Attachment J. - Excerpts from Conn's Legal Brief with Explanatory Notes

4.0 Jurisdictional Error

4.1 The following excerpts are from a legal brief prepared by Margaret Conn B.A. (Hons1 ANU) LL.B.(Hons 1 ANU) on behalf of CWOREZist Inc. Margaret and her husband Terry own a farm in the Central West Orana Renewable Energy Zone (CWOREZ) and will be directly affected by proposed wind projects nearby. The brief naturally references the NSW situation as well as NEL.

4.2 Credit and acknowledgement of Margaret's work is given. The complete document is provided as Attachment A. - Legal Brief. Additional notes are inserted in the text where relevant.

Contents

Annexures

A. PWC Report Mid-Western Regional Council - CWO-REZ.

B. MWRC Submission to CWO-REZ Transmission EIS.

C. Technical and Engineering Matters.

D. Aidan Morrison – Submission Feedback Loop Proposed Rule Change.

National Electricity Law, Objective and Regulations

The NEL is contained in a Schedule to the National Electricity (South Australia) Act 1996. It establishes the framework and obligations of the National Electricity Market (NEM) and the role of the Australian Energy Market Operator (AEMO). As energy is the constitutional domain of the states, the national framework has been specifically adopted and applied at state level.

Relevant provisions of the National Electricity (NSW) Act 1997 No 20 include:

Part 2 National Electricity (NSW) Law and National Electricity (NSW) Regulations

6 Application in New South Wales of National Electricity Law

The National Electricity Law set out in the Schedule to the National Electricity (South Australia) Act 1996 of South Australia, as in force for the time being:

(a) applies as a law of New South Wales, and

(b) as so applying, may be referred to as the National Electricity (NSW) Law.

7 Application in New South Wales of regulations under National Electricity Law

The regulations in force for the time being under Part 4 of the National Electricity (South Australia) Act 1996 of South Australia:

(a) apply as regulations in force for the purposes of the National Electricity (NSW) Law, and

(b) as so applying, may be referred to as the National Electricity (NSW) Regulations.

8 Interpretation of expressions in National Electricity (NSW) Law and National Electricity (NSW) Regulations

(1) In the National Electricity (NSW) Law and the National Electricity (NSW) Regulations:

Legislature of this jurisdiction means the Legislature of New South Wales. Supreme Court means the Supreme Court of New South Wales. the jurisdiction or this jurisdiction means the State of New South Wales.

the National Electricity Law or this Law means the National Electricity (NSW) Law. (2) The Acts Interpretation Act 1915, and other Acts, of South Australia do not apply to:

(a) the National Electricity Law set out in the Schedule to the National Electricity (South Australia) Act 1996 of South Australia in its application as a law of New South Wales, or

(b) the regulations in force for the time being under Part 4 of the National Electricity (South Australia) Act 1996 of South Australia in their application as regulations in force for the purposes of the National Electricity (NSW) Law.

8A Regulation-making power for National Electricity (New South Wales) Law

The Governor may make such regulations as are contemplated by the National Electricity (New South Wales) Law as being made under this Act as the application Act of this jurisdiction.

Note 1: NSW is referenced above but similar provisions exist in all states of the NEM.

The SA legislation is reflected in the National Electricity (NSW) Law No 20a 1997. At all times prior to 23 September 2023, the National Electricity Objective (NEO) was:

Part 1, Section 7 National electricity objective

The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—

(a) price, quality, safety, reliability and security of supply of electricity; and (b) the reliability, safety and security of the national electricity system.

Schedule 2

7 Interpretation best achieving Law's purpose

(1) In the interpretation of a provision of this Law, the interpretation that will best achieve the

purpose or object of this Law is to be preferred to any other interpretation.

(2) Subclause (1) applies whether or not the purpose is expressly stated in this Law.

In September 2023, the National Electricity Law was amended by the Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Act 2023 (SA). It is unclear whether the amendments were debated or discussed in the NSW parliament as they followed automatically pursuant to the South Australian legislation.

DCCEEW (energy.gov.au) reports that in August 2022, Energy Ministers agreed to fast track the introduction of an emissions reduction objective into the NEO in order to integrate emissions reduction with energy policy. A proposed Bill was released with a Consultation Paper on 20 December 2022.

The proposed changes constituted a belated acknowledgement that to implement the transition of the energy system to renewables, "changes will be needed to the NEL...". It is clearly arguable that prior to the amendment of the NEO, the policy push to replace existing synchronous generation with renewable generation was inconsistent with the NEO. In this respect, the Consultation Paper makes specific reference to the ISP, the primary object of which was to facilitate the Roadmap transition to renewables:

Note 2: '...was inconsistent with the NEO.' is an understatement. Prior to the NEL amendment of Sep 2023 and the respective state legislation (such as the NSW Emissions Reduction Act 2023) that added emissions targets, there was no legislated basis for any activity based on perceived emissions reduction.

AEMO has a range of statutory functions under the NEL and NGL, including various planning functions, such as the ISP. The ISP is published every two years in accordance with r 5.22 of the National Electricity Rules. Its purpose, generally speaking, is to establish a whole of system plan for the efficient development of the power system that achieves power system needs for a planning horizon of at least 20 years for the long-term interests of the consumers of electricity. If an emissions reduction objective is inserted into the NEO, this would be expected to allow treatment of emissions reduction as a new category of market benefit that AEMO can acknowledge and apply in its development of the ISP.

In 2018, AEMO had released the Integrated System Plan which was a plan for the transition of the electricity system over the ensuing 20 years. The ISP called for the replacement of coal-fired generators with a mix of "low-cost" renewables, gas-fired generators and storage from batteries and pumped hydro. The ISP called for new transmission to be built and Renewable Energy Zones to be developed. The ISP is updated every two years. The first ISP was endorsed by the COAG Energy Council in 2018. There were regular communiqués thereafter from the Energy and Climate Change Ministerial Council (ECMC). These news releases stressed the objects of affordable, secure and reliable energy consistently with achieving net zero emissions by 2050.

Note 3: The 2018 ISP actioned 'renewables' despite there being no legislated requirement, and contrary to what the then NEL objctives required.

The Preface to the 2022 ISP states:

As it has since 2018, the ISP offers the most robust 'whole of system plan' available for supplying affordable and reliable electricity to homes and businesses in the eastern and south eastern states, while supporting Australia's net zero ambitions. From 2025, there will be moments when the National Electricity Market (NEM) has enough renewable energy to meet 100% of that demand.

This plan is for a true transformation of the NEM, from fossil fuels to firmed renewables. It calls for levels of investment in generation, storage, transmission and system services that exceed all previous efforts combined. It cannot offer quick fixes, but it does offer a clear and transparent roadmap through to 2030, and then to 2040 and 2050.

The **Consultation Paper** addressed the intended construction and operation of the amended Objective. It stated:

Consistent with the current approach to applying the objectives, the emissions reduction component will be one of a number of components or 'outcomes' (alongside price, quality, safety, reliability and security of supply) that decision makers under the national energy laws will be obliged to consider and have discretion to balance in making their decisions. In this way, the emissions reduction objective is not intended to sit above, or be prioritised over, the existing components within the objectives, but rather will be considered and balanced alongside the other existing components, in a way that maximises the overall objectives, in the long-term interests of consumers.

The amendment will require that market bodies, when making decisions in line with the new emissions reduction objective, consider relevant Commonwealth, state and territory emissions reduction and/or other targets such as renewable energy targets, whilst still being afforded the flexibility to, after considering targets, decide which targets are relevant to that decision. The new set of energy objectives will be taken into account by market bodies in their interpretation and application of laws and rules.

By way of further explanation of the proposed drafting, the **Consultation Paper** set out the following:

"3.1. Utilising the existing 'economic-efficiency' framework

All three existing energy objectives are framed in terms of 'efficiency'. The word 'efficient' is not defined in the energy laws but is generally understood to be an economic term, with this interpretation supported by the Second Reading speeches of the NEL and NGL Bills. What is 'efficient' is defined by reference to price, quality, safety, reliability and security of supply as determined by state and territory laws, or in some cases by the national energy laws, and their subordinate rules.

The legislative premise of 'efficient' assumes that the long-term interest of consumers of the relevant form of energy (electricity or gas) will be maximised through efficient investment and efficient use and delivery of either electricity/gas services. For example, the Second Reading speech of the NEL (and of the NGL similarly) states:

"The market objective is an economic concept and should be interpreted as such. For example, investment in and use of electricity services will be efficient when services are supplied in the long run at least cost, resources including infrastructure are used to deliver the greatest possible benefit and there is innovation and investment in response to changes in consumer needs and productive opportunities.

The long-term interests of consumers of electricity requires the economic welfare of consumers, over the long-term, to be maximised. If the National Electricity Market is efficient in an economic sense the long-term economic interests of consumers in respect of price, quality, reliability, safety and security of electricity services will be maximised."

Note 4: There is little doubt that 'efficiency' as intended by the original drafters of the NEL would have included, or been wholly, intended, as engineering and thermodynamic efficiency, not only 'economic efficiency'. If engineering efficiency is achieved then resource use is minimised, economic efficiency follows, and thus the lowest price to consumers. It is indicative of the lack of STEM knowledge that only a woolly un-defined 'economic efficiency' is thought of. Engineering efficiency is defined as the energy output divided by the energy input.

The proposed approach in the Draft Bill to adding an emissions reduction component to the energy objectives is to insert this new component within the same 'economic-efficiency' framework with the above legislative premise applying to both the existing components of the objectives and this new component.

The provision of various relevant criteria for the objectives recognises that there are tradeoffs to be made. In practice, market bodies routinely have to balance and make trade-offs between them. This is currently achieved in a balancing act that considers each of the components in the objectives together, rather than consideration of each in isolation. Including an emissions reduction component under the energy objectives as proposed would compel decision makers to consider it as one of a number of components or 'outcomes' (alongside price, quality, safety, reliability and security of supply) but allow market bodies the discretion to balance the various components when making decisions, as they currently do.

For example, the AEMC when considering making a rule or a recommendation in a review would focus on whether the proposed change would promote more efficient decisions towards achievement of the relevant components of the energy objectives (currently price, quality, safety, reliability and security of supply), and assess which outcome or option would deliver the greatest efficiency benefit.

