

NSW transmission planning review – Options paper

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Justice and Equity Centre
ABN 77 002 773 524
www.jec.org.au

Gadigal Country
Level 5, 175 Liverpool St
Sydney NSW 2000
Phone + 61 2 8898 6500
Email contact@jec.org.au



About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are marginalised and facing disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

Contact

Michael Lynch, PhD
The Justice and Equity Centre
Level 5, 175 Liverpool St
Sydney NSW 2000

T: +61 2 8898 6500
E: mlynch@jec.org.au

Website: www.jec.org.au

The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

Contents

1.	Introduction.....	2
2.	Problem definition	2
3.	Theme A: Allocation of roles and responsibilities	4
4.	Theme B: Planning reports.....	5
5.	Theme C: Interaction between the NSW and national frameworks	5
6.	Theme D: Planning for system security services, distribution networks and the needs of customers	5
	6.1 Planning for system security.....	5
	6.2 Planning for distribution and the needs of customers.....	6
7.	Governance	6
	7.1 Consumer and community engagement.....	6
	7.2 Other governance issues.....	6
8.	Continued engagement.....	7

1. Introduction

The Justice and Equity Centre (JEC) welcomes the opportunity to respond to the Farrier Swier Options Paper for the NSW transmission planning review (the Paper).

The JEC supports the framing of the problems to be considered in the review. We note the consultation paper agrees with aspects of our previous submission on the relevance of cost recovery to this work.

We further note that our ability to provide feedback on options identified in the Paper is complicated by the Roadmap cost recovery arrangements. Likewise, the Panel's ability to resolve issues identified in the review so far are circumscribed by the issues associated with Roadmap cost recovery. In short, movement of transmission development activities from the National Electricity Rules (NER) framework to the Electricity Infrastructure Investment Act 2020 (the EII Act) framework will imply a change in the incidence of cost recovery. Of particular relevance is movement of costs from excluded large users and transmission-connected users to NSW households and other consumers who pay for energy via distribution network charges. This complicating impact may include situations where options identified in the review increase costs for these consumers or create situations where transmission investments do not return net benefits for a majority segment of NSW energy consumers.

We consider it is either necessary to expand the terms of reference for the review to include the issue of cost recovery, or to create a path for options recommended by the Panel to be rendered neutral in terms of cost recovery incidence. For the purpose of responding to the options below, we will identify the areas where it is of particular significance.

The JEC broadly prefers options that centralise responsibility for transmission planning on a single actor rather than using models of co-planning. Reducing ambiguity about responsibility for actions and outcomes increases the possibility of transparent and accountable decision-making. We propose that in addition to centralising planning and approval responsibilities on EnergyCo, explicit measures be taken to upgrade EnergyCo's role to that of an 'expert regulator'.

We support the options that remove the conflicts of interest that Transgrid has faced in its multiple roles to date.

Finally, we support the aim of moving towards orchestration, and add that the guiding question for this change must not be 'how can we plan transmission better?' Rather, it should be 'how do we do efficient whole of system planning?'

2. Problem definition

We support the framing of the problems to be solved in this review. However, we consider it necessary to also address the need for the NSW transmission planning framework to be able to do forward-facing planning. We also consider it necessary to expand the terms of reference to include cost recovery issues.

Forward-facing planning entails planning that incorporates analysis of how the future grid that new infrastructure will be operated in will differ from that of today. For example, storage levels on the grid rising in line with AEMO's central forecasts may have profound impacts on the value propositions of different types of transmission augmentations options, most notably drastically reducing the possibility of net-benefit delivering interconnector investments, and moving the likely value-producing opportunities to projects providing backbone infrastructure for Renewable Energy Zones (REZ).

There is currently inadequate capacity for forward-facing planning in the NSW transmission planning infrastructure. We propose the need to address this is added to the aims of the Review.

We strongly support the comments made in the options paper regarding cost recovery arrangements under the NER and EII Act. We quote them here in full.

Cost recovery arrangements under the NER and EII Act

The costs of transmission projects that are planned and delivered under the NER are recovered by Transgrid through transmission use of system charges. These charges are payable by transmission-connected customers and distributors, and passed on to distribution-connected customers through distribution and retail charges. As a result, all electricity customers in NSW and the ACT pay a portion of these charges. The NER regulates the structure of transmission charges to create a degree of cost-reflectivity and locational signals. Where augmentations to the shared transmission network are required to enable a generator to connect, the costs are generally recovered from the relevant generator rather than customers.

