

# National Electricity Rules Version 23

## Status Information

This is a draft consolidation based on the latest electronically available version of the National Electricity Rules as at 20 November 2008.

This draft consolidated version of the National Electricity Rules includes the following draft amendment:

National Electricity Amendment (Easement Land Tax Pass Through) Rule 2008 No. 11

This version of the National Electricity Rules only contains the Chapters of the National Electricity Rules that are amended by the Rule.

This version of the National Electricity Rules is provided for information purposes only. The Australian Energy Market Commission does not guarantee the accuracy, reliability or completeness of this draft consolidated version. The National Electricity Amendment (Easement Land Tax Pass Through) Rule 2008 No. 11 is published separately on the website of the Australian Energy Market Commission.

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**CHAPTER 11**



## 11. Savings and Transitional Rules

### Part A Negative Inter-Regional Settlements Residue (2006 amendments)

#### 11.1 Rules consequent on making of the National Electricity Amendment (Negative Inter-Regional Settlements Residue) Rule 2006

##### 11.1.1 Recovery of accrued negative settlements residue

- (a) Clause 3.6.5(a)(4), as in force immediately before 1 July 2006 which is the date the National Electricity Amendment (Negative Inter-Regional Settlements Residue) Rule 2006 commences operation, continues to apply to any negative *settlements residue* amounts arising before 1 July 2005 and not recovered as at 1 July 2005 until all such negative amounts have been recovered.
- (b) Where negative *settlements residue* amounts arise on or after 1 July 2005 and are not recovered before 1 July 2006 which is the date the National Electricity Amendment (Negative Inter-Regional Settlements Residue) Rule 2006 commences operation, then:
  - (i) the whole or any part of the amount may be recovered from the proceeds of the first *auction* after 1 July 2006 which is the date the National Electricity Amendment (Negative Inter-Regional Settlements Residue) Rule 2006 commences operation; and
  - (ii) if the whole or a part of the amount is not recoverable under clause 11.1.1(b)(i), the unrecovered amount may be recovered from the proceeds of successive *auctions* until the negative amount is recovered.
- (c) Clause 3.6.5(a)(4A), as in force immediately before 30 June 2009, continues to apply to any *negative settlements residue* amounts arising on or after 1 July 2006 but before 30 June 2009, and not recovered as at 30 June 2009, until all such negative amounts have been recovered.

##### 11.1.2 Recovery of interest costs associated with accrued negative settlements residue

- (a) Where interest costs interest costs incurred by *NEMMCO* in relation to any unrecovered negative *settlements residue* amounts referred to in clause 3.6.5(a)(4A) arise on or after 1 July 2005 and are not recovered before 1 July 2006 which is the date the National Electricity Amendment (Negative Inter-Regional Settlements Residue) Rule 2006 commences operation, then:

- (i) the whole or any part of the interest costs may be recovered from the proceeds of the first *auction* after 1 July 2006 which is the date the National Electricity Amendment (Negative Inter-Regional Settlements Residue) Rule 2006 commences operation; and
  - (ii) if the whole or a part of the interest costs are not recoverable under clause 11.1.2(b)(i), the unrecovered interest costs may be recovered from the proceeds of successive *auctions* until the interest costs are recovered.
- (b) Clause 3.6.5(a)(4B), as in force immediately before 30 June 2009, continues to apply to any interest costs arising on or after 1 July 2006 but before 30 June 2009, and not recovered as at 30 June 2009, until all such interest costs have been recovered.

## Part B System Restart Ancillary Services (2006 amendments)

### 11.2 Rules consequent on making of the National Electricity Amendment (System Restart Ancillary Services and pricing under market suspension) Rule 2006 No.6

#### 11.2.1 Transitional provision for acquisition of non-market ancillary services

- (a) For the purposes of clause 11.2.1:

**Amending Rule** means the National Electricity Amendment (System Restart Ancillary Services and pricing under market suspension) Rule 2006.

**Existing NMAS contract** means an *ancillary services agreement* between *NEMMCO* and another person to acquire *non-market ancillary services* from that person, entered into prior to the NMAS commencement date.

**NMAS commencement date** means the date of commencement of the National Electricity Amendment (System Restart Ancillary Services and pricing under market suspension) Rule 2006;

- (b) On the *NMAS* commencement date
- (1) Any action taken by *NEMMCO* or a *Rules body* prior to the *NMAS* commencement date in anticipation of the commencement of the Amending Rule is deemed to have been taken for the purpose of the Amending Rule and continues to have effect for that purpose.
  - (2) *NEMMCO* may continue to acquire *non-market ancillary services* under an existing *NMAS* contract and may extend the period of an

existing *NMAS* contract for such period as *NEMMCO* and that person reasonably determine.

- (3) At any time when no *system restart standard* under clause 8.8.3(a)(1a) is in force, *NEMMCO* must develop and *publish* an interim *system restart standard* that is:
- (i) consistent with the requirements in clause 8.8.3(a); and
  - (ii) approved by the *Reliability Panel*;

and the interim *system restart standard* applies until such time as the *Reliability Panel* determines a *system restart standard*.

### 11.3 [Deleted]

## Part C Dispute Resolution for Regulatory Test (2006 amendments)

### 11.4 Rules consequent on making of the National Electricity Amendment (Dispute Resolution for Regulatory Test) Rule 2006

#### 11.4.1 Continuation of things done under old clause 5.6.6

- (a) For the purposes of clause 11.4.1:

**amending Rule** means the National Electricity Amendment (Dispute Resolution for Regulatory Test) Rule 2006

**commencement date** means the date of commencement of the amending Rule

**new clause 5.6.6** means clause 5.6.6 after the commencement of the amending Rule

**old clause 5.6.6** means clause 5.6.6 before the commencement of the amending Rule.

- (b) On the commencement date:

- (1) any dispute commenced under the old clause 5.6.6 and not completed before the commencement date, must continue to be conducted and completed as if it were a dispute commenced in accordance with the old clause 5.6.6.
- (2) Subject to clause 11.4.1(b)(1), any action taken under the old clause 5.6.6 is deemed to have been taken for the purposes of the corresponding requirement in the new clause 5.6.6 and continues to have effect for those purposes.

## Part D Metrology (2006 amendments)

### 11.5 Rules consequential on the making of the National Electricity Amendment (Metrology) Rule 2006

#### 11.5.1 Definitions

For the purposes of this rule 11.5:

**Amending Rule** means the National Electricity Amendment (Metrology) Rule 2006.

**commencement date** means the day on which the Amending Rule commences operation.

**old Chapter 7** means Chapter 7 of the *Rules* as in force immediately before the commencement date.

**new Chapter 7** means Chapter 7 of the *Rules* as in force immediately after the commencement date.

#### 11.5.2 Metrology procedures continues to apply until 31 December 2006

A metrology procedure as in force under the old Chapter 7 continues in force in accordance with the old Chapter 7 until 31 December 2006.

#### 11.5.3 Responsible person

A *Local Network Service Provider* who is the responsible person for a *metering installation* under Chapter 9 of the *Rules* immediately before the commencement date continues to be the *responsible person* for that *metering installation* for the purposes of clause 7.2.3.

#### 11.5.4 NEMMCO's responsibility to develop a metrology procedure

- (a) Subject to this clause 11.5.4, *NEMMCO* must *publish* an initial metrology procedure by 1 January 2007 in accordance with the new Chapter 7 and this procedure must commence operation on 1 January 2007.
- (b) The requirement in clause 7.14.1(b) that requires a minimum period of 3 months between the date the *metrology procedure* is published and the date the *metrology procedure* commences does not apply to the initial metrology procedure developed and published under this clause 11.5.4.
- (c) Any action taken by *NEMMCO* for the purpose of developing and publishing an initial metrology procedure prior to the commencement date is taken to satisfy the equivalent actions required for a *metrology procedure* under the new Chapter 7.

- (d) *NEMMCO* may dispense with, or not comply with, any relevant action under rule 7.14, if the action duplicates or is consistent with action that has already been taken under paragraph (c).
- (e) An initial metrology procedure developed and published under this clause 11.5.4 is taken to be the *metrology procedure* for the purposes of Chapter 7 of the *Rules*.
- (f) The initial metrology procedure is not required to incorporate the matters referred to in clause 7.14.1(c)(4) until 30 June 2008 and *NEMMCO* may develop a separate procedure for those matters during that period to 30 June 2008.

#### **11.5.5 Jurisdictional metrology material in the metrology procedure**

- (a) For the purposes of this clause 11.5.5, **expiry date** means 1 January 2009.
- (b) Until the expiry date, the *Ministers of the MCE* is taken to be each *Minister of the participating jurisdictions*, acting on behalf of that jurisdiction and undertaking the role of the *Ministers of the MCE* in relation to *jurisdictional metrology material* under clause 7.14.2.
- (c) For the avoidance of doubt, a *Minister of a participating jurisdiction* may delegate the role of submitting *jurisdictional metrology material* to *NEMMCO* under paragraph (b) by instrument in writing.
- (d) A certified copy of any delegation given under paragraph (c) must be provided to *NEMMCO* at the time any *jurisdictional metrology material* is submitted to *NEMMCO* under clause 7.14.2.

[**Note:** Ministers of participating jurisdiction have powers of delegation under their own jurisdictional legislation governing the procedure for conferring such delegations.]

## **Part E Economic Regulation of Transmission Services (2006 amendments)**

### **11.6 Rules consequent on making of the National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006**

#### **11.6.1 Definitions**

Subject to this rule 11.6, in this rule 11.6:

**Amending Rule 2006** means the National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006.



**commencement date** means the date on which the *Amending Rule 2006* commences operation.

**current regulatory control period** means the regulatory control period applicable to an existing revenue determination.

**distribution matters** includes matters relating to the economic regulation of *distribution services*, including, but not limited to, existing determinations, decisions, instruments, agreements or any other relevant action.

**ElectraNet** means ElectraNet Pty Ltd ACN 094 482 416 trading as ElectraNet.

**existing revenue determination** means any determination made, or deemed to be made, by the *ACCC* or the *AER* on or prior to the commencement date for the purpose of regulating the revenues of a *Transmission Network Service Provider*.

**first regulatory control period** means a *regulatory control period* immediately after a current regulatory control period.

**first revenue cap determination** means the first *revenue cap determination* after an existing revenue cap determination.

**new Chapter 6A** means Chapter 6A of the *Rules* as in force immediately after the commencement of the *Amending Rule 2006*.

**old Chapter 6** means Chapter 6 of the *Rules* as in force immediately before the commencement of the *Amending Rule 2006*.

**old clause 6.5.9** means clause 6.5.9 of the *Rules* as in force immediately before the commencement of the *Amending Rule 2006*.

**old Part C** means Part C (Transmission Pricing) of Chapter 6 of the *Rules* as in force immediately before the commencement of the *Amending Rule 2006*.

**old Part F** means Part F (Interconnections) of Chapter 6 of the *Rules* as in force immediately before the commencement of the *Amending Rule 2006*.

**relevant action** includes (without limitation) any of the following actions in relation to *distribution* matters:

- (a) the performance or exercise of any function, power, obligation or right;
- (b) the making or publishing of any guideline, standard, procedure, report, negotiating framework or other document;
- (c) the giving, publishing, service or receipt of any communication, notice or other document;
- (d) the provision or receipt of any submission or information;

- (e) the making or receiving any inquiry, request or application;
- (f) the undertaking or completion of any transaction;
- (g) the payment of any monetary amount or fee.

**renumbered Chapter 6** means Chapter 6 of the *Rules* as in force immediately after the commencement of the *Amending Rule 2006*.

**SP AusNet** means SPI PowerNet Pty Ltd ACN 079 798 173.

**Statement of Regulatory Principles** means the Statement of Principles published by the *AER* as part of the Compendium of Electricity Transmission Regulatory Guidelines dated August 2005.

**VENCorp** means the Victorian Energy Networks Corporation established under the Gas Industry Act 1994 (Vic) and continued under the Gas Industry Act 2001 (Vic).

### 11.6.2 **New Chapter 6A does not affect existing revenue determinations**

- (a) Subject to this rule 11.6, the old Chapter 6 continues to apply to and in respect of, existing revenue determinations as if the new Chapter 6A had not been made.
- (b) The Amending Rule 2006 has no effect on the continuing operation of clause 9.8.4G.
- (c) The Amending Rule 2006 has no effect on the continuing operation of clause 9.16.5 in so far as it:
  - (1) applies to deem a revenue cap for the *financial year* commencing on 1 July 2004;
  - (2) specifies the basis on which prices for certain transmission services during the *financial year* commencing on 1 July 2004 are to be determined;
  - (3) specifies the manner in which clause 6.4.3C of the old Chapter 6 is to apply for the *financial year* commencing on 1 July 2005; and
  - (4) deems a revenue cap for the period commencing on 1 July 2004 until the end of 30 June 2009 to be for a period of five years.

### 11.6.3 **Old Part C and Schedules 6.2, 6.3, 6.4, 6.7 and 6.8 of old Chapter 6**

Subject to this rule 11.6 and rule 11.8, old Part C (including Schedules 6.2, 6.3, 6.4, 6.7 and 6.8) continues to apply for the duration of a current regulatory control period.

#### **11.6.4 Old Part F of Chapter 6**

Subject to this rule 11.6, old Part F of Chapter 6 continues to apply for the duration of a current regulatory control period.

#### **11.6.5 Application of new Chapter 6A to Transmission Network Service Providers**

Subject to this rule 11.6, a *Transmission Network Service Provider* is not required to submit a *Revenue Proposal* or a proposed *negotiating framework* to the *AER* under the new Chapter 6A until a date that is 13 months before the expiry of a current regulatory control period.

#### **11.6.6 Application of Chapter 6 to old distribution matters**

- (a) The restructuring and renumbering of provisions of the old Chapter 6 by the *Amending Rule 2006* does not affect:
  - (1) *distribution* matters occurring or in existence before the commencement date; or
  - (2) anything done or omitted to be done in respect of *distribution* matters before the commencement date.
- (b) Without limiting paragraph (a), anything done or omitted to be done under a provision of the old Chapter 6 in respect of *distribution* matters before the commencement date is deemed to have been done or omitted to be done under the corresponding provision of that Chapter as restructured and renumbered by the *Amending Rule 2006*, as if that Rule had been in operation when the thing was done or omitted to be done.

#### **11.6.7 References to the old Chapter 6**

Unless the context otherwise requires, on and from the commencement date every reference to the old Chapter 6 in a document (however described) is deemed to be a reference to the renumbered Chapter 6 or the new Chapter 6A (as the case may be).

#### **11.6.8 References to provisions of the old Chapter 6**

Unless the context otherwise requires, on and from the commencement date every reference to a provision of the old Chapter 6 in a document (however described) is deemed to be a reference to the corresponding provision of the renumbered Chapter 6 or the corresponding provision (if any) of the new Chapter 6A (as the case may be).

### **11.6.9 Roll forward of regulatory asset base for first regulatory control period**

In making a *revenue determination* for the first *regulatory control period*, the value of the regulatory asset base at the beginning of the first *regulatory year* of that period calculated in accordance with clause S6A.2.1(f), may be adjusted having regard to an existing revenue determination and any other arrangements agreed between the *AER* and the *Transmission Network Service Provider*.

### **11.6.10 Other adjustment carry-over mechanisms from current to first regulatory control period**

The *maximum allowed revenue* that a *Transmission Network Service Provider* may earn in any *regulatory year* of the first *regulatory control period* may be adjusted for any carry-over mechanisms provided for in the relevant existing revenue determination and in any other arrangements agreed between the *AER* and the *Transmission Network Service Provider* for the purposes of, and in accordance with, the existing revenue determination.

### **11.6.11 Transition to new Chapter 6A: existing prescribed transmission services**

- (a) References to *prescribed transmission services* in the new Chapter 6A include a service provided by an asset used in connection with, or committed to be constructed for use in connection with, a *transmission system* as at 9 February 2006:
- (1) to the extent that the value of the asset is included in the regulatory asset base for that *transmission system* under an existing revenue determination in force at that time; or
  - (2) if the price for that service has not been negotiated under a negotiating framework established pursuant to old clause 6.5.9,
- and, but for this clause, that service would not otherwise be a *prescribed transmission service*.
- (b) Where a service is a *prescribed transmission service* by virtue of the operation of this clause, that service is taken not to be a *negotiated transmission service*.
- (c) For the purposes of this clause 11.6.11, an asset is, and is only, to be taken to be committed to be constructed if it satisfies the criteria which a project needs to satisfy to be a “committed project” for the purposes of the *regulatory test*.