The focus of the energy objectives on the long-term interests of consumers provides a temporal aspect to these considerations. For example, investment in transmission may increase the costs paid by consumers in the short-to-medium term but has the long-term

impact of improving reliability and security, and reducing the emissions intensity of the National Electricity Market (NEM). So, while there may be a range of 'economically efficient' decisions that can be made, some may not be in the long-term interests of consumers and therefore are unlikely to advance the NEO. The AEMC uses the concept of 'dynamic efficiency' in assessing these temporal trade-offs – a concept well understood within the framework of 'economic efficiency.'"

In May 2023, Energy Ministers agreed to the incorporation of the emissions reduction objective into the NEO in order to integrate emissions reduction with energy policy. The Bill was introduced to the SA Legislative Council with the following second reading speech:

"**As with the existing components of the national energy objectives that include price, quality, safety, reliability and security of supply, the emission reduction component will sit within the existing 'economic efficiency' framework that underpins the current national energy objectives.**

Under this framework, decision makers under the national energy laws, will be obliged to consider the emissions reduction component alongside the other components in making their decisions. In this way, the emissions reduction component is not intended to sit above, or be prioritised over, any other component within the objectives. This will ensure that the national energy objectives continue to promote the long-term interest of consumers through efficient investment, operation, and use of energy services.

The legislative premise of 'efficient' assumes that the long-term interest of energy consumers in the national energy laws will be maximised through efficient investment and efficient use and delivery of relevant energy services. This was formally expressed in the original second reading speech associated with the introduction of the National Electricity Law. This premise was reiterated later in the National Gas Law and the National Energy Retail Law and the amendments in this Bill are not intended to change this intent.

Processes affected by the Bill include the range of functions, powers and obligations assigned to the market bodies, all of which are already required to be undertaken regarding or with consideration of contributions to the achievement of the relevant energy objective. Examples of relevant functions include system planning and economic regulatory functions, rule change determinations, and self-initiated and statutory reviews and reports. The new emissions component is not intended to affect the Australian Energy Market Operator's operation of wholesale markets including its role in managing real time activities that includes dispatch and scheduling." (31/8/23 – Statutes Amendment (National Energy Laws)(Emissions Reduction Objectives)Bill, K.J. Maher)

The **Consultation Paper** had considered the intended application of the changed Objective by energy market bodies. In relation to the AEMC, it pointed out that in applying the new objective, the AEMC might consider, in some situations, that emissions reduction benefits were outweighed by the impacts on other components of the objective such as price or reliability. Similarly, the AER's assessment approach to distribution and transmission expenditure proposals would now permit incorporation of emission reductions in the cost benefit analysis framework -

The calculation of emissions reduction from a proposed project or program would take account of the total net emissions from an investment. It would therefore incorporate emissions from inputs (e.g. materials used in the investment), as well as outputs (e.g. emissions reductions from coal or gas).

Note 5: It is clear the original intent was that TOTAL NET emissions be calculated and considered, not only the emissions from fuel burnt in generating electricity. 'Materials used in the investment' would include the mining, transport, processing, manufacturing, installation, decommissioning, recycling, associated local environmental losses and emissions etc.

The Amended Objective became law with effect from 23 September 2023. The amended portions of the National Electricity Objective are underlined below:

[4] 7 National electricity objective

The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—

(a) price, quality, safety, reliability and security of supply of electricity; and (b) the reliability, safety and security of the national electricity system.; and

(c) the achievement of targets set by a participating jurisdiction—

(i) for reducing Australia's greenhouse gas emissions; or

(ii) that are likely to contribute to reducing Australia's greenhouse gas emissions.

Note 6: This appears very sloppy or intentionally negligent legal drafting. Legislation is meant to define the law without ambiguity or loopholes ideally, though this frequently happens inadvertently. In this case it intentionally provides a loophole for doing things that don't reduce emissions, but subjectively may be 'likely'.

Note—

The AEMC must publish targets in a targets statement: see section 32A.

32A—Targets statement for greenhouse gas emissions targets

(1) The AEMC must prepare and maintain a document (the targets statement) stating the targets set by a participating jurisdiction mentioned in section 7(c).

(2) If the MCE or a Minister of a participating jurisdiction gives a written direction to the AEMC to include a target in, or remove a target from, the targets statement, the

AEMC must comply with the direction.

(3) A Minister may give a written direction under subsection (2) only in relation to a target set by the Minister's participating jurisdiction.

(4) The AEMC must publish on its website—

(a) the targets statement; and

(b) each direction given under subsection (2).

(5) In having regard to the national electricity objective under this Law, the Regulations or the Rules with respect to the matters mentioned in section 7(c), a person or body must consider, as a minimum, the targets stated in the targets statement.

Note 7: If no legislated targets existed prior to 2023, on what pretext did AEMO decide that only emissions reduction pathways were 'optimum'? If nuclear was excluded due to being unlawful at the time, so not to be considered, then why does the same reasoning not apply to not-yet-legislated emissions targets or objectives?

The question of the **relative weight to be given to the basic objectives of the NEL** following the inclusion of the emissions objective now arises. There is authority that, in the absence of any statutory indication of the weight to be given to the various objectives, it is generally for the decision maker and not the court, to determine the appropriate weight to be given to the matters which are required to be taken into account in exercising the statutory power – *Minister for Aboriginal Affairs v Peko Wallsend Ltd (1986) 162 CLR 24, 40-41*. In the present instance, the Consultation Paper and the Parliamentary Reading Speech clearly and deliberately state that no single matter in the NEO can be given an automatic priority. In addition, there is the construction of the statute itself. The historical objectives of *efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—*

(a) price, quality, safety, reliability and security of supply of electricity; and

(b) the reliability, safety and security of the national electricity system"

are of long standing. They have not been modified by the amendment. The addition of the emissions component in itself has been made subject to "the efficient investment in and operation and use of, electricity services" in the interests of consumers.

Note 8: The intent of the above is to show that AEMO, authorities and Regulators in all jurisdictions acted ultra vires/with jurisdictional error , by actioning projects and transmission lines heavily advertised to reduce emissions, without having a legislative basis.

The NSW Energy Framework

Policy and Legislative Development NSW – General Framework

Between 2019 and 2022, Matt Kean as Minister for Energy and Environment drove a significant change of direction (consistently with the ISP) in the State's energy framework. In November 2019, the NSW Electricity Strategy was first published. The Strategy was put into action with the NSW Electricity Infrastructure Roadmap in November 2020. The Strategy asserted an energy transition to renewables driven by emissions reduction objectives. These developments were largely ignored by the public who were pre-occupied and isolated with Covid 19.

The legislative structure for the energy transition in NSW was put into place with the NSW Electricity Infrastructure Investment Act 2020 (EII Act 2020) and the Electricity Infrastructure Investment Regulation 2021 (EIIR 2021). It includes the Energy and Utilities Administration Act 1987 which established EnergyCo (EnergyCo is appointed the Infrastructure Planner under the legislation). As set out above, it also includes the NEL and NER.

Broadly, the NSW legislative scheme expresses its own objectives and sets up the following in pursuit of them:

• Renewable Energy Zones;

• an Infrastructure Planner – EnergyCo;

• a Consumer Trustee – AEMO Services;

• a Regulator – AER (and the EPA re firming);

• Network Operators;

• A Financial Trustee, a Scheme Financial Vehicle and the Electricity Infrastructure Fund.

In the course of the planning and progressing of the energy transition, various decisions are made at various times by various entities. The process is characterised by the making of "Plans," "Roadmaps," and "Reports" as well as "assessments" and "recommendations" which may or may not be regarded as determinations or decisions for legal purposes but which themselves are based upon any number of decisions applied to input variables and modelling. There is no reference to judicial review provisions in the framework.

1. NSW Electricity Infrastructure Investment Act 2020 – Objects

S.3 Objects of Act

(1) The objects of this Act are—

(a) to improve the affordability, reliability, security and sustainability of electricity supply, and

(b) to co-ordinate investment in new generation, storage, network and related infrastructure, and

(c) to encourage investment in new generation, storage, network and related infrastructure by reducing risk for investors, and

(d) to foster local community support for investment in new generation, storage, network and related infrastructure, and

(e) to support economic development and manufacturing, and

(f) to create employment, including employment for Aboriginal and Torres Strait Islander people, and

(g) to invest in education and training, and

(h) to promote local industry, manufacturing and jobs, and

(i) to promote export opportunities for generation, storage and network technology.

(2) The following objects also apply to Parts 4–6—

(a) to increase employment and income opportunities for Aboriginal and Torres Strait Islander people in New South Wales, and

(b) to promote consultation and negotiation with the traditional Aboriginal owners of land on which generation, storage and network infrastructure is proposed to be constructed or operated under this Act.

(3) A person or body exercising a function under this Act must do so in a way that is consistent with the objects of this Act.

Although the NEL applies, Section 27 states that the EIIAct and EIIRules can modify its application if necessary to achieve the objects of the EIIAct. No such modification appears to have been made.

At that time, there were not any specific references to emissions reduction targets or objects within the objects of the Act. In November 2023 however, the Climate Change (Net Zero Future) Act 2023 commenced. The Act legislated NSW'S emission reduction targets to achieve net zero GHG emissions by 2050 with intermediate targets set for 2030 and 2035.

Note 8: Once again, all action that took place prior to the NSW Emissions Reduction Act 2023 had no legislated basis to reduce emissions. The combined 'hive-mind' of state and federal authorities all appear to have acted in unison, prioritising emssions, without any lawful order to do so. This is the definition of 'going rogue'.

Note 9: The NSW CC (Net Zero Future) Act 2023 preamble states it is to codify the 2015 Paris Agreement, yet the Paris Agreement states that the transition should not affect food production, yet this proviso does not appear in the NSW Act.

Note 10: The NSW Electrical Infrastructure ACT 2020 took the NSW REZ and transmission projects out of the ISP, making them not subject to RIT-T , or costing, in later AEMO ISPs.

3. Energy Corporation of NSW

3.1 Constitution, Objects, Functions

EnergyCo was established by the NSW Energy and Utilities Administration Act in 1987. The Objects of the Act are set out in Part 2, Section 5:

5 Objects

(1) The objects of this Act in relation to energy are—

(a) to secure the best management of the supply and use of energy in the State,

(b) to provide an authoritative source of advice to the Government and the community on energy matters and their co-ordination,

(c) to apply the State's energy resources, technologies and associated expertise to promote economic development and employment in the State,

(d) to promote and maintain the efficiency and accountability of energy producers and suppliers and their responsiveness to community needs and expectations,

(e) to promote the most cost-effective long term match of energy supply and demand, and

(f) to promote the safe and effective utilisation of energy.