The costs of projects that are planned and delivered under the EII Act are recovered via the SFV from NSW distributors and passed on to NSW distribution-connected customers by their retailers. Transmission-connected customers, ACT customers and certain exempted large customers do not pay any charges for EII Act projects. Costs can only be recovered from generators if the project is in a REZ, the Minister has declared an access scheme and the Consumer Trustee has required generators to pay a portion of the costs through access fees.

Different cost recovery arrangements also apply if distribution network projects proceed under the NER (where only the customers of the relevant DNSP pay for the project) or the EII Act (where customers of all three NSW DNSPs pay).

For system strength projects, the structure of charges and the allocation of costs between generators and customers varies under the NER and EII Act.

While changes to cost recovery arrangements are not within the scope of this review, these differences inform the problem definition and the need for clear tests or principles to determine which projects should be planned under each framework given the significant impact that decision can have on some customers. We are also mindful of the inefficient and inequitable outcomes that can arise from the current cost recovery arrangements due to the disproportionate share of the costs that are recovered from small customers and the impact this can have on social licence for the

entire Roadmap and energy transition as noted in the Justice and Equity Centre's submission.¹

In addition to this articulation of the problem provided in the Paper, we note here the complications it produces for us responding to the options and for the Panel itself in making recommendations.

The option preferences that we indicate below presuppose that the costs recovered for different activities are not moved from the NEM framework to the EII one. In some cases – such as our preference for EnergyCo to take over responsibility for providing system services and inertia from Transgrid – this is arguably an heroic assumption. We prefer the option, leaving aside the issue of cost recovery, which is material but unresolved. If the option implies a change in the incidence of cost recovery, and there is no way to avoid this, our preference may be substantially different.

We contend this dynamic is a problem for the Panel in making any recommendations, as much as it is for us in considering our preferences. If options identified in the paper exacerbate the issues of inefficient and inequitable cost recovery in the Roadmap – acknowledged in the quote – this is a material consideration for the Panel. This means that the options chosen may not be the optimal or most rational solutions to given problems in the opinion of the Panel. It also means that consumers may be required to pay a second time for flaws in the design of the Roadmap by incurring the implicit costs of further sub-optimal transmission planning design regime choices.

We see two paths forward.

- Roadmap cost recovery is be added to the terms of reference of the Review,
- Consideration is given to carving out elements or activities in the NSW transmission planning regime to retain the NER cost recovery arrangements rather than the EII Act arrangements.

3. Theme A: Allocation of roles and responsibilities

The JEC supports option A3 – EnergyCo takes on most NSW planning roles similar to Victorian arrangements with some exceptions. This removes the inherent conflicts of interest Transgrid faces by being both the planner and provider of system security.

To realise the intended benefits of this consolidation, responsibility and accountability for rigorous assessment of investment options and the selection of only those that return a net benefit for consumers lies unambiguously with EnergyCo. While it is appropriate that EnergyCo consults AEMO Services and others on matters related to authorization, EnergyCo must develop adequate in-house skills and expertise commensurate with the responsibility for decisions it must make.

To guide the process of enhancing EnergyCo's capacities to fulfil this substantially larger role, we recommend it assume the role of an 'expert regulator'. We would welcome the opportunity to discuss the aspects of expert regulation we consider relevant to this role.

¹ Farrier Swier, 24 April 2025, NSW transmission planning review; Options Paper, 28-29.

The JEC supports the introduction of a test or criteria for contestability.

Regarding the possibility of the introduction of a more prescriptive network-to-network connection process, we have detailed comment and recommendations to submit to the Panel in a separate submission.

4. Theme B: Planning reports

The JEC supports option B3 – introduction of a new NSW Integrated Infrastructure Plan. A single planner, consulting widely and transparently, is preferable to a system relying on joint planning.

A NSW Integrated Infrastructure Plan may not receive support from AEMO on the grounds that it diminishes the stature and effectiveness of the Integrated System Plan (ISP). We strongly disagree with this reasoning. A NSW plan would not substantively move NEM level planning operations to the jurisdictional level. Rather it would more effectively facilitate the planning operations already unambiguously situated at the jurisdictional level.

