

2 August 2024

Mr Andrew Nicholls  
Chief Executive Officer  
Independent Pricing and Regulatory Tribunal  
2-24 Rawson Place, Sydney NSW 2000

Dear Mr Nicholls,

### **Submission on ACERERZ Partnership draft Transmission Operator's Licence**

ACERERZ Partnership (ACERERZ) appreciates the opportunity to comment on IPART's Draft Report and draft recommended licence conditions for the ACERERZ Partnership Licence.

ACERERZ, a consortium of Acciona Concesiones, Cobra and Endeavour Energy, has been appointed by EnergyCo and authorised by the Customer Trustee to be the Network Operator to design, construct and maintain the transmission network for the Central-West Orana Renewable Energy Zone (CWO REZ).

This will be first renewable energy zone network infrastructure project to be progressed under the Electricity Infrastructure Investment Act 2020 (NSW) (EII Act) and will provide up to 6 GW of network capacity for renewable energy and storage to connect and deliver clean, reliable energy to NSW customers.

The CWO REZ will make a crucial contribution to the NSW economy through better coordinating investment in new transmission capacity and new renewable energy generation. It will deliver substantial benefits to customers through lower energy prices and additional protections against disruptions and volatility as the National Electricity Market transitions away from fossil fuel generation.

### **IPART's recommendation to grant licence to ACERERZ**

We welcome IPART's draft recommendation for the Minister to grant ACERERZ a transmission operator's licence. This will ensure that the project continues to keep to the timeframes set out in the NSW Energy Infrastructure Roadmap to support the smooth transition towards renewables.

ACERERZ is committed to the delivery of a reliable network that drives decarbonisation, delivers value to local communities through job creation, participation opportunities and positive partnerships. Working alongside EnergyCo, we are actively engaging with the local community and building confidence and co-operation in the project with all stakeholders including Aboriginal and Torres Strait Islander people, landowners, and councils. The granting of a transmission operator's licence will be a major milestone in the delivery of the CWO REZ and help strengthen community and stakeholder confidence, enabling us to further engage and progress the project.

### **Comments on the draft licence conditions**

We appreciate IPART's approach to the drafting of the proposed licence conditions. On balance, the draft conditions reflect a sensible, proportionate and practical approach to protecting customers and

promoting confidence and transparency in the project while recognising the unique contractual and regulatory arrangements applicable to the project under the EII Act.

Our submission identifies a few refinements to certain conditions that would help to deliver better outcomes for customers and the project. The attached table details our response to IPART's questions set out in the Draft Report. In summary, our main points for IPART's consideration include:

- Clarification on the requirement to maintain appropriate insurance to better reflect that the appropriate insurance requirements will change through the various stages of the project and the requirement to hold all insurances at all times (for example requiring operational phase insurances in 2024 which are only needed after commissioning of the project) may not create any benefits for customers.
- Additional time is required for ACERREZ to ensure compliance with the conditions related to critical infrastructure, to enable us to engage further with the Cyber and Infrastructure Security Centre and agree and establish appropriate protocols for access, operation and control of data and ICT systems.
- The need for Business Continuity Plans during the design and construction stage could create unnecessary duplication and costs given the range of existing documentation and policies already being developed and implemented for this stage.

### **Reliability and Performance Standards**

As noted in our licence application, EnergyCo as the Infrastructure Planner is responsible for planning the technical capability, reliability and performance standards for the CWO REZ. ACERREZ's responsibility is to construct, operate and maintain the network consistent with those standards.

We therefore appreciate the proposed approach put forward in the Draft Report for the licence to replicate the contractual performance regime for the CWO REZ and not to impose an additional performance regime onto ACERREZ. Requiring ACERREZ to measure and report against reliability and availability standards (99.75% and 99.963%, respectively) and then take action if these standards are not met will improve transparency for customers and provide a reasonable threshold to maintain efficient reliability and availability outcomes for generators connecting to the CWO REZ.

ACERREZ notes that even with the draft licence conditions reflecting the points noted above, there is still the possibility of differences in interpretation and assessment between the Infrastructure Planner and Tribunal on performance and reliability issues plus potentially disagreement between the parties on the appropriate action to rectify.

There is a possibility that ACERREZ is required to develop separate reports on different basis and be subject to different compliance obligations under the licence compared to the EII Act arrangements. This creates a risk to the project that was not foreseen at the time of the tender for the project. To best manage this risk, we appreciate if IPART regularly consults with the Infrastructure Planner on these matters and engages with all parties prior to considering any compliance requirements.