(3) In the administration of Acts relating to energy, regard shall, to the maximum extent possible having regard to the needs of the State and available resources, and subject to any directions of the Minister, be had to the objects of this Act.

The Functions of the Corporation are set out in Part 4 –

11 Objects and general functions

(1) The objects of the Corporation are—

(a) to carry out such investigations relating to the locating and the development, extraction, provision, allocation, transportation, distribution, pricing, conservation, utilisation and conditions of supply of energy and energy resources as it considers appropriate or as the Minister directs,

(b) to plan the locating and the development, extraction, provision, allocation, transportation, distribution, pricing, conservation, utilisation and conditions of supply of energy and energy resources in such manner as it considers appropriate or as the Minister directs,

(c) to assist and advise, and make reports and recommendations to, the Minister in respect of matters relevant to this Act and any other Act administered by the Minister,

(d) to review plans or draft plans for the development, extraction, provision, allocation, transportation, distribution, pricing, conservation, utilisation and conditions of supply of energy and energy resources prepared by any energy undertakings operating in the State, and

(e) in accordance with this Act, to acquire and dispose of energy and energy resources or operations connected with the locating and the development, extraction, provision, transportation, distribution, conservation or utilisation of energy and energy resources, and

(f) to promote energy conservation and measures to increase the efficiency of energy supply, transmission and use.

Section 15 (1) states that:

The Corporation may, for the purposes of this Act or any other Act administered by the Minister, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

There is a power of entry onto land at Section 39.

Note 11: In the NSW Central West Orana REZ landowners had their freehold rights diminished via Compulsorily Acquisition, or had been issued Property Acquisition Notices (PAN) pending formal acquisityion, well before the REZ Transmission Project itself was approved by the Minister, and before the NSW Emissions Reduction Act 2023, or the September 2023 amendment to the NEL, were made.

3.2 EnergyCo – Infrastructure Planner – EII Act

The EII Act appointed EnergyCo as the Infrastructure Planner. Its Roles and Functions are:

63 Infrastructure planner

(1) The Minister is to appoint a person as the infrastructure planner.

2) Different infrastructure planners may be appointed to exercise different functions or functions in relation to different renewable energy zones or different parts of renewable energy zones.

(3) The functions of an infrastructure planner in relation to a renewable energy zone or part of a renewable energy zone are to be exercised by the Energy Corporation at any time during which a person is not appointed as the infrastructure planner for the renewable energy zone or part of the renewable energy zone.

(4) Subject to limitations in the instrument of appointment, an infrastructure planner has the following functions—

(a) to make and enter into contracts or other agreements in connection with the exercise of its functions under this Act,

(b) to investigate, plan, co-ordinate and carry out planning and design of generation infrastructure,

(c) to investigate, plan, co-ordinate and carry out planning, design, construction and operation of storage and network infrastructure,

(d) other functions prescribed by the regulations,

(e) other functions conferred or imposed on the infrastructure planner by or under this or another Act or law.

(5) If the Energy Corporation is appointed as an infrastructure planner, the Energy Corporation has the functions, as modified by the regulations, that the Corporation has under the Energy and Utilities Administration Act 1987 and may exercise those functions as the infrastructure planner under this Act, to the extent reasonably necessary to—

(a) enable the infrastructure planner to exercise its functions under this Act, and (b) achieve the objects of this Act.

30 Infrastructure planner to recommend REZ network infrastructure projects for renewable energy zone

(1) The infrastructure planner for a renewable energy zone is to assess and make recommendations to the consumer trustee about REZ network infrastructure projects required for the renewable energy zone.

(2) The infrastructure planner must assess and make recommendations about the following—

(a) the different options for REZ network infrastructure projects to provide the intended network capacity for the renewable energy zone,

(b) staging and sequencing of REZ network infrastructure projects,

(c) funding, procurement and cost recovery for the recommended REZ network infrastructure projects,

(d) other matters prescribed by the regulations.

(3) In assessing and making recommendations about REZ network infrastructure projects,

the infrastructure planner must consult with the following— (a) AEMO,

(b) relevant operators in the renewable energy zone, (c) each local council in the renewable energy zone.

(4) The infrastructure planner must make recommendations about REZ network infrastructure projects to the consumer trustee within the period specified by the consumer trustee.

(5) The regulations may make further provision for or with respect to the following—

(a) the exercise of the infrastructure planner's functions under this section,

(b) requiring the consumer trustee to provide information to the infrastructure planner,

(c) public consultation requirements.

The Regulations have detailed further the responsibilities of the infrastructure planner. They include the following:

43 Matters requiring assessment and recommendations—the Act, ss 30 and 63(4)

(1) The infrastructure planner must assess and make recommendations about the

following—

(a) proposed REZ network infrastructure projects,

(b) priority transmission infrastructure projects in relation to which the infrastructure planner is appointed,

(c) network operators who may be authorised or directed to carry out—

(i) a REZ network infrastructure project, or (ii) a priority transmission infrastructure project,

(d) other persons who may assist the network operator to carry out— (i) a REZ network infrastructure project, or

(ii) a priority transmission infrastructure project,

(e) the contractual arrangements that a network operator may be required to enter into to carry out a REZ network infrastructure project or priority transmission infrastructure project under an authorisation (the recommended contractual arrangements).

(2) The infrastructure planner may decide—

(a) the extent of an assessment under subclause (1), and

(b) how the assessment will be carried out, including whether to carry out a competitive assessment process.

(3) An assessment and recommendation made by the infrastructure planner in relation to

a priority transmission infrastructure project must be provided to the Minister.

Note—

An assessment and recommendation about a REZ network infrastructure project must be provided to the consumer trustee under the Act, section 30(1).

(4) For the purposes of the Act, section 34(2)(d), the Minister must consider an assessment and recommendation by the infrastructure planner before giving—

(a) a direction under the Act, section 32(1)(b), or (b) an authorisation under the Act, section 36(2).

44 Technical specifications for REZ network infrastructure projects—the Act, s 30

The infrastructure planner's assessment and recommendations about a REZ network infrastructure project must deal with the following—

(a) technical specifications about the following—

(i) proposed routes of the network infrastructure, including substation locations, (ii) connections between proposed and existing network infrastructure, (iii) the operating voltages and network capacity of the network infrastructure,

(b) how the project will ensure the safe operation of the network infrastructure and the reliability and security of electricity supply,

(c) how the project will meet the system strength requirements under the National Electricity Rules for the NSW region,

(d) if the project includes class 3 network infrastructure—details of the person who is proposed to own or control the network infrastructure.

Accordingly, EnergyCo has the responsibility of **planning, designing, developing, assessing and making recommendations covering generation, storage and network infrastructure within a REZ**. It is arguable that, in so doing, it is required to act consistently with its objects, the objects of the EII Act and Regulation, and the NEL (whose application has not been modified by the EII Regulations). EnergyCo is also to make recommendations concerning network operators and the authorization of Network Operators. It is not clear when and whether these recommendations are to the Minister, the Consumer Trustee (AEMO Services) or both as required. It is noted that the assessment and recommendations re an infrastructure project must deal with technical matters including how the project will ensure the safe operation of the network infrastructure and the reliability and security of electricity supply. Cost and cost recovery is also integral to the planning and design.

EnergyCo's own view of its purpose and responsibilities is detailed on its website which stresses the "shift to renewables" and the resultant "energy transformation":

"Our purpose

Our role is to maximise the opportunities created by the transformation of the NSW electricity system by coordinating investment in Renewable Energy Zones (REZs) across the State.

We will channel investment in solar and wind farms and storage such as batteries and pumped hydro to places best suited to host it. This means clean energy can be harnessed and distributed reliably and affordably. This will power NSW for decades to come.

In our regions, it will generate profound economic opportunities as cheap renewable energy underpins new low carbon industries such as green hydrogen, manufacturing and metals production. Investors are ready to build the generation and storage we need right now. Five dedicated REZs have already been identified across the State.

We are coordinating the transition to ensure it happens in an orderly manner and are leading strategic planning and consultation processes, so the new transmission infrastructure needed to realise the State's energy transition is developed in the right place, at the right time, to deliver clean, reliable and affordable energy to the households and businesses of NSW."

Note 12: Once again the 'transition', 'clean energy', 'renewable' are clearly touted as primary justification for the project and change in generation from traditional thermal plants to wind, solar and storage, all without lawful basis at the time. Why were not Officers of any jurisdiction scrutinising and policing the adherence to legislation? Surely questions should at least have been asked re. ***jurisdictional error*** *including –*

- failing to take into account mandatory relevant considerations and
- taking into account irrelevant considerations.

3.3 EnergyCo – Central-West Orana Transmission Project Application No SSI-48323210

The Central West Orana REZ (CWO-REZ) was formally declared (5 November 2021) under s.19(1) of the EII Act 2020. It was the first in Australia and recognized in AEMO's Draft 2022 ISP. It had an initial intended network capacity of 3 GW but the Minister has since, at the request of EnergyCo, increased the capacity to 6 GW. Some documents foreshadow an increase to 14 GW.

Details are as set out in the EIS, public exhibition of which commenced on 28 September 2023 and concluded on 8 November 2023. The Scoping Report (September 2020), SEARS, EIS, and

Submissions are viewable via planningportal.nsw.gov.au. There were 401 submissions objecting or commenting adversely; there were 3 submissions in support. The Project was subsequently approved in June 2024.

Note 13: Overwhelmingly public submissions for the REZ, and projects within it, are in opposition for many reasons. Many projects have gone to Independent Planning Commission due to the number of opposing submissions, but as yet NONE have been declined approval.

The need and strategic justification of the project are set out in both the Scoping Report and the EIS. The Scoping Report states that the object of the transmission is to drive the uptake of "low emissions technologies" i.e. wind, solar, pumped hydro, batteries. The "first priority" is to "provide a pathway to deploy at scale" low emissions technologies. The EIS asserts that the project is consistent with ongoing policy directions in NSW which push the transition to renewable energy through the development of 5 regional Renewable Energy Zones. Multiple wind farms, solar farms, pumped hydro, batteries and associated infrastructure will be pushed into these zones, which will require new transmission infrastructure to transfer the proposed energy generation to the major load centres of Sydney, Wollongong, Newcastle and the Hunter area. The nature of this intermittent generation is that it requires multiple generators across large land areas distanced from the bulk of consumers as well as "firming" or backup. The existing transmission deployed "synchronous" generation (coal and gas) which required few generators, occupied less space and provided consistent and controllable output which does not need additional backup.