5. Theme C: Interaction between the NSW and national frameworks

The JEC supports the introduction of a test and/or assessment criteria to determine which projects should be planned and approved under the EII Act instead of the NER. This implies that the default is that a project falls under the NER unless it fulfils the criteria to be moved to the EII framework. We support an arrangement of this nature.

Options C2 to C5 seem to be reasonable actions for EnergyCo to undertake. We see C2 as the most important of the four as coordination with AEMO is the most material task of the NSW transmission planner.

6. Theme D: Planning for system security services, distribution networks and the needs of customers

6.1 Planning for system security

The JEC supports option D1 – making EnergyCo the System Strength Service Provider (SSP) and inertia service provider for NSW. This position is contingent upon cost recovery for these services continuing to occur via transmission use of system charges, rather than being rolled into the Roadmap cost recovery mechanism. It is not appropriate for households and small users to subsidise the system strength and inertia services consumed by large exempted and transmission-connected customers.

Option D1 removes the conflict of interest Transgrid faces without removing the possibility of Transgrid providing these services. Instead, EnergyCo would be empowered to select Transgrid when it is the best-placed party to provide a given service.

By removing this conflict of interest, D1 also removes the impact of Transgrid's potential bias towards network over non-network solutions to identified needs, ensuring the most efficient options are selected.

6.2 Planning for distribution and the needs of customers

The JEC supports the ambition to orchestrate and optimise the development of transmission networks, distribution networks, and consumer energy resources (CER)/distributed energy resources (DER). The aim of such orchestration must be to move to whole-of-system planning, not simply to consider new elements of the energy system insofar as they appear as inputs to transmission planning.

The move to whole-of-system planning is as relevant at the jurisdictional level as it is at the national level.

7. Governance

7.1 Consumer and community engagement

The JEC supports option E2 – requiring EnergyCo to establish and fund a Consumer and Community Panel comprised of representatives of consumers and local communities.

We recommend this expert consumer panel should report and be accountable to EnergyCo formally. It should have a webpage on the EnergyCo website, with any reports or publications they produce being published there. They should also have the explicit power to self-initiate reports on any subject.

There are currently a number of other critical areas of activity in Roadmap delivery that need direct input from an expert consumer panel, and do not have it. These include any and all decision-making activity that involves costs or benefits to consumers, including:

- access fee setting,
- the production of the Infrastructure Investment Objectives (IIO) report, and
- network-to-network connections.

Instead of creating a new dedicated expert consumer panel for each of these areas, the body established as a result of recommendations here should be used in all these (and other relevant) areas. The ISP Consumer Panel should be considered as a model for this new expert consumer panel.

The JEC supports options E1, E3, E4, E5, E6, E7 and E8.

7.2 Other governance issues

We are unclear as to what problem option E10 – introducing additional mechanisms for funding and approving staged projects, early works and long-lead time items – resolves. It appears to speak to issues of financeability, but the problem definition does not refer or allude to such issues.

To the degree option E10 is intended to address financeability, the JEC does not support it. Financeability issues in transmission are addressed by multiple overlapping instruments and measures at jurisdictional and Commonwealth/NEM level and the mechanisms and funding opportunities involved in these solutions are available for entities delivering NSW transmission. We strongly disagree there is any further need to address financeability again here.

If option E10 relates to empowering EnergyCo to begin work earlier – such as designing, costing, and procuring materials for network-to-network connections – the JEC supports it.

The JEC supports option E11 – requiring EnergyCo to publish and consult on its budget. This is in line with the requirements imposed on AEMO as the NEM-level planner and is in accordance with best practices for transparency and accountability.

The JEC supports option E12 – introducing a mechanism for IPART, the AER or the NSW government to review whether EnergyCo's expenditure on a RNIP or PTIP was prudent, efficient and reasonable. Of the three, we support the AER having responsibility for this task on the grounds that they have the requisite expertise and experience in house.

The JEC supports option E13 – ensuring a clear separation between DCCEE and EnergyCo on policy development. We understand this was always the intention, and it is appropriate that the separation continues as EnergyCo develops into an expert regulator.

8. Continued engagement

We welcome the opportunity to meet with the panel members of the NSW transmission planning review and any other stakeholders to discuss these issues in more depth. Please contact Michael Lynch at mlynch@jec.org.au regarding any further follow up.