The attached table provides some suggested clarifications and modifications to the draft licence condition to better align the practical application of the standards with our incentives and obligations under the EII Act, including:

- The Infrastructure Planner has the ability to amend the reliability and performance regime in our contractual arrangements. Therefore, there is the possibility of divergence between our contractual

obligations and the licence conditions over time which will impede our ability to comply with the licence conditions. We appreciate if IPART could clarify how it intends to update the licence conditions if the Infrastructure Planner changes the performance requirements of the CWO REZ.

- ACERZ's ability to implement any solutions set out in the rectification plan will be subject to the approval of the Infrastructure Planner consistent with our contractual arrangements.
- The Regulatory Investment Test for Transmission (RIT-T) has been developed for customer-based reliability assessments and not for assessing improvements in renewable energy zones for generators. There are challenges in applying the methodology in the context of the CWO REZ. Further it is not consistent with the contractual arrangements for rectification action and could contradict the incentives provided under the EII Act. We suggest that IPART removes the requirement to apply the RIT-T methodology noting that IPART will still have the ability to approve the methodologies employed for any cost benefit analysis.

We also note that there could be an error in the draft licence which states that the Reliability Standard for each financial year is 99.975%, while the draft report refers to the Reliability Standard being set at 99.75%. We have assumed that the Standard will be 99.75% as described in the draft report.

### **Engagement with EnergyCo when applying the licence**

The draft licence conditions provide a level of discretion for IPART in deciding how to apply the conditions including on how ACERZ must demonstrate compliance. This is appropriate as it provides flexibility for IPART to apply the licence conditions in certain ways to reflect particular issues and circumstances at that time.

In deciding the application of the licence conditions and reporting requirements on ACERZ, it will be important that IPART appreciates the unique nature of the CWO REZ and the contractual and regulatory framework applicable to ACERZ. As noted in the Draft Report, there will be some duplication between the licence conditions and the contractual arrangements applicable to ACERZ. This can lead to risks of inconsistencies, confusion and potentially unnecessary costs. IPART should always first explore the contractual arrangements prior to considering taking regulatory action under the licence conditions.

Further, the structure of the cost recovery arrangements reflects a typical fixed price public-private partnership (PPP) type arrangement with limited ability to adjust prices in the future. ACERZ are not afforded the same provisions as other regulated network businesses who have the ongoing ability under the National Electricity Rules to seek efficient and prudent costs of complying with any regulatory requirement<sup>1</sup> and can seek funding to meet licence conditions either through the cost pass through arrangement or a five yearly regulatory revenue reset. ACERZ's ability to comply and respond to IPART's directions and requests for information will be influenced by our contractual arrangements.

We would encourage IPART to regularly engage with EnergyCo when considering the application of the licence conditions.

---

<sup>1</sup> See National Electricity Rules 6A.6.7(c) and 6A.6.6(c) which requires the AER to accept forecast operating and capital expenditure associated with complying with all applicable regulatory obligations or requirements associated with the provision of prescribed services (under the capital and operating expenditure objectives).



# ACERZ

the future of renewable energy

We appreciate IPART's engagement and cooperation to date on our licence application and we welcome the opportunity to engage further with your staff on the matters set out in this submission.

Should you require any further information regarding our submission, please contact Eamonn Corrigan, Regulatory Manager [REDACTED] if you have any questions.