The EIS justifies the project as follows:

"The Australian Government is committed to coordinated global action to reduce greenhouse gas emissions in line with the Paris Agreement and has set targets to reduce emissions by 43 per cent below 2005 levels by 2030, and to net-zero by 2050. Independently, the NSW Government has set a goal to achieve net-zero emissions by 2050 (NSW Department of Planning, Industry and Environment (DPIE), 2020a). Achieving these goals requires transformative low emissions technologies to be deployed at scale across all sectors of the economy. ....

The NEM, inclusive of the NSW transmission network, needs to be expanded and modernised so that the system can accommodate and respond to changes in electricity generation from traditional energy sources to lower emission alternatives, including renewable energy and batteries, as well as shifting consumer preferences (Australian Government Department of Industry, Science, Energy and Resources (DISER), 2021a). The closure of large coal-fired power stations has the potential to put pressure on the future supply of energy, particularly when considering that electricity consumption in NSW is forecast to increase in the future (AEMO, 2019; AEMO, 2022a). AEMO's Integrated System Plan 2018 (AEMO, 2018) notes: 'When existing thermal generation reaches the end of its technical life and retires, the most cost-effective replacement of its energy production, based on current cost projections, is a portfolio of utility-scale renewable generation, energy storage, distributed energy resources (DER), flexible thermal capacity including gas-powered generation (GPG), and transmission'. This highlights the urgent need to develop and connect new renewable energy to the NEM (via the NSW transmission .....

The NSW Transmission Infrastructure Strategy (NSW Department of Planning and Environment (DPE), 2018a), … states that connection of these REZs will leverage massive private sector investment opportunities, boosting regional economies and building the State's resilience by ensuring there are enough new energy projects coming online to replace the retiring traditional power stations expected over the next two decades. However, it is noted that investors in new energy projects typically will not invest unless they are sure there will be enough transmission capacity to transfer the energy they generate back to the NEM (DPE, 2018b).

As discussed in Chapter 1 (Introduction), the existing transmission network is not capable of transferring the scale of new electricity generation identified for the Central-West Orana REZ. Development of new electricity generation and storage projects in the Central-West Orana REZ will therefore require new high voltage transmission infrastructure in the region."

The Project objectives are outlined by EnergyCo at 2.4 of the EIS and are as follows:

"to ensure efficient aggregation and transfer of renewable energy from renewable energy generators and storage within the REZ to the NSW transmission network (as part of the broader NEM). The project forms part of the NSW Government's broader objective of encouraging and coordinating generation, storage and network investment in the CentralWest Orana REZ under the NSW Electricity Infrastructure Roadmap (DPE, 2020)."

Note 14: Clearly the intent was to transition to renewables even though no Legislation existed at that time to authorise this action.

4. Consumer Trustee – AEMO Services.

4.1 Aemo Services

AEMO Services is a subsidiary of AEMO. It is unclear whether references in the NEL to AEMO (s.70) would include AEMO Services. The relationship is described by AEMO as follows:

In July 2021, the New South Wales Government appointed AEMO to the role of NSW Consumer Trustee. To carry out the functions conferred transparently and independently,

AEMO established a subsidiary, AEMO Services Limited (AEMO Services).

AEMO Services has been created with initially AEMO Limited and the NSW Government as members, but it is open to all other jurisdictions to join as members also. The Chair of the AEMO Board will initially serve as interim non-executive Chair of the AEMO Services Board, pending a director search and appointment process.

To ensure AEMO's key staff and roles are not impacted by this new appointment, AEMO Services will appoint its own staff, with capabilities consistent with its required mandate.

All costs in fulfilling the NSW Consumer Trustee Role will be met through arrangements with the NSW Government.

AEMO (and therefore AEMO Services) are required to carry out their functions having regard to the NEL (Part 5 s. 49 National Electricity (NSW) Law 1997). AEMO and presumably AEMO

Services have Constitutions which have not been accessed and which may confer additional objects and functions.

4.2. Responsibilities and Functions of the Consumer Trustee (EII Act and Regulation)

S. 60 (EII Act) Consumer trustee

(1) The Minister is to appoint a person or body as the consumer trustee.

(2) In the absence of an appointment, the Secretary must exercise the functions of the consumer trustee.

(3) The consumer trustee is to act independently and in the long-term financial interests of NSW electricity customers.

(4) The consumer trustee has the following functions—

(a) to advise the Minister and the infrastructure planner in relation to proposed and declared renewable energy zones and proposed and required REZ network infrastructure projects,

(b) to negotiate, in accordance with any requirements prescribed by the regulations, with a person in relation to LTES agreements,

(c) other functions prescribed by the regulations,

(d) other functions conferred or imposed on the consumer trustee by or under this or another Act or law.

(5) In the exercise of functions under this Act, the consumer trustee is not subject to the control or direction of the Minister.

These provisions set out a clear, general obligation, as an independent body acting in the long term interests of customers, to provide recommendations and advice on network infrastructure projects, which in turn, clearly include the build out of the Central West Orana Renewable Energy Zone. The obligation in S.60 is mandatory.

AEMO Services published their 2023 Infrastructure Investment Objectives Report in December 2023. The document contains the following Disclaimer:

The contents of this document are for information purposes only. This document is not intended to provide any advice or imply any recommendation or opinion and should not be relied upon as constituting advice. This document may include inputs and assumptions that are not necessarily current as at the date of publication.

AEMO Services has taken care in the preparation of the information contained or referred to in this document but cannot guarantee its accuracy or completeness. Accordingly, to the maximum extent permitted by law, AEMO Services and its officers, employees and consultants involved in the preparation of this document do not give any warranty or make any representation, express or implied,

as to the completeness, accuracy, adequacy or correctness of the information contained or referred to in this document; and expressly disclaim any and all liability relating to or resulting from: the use of, or reliance on, such information by any person; or the exercise of any discretion, or the making of any decision, by AEMO Services as the Consumer Trustee in relation to the information contained or referred to in this document.

Note 15: Hardly an endorsement of confidence in their forecast.

The Report states that it "sets out the least-cost 20-year pathway for meeting NSW's legislated targets for renewable energy infrastructure, alongside a 10-year plan for conducting tenders for long-term energy service agreements (LTESAs)." The Report purports to provide forecast costs for the supply of wholesale energy services for the next 10 years (49.6 billion dollars) together with reliability assessments and a consideration of modifications in the event of delays (12 months).

Note 16: Has AEMO Services, born from within AEMO, truly acted 'in the long term financial interests of NSW electricty consumers'. How has it determined what is in the long term financial interests of consumers? Has it done its own analysis, or relied upon the AEMO ISP or CSIRO GENCOST, or simply followed the hive-mind charge to renewables (sic) without rigorous technical analysis? Even a cursory knowledge of the subject area would inform that in every jurisdiction of the world that renewables (sic) have been built electricity retail prices have increased and reliabilitry of supply has decreased, as evidenced by the erratic market price fluctuations. South Australia has the highest wholesale prices in Australia, California in the US, and Germany is de-industrialising after massive investment in wind and solar and losing access to affordable Russian gas, on which the renewable (sic) scheme is actually based.

5.3 AEMO Services

Query whether there are grounds for an action against AEMO Services on the basis of the matters outlined above – failure to take into account mandatory considerations such as costs and reliability - but with specific reference to the legislative provisions pertaining to the Consumer Trustee.

The trustee is obligated to act independently and in the long-term financial interests of NSW electricity customers and to advise the Minister and the infrastructure planner in relation to proposed and declared renewable energy zones and proposed and required REZ network infrastructure projects.

Relevant responsibilities/decisions/determinations include:

• Both EnergyCo and the AEMO Services appear to share responsibility for the appointment of the Network Operator which, in the case of the CWO-REZ is predominantly comprised of foreign ownership;

• Determination of the maximum capital costs recoverable by the Network Operator; and

• Responsibility for the IIO Report which carries its own legislative imperative (S.44(2)).

