where the aggregate amount of adjustments exceed the Service Charge payable in the period for which the adjustment is to be applied.

In addition to the above adjustment events/mechanisms, Transgrid has proposed processes to reflect terms in the SIPS Service Agreement that allow for a Final Adjustment to be effected following the conclusion of the final Contract Year, and for early termination of the SIPS Service Agreement.

In relation to a Final Adjustment, Transgrid's revenue proposal notes that any Service Charge Variation Event occurring in the final Contract Year will result in a payment being made to the relevant party after the end of the Term. The amount of that payment will be equal to the increase/reduction (as applicable) to the Service Charge that would have occurred as a result of that Service Charge Variation Event had the Service Charge still been payable (an exception is for any amount that relates to the failure to meet Performance Guarantees, which will be capped at an amount equal to a specified percentage of the Service Charge in the final Contract Year).

Transgrid notes that any Service Charge Variation Event for the penultimate Contract Year would also be dealt with in accordance with this approach, except that the cap would only apply to any Carry Over Abatements from the penultimate Contract Year to the final Contract Year.

In the event of the early termination of the SIPS Service Agreement, Transgrid notes that the Service Provider will not be required to provide the SIPS Service in future periods and Transgrid's obligation to pay Service Charges to the Service Provider for future periods will cease. This would lead to a Final Adjustment process as described above.

Transgrid noted that should a revenue adjustment be required following the conclusion of a Contract Year, it would submit an annual Revenue Adjustment Proposal to the AER consistent with the requirements of our Guideline. Its proposal would identify any adjustment events/mechanisms that have occurred during a Contract Year and set out the proposed change to the schedule of payments consistent with adjustment events/mechanisms included in this determination or the second regulatory determination, including any payment required for the Final Adjustment.

7.3 AER assessment

We reviewed the adjustment events/mechanisms set out in Transgrid's revenue proposal and found them to be consistent with those in the contractual arrangements. However, we did not consider that the adjustment events/mechanisms, in all instances, set out clearly how they would alter the schedule of payments. We therefore requested that Transgrid provide further clarity on these aspects.

On 23 November, Transgrid submitted a revised revenue proposal, providing greater clarity around how the adjustment events/mechanisms would alter the schedule of payments. This

included further explanation and information on when events would occur, how the impact on the amounts payable would be assessed (including detailed formulae) and how any changes in revenue would be recovered over the remaining period covered by our determinations.

We reviewed the information provided by Transgrid in its revised revenue proposal and considered that it provided sufficient clarity to allow us to adjust the schedule of payments in response to receipt of a Revenue Adjustment Proposal.

The 12 adjustment events/mechanisms set out in Transgrid's revenue proposal have been included in our revenue determination. The 'final adjustment' has not been included as a separate event/mechanism. This is because it has the effect of adjusting the timing and amount of any adjustment for the final year of the project term resulting from any of the other adjustments. It is therefore more akin to a process step than an adjustment event/mechanism. This different application of adjustment events/mechanisms for the final contract year is discussed in sections 7.4.2 and 7.4.3.

7.4 AER determination

Under EII Regulation 51, amounts in the schedule of payments of this determination can be amended through an annual revenue adjustment process to reflect the adjustment events/mechanisms set out in section 7.4.1.

Any adjustments to the schedule of payments resulting from an adjustment event/mechanism will not require the revenue determination to be remade. As part of our review of an Annual Adjustment Proposal we will develop a revised schedule of payments. The revised schedule of payments would be used by the SFV to pay Transgrid.

7.4.1 Adjustment events/mechanisms

We determine nine adjustment events and three adjustment mechanisms to be included in our revenue determination. **Appendix D** to this determination sets out each of these events/mechanisms and includes:

- (a) a description of the adjustment,
- (b) the timing of the adjustment, or relevant trigger event, and
- (c) a detailed explanation of the proposed method of indexation, escalation or adjustment.