Yours sincerely,



Trevor Armstrong | Chief Executive Officer

## ACERZ responses to IPART's questions contained in the Draft Report

### ACERZ response

- |   |   |
|---|---|
| <p>1 Do you agree that IPART's draft recommendation that the Minister grant ACERZ a transmission operator licence? If not, why?</p> | <p>Granting of the licence for the CWO REZ is an essential step towards project completion and we welcome IPART's draft recommendation. ACERZ has sufficient capacity, expertise and capability to operate and maintain the CWO REZ transmission system. ACERZ is committed to the delivery of a reliable, best practice network that drives decarbonisation, delivers value to local communities through job creation, participation opportunities and positive partnerships, and protects and enhances the environment.</p> <p>We agree with IPART's assessment that granting the licence to ACERZ will meet the objects of the ES Act and help to ensure a safe and reliable supply of electricity to NSW customers.</p> |
| <p>2 Do you agree with our proposed licence condition to obligate ACERZ to be registered in the NEM? If not, why?</p>               | <p>Yes, it is appropriate given the extent and nature of the CWO REZ for ACERZ to be registered as a transmission network service provider under the National Electricity Rules. NEM registration will complement the draft licence conditions and help to ensure safe and reliable operation of the REZ.</p> <p>ACERZ is currently consulting with AEMO on the registration process and will be able to submit our registration application soon after the grant of the licence. That said, the proposed transition period of 9 months (or another date nominated by ACERZ and approved by IPART) is appropriate to give sufficient time to obtain registration without triggering a breach of the licence.</p>            |
| <p>3 Do you agree with the inclusion of a new licence condition relating to financial capacity? Please expand on your answer</p>    | <p>ACERZ accepts the introduction of this new condition.</p> <p>Under our contractual and financing arrangements, ACERZ will be subject to a range of obligations to ensure that we remain financially viable and have the financial resources to construct, operate and maintain the transmission system over the 35-year project term.</p>  |
| <p>4 Do you agree that the licence should include a condition requiring the maintenance of insurance? If not, why?</p>              | <p>ACERZ supports the inclusion of this condition and agree that it will help to promote transparency and public confidence in the project. As the Draft Report notes, our contractual arrangements with EnergyCo already include extensive insurance provisions. However, we seek clarification to ensure the licence condition aligns with the appropriate timing to purchase appropriate insurances over the project term, in both the delivery phase and operations phase.</p>  |

## ACERZ response

ACERZ notes that, under the draft licence condition, this requirement would commence from the date the licence is issued and as set out in the Draft Reporting Manual, ACERZ would be required to provide certificates of currency for each of these within 30 calendar days of the licence being issued.

Under the contractual arrangements for the project, our insurance requirements differ depending on the stage of the project (e.g., between the design and construction phase compared to the operational phase). While the majority of our insurances must be purchased prior to Financial Close (aimed for November this year), some of the operational insurances are required to be purchased closer to the date of first energisation (e.g. Operations Phase Public and Products Liability Insurance and Operations Phase Professional Indemnity Insurance).

The reason for this difference in timing is that the price is more likely to be reasonable with more competitive offers, the closer to the period when the insurance is required. The wording of the clause that we have to maintain appropriate insurances at all times from the grant of the licence could be interpreted that ACERZ must maintain all insurances, noting some flexibility is provided in the language of 'an appropriate type, scope and limit'.

It would not be sensible or efficient for any network operator to purchase certain types of insurance multiple years in advance of when such insurance is required, as there will be limited offers and providers are likely to add substantial risk premiums to their offers given the longer timeframes and increased uncertainty. The proposed wording of the draft condition could therefore lead to expensive and unnecessary insurances being required to be purchased at certain times over the project term. The wording of this licence condition could be further clarified to reflect its intention.

Requiring ACERZ to therefore, purchase insurances relating to the operational phase of the project now will lead to increase costs for customers and is inconsistent with our contractual obligations. We would appreciate if IPART could clarify the wording of this licence condition to better reflect the project stage and that the range of insurances needed will differ over time. We have suggested some alternative wording below to clarify the application of this clause:

*The Licence Holder must, **at all times**, maintain insurance of an appropriate type, scope and limit that is adequate to cover the Licence Holder's liabilities in connection with its operation of the Transmission System, having regard to the nature and risks, associated with its operation of the Transmission System in accordance with this Licence, the Act and Regulations **and taking into account the stage of project delivery at that time.***

We also request that IPART clarifies whether insurances required for the design and construction phases of the project are intended to be subject to this clause or whether this is limited to insurances required post commissioning of the project.

## ACERZ response

5 Are there any barriers to ACERZ complying with our proposed reliability and performance standards?

While we support the proposed approach to replicate the reliability and performance regime within ACERZ's contractual arrangements with EnergyCo into the licence conditions, there are a number of aspects to the draft proposed licence conditions that could impact the our ability to comply and could lead to unnecessary duplication and costs for customers:

- The Infrastructure Planner has the ability to amend the reliability and performance regime in our contractual arrangements. Therefore, there is the possibility of divergence between our contractual obligations and the licence conditions over time which will impede our ability to comply with the licence conditions. We appreciate if IPART could clarify how it intends to update the licence conditions if the Infrastructure Planner changes the performance requirements of the CWO REZ.
- ACERZ's ability to implement any solutions set out in the rectification plan will be subject to the approval of the Infrastructure Planner consistent with our contractual arrangements.
- The Regulatory Investment Test for Transmission has been developed for customer-based reliability assessments and not for assessing improvements in renewable energy zones for generators. There are challenges in applying the methodology in the CWO REZ, it is not consistent with the contractual arrangements and could contradict the incentives provided under the EII Act. We suggest that IPART removes the requirement to apply the RIT-T methodology.