## 11.6.12 Powerlink transitional provisions

### Definitions

- (a) In this clause 11.6.12:

**contingent project** means a project identified in the transitional revenue determination as a contingent project.

**Powerlink** means the Queensland Electricity Transmission Corporation Limited (ACN 078 849 233), trading as Powerlink Queensland .

**transitional regulatory control period** means the regulatory control period commencing on 1 July 2007 and ending on 30 June 2012.

**transitional revenue determination** means a final revenue determination by the *AER* for the Powerlink transmission network, in respect of the transitional regulatory control period.

**trigger** means the unique investment driver identified in the transitional revenue determination as a trigger for a contingent project.

### Scope and application

- (b) This clause 11.6.12:

- (1) applies only in respect of the Powerlink *transmission network* and applies only until 30 June 2012; and
- (2) prevails, to the extent of any inconsistency, over any other clause in the *Rules*.

### Transitional revenue determination

- (c) Except as provided in this clause 11.6.12, and despite any changes to the old Chapter 6:
- (1) the old Chapter 6 continues to apply in respect of the *AER* setting the revenue cap for the transitional regulatory control period for the Powerlink *transmission network*; and
  - (2) in setting the revenue cap for the transitional regulatory control period, the *AER* must substantially adhere to the Statement of Regulatory Principles including the ex ante approach to setting the revenue cap set out in the statement.
- (d) The *AER* must calculate the *weighted average cost of capital* for the transitional regulatory control period, in accordance with the values,

methodologies or benchmarks in the new Chapter 6A, in respect of the following items:

- (1) the nominal risk free rate including the maturity period and source of the benchmark;
  - (2) the debt risk premium including the maturity period and source of the benchmark;
  - (3) the equity beta;
  - (4) the market risk premium; and
  - (5) the ratio of the market value of debt as a proportion of the market value of equity and debt.
- (e) In calculating the *WACC* for the transitional regulatory control period, the *AER* must use an average gamma of 0.5.

### **Contingent projects**

- (f) Where the trigger event identified in respect of a contingent project occurs prior to 30 June 2012, the *AER* must, in accordance with the transitional revenue determination:
- (1) determine:
    - (i) the amount of capital and incremental operating expenditure for that contingent project for each remaining regulatory year of the transitional regulatory control period, which the *AER* considers is reasonably required for the purpose of undertaking the contingent project;
    - (ii) the likely commencement and completion dates for the contingent project;
    - (iii) the incremental revenue which is likely to be earned by Powerlink in each remaining regulatory year of the transitional regulatory control period as a result of the contingent project being undertaken; and
    - (iv) the *maximum allowed revenue* for each regulatory year in the remainder of the transitional regulatory control period by adding the incremental revenue for that regulatory year; and
  - (2) calculate the estimate referred to in subparagraph (1)(iii):

- (i) on the basis of the rate of return for Powerlink for the transitional regulatory control period in accordance with the transitional revenue determination; and
  - (ii) consistently with the manner in which depreciation is calculated under the transitional revenue determination; and
- (3) amend the transitional revenue determination to apply for the remainder of the transitional regulatory control period in accordance with paragraph (g).
- (g) The *AER* may only vary the transitional revenue determination to the extent necessary:
  - (1) to adjust the forecast capital expenditure for the transitional regulatory control period to accommodate the amount of additional capital expenditure determined under paragraph (f)(1)(i);
  - (2) to adjust the forecast operating expenditure for the current regulatory control period to accommodate the amount of additional operating expenditure determined under paragraph (f)(1)(i); and
  - (3) to reflect the effect of any resultant increase in forecast capital expenditure and incremental operating expenditure on the maximum allowed revenue for each regulatory year in the remainder of the transitional regulatory control period.
- (h) An application for approval of a contingent project may only be made if the intended date for commencing the contingent project is during the transitional regulatory control period.
- (i) For the first *regulatory control period* after the transitional regulatory control period, the forecast of capital expenditure for that first *regulatory control period* must be determined by applying the provisions of clause 6A.6.7 of the new Chapter 6A, in respect of the capital expenditure for a contingent project, with such modifications as are necessary to properly apply clause 6A.6.7.

**Cost pass-through**

- (j) For the duration of the transitional regulatory control period:
  - (1) subject to subparagraph (2), clause 6A.7.2 of the new Chapter 6A applies to a *network support event* under the transitional revenue determination;
  - (2) the process to apply to the calculation, presentation and approval of pass through resulting from a *network support event* is as set out in the transitional revenue determination; and

- (3) in respect of any *positive change event* or *negative change event*, the new Chapter 6A applies, with any modifications that are necessary to apply the relevant provisions to the transitional revenue determination.

#### **Roll forward of regulatory asset base**

- (k) For the avoidance of doubt, in making a *revenue determination* for the first *regulatory control period* after the transitional regulatory control period, the value of the regulatory asset base at the beginning of the first *regulatory year* of that period calculated in accordance with clause S6A.2.1(f), may be adjusted having regard to the transitional revenue determination and any other arrangements agreed between the *AER* and Powerlink.

#### **Application of efficiency benefit sharing scheme**

- (l) The *efficiency benefit sharing scheme* in force under clause 6A.6.5 applies to Powerlink during the transitional regulatory control period.

#### **Power to re-open transitional revenue determination**

- (m) Clause 6A.7.1 applies to the transitional revenue determination, and a reference in the clause to:
- (1) “revenue determination” is taken to be a reference to the transitional revenue determination;
  - (2) “regulatory control period” is taken to be a reference to the transitional regulatory control period;
  - (3) “contingent project” has the meaning referred to in paragraph (a); and
  - (4) “X Factor” has the same meaning as in the transitional revenue determination.
- (n) Subject to rule 11.8, old Part C (including Schedules 6.2, 6.3, 6.4, 6.7 and 6.8 of old Chapter 6) continues to apply for the duration of the transitional regulatory control period

### **11.6.13 ElectraNet easements transitional provisions**

- (a) In this clause 11.6.13:

**current regulatory control period** means the regulatory control period for ElectraNet commencing on 1 January 2003 and ending on 30 June 2008.

**Determination** means the South Australian Transmission Network Revenue Cap Decision of the *ACCC* dated 11 December 2002.

**easement** means easements referred to in the *Determination*.



- (b) Without limiting the operation of the new Chapter 6A, in establishing the opening regulatory asset base for ElectraNet for the regulatory control period subsequent to ElectraNet's current regulatory control period, the *AER* may also consider adjustments to the regulatory asset base for ElectraNet that relate to easements, as agreed by letter dated 3 August 2004, between the *ACCC* and ElectraNet.

#### 11.6.14 TransGrid contingent projects

- (a) In this clause 11.6.14:

**contingent project** means a project identified in the Determination as a contingent project.

**current regulatory control period** means the period 1 July 2004 to 30 June 2009.

**Determination** means the "Final Decision, NSW and ACT Transmission Network Revenue Cap TransGrid 2004-05 to 2008-09" dated 27 April 2005 determined by the *ACCC* pursuant to clause 6.2.4(b) of the National Electricity Code.

**TransGrid** means the energy services corporation constituted under section 6A of the Energy Services Corporations Act 1995 (NSW) and specified in Part 1A of Schedule 1 to that Act.

- (b) For the purposes of the application of clause 11.6.2(a) to the Determination, a reference to the old Chapter 6 is a reference to the old Chapter 6 as modified by rule 8A.1.
- (c) For the first *regulatory control period* after the current regulatory control period, the forecast of capital expenditure for TransGrid for that first *regulatory control period* must be determined by applying the provisions of clause 6A.6.7 in respect of the capital expenditure for a contingent project, with such modifications as are necessary to properly apply clause 6A.6.7.

#### 11.6.15 Transmission determination includes existing revenue determinations

The definition of a *transmission determination* may, where the context so requires, include a determination (or substituted determination) made, or deemed to be made, by the *AER* or the *ACCC* prior to the commencement date.

#### 11.6.16 References to regulatory control period

A reference to a *regulatory control period* may, where the context so requires, include a period during which a revenue cap applied by virtue of a determination

(or substituted determination) made, or deemed to be made, by the *AER* or the *ACCC* prior to the commencement date.

#### **11.6.17 Consultation procedure for first proposed guidelines**

(a) In this clause 11.6.17:

**guideline** means:

- (1) the *post-tax revenue model* referred to in rule 6A.5.2;
  - (2) the *roll forward model* referred to in rule 6A.6.1;
  - (3) an *efficiency benefit sharing scheme* referred to in rule 6A.6.5;
  - (4) a *service target performance incentive scheme* referred to in rule 6A.7.4;
  - (5) *submission guidelines* referred to in rule 6A.10.2; and
  - (6) *Cost Allocation Guidelines* referred to in rule 6A.19.3.
- (b) The *AER* must develop and *publish* the first proposed guidelines on or before 31 January 2007, and may carry out consultation in the preparation of those proposed guidelines as the *AER* considers appropriate.
- (c) Each proposed guideline must be *published* in accordance with the requirements of rule 6A.20(b), including an explanatory statement and an invitation for written submissions.
- (d) The invitation for written submissions for the proposed guidelines must allow no less than 60 *business days* for the making of submissions.
- (e) The *AER* may *publish* papers and hold conferences or information sessions in relation to the proposed guidelines as provided by rule 6A.20(d).
- (f) Rule 6A.20(e)-(f) applies to the publication of the final decision of the *AER* in relation to the first guidelines, which must be published under rule 6A.20 on or before 30 September 2007.

#### **11.6.18 Reliance on proposed guidelines for SP AusNet, VENCORP and ElectraNet**

(a) In this clause 11.6.18:

**guideline** has the same meaning as in clause 11.6.17.

**proposed guideline** means a proposed guideline published under clause 11.6.17.

**relevant provider** means SP AusNet, VENC Corp or ElectraNet.

**2008 determination** means a transmission determination to be made in 2008 for a relevant provider.

- (b) For the purposes of making a 2008 determination for the regulatory control period to be covered by a 2008 determination, anything that must be done in accordance with a guideline must instead be done in accordance with the corresponding proposed guideline.
- (c) Unless sooner revoked, a proposed guideline ceases to have effect in relation to a relevant provider at the end of the regulatory control period covered by a 2008 determination applying to the provider. For the avoidance of doubt, a proposed guideline does not apply to or in respect of the making of a subsequent transmission determination.
- (d) For the purposes of making a 2008 determination for the regulatory control period to be covered by a 2008 determination, a relevant provider is taken to have complied with a requirement to comply with a *Cost Allocation Methodology* under the new Chapter 6A if the *AER* is satisfied that the relevant provider has complied with the relevant proposed guideline for cost allocation referred to in clause 11.6.17(a)(6), but only until the *AER* has approved a *Cost Allocation Methodology* for that provider under clause 6A.19.4.

#### 11.6.19 EnergyAustralia transitional provisions

- (a) In this clause 11.6.19:

**contingent project** means a project approved by the *ACCC* and identified in the Determination as a contingent project.

**current regulatory control period** means the period 1 July 2004 to 30 June 2009.

**Determination** means the “Final Decision, NSW and ACT Transmission Network Revenue Cap EnergyAustralia 2004-05 to 2008-09”.

**EnergyAustralia** means the energy services corporation constituted under section 7 of the Energy Services Corporations Act 1995 (NSW) and specified in Part 2 of Schedule 1 to that Act.

**maximum allowed revenue** means the maximum allowed revenue in the Determination.

**trigger event** means an event identified as a trigger in Appendix A of the Determination in respect of a contingent project.

**triggered contingent project** means the contingent project referred to in Appendix A of the Determination as “A.1 Replacement of Feeders 908/909”.

#### **Application of Chapter 6A to Determination**

- (b) Subject to paragraph (c), clauses 6A.7.1, 6A.7.2 and 6A.7.3 apply to the Determination from the commencement date.
- (c) In applying clause 6A.7.1 to the Determination, a reference in the clause to:
  - (1) “revenue determination” is taken to be a reference to the Determination;
  - (2) “regulatory control period” is taken to be a reference to the current regulatory control period;
  - (3) “contingent project” has the meaning referred to in paragraph (a); and
  - (4) “X Factor” has the same meaning as in the Determination.

#### **Treatment of contingent projects**

- (d) Where the trigger event identified in respect of a contingent project occurs prior to 1 July 2009, the AER must, in accordance with the Determination:
  - (1) determine:
    - (i) the total capital expenditure which the AER considers is reasonably required for the purpose of undertaking the *contingent project* including any amount for forecast capital expenditure already included in the Determination in respect of the triggered contingent project;
    - (ii) the forecast capital and incremental operating expenditure for that contingent project (in addition to any amount for forecast capital expenditure already included in the Determination in respect of the triggered contingent project) for each remaining regulatory year of the current regulatory control period, which the AER considers is reasonably required for the purpose of undertaking the contingent project in accordance with Appendix A of the Determination;
    - (iii) the likely commencement and completion dates for the contingent project;
    - (iv) the incremental revenue which is likely to be earned by EnergyAustralia in each remaining regulatory year of the current

- regulatory control period as a result of the contingent project being undertaken; and
- (v) the maximum allowed revenue for each regulatory year in the remainder of the current regulatory control period by adding the incremental revenue for that regulatory year;
- (2) calculate the estimate referred to in subparagraph (1)(iv) in accordance with the Determination, including:
    - (i) on the basis of the rate of return for EnergyAustralia for the current regulatory control period; and
    - (ii) consistently with the manner in which depreciation is calculated under the Determination; and
  - (3) vary the Determination to apply for the remainder of the current regulatory control period in accordance with paragraph (e).
- (e) The *AER* may only vary the Determination to the extent necessary:
    - (1) to adjust the forecast capital expenditure for the current regulatory control period to accommodate the amount of additional capital expenditure determined under paragraph (d)(1)(ii); and
    - (2) to adjust the forecast operating expenditure for the current regulatory control period to accommodate the amount of additional operating expenditure determined under paragraph (d)(1)(ii); and
    - (3) to reflect the effect of any resultant increase in forecast capital expenditure and incremental operating expenditure on the maximum allowed revenue for each regulatory year in the remainder of the current regulatory control period.
  - (f) The intended date for commencing the contingent project must be during the current regulatory control period.
  - (g) For the first *regulatory control period* after the current regulatory control period, the forecast of capital expenditure for EnergyAustralia for that first *regulatory control period* must be determined by applying the provisions of clause 6A.6.7 in respect of the capital expenditure for a contingent project, with such modifications as are necessary to properly apply clause 6A.6.7.

## 11.6.20 Basslink transitional provisions

### Definitions

- (a) In this clause 11.6.20:

**Basslink** has the meaning provided in the *Electricity Supply Industry Act 1995* of Tasmania, and means the interconnection between the electricity grids of the States of Tasmania and Victoria by means of:

- (1) a high voltage, direct current, submarine cable across Bass Strait;
- (2) converter stations in those States;
- (3) direct current connecting lines to those converter stations;
- (4) alternating current transmission connections to the transmission networks of those States; and
- (5) related infrastructure.

**previous regulatory approach** means the methodologies, objectives and principles for determination of a regulatory asset base applied in the previous regulatory determinations.

**previous regulatory determinations** means the decision (including the reasons for decision) made under clause 2.5.2(c) of the National Electricity Code or clause 2.5.2(c) of the *Rules* (as the case may be):

- (1) by the *ACCC*, entitled the “Murraylink Transmission Company Application for Conversion and Maximum Allowable Revenue” dated 1 October 2003; and
- (2) by the *AER*, entitled “Directlink Joint Ventures’ Application for Conversion and Revenue Cap” dated 3 March 2006.

### **Application**

- (b) Where, after the commencement date, a service provided by means of, or in connection with, the Basslink *transmission system* ceases to be classified as a *market network service*:
  - (1) paragraph (c) applies to that service to the exclusion of clause 2.5.2(c); and
  - (2) paragraphs (d),(e),(f) and (g) apply to that service to the exclusion of clause S6A.2.1(e)(1) and (2).
- (c) If, after the commencement date, a *network service* provided by means of, or in connection with, the Basslink *transmission system* ceases to be classified as a *market network service*, it may at the discretion of the *AER* be determined to be a *prescribed transmission service*, in which case the relevant *total revenue cap* may be adjusted in accordance with Chapter 6A and this clause 11.6.20 to include to an appropriate extent the relevant *network* elements which provide those *network services*.

