

Making of National Electricity Rules

National Electricity (South Australia) Law – Section 90EG

I, Tom Koutsantonis, Minister for Energy and Mining for the Crown in right of the State of South Australia, as the Minister administering the *National Electricity (South Australia) Act 1996* of South Australia, hereby make the National Electricity Amendment (Orderly Exit Management) Rule 2024 under section 90EG of the National Electricity (South Australia) Law on the unanimous recommendation of the Ministers of the participating jurisdictions sitting as the Ministerial Council on Energy for the purposes of that section.

This Rule has been signed by me for the purposes of identification as the National Electricity Amendment (Orderly Exit Management) Rule 2024 and commences operation 10 business days after publication of this notice in the South Australian Government Gazette.



Hon Tom Koutsantonis MP

Minister for Energy and Mining

31 December 2024

National Electricity Amendment (Orderly Exit Management) Rule 2024

1 Title of Rule

This Rule is the *National Electricity Amendment (Orderly Exit Management) Rule 2024*.

2 Commencement

This Rule commences operation on the date that is 10 business days after the date on which notice of the making of this Rule is published in the South Australian Gazette.

3 Amendment to the National Electricity Rules

The National Electricity Rules are amended as set out in Schedule 1.

4 Amendment to the National Electricity Rules

The National Electricity Rules are amended as set out in Schedule 2.

Schedule 1 Amendment to the National Electricity Rules

(Clause 3)

[1] Chapter 4B Orderly Exit Management

After Chapter 4A, insert:

Chapter 4B Orderly Exit Management

Part A Introduction

4B.A.1 Application of this chapter

This Chapter of the *Rules* does not apply in a *participating jurisdiction* unless it is a *participating jurisdiction* referred to in section 118AB of Part 8AA of the *NEL*.

4B.A.2 Structure of this chapter

- (a) This Chapter deals with processes that apply in respect of an OEM generator that seeks to bring forward the closure of an OEM generating unit.
- (b) The Chapter is divided into the parts described below.
 - (1) **Part A-Introduction:** which is introductory and includes a number of specific definitions used throughout this Chapter.
 - (2) **Part B-Notice of early closure:** which specifies the nature and scope of information that an OEM generator must provide to the *AER* if the OEM generator proposes early closure of a relevant generating unit.
 - (3) **Part C-Determining system needs and investigation for alternative solutions:** which addresses the steps to be taken by the Minister to obtain advice on and assess:
 - (i) the extent of the impact of the proposed early closure of the OEM generating unit on *reliability* and system security; and
 - (ii) the potential costs and/or benefits to consumers of addressing any system needs shortfall,
 before the Minister can issue a mandatory operation direction.
 - (4) **Part D-Voluntary agreement negotiations:** which provides for a voluntary agreement to be negotiated and entered into by the OEM generator and the Minister to facilitate the ongoing operation of the OEM generating unit beyond the proposed closure date.
 - (5) **Part E-Mandatory operation direction:** which deals with the scope and content of matters that must be specified in any mandatory operation direction to be issued by the Minister in circumstances where a voluntary agreement cannot be reached.

(6) **Part F-Payments to MOD generator:** which deals with the generator payments that a MOD generator is entitled to receive from the financial vehicle and comprises the Divisions set out below.

(i) **Division 1 Generator payments:** which identifies two categories of generator payments provided for under this Chapter, namely (in each case in amounts determined by the *AER*):

- (A) a generator payment in a fixed payment amount for each MOD financial year of the mandatory operation period as further described in clause 4B.F.4(a); and
- (B) GPI financial transaction payments specified under any generator payment instrument issued by the Minister to a MOD generator under clause 4B.F.5.

This Division deals with the issue by the Minister of payment orders to facilitate the making of generator payments to the MOD generator. This includes the issue by the Minister of a generator payment instrument to a MOD generator and the financial vehicle, which specifies the amounts of any GPI financial transaction payments to be made by each of them to the other, as well as any terms and conditions in respect of those payments.

(ii) **Division 2 *AER* generator payments determination:** which sets out the procedure and approach to be taken by the *AER* in determining the amounts of each of the generator payments contemplated in Division 1 under a generator payments determination.

(iii) **Division 3 Generator to make generator payments application to *AER*:** which sets out the matters that must be included in a generator payments application made by the MOD generator to the *AER* to facilitate the making of a generator payments determination under Division 2.

(iv) **Division 4 Changes to MOD generator payment amounts:** which deals with:

- (A) an annual redetermination by the *AER* of the GPI financial transaction payment amount (in addition to the transaction strike price in the case of a financial swap);
- (B) an annual assessment by the *AER* of the MOD generator's actual capital expenditure and fixed O&M costs during a MOD financial year;
- (C) the circumstances under which a MOD generator may apply to the *AER* for a review of the amounts set out in a generator payments determination;
- (D) a process by which the MOD generator may apply to the *AER* for the *AER* to determine whether any

incremental rehabilitation costs are payable to the MOD generator; and

- (E) the circumstances under which the Minister may apply to the *AER* for a review of the short run marginal costs for a MOD financial year and if determined by the *AER*, an adjustment to the GPI financial transaction payment amount.
- (v) **Division 5 Making of contribution determination by the AER:** which details the process that the *AER* must follow when making a contribution determination in accordance with sections 118AZA and 118AZB of the *NEL*.
- (vi) **Division 6 Surplus funds at end of mandatory operation period:** which sets out the process that the financial vehicle must follow at the end of the mandatory operation period in relation to any surplus funds held in the orderly exit management fund on expiry or termination of the mandatory operation period.
- (7) **Part G-Termination of mandatory operation direction:** which sets out a process by which the MOD generator may apply to the *AER* for the *AER* to determine amounts payable to the MOD generator on termination of the mandatory operation direction.
- (8) **Part H-Annual Performance Report by MOD Generator:** which provides a process by which the MOD generator must submit an annual performance report to the *AER* during the mandatory operation period.
- (9) **Part I-Financial matters and financial vehicle cost recovery:** which:
 - (i) addresses the key financial matters associated with the implementation of the orderly exit management scheme; and
 - (ii) establishes a mechanism by which the financial vehicle can issue a *Distribution Network Service Provider* with an order for the *Distribution Network Service Provider* to contribute funds to the orderly exit management fund in amounts determined by the Minister or the *AER*.

4B.A.3 Definitions

In this Chapter:

additional MOD generator revenue means, in respect of any time period, any revenue received or earned by:

- (a) the MOD generator from any source in relation to the operation of the MOD generating unit; or
- (b) any MOD affiliate in relation to any:
 - (i) services provided by the MOD generator or MOD affiliate in respect of the operation of any MOD generating unit; or
 - (ii) services provided, or contracts entered into in respect of any MOD generating unit or its *sent out generation* including but not limited to the provision of *ancillary services*,

but excluding any:

- (c) amounts paid or payable to a MOD affiliate in respect of goods, commodities, equipment or services (at rates which do not exceed genuine, commercial arm's length rates) provided or supplied by the MOD affiliate to the MOD generator or to another MOD affiliate;
- (d) *NEM spot market* payments by AEMO in respect of any quantity (in megawatt hours) of *sent out generation* of any MOD generating unit in any *trading interval* arising during that time period, to the extent that that quantity is less than or equal to a quantity (in megawatts) of electricity specified in respect of that same *trading interval* under a GPI financial transaction; and
- (e) generator payments paid or payable to the MOD generator (or an affiliate) in respect of that time period;

affiliate has the meaning given in section 118AA of the *NEL*;

alternative options direction means a direction issued under clause 4B.C.5(b);

annual GPI financial transaction payment amount reassessment has the meaning given in clause 4B.F.19(a);

annual performance report means a report prepared by a MOD generator under section 118AR of the *NEL* and which meets the requirements of clause 4B.H.1;

capital expenditure means capital expenditure costs comprising each of the following:

- (a) recurring capital costs; and
- (b) non-recurring capital costs;

capital expenditure information has the meaning given in clause 4B.F.15;

contribution determination has the meaning given in section 118AA of the *NEL*;

contribution order has the meaning given in section 118AA of the *NEL*;

early closure proposal has the meaning given in section 118AA of the *NEL*;

excluded losses means:

- (a) loss of earnings from the operation of a MOD generating unit;
- (b) losses for which the MOD generator has already been compensated via additional MOD generator revenue; or
- (c) losses recovered or recoverable by the MOD generator via:
 - (i) insurance proceeds (including where those proceeds are reasonably likely to be recoverable); or
 - (ii) other proceeds from any settlement with a third party;

fair margin component means the component of the recoverable margin which:

- (a) represents a fair margin on the MOD generator's reasonable costs that directly relate to operating and maintaining each MOD generating unit (excluding any costs for which the MOD generator is reimbursed via fixed payment amounts); and
- (b) is to be determined having regard to the principles set out in 4B.F.12(a);

financial risk management product has the meaning given in section 18A of the *NEL*;

financial vehicle has the meaning given in section 118AA of the *NEL*;

financial due diligence audit means an independent financial audit and report of the OEM generator to be undertaken by a suitably qualified

accounting firm in accordance with the requirements of clause 4B.C.8;
fixed O&M costs means any fixed costs to be incurred in connection with the operation and maintenance of the MOD generating unit during the mandatory operation period, including any fixed costs for periodic maintenance and excluding shutdown costs, restart costs and holding costs;
fixed payment amount has the meaning given in clause 4B.F.4;
force majeure event means an event or circumstance, or combination of events or circumstances, occurring following the MOD issue date or during the mandatory operation period that:

- (a) is not within the reasonable control of the MOD generator; and
- (b) the MOD generator and MOD affiliates could not have avoided through the exercise of reasonable care, compliance with the mandatory operation direction and *good electricity industry practice*, including:

- (c) any curtailment or congestion affecting the availability of the *network* to which the MOD generating unit is *connected*,

that satisfies the above criteria, but excluding the following circumstances which will not constitute a force majeure event:

- (d) lack of funds, financial hardship, failure or inability of any person to pay any sum due and payable, or the inability of the MOD generator (or a MOD affiliate) to pay any sum due and payable;
- (e) a shortage or delay in delivery of materials, consumables, equipment or utilities required by the MOD generator or any failure by the MOD generator to hold sufficient stock of spares and stock of fuel, except to the extent it is itself caused by a force majeure event;
- (f) any event or circumstance arising due to a failure by the MOD generator, a MOD affiliate or any of their respective employees, agents or subcontractors to properly maintain any equipment, property or assets in accordance with *good electricity industry practice*;
- (g) strikes, industrial disputes or other industrial actions or disruption that only affects the MOD generator; or
- (h) failure by any person (other than the MOD generator) to perform an obligation, except where such failure is caused by any event or circumstance that, if such event or circumstance had happened to the MOD generator, would have been a force majeure event;

fuel costs means the cost of acquiring any fuel (such as coal or gas, in the case of a coal or gas fired MOD generating unit) required for the operation of a MOD generating unit;

fuel price risk contract means a contract or arrangement that affects an OEM generator's exposure to fuel price risk;

generator payment instrument has the meaning given in section 118AA of the *NEL*;

generator payments means the payments to be made by the financial vehicle to a MOD generator under each payment order issued by the Minister, in accordance with clause 4B.F.2;

generator payments application means an application to be made by a MOD generator to the *AER* in accordance with Division 3 of Part F;

generator payments determination means the determination made:

- (a) by the *AER*;
- (b) in accordance with clauses 4B.F.8 and 4B.F.9 and the content and

process requirements set out in Division 2 of Part F,

and as may be revoked and reissued from time to time under Division 4 of Part F;

holding costs means, in respect of a MOD generating unit, any fuel and other costs that a MOD generator incurs solely for the purpose of operating a MOD generating unit in reserve (that is, without dispatching electricity to the *NEM*), pending the bidding or dispatch of electricity from the MOD generating unit to the *NEM*;

identified need means any reliability shortfall and/or system security shortfall identified in a system needs assessment;

incremental rehabilitation costs means the net incremental remediation and rehabilitation costs expected to be incurred by the MOD generator arising from the continued operation of a MOD generating unit during the mandatory operation period, which for the avoidance of doubt, excludes any remediation or rehabilitation costs that:

- (a) do not arise directly from the operation of the MOD generating unit during the mandatory operating period; or
- (b) arise as a result of a negligent act or omission by the MOD generator or MOD affiliates (or any contractor engaged by the MOD generator or MOD affiliates);

incremental rehabilitation costs determination has the meaning given in clause 4B.F.22(f);

jurisdiction specific reliability shortfall means any reliability shortfall against any reliability standards specific to a jurisdiction as set out in the applicable *jurisdictional electricity legislation*;

market sounding process means a process to be conducted by the Minister to identify potential market solutions (including any anticipated or prospective projects) that may be available to meet a system needs shortfall;

mandatory operation direction has the meaning given in section 118AA of the *NEL*;

mandatory operation period has the meaning given in section 118AA of the *NEL*;

Minister has the meaning given in section 118AA of the *NEL*;

MOD affiliate means any affiliate of a MOD generator;

MOD financial year means:

- (a) the period commencing on the commencement date of the mandatory operation period and ending on the immediately following 30 June;
- (b) each consecutive 12 month period commencing on 1 July and ending 30 June arising during the mandatory operation period; and
- (c) the period commencing on the last 1 July to arise during the mandatory operation period and ending on the last day of the mandatory operation period;

