Indicative changes to the National Electricity Rules

Note:

This document shows indicative changes to the relevant parts of the National Electricity Rules (NER) proposed to be made by the *Draft National Electricity Amendment (Accommodating financeability in the regulatory framework) Rule 2024*. The changes are shown in a modified version of the NER that incorporates, where relevant, final rules made by 14 December 2023 which take effect as of 29 March 2024. This modified version of parts of the NER is provided for information only and should not be used for any other purpose. The Australian Energy Market Commission does not guarantee the accuracy, reliability or completeness of this version of the NER or the mark-up.

The document includes changes to the NER proposed to be made by the following rule:

- Draft National Electricity Amendment (Sharing concessional finance benefits with consumers) Rule 2024

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5.16A.5 Actionable ISP project trigger event

In order to be eligible to submit a *contingent project* application in relation to an *actionable ISP project* (or a stage of an *actionable ISP project*~~ if the *actionable ISP project* is a staged project~~) under clause 6A.8.2, ~~all of ~~the following criteria must be satisfied ("**trigger event**")~~:~~ for each category:

Category 1 – *contingent project* application for an *actionable ISP project*

(a) the *RIT-T proponent* must issue a *project assessment conclusions report* that meets the requirements of clause 5.16A.4 and which identifies a project as the *preferred option* (which may be a stage of an *actionable ISP project*~~ if the *actionable ISP project* is a staged project~~);

(b) the *RIT-T proponent* must obtain written confirmation from *AEMO* that:

(1) the *preferred option* addresses the relevant *identified need* specified in the most recent *Integrated System Plan* and aligns with the *optimal development path* referred to in the most recent *Integrated System Plan*; and

(2) the cost of the *preferred option* does not change the status of the *actionable ISP project* as part of the *optimal development path* as updated in accordance with clause 5.22.15 where applicable;

(c) no *dispute notice* has been given to the *AER* under rule 5.16B(c) or, if a *dispute notice* has been given, then in accordance with rule 5.16B(d), the dispute has been rejected or the *project assessment conclusions report* has been amended and identifies that project as the *preferred option*; and

(d) the cost of the *preferred option* set out in the *contingent project* application must be no greater than the cost considered in *AEMO's* assessment in subparagraph (b)~~.~~; or

Category 2 – *early works contingent project application*

(e) the *contingent project* application is an *early works contingent project application*.

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6A.6.3 Depreciation

(a) The depreciation for each *regulatory year*:

(1) must be calculated on the value of the assets as included in the regulatory asset base, as at the beginning of that *regulatory year*, for the relevant *transmission system*; and

(2) must be calculated:

(i) providing such depreciation schedules conform with the requirements set out in paragraph (b), using the depreciation schedules for each asset or category of assets that are nominated in the relevant *Transmission Network Service Provider's Revenue Proposal*; or

(ii) to the extent the depreciation schedules nominated in the provider's Revenue Proposal do not so conform, using the depreciation schedules determined for that purpose by the *AER* in its final decision on the *Transmission Network Service Provider's* Revenue Proposal.

(b) The depreciation schedules referred to in paragraph (a) must conform to the following requirements:

(1) except as provided in paragraph (c)~~,~~ and clause 6A.6.3A, the schedules must depreciate using a profile that reflects the nature of the assets or category of assets over the economic life of that asset or category of assets;

(2) the sum of the real value of the depreciation that is attributable to any asset or category of assets over the economic life of that asset or category of assets (such real value being calculated as at the time the value of that asset or category of assets was first included in the regulatory asset base for the relevant *transmission system*) must be equivalent to the value at which that asset or category of assets was first included in the regulatory asset base for the relevant *transmission system*; and

(3) the economic life of the relevant assets and the depreciation methodologies and rates underpinning the calculation of depreciation for a given *regulatory control period* must be consistent with those determined for the same assets on a prospective basis in the *transmission determination* for that period.

(c) To the extent that:

(1) an asset (or group of assets) the value of which forms part of the regulatory asset base for a *transmission system* is dedicated to one *Transmission Network User* (not being a *Distribution Network Service Provider*) or a small group of *Transmission Network Users*; and

(2) the value of the assets (or group of assets), as included in the value of that regulatory asset base as at the beginning of the first *regulatory year* of the current *regulatory control period*, exceeds the *indexed amount*,

as at the commencement of that *regulatory control period*, of $20 million,

that asset (or group of assets) must be depreciated on a straight line basis over the life at which that asset (or group of assets) was first included in the regulatory asset base for that *transmission system*.

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6A.6.3A Financeability adjustment

Definitions

(a) In this clause:

financeability guidelines means the guidelines made by the *AER* under paragraph (r).

financeability request has the meaning given to it in paragraph (b).

financeability test means the test described in paragraph (l).

financeability threshold means the benchmark credit rating used to estimate the return on debt component in the *applicable rate of return instrument*.