Further, there are also a few areas in the proposed drafting that could be clarified:

- Clause 3.1(3) states "a rectification plan is not required if the causes for not meeting the standard have already been rectified before the Investigation Report is required to be submitted". However, the investigation report is due on 30 September while the rectification plan is not due until 31 December. It may be better for this clause to reference the date of the rectification plan and not the investigation plan, given the possibility that the causes have been resolved during the 30 September to 31 December. Maybe in such a situation, ACERZ only needs to notify IPART of the rectification, rather than having to provide a complete rectification plan consistent with the requirements as set out in clause 3.4?
- Under the Project Deed, the Constraint Model and the Energy Model must be the model used by AEMO or otherwise agreed between ACERZ and Infrastructure Planner. There is a slight inconsistency with the wording of clause 2.3 and clause 2.4 of the draft licence which states that IPART must approve any model which is not used by AEMO. In theory, this creates a possible scenario of the Infrastructure Planner agreeing to the alternative model but not IPART and vice versa. ACERZ suggest it may be sensible to add a clause that states

## ACERZ response

that "IPART will consider the views of the Infrastructure Planner in assessing any request to use an alternative model".

- The wording of clause 3.4 for the rectification plan refers to solutions in the plural. There might only be a single solution required to address the issue.
- There is a discrepancy in the reliability standard referenced in Appendix 1, clause 2 of the draft licence relative to the reliability standard referenced in the Draft Report. We understand that the intended reliability standard is 99.75% as referenced in the Draft Report and make this submission on the basis of this understanding. We appreciate if this minor oversight can be corrected in the final licence conditions.

IPART is requesting that we report on the availability and reliability performance for each separable portion. While this is possible, we note that given the interdependencies within our network, IPART needs to be careful in evaluating performance on this basis. The nature of availability and reliability on the network may not be easily isolated to a particular portion and for example, a fault in one portion may lead to issues in another portion. We understand based on the formulas included in Appendix 1 of the draft licence that the calculation of Actual Availability and Actual Reliability for the purposes of assessing the reliability and performance of the REZ network is to be undertaken on a weighted average basis of all separable portions across the REZ network. Consistent with the reasons set out above, we agree that this is an appropriate approach and stress that the isolated performance of any individual separable portion should not in itself be used to assess performance against the Availability Standard or Reliability Standard.

6 Do you agree with our draft business continuity conditions?

We agree and support the requirement for ACERZ to implement and maintain business continuity plans throughout the operational phase from the date of first energisation.

The need for business continuity plans during the design and construction stage could create unnecessary duplication and costs given the range of existing documentation and policies being developed and implemented for this stage of the project. As such we ask that IPART consider limiting the application of condition 7 – Business continuity and disruptions to the operational phase.

ACERZ and its D&C contractor have existing obligations and incentives under the contractual arrangements to complete design and construction in a timely manner and to identify, assess and manage risks to business continuity or disruption throughout. ACERZ and its D&C contractor will maintain relevant and robust procedures to identify, assess and manage risks of delay, disruption and other impacts to the delivery of the design and construction activities. The ACERZ D&C Contractor will maintain a Risk Management Plan which will be supported by multiple project plans, sub-plans and supplementary documents to maintain alignment with the Risk Management Plan.



## ACERZ response

We recognise that the required content of a business continuity plan could vary significantly and appreciate IPART's guidance in the Draft Report to "not recommend specifying the form of the BCP, so that ACERZ has flexibility to comply in an efficient way". Where condition 7 is to apply during the design and construction stage, ACERZ would appreciate if IPART could clarify in its final report its expectations regarding ACERZ's compliance with this condition.

7 Do you agree with our draft critical infrastructure conditions? If not, why?

We agree with the draft critical infrastructure conditions and are implementing robust and secure IT and data management systems to best meet these requirements. A number of these conditions will create challenges for ACERZ to meet upon the grant of the licence and therefore temporary exemptions may be needed.

In reviewing the draft proposed critical infrastructure conditions, ACERZ has identified two conditions for which we seek a delayed implementation of four months to allow us to adequately consult with the Cyber and Infrastructure Security Centre (CISC).