If necessary, we will update the schedule of payments at our first annual adjustment review following Contract Close to reflect the following adjustment event:

1. *Change in foreign exchange rate*

If necessary, we will update the schedule of payments at annual adjustment reviews up to and including the first annual adjustment review following achievement of Commercial Operation to reflect the following adjustment mechanisms:

2. *Delay in achieving Commercial Operation*

3. *Extension of the Service Period End Date for a Munmorah Site Delay*

If necessary, we will update the schedule of payments annually to reflect the following adjustment events/mechanisms:

4. *Alternative Service Period Reduction*

5. *Performance Guarantees not met*
6. *Failed Performance Test*
7. *Material Impairment Event*
8. *Capacity reinstated*
9. *Agreed Modification*
10. *Change in Law*
11. *Force Majeure Event*
12. *Change to Fixed Core Services*

In addition to the above adjustment events/mechanisms that will be reviewed as part of an Annual Adjustment Proposal, Transgrid may submit to us an ad hoc adjustment proposal to adjust the schedule of payments should the SIPS Service Agreement be terminated early. Any adjustment proposed must be consistent with the terms of the SIPS Service Agreement. That is, the proposed adjustment to the schedule of payments must reflect any change in amounts payable by, or due to, Transgrid under the SIPS Service agreement as a result of the earlier termination of the agreement.

7.4.2 Timing of revenue adjustments

Transgrid is required to submit an annual Revenue Adjustment Proposal to us no later than 63 business days before the start of the next regulatory year.⁴⁶ The proposal must provide an updated schedule of payments, along with supporting evidence of how each adjustment event/mechanism in section 7.4.1 of this determination has been applied. Evidence to support an adjustment may include:

- Calculations supporting the adjustment.
- Evidence of the event that triggered application of the adjustment event/mechanism.
- Relevant contractual provisions relied on.
- Performance reports prepared by the SIPS Service provider or Transgrid.
- Evidence that the adjustment amount has been agreed by the SIPS Service provider.
- Any verification from EnergyCo of an adjustment and its amount (where EnergyCo has a role under the contractual arrangements).

An annual Revenue Adjustment Proposal would form part of any revenue proposal relating to a remaking of our determination of the amount payable to Transgrid over the service period. The EII Act requires the AER to remake its determination every five years.⁴⁷

Following the end of the SIPS Service period, Transgrid is required to submit a final revenue adjustment proposal within 20 business days.

⁴⁶ Regulatory years in this determination are financial years.

⁴⁷ EII Act, s. 40(1)(a).

Consistent with our Guideline we will endeavour to make our revenue adjustment decisions and publish an adjusted schedule of payments within 42 business days of receipt of a Revenue Adjustment Proposal.

7.4.3 Application of adjustment amounts

Annual adjustments will generally be made to the schedule of payments to reflect:

- changes in forecast payments for the remainder of the project term
- a true-up of past payments to reflect actual performance outcomes.

Where adjustments are required to be made to future payments, the payment amounts for the relevant quarters will be updated in the schedule of payments to reflect the adjusted forecast.

Any true-up amount (either positive or negative) will generally be applied against payment amounts for the Contract Year that is two years after the Contract Year to which the adjustment relates. An exception is for the adjustment event/mechanism 2, *Delay in achieving Commercial Operation*. For this adjustment, the payment amount is adjusted for the July-September service period following our adjustment decision. Where a negative adjustment amount for a quarter exceeds the quarterly payment amount, the quarterly payment will be reduced to \$0. For adjustment events 'Alternative Service Period Reduction' and 'Performance Guarantees not met', any unapplied true-up amount is to be applied against following quarterly payments until the full amount of the true-up is recovered.⁴⁸ For all other adjustment events/mechanisms, any unapplied true-up amount is not carried over to following quarterly payments.

Final adjustments

Any adjustment amounts determined for a Revenue Adjustment Proposal related to the second last year or final year of the revenue determination may be applied against payment periods where there is no approved payment amount in the schedule of payments (as it is beyond the SIPS Service period). Where an adjustment amount is positive, the schedule of payments will apply that adjustment amount to the service period following our final adjustment decision. Where the adjustment amount is negative (that is, payments Transgrid received for the second last year or final contract year exceed the adjusted payment amount), the adjustment amount will be treated as \$0 in setting the revised schedule of payments. Recovery of the negative amount would be undertaken through the contractual arrangements.

⁴⁸ This is because the SFV does not have the authority to require payment from a Network Operator.

Glossary

Term	Definition or extended form
AEMO	Australian Energy Market Operator
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.
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 into 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	<i>Electricity Infrastructure Investment Act 2020</i> (NSW).
EII framework	The EII Act and any regulations made under it.
EII Regulations	Any regulations made under the EII Act.
EOI	Expressions of interest
Guideline	The <i>Revenue Determination Guideline for NSW contestable network projects</i> prepared and published by the AER in August 2022 as updated from time to time.
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.
ISP	Integrated System Plan
ITT	Invitation to tender
Minister	The New South Wales Minister for Energy
Network Operator	Means a person who owns, controls or operates, or proposes to own, control or operate, network infrastructure under the EII Act.
Priority transmission infrastructure project (PTIP)	As defined in the EII Act means a transmission infrastructure project that: <ul style="list-style-type: none"> (a) is located in the State, and (b) is identified in, or forms part of an infrastructure project identified in, the most recent integrated system plan published by AEMO under the National Electricity Rules.
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.
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.
SFV (Scheme Financial Vehicle)	A person or body authorised under section 62 of the EII Act to exercise the functions of the Scheme Financial Vehicle.

