

Ref: 20210211AS:CB

27 October 2021

Electricity Infrastructure Roadmap Delivery Taskforce  
Department of Planning, Industry and Environment

Submitted electronically via [Electricity.Roadmap@dpie.nsw.gov.au](mailto:Electricity.Roadmap@dpie.nsw.gov.au)

## **Essential Energy – Infrastructure Safeguard Policy Paper – Submission**

Essential Energy welcomes the opportunity to provide a submission in response to the Department of Planning, Industry and Environment's (DPIE's) *Infrastructure Safeguard Policy Paper* (the Policy Paper).

The Infrastructure Safeguard is a core component of the New South Wales (NSW) Electricity Infrastructure Roadmap (the Roadmap). In particular, it is the principal mechanism through which the Roadmap seeks to encourage private infrastructure investment. Given its role in stimulating investment, the Infrastructure Safeguard is also closely linked to the Infrastructure Investment Objectives Report (IIO Report). Our submission focuses on this interaction, while also noting the need for a more balanced consideration of investor and consumer perspectives in developing the details of the long-term energy service agreements (LTESAs). We also note our support for the flexibility in tendering of LTESAs and access rights (ie, the ability to bid solely for an LTESA or for a combination of LTESA and access rights).

### **Stakeholder engagement is critical to the success of the Roadmap**

Essential Energy is concerned with the way in which the role of stakeholder engagement in the development of the IIO Report is characterised in the Policy Paper. Effective consultation and stakeholder engagement is critical to the success of the Roadmap in garnering stakeholder support and buy-in. However, the discussion of stakeholder engagement suggests it will play quite a modest role in the process of developing the IIO Report (and informing Consumer Trustee decisions more broadly).

Essential Energy is concerned with the statement in the Policy Paper that '...the principle should be that consultation is meaningful and occurs only when it can enhance decision making'.<sup>1</sup> It is unclear to Essential Energy in what circumstances stakeholder engagement would not enhance decision making, particularly where that engagement is with consumers and their representatives on decisions that are being taken based on long-term financial interests of consumers.

The view that stakeholder engagement only has a relatively modest role to play permeates the discussion in the Policy Paper, and appears to influence the conclusions drawn. By way of example, the Policy Paper explains that 'some level' of engagement will be appropriate to ensure:<sup>2</sup>

---

<sup>1</sup> DPIE, *Infrastructure safeguard policy paper*, September 2021, p 20.

<sup>2</sup> DPIE, *Infrastructure safeguard policy paper*, September 2021, p 7.

- > additional inputs and assumptions not directly sourced from the Integrated System Plan (ISP) have been tested to ensure they are credible; and
- > the risks taken by the Consumer Trustee on behalf of NSW consumers are informed by stakeholder views.

In our opinion, the implied view behind the use of language such as ‘some level’ is problematic – a high degree of consultation with stakeholders should be seen as absolutely required because the IIO Report essentially acts as the cornerstone for the costs that will be borne by customers in delivering the Roadmap. The modest role for stakeholder engagement currently suggested appears to rely on a view of the similarities between the ISP and IIO Report, meaning consultation for the IIO report can leverage the consultation process undertaken for the ISP. Essential Energy does not consider this to be an appropriate outcome.

As noted by DPIE, although the IIO Report and ISP are similar, they have different objectives. The purpose of the IIO Report is to set out:<sup>3</sup>

- > the development pathway for the infrastructure that is required to be constructed over the following 20 years to achieve the infrastructure investment objectives; and
- > a plan for the competitive tenders that the Consumer Trustee will conduct during the following ten years to give effect to the development pathway.

The IIO Report is therefore principally concerned with meeting the minimum investment targets by 2030, while minimising costs for NSW electricity consumers and meeting security and reliability targets.<sup>4</sup>

In contrast, AEMO describes the guiding objective of the ISP as achieving power system needs in the long-term interests of electricity consumers.<sup>5</sup> Importantly, an element of power system needs relates to consideration of jurisdictional environmental or energy policies – including the Roadmap. It follows that the IIO Report outcomes are *inputs* to the ISP process,<sup>6</sup> the scope of which are not directly consulted on by AEMO as part of that process. For example, network developments proposed in the IIO Report will be reflected in the ISP as an outcome of ‘government policy’, but will not be subject to stakeholder consultation to ensure that those proposed network developments are themselves optimal. In such a circumstance, it is not appropriate that the Consumer Trustee leverages off AEMO’s consultation for the ISP, in lieu of conducting its own consultation with stakeholders on the IIO outcomes.

More broadly, Essential Energy has reservations regarding the indicative timing of the first IIO Report in figure three of the Policy Paper. The 2022 Draft ISP is scheduled for December 2021, with the inaugural IIO Report scheduled for publication prior to the Draft ISP. This is a tight timeframe for the first IIO Report and it does not appear that there will be sufficient time for adequate consultation. What is clear is that there has been no detailed consultation to date on the matters that the IIO Report is required to cover, as part of AEMO’s ISP process - and in particular as part of AEMO’s final Inputs, Assumptions and Scenarios Report (IASR). Indeed, this report notes in relation to the NSW Electricity Infrastructure Roadmap that:

*AEMO will apply a development trajectory at least as fast as the trajectory of energy generating and storage capability specified in the Consumer Trustee’s 2021 Infrastructure Investment Opportunities (IIO) Report over the period until the minimum objective is met, provided the report is published in time to be incorporated in the modelling.*

### Explicit accountability processes should be developed for the Consumer Trustee

The Policy Paper expresses the view that ‘the Consumer Trustee’s role is not to appease stakeholders – it is to make decisions consistent with the objects of the EII Act and principally in the long-term financial interests of consumers.’ Essential Energy recognises the importance of the Consumer Trustee’s independence, and that it ultimately needs to make the decisions it considers will best meet

<sup>3</sup> Section 45(1) of the EII Act.