MOD generating unit has the meaning given in section 118AA of the *NEL*;

MOD generator has the meaning given in section 118AY of the *NEL*;

MOD issue date means the date on which the mandatory operation direction is made by the Minister;

non-recurring capital costs means capital expenditure that occurs on an irregular, extraordinary or one-time basis;

notice exemption has the meaning given in section 118AA of the *NEL*;

OEM generator means the *Registered Participant* for the relevant generating unit the subject of an early closure proposal;

OEM generating unit means a relevant generating unit owned or operated by an OEM generator;

OEM payments has the meaning given in section 118AA of the *NEL*;

orderly exit management fund has the meaning given in section 118AA of the *NEL*;

payment order has the meaning given in section 118AA of the *NEL*;

prescribed information means the information prescribed under clauses 4B.B.2 and 4B.B.3 for the purposes of section 118AO of the *NEL* that must be provided by a *Registered Participant* who submits an early closure proposal;

proposed closure date means the proposed closure date for an OEM generating unit as specified by an OEM generator in an early closure proposal;

proposed maintenance schedule has the meaning given in clause 4B.F.14(b)(3);

recoverable margin means an amount to cover the following during the mandatory operation period:

- (a) MOD generator's risks of operating each MOD generating unit;
- (b) fair margin component; and
- (c) an allowance for the cost of managing outage risk (having regard to the process for assessing outage risk under clause 4B.F.18);

recurring capital costs means capital expenditure that occurs on a recurring basis;

related body corporate has the meaning given in section 118AA of the *NEL*;

related entity has the meaning given in section 118AA of the *NEL*;

relevant generating unit has the meaning given in section 118AA of the *NEL*;

reliability shortfall means any reliability shortfall against the *interim reliability measure* used by AEMO in the *statement of opportunities* to determine a risk to *reliability* or any other measure that is used by AEMO in the *statement of opportunities* to determine the risk to *reliability*;

reliability tail risk means any *contingency event* or set of circumstances which are low probability events or circumstances that would (if they occurred) have a high adverse impact on *reliability* and/or *power system security*;

restart costs means any fuel and other costs that a MOD generator incurs solely with respect to the starting or restarting of a shutdown MOD generating unit, in order for it to commence or recommence operating in accordance with a mandatory operation direction and which would not otherwise have been incurred by the MOD generator, but for the starting or restarting of the MOD generating unit;

scope 1 emission has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007* (Cth);

short run marginal costs means marginal or variable costs incurred in the short term by the MOD generator:

- (a) in connection with the operation of its MOD generating units to the extent required to enable it to meet its payment obligations to the financial vehicle under a generator payment instrument;
- (b) which vary with the extent to which each MOD generating unit is operating; and
- (c) which may include any:
 - (i) fuel costs (excluding holding costs);
 - (ii) holding costs;
 - (iii) variable maintenance costs (to the extent not covered by fixed

O&M costs); and

- (iv) other costs that are incurred only when the relevant MOD generating units are operating,

but excluding any restart costs or shutdown costs;

shortfall notice has the meaning given in clause 4B.C.4(b);

shutdown costs means any fuel and other costs that a MOD generator incurs solely with respect to the shutting down of a MOD generating unit, in order for it to cease operating in accordance with a mandatory operation direction or for planned or unplanned maintenance to the MOD generating unit, in accordance with the terms of a mandatory operation direction or the *Rules*;

system needs shortfall means an unacceptable risk of a:

- (a) reliability shortfall;
- (b) system security shortfall;
- (c) reliability tail risk; or
- (d) jurisdiction specific reliability shortfall;

system security shortfall means any impact on maintaining the *power system* in a *secure operating state* as contemplated by clause 4.2.4;

technical due diligence audit means an independent technical review and report of the OEM generating unit to be undertaken by a suitably qualified engineering firm in accordance with the requirements of clause 4B.C.8(d);

voluntary agreement has the meaning given in section 118AA of the *NEL*;

wholesale exchange has the meaning given in Part 2A of the *NEL*.

Part B Notification of early closure

4B.B.1 Definitions

In this Part:

current expected closure date means the most recent closure date notified to *AEMO* by an OEM generator under the *Rules*, prior to the OEM generator submitting an early closure proposal.

4B.B.2 Prescribed information to be submitted

The following information is prescribed for the purposes of section 118AO of the *NEL*:

- (a) subject to clause 4B.B.7, the following information on a *financial year* basis in respect of the period specified in clause 4B.B.4(a)(1):
 - (1) for each OEM generating unit:
 - (i) fuel costs;
 - (ii) the process for sourcing fuel, including to confirm whether competitive sourcing was used;
 - (iii) the number, timing and duration of each planned and unplanned *outage*, including information relating to:
 - (A) the costs incurred by the OEM generator to restart and shutdown the OEM generating unit; and
 - (B) restart reliability (in terms of length of time taken

and the percentage of full capacity achieved) for each starting or restarting of a shutdown to the OEM generating unit during the *financial year*;

- (iv) maintenance costs;
 - (v) employee related costs;
 - (vi) financing costs;
 - (vii) insurance costs; and
 - (viii) other ongoing costs, including details of the cost; and
- (2) all revenue earned from the OEM generating units, including details of whether the revenue was sourced from a *market*, contracts or other sources;
- (b) the following information for each *financial year* in the period specified in clause 4B.B.4(a)(2):
- (1) proposed annual maintenance schedule and budget (separated by capital expenses and operating expenses) for the OEM generator and specific OEM generating units, including details to indicate the extent to which these costs are committed;
 - (2) the following with respect to fuel supply:
 - (i) expected annual fuel supply quantity and cost, including demonstration of where costs are already committed (for example, contract being signed);
 - (ii) details of any risk management strategy; and
 - (iii) expected quality characteristics and delivery profile;
 - (3) expected quantity and cost for other consumables, including information on the type of consumable;
 - (4) risks and risk management strategies relating to (including but not limited to, risk/management plans, policies, third-party contracting arrangements):
 - (i) *reliability* of the *plant* and the likelihood of forced *outages*; and
 - (ii) safety;
 - (5) information on any regulatory approvals that would be required for the continued operation of each OEM generating unit, for example, environmental licences, and details of the time by which the approval would need to be renewed, if operations were to be extended;
 - (6) any other expected annual capital and operating costs for the generator and specific OEM generating units (if applicable), including details to indicate the extent to which the costs are committed;
 - (7) details of any other substantial costs expected to be borne by the OEM generator in relation to the OEM generating unit;
 - (8) details of existing contractual obligations with related entities necessary for the operation of the OEM generating unit by the

OEM generator; and

- (9) information on the technical condition of each OEM generating unit and supporting on-site infrastructure required for the continued operation of the OEM generating unit (for the period until the current expected closure date of the generating unit specified in the early closure proposal),

and for each item of information required by this clause 4B.B.2(b), the methodologies and assumptions underlying the data used to calculate that information and details of the extent to which the *Registered Participant's* proposed closure date impacts upon or changes the information provided on a year by year basis.

4B.B.3 Additional prescribed information

- (a) Subject to clause 4B.B.7, if the Minister or the *AER* gives a direction under section 118AO(4) of the *NEL*, the following additional information is prescribed for the purpose of section 118AO(4)(a) of the *NEL*:

- (1) the following information for the *Registered Participant* for the period specified in clause 4B.B.4(c)(1):
- (i) projected revenues and assumptions on which they are based; and
 - (ii) information on the forecast emissions (including direct scope 1 emissions) associated with the OEM generating unit;
- (2) the following information for the *Registered Participant* for the period specified in clause 4B.B.4(c)(2):
- (i) information on any supply contracts with third parties that are currently in place and necessary for the continued operation of the OEM generating units which must include:
 - (A) current term and expiry date of the contracts;
 - (B) contract conditions relating to termination of the contract;
 - (C) contract conditions relating to the extension of the contract;
 - (D) terms relating to volume supplied and price; and
 - (E) other terms likely to be relevant to the continued operation of the OEM generating unit;
 - (ii) information on any other agreements with related entities, including in other jurisdictions to the extent those agreements relate to the OEM generating unit;
 - (iii) information on the corporate structure of the entity owning the OEM generator and where services are provided to the OEM generator by related entities, information on the corporate structure of those related entities; and
 - (iv) details of the following in respect of the OEM generator, any:

- (A) financial risk management product; and
 - (B) fuel price risk contracts,
- and in each case details of the payments to be made and/or received under these arrangements.
- (b) If the Minister or *AER* issues a direction under section 118AO(4) of the *NEL*, the *Registered Participant* must give the information to the Minister or *AER* (as applicable) within 20 *business days*.

4B.B.4 Period for prescribed information

- (a) If an OEM generator submits an early closure proposal after the commencement of Part 8AA of the *NEL*, the *Registered Participant* must provide the information in clause:
- (1) 4B.B.2(a) for the prior three full *financial years*; and
 - (2) 4B.B.2(b) for the financial year in which the early closure proposal is submitted and each *financial year* until the current expected closure date for the OEM generating unit or seven years, whichever is earliest.
- (b) If the Minister or *AER* directs that an OEM generator provide information under section 118AO(1)(b) of the *NEL*, the OEM generator must provide the information in clause:
- (1) 4B.B.2(a) for the prior three full *financial years*; and
 - (2) 4B.B.2(b) for each *financial year* in the period from the date of the *AER*'s direction to the current expected closure date for the OEM generating unit or seven years, whichever is earliest.
- (c) If the Minister or *AER* directs that an OEM generator provide information under section 118AO(4) of the *NEL*, the OEM generator must provide the information in clause:
- (1) 4B.B.3(a)(1) for each *financial year* in the period from the date of the Minister or *AER*'s direction to the current expected closure date for the OEM generating unit or seven years, whichever is earliest; and
 - (2) 4B.B.3(a)(2), as at the date of the direction.

4B.B.5 *AER* may request further information

- (a) The *AER* may, by written request, require an OEM generator to provide any further information that the *AER* reasonably requires in relation to an early closure proposal.
- (b) The MOD generator must comply with an information request under clause 4B.B.5(a).

Note: Clause 4B.J.1 provides for the *AER* to also impose requirements in relation to the manner and form such information must be provided and the verification of that information.

4B.B.6 *AER* must provide information to *AEMO*

For the purpose of section 118AO(3)(b) of the *NEL*, the *AER* will provide to *AEMO* (for the purpose of *AEMO* carrying out its functions under Part 8AA of

the *NEL* and this Part B of this Chapter 4B) a copy of the information received by it under the following clauses:

- (a) 4B.B.2(b)(1);
- (b) 4B.B.2(b)(2)(i);
- (c) 4B.B.2(b)(4);
- (d) 4B.B.2(b)(5);
- (e) 4B.B.2(b)(8); and
- (f) 4B.B.2(b)(9).

4B.B.7 Itemisation of financial costs

- (a) If the OEM generator cannot obtain specific financial information on a per OEM generating unit basis for a specific category of prescribed information, the OEM generator may submit an estimate of the costs for the OEM generating unit provided that:
 - (1) the information is verified by the OEM generator in a manner to be specified by the *AER*; and
 - (2) the OEM generator provides information to the *AER* to substantiate the basis for the estimated amount.
- (b) The *AER* may, by written request, require the OEM generator to provide any further information that the *AER* reasonably requires for the *AER* to be satisfied with any estimate by the OEM generator under clause 4B.B.7(a).

Note: Clause 4B.J.1 provides for the *AER* to also impose requirements in relation to the manner and form such information must be provided and the verification of that information. Such a requirement may allow the generator to provide information on an aggregate basis for all generating units that are subject to an early closure proposal.

Part C Determining system needs and investigation for alternative solutions

4B.C.1 Definitions

In this Part:

relevant TNSP means any *Transmission Network Service Provider* who in the opinion of *AEMO* can contribute information or advice relevant to (as applicable):

- (a) the preparation of a system needs assessment advice prepared under clause 4B.C.3; or
- (b) the advice provided to the Minister by *AEMO* in response to an alternative options direction under clause 4B.C.5;

system needs assessment advice means an assessment to be undertaken in accordance with clause 4B.C.3.

4B.C.2 Rules for the purposes of section 118AD of the NEL

This Part sets out the *Rules* under section 118AD(3) of the *NEL* in relation to

the advice that the Minister obtains for the purposes of section 118AD(4) of the *NEL*.