Financeability request by TNSP

(b) Subject to paragraphs (c) and (d), if an asset (or group of assets) forms part of an *actionable ISP project*, a *Transmission Network Service Provider* may submit a request to the *AER* to approve that the asset (or group of assets) is depreciated on a basis other than in accordance with clause 6A.6.3(b)(1) (**financeability request**).

(c) A financeability request must include:

(1) the *Transmission Network Service Provider's* proposed adjustments to the depreciation of the asset (or group of assets);

(2) if applicable, the information in paragraph (f); and

(3) any information required under the financeability guidelines.

(d) A *Transmission Network Service Provider* must:

(1) only submit a financeability request at the same time as submitting a *contingent project* application under clause 6A.8.2(a) in relation to an *actionable ISP project*; and

(2) not submit a financeability request in relation to an *early works contingent project application*.

(e) A *Transmission Network Service Provider* must only submit a financeability request if, where it has entered into a *concessional finance agreement* after 14 December 2023 relating to:

(1) any *actionable ISP project* other than the *actionable ISP project* to which the request relates:

(i) all of the benefits under each relevant *concessional finance agreement* is being passed through to consumers under clause 6A.3.3; or

(ii) where the benefits under one or more of those *concessional finance agreements* are not all being passed through to consumers, each relevant *concessional finance agreement* specifies how the benefits of the *concessional finance* that are retained by the *Transmission Network Service Provider* are to be taken into account by the *AER* in carrying out the financeability test; and

(2) the *actionable ISP project* to which the financeability request relates:

(i) all of the benefits under each relevant *concessional finance agreement* is being passed through to consumers under clause 6A.3.3; or

(ii) where the benefits under each relevant *concessional finance agreement* are not all being passed through to consumers, the *concessional finance agreement* specifies how the benefits of the *concessional finance* that are retained by the *Transmission Network Service Provider* are to be taken into account by the *AER* in carrying out the financeability test and with the written approval of the *government funding body*.

(f) If the *Transmission Network Service Provider* submits a financeability request in the circumstances specified in paragraph (e)(1)(ii) or (e)(2)(ii), then at the same time as it submits the request, it must also provide to the *AER* (to the extent not already provided under clause 6A.3.3):

(1) a copy of every *concessional finance agreement* relating to any *actionable ISP project* it, or a related entity of it, has entered into since 14 December 2023;

(2) if applicable, the written approval of the *government funding body* to which the financeability request relates;

(3) if the *concessional finance agreement* was entered into by a related entity of the *Transmission Network Service Provider*, the name, ACN and contact details of the related entity that is party to the agreement and an explanation of the benefit of the *concessional finance* to the *Transmission Network Service Provider*;

(4) a description of the capital expenditure in relation to which the *concessional finance* is being provided; and

(5) a description of the benefits of the *concessional finance* that are retained by the *Transmission Network Service Provider* and an explanation of how the benefits are to be taken into account by the *AER* in carrying out the financeability test, in accordance with the *concessional finance agreement*.

(g) The *AER* may consult with the relevant *government funding body* in respect of the financeability request and in doing so, may:

(1) request information from the *government funding body*; or

(2) disclose any information received from the *Transmission Network Service Provider* in the financeability request for that purpose.

(h) If the *AER* receives confidential information from a *government funding body*, the *AER* must treat that information as confidential information.

(i) The *Transmission Network Service Provider* must provide the *AER* with such additional information that the *AER* reasonably requests for the purposes of applying the financeability test or addressing a financeability issue under paragraph (o).

Financeability test by AER

(j) If the *AER* receives a financeability request, it must apply the financeability test in accordance with paragraphs (k) to (m).

(k) The purpose of the financeability test is to determine whether or not there is a financeability issue as described in paragraph (m) for a *Transmission Network Service Provider*.

(l) To determine whether or not there is a financeability issue for a *Transmission Network Service Provider*, the *AER* must:

(1) first, determine a financeability position without the *actionable ISP project* using the *post-tax revenue model* to determine the *Transmission Network Service Provider*'s *maximum allowed revenue*, using the benchmark gearing ratio set out in the *applicable rate of return instrument* (**step one**); and

(2) second, determine a financeability position using the same process used under sub-paragraph (1), but including the relevant *actionable ISP project* (**step two**),

(together, the **financeability test**).

(m) A financeability issue exists for the purposes of paragraph (k) if the financeability test demonstrates that the financeability position for the *Transmission Network Service Provider* is:

(1) equivalent to or higher than the financeability threshold at step one, and deteriorates below the financeability threshold following the application of step two; or

(2) lower than the financeability threshold at step one, and deteriorates below that financeability position following the application of step two.

Addressing a financeability issue

(n) If the financeability test demonstrates that there is a financeability issue, the *AER* must make a determination to address the financeability issue by:

(1) if paragraph (m)(1) applies, preventing the *Transmission Network Service Provider's* financeability position determined in step one from deteriorating below the financeability threshold following the application of step two;

(2) if paragraph (m)(2) applies, preventing the *Transmission Network Service Provider's* financeability position determined in step one from deteriorating below that financeability position following the application of step two,

to the extent possible.