Term	Definition or extended form
SIPS	System Integrity Protection Scheme
SIPS Service	A service capable of providing a guaranteed continuous active power capacity of at least 700 MW and a guaranteed useable energy storage capacity of at least 1400 MWh.
TET (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.
Transgrid	NSW Electricity Network Operations Pty Limited (ACN 609 169 959) as trustee for NSW Electricity Networks Operations Trust (ABN 70 250 995 390), trading as Transgrid the Network Operator for the WSB project
Waratah Super Battery (WSB) project	The Waratah Super Battery project comprising contestable components (SIPS Service and Paired Generation Services) and non-contestable components (the SIPS control and communications system and network augmentations). This revenue determination relates to one of the contestable components of the WSB project, namely the SIPS Service.

Appendix A: Key phases of the procurement process and AER engagement

Procurement phase	AER engagement
Market sounding phase (March 2022)	
EnergyCo held a market forum to provide information to the market about the opportunity.	We attended the market forum and reviewed market forum slide pack
EnergyCo held a registration of interest process in which interested parties registered to receive EOI documentation. EnergyCo reviewed the registration list to identify organisations capable of undertaking the project.	We reviewed the registration of interest list, including those organisations deemed not capable of providing the SIPS Service as part of our review of the procurement strategy.
Expression of interest phase (April-June 2022)	
EnergyCo released an EOI invitation to registered parties deemed capable of undertaking the project.	We reviewed the EOI invitation as part of our review of the procurement strategy.
Interested parties provided EOI responses including information on their capability to undertake the project and initial pricing for the SIPS support service. An evaluation panel assessed EOI responses and selected a shortlist of organisations to progress to a full tender process.	We observed all evaluation panel meetings. We reviewed documentation associated with the evaluation process, including an EOI evaluation plan and an EOI evaluation panel report on the outcomes of the evaluation process.
EnergyCo provided a procurement strategy to the AER.	We reviewed EnergyCo's procurement strategy. The procurement strategy included a detailed set of project documentation, and responses to AER staff requests for further information. A list of the documents EnergyCo provided to us is set out in Appendix B . We concluded that the procurement strategy was capable of producing prudent, reasonable and efficient outcomes. We wrote to EnergyCo notifying them of our view.
Invitation to tender phase (July-September 2022)	
EnergyCo issued the ITT invitation to shortlisted applicants.	We reviewed the ITT invitation provided to shortlisted applicants.
EnergyCo received ITT responses. An evaluation panel assessed the responses and selected a preferred SIPS Service provider.	AER staff observed all evaluation panel meetings. We reviewed documentation associated with the evaluation process, including the ITT evaluation panel report on the outcomes of the evaluation process.
Contracting phase (September-October 2022)	
EnergyCo entered into contract negotiations.	We reviewed documentation of contract negotiation outcomes.
EnergyCo contracted with the successful service provider (Akaysha Energy).	We reviewed the final contract between Akaysha and Transgrid.
EnergyCo provided a procurement report to the AER.	We review EnergyCo's procurement report. The procurement report included a detailed set of project documentation associated with the competitive assessment process from market sounding through to contracting. A list of the documents EnergyCo provided to us is set out in Appendix B .

Appendix B: Information provided in procurement report and strategy

Information provided by EnergyCo in the procurement report

EnergyCo submitted a procurement strategy to the AER on 3 June and a procurement report to the AER on 4 October. The procurement strategy and the procurement report contained the following documents and attachments, including documents provided following AER requests for further information.