- (d) Where services are determined to be *prescribed transmission services* as referred to in paragraph (c), the value of the regulatory asset base, as at the beginning of the first *regulatory year* of the first *regulatory control period* for which those *prescribed transmission services* are to be regulated under a *revenue determination*, is the amount that is determined by the *AER* in accordance with paragraphs (e), (f) and (g).
- (e) Subject to paragraph (f), the *AER* must determine the value of the regulatory asset base for the *Basslink transmission system* for the purposes of paragraph (d) by applying the previous regulatory approach to the circumstances of that *transmission system*.
- (f) In the event of an inconsistency between the previous regulatory approach adopted in each of the previous regulatory determinations, the approach adopted in a decision of the *AER* regarding the *Directlink transmission system* prevails over the approach adopted in the decision of the *ACCC* regarding the *Murraylink transmission system* to the extent of the inconsistency.
- (g) Without limiting paragraph (e), the *AER* must, when exercising any discretion in relation to the application of paragraph (e) above:
  - (1) have regard to the prudent and efficient value of the assets that are used by the relevant *Transmission Network Service Provider* to provide those *prescribed transmission services* (but only to the extent that those assets are used to provide such services); and
  - (2) for this purpose, determine that value having regard to the matters referred to in clause S6A.2.2.

## 11.6.21 SPI Powernet savings and transitional provision

### Definitions

(a) In this clause 11.6.21:

**easements tax change event** means a *change* in the amount of land *tax* that is payable by SPI PowerNet in respect of the easements which are used for the purposes of SPI PowerNet's *transmission network*. For the purposes of this definition, the *change* in the amount of land tax that is payable by SPI PowerNet must be calculated as the difference between:

- (1) the amount of land tax that is payable in each *regulatory year* by SPI PowerNet, as advised by the Commissioner of State Revenue, Victoria; and

(2) the amount of land tax which is forecast for the purposes of and included in the revenue determination for each regulatory year of the regulatory control period.

Regulated owner and SPI PowerNet both have the meaning provided in clause 9.3.1(2) of the Rules.

**Transition to new Chapter 6A: existing prescribed transmission services**

- (b) Notwithstanding clause 11.5.11, references to *prescribed transmission services* in the new Chapter 6A include a service provided by an asset used in connection with, or committed to be constructed for use in connection with, a *transmission system* as at 9 February 2006, where that asset is the subject of an agreement between SPI PowerNet and any of:
- (1) VENCORP;
  - (2) a Distributor;
  - (3) a Regulated owner;
  - (4) a *Generator*; or
  - (5) a *Market Network Service Provider*,
- and:
- (6) the agreement provides or contemplates that following an interim period the relevant asset will become subject to regulation under a revenue determination applicable to SPI PowerNet; and
  - (7) in the case of an agreement with a *Generator* or a *Market Network Service Provider*, the service the subject of the agreement is for *connection assets* provided on a non-contestable basis.

**Deleted: Definitions¶**

(a) . In this clause 11.6.21:¶  
**easements tax change event** means a change in the amount of land tax that is payable by SPI PowerNet in respect of the easements which are used for the purposes of SPI PowerNet's *transmission network* where that change results in SPI PowerNet incurring higher or lower costs in providing *prescribed transmission services* than it would have incurred but for that event. For these purposes the change in the amount of land tax that is payable by SPI PowerNet must be calculated by applying the relevant land tax rate to the difference between:¶  
(1) . the value of the easements which is used for the purposes of assessing the land tax that is payable; and¶  
(2) . the value of the easements which is assumed for the purposes of the *revenue determination for the regulatory control period*,¶  
*and an easements tax change event* does not include an event described in paragraphs (a), (b) or (c) of the definition of *tax change event*.¶

**Regulated owner and SPI PowerNet** both have the meaning provided in clause 9.3.1(2) of the *Rules*.¶

**Method of adjustment of value of regulatory asset base**

- (c) For the avoidance of doubt, in adjusting the previous value of the regulatory asset base for SPI PowerNet's *transmission system* as required by clause S6A.2.1(f), the previous value of the regulatory asset base must be increased by the amount of capital expenditure specified in, or that forms the basis of, agreements pursuant to which SPI PowerNet constructed assets during the previous regulatory control period used to provide *prescribed transmission services*, adjusted for outturn inflation and depreciation in accordance with the terms of those agreements.

(d) For the purposes of a revenue determination for SPI PowerNet (including but not limited to, a 2008 determination as defined in clause 11.6.18(a)) and clause 6A.7.3, easements tax change event is deemed to be:



(1) a pass through event; and

(2) a positive change event or negative change event, as the case may be, whether or not the easements tax change event would be material for the purposes of those definitions.

#### 11.6.22 Interim arrangements pricing-related information

- (a) Clause 6.2.5(a1) as in force immediately before the commencement date continues to apply during the current regulatory control period.
- (b) The *information guidelines* may, in addition to the matter referred to in clause 6A.17.2(e), require the inclusion in the certified annual statements of:
  - (1) information on the amount of each instance, during the relevant reporting period, of any reduction in the prices payable by a *Transmission Customer* for *prescribed transmission services* provided by the *Transmission Network Service Provider*;
  - (2) information on each instance, during the relevant reporting period, of a reduction in the prices payable by a *Transmission Customer* for *prescribed transmission use of system services* or *prescribed common transmission services* (or both) that were recovered from other *Transmission Customers* for *prescribed transmission use of system services* or *prescribed common transmission services*; and
  - (3) information to substantiate any claim by the *Transmission Network Service Provider* that the information provided to the AER with respect to reductions in the prices payable by a *Transmission Customer* for the relevant *prescribed transmission services* under subparagraphs (2) or (3) is confidential information.

**Deleted:** (d) For the purposes of a *revenue determination* for SPI PowerNet (including but not limited to, a 2008 determination as defined in clause 11.6.18(a)), a *pass through event* includes an easements tax change event.¶

## Part F Reform of Regulatory Test Principles (2006 amendments)

### 11.7 Rules consequent on making of the National Electricity Amendment (Reform of the Regulatory Test Principles) Rule 2006 No.19

#### 11.7.1 Definitions

For the purposes of this rule 11.7:

**Amending Rule** means the National Electricity Amendment (Reform of the Regulatory Test Principles) Rule 2006 No.19.

**commencement date** means the date on which the Amending Rule commences operation.

**current application** means any action taken or process commenced under the *Rules*, which relies on or is referenced to, the *regulatory test*, and is not completed as at the commencement date.

**new clause 5.6.5A** means clause 5.6.5A of the *Rules* as in force immediately after the commencement of the Amending Rule.

**old clause 5.6.5A** means clause 5.6.5A of the *Rules* as in force immediately before the commencement of the Amending Rule.

**transitional application** means any action taken or process commenced under the *Rules*, which relies on or is referenced to, the *regulatory test* and is not completed on 31 December 2007, or the date on which amendments (if any) to the *regulatory test* commence, whichever is the earlier.

### 11.7.2 Amending Rule does not affect old clause 5.6.5A

- (a) On the commencement date, the *regulatory test* promulgated by the *AER* in accordance with the old clause 5.6.5A and in effect immediately before the commencement date, continues in effect and is taken to be consistent with the new clause 5.6.5A until 31 December 2007.
- (b) Old clause 5.6.5A, and the *regulatory test* promulgated under that clause 5.6.5A, continues to apply to and in respect of, any current application and any transitional application.

## Part G Pricing of Prescribed Transmission Services (2006 amendments)

### 11.8 Rules consequent on making the National Electricity Amendment (Pricing of Prescribed Transmission Services) Rule 2006

#### 11.8.1 Definitions

Subject to this rule 11.8, in this rule 11.8:

**agreed interim requirements** means interim requirements that are equivalent to the requirements of the *pricing methodology guidelines* referred to in rule 6A.25 and have been developed in consultation with the relevant providers for the purposes of a proposed 2008 pricing methodology.

**ElectraNet** means ElectraNet Pty Ltd ACN 094 482 416 trading as ElectraNet.

**existing assets** means *transmission system* assets in existence as at 24 August 2006.

**previous regulatory determinations** means the decision (including the reasons for decision) made under clause 2.5.2(c) of the National Electricity Code or clause 2.5.2(c) of the *Rules* (as the case may be):

- (1) by the ACCC, entitled the “Murraylink Transmission Company Application for Conversion and Maximum Allowable Revenue” dated 1 October 2003; and
- (2) by the AER, entitled “Directlink Joint Ventures’ Application for Conversion and Revenue Cap” dated 3 March 2006.

**Pricing Rule commencement date** means the date on which the National Electricity Amendment (Pricing of Prescribed Transmission Services) Rule 2006 commences operation.

**relevant provider** means SPAusNet, ElectraNet or VENCORP.

**SPAusNet** means SPI PowerNet Pty Ltd ACN 079 798 173.

**2008 pricing methodology** means a pricing methodology to be made in 2008 for a relevant provider.

**VENCORP** means the Victorian Energy Networks Corporation established under the Gas Industry Act 1994(Vic) and continued under the Gas Industry Act 2001(Vic).

## 11.8.2 Regulated interconnectors

- (a) All *interconnectors* that formed part of the *power system* in the *participating jurisdictions* as at 31 December 1997 continue to be taken to be *regulated interconnectors*.
- (b) All *interconnectors* that ceased to be classified as a *market network service* by a previous regulatory determination made before 28 December 2006 are taken to be *regulated interconnectors*.
- (c) All *interconnectors* that, by a decision made after 28 December 2006 under clause 2.5.2(c) of the *Rules* cease to be classified as a *market network service* are taken to be *regulated interconnectors*.

## 11.8.3 Application of new Part J of Chapter 6A to Transmission Network Service Providers

- (a) Subject to this rule 11.8, a *Transmission Network Service Provider* is not required to submit a proposed *pricing methodology* to the AER under the new Part J of Chapter 6A until a date that is 13 months before the expiry of a current *regulatory control period*.

- (b) For the purposes of this clause 11.8.3, the transitional regulatory control period referred to in rule 11.6.12 (a) for Powerlink is taken to be the current *regulatory control period*.

#### **11.8.4 Reliance on agreed interim guideline for ElectraNet, SPAusNet, and VenCorp**

For the purpose of making a 2008 pricing methodology, anything that must be done in accordance with the *pricing methodology guidelines* must instead be done in accordance with the agreed interim requirements.

#### **11.8.5 Prudent discounts under existing agreements**

- (a) A *Transmission Network Service Provider* may continue to recover discounts arising as a result of agreements that were entered into prior to 10 October 2001 so long as the agreement remains in effect and its terms are not renegotiated.
- (b) A *Transmission Network Service Provider* may continue to recover discounts arising as a result of agreements that were entered into prior to 28 December 2006 so long as the agreement remains in effect and its terms are not renegotiated.
- (c) The *AER* is not required to re-approve discounts arising under paragraphs (a) or (b) that were approved prior to 28 December 2006, and any approval for the recovery of such discounts is valid so long as the agreement between the *Transmission Network Service Provider* and the *Transmission Customer* remains in effect and its terms are not renegotiated.

#### **11.8.6 Application of prudent discounts regime under rule 6A.26**

- (a) Despite clause 11.6.3, a *Transmission Network Service Provider* may apply rule 6A.26 during a current regulatory control period (as defined in clause 11.6.1).
- (b) Where a *Transmission Network Service Provider* applies to the *AER* under clause 6A.26.2 for approval to recover a proposed recovery amount in circumstances where paragraph (a) applies, the *AER* must make a determination in accordance with clause 6A.26.2 notwithstanding that there is no approved *pricing methodology* for that provider.

#### **11.8.7 Prudent discounts pending approval of pricing methodology**

- (a) This clause 11.8.7 applies where:
  - (1) a *Transmission Network Service Provider* has submitted or resubmitted a proposed *pricing methodology* to the *AER* under clause 6A.10.1, 6A.11.2 or 6A.12.3;

- (2) the *AER* has not made a final decision approving or amending that methodology under rule 6A.13; and
  - (3) a *Transmission Customer* requests the provider to charge lower prices for *prescribed TUOS services* or *prescribed common transmission services* than the prices determined in accordance with the provider's *pricing methodology* as referred to in clause 6A.26.1(d).
- (b) Despite clause 6A.26.1, a *Transmission Network Service Provider* may agree to charge lower prices for *prescribed TUOS services* or *prescribed common transmission services* than the prices determined as referred to in clause 6A.26.1(d) in accordance with:
- (1) in the case where the *AER* has made a draft decision in which it proposes to approve a proposed *pricing methodology*, - that proposed *pricing methodology*; or
  - (2) if subparagraph (1) does not apply, the *pricing methodology* most recently approved for that *Transmission Network Service Provider* prior to the proposed *pricing methodology* referred to in subparagraph (a)(1); or
  - (3) if there is no a previously approved *pricing methodology* for that *Transmission Network Service Provider*, - the previous method used by the *Transmission Network Service Provider* to establish prices, however determined must be used in place of an approved *pricing methodology*.
- (c) Where a *Transmission Network Service Provider* applies to the *AER* under clause 6A.26.2 for approval to recover a proposed recovery amount in circumstances where paragraphs (a) and (b) apply, the *AER* must make a determination in accordance with clause 6A.26.2 notwithstanding that the reduced charges were agreed before a *pricing methodology* was approved.
- (d) The subsequent approval by the *AER* of a *pricing methodology* for a *Transmission Network Service Provider* does not require the provider to adjust, reverse or recompense any amounts to *Transmission Customers* in connection with charges for services established pursuant to this clause 11.8.7.

## Part H Reallocations (2007 amendments)

### 11.9 Rules consequent on the making of the National Electricity Amendment (Reallocations) Rule 2007

#### 11.9.1 Definitions

For the purposes of this rule 11.9:

**Amending Rule** means the National Electricity Amendment (Reallocations) Rule 2007.

**commencement date** means the day on which the Amending Rule commences operation.

**existing reallocation** means a *reallocation* in place immediately before the commencement date.

**new reallocation** means a *reallocation* undertaken in accordance with the *Rules* after the date of *publication* of the *reallocation procedures* under clause 3.15.11A(d).

**transitional reallocation** means a *reallocation* in place immediately after the commencement date but prior to the date of *publication* of the *reallocation procedures* by *NEMMCO* under clause 3.15.11A(d).

#### 11.9.2 Existing and transitional reallocations

- (a) Subject to paragraph (c), an existing reallocation is to be treated as if the Amending Rule had not been made.
- (b) Subject to paragraph (c), a transitional reallocation is to be treated as if the Amending Rule had not been made.
- (c) A *Market Participant* who is a party to an existing reallocation or a transitional reallocation may elect to have the reallocation treated as a new reallocation if the participant obtains the agreement of the *Market Participant* who is the other party to the reallocation.

## Part I Technical Standards for Wind Generation (2007 amendments)

### 11.10 Rules consequent on making of the National Electricity Amendment (Technical Standards for Wind Generation and other Generator Connections) Rule 2007

#### 11.10.1 Definitions

Subject to this rule 11.10, in this rule 11.10:

**Amending Rule** means the National Electricity Amendment (Technical Standards for Wind Generation and other Generator Connections) Rule 2007.

**commencement date** means the date on which the Amending Rule commences operation.

**new Chapter 5** means Chapter 5 of the *Rules* in force immediately after the commencement date.

**old Chapter 5** means Chapter 5 of the *Rules* in force immediately prior to the commencement date.

#### 11.10.2 Provision of information under S5.2.4 in registration application

(a) Any requirements in the Amending Rule that require a person who is applying to be a *Registered Participant* to submit information in relation to clause S5.2.4 for the purposes of clause 2.9.2 does not apply to any person who has, in accordance with clause 2.9.1:

- (1) submitted an application to be registered as a *Registered Participant*;
- (2) commenced a process for submitting further information in relation to the application referred to in subparagraph (1); or
- (3) has submitted further information in relation to the application referred to in subparagraph (1),

and, at the commencement date, has not been registered by *NEMMCO* in accordance with clause 2.9.2 as a *Registered Participant*.

