

AER DIRECTIONS PAPER – SOCIAL LICENCE FOR ELECTRICITY TRANSMISSION PROJECTS

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The Energy Users' Association of Australia (EUAA) is the peak body representing Australian commercial and industrial energy users. Our membership covers a broad cross section of the Australian economy including significant retail, manufacturing, building materials and food processing industries. Combined our members employ over 1 million Australians, pay billions in energy bills every year and in many cases are exposed to the fluctuations and challenges of international trade.

The development of social licence guidelines is a growth industry. We have the recently published AEMC final rule change on enhancing community engagement in transmission building¹, the Department of Climate Change, Energy, the Environment and Water working with States as part of the National Energy Transformation Partnership to improve community engagement and speed up project delivery², the Australian Energy Infrastructure Commissioner is about to publish a Community Engagement Review³ and the Energy Charter Better Practice Social Licence Guideline⁴ was published around 12 months ago. Now we have the proposed amendments to the AER's Cost Benefit Analysis Guidelines to incorporate social licence.

We very much support the development of these guidelines, though it can be confusing in trying to work out which one actually applies to specific projects (it seems only the AEMC and AER initiatives and then with a limited application some years into the future) and which ones are purely guidance (it seems most of them). Which ones simply set out 'best' or 'better' practice that it is suggested project developers apply (most) and which ones actually involve a legal requirement with compliance obligations and sanctions for failure to comply (perhaps the AEMC and AER).

The AEMC rule change went through the complex rule change process to develop a final rule that⁵:

“... applies to projects in AEMO's integrated system plan (ISP) up until the regulatory investment test for transmission (RIT-T) is completed.”

Based on the 2022 ISP and developments since, all the actionable projects have completed their RIT-T and the only Future ISP projects that the rule change might apply to are QNI upgrade (due on 2031-32) and a couple of South Australian REZs some years into the future. 'Future' ISP projects in NSW, Victorian and Queensland will be considered under State derogations. The relevance of all of these publications is how they may influence the

¹ <https://www.aemc.gov.au/rule-changes/enhancing-community-engagement-transmission-building>

² <https://www.dcceew.gov.au/energy/renewable/improving-community-engagement-support-energy-infrastructure>

³ <https://www.dcceew.gov.au/energy/renewable/community-engagement-review>

⁴ <https://www.theenergycharter.com.au/better-practice-social-licence-guideline/>

⁵ https://www.aemc.gov.au/sites/default/files/2023-11/information_sheet_-_enhancing_community_engagement_in_transmission_building.pdf

development and implementation at the State level which does set the rules of engagement e.g. through the implementation of the Powerlink Supergrid Landholder Payment Framework⁶.

So, the lens we bring to this review of the AER Directions Paper (the Paper) are:

- how much is it, yet another advisory paper e.g. 'required' vs 'discretionary' Guidelines?
- what will be the transitional provisions for ISP projects that have completed their RiT-T but have yet to complete their CPA?
- what sanctions will transmission businesses face for not following the Guidelines?
- how much will it have a direct impact on timely transmission project build and that energy consumers are, in AER's words, 'better off now and in the future'?

Given the AER's role on determining the guidelines under which the ISP is prepared, the RiT-T is administered, and 5-year network revenue resets are determined, what direct influence can/should the AER give on that objective?

Relevance to the ISP process

Chapter 4 of the Paper discusses how social licence issues can be considered as part of the RiT-T process – identification of credible options, assessment of costs and benefits and engagement.

Our understanding is that the proposed Guidelines will only apply to ISP projects, not to the many projects that are required to apply the RiT-T because they exceed the \$7m capex threshold. Given our comments above, unless the 2024 ISP reveals new ISP projects that are covered by the national rules, the coverage of any social licence amendments to the CBA Guidelines will be almost non-existent for the next 5 years at least. We recommend that, given the next paper to be published in this review process will be after the publication of the Draft 2024 ISP, that the AER explicitly state the ISP projects that it considers would be covered by any revised Guideline.

Cost Recovery

We consider this the most useful part of the Paper and respond in two parts.

(i) What should be included in social costs?

We agree with the proposed cost classification being mainly capex, but there will be opex e.g. ongoing landowner access payments. However, we think that the costs to be considered as 'social licence' costs – costs of specific engagement and resulting costs e.g. landowner compensation - to be too narrow.

It seems to exclude increased capex that results from poor social licence engagement. For example, the estimated capex costs of Western Renewables Link and VNI West have gone up significantly since they were first proposed in the 2018 ISP. While some of this is due to changing routes and increased costs of labour and materials, we think it is reasonable to argue that a major contributor to that increase has been a project delay due to poor social licence engagement.

⁶ <https://www.powerlink.com.au/sites/default/files/2023-05/SuperGrid-Landholder-Payment-Framework.pdf>

What if a transmission business decides to put a section underground because, as a result of their engagement, they consider necessary for social licence reasons? Is that a social licence cost?

(ii) How to assess prudence and efficiency?

While we support the requirement to submit an engagement plan prior to the start of engagement and then update throughout the engagement process as required, all the projects that will come to the AER in the next 5 years for early works/CPA approval are well down the engagement timeline. Which again raises the question about how many ISP projects will be required to meet this requirement from the start? Ideally this engagement plan (and updates) should not only set out what the transmission business is going to do in a qualitative sense, it should also set out what it considers would be a successful implementation in a quantifiable sense.

- How are they going to quantitatively measure successful engagement?
- What do they, ex ante, consider to be the prudent and efficient social licence cost that results from high quality engagement?
- What are the components of that? This could include a target level of compulsory acquisition and a target approval timetable.

