

AER DRAFT REVENUE DETERMINATION GUIDELINE FOR NSW NON-CONTESTABLE PROJECTS

30 SEPTEMBER 2025

The Energy Users' Association of Australia (EUAA) is the peak body representing Australian commercial and industrial energy users. Our members are the engine room of the Australian economy, producing many of the products that households and business use every day including bricks, glass, steel, aluminium, paper, food and beverages. 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.

EUAA members are focussed on making products that meet their own customers' requirements where energy is just one input to the process albeit a critical one. Their expectation is that the energy industry continues to provide energy services that are fit for purpose and consistent with the National Electricity Objectives (NEO) so that our members can continue to provide a fit for purpose product for their customers.

Thank you for the opportunity to make a submission under the Draft Revenue Determination Guideline for NSW Non-Contestable Projects (Draft Guideline).

We recognise that the AER is limited in its abilities to assess and be transparent in its dealings with projects that fall under the *NSW Energy Infrastructure Investment Act* (EII Act). From that perspective, we appreciate the AER's attempts to improve both accountability and transparency in EII Act projects through the development of the Draft Guideline.

As we understand the current Draft Guideline as it applies to projects that fall under the EII Act:

- When a project is submitted to the AER for a revenue proposal by a Network Operator, it may contain a combination of contestable and non-contestable components, and this is referred to as a hybrid project.
- If the competitive assessment process for the contestable component is deemed by the AER to be genuine and appropriate, then the contestable component will be assessed using the AER's contestable revenue determination.
- If the competitive assessment process for the contestable component is deemed by the AER to not be genuine and appropriate, then the contestable component will be assessed using the AER's non-contestable revenue determination.
- Non-contestable components, including those that are deemed non-contestable by the AER due to AER's determination that a genuine and appropriate competitive assessment process was not completed, are liable for Efficiency Benefits Sharing Scheme (EBSS) and Capital Expenditure Sharing Scheme (CESS).
- That AER will advise the Network Operator of its determination of whether the competitive assessment process was genuine and appropriate at the pre-lodgement stage.

We recognise that confidentiality is embedded in the EII Act making transparency and openness difficult, however appreciate AER's commitment nonetheless in the Draft Guidelines to:

"We seek to ensure that regulatory process and decisions are undertaken in an open and transparent manner."

and

"...we expect information on the nature of, and outcomes from a competitive assessment process for a contestable component to be included in a Network Operator's revenue proposal."

and

"We value meaningful consumer engagement as part of our regulatory processes. We strongly encourage Network Operators to provide as much information as possible to stakeholders on both contestable and non-contestable throughout the hybrid revenue determination."

However, we recognise that while the original bidding process might give a competitive outcome based on the bid allocation of risk (and adjustment events), there is no guarantee that this will flow over into the final Commitment/Project Deed the network will sign with EnergyCo. This will only be the case if the adjustment events in the Deeds are exactly the same as the bid documents.

Nonetheless, we believe that the AER is best placed to test the *"prudent, efficient and reasonable"* nature of non-contestable applications, and it is under the AER's advice that consumers can feel comfortable that Network Operators are limited in "gold-plating" their investments.

The EUAA is a strong supporter of efficient, prudent and transparent processes and encourages the AER to ensure that the Network Operators prioritise consultation with consumers and other stakeholders. In recognition of the limited scope of engagement available to the Network Operator, due to the EII Act requiring the Consumer Trustee's authorisation or Minister's authorisation or direction, we believe it is critical that the Network Operator engage with impacted stakeholders and consumers to ensure that, at the very least, they are aware of the project and impacts.

In conclusion, we support the AER's Draft Guideline as it is currently written.

The EUAA welcomes further discussions on the issues raised in this submission.

Do not hesitate to be in contact with EUAA Policy Manager Dr Leigh Clemow, should you have any questions.



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