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Corporate and International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email to stapledstructures@treasury.gov.au

Dear Sir/Madam

Stapled Structures Exposure Draft Legislation

TransGrid welcomes the opportunity to respond to the exposure draft legislation and explanatory material giving effect to the Government's announced measures to improve the integrity of stapled structures. In making this response TransGrid is seeking clarity as to how these new measures will impact its ability to invest further in its transmission network, including contestable services and contingent projects.

TransGrid recognises that Treasury has consulted with industry since March 2017 when stapled structures were first raised as a concern; nonetheless, the consultation period was too brief for legislation that covers several areas of tax law and which will have a significant impact on current and future investment in critical infrastructure in Australia. We would encourage Treasury to undertake ongoing and meaningful consultation with a broad range of stakeholders as this law change is developed further.

TransGrid

TransGrid is the operator and manager of the high voltage transmission network connecting electricity generators, distributors and major end users in New South Wales and the Australian Capital Territory. TransGrid's network is also interconnected to Queensland and Victoria, and is instrumental to an electricity system that allows for interstate energy trading supporting the delivery of lowest-cost generation to consumers across the National Electricity Market.

TransGrid is owned by a consortium of corporate and institutional investors from Australia and offshore.

Economic Infrastructure Asset

Economic Infrastructure Asset is a key definition for accessing the transitional relief provided in the draft legislation and, despite the guidance in the explanatory materials, there remains some doubt about the 'assets' to which the definition is intended to apply. Whilst it seems reasonably clear from the explanatory materials (in particular, example 1.4) and our discussions with Treasury during the consultation process that it is intended an electricity network such as TransGrid falls within the definition in the exposure draft, further clarification of the term is warranted. For instance, we would like to engage with you to seek guidance in relation the following:

- Example 1.4 in the explanatory materials appears to focus on regulated services. TransGrid also provides "negotiated services" and "non-regulated services" (also known as "contestable services") to the community in accordance with the National Electricity Rules. In its role as a Transmission Network Service Provider (**TNSP**) it must provide negotiated transmission services to allow customers such as generators (e.g. wind and solar farms) and large end users (e.g. miners and factories) to connect to its network. Negotiated transmission services must be provided by TransGrid as the TNSP and include, for example, cut-ins to existing lines, network augmentations and communication upgrades to enable new connections. In addition, TransGrid further assists customers by offering contestable transmission services whereby it constructs, owns and operates non-regulated assets to facilitate connection to the network, for example, new substations and new dedicated transmission lines to connect a customer's generation facility. While these non-regulated assets do not form part of the regulated shared transmission network (as they are specific to a particular customer), they are properly regarded as forming part of TransGrid's overall integrated transmission network. In our view, transmission assets operated by TransGrid should be treated as part of the economic infrastructure asset that is the TransGrid network, irrespective of whether the assets are classed as regulated, negotiated or contestable under the National Electricity Rules. All these assets are of critical importance to the fully functioning transmission system TransGrid operates and it should be made clear that they all fall within the definition.

- Due to the significant changes occurring in the National Electricity Market TransGrid is likely to undertake large scale, economically significant construction projects over the course of the transition period proposed in the exposure draft (refer to Appendix A 'Contingent Projects'). We raise the following concerns regarding these projects:
    - Due to their critical importance, scale and value, these projects are likely to meet the requirements of standalone Economic Infrastructure Assets. Although such projects would also connect to the TransGrid network and will potentially be subject to the existing 99 year network lease with the NSW Government signed in December 2015, we would regard them as Economic Infrastructure Assets in their own right for the purposes of the exposure draft legislation. Accordingly, each such asset should have its own 15 year transition period, rather than being included in the existing network's transitional period. It is not clear from the exposure draft whether this is the case.
    - s12-450(2) of the exposure draft appears to make the Treasurer's approval of Economic Infrastructure Assets contingent on the application being made by an 'Australian government agency'. A question arises as to whether privately arranged projects which satisfy all of the other requirements should not be eligible for the concessional treatment.
    - S12-450(3)(b) of the exposure draft sets a value hurdle of $500 million of estimated expenditure for an Economic Infrastructure Asset to be approved by the Treasurer. Is such an expenditure hurdle necessary given the other requirements to be met under s12-450 are clearly designed to capture significant infrastructure assets? If this provision is enacted, how would the value of the asset be determined and administered, in particular if the asset was a shared asset amongst different tax payers? For instance, TransGrid is likely to have significant involvement in the development and delivery of major electrical energy infrastructure in NSW through the provision of its specialised high-voltage connection services. How would the value of TransGrid's part of an approved project be treated, in particular where the value of that part is less than $500 million?
- TransGrid is also a licensed telecommunications carrier operating a network with over 5,000km of optical fibre either owned or under long term lease arrangements. TransGrid's telecommunications business provides wholesale services to other carriers and is focussed on the delivery of backhaul and IP Transit services in the Wholesale, Enterprise and Government sectors, with a particular focus on services in regional areas. We would regard the telecommunications network as having the public benefit and other features of an Economic Infrastructure Asset.