(2) The overall objectives are—

(a) construction of generation infrastructure that is necessary to

minimise electricity costs for NSW electricity customers, and

(b) construction of long-duration storage infrastructure that is necessary

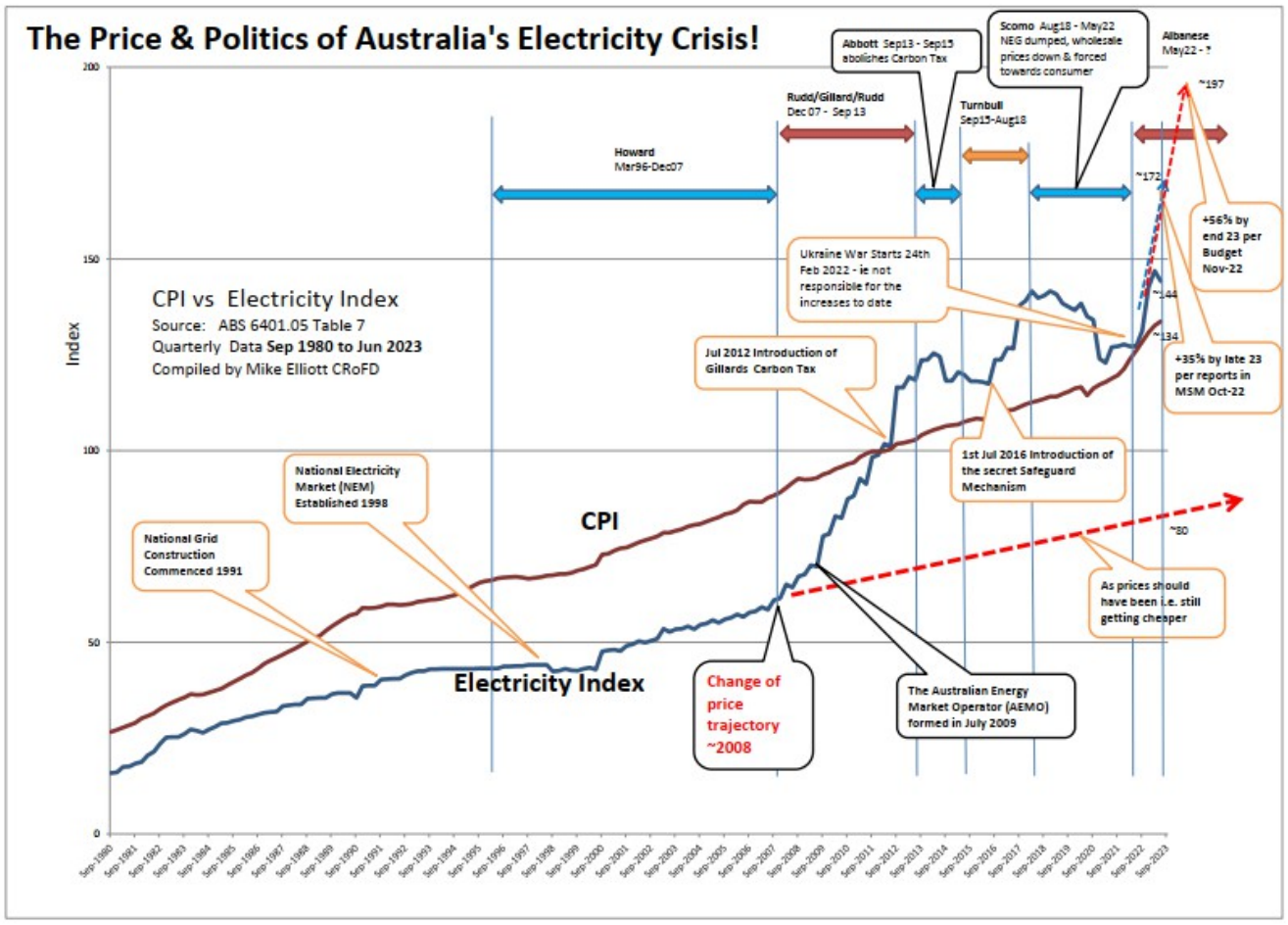
to meet the reliability standard, and

(c) construction of firming infrastructure that is necessary to meet the energy security target and the reliability standard.

In addition, the IIO Report raises for consideration the argument that its current outlined plan is so unreasonable that no reasonable authority could ever have come to it. The bar for "unreasonableness" was set at a high level in the Wednesbury decision but more recent High Court cases have construed the meaning of reasonableness by relating it to the "subject matter, scope and purposes of the statute." In Li [(2013) 249 CLR 332] the Court referred to a decision lacking an "evident and intelligible justification" – "not … possible for a Court to comprehend how the decision was arrived at." This approach was reinforced in MZYTS [(2013) 230 FCR 431]. The argument is that no reasonable person could conclude that the Report represents either the lowest cost plan for consumers or meets the reliability standard. It is in fact impossible to even determine the capital costs recouped by investors as these, and the amounts paid to proponents are all "commercial in confidence."

As set out above, one of the difficulties with this argument is that, unlike the ISP, specific objectives are specified in the legislation for the buildout of the renewable energy zones. There is an inherent contradiction between the requisite minimum renewable energy build out which is required and the objects of minimizing consumer's electricity costs and meeting reliability standards and energy security targets.

Note 16: Below is a chart of electricity vs. time for Australia (also presented as Attachment C and similar chart appears in D. Moran), showing how stability and affordability has gone from Australi's energy market since instigation of the NEM and very noticeably the AEMO. It begs the question - how, when we have all these agencies, authorities and legislation with the objects and mandate to supply electricity to the consumer safely, reliably, affordably and efficiently, that since they were all established electricity prices have markedly increased and reliability markedly decreased?



Note 17: AEMO was established in July 2008 and is a Quasi-Autonomous-Non-Government Organisation (QANGO), without direct accountability to Government or the Citizen. It is comprised of Members from Industry and Government jurisdictions. There are no Citizen or Consumer Members, apart from indirectly via the Government representation. Current 2024 Membership shows 93 Industry Members, made up of generators, retailers, traders, one bank, but no identifiable electricity users.

This exemplifies Stakeholder Capitalism where the people that profit from the NEM are actively involved in influencing the structure and priorities of AEMO via the ISP. Is it little wonder the ISP is such a flawed document from a Citizen Consumer perspective.

To continue from Margart Conn's document. While this refers to the NSW situation and EnergyCo, the national situation is analagous:

The common objects emerging are:

- The cost imperative - Price to consumers, affordability, cost effective supply.
- The reliability imperative
- Security of supply.
- System efficiency.
- System strength – safety and quality.

• The use of local resources, technology, expertise, manufacturing as well as the development of these matters.

• Sustainability – long term.

It is notable that prior to the September 2023 amendment of the NEL, there was no reference in any of the Objects to emission reductions, or meeting policy driven emission targets. It is asserted that the Project and EnergyCo's actions and plans have been primarily driven by policies aimed at emission reductions and policy driven emission reduction targets none of which are requisite objects of the applicable legislation other than the NEL. Applicable legislation is focused on the quality, reliability, security and efficiency of the system and the price at which electricity is delivered by the system to consumers. The amendment of the NEL and the inclusion of an emissions reduction objective does not mean that emission reductions can be afforded primacy in energy design above the longstanding objects of reliability, security, efficiency and price.

In addition to wrongfully allowing emission reductions to drive the Project, the Proponent has failed to take into account the mandatory primary considerations relating to the Project which are, as aforesaid, security and cost of supply related. Each of these mandatory considerations is discussed generally below.

Costs - Costs and Price Imperative, Consumer Based

An energy network comprises component parts which are indispensable to the functioning whole - generation, transmission, delivery and retail. The costs of each of these sectors impacts the final consumer price. With "transformation" of an energy network, an assessment of the cost of each of these aspects of the network is required to truthfully assess the cost of network changes. The analogy is designing a new car which is asserted to be cheap to produce, but which can only run on square wheels and therefore requires an entirely new road/rail system which is funded by road users.

The EIS asserts repeatedly, in passing, that the CWO-REZ will lead to "low cost" technologies. There is nothing in the document to examine or substantiate this assertion. Outside the EIS, the policy documents usually relied upon are the CSIRO Generation Cost Report (GenCost) and AEMO's ISP. In relation to the 2022 (?2020) ISP, we are now aware that these reports provided neither proper comparisons with other technologies nor comprehensive and accurate figures of the cost of a wind and solar transition. CSIRO figures purported to prove that solar and wind were the most cost effective technologies but did not and do not include almost all transmission, backup and firming costs needed by solar and wind between now and 2030 – tens of billions of dollars. The ISP costs, which are said to include the missing seven years of initial work, don't include essential and extensive distribution network upgrades and transmission projects which are already underway. The Draft 2024 ISP has recently been released. Issues in relation to its failure to deal with the whole of system costs to the consumer are dealt with specifically later in this brief.

The only substantiated fact in relation to electricity prices in NSW is that they are rising. Policy makers advised initially that prices would drop in response to a renewables build out very quickly. Steps have now been taken to subsidize consumers as a result of ongoing rising prices and the rhetoric has now changed to "long term" price reductions. Nowhere in the EIS is the cost of the Project disclosed. Nowhere in the EIS is the comprehensive cost of the energy transformation within the REZ (transmission, associated infrastructure, batteries, firming, new

generation ...) calculated, discussed or disclosed. Nowhere in the EIS is there a comparison of the cost of the proposed "energy transformation" being imposed on the CWO-REZ with alternative forms of energy and transmission. Nowhere in the EIS is the issue of the price of electricity for the consumer arising out of the "energy transformation" specifically calculated, discussed or disclosed. There is an acknowledgement that the Network Operator will need to recover (undisclosed) costs.

More specifically in relation to the CWO-REZ, the Project was identified in the 2020 ISP as "actionable." The Rules require that if a project is an actionable project, the proponent must apply the RIT-T. The RIT-T (Regulatory Investment Test – Transmission) quantifies expected cost and expected market benefits to arrive at net economic benefits, and to identify preferred options. The purpose is to identify the credible option to address the identified need at the greatest net benefit (or least net cost) to the NEM. Costs and benefits are defined. Costs include capital, operating and compliance costs. In the 2020 ISP the COWREZ is actionable and the PADR is required by December 2021, proponent Transgrid.

Whether a PADR was prepared is unknown as subsequently, the alternative regulatory path is adopted which is the EII Act path and the Transmission Efficiency Test. There is a twofold consequence for consumers. They have been denied the possibility of determining the economic viability of the CWO-REZ under the RIT-T (which now becomes a sunk cost for the ISP). Under the TET, the only assessment is of the proposed capital costs to investors for the development and construction of the project. The Regulator must be satisfied that the capital costs proposed by the Network Operator are "prudent, efficient and reasonable." The costs are effectively deemed to be "prudent, efficient and reasonable" as long as they do not exceed the maximum capital costs approved by the Consumer Trustee and as long as the Network Operator has been appointed following a competitive tender process. It is also noted that the Consumer Trustee is required not to disclose the maximum capital costs to any person and it is not clear from the legislation that even the Minister is made aware of the amount.

S. 37 EII Act sets out the costs payable to the Network Operator (for which the consumer is ultimately responsible) as:

(a) repayment of capital costs as determined under the transmission efficiency test, (b) the return on capital costs that have not been repaid,

(c) an allowance for operating costs,

(d) other components prescribed by the regulations.

The cost benefit guidelines which underline the formula for the RIT-T have been replaced by a capital cost competition based formula. The latter assesses costs to investors, not to end users.

Reliability

The major issues relate to the fundamental character of non-synchronous generators (wind and solar) working only intermittently in a random and chaotic manner producing, maybe, 30% and 20% of nameplate capacity on an average basis unrelated to demand. It is accepted that energy reliability has not been achieved anywhere else in the world with a grid wholly powered by

intermittent and asynchronous generation. Reliability is unachievable without synchronous generators backing up the grid at all times. AEMO and EnergyCo have admitted that the task is daunting. In designing the grid for a Renewable Energy Zone in this context, EnergyCo is failing to give the requisite consideration to its mandatory energy objective of grid reliability. The EIS does not, and cannot, assert that the Project will result in reliable generation to the necessary standard.