4B.C.3 System needs assessment advice

- (a) Within 60 *business days* after:
- (1) an OEM generator submits an early closure proposal; or
 - (2) publication by *AEMO* of a *statement of opportunities*, where an early closure proposal submitted by an OEM generator may cause or contribute to a system needs shortfall identified in the publication,
- the Minister may direct *AEMO* to undertake an assessment and deliver to the Minister the advice specified in this clause 4B.C.3, to be known as a system needs assessment advice.
- (b) The system needs assessment advice provided to the Minister by *AEMO* must:
- (1) be prepared following consultation with any relevant TNSPs;
 - (2) consider the impact of the OEM generator's proposed closure date;
 - (3) include a reliability assessment – to be undertaken in accordance with clause 4B.C.3(c);
 - (4) include a system security assessment – to be undertaken in accordance with clause 4B.C.3(d); and
 - (5) identify the type, size, and duration of:
 - (i) any identified need; and
 - (ii) any other risks considered appropriate by *AEMO*.
- (c) The reliability assessment must, taking into account the impact of the OEM generator's proposed closure date, assess the risk of a reliability shortfall:
- (1) consistent with the approach taken and scenarios used in the most recent *statement of opportunities* or update to the *statement of opportunities* (as applicable), adjusted to take into account the closure of the OEM generating units on the proposed closure date; and
 - (2) taking into account the potential for any project for which, in *AEMO*'s opinion, the project's capacity is likely to be available to the electricity consumers in the jurisdiction;
- to establish the following matters:
- (3) identify the event(s) that are expected to contribute to any system needs shortfall being resolved (for example, the commissioning of additional *generation* capacity or *transmission* infrastructure);
 - (4) identify the likelihood of *unserved energy* arising, including estimates for the probability, magnitude, and duration of periods of *unserved energy*; and
 - (5) provide descriptive information on any reliability tail risk.

- (d) The system security assessment must assess whether the OEM generator's proposed closure date is likely to give rise to a system security shortfall.

4B.C.4 Minister to determine system needs shortfall

- (a) Following receipt of the system needs assessment advice the Minister will consider:
 - (1) the system needs assessment advice;
 - (2) any other information available to the Minister which the Minister considers relevant;
 - (3) any reliability standards specific to the jurisdiction as set out in the applicable *jurisdictional electricity legislation*; and
 - (4) whether the proposed closure date will contribute to a system needs shortfall.
- (b) If the Minister considers that the proposed closure date will contribute to a system needs shortfall, then the Minister may, within 60 *business days* of receiving the system needs assessment advice from *AEMO* (or such longer period as the Minister may determine), notify the relevant OEM generator accordingly (**shortfall notice**).
- (c) A shortfall notice must be publicly notified by the Minister together with a statement setting out a summary of the reasons for the issue of the shortfall notice.

4B.C.5 Search for alternative solutions

- (a) In this clause 4B.C.5 **alternative options** means timely, economic, technically and environmentally feasible replacement options to address a system needs shortfall as an alternative to extending the operation of an OEM generating unit.
- (b) Following the issue of a shortfall notice, the Minister may issue a direction to *AEMO* to commence a process for the provision of advice to identify alternative options (**alternative options direction**).
- (c) The advice provided to the Minister by *AEMO* in response to an alternative options direction must:
 - (1) be provided following consultation with any relevant TNSPs;
 - (2) include a desktop assessment to identify potential alternative options (including any nominated by the Minister) to address the system needs shortfall; and
 - (3) include a high-level assessment of project pipeline information against the alternative options identified under 4B.C.5(c)(2).
- (d) For the purpose of section 118AF(2)(a) of the *NEL*, the Minister must make the advice from *AEMO* publicly available (as applicable):
 - (1) within 60 days after:
 - (i) issuing a mandatory operation direction; or
 - (ii) entering into a voluntary agreement; or
 - (2) if the Minister does not issue a mandatory operation direction or

enter into a voluntary agreement, at a time to be determined by the Minister within the period of 2 years of the Minister receiving the advice.

- (e) The Minister may also undertake additional actions to identify alternative options, including, but not limited to, undertaking a market sounding process.
- (f) If the Minister:
 - (1) undertakes a market sounding process; and
 - (2) considers prospective projects as part of that process,
 the project proponent for any prospective project considered by the Minister must provide details of the expected scope 1 emissions of the relevant project.

4B.C.6 Minister may commission additional reports and assessments

- (a) In this clause 4B.C.6:
 - (1) **consumer benefit assessment** means an assessment to establish the benefit to electricity consumers of addressing the system needs shortfall; and
 - (2) **emissions impact report** means a report to establish the emissions impact of one or more alternative options.
- (b) At any time after the Minister issues an alternative options direction the Minister may commission a third party to undertake:
 - (1) a consumer benefit assessment; and/or
 - (2) an emissions impact report,
 in accordance with this clause and with input from such other persons or bodies which perform functions under the *NEL* and *Rules* as may be required by the Minister.
- (c) A consumer benefit assessment or emissions impact report prepared under this clause is to be made publicly available by the Minister at the same time as the Minister publishes a notice under (as applicable):
 - (1) section 118AQ(1) of the *NEL*, in the case of a mandatory operation direction; or
 - (2) 118AQ(2) of the *NEL*, in the case of a voluntary agreement.

4B.C.7 AER to prepare preliminary cost estimate

- (a) In this clause:
 - (1) **preliminary cost estimate** means an estimate of the proposed cost of a mandatory operation direction, to be prepared by the *AER* in accordance with this clause 4B.C.7; and
 - (2) **preliminary cost estimate direction** means a direction issued by the Minister to the *AER* in accordance with clause 4B.C.7(b).
- (b) At any time after the Minister issues an alternative options direction the Minister may direct the *AER* to prepare a preliminary cost estimate.
- (c) If the Minister issues a preliminary cost estimate direction, the *AER*

may require the OEM generator, and the OEM generator must provide, any additional information the *AER* deems necessary to enable the preparation of the preliminary cost estimate.

Note: Clause 4B.J.1 provides for the *AER* to also impose requirements in relation to the manner and form such information must be provided and the verification of that information.

4B.C.8 Technical and financial due diligence requirements

- (a) The Minister may direct that an OEM generator provide to the Minister and the *AER* the following additional information for the purposes of section 118AO(4)(a) of the *NEL*:
- (1) financial due diligence audit report; and/or
 - (2) technical due diligence audit report,
- and any such reports must be prepared in accordance with the requirements of this clause.
- (b) For any audit report required under clause 4B.C.8(a), the Minister must determine:
- (1) the third-party service provider that will undertake and prepare the audit; and
 - (2) the scope of the audit,
- in accordance with this clause 4B.C.8 and in each case in consultation with the OEM generator and the *AER* and, in the case of the technical due diligence audit report, *AEMO*.
- (c) The scope of any financial due diligence audit report must be to assess the extent to which the prescribed information reported by the OEM generator under clause 4B.B.2 is accurate and reasonable in the context of prolonging the operation of the OEM generating unit.
- (d) The scope of any technical due diligence audit must cover the following matters, without limitation:
- (1) confirm the technical condition of the OEM generating unit;
 - (2) identify requirements, issues and risks in relation to the continued operation of the OEM generating unit from an engineering perspective for the proposed period required to address the system needs shortfall; and
 - (3) identify any specific issues relating to:
 - (i) work, health and safety;
 - (ii) the environment; and/or
 - (iii) fuel supply and fuel quality,
 and to the extent associated with the continued operation of the OEM generating unit for the proposed period required to address the system needs shortfall.
- (e) The OEM generator must provide any third-party service provider that undertakes a financial due diligence audit report or a technical due diligence audit report with:

- (1) any information reasonably requested by the service provider in undertaking the relevant audit; and
- (2) any information which the OEM generator considers (acting reasonably) may be relevant to the audit.

Part D Voluntary agreement negotiations

4B.D.1 Voluntary negotiations

- (a) At any time after the Minister issues an alternative options direction, the Minister or OEM generator may request the other to commence negotiations for the purpose of entering into a voluntary agreement for the OEM generator to extend its operations for the period required to address any system needs shortfall.
- (b) A notice published by the Minister under section 118AQ(2) of the *NEL*, following the entry by the Minister into a voluntary agreement must include the following information:
 - (1) the *Registered Participant* that is a party to the voluntary agreement;
 - (2) the duration of the voluntary agreement;
 - (3) any identified events or circumstances that may trigger a change in the term of the voluntary agreement;
 - (4) a statement confirming whether, prior to entering into the voluntary agreement, a market sounding process was undertaken by the Minister; and
 - (5) if no market sounding process was undertaken, the Minister must provide reasons for why the market sounding process was not undertaken.
- (c) A notice under section 118AQ(2) of the *NEL* may be published at the same time as the Minister makes publicly available the Minister's reasons for entering into the voluntary agreement under section 118AH(4) of the *NEL*.
- (d) If a voluntary agreement is entered into, the Minister must arrange for the estimated cost to consumers of that voluntary agreement to be published within 3 months of the date the voluntary agreement is entered into.

Part E Mandatory operation direction

4B.E.1 Definitions

In this Part:

MOD performance obligations has the meaning given in clause 4B.E.3(a);

MOD performance period has the meaning given in clause 4B.E.3(a);

non-restricted operating mode means that the relevant MOD generating unit may be operated without restriction for the duration of the mandatory operation period, subject to any specific performance obligations specified in the mandatory operation direction;

operating mode means:

- (a) non-restricted operating mode; or
- (b) restricted operating mode;

restricted operating mode means that the relevant MOD generating unit may only be operated in accordance with specific restrictions on operation, including specific restrictions on operation by reference to or triggered by (without limitation):

- (a) specific time periods;
- (b) specific capacity levels, operating limits; and/or
- (c) the occurrence of specific events,

as further described in the applicable mandatory operation direction.

4B.E.2 **Content of mandatory operation direction**

For the purpose of section 118AD(3) of the *NEL*, a mandatory operation direction must include the following information:

- (a) the MOD issue date;
- (b) the MOD performance obligations in accordance with clause 4B.E.3; and
- (c) the operating mode for the MOD generator in accordance with clause 4B.E.4.

4B.E.3 **MOD performance obligations**

- (a) The Minister will specify in a mandatory operation direction, the performance obligations of the MOD generator for the mandatory operation period (**MOD performance obligations**) covering the following matters:
 - (1) any time periods, including:
 - (i) by reference to specified hours of the day, days of the week, specified weeks and/or specified months, as applicable; and/or
 - (ii) time periods within which the MOD generating unit must be available to start within a defined period of a forecast shortfall,

arising during the mandatory operation period during which the MOD generator must make the *generation* capacity (in MW) of any or all of its MOD generating units available to AEMO, via participation in the wholesale exchange operated by AEMO in accordance with the *Rules* (**MOD performance period**) or any requirement to be available to start within a defined period of a forecast reliability shortfall (which may be defined by reference to a specific forecast *lack of reserve* condition declared by AEMO in accordance with clause 4.8.4(b) of the *Rules*);
 - (2) any required *generation* capacity (in MW) that the MOD generator must make available to the wholesale exchange operated during each *trading interval* arising during the MOD performance period; and

- (3) any other obligations determined by the Minister, and in each case to be set out in further detail in the mandatory operation direction.
- (b) The Minister may amend the MOD performance obligations by revoking the mandatory operation direction and reissuing a new direction in accordance with section 118AJ of the *NEL*.
- (c) The updated MOD performance obligations will take effect from the start of the next MOD financial year commencing during the mandatory operation period.

4B.E.4 MOD operating mode

The Minister will specify in a mandatory operation direction the operating mode for the MOD generator, being either:

- (a) non-restricted operating mode; or
- (b) restricted operating mode.

4B.E.5 MOD insurance requirements

- (a) The Minister may specify in a mandatory operation direction the insurance requirements that must be maintained by the MOD generator during the mandatory operation period.
- (b) For the purpose of clause 4B.E.5(a), the matters that may be specified in the mandatory operation direction may include (without limitation):
 - (1) the types of insurance and value;
 - (2) the period during which each insurance type is required;
 - (3) requirements relating to the minimum rating for the insurance provider; and
 - (4) a requirement for the Minister to have an insurable interest.
- (c) If the Minister does not impose insurance requirements in a mandatory operation direction under clauses 4B.E.5(a) and 4B.E.5(b), the MOD generator must maintain during the mandatory operation period, insurance that:
 - (1) is on reasonable commercial terms; and
 - (2) reflects prudent and commercial risk management consistent with *good electricity industry practice*.
- (d) A MOD generator must use all reasonable endeavours to meet the applicable insurance requirements in clauses 4B.E.5(a) to 4B.E.5(c).
- (e) If a MOD generator has used all reasonable endeavours to meet the applicable insurance requirements in clauses 4B.E.5(a) to 4B.E.5(c) but the MOD generator cannot obtain the relevant insurances on reasonable commercial terms, the MOD generator may apply to the AER for:
 - (1) approval of alternative insurance arrangements (which may include self-insurance); or
 - (2) a waiver of some or all of the applicable insurance requirements.

- (f) An application to the *AER* by a MOD generator under clause 4B.E.5(e) must:
- (1) be accompanied by supporting evidence to substantiate the MOD generator's application; and
 - (2) be made to the *AER* with sufficient time before the insurance requirements are required to be in place so that the *AER* has at least 20 *business days* to consider and determine the application.
- (g) The *AER* must consider an application made under clause 4B.E.5(e) and if the *AER* is satisfied that the relevant insurance requirements specified in clauses 4B.E.5(a) to 4B.E.5(c) cannot be met on reasonable commercial terms, the *AER* may:
- (1) approve the alternative insurance requirements sought by the MOD generator; or
 - (2) specify insurance requirements which, in the *AER*'s opinion, acting reasonably, could be obtained on reasonable commercial terms,
- in which case the MOD generator must comply with the requirements as determined by the *AER*, or
- (3) grant a waiver of some or all of the applicable insurance requirements.
- (h) The *AER* must use reasonable endeavors to determine the application made under clause 4B.E.5(e) within 20 *business days* of receiving the application.