(b) A person registered in accordance with this clause 11.10.2:

- (1) subject to subparagraph (2), is taken to be registered in accordance with the requirements of the *Rules* as amended by the Amending Rule; and
- (2) must submit all information required under clause S5.2.4 within six months of the commencement date.

### 11.10.3 Access standards made under the old Chapter 5

- (a) Any *automatic access standard* or *negotiated access standard* that applied to a *generating unit or generating system* under the old Chapter 5 continues to apply to that system or unit as if the Amending Rule had not been made.
- (b) Unless a *Generator* and a *Network Service Provider* otherwise agree, a *negotiated access standard* that is the subject of a negotiating process as at the commencement date, is to be negotiated in accordance with the old Chapter 5, as if the Amending Rule had not been made.

### 11.10.4 Modifications to plant by Generators

Unless the *Generator* and the relevant *Network Service Provider* otherwise agree, a *Generator* who at the commencement date has proposed to modify a *plant* and has commenced negotiations with a *Network Service Provider* under the old Chapter 5 is to continue the negotiating process in accordance with the old Chapter 5 as if the Amending Rule had not been made.

### 11.10.5 Technical Details to Support Application for Connection and Connection Agreement

- (a) Subject to paragraphs (b) and (c), any decision or action taken by *NEMMCO* for the purpose of developing and *publishing* an initial *Generating System Design Data Sheet*, an initial *Generating System Setting Data Sheet* and initial *Generating System Model Guidelines* under clause S5.5.7 prior to the commencement date has continuing effect as if the decision had been made or the action had been taken under the Amending Rule.
- (b) Pending the final *publication* of the *Generating System Design Data Sheet* and the *Generating System Setting Data Sheet* under clause S5.5.7:
  - (1) schedule 5.5.1 of the *Rules* as in force immediately before the commencement date is taken to be the interim *Generating System Design Data Sheet*; and
  - (2) schedule 5.5.2 of the *Rules* as in force immediately before the commencement date is taken to be the interim *Generating System Setting Data Sheet*.
- (c) The interim *Generating System Design Data Sheet* and interim *Generating System Setting Data Sheet* referred to in paragraph (b) continue in force until *NEMMCO publishes* the equivalent data sheet under S5.5.7 which must be no later than 29 February 2008.



### **11.10.6 Transitional arrangements for establishment of performance standards**

For the purposes of the definition of performance requirement in clause 4.16.1, clauses S5.2.8 and S5.2.9 of the old Chapter 5 applies as if the Amending Rule had not been made.

### **11.10.7 Jurisdictional Derogations for Queensland**

- (a) For the purposes of clause 9.37.12, clause S5.2.5.2(c) of the old Chapter 5 applies as if the Amending Rule had not been made.
- (b) For the purposes of clause 9.37.21, clause S5.2.5.13 of the old Chapter 5 applies as if the Amending Rule had not been made.

## **11.10A Rules consequent on the making of the National Electricity Amendment (Central Dispatch and Integration of Wind and Other Intermittent Generation) Rule 2008**

### **11.10A.1 Definitions**

In this rule 11.10A:

**Amending Rule** means the National Electricity Amendment (Central Dispatch and Integration of Wind and Other Intermittent Generation) Rule 2008.

**classified generating unit** means a *non-scheduled generating unit* or *scheduled generating unit* immediately before the registration date that could be classified as a *semi-scheduled generating unit* immediately after the registration date.

**commencement date** means the date on which Schedule 2 of the Amending Rule commences operation.

**committed project** means a project that *NEMMCO* considers has been fully committed by the project proponent taking into account the following factors:

- (a) the project proponent's rights to land for the construction of the project;
- (b) whether contracts for the supply and construction of the project's major plant or equipment, including contract provisions for project cancellation payments, have been executed;
- (c) the status of all planning and construction approvals and licences necessary for the commencement of construction of the project, including completed and approved environmental impact statements;
- (d) the level of commitment to financing arrangements for the project; and

- (e) whether project construction has commenced or a firm date has been set for it to commence.

**initial ECM guidelines** has the meaning given in clause 11.10A.8.

**potential semi-scheduled generating unit** means a *generating unit* that, at the time of registration of that unit under Chapter 2, could have been classified as a *semi-scheduled generating unit* in accordance with clause 2.2.7 and:

- (a) is listed in “Table 4.22: Committed NEM Wind Farms” of the 2007 *statement of opportunities*; or
- (b) is considered by *NEMMCO* to be a committed project as at 1 January 2008, and, for the avoidance of doubt, does not include a classified generating unit.

**registered generating unit** means a *generating unit* which has had its classification as a *semi-scheduled generating unit* approved by *NEMMCO* on or after the registration date and before the commencement date.

**registration date** means the date on which Schedule 1 of the Amending Rule commences operation.

### 11.10A.2 Registration and reclassification of classified generating units

- (a) On and after the registration date, a *Non-Scheduled Generator* or *Scheduled Generator* with a classified generating unit will not be required to register as a *Semi-Scheduled Generator* and reclassify the classified generating unit as a *semi-scheduled generating unit*.
- (b) For a period of 2 years after the commencement date, a *Generator* who:
  - (1) as at the commencement date has classified generating units; and
  - (2) subsequently reclassifies those generating units as *semi-scheduled generating units*,is not required to pay *Participant fees* in accordance with rule 2.11.
- (c) Classified generating units that are reclassified as *semi-scheduled generating units* after the registration date but prior to the commencement date are taken to be *non-scheduled generating units* or *scheduled generating units* (as the case may be) until the commencement date.

### 11.10A.3 Registered generating unit

- (a) Subject to paragraph (b) and clause 11.10A.4, until the commencement date, a registered generating unit is taken to be a *non-scheduled generating unit* for the purposes of the *Rules*.

- (b) A registered generating unit must meet the technical requirements for a *semi-scheduled generating unit* in schedule 5.2.
- (c) A registered generating unit that:
  - (1) prior to the registration date is classified as a *scheduled generating unit*; and
  - (2) on or after the registration date but prior to the commencement date is reclassified as a *semi-scheduled generating unit*,is taken to continue to be a *scheduled generating unit* until the commencement date.

#### **11.10A.4 Classification of potential semi-scheduled generating unit**

- (a) On and after the registration date, a person may apply to *NEMMCO* to classify a potential semi-scheduled generating unit as:
  - (1) a *scheduled generating unit* in accordance with clause 2.2.2; or
  - (2) a *non-scheduled generating unit* in accordance with clause 2.2.3.
- (b) *NEMMCO* must treat an application received under paragraph (a) as:
  - (1) in the case of an application referred to paragraph (a)(1), as an application to be classified as a *scheduled generating unit*; or
  - (2) in the case of an application referred to in paragraph (a)(2), as an application to be classified as a *non-scheduled generating unit*.
- (c) In assessing an application referred to in paragraph (a)(2), *NEMMCO* must approve the classification if *NEMMCO* is satisfied that the output of the *generating unit* is *intermittent* even where the *generating unit* does not meet the requirements of clause 2.2.3(b)(1) or (2).
- (d) If an application for classification of a potential semi-scheduled generating unit made under this clause 11.10A.4 is approved by *NEMMCO* in accordance with clause 2.2.2 or, subject to paragraph (c), clause 2.2.3, the relevant unit is taken to be a *scheduled generating unit* or *non-scheduled generating unit* (as the case may be) for the purposes of the *Rules*.

#### **11.10A.5 Participant fees**

Until *NEMMCO* determines a structure of *Participant fees* under rule 2.11 which provides for *Semi-Scheduled Generators*, references to *Scheduled Generators* in *NEMMCO*'s "Structure of Participant Fees under rule 2.11 of the National Electricity Rules" publication dated 24 March 2006, will be taken to include *Semi-Scheduled Generators*.

### 11.10A.6 Timetable

- (a) *NEMMCO* must amend the *timetable* in accordance with clause 3.4.3(b) to take into account the Amending Rule with those amendments to take effect from the commencement date.
- (b) All actions taken by *NEMMCO* prior to the commencement date in anticipation of the commencement date to amend the *timetable* as required under paragraph (a) are taken to satisfy the equivalent action required under clause 3.4.3(b).

### 11.10A.7 Procedure for contribution factors for ancillary service transactions

- (a) *NEMMCO* must amend the procedure prepared by *NEMMCO* under clause 3.15.6A(k) in accordance with clause 3.15.6A(m) to take into account the Amending Rule with those amendments to take effect from the commencement date.
- (b) All actions taken by *NEMMCO* prior to the commencement date in anticipation of the commencement date to amend the procedure prepared by *NEMMCO* under clause 3.15.6A(k) as required under paragraph (a) are taken to satisfy the equivalent action under clause 3.15.6A(m).

### 11.10A.8 Guidelines for energy conversion model information

- (a) Subject to paragraph (b), for the purposes of clause 2.2.7(d) *NEMMCO* must *publish* guidelines by no later than the registration date setting out the information to be contained in *energy conversion models* (the **initial ECM guidelines**).
- (b) The initial ECM guidelines do not need to be prepared in consultation with *Semi-Scheduled Generators*. *NEMMCO* must replace the initial ECM guidelines as soon as reasonably practicable with guidelines described in clause 2.2.7(d) which have been prepared in consultation with *Semi-Scheduled Generators* and such other person that *NEMMCO*, acting reasonably, considers appropriate.

## Part L Abolition of Snowy Region (2007 amendments)

### 11.13 Rules consequent on making the National Electricity Amendment (Abolition of Snowy Region) Rule 2007

#### 11.13.1 Definitions

In this rule 11.13:

**Amending Rule 2007** means the National Electricity Amendment (Abolition of Snowy Region) Rule 2007.

**current *Regions Publication*** means the document published by NEMMCO entitled “List of Regional Boundaries and Marginal Loss Factors for the 2007/08 Financial Year”.

**Draft Determination date** means 25 January 2007.

**implementation period** means the period specified in clause 11.13.4.

**implementation plan** means the plan referred to in clause 11.13.5.

**implementation function** means a function referred to in clause 11.13.6.

**Loss Factors Publication** means the document *published* by NEMMCO from time to time under clauses 3.6.1(f) and 3.6.2(f1) which sets out *marginal loss factors*.

**modified *regions*** means the *regions* identified as the New South Wales *region* and the Victoria *region* in the current *Regions Publication*, modified as a result of the abolition of the Snowy *region* under the *Amending Rule 2007* taking effect.

**new *regions*** means the unmodified *regions* and the modified *regions*.

**New South Wales *region*, Snowy *region* and Victoria *region*** each have the same meaning as in clause 3.5.6.

**old *regions*** means the *regions* identified in the current *Regions Publication*.

**Rule commencement date** means the date on which the *Amending Rule 2007* commences operation.

**unmodified *regions*** means the *regions* known as the Queensland *region*, the South Australia *region* and the Tasmania *region* as identified in the current *Regions Publication*, the boundaries of which are not affected by the abolition of the Snowy *region* under the *Amending Rule 2007*.

### 11.13.2 Purpose of rule 11.13

The purpose of this rule 11.13 is to enable the efficient and effective implementation of a change of *region* boundaries as a result of the abolition of the Snowy *region* during the implementation period, prior to the start of the new *regions*, and to support a smooth transition from the old *regions* to the new *regions*.

### 11.13.3 Application of rule 11.13

This rule 11.13 applies despite any other provision of the *Rules* (including any guideline or procedure made under the *Rules*), and to the extent of any inconsistency, this rule 11.13 prevails during the implementation period.

### 11.13.4 Implementation period

- (a) The implementation period starts on the Rule commencement date and ends on 15 July 2008.
- (b) Any decision made or action taken by *NEMMCO* for the purpose of implementing the abolition of the Snowy *region* between the Draft Determination date and the Rule commencement date, has continuing effect as if the decision had been made or the action had been taken under the *Rules* as amended by the *Amending Rule 2007*.

### 11.13.5 Publishing of implementation plan by NEMMCO

- (a) *NEMMCO* must develop and *publish* by 15 September 2007 an implementation plan that identifies the key implementation steps to be taken during the implementation period, including the proposed exercise by *NEMMCO* of the implementation functions.
- (b) *NEMMCO* may, during the implementation period, amend the implementation plan as necessary, and must *publish* the amended plan.

### 11.13.6 NEMMCO implementation functions

- (a) Subject to this rule 11.13, *NEMMCO* has, during the implementation period, the following functions and powers ('the implementation functions'):
  - (1) the power to make a decision or take any action (including the power to refrain from making a decision or taking action) that is necessary or consequential to the implementation of the *Amending Rule 2007*; and
  - (2) the other functions and powers specified under this rule 11.13.
- (b) The exercise of the implementation functions by *NEMMCO* must be referable to and consistent with the implementation plan as *published*.

### 11.13.7 Software modifications to implement abolition of Snowy region

Despite clause 3.17.1 and subject to this clause 11.13.7, *NEMMCO*:

- (1) may, as an implementation function, alter, reconfigure, reprogram or otherwise modify or enhance any computer software required for the operation of the *market*; and

- (2) must, to the extent practicable, adhere to the procedures for change management under the document entitled “NEM Systems IT Procedure Manual: Change Management” and *NEMMCO* may make the changes under paragraph (1) without authorisation by the *AER* even if *NEMMCO* does not fully adhere to that document.

### 11.13.8 Allocation of transmission connection points as a result of abolition of Snowy region

Each *transmission network connection point* previously assigned to the Snowy region as at the Rule commencement date is allocated to the New South Wales region and the Victoria region as follows:

#### Loads

Location	Voltage kV	TNI code	Region
Khancoban	330	NKHN	Victoria

#### Generation

Location	Voltage kV	Connection point ID	TNI code	Region
Jindabyne pump at Guthega	132	NGJP	NGJP	Victoria
Guthega	132	NGUT	NGUT	NSW
Guthega Ancillary Services 2	132	NGUT2	NGUT	NSW
Guthega	132	NGUT8	NGUT	NSW
Lower Tumut	330	NLTS	NLTS	NSW
Lower Tumut Ancillary Services 2 (pumps)	330	NLTS3	NLTS	NSW
Lower Tumut Ancillary Services 3	330	NLTS5	NLTS	NSW
Lower Tumut	330	NLTS8	NLTS	NSW
Murray Ancillary Services 1	330	NMUR11	NMUR	Victoria
Murray Ancillary Services 2	330	NMUR13	NMUR	Victoria
Murray Ancillary Services 3	330	NMUR5	NMUR	Victoria
Murray Ancillary Services 4	330	NMUR7	NMUR	Victoria
Murray	330	NMUR8	NMUR	Victoria

Location	Voltage kV	Connection point ID	TNI code	Region
Murray Ancillary Services 5	330	NMUR9	NMUR	Victoria
Upper Tumut	330	NUTS	NUTS	NSW
Upper Tumut Ancillary Services 2	330	NUTS3	NUTS	NSW
Upper Tumut Ancillary Services 3	330	NUTS5	NUTS	NSW
Upper Tumut Ancillary Services 4	330	NUTS7	NUTS	NSW
Upper Tumut	330	NUTS8	NUTS	NSW

### 11.13.9 Location of region boundaries

The location of the *region* boundary between the New South Wales region and the Victoria *region* as a result of the abolition of the Snowy *region* is as follows:

- (1) at Red Cliffs Terminal Station on the 0X1 Red Cliffs to Buronga 220 Transmission Line;
- (2) at Wodonga Terminal Station on the 060 Wodonga to Jindera 330 Transmission Line;
- (3) at Murray Switching Station on the 066 Murray to Lower Tumut 330 Transmission Line;
- (4) at Murray Switching Station on the 065 Murray to Upper Tumut 330 Transmission Line;
- (5) at the Guthega 132kV Switchyard 132kV Bus No 2-3 bus Section Disconnecter 4128.

### 11.13.10 2008/09 Regions Publication and Loss Factors Publication

- (a) *NEMMCO* must, as an implementation function, review and *publish* by 1 April 2008:

- (1) the 2008/09 *Regions Publication*; and
- (2) the 2008/09 Loss Factors Publication,

making any changes necessary in accordance with the *Amending Rule 2007*, including but not limited to the allocation of *transmission network*



*connection points* under clause 11.13.8 and the location of *region* boundaries under clause 11.13.9.