The EIS is in fact premised on the absence of reliability of the energy generators which it is being designed to support. The Project purpose is to facilitate, for emission reduction objectives, the development of intermittent and unreliable generation. The unreliability and intermittency of wind and solar is acknowledged by AEMO and by EnergyCo. EnergyCo acknowledges that it needed to design the CWO-REZ to "address issues of inertia and stability by including equipment and technology within the design … to ensure stability and reliability." But there is no assessment in the EIS which sets out how these issues have been taken into account and outlining whether (and how) this has been achieved. Reliability is a consideration which is abandoned for the expressed purpose of alleged emissions reductions.

Security of supply, System efficiency, Quality.

These matters are closely associated with the reliability criterion. Energy objective is strong system strength. An energy grid of the size and nature proposed is inherently weak, insecure and inefficient. These considerations are not dealt with in the EIS. Some of the problems which EnergyCo is facing have never been solved. Examples of some of the difficulties which need to be overcome to achieve system strength and which are not addressed in the EIS are dealt with in the document appended marked Annexure C.

Safety

This objective relates to the system strength of the grid and overlaps with the above objects. However, it has new meaning given that the wind turbine components and solar panels likely to be used in the CWO-REZ system are imported from China. If we are unable to import wind turbines and solar panels from China, the safety and very existence of our energy grid is threatened. Further these generators rely on electronic chips manufactured in China. It has recently been acknowledged by Australia's security personnel that energy security is considered to be at risk as a result of our dependence on these imported generators and that this risk constitutes a greater threat than a terrorist strike. This has not been considered by Energy Co or in the EIS.

Note 17: Further safety problems are land and water contamination due to bisphenol-A from eroding turbine blades, toxic contamination of soil from degraded or burnt solar panels, turbine blade throw, turbine fires, oil leaks and throw, infrasound and electromagnetic health effects from long term exposure, impediment to ground (solar) and aerial (turbines) firefighting and contamination from disposal of it all in landfill at end of life.

Use of Local Resources, Technology and Manufacturing.

These are objectives arising out of the NSW legislation. But ACEREZ, the Network Operator appointed by EnergyCo is a conglomerate of essentially foreign interests. 49.6% of one of the three companies is fully Australian owned. The EIS acknowledges that there are not the requisite technologies, manufacturing or skills in the State to begin to achieve this build-out. NSW (and Australia) do not build wind turbines or solar panels to any extent. These are imported and, currently, they are imported essentially from China. The REZ buildout will be completed largely by foreign management using imported manufactured hardware and an imported workforce.

Sustainability

There is a case that EnergyCo has failed to analyze and consider the sustainability of the energy grid of which it is fundamental developer. Adopting the dictionary definition of sustainability as "the quality of being able to continue over time causing little or no damage to the environment," EnergyCo fails to address the extensive environmental damage caused in the manufacture of wind turbines and solar panels or the intensive consumption of land and resources associated with an energy powerhouse (i.e. renewable energy zone) located over widespread physical areas long distances from consumers. The lifespan of the generators is limited, varying from a very short term for solar panels to 20 years for wind turbines. Recycling opportunities are limited with significant toxic waste issues.

In addition to failure to take into account relevant considerations, there is an additional potential cause of action based on the argument of unreasonableness. This basis for an assertion of jurisdictional error is dealt with below in relation to the 2024 ISP and touched on in relation to AEMO Services. Briefly however, the assertion is that no reasonable person could conclude that the planned transmission network demonstrably meets the long term interests of consumers in relation to price when the costs to consumers are in fact unknown. Similarly, the reliability, safety and security of the energy system created by the CWO-REZ are unknown factors.

One of the difficult and complicating factors is that the EII Act itself sets up Renewable Energy Zones with specific capacities. That is, it is arguable that neither EnergyCo (nor AEMO Services) had any discretion in relation to the overall systems which they were legislatively charged with creating. There is an inherent, basic contradiction between the framework created by the legislation and the legislative and NEL objects of quality, reliability, security, efficiency and cost to consumers.

Note 18: *This is expanded further later in Conn's thorough brief.*

1. AEMO

The NEL and NER set out the framework for the operation of the electricity grid in the eastern

and southern states. AEMO's statutory functions are set out in S.49:

49—AEMO's statutory functions

(1) The following functions are conferred on AEMO:

(a) to operate and administer the wholesale exchange;

(b) to promote the development and improve the effectiveness of the operation and administration of the wholesale exchange;

(c) to register persons as Registered participants;

(d) to exempt certain persons from being registered as Registered participants; (e) to maintain and improve power system security;

(f) to facilitate retail customer transfer, metering and retail competition;

(fa) any functions of a data holder under the Competition and Consumer Act 2010 of the Commonwealth for CDR data relating to a designated energy sector; (g) for an adoptive jurisdiction—the additional advisory functions or declared network functions (as the case requires);

(h) any functions conferred by jurisdictional electricity legislation or an application Act;

(i) any other functions conferred under this Law or the Rules.

(2) In its role as National Transmission Planner, AEMO has the following functions: (a) to prepare, maintain and publish a plan for the development of the national transmission grid (the National Transmission Network Development Plan) in accordance with the Rules;

(b) to establish and maintain a database of information relevant to planning the development of the national transmission grid and to make the database available to the public;

(c) to keep the national transmission grid under review and provide advice on the development of the grid or projects that could affect the grid;

(d) to provide a national strategic perspective for transmission planning and coordination;

(e) any other functions conferred on AEMO under this Law or the Rules in its capacity as National Transmission Planner.

(3) AEMO must, in carrying out functions referred to in this section, have the regard to national electricity objective.

2. The Integrated System Plan (ISP)

The NTDP referred to at S.49(2)(a) above is no longer published. Legislative amendments in 2020 created the Integrated System Plan. In Moorabool and Central Highlands Power Alliance Inc v. Minister for Energy and Resources [2023] VSC774, the Alliance argued that the 2022 ISP was the equivalent of an NTNDP and published pursuant to S. 49(2). This seems a reasonable argument given that the amending legislation repealed the obligation to produce the NTNDP and replaced references to the NTNDP with references to the ISP. It was rejected as "erroneous"

and it was held that portions of the NER which relate to the content of an ISP are not subject to S. 49(2)(a).

Chapter 5 of the NER applies. Rule 5.22.2 sets out the purpose of the ISP:

The purpose of the Integrated System Plan is to establish a whole of system plan for the efficient development of the power system that achieves power system needs for a planning horizon of at least 20 years for the long term interests of the consumers of electricity.

Power system needs are defined at R5.22.3:

(a) The power system needs are:

(1) the reliability standard;

(2) power system security;

(3) system standards; and

(4) standards or technical requirements in Schedule 5.1 or in an applicable regulatory instrument.

(b) In determining power system needs, as it relates to a NEM participating jurisdiction, AEMO may consider a current environmental or energy policy of that participating jurisdiction where that policy has been sufficiently developed to enable AEMO to identify the impacts of it on the power system and at least one of the following is satisfied:

(1)a commitment has been made in an international agreement to implement that policy;

(2) that policy has been enacted in legislation;

(3) there is a regulatory obligation in relation to that policy;

(4) there is material funding allocated to that policy in a budget of the relevant participating jurisdiction; or

(5) the MCE has advised AEMO to incorporate the policy.

R5.22.10 sets out ISP requirements in detail:

5.22.10. Preparation of ISP ISP requirements

(a)In preparing an Integrated System Plan, AEMO must:

(1) comply with any requirements set out in the Cost Benefit Analysis

Guidelines under clause 5.22.5(c);

(2) comply with any requirements set out in the Forecasting Best Practice

Guidelines under clause 5.22.5(j);

(3) adopt the inputs and assumptions, material issues and scenarios identified in

the Inputs, Assumptions and Scenarios Report, or provide reasons where AEMO has used

updated information;

(4) seek to deliver power system needs;

(5) consider the following matters:

(i) the efficient integration of ISP development opportunities

(ii) the risks to consumers arising from uncertainty, including over investment, under-investment, premature or overdue investment;

(iii) fuel security;

(iv) credible options (including non-network options);

(v) outcomes of joint planning with Transmission Network Service Providers under clause 5.14.4;

(vi) relevant intra jurisdictional developments and any incremental works that may be needed to coordinate the Integrated System Plan with intra jurisdictional planning;

(vii) the forecast quantity of electricity that is expected to flow, and the periods in which electricity is expected to flow, and the magnitude and significance of future network losses on interconnectors, as projected in the Integrated System Planover the Integrated System Plan planning horizon;

(viii) the projected capability of the national transmission grid, and the technical requirements of the power system(such as frequency, voltage, inertia and system strength) required to support the secure and reliable operation of the national transmission grid;

(ix) good electricity industry practice; and

(x) such other matters as AEMO considers relevant.

Relevant documents

(b)In preparing an Integrated System Plan, AEMO must have regard to the following documents:

(1) the ISP methodology;

(2) the Cost Benefit Analysis Guidelines;

(3) the Forecasting Best Practice Guidelines;

(4) the most recent Transmission Annual Planning Reports;

(5) the most recent statement of opportunities;

(6) the most recent gas statement of opportunities under the National Gas Law;

(7) the most recent NSCAS Report, System Security Report and Inertia Report;

(8) ISP consumer panel reports;

(8A) any REZ design reports published under clause 5.24.1(b)(1); and

(9) any other documents that AEMO considers relevant.

Market benefits

(c)In preparing an Integrated System Plan, AEMO must:

(1) consider the following classes of market benefits that could be delivered by

the development path ...

(2) include a quantification of all classes of market benefits which are determined to be material to the optimal development path in AEMO's reasonable opinion; and

(3) consider all classes of market benefits as material unless it can provide reasons ...

Costs

(d) In preparing an Integrated System Plan, AEMO must quantify the following classes of costs:

(1) costs incurred in constructing or providing the projects in the development path;

(2) operating and maintenance costs in respect of the projects in the development path;

(3) the cost of complying with laws, regulations and applicable administrative requirements in relation to the construction and operation of the projects in the development path; and

(4) any other class of costs that are:

(i) determined to be relevant by AEMO and agreed to by the AER in writing before the publication of t Plan; orspecified as a class of cost in the Cost Benefit Analysis Guidelines.

(ii)

3. 2024 ISP

The Draft 2024 ISP was published in December 2023. Submissions were open until 16 February 2024.

