

6 November 2024

Select Committee on Energy Planning and Regulation in Australia
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Members

Thank you for inviting us to comment on the Centre for Independent Studies (CIS) supplementary submission 1 (published 29 October) provided to the Select Committee on Energy Planning and Regulation in Australia.

The Australian Energy Regulator (AER) has provided our own submission to the Committee, which outlines in detail our role within the regulatory framework, particularly regarding transmission planning and regulation. While we believe that the CIS supplementary submission 1 mischaracterises many aspects of our role, this letter focusses on addressing key inaccuracies that we consider may mislead the Committee.

The AER modified or did not enforce the rules for the HumeLink Project

We do not agree with CIS' assertion that we 'modified' or did not enforce the National Electricity Rules (NER) when carrying out our regulatory role in relation to HumeLink's contingent project application assessments.

The CIS submission points to comments made by the AER Chair, Clare Savage, in the media that we made 'concessions' to Transgrid. These comments were intended to convey that we were flexible in our approach while operating within the rules. We did not make concessions on any compliance requirements. We balance a number of factors as a regulator when considering large and complex contingent project applications.

For instance, we offered to review early draft proposals of the HumeLink Stage 2 contingent project application. We also accepted 'as incurred' depreciation of biodiversity offset costs, consistent with our approach to VNI West stage 1 contingent project application, but not for other types of capital expenditure. Unlike physical transmission assets, biodiversity offset costs will be acquired and retired during the ISP construction stage. Therefore, their depreciation should commence at the time the costs are incurred.

There were a number of elements of Transgrid's proposal that we did not accept. For example, we heard stakeholder concerns regarding Transgrid's proposal to exempt HumeLink from the Capital Expenditure Sharing Scheme (CESS) and rejected this proposal. We also made reductions to Transgrid's risk costs. In line with the updated (April 2023)

Capital expenditure incentive guideline for large transmission projects, we also modified our application of the CESS, capping when it applies, and exempting costs associated with biodiversity offsets to better reflect the risks of large projects.

All of these things combined ensures that risk is shared appropriately between Transgrid and electricity consumers.

The AER waived obligations for consultation on the ISP update

In reference to the AER Chair's 12 February 2024 Senate Estimates appearance, CIS's submission inserts their own text (bolded) within the following Hansard quote: *"it is within our right to do that **[waiving the mandated consultation]** under the law, and it is our guidelines that they would be needing to comply with."*

The AER does not 'waive' obligations under the National Energy Laws, nor did we sanction a rule breach in relation to the Australian Energy Market Operator's (AEMO) Integrated System Plan (ISP) updates. This quote refers to our right to use discretion when carrying out our compliance and enforcement activities, outlined below, rather than 'waiving' obligations.

Section 15(1) of the National Electricity Law confers a range of compliance and enforcement functions on the AER; however, these powers are not expressed in terms that obligate the AER to exercise them in any particular instance. Like most officers or bodies tasked with responsibility for law enforcement, the AER has the discretion to determine whether and to what extent it will investigate possible breaches of relevant laws, and what action, if any, is appropriate if it considers that a breach has occurred.

The AER exercises this discretion in line with its published [Compliance and Enforcement policy](#). When considering an appropriate response to a possible non-compliance, the AER takes into account a range of factors, including the regulatory and policy intent of the relevant legislation, as well as the broader impact on consumers and market outcomes.

Our letters to AEMO in 2021 and 2023 acknowledged their approach that an additional round of consultation would be duplicative because consultation occurred on the Inputs Assumptions and Scenarios Reports and the ISP methodology. We did not send correspondence stating or inferring a waiver or providing the comfort that would ordinarily be part of a letter of no action. This position is clearly set out in the full Hansard from our February Senate Estimates appearance.

We also take stakeholder views seriously and this is reflected in our determination document for HumeLink's Stage 2 contingent project application decision. Earlier this year, during our consultation process for this application, we heard concerns raised by stakeholders on whether there was adequate opportunity to comment on the ISP update made prior to the feedback loop process. In particular, stakeholders expressed concerns that they had not had a chance to comment on the optimal development path before the ISP update had been completed, only the inputs, assumptions, scenarios and methodologies. We considered that it was appropriate for Transgrid and AEMO to undertake a further feedback loop assessment against the 2024 Final ISP to address stakeholder concerns. We raised this with Transgrid and AEMO. Following a request from Transgrid, on 8 July 2024, AEMO published a further feedback loop assessment, completing this cross-check.

Our primary focus is to continue to perform our statutory role rigorously, and independently, with the long-term interests of consumer in mind.

We appreciate the opportunity to address these claims made to the Committee.

Yours sincerely

Clare Savage
AER Chair