4B.E.6**Relief from compliance with mandatory operation direction**

- (a) For the purpose of section 118AE(3)(a) of the *NEL*, a MOD generator is not required to comply with a performance obligation in a mandatory operation direction to the extent that it is unable to meet the obligation due to a safety issue or a force majeure event, during the period of time required to address the safety issue or force majeure event, provided the MOD generator has complied with the requirements set out in clause 4B.E.6(b).
- (b) Subject to clause 4B.E.6(c), the MOD generator must use reasonable endeavours (including by incurring reasonable costs) to:
- (1) overcome or avoid the force majeure event; and
 - (2) mitigate the effects or consequences of the force majeure event on the MOD generator's ability to comply with its performance obligations in a mandatory operation direction,
- in each case as soon as reasonably practicable.
- (c) If the MOD generator's reasonable estimate of the costs required to comply with clause 4B.E.6(b) (**FM costs**) exceeds:
- (1) \$10 million (or another amount notified to the MOD generator and the *AER* by the Minister) for capital expenditure or fixed O&M expenditure, then before incurring any such FM costs the MOD generator must notify the Minister and the *AER*; or

- (2) \$50 million (or another amount notified to the MOD generator and the *AER* by the Minister), then before incurring any such costs the MOD generator must consult with the Minister and the *AER* on the proposed FM costs and consider any feedback received from the Minister or the *AER* (to the extent that feedback is received within 10 *business days* of the MOD generator notifying the Minister and the *AER* of its proposed FM costs).
- (d) For the purpose of section 118AE(3)(b) of the *NEL*, the MOD generator must give the *AER*:
 - (1) all relevant information confirming the reason for the non-compliance, including information to evidence that the MOD generator took all reasonable steps and acted in accordance with *good electricity industry practice* to avoid the safety issue or force majeure event; and
 - (2) information setting out the MOD generator's proposal for addressing the issue, including details of the expected timeframe for rectification,

within 20 days (or such other period approved by the *AER* in writing) of the MOD generator becoming aware of the safety issue or a force majeure event.

Note: Clause 4B.J.1 provides for the *AER* to also impose requirements in relation to the manner and form such information must be provided and the verification of that information.

- (e) If the MOD generator becomes aware that it will not meet the expected timeframe for rectification notified under clause 4B.E.6(d)(2), it must advise the *AER* as soon as practicable and provide a revised expected timeframe for rectification.
- (f) For the purpose of section 118AK(2)(b) of the *NEL*, the Minister may request the *AER* provide advice on the extent to which a safety issue or a force majeure event will impact the MOD generator's ability to comply with the mandatory operation direction.
- (g) To assist the *AER* in preparing its advice to the Minister under clause 4B.E.6(f), the MOD generator must give the *AER* all relevant information to confirm the impact of the safety issue or force majeure event on the MOD generator's ability to comply with the mandatory operation direction.

Note: Clause 4B.J.1 provides for the *AER* to also impose requirements in relation to the manner and form such information must be provided and the verification of that information.

4B.E.7 Minister to make information public

For the purpose of section 118AF of the *NEL*, if the Minister issues a mandatory operation direction and the Minister did not undertake a market sounding process in accordance with clause 4B.C.5 prior to issuing the mandatory operation direction, the Minister must provide reasons for why the market sounding process was not undertaken and those reasons must be made publicly available.

Part F Payments to MOD generator

4B.F.1 Definitions

In this Part:

GPI financial transaction has the meaning given in clause 4B.F.5(c);

GPI financial transaction payment amount in respect of a generator payment instrument means the amount so determined by the *AER* in a generator payments determination in accordance with clause 4B.F.13 (and as may be adjusted under clause 4B.F.19, clause 4B.F.21 and clause 4B.F.23);

GPI financial transaction quantity has the meaning given in clause 4B.F.6(a)(3)(vii)(B);

negative fixed price true-up amount has the meaning given in clause 4B.F.20(c)(1)(ii);

outage risk means, in respect of each MOD generating unit, the risk of an *outage* during a period that the MOD generator is required to operate under the terms of the mandatory operation direction;

outage risk valuation means the MOD generator's valuation of the cost of outage risks arising during the mandatory operation period, carried out via one of the methods specified in clause 4B.F.18(b);

positive fixed price true-up amount has the meaning given in clause 4B.F.20(c)(1)(i);

pre-MOD amount means funds:

- (a) incurred by the MOD generator after the MOD issue date, but before the mandatory operation period, to the extent those funds relate to the continued operation of the MOD generating unit during the mandatory operation period; and
- (b) in an amount to be determined by the *AER* in a generator payments determination;

SRMC representative year has the meaning given in clause 4B.F.16(b);

transaction strike price has the meaning given in clause 4B.F.13(b); and **true-up amount** means any:

- (a) positive fixed price true-up amount; and
- (b) negative fixed price true-up amount.

Division 1 Generator payments

4B.F.2 Financial vehicle and MOD generator must make payments under payment orders made by the Minister

- (a) The financial vehicle must pay to the MOD generator the fixed payment amounts specified in a payment order issued by the Minister in accordance with clauses 4B.F.3(a)(1) and 4B.F.4, as amended from time to time in accordance with clause 4B.F.3(b).
- (b) The financial vehicle and the MOD generator must each pay to the other the payment amounts specified in a payment order, in the form of a generator payment instrument, issued by the Minister in

accordance with clauses 4B.F.3(a)(2) and clause 4B.F.5, as amended from time to time in accordance with clause 4B.F.3(b).

4B.F.3 Minister to make payment orders

- (a) For the purpose of section 118AY(1), (2) and (4) of the *NEL*, the Minister may make payment orders as follows:
- (1) a payment order for the payment of a fixed payment amount by the financial vehicle to the MOD generator, addressing the matters set out in clause 4B.F.4; and
 - (2) a payment order, in the form of a generator payment instrument, for the payment of:
 - (i) a GPI financial transaction payment amount by the financial vehicle to the MOD generator; and
 - (ii) amounts payable by the MOD generator to the financial vehicle, addressing the matters set out in clause 4B.F.5.
- (b) The Minister may amend:
- (1) any payment order for a fixed payment amount:
 - (i) to account for any changes to the components of a fixed payment amount following the issue of a new generator payments determination under clause 4B.F.20, clause 4B.F.21 or clause 4B.F.22;
 - (ii) to include any pre-MOD amount determined in a generator payments determination and any amounts the MOD generator is entitled to receive under clause 4B.F.7(c)(2) in respect of the pre-MOD amount;
 - (iii) to include any amount the MOD generator is entitled to receive under clause 4B.F.20(f) in respect of a positive fixed price true-up amount; and
 - (iv) to require payment on or after expiry of the mandatory operation period:
 - (A) by the MOD generator to the financial vehicle, to account for any over-recovery of fixed payment amounts by the MOD generator; or
 - (B) by the financial vehicle to the MOD generator, to account for any under-recovery of fixed payment amounts by the MOD generator;
 - (v) to account for any termination payment amount determined under clause 4B.G.1; and
 - (2) any generator payment instrument to account for any changes set out in a new generator payments determination issued under clause 4B.F.19, clause 4B.F.21, clause 4B.F.22 or clause 4B.F.23.
- (c) A payment order may be made before, during or after the mandatory operation period.

4B.F.4 Fixed payment amount

- (a) A payment order issued by the Minister in accordance with clause 4B.F.3(a)(1) must set out the fixed payment amounts to be paid by the financial vehicle to the MOD generator (**fixed payment amount**), in amounts:
- (1) to be determined by the AER under Division 2 of this Part (and as may be adjusted under clause 4B.F.21, clause 4B.F.22 and clause 4B.F.23) to compensate the MOD generator for its:
 - (i) capital expenditure;
 - (ii) fixed O&M costs;
 - (iii) restart costs; and
 - (iv) shutdown costs,
 with respect to the MOD generating unit for the mandatory operation period; and
 - (2) addressing each of the matters set out in the rest of this clause 4B.F.4.
- (b) The fixed payment amount will be specified in a generator payments determination in both:
- (1) a total amount for the duration of the mandatory operation period; and
 - (2) an amount for each MOD financial year.
- (c) Without limiting clause 4B.F.3, the payment order will provide that the fixed payment amount payable for each MOD financial year will be paid to the MOD generator by the financial vehicle in four instalments, with each instalment to be made at the start of each quarter of the MOD financial year.

4B.F.5 Generator payment instrument issued by the Minister

- (a) A generator payment instrument issued by the Minister in accordance with clause 4B.F.3(a)(2) must set out:
- (1) the GPI financial transaction payment amount to be paid by the financial vehicle to the MOD generator; and
 - (2) any amounts payable by the MOD generator to the financial vehicle,
- and the terms and conditions on which those payments are to be made, in accordance with the requirements set out in this clause 4B.F.5 and in clause 4B.F.6.
- (b) The GPI financial transaction payment amount specified in a generator payment instrument should be in an amount determined by the AER under Division 2 of this Part to compensate the MOD generator for its:
- (1) short run marginal costs incurred during the mandatory operation period; and
 - (2) recoverable margin.
- (c) A generator payment instrument issued by the Minister may be in the

form of any one or more of the following financial transactions (each a **GPI financial transaction**):

- (1) a financial swap payments transaction in respect of quantities of electricity (in MWh);
- (2) a financial cap payments transaction in respect of quantities of electricity (in MWh), where the financial cap must be set at the *administered price cap* specified under clause 3.14.1; or
- (3) any other form of financial transaction relating to quantities of electricity that may be bid for dispatch in the wholesale exchange operated by *AEMO* under the *NEL*.

4B.F.6 Generator payment instrument content requirements

- (a) A generator payment instrument issued by the Minister may include any of the following matters in relation to a GPI financial transaction:
 - (1) the term of the GPI financial transaction (which must be during the mandatory operation period), including any events that may result in an extension to the term;
 - (2) the applicable *trading intervals* within the term;
 - (3) the payment terms, including (as applicable):
 - (i) the GPI financial transaction payment amount; and
 - (ii) in the case of a financial swap payments transaction, the GPI financial transaction strike price payable to the MOD generator,

in an amount determined by the *AER* in a generator payments determination and in instalments as may be determined by the Minister;
 - (iii) any amounts payable by the MOD generator under the GPI financial transaction, including details of how such amount or amounts are calculated or determined (including, for example, by reference to a specified *regional reference price* under the *Rules* for each applicable *trading interval*);
 - (iv) the netting or setting off of amounts payable to and by the MOD generator under sub-paragraphs 4B.F.6(a)(3)(i), 4B.F.6(a)(3)(ii) and 4B.F.6(a)(3)(iii);
 - (v) the effective date on which the payment terms will commence;
 - (vi) any other terms and conditions applicable to the settlement of payment amounts under the GPI financial transaction (including the time periods within which payments will be settled between the parties); and
 - (vii) a quantity of electricity (in MWh):
 - (A) per applicable *trading interval* (arising during the term) in respect of which payments (per *trading interval*) may be required to be made by the parties under the GPI financial transaction; and

- (B) (in the case of a financial swap payments transaction) in aggregate, in respect of all amounts payable over the term (**GPI financial transaction quantity**); and
- (4) subject to clause 4B.F.6(b), a provision which specifies that to the extent a force majeure event affects the ability of the MOD generating unit to generate electricity, the obligations of the MOD generator and the financial vehicle to make payments to each other pursuant to a GPI financial transaction will be reduced proportionately to reflect the actual amount of electricity capable of being generated by the MOD generating unit (if any) for the duration of that force majeure event.
- (b) A reference to a force majeure event in clause 4B.F.6(a)(4) means a force majeure event for which the MOD generator, acting prudently, has not been able to obtain insurance on reasonable commercial terms.