- (b) In relation to the publications referred to in paragraph (a) (or subsequent annual *Regions Publications* or Loss Factors Publications), nothing prevents *NEMMCO*:
  - (1) amending those publications to implement:
    - (i) the *Amending Rule 2007* or future *region* boundary changes under the *Rules*;
    - (ii) future physical changes to the *transmission network*; or
    - (iii) changes in the configuration of *connection points* requested by *Registered Participants* for the purposes of participation in the *NEM*; or
  - (2) publishing the annual *Regions Publication* and the Loss Factors Publication in a single document.

#### **11.13.11 Reserve margin calculations**

*NEMMCO* may, as an implementation function, determine estimates of the minimum reserve levels to be applied to the modified *regions* provided that the process used to determine the estimates is *published*.

#### **11.13.12 Re-calculation of network constraints and transmission loss factors**

- (a) A *Transmission Network Service Provider* must, to the extent practicable, provide to *NEMMCO* on request information for or with respect to the re-calculation of *network constraints* and *transmission loss factors* including but not limited to:
  - (1) advice on the re-calculation of *network* limits, including stability limits; and
  - (2) information relating to the determination of *network losses* and *loss factors*.
- (b) Where a *Transmission Network Service Provider* advises *NEMMCO* that it is not practicable to provide information relating to the re-calculation of *network* limits or losses within the time period specified in the request, *NEMMCO* may:
  - (1) request the *Transmission Network Service Provider* to provide the information to *NEMMCO* as it becomes available to the provider;

- (2) determine *inter-regional loss factors* on the basis of estimates;
  - (3) apportion losses for the purpose of *settlements residue payments* using estimates; or
  - (4) re-formulate existing *network constraints* to apply to the new *regions* using estimates.
- (c) *NEMMCO* must *publish* the process used for determining estimates under paragraph (b).

### 11.13.13 Transition of settlements residue auction arrangements

- (a) Terms used in this clause 11.13.13 that are used in the *auction rules* have the same meaning as in those rules.
- (b) Despite anything in rule 3.18, *NEMMCO*:
  - (1) may, as an implementation function:
    - (i) amend the *auction rules*;
    - (ii) remove or modify Unit Categories affected by the abolition of the *Snowy region* and the consequential modification of the *New South Wales region* and the *Victoria region*;
    - (iii) re-set *auction expense fees* as required to align with any new Unit Categories;
    - (iv) conduct *auctions* in relation to new Unit Categories; and
    - (v) take any other action in relation to *auctions* that is necessary or consequential on the abolition of the *Snowy region*; and
  - (2) must consult with the *Settlements Residue Committee* in amending the *auction rules* under paragraph (1) and is only required to comply with the *Rules consultation procedures* to the extent practicable in the circumstances of the implementation of the abolition of the *Snowy region*.

### 11.13.14 Continuity of regions

Subject to this rule 11.13 and clause 3.5.6, on and from 00:00 hours *EST* on 1 July 2008:

- (1) the unmodified *regions* continue and are taken to be *regions* for all purposes under the *Rules*; and

- (2) the New South Wales *region* and the Victoria *region* as modified by the *Amending Rule 2007* continue and are taken to be *regions* specified under clause 3.5.1 for all purposes under the *Rules*.

## Part M Economic Regulation of Distribution Services (2007 amendments)

### Division 1 General Provisions

#### 11.14.1 Application of this Division

This Division has no application in relation to Victoria.

#### 11.14.2 Definitions

**amending rules** means the *National Electricity (Economic Regulation of Distribution Services) Amendment Rules 2007*.

**current Chapter 6** means Chapter 6 of these *Rules* as currently in force.

**former Chapter 6** means Chapter 6 of these *Rules* as in force before the substitution of the *current Chapter 6* by the amending rules.

**jurisdictional pricing determination** for a *participating jurisdiction* means a determination regulating *distribution service* pricing made by the *Jurisdictional Regulator* for the *participating jurisdiction* and in force immediately before the date of the relevant amendment.

**new regulatory provisions** means the provisions of *current Chapter 6* or (if applicable) of later Divisions of this Part providing for the economic regulation of *distribution services* after the transitional regulatory period comes to an end.

**old regulatory regime** for a *participating jurisdiction* includes:

- (a) the jurisdictional pricing determination for the *participating jurisdiction*; and
- (b) the laws (including the *former Chapter 6*) governing the making, monitoring, administration and enforcement of the jurisdictional pricing determination;
- (c) any other determination, guideline, code or document (whatever its description) of a kind contemplated by the *former Chapter 6* that was made for the *participating jurisdiction* by the relevant *Jurisdictional Regulator* and was in force immediately before the date of the relevant amendment;

- (d) any other obligation imposed by or under the *former* Chapter 6;
- (e) any power or function of the *Jurisdictional Regulator* under the former Chapter 6.

**new regulatory regime** means the system for the economic regulation of *distribution services* contemplated by the new regulatory provisions.

**relevant amendment** means the substitution of the current Chapter 6 for the former Chapter 6 by the amending rules.

**transitional regulatory period** for a *participating jurisdiction* means the *regulatory control period* for which the *jurisdictional pricing determination* for the relevant *participating jurisdiction* was made.

### 11.14.3 Preservation of old regulatory regime

- (a) Subject to this Part, a *Distribution Network Service Provider* who was providing *distribution services* in a *participating jurisdiction* at the date of the relevant amendment
  - (1) remains subject to the old regulatory regime for the duration of the transitional regulatory period; and
  - (2) does not become subject to the new regulatory regime until the end of the transitional regulatory period.

*Examples:*

1. *Reporting, monitoring and other compliance requirements continue under the old regulatory regime until the end of the transitional regulatory period and (subject to this Part) are unaffected by the new regulatory provisions.*
2. *Price regulation continues under the old regulatory regime until the end of the transitional regulatory period and is unaffected by the new regulatory provisions.*
3. *Prudential, billing and settlement issues are governed by rules 6.7 and 6.8 of former Chapter 6 and any applicable regulatory instruments (rather than Parts J and K of current Chapter 6).*
4. *Access disputes are dealt with under the old regulatory regime (and cannot be notified under Part L of current Chapter 6).*

- (b) However:

- (1) the new regulatory provisions govern the making of a distribution determination for the *Distribution Network Service Provider* at the end of the transitional regulatory period; and
- (2) in that respect the *new regulatory provisions* apply to a *Distribution Network Service Provider* who is still subject to the old regulatory regime as if the jurisdictional pricing determination were a distribution determination approaching the end of its *regulatory control period*.

#### 11.14.4 Transfer of regulatory responsibility

- (a) The Minister for a *participating jurisdiction* may, during the course of the transitional regulatory period, transfer responsibility for the economic regulation of *distribution services* in the relevant jurisdiction from the *Jurisdictional Regulator* to the *AER*.
- (b) A Minister for a *participating jurisdiction* makes (or is taken to make) a transfer of regulatory responsibility under this clause:
  - (1) by giving notice of the transfer to the *Jurisdictional Regulator* and the *AER*; or
  - (2) if powers exist apart from this clause under the law of the *participating jurisdiction* to transfer regulatory responsibility from the *Jurisdictional Regulator* to the *AER* – by exercising those powers.
- (c) If the Minister makes a transfer of regulatory responsibility under this clause:
  - (1) the *AER* is subrogated to the position of the *Jurisdictional Regulator*; and
  - (2) the *AER* may therefore exercise powers and functions of the *Jurisdictional Regulator* (including legislative powers and functions) under the old regulatory regime; and

*Note:*

*The AER may also use its powers (e.g. for information gathering) under the Law.*

- (3) references to the *Jurisdictional Regulator* in a determination or other instrument (including a legislative instrument) related to the old regulatory regime will be read as references to the *AER*.

### 11.14.5 Special requirements with regard to ring fencing

- (a) The requirements of the old regulatory regime with regard to ring fencing (rule 6.12 of *former Chapter 6* and related guidelines) apply to a *Distribution Network Service Provider* until the *AER* assumes regulatory responsibility at the end of the transitional regulatory period or on the earlier transfer of regulatory responsibility to the *AER*.
- (b) On the *AER's* assumption of regulatory responsibility, a *Distribution Network Service Provider*:
  - (1) ceases to be subject to the requirements of the old regulatory regime with regard to ring fencing; and
  - (2) becomes subject to the ring fencing requirements of the new regulatory regime; but
  - (3) guidelines in force for a *participating jurisdiction* immediately before the *AER's* assumption of regulatory responsibility (**transitional guidelines**) continue in force for that jurisdiction subject to amendment, revocation or replacement by guidelines made under the new regulatory regime.
- (c) The transitional guidelines:
  - (1) are taken to be guidelines made by the *AER* under the new regulatory regime; and
  - (2) are to be construed as if references to a *Jurisdictional Regulator* were references to the *AER*.
- (d) A waiver granted, or additional ring fencing requirement imposed, by a *Jurisdictional Regulator* under the transitional guidelines continues in force under the transitional guidelines subject to variation or revocation by the *AER*.

### 11.14.6 Additional requirements with regard to cost allocation

- (a) Even though a *Distribution Network Service Provider* remains subject to the old regulatory regime, the provider is also subject, as from the date of the relevant amendment, to the requirements of Part F of the current Chapter 6 (Cost Allocation).
- (b) This clause applies only for the purposes of the next distribution determination for the *Distribution Network Service Provider*.

### **11.14.7 Construction of documents**

To facilitate the transition from the old regulatory regime to the new regulatory regime, references in determinations and other documents to provisions of former Chapter 6 are to be read (where the context admits) to corresponding provisions of the current Chapter 6.

## **Division 2 Special provisions applying to New South Wales and the Australian Capital Territory for the Regulatory Control Period 2009-2014**

### **11.15 Special provisions applying to New South Wales and the Australian Capital Territory**

#### **11.15.1 Regulatory control period 2009-2014 for NSW and ACT**

There is to be a regulatory control period of 5 years for the NSW and ACT Distribution Network Service Providers commencing on 1 July 2009, which is referred to in this Division 2 as the regulatory control period 2009-2014.

#### **11.15.2 Application of Chapter 6 to NSW and ACT for regulatory control period 2009-2014**

- (a) Chapter 6 of the *Rules* applies in relation to the NSW and ACT Distribution Network Service Providers in respect of the regulatory control period 2009-2014 as if that Chapter were amended so as to be in the form set out in Appendix 1 to the *Rules*.
- (b) However, anything required to be done by or in relation to the NSW and ACT Distribution Network Service Providers during the regulatory control period 2009-2014 for the purposes of the *regulatory control period* commencing on 1 July 2014 is to be done in accordance with general Chapter 6, but (where appropriate) taking into account anything done under transitional Chapter 6.
- (c) Accordingly general Chapter 6 does not apply in relation to the NSW and ACT Distribution Network Service Providers in respect of the regulatory control period 2009-2014 except:
  - (1) as provided by paragraphs (a) and (b); and
  - (2) to the extent that a provision of transitional Chapter 6 expressly applies a provision of general Chapter 6 or expressly provides that an act, matter or thing has to be done in accordance with a provision of or a procedure in general Chapter 6.

- (d) For the avoidance of doubt, this rule 11.15 and transitional Chapter 6 do not apply to *Distribution Network Service Providers* not referred to in paragraph (c).
- (e) References in the *Rules* (other than Chapter 6 and this rule 11.15) to Chapter 6 or a provision of Chapter 6 are references to transitional Chapter 6 or a provision of transitional Chapter 6 so far as the references relate to the regulatory control period 2009-2014 for the NSW and ACT Distribution Network Service Providers.
- (f) In this rule 11.15:
  - “general Chapter 6” means Chapter 6 as in force apart from this rule 11.15.
  - “transitional Chapter 6” means Chapter 6 in the form set out in Appendix 1 to the Rules.

### **Division 3 Transitional arrangements for first distribution determination for Queensland Distribution Network Service Providers**

#### **11.16 Transitional arrangements for first distribution determination for Queensland Distribution Network Service Providers**

##### **11.16.1 Definitions**

In this Division 3:

**2005 determination** means the Final Determination: Regulation of Electricity Distribution of the Queensland Competition Authority dated April 2005.

**EDSD Review** means the review by the Independent Panel appointed by the Queensland Government into Electricity Distribution and Service Delivery for the 21st Century which was established in March 2004 and reported in July 2004.

**ENERGEX** means Energex Limited A.C.N 078 849 055 and any successor business.

**Ergon Energy** means Ergon Energy Corporation Limited A.C.N. 087 646 062 and any successor business.

**Queensland Competition Authority** means the authority established by section 7 of the *Queensland Competition Authority Act 1997* (Qld).

**regulatory control period** means the *regulatory control period* beginning 1 July 2010.



### 11.16.2 Application of Part to Queensland 2010 distribution determinations

The requirements of this Division 3 apply for the purposes of making a distribution determination for ENERGEX and Ergon Energy for the regulatory control period and modify the application of Chapter 6 of the Rules to the extent set out in this Division 3.

### 11.16.3 Treatment of the regulatory asset base

- (a) Nothing in Chapter 6 of the *Rules* requires ENERGEX or Ergon Energy to amend the approach allowed in the 2005 determination in relation to the treatment of *standard control services* and other services in the regulatory asset base for the regulatory control period.
- (b) The *AER* must accept the approach proposed by ENERGEX and Ergon Energy for the regulatory control period if it is consistent with the approach in the 2005 determination.
- (c) The *AER* must provide for any necessary adjustments or mechanisms in the *distribution determination* for the regulatory control period to prevent any cross-subsidies between *standard control services* and other *distribution services*.

*Note:*

*The regulatory asset bases for Ergon Energy and ENERGEX are likely to include assets used to provide services which are not standard control services and accordingly the expected revenue for each year will need to be adjusted to avoid double recovery of those costs.*

### 11.16.4 Efficiency Benefit Sharing Scheme

- (a) An *efficiency benefit sharing scheme* for ENERGEX and Ergon Energy for the regulatory control period must not cover efficiency gains and losses relating to capital expenditure.
- (b) For the purposes of clause 6.5.8(c) the *AER* must also have regard to the continuing obligations on ENERGEX and Ergon Energy throughout the regulatory control period to implement the recommendations from the EDSD Review adopted by the Queensland Government.

### 11.16.5 Service Target Performance Incentive Scheme

In formulating a *service target performance incentive scheme* to apply to ENERGEX and Ergon Energy for the regulatory control period, the *AER*, in addition to the requirements in clause 6.6.2(b), must also:

- (1) take into account the continuing obligations on ENERGEX and Ergon Energy throughout the regulatory control period to implement the recommendations from the EDSR Review adopted by the Queensland Government;
- (2) take into account the impact of severe weather events on service performance; and
- (3) consider whether the scheme should be applied by way of a paper trial or whether a lower powered incentive is appropriate.

#### **11.16.6 Framework and approach**

- (a) If either ENERGEX or Ergon Energy submits a proposal to the *AER* as to the classification of services and control mechanism for the regulatory control period on or before 31 March 2008, the *AER* must publish its *framework and approach paper* under clause 6.8.1 in relation to those issues within five months of receiving the proposal from ENERGEX or Ergon Energy (as the case may be).
- (b) This clause does not affect the timing or the processes of the *AER* in preparing and publishing its *framework and approach paper* on the remaining issues in clause 6.8.1 for ENERGEX or Ergon Energy if they submit a proposal under paragraph (a).

#### **11.16.7 Regulatory Proposal**

- (a) For the purposes of submitting a *regulatory proposal* under clause 6.8.2 for the regulatory control period, ENERGEX and Ergon Energy may, for the purposes of calculating indicative prices referred to in clause 6.8.2(c)(4) and including X factors for the purposes of clause 6.5.9, treat the proposed *statement of regulatory intent* published under clause 6.16(b)(1) as if it were the applicable *statement of regulatory intent*.
- (b) If the *statement of regulatory intent* differs materially from the proposed *statement of regulatory intent*, ENERGEX or Ergon Energy may revise its calculation of indicative prices and proposed X factors in its *regulatory proposal* on or before 1 July 2009.
- (c) The *AER* must *publish* any revised information submitted by ENERGEX or Ergon Energy under this clause.

#### **11.16.8 Side constraints**

For the regulatory control period, nothing in clause 6.18.6 should preclude the implementation of any price paths approved by the Queensland Competition Authority (including any necessary adjustment of those price paths in light of the expected revenue for the first *regulatory year* of the regulatory control period).