3.1 The Application of emissions policies to the Draft 2024 ISP

In July 2023, AEMO published the final 2023 Input, Assumptions, Scenarios Report. The Executive Summary details the policies applied:

Table 2 Policies used in all scenarios

Emission reduction policies

• Federal – Emission reduction of 43% below 2005 levels by 2030 and net zero by 2050 under the Climate Change Act (2022) (C'th).

• New South Wales – Emission reduction targets of 50% by 2030 and net zero by 2050 (legislation is pending).

• South Australia – target of 60% (40% of 1990 levels) by 2050 under the Climate Change and Greenhouse Emissions Reduction Act 2007.

• Victoria – target of 28-33% below 2005 levels by 2025, 50% by 2030, 75-80% by 2035 and net zero by 2050 under Victoria's Climate Change Act 2017; and the net-zero emission target by 2045 that is

intended to be legislated.

Renewable energy targets

• Federal – Complementing the 2030 emissions target is the Federal Government's commitment to

achieve an 82% share of renewable generation by 2030, announced in the Powering Australia Plan

• New South Wales – new renewable generation that can produce the same electricity as 8 GW in New

England REZ, 3 GW in Central-West Orana REZ, and 1 GW elsewhere by end of 2029 under the New

South Wales Electricity Infrastructure Investment Act 2020 (NSW EII Act).

• Queensland – expansion of the Queensland Renewable Energy Target (QRET) to 50% by 2030, 70% by 2032, and 80% by 2035 under the Queensland Energy and Jobs Plan (QEJP); legislation is under consultation.

• Tasmania – target of 150% of consumption by 2030 (on 2020 levels) and 200% by 2040 under the

Energy Co-ordination and Planning Amendment (Tasmanian Renewable Energy Target) Act 2020.

• Victoria – Victorian Renewable Energy Target (VRET) of 40% by 2025, 50% by 2030 under the

Renewable Energy (Jobs and Investment) Act 2017, and intentions to update VRET with 65% of the

state's generation to come from VRE by 2030 and 95% by 2035.

Storage targets

• New South Wales – target of 2 gigawatts (GW) of deep storage by 2030 under the NSW EII Act.

• Queensland – Development of Borumba Pumped Hydro Energy Storage (now classified as an Anticipated project under AEMOs' generation commitment criteria5).

• Tasmania – Battery of the Nation will be considered as a generation development option.

• Victoria – Storage targets of 2.6 GW by 2030 and 6.3 GW by 2035 (legislation is pending).

Offshore wind targets

• Victoria – 2 GW by 2032, 4 GW by 2035, and 9 GW by 2040 as stated in the Offshore Wind Policy

Directions Paper and Implementation Strategy Statements One and Two (legislation is pending).

Hydrogen policies

• New South Wales – Renewable Fuels Scheme (legislated in 2021 and is expected to start in 2024) of

the NSW Hydrogen Strategy.

• Queensland – The QEJP has allocated funding to support the Kogan Renewable Hydrogen Project

• South Australia – Hydrogen Jobs Plan, which includes a 250 MW electrolyser and a 200 MW hydrogen- capable generator, that has significant budget commitments.

Transmission support policies

• New South Wales – Consideration of various transmission development options under the NSW Electricity Infrastructure Roadmap, including Renewable Energy Zone network infrastructure projects and priority transmission infrastructure projects (PTIPs) under the NSW EII Act. Waratah Super Battery System Integrity Protection Scheme will be treated as a committed project, and CentralWest Orana Transmission Project will be treated as an anticipated project.

• Queensland – Consideration of various transmission development options and Queensland Renewable Energy Zone (QREZ) infrastructure, as described in the SuperGrid Infrastructure Blueprint and Queensland Renewable Energy Zone (QREZ). CopperString 2032 will be treated as an Anticipated project with the Townsville to Hughenden connection being modelled quantitively as a REZ network expansion.

• Victoria – Consideration of various transmission development options, including coordinating the planning and development of REZs through VicGrid, supported by the National Electricity (Victoria) Act 2005 (NEVA). The Western Renewables Link and the Mortlake Turn-in will be treated as an Anticipated projects.

Following the AER Transparency Review, an Addendum to the 2023 IASR was published in December 2023. The AER queried the inclusion of emissions policies which do/did not yet meet the NER requirements. AEMO stated that the IASR included policies if either their legislation or their funding arrangements were likely to be in place by the June 2024 publication of the 2024 ISP.

The Preface to the Draft 2024 ISP asserts that the plan outlines “the lowest-cost pathway of essential generation, storage and transmission infrastructure to meet consumers’ energy needs

for secure, reliable and affordable energy, and to achieve net zero emissions targets." Footnotes 12 and 13 (p35) of the Draft ISP deal specifically with the amended NEO:

12 National Electricity Rules (NER) 5.22.2.

13 NER 5.22.3(b) provides requirements for public policies' inclusion in the ISP. In November 2023 a new emissions reduction element came into force in the National Electricity Objective (NEO) of the National Electricity Law. AEMO has chosen to apply the amended NEO in its preparation of the Draft 2024 ISP, by using only scenarios that comply with Australian governments' emissions reduction policies and by considering policies and targets in the Australian Energy Market Commission's Emissions Targets Statement, including those which are on their way to meeting (but have not yet met) the National Electricity Rules requirements for public policies' inclusion in the ISP.

The approach adopted in relation to emissions targets has been to start with the requirement that no plan or options or generation will be considered unless they will achieve net zero emissions targets. This is the pre-condition to which the interests of consumers, costs and reliability are then applied. In addition, there is no consideration of any combination of synchronous and nonsynchronous generators or consideration of any potential modification of synchronous generators which could reduce emissions while maintaining stability and reliability standards. Consideration of nuclear generation is discarded on the basis of GenCost data and the assertion that its development would be too slow to replace retiring coal fired generation. The ISP is explicit in setting out that it is a plan premised not just upon the necessity of achieving emissions targets in priority to the historical objectives of the NEL, but on facilitating this energy transmission based on retiring coal and using wind and solar generation with hydro, batteries and gas to provide the firming. The previous Slow Change Scenario has been removed from the ISP.

3.2 The Long Term Interests of Consumers – Price and Costs.

AEMO asserts that the ISP outlines the investments needed to make sure that Australians have access to "affordable" energy. It makes no attempt however to assess or model the full system costs to the consumer of the ISP. The following matters are critical:

• The ISP does not include distribution costs. This omission is acknowledged with thestatement that "The ISP does not plan the distribution network, that is, the poles and wires that connect individual households and business to the grid....Distribution system planning, including costs, happens at a state and local level." Although the ISP states that "The plan includes an estimate of what it will cost to build the new generation, storage, and transmission needed to maintain a reliable supply of electricity as coal generation retires" the costs of the distribution network to deliver the electricity to consumers, are not included or estimated.

• The Plan is able to omit huge costs from calculation with its classification and treatment of "committed and anticipated projects," "actionable projects," and "future ISP projects". Only actionable projects have costs estimates. Committed and anticipated ISP projects (the CWO-REZ is an anticipated project) is not costed for the purpose of the ISP. This enables tens of billions of

dollars in transmission costs (to which state governments are committed) to be ignored. But these are costs which consumers will pay.

• AEMO works closely with the CSIRO in relation to costings and the ISP uses GenCost data. This data calculates the relative costs of energy from different generation technologies. In particular, the levelized cost of electricity data for new build generation capacity is calculated at 2030 by which time 50% renewables will have already been achieved. Paul Graham, Chief Economist CSIRO, recently acknowledged that the cumulative cost of all investment up to 2030 in relation to these technologies are not included in the analysis. All existing generation, storage and transmission capacity which are factored in to be built by 2030 are treated as sunk costs. These include Snowy 2.0 and the "Battery of the Nation" pumped hydro in Tasmania, the gas peaking plant at Kurri Kurri and Illawarra as well as VNI West, Marinus Link, HumeLink, Sydney Ring....

Effectively, GenCost has calculated costs on the basis of the costs to the investor at 2030. But the consumer bears the costs that have produced the generation, storage and transmission infrastructure required to occur by 2030.

• The ISP forecasts that "consumer resources" are now critical to the power system. The uptake of rooftop solar has already significantly impacted the grid. The grid's ongoing performance and capacity is forecast to depend on the ongoing uptake and management of rooftop solar by homes and businesses. In addition, there is the expected (projected) growth in home batteries and electric vehicles. The importance of these consumer resources, and the role they play in the energy transition is acknowledged by the ISP but the costs to the consumer have not been modelled or considered. The direct consumer costs for example of ongoing rooftop solar and home batteries (power walls) to support the renewables, is likely to be hundreds of billions of dollars. There are also less direct costs such as behaviour modification so that car batteries are charged at off peak times.

3.3. Capability and Reliability

The ISP does not expressly purport to have modelled a system which will produce the capability, reliability and system strength which is required. There is no serious claim that the ISP will produce a system which meets the safety, capability and reliability standards on its own. It may need extra storage, additional transmission, additional generation. On 15 August 2023, at a webinare with interested parties, a senior modeller with the Department of Climate Change and Energy stated that the ISP was never intended to produce a fully reliable system. Physicist and data analyst of the C.I.S., Aidan Morrison, has asserted that when one "dives down into the models," analysis of their optimization processes confirms that they do not attempt to finalize or model a reliable system which will work as modelled.

3.4 Cause of Action

Counsel's advice is sought in relation to the prospects of success of a challenge to AEMO's

decision to publish/publication of the Draft 2024 ISP. The first basis of the challenge is the principle of unreasonableness – the ISP is so unreasonable that no reasonable authority could ever have come to it. The bar for "unreasonableness" was set at a high level in the Wednesbury decision but more recent High Court cases have made some modification of it. In Li [(2013) 249 CLR 332] the Court referred to a decision lacking an "evident and intelligible justification" – "not … possible for a Court to comprehend how the decision was arrived at." Justice Gageler construed the meaning of reasonableness by relating it to the "subject matter, scope and purposes of the statute." This approach was reinforced in MZYTS [(2013) 230 FCR 431]. The current position is more likely to be that a decision will be unreasonable where its reasoning process or its outcome is at odds with the statutory scheme.

The argument is that no reasonable person could conclude that the ISP represents either the lowest cost plan for consumers or meets the necessary reliability and power system security standards. On the basis of the above matters, no reasonable person could conclude that the long term interests of consumers in relation to price have been taken into account when the costs to consumers are in fact unknown. Similarly, the reliability, safety and security are unknown factors.