Division 2 **AER generator payments determination**

4B.F.7 **Generator payments determination – content and process**

- (a) By no later than the date of commencement of the mandatory operation period, the *AER* must, in accordance with the process outlined in this Division 2 of Part F, make a generator payments determination to determine the total amount and components of the generator payments referred to in clause 4B.F.2.
- (b) The generator payments determination must identify the following amounts in aggregate for the duration of the mandatory operation period and separately for each MOD financial year:
 - (1) the fixed payment amount payable by the financial vehicle to the MOD generator under clause 4B.F.4;
 - (2) the recoverable margin, including the fair margin component (in each case determined in accordance with clause 4B.F.12);
 - (3) the GPI financial transaction payment amount to be the subject of any generator payment instrument, determined in accordance with clause 4B.F.13(a); and
 - (4) in the case of a financial swap payments transaction, the transaction strike price calculated in accordance with clause 4B.F.13(b).
- (c) If the generator payments application specifies any estimated pre-MOD amount:
 - (1) the *AER* must assess and determine in the generator payments determination, the total amount of any such pre-MOD amount (being an amount that must only include those costs that are additional to the costs that the MOD generator would have incurred if the MOD generator had closed the MOD generating unit on the date nominated in the early closure proposal); and
 - (2) if the *AER* determines a pre-MOD amount, the MOD generator is entitled to the payment of interest at the *bank bill rate* for the period between:

- (i) the date the relevant pre-MOD amount was incurred by the MOD generator (as determined by the *AER*); and
 - (ii) the date on which the pre-MOD amount is made by the financial vehicle.
- (d) To calculate the amounts specified in clause 4B.F.7(b), the generator payments determination must also determine a forecast of the prudent, efficient and reasonable expenditure likely to be required by the MOD generator both in aggregate for the mandatory operation period and separately for each MOD financial year for each of the following categories of expenditure or cost (itemised and in total) for each MOD generating unit:
 - (1) capital expenditure (including a breakdown of recurring capital costs and non-recurring capital costs);
 - (2) fixed O&M costs;
 - (3) shutdown costs and restart costs;
 - (4) short run marginal costs (excluding fuel costs), to be determined in accordance clause 4B.F.10; and
 - (5) fuel costs, to be determined in accordance with clause 4B.F.11.
- (e) When making the generator payments determination the *AER* must:
 - (1) take into account:
 - (i) any submissions provided by the Minister, the financial vehicle or the MOD generator (in accordance with clauses 4B.F.8(a) and 4B.F.8(c));
 - (ii) the generator payments application made by the MOD generator to the *AER* in accordance with Division 3 of this Part F;
 - (iii) any information the *AER* has received under Part B;
 - (iv) any financial due diligence audit and/or technical due diligence audit;
 - (v) any ongoing information provided to the *AER* by the MOD generator; and
 - (vi) any other information available and considered relevant by the *AER*, including but not limited to, any advice from independent experts or consultants and other information the *AER* has been made aware of; and
 - (2) when determining the fixed payment amount in respect of a MOD financial year, deduct an amount not exceeding the amount of any additional MOD generator revenue in respect of that MOD financial year.
- (f) If the *AER* takes into account advice from an independent expert or consultant as referred to in clause 4B.F.7(e)(1)(vi), the *AER* must provide the relevant advice to the MOD generator, the financial vehicle and the Minister.
- (g) For the purpose of making a generator payments determination, the *AER* may request and the MOD generator must provide, copies of any

billing arrangements between the MOD generator and any MOD affiliates in order for the *AER* to substantiate the matters set out in the generator payments application made by the MOD generator under Division 3 of this Part F.

4B.F.8 *AER* to make draft generator payments determination

- (a) By no later than 3 months after the MOD issue date, the Minister and the financial vehicle may each make a submission to the *AER* setting out any information or details relevant to the *AER*'s generator payments determination.
- (b) Following receipt of the generator payments application from the MOD generator under Division 3 of this Part F and any submissions by the Minister and the financial vehicle under clause 4B.F.8(a), the *AER* must make a draft generator payments determination of the matters referred to in clause 4B.F.7, and must provide a copy of the draft generator payments determination to the Minister, the financial vehicle and the MOD generator.
- (c) By no later than 20 *business days* (or such other time determined by *AER* and notified to recipients) of receiving the draft generator payments determination, the MOD generator, financial vehicle and Minister may each make submissions to the *AER* in response to the draft generator payments determination, to provide the *AER* with information and details relevant to the *AER* making a final determination in accordance with clause 4B.F.9.

4B.F.9 *AER* to make final generator payments determination

- (a) The *AER* must:
 - (1) consider any submissions made under clause 4B.F.8(c) and any other information made available to the *AER*; and
 - (2) within 2 months of receiving those submissions, issue its final generator payments determination to the MOD generator, the Minister and the financial vehicle.
- (b) The *AER* must use reasonable endeavours to issue the final generator payments determination by no later than 6 months before the commencement of the term of any generator payment instrument.
- (c) The *AER* must, at the same time as it makes a final generator payments determination, prepare reasons for its determination and provide those reasons to the MOD generator, the Minister and the financial vehicle as part of its final generator payments determination.

4B.F.10 *Process for determining short run marginal costs (excluding fuel costs)*

- (a) Subject to clause 4B.F.10(b) and 4B.F.10(c), to make a determination of the short run marginal costs, the *AER* must use details of the SRMC representative year as the basis for assessing the short run marginal costs specified in the generator payments application.
- (b) The amounts specified in the SRMC representative year will be subject to adjustments required to:

- (1) take into account inflation, using such:
 - (i) industry, sector or other benchmarks or indicators, relating to labour costs and other short run marginal costs of production; or
 - (ii) other methodology, that the *AER* determines is likely to result in the best estimates of expected inflation in respect of those short run marginal costs; and
 - (2) remove any material, isolated costs that were incurred in the SRMC representative year that cannot be classed as recurrent costs.
- (c) For the purpose of this clause 4B.F.10, the short run marginal costs exclude fuel costs.

4B.F.11 Process for determining fuel costs

In determining the forecast fuel price to be used when the *AER* determines fuel costs, the *AER* may take into account the following matters:

- (a) whether the MOD generator's actual or proposed fuel contracting strategy reflects a prudent, efficient and reasonable strategy for a generator in the position of the MOD generator, having regard to previous fuel sourcing strategies and fuel costs and, where appropriate, the use of market based sourcing strategies;
- (b) whether the MOD generator has demonstrated that it has undertaken all reasonable steps to reveal an efficient market price for fuel;
- (c) current market prices and the forward price of fuel;
- (d) previous *spot market* offers and bidding behaviour by the MOD generator (as well as by other *Generators* and *Market Participants* in the *spot market* generally) and other *market* information, to form a view on the MOD generator's proposed fuel costs (as set out in the generator payments application);
- (e) the MOD generator's previous contracting strategies and existing fuel supply contracts;
- (f) research produced by suitably qualified analysts on coal or other fuel costs, stockpile and storage levels, current fuel contracting arrangements and pricing, as well as future fuel supply options;
- (g) independent advice from expert consultants, if engaged; and
- (h) benchmark price indices and forward prices.

4B.F.12 Process for determining recoverable margin

- (a) To determine the fair margin component of the recoverable margin, the *AER* must have regard to the following principles:
 - (1) the extent to which the assets to be used by the MOD generator to comply with the MOD performance obligations are depreciated, acknowledging that but for the mandatory operation direction the MOD generator would have ceased to operate the relevant assets;

- (2) the reduction in risk to the MOD generator as a result of the generator payments;
 - (3) that the fair margin component is not intended to incentivise new investment or innovation by the MOD generator beyond what is required to allow the MOD generator to comply with the mandatory operation direction;
 - (4) that the fair margin component should only apply to the level of generation:
 - (i) required by the MOD generating unit; and
 - (ii) as specified the mandatory operation direction; and
 - (5) that the fair margin component should not provide a margin or return on the MOD generator's fixed O&M costs and capital expenditure for the mandatory operation period.
- (b) The recoverable margin determined by the *AER* must also include an allowance for the cost to the MOD generator of managing its outage risk, taking into account the MOD generator's proposal regarding the cost of outage risk as set out in the generator payments application.
- (c) In assessing the MOD generator's outage risk valuation, the *AER* may have regard to (without limitation):
- (1) the options available to the MOD generator to manage the risk, including how it might operate each MOD generating unit's *plant* or rely on any reserve capacity maintained by the MOD generator, where applicable;
 - (2) independent advice from expert consultants; and
 - (3) any other information the *AER* considers relevant to determine the outage risk.
- (d) The cost of managing outage risk must not include the cost of purchasing any insurance product to insure the MOD generator against the risk of any penalty for non-compliance with or breach of the mandatory operation direction by the MOD generator.

4B.F.13 Process for determining GPI financial transaction payment amount and transaction strike price

- (a) Subject to clauses 4B.F.13(b) and 4B.F.13(c), the GPI financial transaction payment amount must be an amount per MOD financial year equal to the sum of the MOD generator's:
- (1) short run marginal costs; and
 - (2) recoverable margin,
- for that MOD financial year, as may be redetermined under clause 4B.F.19, 4B.F.21 or 4B.F.23.
- (b) If the financial transaction instrument is in the form of a financial swap payments transaction, then the GPI financial transaction payment amount determined for a MOD financial year under clause 4B.F.13(a) must be converted to a (\$/MWh) transaction strike price for that MOD financial year by dividing the GPI financial transaction payment amount for that MOD financial year by the GPI financial transaction

quantity for that MOD financial year (**transaction strike price**) and that transaction strike price may be redetermined under clause 4B.F.19, 4B.F.21 or 4B.F.23.

- (c) If the financial transaction instrument is in the form of a financial cap payments transaction, fuel costs (in the amount determined by the *AER* in the generator payments determination), must be excluded from the *AER*'s calculation of the GPI financial transaction payment amount.

Division 3 Generator to make generator payments application to *AER*

4B.F.14 Content requirements for generator payments application

- (a) By no later than 3 months after the MOD issue date, the MOD generator must make an application to the *AER* setting out details of the proposed costs to be incurred by the MOD generator over the mandatory operation period in accordance with the content and process requirements of this Division 3 of Part F.
- (b) The generator payments application must include:
- (1) details of the MOD generator's reasonable ex ante forecast of the following matters with respect to the MOD generating unit for the duration of the mandatory operation period and separately for each MOD financial year:
 - (i) capital expenditure (which must include the capital expenditure information specified in clause 4B.F.15);
 - (ii) short run marginal costs (which must include the information specified in clause 4B.F.16), excluding holding costs and fuel costs;
 - (iii) holding costs;
 - (iv) fuel costs (which must include the details set out in clause 4B.F.17);
 - (v) details of the scheduled number, timing and duration of planned *outages* required for each MOD generating unit to comply with:
 - (A) the MOD performance obligations; and
 - (B) the proposed maintenance schedule and sourcing strategy referred to in clause 4B.F.14(b)(3),
including details of the MOD generator's associated shutdown costs and restart costs;
 - (vi) fixed O&M costs;
 - (vii) a proposed recoverable margin, including an outage risk valuation (in accordance with clause 4B.F.18); and
 - (viii) details of all additional MOD generator revenue, including details of whether that revenue is sourced from a *market*, contracts or other sources;
 - (2) details to substantiate any forecasted amounts referred to in clause 4B.F.14(b)(1); and
 - (3) the MOD generator's proposed maintenance schedule and

sourcing strategy for maintenance with respect to each generating unit (**proposed maintenance schedule**).

- (c) The generator payments application may also specify any estimated pre-MOD amount incurred (or to be incurred) by the MOD generator, along with details to:
- (1) substantiate the estimated pre-MOD amount; and
 - (2) demonstrate how the pre-MOD amount relates to the continued operation of the MOD generating unit during the mandatory operation period.

4B.F.15 Capital expenditure information

For any capital expenditure specified in the generator payments application, the MOD generator must include the following information (**capital expenditure information**):

- (a) the need for the expenditure;
- (b) proposed timing for the expenditure;
- (c) a statement of reasons to justify the cost as a prudent, efficient and reasonable operating cost that is required to be incurred during the mandatory operation period; and
- (d) details of whether the proposed expenditure:
 - (1) is consistent with the MOD generator's historical practice for past costs of a similar nature; and
 - (2) uses competitive market sourcing.

4B.F.16 Representative year for short run marginal costs

To substantiate the MOD generator's estimate of the short run marginal costs forecast to be incurred during the mandatory operation period, the MOD generator must specify:

- (a) details of the actual variable costs incurred by the MOD generator in each of the previous 3 *financial years*, including to identify whether any such costs were material 'one off' costs that were incurred during that year but which cannot be classed as recurrent costs; and
- (b) specify the MOD generator's best estimate of the different variable costs incurred by a MOD generator in connection with operating the MOD generating unit in any given *financial year* (**SRMC representative year**) with supporting reasons for why the MOD generator considers that the specified amounts are representative of the nature and amount of the MOD generator's typical variable costs for operating the MOD generating unit in a *financial year*.

4B.F.17 Details of fuel costs

In respect of the MOD generator's forecast fuel costs, the generator payments application must include details of the MOD generator's:

- (a) proposed fuel sourcing strategy for the mandatory operation period;
- (b) historic fuel sourcing strategy and fuel costs; and
- (c) the reasonable steps taken by the MOD generator to reveal an

efficient market price for fuel.

4B.F.18 Proposed recoverable margin (including fair margin component and outage risk valuation)

- (a) The generator payments application must include the MOD generator's proposed recoverable margin, including to identify:
 - (1) an estimated fair margin component; and
 - (2) an outage risk valuation in accordance with clause 4B.F.18(b).
- (b) The outage risk valuation may be proposed via one of the following methods in respect of the estimated outage risk cost:
 - (1) a valuation based on the cost of purchasing a hedge or insurance product against the risk of unfunded difference payments under any GPI financial transaction; or
 - (2) a valuation based on an estimation of the probability of the incidence and value of unfunded difference payments under any GPI financial transaction.
- (c) The outage risk valuation must not include the cost of purchasing any insurance product to insure the MOD generator against the risk of any penalty for non-compliance with or breach of the mandatory operation direction by the MOD generator.
- (d) Where the outage risk valuation is based on:
 - (1) the method in clause 4B.F.18(b)(1), the MOD generator must demonstrate to the satisfaction of the *AER* that:
 - (i) it has undertaken all reasonable efforts to competitively source quotes that are likely to reveal the prudent, reasonable and efficient cost of insuring against the outage risk (taking account of the condition of the *plant* and a prudent and efficient level of maintenance expenditure consistent with *good electricity industry practice*); and
 - (ii) that there is a viable market for this form of risk; or
 - (2) the method in clause 4B.F.18(b)(2), the MOD generator must demonstrate to the satisfaction of the *AER* that its method for estimation is robust and represents the prudent, reasonable and efficient cost of managing the outage risk.
- (e) To assist the *AER* in its assessment of the MOD generator's outage risk valuation, the outage risk valuation must include details of the following in respect of each MOD generating unit the subject of the mandatory operation direction:
 - (1) in respect of the past 3 *financial years*, details of the type, duration, cost and reasons for:
 - (i) planned and unplanned maintenance; and
 - (ii) *outage* events; and
 - (2) details of any forecast *outages* for planned maintenance to the extent known by the MOD generator.