New Total Participation Interest

The transitional provisions apply to the non-concessional MIT income only to the extent of the MIT's Total Participation Interest (**TPI**) in the relevant investment entity as worked out under Part 3 of Schedule 1, sub items 10 (2) to (5), which reduces the concessional treatment where there is an increase in post-announcement TPI. This measure appropriately reduces concessional treatment where there is a change in the ownership of the investment after the announcement date.

However, it is unclear whether this provision is intended to apply in the case where there is no change in the proportion of ownership interests and existing shareholders continue to invest in the existing infrastructure assets to, for example, augment or expand the network. That is, all investors make a post-announcement investment in proportion to their pre-announcement holding and that new amount of investment is used in the existing business. If the provision is intended to apply in this case it would discourage existing investors to invest further in their existing critical infrastructure.

If the transitional rule is not intended to apply where new investment is made in proportion to existing pre-announcement holdings, could the proposed rule be amended to make that clear?

Example 1 - proportionate interest remains the same

Pre-announcement participation interest

	Investor A	Investor B	Total
Initial Investment ($ millions)	100	400	500
Proportionate interest	20%	80%	100%

Post-announcement participation interest

	Investor A	Investor B	Total
Investment ($ millions)	100	400	500
New Investment ($ millions)	10	40	50
Total Investment ($ millions)	110	440	550
Proportionate interest	20%	80%	100%

We would welcome the opportunity to discuss this submission and the important and complex issues that it covers with Treasury further. Please contact David Kavanagh, Manager, Tax on [redacted].

Yours faithfully

Paul Italiano

Paul Italiano
CEO, TransGrid

Appendix A

Contingent projects [1]

Contingent projects are generally significant network augmentation projects that may be reasonably required to be undertaken in order to achieve the capex objectives. However, unlike other proposed capex projects, the need for the project and the associated costs are not sufficiently certain. Consequently, expenditure for such projects does not form a part of our assessment of the total forecast capex that we approve in this determination.

If, during the regulatory control period, TransGrid considers that the trigger event for an approved contingent project has occurred, then it may apply to us to increase its MAR to recover the costs of the project. At that time, we will assess whether the trigger event has occurred and whether the project meets the defined materiality threshold. When a contingent project is triggered, we then determine the efficient amount of expenditure that meets the capex criteria.

In its initial proposal TransGrid proposed five contingent projects, which we considered were reasonably likely to need to proceed in the 2018–23 regulatory control period. In its revised proposal TransGrid included an additional four contingent projects in response to rapidly changing circumstances. The nine contingent projects are as follows:

- New South Wales to South Australia Interconnector ($276m to $1074m)
- Reinforcement of Southern Network ($60m to $393m)
- Reinforcement of Northern Network (QNI upgrade) ($63m to $141m)
- Support South Western NSW for Renewables ($89m to $477m)
- Supply to Broken Hill ($52m to $177m)
- Reinforcement of Southern Network in response to Snowy 2.0 ($831m to $1,228m)
- Support Central Western NSW for Renewables ($120m to $455m)
- Support North Western NSW for Renewables ($500m to $945m)
- Renewables development in the Mt Piper to Wellington area ($36.8m).

[1] *TransGrid transmission determination 2018 to 2023 Overview* page 25, Australian Energy Regulator May 2018