<sup>4</sup> Section 44 of the EII Act.

<sup>5</sup> AEMO, 2020 ISP, p 21.

<sup>6</sup> See AEMO, 2021 Inputs, Assumptions and Scenarios Report, July 2021, p. 26 for a description of the treatment of public policy settings (including the NSW Government Roadmap) as inputs into AEMO’s ISP assessment.

the investment objectives under the Roadmap. However, it is equally important that stakeholders have the ability to present their view ‘first hand’, so that the Consumer Trustee is aware of stakeholders’ perspectives rather than presuming to understand stakeholders’ interests. In this light, consultation is not ‘appeasement’ but rather an opportunity to share information directly, and for the Consumer Trustee to explain its reasoning transparently. This in turn is key to achieving trust in the process that has informed the decision making. Essential Energy considers that this will be key to ensuring the success of the Roadmap.

In this respect, we welcome the statement in the Policy Paper regarding the importance of transparency and accountability for the Consumer Trustee, due to its central role in the Roadmap.<sup>7</sup> However, the Policy Paper lacks sufficient detail as to the transparency requirements on the Consumer Trustee or how it will be kept accountable. One exception to this is the prospect of a mandated review of previous decision-making, and we note that the AER has a somewhat similar role in the context of the ISP (particularly in relation to the process adopted by AEMO in developing its inputs, assumptions and scenarios and draft ISP).<sup>8</sup>

In our opinion, it is important that the development of the Regulations regarding the operation of the Consumer Trustee addresses the consultation procedures it will be required to follow. This includes:

- > whether the Consumer Trustee will be expected to publish both a draft and final IIO Report (similar to the requirement on AEMO with respect to the ISP). Essential Energy considers that adequate engagement requires that a draft IIO Report be published;
- > the process for progressing from a draft IIO Report to a final IIO Report, including the extent to which the Consumer Trustee is required to address stakeholder submissions (for the ISP AEMO must set out its response to submissions that it considers contain material issues);<sup>9</sup> and
- > the length of the consultation period (AEMO must allow a period of at least 30 business days for submissions to the draft ISP).<sup>10</sup>

There may also be a role for the regulator to assess whether the consultation procedures have been followed by the Consumer Trustee (such as the AER’s role regarding the ISP). Such a role would help ensure the accountability of the Consumer Trustee to stakeholders and build trust in the transparency of decision-making.

#### Consideration of LTESA design should better balance investor and consumer considerations

The objectives of LTESAs set out in the Policy Paper are somewhat in conflict. The most notable example of this tension is in relation to the objectives to:

- > incentivise investment in NSW by providing an insurance mechanism for projects against low wholesale electricity prices; and
- > protect the financial interests of NSW electricity consumers by supporting sufficient (but not excessive) generation, long duration storage and firming projects.

These two objectives highlight that both an investor and consumer perspective need to be brought to bear on the discussion of LTESAs. However, our opinion is that the Policy Paper places an undue emphasis on the need for investment and therefore on investor considerations. By way of example, the potential controls on LTESA design (table 1) state that:

- > the objective of LTESA design is to provide an attractive product to reduce the cost of capital while ensuring risks are appropriately allocated between parties and supports hedging;
- > a potential ex-ante control is to undertake consultation on design elements with investors and experts, as well as modelling of alternative risk allocation outcomes; and

<sup>7</sup> DPIE, *Infrastructure safeguard policy paper*, September 2021, p 20.

<sup>8</sup> The AER’s role in review AEMO’s inputs, assumptions and scenarios report and draft ISP are set out in clauses 5.22.9 and 5.22.13 of the National Electricity Rules. In the event that the AER concludes there is an issue with either the inputs, assumptions and scenarios report or the draft ISP, AEMO must provide further explanatory material in an addendum to the relevant report and consult on the relevant issues.

<sup>9</sup> See clause 5.22.14(c) of the National Electricity Rules.

<sup>10</sup> See clause 5.22.11(a)(3)(i).

- > a potential ex-post control is to monitor investor behaviour, preferences and market outcomes to refine the design over time.

Commensurate controls that emphasise the consumer perspective relating to LTESAs and the impact of the design choices on the costs consumers will bear is required. However, the Policy Paper provides a number of reasons as to why ensuring transparency and accountability may be complicated. While Essential Energy acknowledges the commercial nature of LTESAs creates difficulty in transparency and accountability in their operation, these are challenges that need to be overcome to facilitate stakeholder confidence in the Roadmap.

#### Flexibility in combined tenders for LTESAs and access rights is an appropriate approach

Essential Energy supports the approach of using a single tender for LTESAs and access rights to ensure effective coordination of generation and network investment. Further, we welcome the flexibility that is envisaged for the tender process, ie, bidders being able to bid for an LTESA without also having to bid for access rights. As noted in the Policy Paper, this flexibility is critical to ensure all projects can compete on merit. Equal consideration of all potential projects, including projects located in the distribution network which do not require access rights, will facilitate lower costs for consumers.

If you have any questions in relation to our submission, please contact me directly via phone [REDACTED] or Mr Anders Sangkuhl, Regulatory Strategy Manager, at [REDACTED] or via phone [REDACTED]

Yours sincerely,



Chantelle Bramley  
**General Manager, Strategy, Regulation and Corporate Affairs**