Division 4 Changes to MOD generator payment amounts

4B.F.19 AER annual GPI financial transaction payment amount reassessment

- (a) By no later than 2 months before the beginning of each MOD financial year (except for the first MOD financial year), the *AER* must reassess the GPI financial transaction payment amount to apply for the next MOD financial year (**annual GPI financial transaction payment amount reassessment**), to determine whether that amount should be adjusted to appropriately compensate the MOD generator for:
- (1) any changes to the MOD generator's forecast short run marginal costs; and
 - (2) its recoverable margin,
- and if the *AER* determines such an adjustment is necessary, then the *AER* must redetermine the GPI financial transaction payment amount (in addition to the transaction strike price in the case of a financial swap payments transaction) for that MOD financial year in accordance with the rest of this clause 4B.F.19.
- (b) In undertaking an annual GPI financial transaction payment amount reassessment, the *AER* must have regard to:
- (1) any annual performance report previously provided in accordance with clause 4B.H.1; and
 - (2) any other information available to the *AER*, that the *AER* considers relevant, including advice or reports from independent consultants and experts.
- (c) If the *AER* considers any advice or reports received from independent consultants for the purpose of undertaking the annual GPI financial transaction payment amount reassessment, the *AER* must provide the Minister, MOD generator and financial vehicle with a copy of the relevant reports and/or advice.
- (d) If following an annual GPI financial transaction payment amount reassessment the *AER* considers that the GPI financial transaction payment amount (in addition to the transaction strike price in the case of a financial swap) should be adjusted, the *AER* must, by no later than 2 months before the commencement of the next MOD financial year:
- (1) revoke the generator payments determination and make a new generator payments determination; and
 - (2) issue that generator payments determination to the MOD generator, the Minister and the financial vehicle.
- (e) For the avoidance of doubt:
- (1) the adjustment referred to in clause 4B.F.19(d) may be a positive or negative amount; and
 - (2) fuel costs must be excluded from the *AER*'s calculation of the GPI financial transaction payment amount in circumstances where the applicable financial transaction instrument is in the form of a financial cap payments transaction.
- (f) The *AER* must, at the same time as it makes a determination under this clause 4B.F.19, prepare reasons for its determination and provide those reasons to the MOD generator, the Minister and financial vehicle

as part of its determination.

**4B.F.20
costs**

AER annual assessment of actual capital expenditure and fixed O&M

- (a) By no later than 45 days after the end of a MOD financial year, the MOD generator must submit the following information to the *AER* for that MOD financial year:
- (1) details of the actual:
 - (i) capital expenditure; and
 - (ii) fixed O&M costs, incurred by the MOD generator;
 - (2) in relation to planned and unplanned *outages*, details of:
 - (i) the actual number of, timing and duration of each planned and unplanned *outage*, including actual restart costs and shutdown costs incurred by the MOD generator; and
 - (ii) the extent to which the *outages* referred to in clause 4B.F.20(a)(2)(i) are consistent with the MOD generator's proposed maintenance schedule.
- (b) If following the *AER*'s review of:
- (1) the information submitted by the MOD generator under clause 4B.F.20(a), the *AER* determines that the actual costs incurred by the MOD generator for the items specified in clause 4B.F.20(a) differ from the amounts specified for those costs in the generator payments determination; or
 - (2) an annual performance report submitted by the MOD generator in accordance with clause 4B.H.1 in respect of a MOD financial year, the *AER* determines that any amount paid or payable to the MOD generator comprises additional MOD generator revenue in respect of that (or the next) MOD financial year,
- the *AER* will revoke the generator payments determination and must, in accordance with clause 4B.F.20(c), make a new generator payments determination and issue that generator payments determination to the MOD generator, the Minister and the financial vehicle.
- (c) In a new generator payments determination made by the *AER*, the *AER* may (as applicable):
- (1) subject to clause 4B.F.20(d) and clause 4B.F.20(e), adjust the fixed payment amount payable for the next MOD financial year by:
 - (i) increasing the amount payable for the next MOD financial year, if the MOD generator's actual costs for the items specified in clause 4B.F.20(a) exceeded the fixed payment amount already paid to the MOD generator, by an amount determined by the *AER* as the difference between the two amounts (**positive fixed price true-up amount**); or
 - (ii) reducing the fixed payment amount for the next MOD

financial year, if the MOD generator's actual costs for the items specified in clause 4B.F.20(a) were less than the fixed payment amount already paid to the MOD generator, by an amount determined by the *AER* as the difference between the two amounts (**negative fixed price true-up amount**); and

- (2) adjust the fixed payment amount payable to the MOD generator for the next MOD financial year by deducting from it all of that additional MOD generator revenue determined by the *AER* under clause 4B.F.20(b)(2).
- (d) The *AER* will only make the adjustment contemplated in clause 4B.F.20(c)(1) in the following circumstances:
- (1) the *AER* is satisfied that the MOD generator followed the proposed maintenance schedule that was specified in the generator payments application for the MOD financial year; or
 - (2) where any maintenance of the MOD generating unit differs from the proposed maintenance schedule that was specified in the generator payments application for the MOD financial year:
 - (i) the MOD generator provides the *AER* with information to demonstrate that the change to the proposed maintenance schedule is prudent, efficient and consistent with *good electricity industry practice*; and
 - (ii) the *AER* is satisfied that the change to the proposed maintenance schedule is prudent, efficient and consistent with *good electricity industry practice*.
- (e) To the extent the MOD generator's actual costs for the items specified in clause 4B.F.20(a) are FM costs, any true-up amount will only include those FM costs if the MOD generator complied with clause 4B.E.6(c) in relation to those costs.
- (f) If the *AER* adjusts the fixed payment amount for the next MOD financial year:
- (1) by a positive fixed price true-up amount and issues a new generator payments determination under clause 4B.F.20(b), the MOD generator is entitled to the payment of interest at the *bank bill rate* on the positive fixed price true-up amount for the period between:
 - (i) the date the costs attributable to the positive fixed price true-up amount were incurred by the MOD generator (being a date determined by the *AER* based on information submitted to it by the MOD generator); and
 - (ii) the date on which the adjusted fixed payment amount is made by the financial vehicle to the MOD generator; or
 - (2) by a negative fixed price true-up amount and issues a new generator payments determination under clause 4B.F.20(b), the fixed payment amount will be further reduced to account for the accrual of interest at the *bank bill rate* on the negative fixed price true-up amount for the period between:

- (i) the date the MOD generator incurred actual costs for the amounts that were forecast to be covered by the negative fixed price true-up amount (being a date determined by the *AER* based on information submitted to it by the MOD generator); and
- (ii) the date on which the adjusted fixed payment amount is made by the financial vehicle to the MOD generator.

4B.F.21 Application by MOD generator for review of generator payments determination

Definitions

- (a) In this clause 4B.F.21:
 - adverse event** has the meaning given in clause 4B.F.21(c);
 - generator payments review application** has the meaning given in clause 4B.F.21(b);
 - material unforeseen capital or fixed O&M expenditure** has the meaning given in clause 4B.F.21(c)(1); and
 - material unforeseen short run marginal costs** has the meaning given in clause 4B.F.21(c)(2).
- (b) At any time during the mandatory operation period, in the circumstances set out in clause 4B.F.21(c), the MOD generator may apply to the *AER* for the *AER* to review the generator payments determination (**generator payments review application**).
- (c) The MOD generator may make a generator payments review application if an event that is beyond the reasonable control of the MOD generator has occurred and the occurrence of that event (or of an event of a similar kind) could not have been reasonably foreseen by the MOD generator at the time the generator payments determination was made (**adverse event**); and
 - (1) in the case of any additional capital expenditure or fixed O&M costs;
 - (i) the MOD generator would be required to undertake the additional capital expenditure or fixed O&M costs to rectify the consequences of the adverse event;
 - (ii) there is no existing allowance for the capital expenditure or fixed O&M costs; and
 - (iii) the total capital expenditure or fixed O&M costs required to rectify the consequences of the adverse event will exceed \$10 million (or another amount notified by the Minister to the MOD generator and *AER*) of the value of the total capital expenditure forecast for the remaining mandatory operation period, (**material unforeseen capital or fixed O&M expenditure**); or
 - (2) in the case of any additional short run marginal costs:
 - (i) there is no existing allowance for the short run marginal costs; and

- (ii) the total short run marginal costs required to rectify the adverse consequences will exceed:
 - (A) the aggregate value of the fair margin component determined by the *AER* for the mandatory operation period (as set out in the generator payments determination); or
 - (B) any other amount notified by the Minister to the MOD generator and *AER*,

(material unforeseen short run marginal costs).
- (d) The generator payments review application must include:
 - (1) details of each of the items specified in 4B.F.21(c)(1) and/or 4B.F.21(c)(2) (as applicable); and
 - (2) any other information notified by the *AER* to the MOD generator.
- (e) Following its receipt of a generator payments review application, the *AER* will review the generator payments determination and seek submissions from the MOD generator, financial vehicle, the Minister and may consult with other persons as it considers appropriate in relation to the application.
- (f) The *AER* may revoke the generator payments determination if:
 - (1) in relation to material unforeseen capital or fixed O&M expenditure, the Minister has approved that expenditure; or
 - (2) in relation to material unforeseen short run marginal costs, the *AER* is satisfied with each of the matters in clause 4B.F.21(c).
- (g) If the *AER* revokes the generator payments determination, the *AER* must, in accordance with clause 4B.F.21(h), make a new generator payments determination and issue that generator payments determination to the MOD generator, the Minister and the financial vehicle.
- (h) The amounts included in a new generator payments determination made by the *AER* must:
 - (1) only vary from those specified in the revoked generator payments determination to the extent necessary to reflect the material unforeseen capital or fixed O&M expenditure and/or material unforeseen short run marginal costs (as applicable), net of any losses recovered or recoverable by the MOD generator via:
 - (i) insurance proceeds (including where those proceeds are reasonably likely to be recoverable);
 - (ii) other proceeds from any settlement with a third party; or
 - (iii) any other amounts that are separately recoverable by the MOD generator; and
 - (2) not include the excluded amounts specified in clause 4B.F.21(i).
- (i) The amounts in a generator payments determination must not be adjusted to the extent the material unforeseen capital or fixed O&M expenditure and/or material unforeseen short run marginal costs were

caused or contributed to by any:

- (1) negligent act or omission; or
- (2) willful misconduct,

of the MOD generator or any MOD affiliate (or any employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer, contractor or sub-contractor of the MOD generator or any MOD affiliate).

4B.F.22 Application by MOD generator for incremental rehabilitation costs

- (a) In this clause 4B.F.22:

incremental rehabilitation costs amount means the amount of incremental rehabilitation costs determined to be paid to the MOD generator by the financial vehicle under an incremental rehabilitation costs determination;

incremental rehabilitation costs application means an application by the MOD generator to the *AER* for an incremental rehabilitation costs determination under this clause 4B.F.22.

- (b) If a MOD generator considers that upon closure of the MOD generating unit at the end of the mandatory operation period, the MOD generator will incur incremental rehabilitation costs and those costs have not already been provided for in the generator payments determination, then the MOD generator may make an incremental rehabilitation costs application to the *AER*.
- (c) An incremental rehabilitation costs application must be made to the *AER* at least 12 months prior to the end of the mandatory operation period and must include the following information:
- (1) details of the amount, nature and scope of the incremental rehabilitation costs; and
 - (2) information to substantiate those incremental rehabilitation costs.
- (d) The *AER* must as soon as practicable after receiving an incremental rehabilitation costs application under clause 4B.F.22(c), provide a copy of that application to the Minister and the financial vehicle and invite submissions on the application within a reasonable timeframe determined by the *AER*.
- (e) If the *AER* receives any submissions from the Minister or the financial vehicle under clause 4B.F.22(d), the *AER* must provide those submissions to the MOD generator and take them into account when making its determination.
- (f) If the MOD generator has made an incremental rehabilitation costs application, the *AER* will determine the amount of any incremental rehabilitation costs to be paid to the MOD generator in accordance with clause 4B.F.22(g) (**incremental rehabilitation costs determination**) and the *AER* will aim to make any such determination at least six months before the end of the mandatory operation period.
- (g) In making an incremental rehabilitation costs determination, the *AER*:
- (1) must consider:

- (i) the incremental rehabilitation costs application;
 - (ii) any other information available to the *AER* which the *AER* considers is relevant, including any independent expert advice or reports that the *AER* considers relevant; and
 - (iii) any submissions received by the *AER* from the Minister or financial vehicle; and
- (2) may exclude any amount that the *AER* considers (acting reasonably) is attributable to a negligent act or omission by the MOD generator or MOD affiliates (or any contractor engaged by the MOD generator or MOD affiliates).
- (h) If the *AER* obtains any independent expert advice or reports as part of the determination process, it must provide that advice to the Minister, the financial vehicle and the MOD generator, invite submissions from the Minister, MOD generator and financial vehicle in relation to that advice within 20 *business days*, and consider:
- (1) the expert advice or reports; and
 - (2) any submission received from the Minister, MOD generator and financial vehicle in relation to the expert advice or reports,
- when making its determination.
- (i) The *AER* must provide its incremental rehabilitation costs determination to the Minister, the financial vehicle and to the MOD generator.
- (j) If the incremental rehabilitation costs determination provides for the MOD generator to recover an incremental rehabilitation costs amount then the *AER* must:
- (1) revoke the generator payments determination and substitute it with a new generator payments determination in which any remaining fixed payment amounts are proportionately adjusted to include incremental rehabilitation costs amount; and
 - (2) issue that generator payments determination to the MOD generator, the Minister and the financial vehicle.
- (k) The *AER* must, at the same time as it makes a determination under this rule 4B.F.22, prepare reasons for its determination and provide those reasons to the MOD generator, the Minister and the financial vehicle at the same time as it provides its determination.