Procurement report	Procurement strategy
Procurement report	Procurement strategy
Attachment 1 – Probity Plan	Attachment 1 – EOI evaluation plan
Attachment 2 – Probity Report	Attachment 2 – WSB probity plan
Attachment 3 – Procurement strategy dated 3 June 2022	Attachment 3 – Waratah Super Battery technical overview
Attachment 4 – EOI Evaluation Plan dated 28 April 2022	Attachment 4 – ITT rules
Attachment 5 – Final EOI evaluation report dated June 2022	Attachment 5 – Waratah Super Battery expression of interest (EOI) invitation
Attachment 6 – ITT Evaluation Plan dated 22 August 2022	Attachment 6 – Market forum slide pack
Attachment 7 – ITT Evaluation Report dated 23 September 2022	Attachment 7 – WSB EOI registration tracker
Attachment 8 – Tender briefing including probity details dated July 2022	Attachment 8 – Media release – Charging up the Waratah Super Battery
Attachment 9 – WSB legal and regulatory briefing	WSB EOI probity report
Attachment 10 – WSB ITT regulatory briefing slides for bidders dated July 2022	WSB invitation to tender
Attachment 11 – Waratah Super Battery Project technical overview	WSB EOI Evaluation report
Attachment 12 – ITT Rules	WSB – benchmark analysis
Attachment 13 – EOI Invitation dated 4 April 2022	WSB – AER request for information written responses.
Attachment 14 – Market Forum slide pack 31 March 2022	
Attachment 15 – WSB EOI registration tracker	
Attachment 16 – WSB benchmark analysis dated 22 June 2022	
Attachment 17 – Tender evaluation sheet	
Attachment 18 – Legal briefing to evaluation panel dated 30 August 2022	
Attachment 19 – Project contracts. These are:	

Revenue Determination (Contestable) – Transgrid – Waratah Super Battery (SIPS Service component)

<ul style="list-style-type: none"> ○ Service Provider Commitment Deed between Energy Corporation of NSW and Munmorah Battery ProjectCo Pty Ltd – Executed Version – 7 ○ SIPS Service Agreement between NSW Electricity Network Operations Pty Ltd as trustee for NSW Electricity Network Operations Trust, trading as Transgrid and Munmorah Battery ProjectCo Pty Ltd (draft) ○ Tripartite Deed – SIPS Service Agreement between NSW Electricity Network Operations Pty Ltd as trustee for NSW Electricity Network Operations Trust trading as Transgrid, Munmorah Battery ProjectCo Pty Ltd, and a Security Trustee (draft) 	
Attachment 20 – EnergyCo Negotiation Guidelines	
Attachment 21 – WSB EnergyCo Negotiation Outcomes	
The final submission provided by Akaysha in response to the ITT document	
Correspondence from the shortlisted tenderer that did not provide a response to the ITT, explaining their reasons for not submitting a bid	
The final ITT document issued to shortlisted tenderers.	

Appendix C: Quarterly service payments – seasonal sculpted and fixed core

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Revenue Determination (Contestable) – Transgrid – Waratah Super Battery (SIPS Service component)

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Revenue Determination (Contestable) – Transgrid – Waratah Super Battery (SIPS Service component)

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Revenue Determination (Contestable) – Transgrid – Waratah Super Battery (SIPS Service component)

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Revenue Determination (Contestable) – Transgrid – Waratah Super Battery (SIPS Service component)

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Revenue Determination (Contestable) – Transgrid – Waratah Super Battery (SIPS Service component)


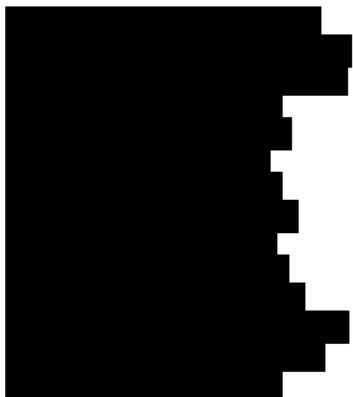
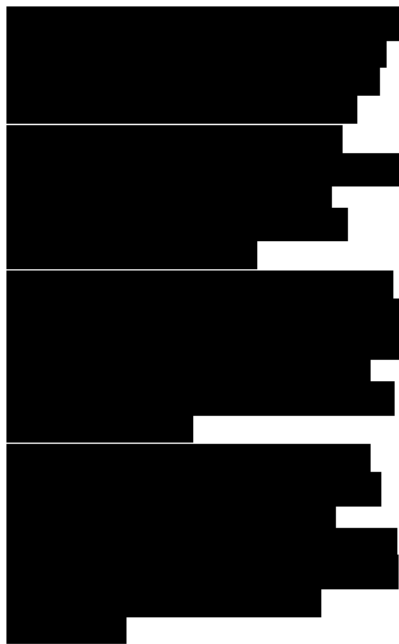


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Revenue Determination (Contestable) – Transgrid – Waratah Super Battery (SIPS Service component)

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Revenue Determination (Contestable) – Transgrid – Waratah Super Battery (SIPS Service component)

				
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Revenue Determination (Contestable) – Transgrid – Waratah Super Battery (SIPS Service component)

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