### 11.16.9 Cost pass throughs

- (a) If an event or circumstance occurs before 1 July 2010 which would constitute a pass through under the 2005 determination and no application for a pass through has been made in relation to that event or circumstance, ENERGEX or Ergon Energy may apply to the *AER* within a year of the event or circumstance occurring to accommodate the impact of the event in the regulatory control period.
- (b) The *AER* must allow a pass through of such amounts if the event or circumstance would have constituted a pass through under the 2005 determination as if the amounts were *approved pass through amounts* under clause 6.6.1.

### 11.16.10 Capital Contributions Policy

- (a) ENERGEX and Ergon Energy must comply with a capital contributions policy published under this clause 11.16.10 for the regulatory control period.
- (b) By 1 July 2009, ENERGEX and Ergon Energy must publish on their website a capital contributions policy based upon the requirements relating to capital contributions in their Network Pricing Principles Statements approved by the Queensland Competition Authority immediately in force prior to 1 July 2009.
- (c) The *AER* may by written notice, before 1 January 2010, direct ENERGEX or Ergon Energy to revise and republish their capital contributions policy within 15 *business days* of the notice only if the published policy does not give effect to the requirements relating to capital contributions in their Network Pricing Principles Statement.
- (d) After 1 January 2010, ENERGEX or Ergon Energy may apply to the *AER* to amend their published capital contributions policy and the *AER* may, after such consultation as it considers appropriate, approve or not approve that amendment.

## Division 4 – Transitional provisions of specific application to Victoria

### 11.17.1 Definitions

In this Division:

**AMI Order in Council** means the Order in Council made by the Governor of Victoria under section 15A and section 46D of the *Electricity Industry Act 2000* (Vic) and published in the Victoria Government Gazette on 28 August 2007 (and includes that Order in Council as amended from time to time).

**ESC cost allocation guidelines** means *Electricity Industry Guideline No.3, Regulatory Information Requirements* made by the ESC and dated 14 December 2006 (and includes those guidelines as amended from time to time).

**ESC distribution pricing determination** means the Victorian distribution pricing determination as defined in section 3(1) of the *National Electricity (Victoria) Act 2005*.

**Victorian Distribution Network Service Provider** means a *Distribution Network Service Provider* for a *distribution network* situated wholly or partly in Victoria.

### 11.17.2 Calculation of estimated cost of corporate income tax

- (a) This clause applies to the calculation of the estimated cost of corporate income tax for the purposes of distribution determinations that are to take effect on 1 January 2011 for Victorian Distribution Network Service Providers.
- (b) For calculating the estimated cost of corporate income tax, the *AER* must adopt:
  - (1) the taxation values of assets carried over from the ESC distribution pricing determination; and
  - (2) the classification of assets, and the method of classification, adopted for the ESC distribution pricing determination; and
  - (3) the same method of depreciation as was adopted by the ESC for the ESC distribution pricing determination.
- (c) The *AER* may, however, depart from methods of asset classification or depreciation mentioned in paragraph (b)(2) or (3) to the extent required by changes in the taxation laws or rulings given by the Australian Taxation office.
- (d) A *post-tax revenue model* must be consistent with this clause.

### 11.17.3 Decisions made in the absence of a statement of regulatory intent

- (a) This clause applies if a Victorian Distribution Network Service Provider submits a *building block proposal* before the *AER* issues a *statement of regulatory intent*.
- (b) In deciding questions to which the considerations stated in clause 6.5.4(e) are relevant, the *AER* must have regard to those considerations.

#### 11.17.4 Cost allocation guidelines

- (a) In formulating the *Cost Allocation Guidelines* under clause 6.15.3, the *AER* must include guidelines specifically applicable to Victorian Distribution Network Service Providers (the *guidelines of specific application to Victoria*).
- (b) The guidelines of specific application to Victoria:
  - (1) must be formulated with regard to the ESC cost allocation guidelines; and
  - (2) must be designed to ensure, to the maximum practicable extent, consistency between cost allocation as required by the ESC distribution pricing determination and cost allocation in later *regulatory control periods*.

#### 11.17.5 Modification of requirements related to cost allocation method

- (a) Clause 6.15.4(a) applies to a Victorian Distribution Network Service Provider as if, instead of requiring submission of the provider's proposed *Cost Allocation Method* within 12 months after the commencement of Chapter 6, it required submission of the proposed *Cost Allocation Method* together with the first *building block proposal* to be submitted by the provider after the commencement of Chapter 6.
- (b) The references in clauses 6.5.6(b)(2) and 6.5.7(b)(2) to the *Cost Allocation Method* are, if paragraph (a) is applicable, to be read as references to the proposed *Cost Allocation Method* submitted with the *building block proposal*.
- (c) The *AER* must include in its *framework and approach paper* prepared for a Victorian *Distribution Network Service Provider*, in relation to the first *building block proposal* to be submitted by the provider after the commencement of Chapter 6, a statement of its likely approach to cost allocation based on the guidelines then in force.
- (d) The *AER*:
  - (1) must, in deciding under clause 6.15.4(c) whether to approve a *Cost Allocation Method* submitted by a Victorian Distribution Network Service Provider, have regard to previous cost allocation in accordance with the ESC distribution pricing determination; and
  - (2) must not approve the *Cost Allocation Method* unless it allows effective comparison of historical and forecast cost allocation between the period to which the ESC distribution pricing determination applies and later *regulatory control periods*; and

- (3) may, subject to the relevant *Cost Allocation Guidelines*, refuse to approve the *Cost Allocation Method* if it differs from the method previously used by the Victorian Distribution Network Service Provider.

### 11.17.6 AMI Order in Council

- (a) Metering services that are regulated under the AMI Order in Council are not, while so regulated, subject to regulation under a distribution determination but, on cessation of regulation under the AMI Order in Council, are liable to regulation under a distribution determination.
- (b) However, for a relevant *regulatory control period*, services to which exit fees under clause 7, or restoration fees under clause 8, of the AMI Order in Council applied are to be classified as alternative control services and are to be regulated by the *AER* on the same basis as applied under the AMI Order in Council.
- (c) For paragraph (b), a relevant *regulatory control period* is a *regulatory control period* commencing on or after 1 January 2016 and before 1 January 2021.
- (d) Until there is a transfer of regulatory responsibility from the *ESC* to the *AER* under a law of Victoria, clause 7.3.6(f) in its application to Victoria will be read as if it permitted the recovery of the costs to which it refers in accordance with a determination made either by the *AER* or by the *ESC*.
- (e) This clause expires on 1 January 2021.

## Part N Registration of Foreign Based Persons and Corporations as Trader Class Participants (2007 amendments)

### 11.18 Rules consequential on the making of the National Electricity Amendment (Registration of Foreign Based Persons and Corporations as Trader Class Participants) Rule 2007

#### 11.18.1 Definitions

For the purposes of this rule 11.18:

**Amending Rule** means the National Electricity Amendment (Registration of Foreign Based Persons and Corporations as Trader Class Participants) Rule 2007.

**commencement date** means the day on which the Amending Rule commences operation.

## 11.18.2 Auction rules

- (a) *NEMMCO* must amend the *auction rules* by 1 September 2008 in accordance with clause 3.18.3 to incorporate the amendments to the *Rules* made by the Amending Rule.
- (b) Any action taken by *NEMMCO* prior to the commencement date, in anticipation of the commencement date, to amend the *auction rules* for the purpose of the Amending Rule is taken to satisfy the equivalent action under clause 3.18.3.

## Part O Process for Region Change (2007 amendments)

### 11.19 Rules consequent on making of the National Electricity Amendment (Process for Region Change) Rule 2007

#### 11.19.1 Definitions

**Amending Rule** means the National Electricity Amendment (Process for Region Change) Rule 2007.

**commencement date** means the day on which the Amending Rule commences operation.

**old clause 3.5.5** means clause 3.5.5 of the *Rules* as in force immediately before the commencement date.

#### 11.19.2 Regions Publication

The Regions Publication published by *NEMMCO* immediately before the commencement date in accordance with old clause 3.5.5 and clause 11.13.10 is taken to be the *Regions Publication published by NEMMCO* in accordance with clause 2A.1.3.

## Part P Integration of NEM Metrology Requirements

### 11.20 Rules consequential on the making of the National Electricity Amendment (Integration of NEM Metrology Requirements) Rule 2008

#### 11.20.1 Definitions

For the purposes of this rule 11.20:

**Amending Rule** means the National Electricity Amendment (Integration of NEM Metrology Requirements) Rule 2008.

**commencement date** means the day on which the Amending Rule commences operation.

**first-tier jurisdictional requirements publication** means the publication published by *NEMMCO* in accordance with clause 11.20.6.

**Minimalist Transitioning Approach** has the same meaning as in the Queensland Electricity Industry Code.

**new clause 7.3.1** means clause 7.3.1 of the *Rules* immediately after the commencement date.

**Victorian first-tier load** means a load in Victoria where the electricity flowing through the *connection point* is equal to, or greater than, 160 MWh per annum.

### **11.20.2 Metering installations for non-market generating units immediately prior to 30 June 2008**

- (a) A *metering installation* for a *non-market generating unit* that was installed immediately prior to 30 June 2008 and complied with the applicable jurisdictional requirements for that installation on 30 June 2008 is taken to satisfy the requirements for *metering installations for non-market generating units* in new clause 7.3.1.
- (b) Where a *metering installation* for a *non-market generating unit* did not comply with the requirements referred to in paragraph (a), that installation must be repaired or replaced in accordance with the requirements of new clause 7.3.1.
- (c) The applicable jurisdictional requirements for *metering installations for non-market generating units* referred to in paragraph (a) must be referred to in the first-tier jurisdictional requirements publication.

### **11.20.3 First-tier load metering installations**

- (a) Subject to clause 11.20.5, a *first-tier load metering installation* as at 30 June 2008 that complied with the applicable jurisdictional requirements for that installation as at that date is taken to comply with the *Rules* provided the *metering installation* continues to comply with the applicable jurisdictional requirements as at 30 June 2008.
- (b) A *first-tier load metering installation* that does not satisfy the requirements of paragraph (a) must be repaired or replaced in accordance with the *Rules*.
- (c) The applicable jurisdictional requirements referred to in paragraph (a) for *first-tier load metering installations* must be referred to in the first-tier jurisdictional requirements publication.



#### 11.20.4 First-tier load metering installations in Victoria

- (a) Subject to paragraph (b) and despite the *Rules*, a *Market Participant* who is responsible for a Victorian *first-tier load* with a type 5 or type 6 *metering installation* immediately before the commencement date is taken to be the *responsible person* for that *metering installation*.
- (b) A *Market Participant* who is taken to be the *responsible person* for the *metering installation* referred to in paragraph (a) must ensure the *metering installation* meets the applicable jurisdictional requirements for that installation as referred to in the first-tier jurisdictional requirements publication in accordance with clause 11.20.3(c).

#### 11.20.5 Minimalist Transitioning Approach in Queensland

For the duration of the Minimalist Transitioning Approach, clauses 7.2.3(i)(2), 7.2.5(b)(2), 7.2.5(d)(6) and 7.3.1(f) of the *Rules* do not apply in respect of a *metering installation* which:

- (a) is the responsibility of a *Market Participant* or *responsible person* who is operating under the Minimalist Transitioning Approach in Queensland; and
- (b) in accordance with the *Market Settlement and Transfer Solution Procedures*:
  - (1) has a *NMI* classification of SMALL; and
  - (2) the *Local Network Service Provider* has not received a valid request from a *Market Customer* for the *NMI* to be registered with *NEMMCO*.

#### 11.20.6 First-tier jurisdictional requirements publication

- (a) *NEMMCO* must, in consultation with the *participating jurisdictions*, *publish* a document ('**first-tier jurisdictional requirements publication**') that lists the documents that contain the applicable jurisdictional requirements referred to in clauses 11.20.2, 11.20.3 and 11.20.4.
- (b) *NEMMCO* must *publish* the first-tier jurisdictional requirements publication by 30 June 2008.

#### 11.20.7 Metrology procedure

- (a) *NEMMCO* must make the required amendments to the *metrology procedure* as a result of the Amending Rule by 31 July 2008.
- (b) All actions taken by *NEMMCO* prior to the commencement date to amend the *metrology procedure* in accordance with paragraph (a) are deemed to be valid as at the commencement date to the extent that those actions were

taken in accordance with the relevant requirements of rule 7.14 (as though the Amending Rule was in force at the time that the action was taken).

- (c) The *metrology procedure* published in accordance with rule 7.14 immediately before the commencement date continues to apply as if the Amending Rule had not been made and until *NEMMCO publishes* the amended *metrology procedure* in accordance with paragraph (a).

## **11.21 Rules consequential on the making of the National Electricity Amendment (NEM Reliability Settings: Information Safety Net and Directions) Rule 2008 No. 6**

### **11.21.1 Definitions**

In this rule 11.21:

**Amending Rule** means the National Electricity Amendment (NEM Reliability Settings: Information Safety Net and Directions) Rule 2008 No. 6.

**Commencement date** means the date the Amending Rule commences operation.

### **11.21.2 EAAP guidelines**

All actions taken by *NEMMCO* prior to the commencement date in anticipation of the commencement date for the purposes of preparing and publishing the first *EAAP guidelines* as required by clause 3.7C(p) are taken to satisfy the equivalent actions required for *EAAP guidelines* under rule 3.7C.

### **11.21.3 NEMMCO procedures for exercising RERT**

- (a) All actions taken by *NEMMCO* prior to the commencement date in anticipation of the commencement date for the purposes of developing and publishing the procedures for the exercise of the *RERT* as required by clause 3.20.7(e) are taken to satisfy the equivalent actions required for the procedures under clause 3.20.7.
- (b) *NEMMCO* may develop, *publish*, and may amend from time to time, interim procedures for the exercise of the *RERT* under rule 3.20 at any time before it *publishes* the first procedures for that purpose as required by clause 3.20.7(e). For these purposes:
  - (1) *NEMMCO* is not required to develop, *publish* or amend those interim procedures in accordance with the *Rules consultation procedures*;
  - (2) those interim procedures must take into account the *RERT principles* and *RERT guidelines* or, if there are no *RERT guidelines* in existence at that time, the draft guidelines referred to in clause 11.21.4(b);

- (3) those interim procedures must include measures as referred to in clause 3.20.7(e);
- (4) those interim procedures will cease to apply when *NEMMCO publishes* the first procedures for the exercise of the *RERT* as required by clause 3.20.7(g); and
- (5) for so long as those interim procedures apply, references in rule 3.20 to the procedures referred to in clause 3.20.7(e) are taken to include references to those interim procedures.

#### **11.21.4 RERT guidelines**

- (a) All actions taken by the *Reliability Panel* prior to the commencement date in anticipation of the commencement date for the purposes of developing and *publishing* the first *RERT guidelines* as required by clause 3.20.8(c) are taken to satisfy the equivalent actions required for *RERT guidelines* under clause 3.20.8.
- (b) If it exercises the *RERT* under rule 3.20 prior to the *publication* of the first *RERT guidelines* as required by clause 3.20.8(c), *NEMMCO* must take into account the draft guidelines set out in Appendix C.3 to the document entitled 'Comprehensive Reliability Review: Second Interim Report' issued by the *Reliability Panel* and dated August 2007.

#### **11.21.5 Timetable**

- (a) *NEMMCO* must amend the *timetable* in accordance with clause 3.4.3(b) to take into account the Amending Rule and those amendments are to take effect from the commencement date.
- (b) All actions taken by *NEMMCO* prior to the commencement date in anticipation of the commencement date to amend the *timetable* as required by paragraph (a) are taken to satisfy the equivalent action required under clause 3.4.3(b).

#### **11.21.6 Power system security and reliability standards**

- (a) The *Reliability Panel* must amend the *power system security and reliability standards* in accordance with clause 8.8.3 to take into account the Amending Rule and those amendments are to take effect from the commencement date.
- (b) All actions taken by the *Reliability Panel* prior to the commencement date in anticipation of the commencement date to amend the *power system security and reliability standards* as required by paragraph (a) are taken to satisfy the equivalent action required under clause 8.8.3.

### 11.21.7 Report on statement of opportunities

All actions taken by *NEMMCO* prior to the commencement date in anticipation of the commencement date for the purposes of preparing and providing a report to the *Reliability Panel* as required by clause 3.13.3(u) are taken to satisfy the equivalent actions required for preparing and providing a report under clause 3.13.3(u).