Further, there has been a failure of process. The approach has been to start with the policy to which the government is committed and then examine a small number of available options for its implementation. There has been no genuine attempt to look at systems which might meet reliability and security standards as well as effect emissions reductions and consider how these might be adjusted to find an optimal way forward in the interests of consumers.

This raises the second basis of the challenge. It is suggested that there has been an error of law in the application of the NEL emissions target Objective. The emission reductions targets addition to the NEO has been applied to preclude any independent and proper consideration of the matters in (a) and (b) which for so long formed the cornerstone of the NEO. On wellestablished principles of statutory construction, the application of the amendment in this way gives rise to jurisdictional error – error of law. There is a fundamental erroneous application of the Objective which infects the Plan. AEMO has exceeded its powers and its jurisdiction.

Note 19: As just described, AEMO has not performed as authorised, driving all analysis and action based on a pre-conceived end-state. The arcane legal errors are outlined above, but more prosaic is the question - why do we have such a complex document process, convoluted management structure with many high paid bureaucrats, just to try and pull a snow-job on us, when honest forthright rule-by-decree would be a less tortuous route to the same end-state? Awareness of the fact we are being lied to causes umbrage, but the sincerity and gravitas in which it is done totally disrespects our intelligence as well as legal rights to affordable reliable power. The outwardly sincere, well intenioned well dressed professional class conduct malevolent acts against us, while our natural polite reticence to confront them allows it to happen.

Note 20: The following will be covered in other submissions, but I shall include Conn's section on it as confirmation that the ruse was noticed by many, and cannot be ignored.

4. Feedback Loop

4.1 Breaches of the Rules.

In July 2020, AEMO published the 2020 ISP. This Plan was updated in December 2021 to incorporate changes to inputs, assumptions and scenarios. AEMO then used the updated document and Draft 2022 ISP, for the purposes of feedback loop assessment requirements. Short-circuiting the feedback loop requirements in turn facilitated a triggering of eligibility for contingent project applications without the prescribed consultation and review. Two projects in question were Transgrid's Humelink and VNI West. The result was the approval of significant funds for Early Works ($330 million for HumeLink) without the consultation and review process which would otherwise have occurred.

The ISP Consumer Panel Report on the Draft 2022 ISP was strongly critical of this circumventing of the process prescribed by the Rules for the external consultation and review in developing the ISP paths

On 17 November 2023, AEMO foreshadowed a similar approach with the 2024 Draft ISP when it advised subscribers to ISP updates as follows:

> *On Friday 15 December 2023, AEMO will publish an update to the 2022 Integrated System Plan (ISP) alongside the Draft 2024 ISP.*
>
> *Following completion of the Regulatory Investment Test for Transmission (RIT-T), a Transmission Network Service Provider (TNSP) may seek written confirmation from AEMO that the preferred option from the RIT-T remains aligned with the optimal development path in the most recent ISP. This process is referred to as the 'feedback loop'.*
>
> *In accordance with the National Electricity Rules, AEMO has identified that an update to the 2022 ISP is necessary to allow the latest inputs identified in the 2023 Inputs,*
>
> *Assumptions and Scenario Report(IASR) to be considered by AEMO when performing the feedback loop prior to the release of the final 2024 ISP next June. This will ensure that any feedback loops relating to HumeLink, VNI West or Project Marinus can be assessed using the latest available information.*
>
> *AEMO has consulted with the Australian Energy Regulator to develop a workable process to update the 2022 ISP in a timely way to allow assessment of feedback loops based on the latest IASR.*
>
> *Best regards, AEMO ISP Team*

In due course, AEMO acted in accordance with its stated intention. As a result, the green light was given to $9 billion of capital investments being passed on to consumers without the scrutiny prescribed by the Rules.

The impacts of AEMO's breaches of the rules pertaining to the feedback loop have been described by the aforementioned Aidan Morrison (who lodged an objection to AEMO's most recent breach with both AEMO and the AER) in the document reproduced below:

> **"Why breaching rules breaks trust in the energy transition**
>
> On 15th December, AEMO published an update to the 2022 Integrated System Plan (ISP), effectively replacing the document with the

unscrutinised 2024 Draft ISP. This was in breach of the National Electricity Rules 22.15.5 c), which required a minimum 30-day consultation for such an update. FOI documents reveal lengthy consultations between AEMO and the AER, making it clear that the breach - and its sanctioning by the regulator -was comprehensively planned and choreographed by the two entities in secret meetings, the content of which have been withheld even from the FOI documents.

Why does this breach matter?

Because it allowed AEMO to effectively green-light $9billion of capital investment being passed on to the consumers. It is likely to be the largest single action in terms of impact on consumer bills for the energy transition. This was done by issuing 'feedback loop' notices to HumeLink ($5bn) and VNI West ($4bn) on December 21 2023 confirming they fit with the 'latest ISP', which in this case was the 2022 ISP that had been improperly updated.

Would anything have actually changed if the update (and breach) didn't occur?

Yes, since in the 2022 ISP HumeLink was only assessed has having net benefits of $1.3billion, and has since experienced a cost blow-out of $1.6billion. Without the update, HumeLink would likely not have been 'actionable' at the new price, and either postponed or cancelled. The Draft 2024 ISP claims nearly another billion dollars worth of benefits are now attributable to HumeLink, keeping it actionable in the ODP - despite the higher cost. This demands close scrutiny of the Draft 2024 ISP, scrutiny which has now been avoided.

Wasn't this just 'additional duplicative processes' as the Chair of AER claimed?

No, the consultation is the only consultation where the 'Optimal Development Path' (ODP) -the key output of the entire ISP process - could be scrutinised. Consultations on the inputs, such as the IASR and Methodology documents, don't replace consultation on the final output, which is the ODP. Arguing otherwise is akin to saying that a cooking competition can be judged by the chef's description of the recipe and review of the raw ingredients on the bench - that actually tasting the dish on completion is 'additional duplicative processes'. Consulting on the final product is the only step that cannot be skipped.

Why does the Regulator's comments in The Australian further degrade public trust?

Clare Savage's comments in The Australian Jan 31 attempts to defend the regulator's failure to enforce the rules by claiming that "There's no point in having additional, duplicative processes…" aren't just misrepresenting the facts about whether the consultation is duplicative. They demonstrate that the regulator has effectively usurped a power that is explicitly given to a different body – the Australian Energy Market

Commission (AEMC) – who's job it is to make determinations about what the most fair and efficient version of the rules are. If the regulator had that opinion, they could and should advance it through the proper channels, by issuing a rule-change request to the AEMC. By failing to request a rule change, and instead repeatedly agreeing simply to ignore a rule breach at the request of AEMO, the chair of the regulator has demonstrated disdain for the proper processes and functions that her organisation is meant to adhere to, and enforce.

Clare's comments, proudly defending the selective rule enforcement, and the history of secret consultations between the AEMO and the AER leading up to it, stand at odds with her quotation of the Hayne Royal Commission at Australian Energy Week in on 20 June 2023:

"Compliance with the law is not a matter of choice… Negotiation and persuasion, without enforcement, all too readily leads to the perception that compliance is voluntary. It is not."

What's wrong with AEMO working too closely with the regulator?

AEMO has now made a number of decisions that demonstrably favour Transgrid, (the company proposing VNI West and HumeLink), often exercising their discretion outside/around consultation processes to keep these projects 'actionable':

1. 2020 ISP argued VNI West should be brought forward from the optimal timing of 2035-36 to

2027-28 (as soon as possible) to make it 'actionable'.

2. 2022 ISP argued HumeLink should be brought forward from the optimal timing of 2028-20

to 2026-27 (as soon as possible) to make it 'actionable'.

3. AEMO dropped 'Decision Rules' written for HumeLink and VNI West in the Draft 2022 ISP,

which would have automatically postponed/cancelled these projects if costs increased

material (which they have) or material dispatchable generators were retained (which they

will be). AEMO cited 'stakeholders', including Transgrid, as having suggested the Decision

Rules should be dropped, and explicitly argued that the Feedback Loop (the subject of this

most recent breach) was equivalent protection for consumers.

The choice to approve Transgrid's $9billion of investment at consumers' expense, just six days after the Draft 2024 ISP was released (prior to any scrutiny, in breach of the rules), just four days before Christmas, must be

viewed in this context. The regulator's clear decision to side with AEMO's opinion in approving the rule-breach, after months of secret discussions, and subsequently defend that action, is a massive breach of trust.

What happens next?

The Contingent Project Application (CPA) is the final administrative hurdle that VNI West and HumeLink must pass before the costs are irrevocably added to consumers bills. TransGrid must submit their paperwork to the AER. Armed with the 'feedback loop' notices from AEMO, their economic-benefit paperwork is in-hand, and will be waived through by the AER – unless someone raises a dispute. It's hard to imagine, given the clarity we now have that the rules were broken with the AER's knowledge and blessing, that a dispute could be resolved by the AER's judgement alone. I dispute would quickly move to the courts.

If Chris Bowen's rule change request - which would make it normal to pass these investment decisions on a Draft ISP without consultation – is passed, any dispute may be short-lived, along with any pretense that the energy transition is being pursued in a consultative, respectful manner.But if the AEMC rules in favour of some consultation being retained, the regulator's stated position will be repudiated, and their earlier actions exposed as deeply prejudiced. Furthermore, it would seem likely a court would demand that the skipped consultation be completed to fulfil the requirements of the rules, and the two largest projects of the ISP will hang in limbo until the Draft 2024 ISP has survived some public scrutiny.

4.1.2 AER and AEMO complicit in Rule breaches.

Copy documents obtained from a GIPA request to the AER highlight complicity between AEMO and the AER in relation to the Rule breaches. The Chair of the Regulator has asserted that she had the authority to approve the rule breaches. The CIS is presently obtaining its own legal advice on this point.

4.2 Proposed Feedback Loop Rule Change.

On 7 December 2023 the AEMC proposed a formal Rule Change to "improve the workability of the feedback loop" (ERC0369). The effect of the proposed change will be to validate the process which has now been followed twice by AEMO to short circuit the feed back loop. Submissions concerning the proposed rule change closed on 16 February. Mr Morrison's submission is attached. It is expected that the Rule Change will be proceeded with absent legal intervention.

Margaret Conn 19 February 2024