We understand that there may need to be a level of confidentiality around these measures to minimise social licence becoming just a rent seeking exercise. Yet without this information, how is the AER going to undertake an assessment of efficiency and prudence when the project proponent seeks approved funding under early work/CPA? This is particularly important given the AER recognition that ‘each transmission business will have varying baseline levels of social licence in their respective communities’ (p. 19). We can see the difficulty this creates in developing a benchmark, but that should not exclude the ability to recognise poor engagement that has led to higher social licence expenditure. This is the same principle as the AER calling out poor quality business cases in not approving proposed capex. Transmission businesses should not effectively get a blank cheque from consumers through the AER.

How will the AER respond to a transmission business arguing something like ‘we had to add 20% to the overall capex because we would never have received social licence without substantial undergrounding? The AER needs some way of determining whether the undergrounding is the result of poor engagement or a legitimate part of the scope.

The AER should explicitly provide for stakeholder consultation and submissions on the social licence section of a transmission business’s early works/CPA application. These submissions should provide an opportunity for stakeholders to express a view on the quality of the stakeholder engagement and give information to the AER as it assess prudence and efficiency of past and proposed expenditure.

What we are recommending is a significant departure from our past experience of the role of a transmission network meeting engagement requirements under the AER Guidelines where it has effectively been considered irrelevant in their assessment of an early works application. Our submission on Transgrid’s Humelink early works application⁷ argued it did not meet the requirement of the AER Guideline on the regulation of ISP projects⁸. Other submissions from a range of landowner groups made the same point. When we asked the AER to explain why their

⁷ https://www.aer.gov.au/system/files/EUAA%20Hemelink%20CPA%20submission_0.pdf

⁸ <https://www.aer.gov.au/industry/registers/resources/reviews/regulation-large-transmission-projects/final-decision>

final decision did not consider our concerns, the response was effectively ‘we cannot be seen to stand in the way of ISP projects’.

This is the problem that AER faces as it assess proposed expenditure. The transmission business will argue ‘we need to spend this much and without it the project will be delayed and that is not in consumers’ interests. Yes, you would hope that the CESS scheme would act as some discipline on the proposed expenditure, but this is a new area and transmission networks will seek to push boundaries.

The paper does not make clear what happens if the AER assesses the proposed expenditure as not being prudent and efficient? We have concerns about the proposed ‘but for’ test. The Paper describes this as (p.20):

“We intend to use a ‘but for’ test to review this method and subsequent activities. Under this test we will consider whether the project’s objectives cannot be efficiently and prudently met but for the method taken.”

With the transmission business required to:

“...clearly establish that in the absence of incurring the proposed expenditure for each social licence activity, the ability of the network to proceed with the delivery of the transmission project would be significantly impacted. This is consistent with the NER which requires transmission expenditure to relate to the provision of prescribed transmission services.”

What happens when a transmission business says \$x is required to deliver the project but the cost of \$x is the result of poor consumer engagement that significantly increased the cost? Is the AER going to substitute an alternative, lower, estimate of \$x-y and require the transmission business to fund the difference itself?

Even if the AER has an intent of following the rules that allow it to substitute an alternative estimate, how is it going to ensure it has enough information to justify that alternative estimate?

Even if the network is cut back in the CPA then they have a ‘second bite of the cherry’ with the ex post review of the ISP project⁹. What will happen if the transmission business accepts the \$x-y estimate and then comes back in the ex post review seeking a pass through of \$y or more? How is the AER going to assess that component? Now the AER response may well be ‘the same way we assess any other part of the ex post pass through application’. But while that might be straightforward with something like ‘the price of a widget increased above what we expected’, it is much more difficult to disentangle how much of the increased social licence expenditure is due to poor transmission business implementation. This poor engagement may well have delayed the project timeline and opened up the transmission business to the risk of higher widget prices. How much of this higher widget price should be attributable to poor social licence engagement? The transmission business will simply argue ‘we had to spend this amount to get the project completed on time and consumers benefitted from that’. Again, the AER needs to have the information to be able analysis that claim. Social licence costs is not a pass through for transmission businesses on the basis that consumers are prepared to pay any amount to prevent a delay.

⁹ See pp 32-37 <https://www.aer.gov.au/system/files/AER%20-%20Final%20Guidance%20note%20-%20Regulation%20of%20actionable%20ISP%20projects%20-%20March%202021%20-%20FINAL%20FOR%20PUBLICATION%2812129318.1%29.pdf>

(iii) *Transitional provisions*

While the paper suggests that any change in the Guidelines would not have any application to Actionable Projects that have completed their RiT-T, we would recommend that the AER explore how it might apply any guidelines to projects that have yet to complete their CPA.

The very reason there is all this activity in developing social licence guidance documents is widespread recognition of poor social licence engagement by network businesses in recent years. Excluding those projects from application of the Guideline is effectively saying that transmission businesses should be able to pass all that poor engagement risk on to consumers. We look forward at the next stage of this analysis to the AER explaining how this is or is not consistent with its aim to make consumers 'better off now and in the future'

Summary

In summary we submit that a crucial aspect of consumers having some degree of confidence that the AER is indeed working to ensure consumers are better off now and, in the future, is that transmission businesses actually bear the costs of their poor social licence engagement. This should be the prime focus of the AER's future work on this matter.

Of course, all of this might be of little relevance if more projects are taken out of the national rules in State plans of as projects of national significance. Then it is up to how much of inefficient social licence costs are borne by the Commonwealth e.g. through Rewiring the Nation funding and how much remains with electricity consumers. We look forward to participating in the ongoing discussion as the AER develops its position on this very important topic.

Do not hesitate to be in contact should you have any questions. We are happy for this submission to be published on the AER website.



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