### 11.21.8 Methodology for dispatch prices and ancillary services prices

Minor or administrative amendments made by *NEMMCO* to the methodology for determining *dispatch prices* and *ancillary service prices* developed in accordance with clause 3.9.3(e) prior to the commencement date are taken to have been made under clause 3.9.3(g).

## Part R Regulatory Test Thresholds and Information Disclosure on Network Replacements

### 11.22 Rules consequential on the making of the National Electricity Amendment (Regulatory Test Thresholds and Information Disclosure on Network Replacements) Rule 2008

#### 11.22.1 Definitions

In this rule 11.22:

**amended definitions** means the definitions of "new large transmission network asset" and "new small transmission network asset" as amended by the Amending Rule.

**Amending Rule** means the National Electricity Amendment (Regulatory Test Thresholds and Information Disclosure on Network Replacements) Rule 2008.

**commencement date** means the date on which the Amending Rule commences operation.

**old definitions** means the definitions of "new large transmission network asset" and "new small transmission network asset" as in force immediately before the commencement date.

#### 11.22.2 Amending Rule does not affect existing regulatory test

The old definitions continue to apply in place of the amended definitions following the commencement date in respect of:

- (a) a *new small transmission network asset* for which a *Transmission Network Service Provider* has set out the matters required under clauses 5.6.2A(b)(4)

and (5) in an *Annual Planning Report published* prior to the commencement date;

- (b) a *new small transmission network asset* not identified in an *Annual Planning Report* for which a *Transmission Network Service Provider* has *published* a report required under clause 5.6.6A(c) prior to the commencement date; and
- (c) a *new large transmission network asset* for which a *Transmission Network Service Provider* has taken an action or commenced a process under the *Rules* which relies on or is referenced to the *Regulatory Test* (such as *publishing* an application notice under clause 5.6.6(c)) that has not completed prior to the commencement date.

## Part S Performance Standard Compliance of Generators

### 11.23 Rules consequential on the making of the National Electricity Amendment (Performance Standards Compliance of Generators) Rule 2008

#### 11.23.1 Definitions

For the purposes of this rule 11.23:

**Amending Rule** means the National Electricity Amendment (Performance Standards Compliance of Generators) Rule 2008.

**Old Clause 5.7.3(b)** means the clause 5.7.3(b) in the version of the *Rules* that was in force immediately prior to the commencement of the Amending Rule.

#### 11.23.2 Application of rule 11.23 for compliance programs implemented immediately after the commencement of the Amending Rule

*Registered Participants* are not required to comply with the obligation set out in rule 4.15(b) until 3 months after the day on which the *Reliability Panel published* its initial *template for generator compliance programs* under clause 8.8.3 of the *Rules* or until a date determined by the *Reliability Panel*.

#### 11.23.3 Application of rule 11.23 for compliance programs implemented immediately prior to the commencement of the Amending Rule

*Registered Participants* which implemented compliance programs under the Old Clause 5.7.3(b) must maintain compliance with those programs until 3 months after the day on which the *Reliability Panel published* its initial *template for generator compliance programs* under clause 8.8.3 of the *Rules* or until a date determined by the *Reliability Panel*.

#### **11.23.4 Application of rule 11.23 for compliance programs not implemented immediately prior to the commencement of the Amending Rule**

*Registered Participants* which have not implemented compliance programs under the Old Clause 5.7.3(b) must implement and maintain compliance programs under the Old Clause 5.7.3(b) until 3 months after the day on which the *Reliability Panel* published its initial *template for generator compliance programs* under clause 8.8.3 of the *Rules* or until a date determined by the *Reliability Panel*.

## Appendix 1 Form in which Chapter 6 applies to New South Wales and the Australian Capital Territory for the Regulatory Control Period 2009-2014

*Note:*

*This Appendix contains transitional Chapter 6 and is based on general Chapter 6. Matter omitted from numbered provisions of general Chapter 6 is indicated by a row of asterisks (\*\*\*\*\*).*

### Chapter 6 Economic Regulation of Distribution Services

#### Part A Introduction

##### 6.1 Introduction to Chapter 6

###### 6.1.1 AER's regulatory responsibility

The *AER* is responsible, in accordance with this Chapter, for the economic regulation of *distribution services* provided by means of, or in connection with, *distribution systems* that form part of the *national grid*.

###### 6.1.2 Structure of this Chapter

- (a) This Chapter deals with the classification and economic regulation of *distribution services*.
- (b) It is divided into parts as follows:
  - (1) this Part is introductory;
  - (2) Part B provides for the classification of *distribution services* and forms of control for *standard control services* and confers power on the *AER* to determine the forms of control for *alternative control services*, and to make distribution determinations;
  - (3) Part C sets out the building block approach to the regulation of services classified as *standard control services*;
  - (4) Part D regulates the prices that may be charged by EnergyAustralia for the provision of services classified as *negotiated distribution services*;
  - (4A) Part DA regulates the prices for negotiable components of *direct control services* (NSW and ACT);

- (5) Part E sets out the procedures for making a distribution determination;
- (6) Part F regulates cost allocation;
- (7) \*\*\*\*\*
- (8) Part H deals with ring-fencing;
- (9) Part I deals with *tariff classes* and tariffs;
- (10) Part J deals with billing and settlements;
- (11) Part K deals with prudential requirements, prepayments and capital contributions;
- (12) Part L deals with dispute resolution;
- (13) Part M deals with the disclosure of transmission and distribution charges.

### 6.1.3 Access to direct control services and negotiated distribution services

- (a) Subject to and in accordance with the *Rules*:
  - (1) a person (a *Service Applicant*) may apply to a *Distribution Network Service Provider* for provision of *direct control services* or *negotiated distribution services*;
  - (2) a *Distribution Network Service Provider* must provide *direct control services* or *negotiated distribution services* (as the case may be) on *terms and conditions of access* as determined under Chapters 4, 5, this Chapter 6 and Chapter 7 of the *Rules*.
- (b) The *terms and conditions* of access are:
  - (1) in relation to *negotiated distribution services*:
    - (i) the price of those services (including, if relevant, *access charges*); and
    - (ii) other terms and conditions for the provision of those services;
  - (2) in relation to *direct control services*:
    - (i) subject to Part DA:
      - (A) the price of those services under the *approved pricing proposal*, except as provided by subsubparagraph (B); and



- (B) in the case of EnergyAustralia’s prescribed (transmission) standard control services, the price of those services under EnergyAustralia’s approved pricing methodology; and
- (ii) other terms and conditions for the provision of those services.

#### **6.1.4 Prohibition of DUOS charges for the export of energy**

- (a) A *Distribution Network Service Provider* must not charge a *Distribution Network User* distribution use of system charges for the export of electricity generated by the user into the *distribution network*.
- (b) This does not, however, preclude charges for the provision of *connection services*.

#### **6.1.5 Application of this Chapter to certain transmission assets – ActewAGL, Country Energy and Integral Energy Australia**

- (a) This clause 6.1.5 applies to ActewAGL, Country Energy and Integral Energy Australia (each of which is a “relevant provider” for the purposes of this clause).
- (b) For the purposes of the regulatory control period 2009-2014:
  - (1) each part of a relevant provider’s *network* that would, but for this clause, be part of the provider’s *transmission network* is deemed to be part of the provider’s *distribution network* for the purposes of this Chapter 6 and Chapter 6A; and
  - (2) despite anything in those Chapters, those Chapters have effect accordingly.
- (c) This clause 6.1.5 does not affect the operation of the *Rules*, apart from:
  - (1) this Chapter 6 and Chapter 6A; and
  - (2) the definitions of *distribution network* and *transmission network* in Chapter 10 in relation to this Chapter 6 and Chapter 6A.
- (d) However, the relevant providers are not required to submit revenue proposals under clause 6A.10.1.

#### **6.1.6 Application of this Chapter to the EnergyAustralia transmission support network**

- (a) This clause 6.1.6 applies to EnergyAustralia.
- (b) For the purposes of the regulatory control period 2009-2014:

- (1) the EnergyAustralia transmission support network is deemed to be part of EnergyAustralia's *distribution network* for the purposes of this Chapter and Chapter 6A; and
  - (2) despite anything in those Chapters, those Chapters have effect accordingly.
- (c) A service that is provided by EnergyAustralia by means of, or in connection with, the EnergyAustralia transmission support network and that, but for this clause, would be a *prescribed transmission service* is:
- (1) deemed to be classified as a *direct control service* and further classified as a *standard control service*; and
  - (2) referred to in this Chapter as an "EnergyAustralia prescribed (transmission) standard control service".
- (d) A service that is provided by EnergyAustralia by means of, or in connection with, the EnergyAustralia transmission support network and that, but for this clause, would be a *negotiated transmission service* is:
- (1) deemed to be classified as a *negotiated distribution service*;
  - (2) referred to in the Rules as an "EnergyAustralia negotiated distribution service".
- (e) Part J of Chapter 6A applies to EnergyAustralia prescribed (transmission) standard control services to the exclusion of Parts I, J and K, and so applies as if:
- (1) references in Part J of Chapter 6A to a *prescribed transmission service* were references to Energy Australia prescribed (transmission) standard control services; and
  - (2) the reference in clause 6A.22.1 to clause 6A.3.2 were a reference to rules 6.6 and 6.13;
- and with any other necessary modifications.
- (f) This clause 6.1.6 does not affect the operation of the *Rules*, apart from:
- (1) this Chapter 6 and Chapter 6A; and
  - (2) the definitions of *distribution network* and *transmission network* in Chapter 10 in relation to this Chapter 6 and Chapter 6A.

### 6.1.7 Definitions

- (a) In this Chapter (including Schedules 6.1 and 6.2):

“ActewAGL” means the joint venture between ACTEW Distribution Limited ACN 073 025 224 and Alinta GCA Pty Ltd ACN 008 552 663 providing *distribution services* in the Australian Capital Territory, or any successor or successors of that joint venture.

“commencement date” means the date of commencement of transitional Chapter 6.

“Cost Allocation Method” means:

- (a) for NSW Distribution Network Service Providers – the Cost Allocation Method approved under clause 6.15.6 as in force from time to time; or
- (b) for the ACT Distribution Network Service Provider – the Cost Allocation Method approved under clause 6.15.8 as in force from time to time.

“Country Energy” means the energy services corporation of that name, which is constituted under section 7 of the Energy Services Corporations Act 1995 (NSW) and specified in Part 2 of Schedule 1 to that Act, or any successor or successors of that corporation.

“EnergyAustralia” means the energy services corporation of that name, which is constituted under section 7 of the Energy Services Corporations Act 1995 (NSW) and specified in Part 2 of Schedule 1 to that Act, or any successor or successors of that corporation.

“EnergyAustralia negotiated distribution service” – see clause 6.1.6(d).

“EnergyAustralia prescribed (transmission) standard control service” – see clause 6.1.6(c).

“EnergyAustralia transmission support network” means any part of a network owned, controlled or operated by EnergyAustralia and operating between 66 kV and 220 kV that operates in parallel to and provides support to the higher voltage *transmission network*.

“ICRC” means the Independent Competition and Regulatory Commission of the Australian Capital Territory, which is established under section 5(1) of the Independent Competition and Regulatory Commission Act 1997 (ACT).

“Integral Energy Australia” means the energy services corporation of that name, which is constituted under section 7 of the Energy Services Corporations Act 1995 (NSW) and specified in Part 2 of Schedule 1 to that Act, or any successor or successors of that corporation.

“IPART” means the Independent Pricing and Regulatory Tribunal of New South Wales, which is established under section 5(1) of the Independent Pricing and Regulatory Tribunal Act 1992 (NSW).

“regulatory control period 2004-2009” means the regulatory control period of 5 years commencing on 1 July 2004.

“regulatory control period 2009-2014” means the regulatory control period of 5 years commencing on 1 July 2009 and referred to in rule 11.15.

“transitional Chapter 6” means this Chapter (being transitional Chapter 6 as defined in rule 11.15).

- (b) In this Chapter and in rule 11.15:
- (1) a reference to the NSW Distribution Network Service Providers is a reference to Country Energy, EnergyAustralia and Integral Energy Australia; and
  - (2) a reference to the ACT Distribution Network Service Provider is a reference to ActewAGL.

## **Part B Classification of Distribution Services and Distribution Determinations**

### **Division 1 Classification of distribution services**

#### **6.2 Classification**

**6.2.1 \*\*\*\*\***

**6.2.2 \*\*\*\*\***

**6.2.3 \*\*\*\*\***

#### **6.2.3A Classes and subclasses of distribution services**

- (a) *Distribution services* to be provided by a *Distribution Network Service Provider* are divided into the following 3 classes:
- (1) *direct control services*;
  - (2) *negotiated distribution services*;
  - (3) *unregulated distribution services*.

*Note:*

*Certain services provided by means of, or in connection with, the EnergyAustralia transmission support network (which is deemed by clause 6.1.6(b) to be part of EnergyAustralia's distribution network) are deemed by clause 6.1.6(d) to be classified as negotiated distribution services for certain purposes.*

- (b) *Direct control services* are further divided into the following 2 subclasses:
- (1) *standard control services*; and
  - (2) *alternative control services*.

### **6.2.3B Classification for NSW Distribution Network Service Providers**

- (a) A *distribution service* that is provided by a NSW Distribution Network Service Provider and that was determined by the IPART to be a prescribed distribution service (for the purposes of the regulatory control period 2004-2009) is deemed (for the purposes of the regulatory control period 2009-2014) to be classified as a *direct control service* and further classified as a *standard control service*.

*Note:*

*The IPART's Final Determination No 2, 2004 (relating to NSW Electricity Distribution Pricing 2004/05 to 2008/09) provided that prescribed distribution services include:*

- *Distribution Use of System Services*
  - *Private Power Line Inspections and Customer Installation Inspections*
  - *certain Monopoly Services*
  - *certain Miscellaneous Services*
  - *certain Emergency Recoverable Works.*
- (b) A *distribution service* that is provided by a NSW Distribution Network Service Provider and that was determined by the IPART to be an excluded distribution service (for the purposes of the regulatory control period 2004-2009) is deemed (for the purposes of the regulatory control period 2009-2014):
- (1) in the case of the excluded distribution service of the construction and maintenance of public lighting infrastructure – to be classified as a *direct control service* and further classified as an *alternative control service*;

- (2) in the case of any other excluded distribution service – to be classified as:
- (i) an unregulated *distribution service*, unless the *AER* has made a determination under paragraph (e) in relation to that *distribution service*; or
  - (ii) an *alternative control service*, if the *AER* has made a determination under paragraph (e) in relation to that *distribution service*.

*Note:*

*1. Other distribution services provided by a NSW Distribution Network Service Provider are unclassified and not regulated under the Rules.*

*2. The IPART's Final Determination No 2, 2004 (relating to NSW Electricity Distribution Pricing 2004/2005 to 2008/2009) determined that the following Distribution Services are Excluded Distribution Services):*

- *the construction and maintenance of Public Lighting Infrastructure*
- *Customer Funded Connections*
- *Customer Specific Services*
- *Type 1 to 4 Metering Services.*

- (c) A NSW Distribution Network Service Provider is, in relation to a *distribution service* classified as an unregulated *distribution service*, required to comply substantially with the relevant requirements of the provisions of Rule 2004/1 (Regulation of Excluded Distribution Services) made by the IPART in relation to the regulatory control period 2004-2009.

*Note:*

*Distribution services provided by a NSW Distribution Network Service Provider that are unclassified are not regulated under the Rules, and accordingly are not required to comply with the requirements of Rule 2004/1.*

- (d) For the purposes of paragraph (c), the provisions of Rule 2004/1 have effect as if references to the IPART were references to the *AER* and references to the regulatory control period 2004-2009 were references to the regulatory control period 2009-2014, and with any other necessary modifications.
- (e) The *AER* may, at any time during the regulatory control period 2009-2014, determine that a NSW Distribution Network Service Provider is not or has

ceased to be in substantial compliance with the requirements of the provisions referred to in paragraph (c) if the AER has:

- (1) given the provider a written notice inviting the provider to show cause within a specified period of at least 2 weeks why the *AER* should not make the determination and setting out the grounds on which the *AER* would make the determination; and
  - (2) taken into consideration any written submissions made by the provider to the *AER* within that period in response to the notice.
- (f) Once a *distribution service* has been classified as an *alternative control service* because of a determination by the *AER* under paragraph (e), the *distribution service* cannot during the remainder of the regulatory control period 2009-2014 be classified again as an unregulated *distribution service*, unless it appears to the *AER* that the determination is affected by a material error or deficiency of a kind referred to in rule 6.13(a).
- (g) Provisions having effect as referred to in paragraph (c) may be included in a distribution determination in any appropriate format.
- (h) Once a *distribution service* has been classified as an *alternative control service* because of a determination by the *AER* under paragraph (e), the *AER* must make such amendments to the relevant distribution determination as are necessary to regulate the *distribution service* as an *alternative control service*.
- (i) When making the distribution determination for a NSW Distribution Network Service Provider, the *AER* may, with the agreement of the provider, vary the deemed classification effected by this clause 6.2.3B of a *distribution service* provided by the provider.
- (j) A deemed or varied classification under this clause 6.2.3B forms part of a distribution determination and operates for the regulatory control period 2009-2014.