(o) If the *AER* makes a determination under paragraph (n) to address a financeability issue, it may address the financeability issue by doing any one or more of the following:

(1) depreciating the asset (or group of assets) forming part of the *actionable ISP project* using a profile that it considers appropriate, including by approving the financeability request; or

(2) taking other steps through another mechanism available to the *AER* under the *Rules*.

(p) If the *AER* makes a determination under paragraph (n) to address a financeability issue, it must amend the relevant *revenue determination* in accordance with the action taken pursuant to paragraph (o).

(q) If the *AER* determines under paragraph (o) that the depreciation adjustment will apply in a subsequent *regulatory control period*, then the depreciation adjustment is binding on the *AER* and the *Transmission Network Service Provider* for that subsequent *regulatory control period*.

Financeability guidelines

(r) The *AER* must, in accordance with the *transmission consultation procedures*, develop and *publish* guidelines (the **financeability guidelines**).

(s) The financeability guidelines must set out:

(1) how the *AER* determines the financeability position for the *Transmission Network Service Provider* for the purposes of paragraph (l), which must be based on a selection of financial metrics and a specified weighting to apply to each of those metrics;

(2) an explanation of the basis for the selection of each financial metric and the weighting to apply to each financial metric referred to in sub-paragraph (1); and

(3) how the financeability position for a *Transmission Network Service Provider* relates to the financeability threshold for the purposes of paragraph (m).

(t) The financeability guidelines may set out any other matters the *AER* considers appropriate.

10. Glossary

[*Note: The definitions of 'concessional finance', 'concessional finance agreement' and 'government funding body' are proposed to be inserted by the Draft National Electricity Amendment (Sharing concessional finance benefits with consumers) Rule 2024.*]

concessional finance

An arrangement between a *government funding body* and a *Network Service Provider*, under which the *government funding body* directly or indirectly provides financial support to the *Network Service Provider* pursuant to a *concessional finance agreement*.

[*Note: The markup in the definition of 'concessional finance agreement' below shows the changes proposed to the Draft National Electricity Amendment (Sharing concessional finance benefits with consumers) Rule 2024*].

concessional finance agreement

An agreement between a *Network Service Provider*, or a related entity of the *Network Service Provider*, and a *government funding body* which the *government funding body* specifies to be such an agreement for the purposes of clauses 6.2.9, ~~or~~ 6A.3.3 or 6A.6.3A.

early works contingent project application

An application by a *Transmission Network Service Provider* to amend its *revenue determination* in respect of the costs of activities undertaken in respect of an *actionable ISP project* prior to construction of the *preferred option*.

government funding body means a government or government agency (including, without limitation, an entity owned, or where there is a controlling interest, by a Commonwealth, State or Territory government).

11. Savings and Transitional Rules

11.[XXX] Rules consequential on the making of the National Electricity Amendment (Accommodating financeability in the regulatory framework) Rule 2024

11.[XXX].1 Definitions

In this rule 11.[XXX]:

Amending Rule means the *National Electricity Amendment (Accommodating financeability in the regulatory framework) Rule 2024 No.[X]*.

commencement date means [29 March 2024], being the commencement date of the Amending Rule.

effective date means [31 December 2024].

financeability guidelines has the meaning given in new clause 6A.6.3A(a).

new Chapter 6A means Chapter 6A of the *Rules* as in force on and from the commencement date.

new clause 6A.6.3A means clause 6A.6.3A of new Chapter 6A.

new clause 6A.6.3A(a) means clause 6A.6.3A(a) of new Chapter 6A.

new clause 6A.6.3A(b) means clause 6A.6.3A(b) of new Chapter 6A.

new clause 6A.6.3A(r) means clause 6A.6.3A(r) of new Chapter 6A.

transitional period means the period beginning on the commencement date and ending on the effective date.

11.[XXX].2 Financeability guidelines

By [31 December 2024], the *AER* must develop and *publish* the financeability guidelines under new clause 6A.6.3A(r).

11. [XXX].3 Financeability test before publication of financeability guidelines

(a) A *Transmission Network Service Provider* may submit a request under new clause 6A.6.3A(b) at any time during the transitional period.

(b) If a *Transmission Network Service Provider* submits a request under new clause 6A.6.3A(b) during the transitional period:

(1) the financeability guidelines do not apply to the *AER's* decision to approve or reject the request; and

(2) the *AER's* decision to approve or reject the request is binding on the *AER* and the *Transmission Network Service Provider*.

(c) The *AER* must use its reasonable endeavours to give effect to the requirements of paragraphs (l), (m), (n) and (o) in new clause 6A.6.3A if it receives a request under clause 11.[XXX].3(a).