4B.F.23 Application by Minister for review of short run marginal costs

- (a) In this clause 4B.F.23:
- Minister SRMC review application** has the meaning given in clause 4B.F.23(b);
- SRMC review threshold** has the meaning given in clause 4B.F.23(c).
- SRMC true-up amount** has the meaning given in clause 4B.F.23(e).
- (b) By no later than 20 *business days* after the Minister receives the annual performance report for a MOD financial year, in the circumstances set out in clause 4B.F.23(c), the Minister may make an

application to the *AER* for the *AER* to review the generator payments determination for that MOD financial year (**Minister SRMC review application**).

- (c) The Minister may submit a Minister SRMC review application if the Minister considers (acting reasonably) that the actual short run marginal costs incurred by the MOD generator for the MOD financial year the subject of the annual performance report, differs from the short run marginal costs specified in the generator payments determination for that MOD financial year by the threshold amount provided for in clause 4B.F.21(c)(2)(ii)(A) (**SRMC review threshold**).
- (d) Following its receipt of a Minister SRMC review application, the *AER* will review the generator payments determination and seek submissions from the Minister, financial vehicle, the MOD generator and may consult with other persons as it considers appropriate in relation to the application.
- (e) If the *AER* determines that:
 - (1) the actual short run marginal costs incurred by the MOD generator for the MOD financial year differ from the short run marginal costs specified in the generator payments determination for that MOD financial year (**SRMC true-up amount**); and
 - (2) the SRMC true-up amount exceeds the SRMC review threshold, the *AER* must revoke the generator payments determination and, in accordance with clause 4B.F.23(f), make a new generator payments and issue that generator payments determination to the MOD generator, the Minister and the financial vehicle.
- (f) In a new generator payments determination made by the *AER*, the *AER* may adjust the GPI financial transaction payment amount (in addition to the transaction strike price in the case of a financial swap) by:
 - (1) increasing the GPI financial transaction payment amount by the SRMC true-up amount, if the MOD generator's actual short run marginal costs for the MOD financial year exceeded the short run marginal costs component of the GPI financial transaction payment amount for that MOD financial year; or
 - (2) reducing the GPI financial transaction payment amount by the SRMC true-up amount, if the MOD generator's actual short run marginal costs for the MOD financial year were less than the short run marginal costs component of the GPI financial transaction payment amount for that MOD financial year.

4B.F.24 AER may request further information

- (a) The *AER* may, by written request, require the MOD generator to provide any further information that the *AER* reasonably requires to undertake any assessment and make a determination under this Part F.
- (b) The MOD generator must comply with an information request under clause 4B.F.24(a).

Note: Clause 4B.J.1 provides for the *AER* to also impose requirements in relation to the manner and form such information must be provided and the verification of that information.

Division 5 Making of contribution determination by the *AER*

4B.F.25 Making of contribution determination by the *AER*

- (a) The *AER* must, when making a contribution determination in accordance with sections 118AZA and 118AZB of the *NEL*, consult with the financial vehicle and take into account and reflect payments received or expected to be received by the financial vehicle under a generator payment instrument.
- (b) The *AER* may, when making a contribution determination, apportion the amounts payable by each *Distribution Network Service Provider* in a way that the *AER* considers appropriate.
- (c) The *AER* must, at the same time as it makes a contribution determination, prepare reasons for its determination and provide those reasons as part of its contribution determination.
- (d) The *AER* must make its contribution determination for a MOD financial year at least 4 months before the start of that MOD financial year.

4B.F.26 Making of contribution order by the financial vehicle

A contribution order made by the financial vehicle under section 118AZC of the *NEL* may include requirements, as determined by the *AER* in a contribution determination, for the adjusting or smoothing of the timing of payment of OEM payment amounts by the *Distribution Network Service Provider* to the financial vehicle such that, as far as is reasonably practicable, the variations in the amounts to be recovered each *financial year* are minimised.

4B.F.27 Recovery of OEM payments by distribution network service providers

In recovering OEM payments from *Distribution Customers*, a *Distribution Network Service Provider*:

- (a) may adjust or smooth the timing of payment of OEM payment amounts by *Distribution Customers* to the relevant *Distribution Network Service Provider* such that, as far as is reasonably practicable, the variations in the amounts to be recovered from *Distribution Customers* each *financial year* are minimised;
- (b) must ensure that any under or over recovery of amounts charged by the relevant *Distribution Network Service Provider* to *Distribution Customers* to recover the OEM payment amounts are accounted for and appropriately reconciled so that under recoveries are recovered by the *Distribution Network Service Provider* and over recoveries are returned to the *Distribution Network Service Provider's* customers in accordance with accepted distribution pricing practices; and
- (c) must comply with any guidelines issued by the *AER* in relation to the recovery of OEM payment amounts from *Distribution Customers*.

Division 6 Surplus funds at end of mandatory operation period

In this Division:

Contributing DNSP has the meaning given in clause 4B.F.29(a);

Refund Payment has the meaning given in clause 4B.F.29(b);

Surplus OEM Funds means the amount of surplus funds held in the orderly exit management fund after expiry or termination of the mandatory operation period, as determined under clause 4B.F.28; and

Reported Surplus Funds has the meaning given in clause 4B.F.28(a).

4B.F.28 Determination of surplus funds at end of mandatory operation period

- (a) For the purpose of section 118AV(2)(b) of the *NEL*, by no later than 2 months after the expiry or termination of the mandatory operation period, the financial vehicle must prepare and submit to the Minister and the *AER*, a report setting out:
- (1) the total funds held by the orderly exit management fund;
 - (2) details of any funds payable but not yet paid into the orderly exit management fund;
 - (3) details of any reasonably anticipated amounts duly payable from the orderly exit management fund in accordance with section 118AV(1); and
 - (4) the financial vehicle's assessment of the total amount of surplus funds held (or to be held) in the orderly exit management fund once:
 - (i) the amounts referred to in 4B.F.28(a)(2) are paid into the fund; and
 - (ii) the amounts referred to in 4B.F.28(a)(3) are paid out of the fund,

(Reported Surplus Funds).
- (b) The *AER* and Minister will consider any report provided by the financial vehicle under clause 4B.F.28(a) and within 3 months of the date of the notice, notify the financial vehicle that the *AER* or Minister (as applicable):
- (1) has no objection to the amount of Reported Surplus Funds; or
 - (2) objects to the amount of Reported Surplus Funds,
- and if the Minister or *AER* (as applicable) does not provide a response within this period, the Minister or *AER* (as applicable) will be taken to have no objection to the Reported Surplus Funds.
- (c) The financial vehicle must provide any further information or details reasonably required by the *AER* or Minister during the period specified in clause 4B.F.28(b) to assist the *AER* and Minister in making an assessment of the financial vehicle's report.
- (d) If the Minister or *AER* object to the Reported Surplus Funds, the Minister, *AER* and the financial vehicle must use reasonable endeavours to agree on the amount of Surplus OEM Funds and if this cannot be agreed within 2 months of the end of the period specified in clause 4B.F.28(b), the Minister can determine the amount of Surplus

OEM Funds by notice to the *AER* and financial vehicle within a further 1 month period.

- (e) If the Minister does not make a determination under clause 4B.F.28(d) then the Surplus OEM Funds will be the amount of Reported Surplus Funds as specified in the financial vehicle's report provided under clause 4B.F.28(a).

4B.F.29 Payment of surplus funds to electricity consumers

- (a) If an amount of Surplus OEM Funds is agreed or determined under clause 4B.F.28, the financial vehicle must, in accordance with the rest of this clause 4B.F.29, refund the Surplus OEM Funds to any *Distribution Network Service Provider* that made OEM payments under contribution orders during the mandatory operation period (**Contributing DNSP**).
- (b) If there is more than one Contributing DNSP, each Contributing DNSP will be allocated an amount of Surplus OEM Funds that reflects the OEM payments made by that Contributing DNSP, as a proportion of the total OEM payments made by all Contributing DNSPs during the mandatory operation period (**Refund Payment**).
- (c) The financial vehicle must make each Refund Payment no later than the end of the first *financial year* arising immediately after the end of the mandatory operation period.

Part G Termination of Mandatory Operation Direction

4B.G.1 Termination Payment Application

- (a) In this clause:
- termination payment** means a payment amount specified in a termination payment determination which is to be paid to the MOD generator by the financial vehicle;
- termination payment application** means an application made by a MOD generator in accordance with clauses 4B.G.1(b) to 4B.G.1(d) (inclusive);
- termination payment determination** has the meaning given in clause 4B.G.1(e).
- (b) If a mandatory operation direction is terminated under section 118AK of the *NEL* the MOD generator may make an application for the *AER* to determine a termination payment to recover any unavoidable incremental loss incurred by the MOD generator as a result of the termination.
- (c) A termination payment application must be made to the *AER* within three months after the date of termination of the mandatory operation direction.
- (d) A termination payment application:
- (1) must include the MOD generator's reasonable assessment of any incremental loss it has incurred in respect of the termination, except that it cannot include any excluded losses; and

- (2) may include incremental rehabilitation costs if such costs have not been the subject of an incremental rehabilitation costs determination under clause 4B.F.22.
- (e) If the MOD generator has made a termination payment application, the *AER* must, determine the amount of any termination payment to be paid to the MOD generator, in accordance with clauses 4B.F.22(g) to 4B.G.1(l) (inclusive) (**termination payment determination**).
- (f) When making a termination payment determination the *AER* must:
 - (1) consider the termination payment application and any other information available to the *AER* which the *AER* considers is relevant;
 - (2) conduct and take into account any consultations with the Minister or any independent experts that it considers necessary; and
 - (3) ensure that any termination payment only provides for the recovery of loss incurred by the MOD generator as a result of the termination of the mandatory operation direction and does not include any excluded losses.
- (g) If the *AER* takes into account advice from an independent expert or consultant as referred to in clause 4B.G.1(f)(2), the *AER* must provide the relevant advice to the MOD generator, the financial vehicle and the Minister.
- (h) The *AER* must:
 - (1) aim to make a draft termination payment determination within 6 months of receiving the termination payment application; and
 - (2) provide a copy of the draft termination payment determination to the Minister, the financial vehicle and the MOD generator.
- (i) By no later than 2 months of receiving the draft termination payment determination, the Minister, financial vehicle and/or MOD generator may make submissions to the *AER* in response to the draft termination payment determination.
- (j) The *AER* must consider any submissions made under clause 4B.G.1(i) and any other information made available to the *AER* (that the *AER* considers relevant) and must issue its final termination payment determination to the Minister, financial vehicle and the MOD generator.
- (k) If the termination payment determination made by the *AER* provides for the MOD generator to be paid a termination payment then any remaining fixed payment amounts must be proportionately adjusted to include that amount or if there are no remaining fixed payment amounts then the termination payment may be paid as a lump sum.
- (l) The *AER* must, at the same time as it makes a termination payment determination, prepare reasons for its determination and provide those reasons as part of its final termination payment determination.