- Condition 1.2 states "Except to the extent the Licence Holder is complying with a Protocol, the Licence Holder must at all times... after it decides to outsource any part of the operation or control of the Transmission System, including any associated ICT Infrastructure, but before it takes steps to procure a contract for that purpose, notify the Commonwealth Representative of that decision". ACERZ is currently using an outsourced provider for its ICT services. As such, we request a 4-month delay to the implementation of condition 1.2 to allow ACERZ to adequately consult with the CISC.
  - As described below, the '2 + 2' approach included in condition 2.3 of the draft licence to provide a 2 month period after commencement of the licence to make a submission to the CISC, and a further 2 months (or period approved by IPART) for the relevant protocol to be established is a sensible approach and we would support a similar provision being made available in the final licence to support compliance with condition 1.2.
- Condition 2.1 states "all Operational Technology Information is ... only accessible by a Relevant Person authorised by the Licence Holder from within Australia". ACERZ is currently procuring design resources for secondary systems designs for our network, which may involve resources who are outside of Australia. As a result, ACERZ would seek approval from the CISC for any protocol to allow this access to be undertaken, consistent with the process contemplated under condition 2.2(6) of the draft licence.
  - We note that condition 2.3 provides for a 2-month period after the commencement of the licence for the licence holder to provide a submission to the Commonwealth Representative (i.e. the CISC) and a

## ACERERZ response

further 2 months (or period approved by IPART) for the relevant protocol to be established. This approach is sensible and aligns with ACERERZ's position in seeking a delayed implementation of 4 months for this condition.

- |  |   |
|--|---|
| <p>8 Do you agree with our draft licence conditions requiring ACERERZ to develop, maintain and certify AMS and EMS systems? If not, why?</p> | <p>ACERERZ agrees with these licence conditions to develop, maintain and certify AMS and EMS systems. We have already committed to these systems consistent with industry best practice and to be a prudent and reliable network operator. While it is not a requirement of the licence, ACERERZ is committed to following the NSW Code of Practice for Authorised Network Operators where relevant to our functions.</p>   |
| <p>9 Do you agree with our proposal to include a licence condition on compliance, fees and reporting? If not, why?</p>                       | <p>No comment.</p>  |
| <p>10 Do you agree with our draft licence conditions for ACERERZ to become a member of an approved energy ombudsman scheme? If not, why?</p> | <p>We support this new condition and welcome the opportunity to become a member of the NSW Energy &amp; Water Ombudsman external dispute resolution scheme. It is crucial that customers have easy access to information and ability to raise concerns and disputes with their energy businesses. While it is intended that there will be no directly connected customers in the CWO REZ, membership of this scheme will help to complement the existing arrangements for community consultation and engagement being progressed by EnergyCo and ACERERZ. Currently, Energy Co is responsible for managing any customer or community concerns and complaints and has established its own procedures to responding to customers issues in the REZ.</p> |
| <p>11 Do you have any feedback on the proposed compliance commencement dates for the draft licence conditions?</p>                           | <p>See our response to question #7, regarding the compliance date for the critical infrastructure licence conditions. Regarding the timing of compliance with the reliability and performance standard, we understand that it is IPART's intention for the reliability and performance standard to apply from the date of first energisation but note that clause 1 of the General Conditions does not explicitly state this. We appreciate if IPART could clarify in condition 1, that condition 6 – Reliability Performance Standards applies from the date of the first energisation.</p>  |
| <p>12 Are there any additional comments you wish to make on the draft licence conditions or the draft report?</p>                            | <p>We have one additional comment for IPART's consideration.<br/><b>Definition of transmission system and alignment with arrangements under the EII Act</b></p>   |

## ACERERZ response

The draft licence defines Transmission System as follows:

*Transmission System means the electricity power lines and associated equipment and electricity structures that are a transmission system for the purposes of the Act by virtue of the Electricity Supply (Transmission System) Order 2024, as amended from time to time.*

This ties the definition of the system and licenced area to the network description provided in the Minister's Declaration on 17 April 2024.

This approach may lead in the future to a misalignment between the defined licenced Transmission System and the Authorised network for the CWO REZ. The Customer Trustee Authorisation includes the possibility that in the event that the ACERERZ ceases to own or lease the relevant asset under the Deed it would no longer be authorised for that asset. However, the licence would require the Minister to issue an amended Order in order for the licence to be subsequently adapted. This may create a timing misalignment between the Consumer Trustee Authorisation and the licence in regard to the definition of the transmission system.

A potential solution to this issue is to change the transmission licence to instead refer to any transmission system which ACERERZ is authorised or directed to operate under the EII Act. That means the transmission system covered by the licence can change from time to time based on what ACERERZ is authorised or directed to do under the EII Act.