Part H Annual Performance Report by MOD Generator

4B.H.1 Annual Performance Report

- (a) For the purpose of section 118AR of the *NEL*, the annual performance report must:
- (1) be prepared for each MOD financial year during the mandatory operation period; and
 - (2) be provided to the Minister, *AER* and financial vehicle no later than 45 days after the end of the MOD financial year to which the report relates.
- (b) The annual performance report must address each of the following matters (with supporting information):
- (1) the MOD generator's compliance with each requirement of the mandatory operation direction, which must be prepared and submitted in a manner and form specified by the *AER*. The manner and form of the annual performance report may include requirements for:
 - (i) an *independent person* to audit the MOD generator's compliance with the mandatory operation direction; and
 - (ii) for the information contained in the report to be verified by the MOD generator in a manner to be specified by the *AER*;
 - (2) all revenue received or earned by the MOD generator from any source (including details of whether the revenue was sourced from a *market*, contracts or other source) for the past 3 *financial years*, including but not limited to:
 - (i) attributable settlements in energy, ancillary and other security markets; and
 - (ii) the outcomes of financial risk management products and fuel price risk contracts;
 - (3) the costs attributable to the MOD generator and, where relevant, the specific MOD generating unit, including the following actual costs incurred during the past 3 *financial years*:
 - (i) capital expenditure;
 - (ii) fixed O&M costs (excluding shutdown costs and restart costs);
 - (iii) shutdown costs;
 - (iv) restart costs;
 - (v) short run marginal costs (excluding fuel costs and holding costs);
 - (vi) fuel costs;
 - (vii) holding costs;
 - (viii) any other significant costs related to the MOD generator not closing the MOD generating unit (including a pre-agreed allowance for incremental rehabilitation costs); and
 - (ix) taxation expenses;
 - (4) the MOD generator's forecast of each of the following for the

next MOD financial year and annually thereafter for the remainder of the mandatory operating period:

- (i) revenues attributable to the MOD generator including:
 - (A) attributable settlements in energy, ancillary and other security markets; and
 - (B) the outcomes of approved financial risk management products and fuel price risk contracts;
 - (ii) capital expenditure (along with estimated timing for that capital expenditure);
 - (iii) fixed O&M costs (excluding shutdown costs and regard costs), along with estimated timing for those fixed O&M costs;
 - (iv) short run marginal costs (excluding fuel costs and holding costs);
 - (v) fuel costs;
 - (vi) holding costs;
 - (vii) restart costs;
 - (viii) shutdown costs;
 - (ix) any other costs incurred; and
 - (x) incremental costs associated with the continued operation of the MOD generating unit, for example, incremental site rehabilitation costs;
- (5) the duration, scope and cost of any forecast maintenance (to be provided for the next MOD financial year and annually thereafter for the remainder of mandatory operation period);
 - (6) the process for sourcing services for capital works during the MOD financial year, including details of whether it was in line with historical practice and whether competitive sourcing was used;
 - (7) the proposed process for sourcing services for capital works in the next MOD financial year, including details of whether it will be in line with historical practice or whether competitive sourcing will be used;
 - (8) the process for sourcing fuel during the MOD financial year, including details of whether it was in line with historical practice and whether competitive sourcing was used;
 - (9) the proposed process for sourcing fuel in the next MOD financial year, including details of whether it will be in line with historical practice or whether competitive sourcing will be used;
 - (10) the process for sourcing other services during the MOD financial, including details of whether it was in line with historical practice and whether competitive sourcing was used;
 - (11) the proposed process for sourcing other services in the next MOD financial year, including details of whether it will be in line

- with historical practice or whether competitive sourcing will be used;
- (12) the technical condition of each MOD generating unit;
 - (13) restart reliability (in terms of length of time taken and the percentage of full capacity achieved) for each starting or restarting of a shutdown MOD generating unit during the MOD financial year;
 - (14) the number, timing and duration of each planned and unplanned *outage* of each MOD generating unit during the MOD financial year, including details of any restart costs and shutdown costs incurred;
 - (15) the scheduled number, timing and duration of each planned *outage* for each MOD generating unit for the next MOD financial year;
 - (16) the nature and extent of any planned or proposed development:
 - (i) relating to or impacting on the availability or performance of any MOD generating unit; or
 - (ii) of any other facilities proposed to be located at or adjacent to the site on which any MOD generating unit is located; and
 - (17) any other matter notified to the MOD generator by the *AER* at least 3 months prior to the end of the relevant *financial year*.
- (c) The *AER* may, by written request at least 3 months prior to the end of the relevant *financial year*, require the MOD generator to include in the annual performance report any other information specified in that request.
 - (d) The MOD generator must comply with the written request under clause 4B.H.1(c).

Part I Financial Matters and financial vehicle cost recovery

4B.I.1 Functions of financial vehicle

- (a) For the purpose of section 118AS of the *NEL*, the financial vehicle will have the following additional functions and powers:
 - (1) administer the orderly exit management fund;
 - (2) comply with and implement any generator payment instrument and other contracts necessary for the implementation and support of the orderly exit management framework under Part 8AA of the *NEL* and this Chapter 4B; and
 - (3) enter into financing or other credit support arrangements on behalf of the orderly exit management fund (with the amounts of any such funding arrangements to be paid into the orderly exit management fund).
- (b) The financial vehicle has power to do all things necessary or convenient to be done for or in connection with the performance of its functions

4B.I.2 Administration of the orderly exit management fund

(a) In this clause 4B.I.2:

Australian Accounting Standards means the standards issued by the Australian Accounting Standards Board, as in force from time to time; and

Australian Accounting Standards Board means the Australian Government agency of that name established under the *Australian Securities and Investments Commission Act 2001*.

- (b) The Minister may issue directions with respect to the administration of the orderly exit management fund.
- (c) Any such directions issued by the Minister under clause 4B.I.1(a) must be published to the market.
- (d) The financial vehicle must administer the fund in accordance with any directions given by the Minister under clause 4B.I.2(b).
- (e) The financial vehicle must, as soon as practicable after the end of each *financial year* prepare a financial report about the orderly exit management fund and the operation of the generator payment instrument.
- (f) The financial report must be prepared in accordance with the Australian Accounting Standards.

4B.I.3 Determination of costs incurred by AEMO and the AER

(a) The Minister must:

- (1) consult with and consider feedback from *AEMO* when determining the costs incurred by *AEMO* for the purposes of section 118AZA(1)(c)(i) of the *NEL*; and
- (2) determine those costs on a non-profit basis that provides for full recovery of *AEMO*'s costs for performing the relevant service or function.

(b) The Minister must, consult with and consider feedback from the *AER* when determining the costs incurred by the *AER* for the purposes of section 118AZA(1)(c)(i) of the *NEL*.

4B.I.4 Orderly exit management contribution

(a) An orderly exit management contribution to be made by a *Distribution Network Service Provider* under section 118AZA of the *NEL* may include the following amounts which the Minister will determine:

- (1) amounts the Minister is required to pay under a voluntary agreement;
- (2) any costs incurred by the Minister in determining system needs and undertaking the investigation for alternative solutions under Part C;
- (3) any costs incurred by the Minister in implementing an alternative to issuing a mandatory operation direction; and
- (4) any costs reasonably incurred by the relevant *Distribution Network Service Provider* in complying with the requirements of

a contribution order and a *jurisdictional scheme* which:

- (i) the relevant *Distribution Network Service Provider* has provided to the Minister within 6 weeks of the end of the *financial year* to which those costs relate; and
 - (ii) the Minister has accepted as reasonably incurred.
- (b) The *AER* must include any amounts determined by the Minister under clause 4B.I.4(a) and advised to the *AER* in a contribution determination made under section 118AZB of the *NEL*.
- (c) With respect to the amounts specified in clause 4B.I.4(a), the Minister will advise the *AER* by 30 November of the relevant amounts for the next *financial year*.

4B.I.5 Contribution Orders

A contribution order made by the financial vehicle under section 118AZC of the *NEL* may provide for the payment of one or more OEM payments by the relevant *Distribution Network Service Provider* in both the year to which the contribution order relates and the following year.

Part J Information Requirements

4B.J.1 Information requirements

Where, under this Chapter 4B:

- (a) a person provides information to the *AER* or *AEMO*;
 - (b) the *AER* or *AEMO* may require a person to provide information; or
 - (c) a person is required to provide information to the *AER* or *AEMO*,
- then the *AER* or *AEMO* may also impose a requirement on the provision of that information with respect to:
- (d) the manner and form in which that information must be provided;
 - (e) the verification and/or auditing of that information as determined by the *AER*, which may include verification that the information is true and correct, complete and not false or misleading in any material respect; and
 - (f) the timeframe within which that information must be provided (including to vary the timeframe specified under any other provision of this Chapter 4B).

Part K AER Guidelines

4B.K.1 AER Guidelines

The *AER* may make and publish guidelines setting out how it will undertake its functions under Part 8AA of the *NEL* and this Chapter 4B.

Schedule 2 Amendment to the National Electricity Rules

(Clause 4)

[1] **Clause 4A.G.2**

[A] In clause 4A.G.2 insert a new paragraph (e) as follows:

- (e) A MOD generator (as defined in Chapter 4B of the *Rules*) is not a *Market Generator* for the purposes of this Chapter 4A of the *Rules*.

[2] **Clause 6.6.1A**

[A] In clause 6.6.1A(a), after the words "*jurisdictional scheme amounts*" insert "or pass through of *jurisdictional scheme refund amounts*".

[B] In clause 6.6.1A(b)(3)(i) after the words "estimate the *jurisdictional scheme amounts* for the *relevant jurisdictional scheme* for the purposes of clause 6.18.7A(b)" insert "or estimate the *jurisdictional scheme refund amounts* for the *relevant jurisdictional scheme* for the purposes of clause 6.18.7A(c)".

[C] In clause 6.6.1A(b)(3)(ii):

- i. after the words "estimate the *jurisdictional scheme amounts* for the *relevant jurisdictional scheme* for the purposes of clause 6.18.7A(b) insert "and estimate the *jurisdictional scheme refund amounts* for the *relevant jurisdictional scheme* for the purposes of clause 6.18.7A(c)"; and
- ii. after the words "carry out any adjustments to *jurisdictional scheme amounts* for the *relevant jurisdictional scheme* for the purposes of clause 6.18.7A(b)" insert "and carry out any adjustments to *jurisdictional scheme refund amounts* for the *relevant jurisdictional scheme* for the purposes of clause 6.18.7A(c)".

[D] In clause 6.6.1A(b)(3)(iii) delete the reference to "(c)" and replace it with "(d)".

[E] In clause 6.6.1A(e), after the words "*jurisdictional scheme amounts*" insert "or pass through of *jurisdictional scheme refund amounts*".

[3] **Clause 6.12.1 Constituent decisions**

[A] In clause 6.12.1(20), after the words "*jurisdictional scheme amounts*" insert "and pass through of *jurisdictional scheme refund amounts*".

[4] **Clause 6.18.7A Recovery of jurisdictional scheme amounts**

[A] In clause 6.18.7A, delete paragraph (a) and replace it with the following:

- (a) A pricing proposal must provide for tariffs designed to pass on or through to customers a *Distribution Network Service Provider's*:
- (1) *jurisdictional scheme amounts* for *approved jurisdictional schemes*; and
 - (2) *jurisdictional scheme refund amounts* for *approved jurisdictional schemes*.

- [B] In clause 6.18.7A(b) omit the first reference to “amount” and replace it with “*jurisdictional scheme amount*” and omit the reference to “paragraph (c)” and replace it with “paragraph (c1)”.
- [C] In clause 6.18.7A after paragraph (b), delete existing paragraph (c) and replace it with the following:
- (c) The *jurisdictional scheme refund amounts* to be passed through to customers for a particular *regulatory year* must equal the amount of *jurisdictional scheme refund amounts* for a *Distribution Network Service Provider’s approved jurisdictional schemes* received for that *regulatory year*, adjusted if necessary for over or under recovery under paragraph (c1).
- [D] In clause 6.18.7A, insert the following as new paragraph (c1):
- (c1) The over and under recovery amount referred to in paragraph (b) or (c), as applicable, must be calculated in a way that:
- (1) subject to subparagraphs (2) and (3) below, is consistent with the method determined by the *AER* for:
 - (i) *jurisdictional scheme amounts*; or
 - (ii) *jurisdictional scheme refund amounts*,

in the relevant distribution determination for the *Distribution Network Service Provider*, or where no such method has been determined, with the method determined by the *AER* in the relevant distribution determination in respect of *designated pricing proposal charges*;
 - (2) ensures a *Distribution Network Service Provider* is able to, as applicable:
 - (i) recover from customers no more and no less than the *jurisdictional scheme amounts* it incurs; and
 - (ii) pass through to customers no more and no less than the *jurisdictional scheme refund amounts* it receives; and
 - (3) adjusts for an appropriate cost of capital that is consistent with the *allowed rate of return* used in the relevant distribution determination for the relevant *regulatory year*.
- [E] In clause 6.18.7A(e), after subparagraph (3) insert the following:
- (4) a contribution order made under section 118AZC of the *NEL* directing a *Distribution Network Service Provider* to make payments to the orderly exit management fund established in a participating jurisdiction under section 118AT of the *NEL* and recovery of those amounts from electricity consumers under section 118AZD of the *NEL* and the *Rules*; and
 - (5) any refund amount payable in accordance with section 118AZD of the *NEL* and the *Rules*.

[5] **Chapter 10 Glossary**

- [A] In Chapter 10, insert the following new definition in alphabetical order:

jurisdictional scheme refund amounts

In respect of a *jurisdictional scheme*, the amounts a *Distribution Network Service Provider* is entitled under the *jurisdictional scheme* to:

- (a) be paid by a person;
- (b) be paid from a fund established under an Act or Regulations of a participating jurisdiction;
- (c) have credit against charges or amounts payable by the *Distribution Network Service Provider*; or
- (d) have reimbursed to the *Distribution Network Service Provider* by a person.

[B] In limb (b) of the definition of *jurisdictional scheme amounts*, insert the words 'or Regulations' after the words 'an Act'.

[C] In the definition of *jurisdictional scheme obligations*:

- i. include the words 'subject to (c)' at the beginning of limb (a);
- ii. delete the word 'or' at the end of limb (a);
- iii. delete '.' at the end of limb (b) and replace it with '; or'; and
- iv. insert the following as new limb (c) of the definition:
 - (c) a contribution order made under section 118AZC of the *NEL* directing a *Distribution Network Service Provider* to make payments to the orderly exit management fund established in a participating jurisdiction under section 118AT of the *NEL* and recovery of those amounts from electricity consumers under section 118AZD of the *NEL* and the *Rules*.