### **6.2.3C Classification for ACT Distribution Network Service Provider**

- (a) A *distribution service* that is provided by the ACT Distribution Network Service Provider and that was determined by the ICRC to be a prescribed distribution service (for the purposes of the regulatory control period 2004-2009) is deemed (for the purposes of the regulatory control period 2009-2014) to be classified as a *direct control service* and further classified as a *standard control service*.
- (b) A *distribution service* that is provided by the ACT Distribution Network Service Provider and that was determined by the ICRC to be an excluded distribution service (for the purposes of the regulatory control period 2004-

2009) is deemed (for the purposes of the regulatory control period 2009-2014) to be classified as a *direct control service* and further classified as an *alternative control service*.

- (c) When making the distribution determination for the ACT Distribution Network Service Provider, the AER may, with the agreement of the provider, vary the deemed classification effected by this clause 6.2.3C of a *distribution service* provided by the provider.
- (d) A deemed or varied classification under this clause 6.2.3C forms part of a distribution determination and operates for the regulatory control period 2009-2014.

*Note:*

*The ICRC's Final Decision-Investigation into prices for electricity distribution services in the ACT-Report No 6 of 2004 (relating to ACT Electricity Distribution Pricing 2004/2005 to 2008/2009) provided that prescribed distribution services include all distribution services provided by ActewAGL, with the exception of the provision of and servicing of meters for customers consuming fewer than 160 megawatt hours per annum, including:*

- *meter testing*
- *meter reading*
- *meter checking*
- *the processing of metering data*
- *the provision of non-standard meters.*

*The services covered by the exception are accordingly Excluded Distribution Services.*

## **Division 2 Distribution determinations**

### **6.2.4 Duty of AER to make distribution determinations**

- (a) The AER must make a distribution determination for each *Distribution Network Service Provider*.
- (b) When the AER makes a distribution determination it must follow the process set out in Part E.
- (c) \*\*\*\*\*
- (d) \*\*\*\*\*



### 6.2.5 Control mechanisms for direct control services

- (a) A distribution determination is to impose controls over the prices of *direct control services*, the revenue to be derived from *direct control services* or both.
- (b) \*\*\*\*\*
- (c) \*\*\*\*\*
- (c1) The control mechanism for:
  - (1) subject to subparagraph (3), *standard control services* provided by a NSW Distribution Network Service Provider in the regulatory control period 2009-2014:
    - (i) must be substantially the same as that determined by the IPART for the corresponding prescribed distribution services provided in the regulatory control period 2004-2009; and
    - (ii) may, with the agreement of the provider, apply differently for different categories of services; and
  - (2) *standard control services* provided by the ACT Distribution Network Service Provider in the regulatory control period 2009-2014 must be substantially the same as that determined by the ICRC for prescribed distribution services provided in the regulatory control period 2004-2009; and
  - (3) EnergyAustralia prescribed (transmission) standard control services provided in the regulatory control period 2009-2014 and referred to in clause 6.1.6(c) must be substantially the same as that determined by the ACCC for the corresponding *prescribed transmission services* provided in the regulatory control period 2004-2009.
- (c2) The control mechanism for *alternative control services* may consist of:
  - (1) a schedule of fixed prices;
  - (2) caps on the prices of individual services;
  - (3) caps on the revenue to be derived from a particular combination of services;
  - (4) tariff basket price control;
  - (5) revenue yield control;
  - (6) a combination of any of the above.

- (d) In deciding on a control mechanism for *alternative control services*, the AER must have regard to:
- (1) the potential for development of competition in the relevant market and how the control mechanism might influence that potential; and
  - (2) the possible effects of the control mechanism on administrative costs of the AER, the *Distribution Network Service Provider* and users or potential users; and
  - (3) the regulatory arrangements (if any) applicable to the relevant service immediately before the commencement of the distribution determination; and
  - (4) the desirability of consistency between regulatory arrangements for similar services (both within and beyond the relevant jurisdiction); and
  - (5) any other relevant factor.
- (e) The AER must, before 1 March 2008 or the date that is one month after the commencement date (whichever is the later), *publish* a statement indicating its likely approach to the control mechanisms for *alternative control services*. In preparing the statement, the AER may carry out such consultation as the AER thinks appropriate and may take into consideration any consultation carried out before the commencement date.

#### **6.2.6 Basis of control mechanisms for direct control services**

- (a) For *standard control services*, the control mechanism must be of the prospective CPI minus X form, or some incentive-based variant of the prospective CPI minus X form, in accordance with Part C.
- (b) For *alternative control services*, the control mechanism must have a basis stated in the distribution determination.
- (c) The control mechanism for *alternative control services* may (but need not) utilise elements of Part C (with or without modification).

*Examples:*

*The control mechanism might be based on the building block approach.*

*The distribution determination might provide for the application of clause 6.6.1 to pass through events with necessary adaptations and specified modifications.*

## 6.2.7 EnergyAustralia negotiated distribution services

*Negotiated distribution services* provided by EnergyAustralia are regulated in accordance with Part D.

### 6.2.7A Negotiable components of direct control services (NSW and ACT)

Despite anything in this Division 2, the control mechanism for *direct control services* may include elements referred to as negotiable components of *direct control services*, as provided in Part DA.

## Division 3 Guidelines

### 6.2.8 Guidelines

- (a) The *AER* may *publish* guidelines as to:
- (1) \*\*\*\*\*
  - (2) the control mechanisms for *direct control services*; and
  - (3) the calculation of stand-alone, avoidable and long-run marginal costs; and
  - (4) the *AER's* likely approach to determining materiality in the context of possible *pass through events*; and
  - (4A) the transition from pre-tax to post-tax revenue regulation; and
  - (5) other matters relevant to this Chapter.
- (b) The guidelines may relate to a specified *Distribution Network Service Provider* or *Distribution Network Service Providers* of a specified class.
- (c) The guidelines are not mandatory (and hence do not bind the *AER* or anyone else) but, if the *AER* makes a distribution determination that is not in accordance with a relevant guideline, the *AER* must state, in its reasons for the distribution determination, the reasons for departing from the guideline.
- (d) If the guidelines indicate that there may be a change of regulatory approach in future distribution determinations, the guidelines should also (if practicable) indicate how transitional issues are to be dealt with.
- (e) \*\*\*\*\*
- (f) In making or amending a guideline, the *AER* may carry out such consultation as the *AER* thinks appropriate and may take into consideration any consultation carried out before the commencement date.

## Part C Building Block Determinations for standard control services

### 6.3 Building block determinations

#### 6.3.1 Introduction

- (a) A *building block determination* is a component of a distribution determination.
- (b) The procedure for making a *building block determination* is contained in Part E of this Chapter and involves the submission of a *building block proposal* to the AER by the *Distribution Network Service Provider*.
- (c) The *building block proposal*:
  - (1) must be prepared in accordance with the *post-tax revenue model*, other relevant requirements of this Part, and Schedule 6.1; and
  - (2) must comply with the requirements of, and must contain or be accompanied by the information required by, any relevant *regulatory information instrument*.

#### 6.3.2 Contents of building block determination

- (a) A *building block determination* for a *Distribution Network Service Provider* is to specify, for a *regulatory control period*, the following matters:
  - (1) the *Distribution Network Service Provider's* annual revenue requirement for each regulatory year of the regulatory control period;
  - (2) appropriate methods for the indexation of the regulatory asset base;
  - (3) how any applicable *efficiency benefit sharing scheme*, *service target performance incentive scheme*, or *demand management incentive scheme* are to apply to the *Distribution Network Service Provider*;
  - (4) the commencement and length of the *regulatory control period*;
  - (5) any other amounts, values or inputs on which the *building block determination* is based (differentiating between those contained in, or inferred from, the service provider's *building block proposal* and those based on the AER's own estimates or assumptions).
- (b) \*\*\*\*\*

## 6.4 Post-tax revenue model

### 6.4.1 Preparation, publication and amendment of post-tax revenue model

- (a) The *AER* must prepare and *publish* a *post-tax revenue model*.
- (b) \*\*\*\*\*
- (c) \*\*\*\*\*
- (d) The *AER* must *publish* the first *post-tax revenue model* before 1 February 2008 or the date that is one month after the commencement date (whichever is the later), and may carry out such consultation in connection with the preparation of the model as the *AER* thinks appropriate and may take into consideration any consultation carried out before the commencement date.
- (e) The *AER* may, from time to time and with the agreement of each affected *Distribution Network Service Provider*, amend or replace the *post-tax revenue model*.

### 6.4.2 Contents of post-tax revenue model

- (a) The *post-tax revenue model* must set out the manner in which the *Distribution Network Service Provider's annual revenue requirement* for each *regulatory year* of a *regulatory control period* is to be calculated.
- (b) The contents of the *post-tax revenue model* must include (but are not limited to):
  - (1) a method that the *AER* determines is likely to result in the best estimates of expected inflation; and
  - (2) the timing assumptions and associated discount rates that are to apply in relation to the calculation of the building blocks referred to in clause 6.4.3; and
  - (3) the manner in which working capital is to be treated; and
  - (4) the manner in which the estimated cost of corporate income tax is to be calculated.

### 6.4.3 Building block approach

- (a) Building blocks generally

The *annual revenue requirement* for a *Distribution Network Service Provider* for each *regulatory year* of a *regulatory control period* must be

determined using a building block approach, under which the building blocks are:

- (1) indexation of the regulatory asset base – see paragraph (b)(1); and
- (2) a return on capital for that year – see paragraph (b)(2); and
- (3) the depreciation for that year – see paragraph (b)(3); and
- (4) the estimated cost of corporate income tax of the provider for that year – see paragraph (b)(4); and
- (5) the revenue increments or decrements (if any) for that year arising from the application of the *service target performance incentive scheme* and the *demand management incentive scheme* – see paragraph (b)(5); and
- (6) the other revenue increments or decrements (if any) for that year arising from the application of a control mechanism in the previous *regulatory control period* – see paragraph (b)(6); and
- (7) the forecast operating expenditure for that year – see paragraph (b)(7); and
- (8) certain revenue increments or decrements for that year arising from the D-factor carry forward – see paragraph (b)(8).

(b) Details of the building blocks

For the purposes of paragraph (a):

- (1) for indexation of the regulatory asset base:
  - (i) the regulatory asset base is calculated in accordance with clause 6.5.1 and schedule 6.2; and
  - (ii) the building block comprises a negative adjustment equal to the amount referred to in clause S6.2.3(c)(4) for that year; and
- (2) the return on capital is calculated in accordance with clause 6.5.2; and
- (3) the depreciation is calculated in accordance with clause 6.5.5; and
- (4) the estimated cost of corporate income tax is determined in accordance with clause 6.5.3; and
- (5) the revenue increments or decrements referred to in paragraph (a)(5) are those that arise as a result of the operation of an applicable *service*

*target performance incentive scheme* or *demand management incentive scheme* as referred to in clauses 6.6.2 and 6.6.3; and

- (6) the other revenue increments or decrements referred to in paragraph (a)(6) are those that are to be carried forward to the current *regulatory control period* as a result of the application of a control mechanism in the previous *regulatory control period* and are apportioned to the relevant year under the distribution determination for the current *regulatory control period*; and
  - (7) the forecast operating expenditure for the year is the forecast operating expenditure as accepted or substituted by the *AER* in accordance with clause 6.5.6; and
  - (8) the revenue increments or decrements are those that arise as a result of the operation of the arrangements in clause 11 of the IPART's Final Determination No 2, 2004 (relating to NSW Electricity Distribution Pricing 2004/05 to 2008/09) for expenditure or foregone revenue in each of the last 2 *regulatory years* of the regulatory control period 2004-2009.
- (c) The arrangements referred to in paragraph (b)(8) have effect in relation to expenditure or foregone revenue in each of the last 2 *regulatory years* of the regulatory control period 2004-2009:
- (1) as if references to the IPART were references to the *AER* and references to the regulatory control period 2004-2009 were references to the regulatory control period 2009-2014; and
  - (2) with any other necessary modifications.

## **6.5 Matters relevant to the making of building block determinations**

### **6.5.1 Regulatory asset base**

#### **Nature of regulatory asset base**

- (a) The regulatory asset base for a *distribution system* owned, controlled or operated by a *Distribution Network Service Provider* is the value of those assets that are used by the provider to provide *standard control services*, but only to the extent that they are used to provide such services.

#### **Preparation, publication and amendment of model for rolling forward regulatory asset base**

- (b) The *AER* must develop and *publish* a model for the roll forward of the regulatory asset base for *distribution systems*, referred to as the *roll forward model*.

- (c) The *AER* may, from time to time and with the agreement of each affected *Distribution Network Service Provider*, amend or replace the *roll forward model*.
- (d) The *AER* must develop and *publish* the first *roll forward model*, before 1 February 2008 or the date that is one month after the commencement date (whichever is the later), and may carry out such consultation in connection with the preparation of the model as the *AER* thinks appropriate and may take into consideration any consultation carried out before the commencement date. There must be such a model available at all times after that date.

#### **Contents of roll forward model**

- (e) The *roll forward model* must set out the method for determining the roll forward of the regulatory asset base for *distribution systems*:
  - (1) from the immediately preceding *regulatory control period* to the beginning of the first year of the subsequent *regulatory control period*, so as to establish the value of the regulatory asset base as at the beginning of the first *regulatory year* of that subsequent *regulatory control period*; and
  - (2) from one *regulatory year* in a *regulatory control period* to a subsequent *regulatory year* in that same *regulatory control period*, so as to establish the value of the regulatory asset base as at the beginning of that subsequent *regulatory year*;

under which:

- (3) the roll forward of the regulatory asset base from the immediately preceding *regulatory control period* to the beginning of the first *regulatory year* of a subsequent *regulatory control period* entails the value of the first mentioned regulatory asset base being adjusted for actual inflation, consistently with the method used for the indexation of the control mechanism (or control mechanisms) for *standard control services* during the preceding *regulatory control period*.

#### **Other provisions relating to regulatory asset base**

- (f) Other provisions relating to regulatory asset bases are set out in schedule 6.2.
- (g) For the purpose of establishing the value of the regulatory asset base (as referred to in paragraph (e)(1)) as at the beginning of the first *regulatory year* of the regulatory control period 2009-2014 for the ACT Distribution Network Service Provider, and despite clause S6.2.1(e), the *roll forward model* must apply the approach adopted by the ICRC in the distribution



determination for the regulatory control period 2004-2009, but taking into account any written representations by the ICRC to the ACT Distribution Network Service Provider before the commencement date.

- (h) For the purpose of establishing the value of the regulatory asset base (as referred to in paragraph (e)(1)) as at the beginning of the first *regulatory year* of the regulatory control period 2009-2014 for EnergyAustralia, the *roll forward model* in respect of transmission network support assets must be applied as if the *AER* were separately regulating EnergyAustralia's transmission system under the relevant provisions of Chapter 6A.

## 6.5.2 Return on capital

### Calculation of return on capital

- (a) The return on capital for each *regulatory year* must be calculated by applying a rate of return for the relevant *Distribution Network Service Provider* for that *regulatory control period* (calculated in accordance with this clause 6.5.2) to the value of the regulatory asset base for the relevant *distribution system* as at the beginning of that *regulatory year* (as established in accordance with clause 6.5.1 and schedule 6.2).

### Weighted average cost of capital

- (b) The rate of return for a *Distribution Network Service Provider* for a *regulatory control period* is the cost of capital as measured by the return required by investors in a commercial enterprise with a similar nature and degree of non-diversifiable risk as that faced by the *distribution* business of the provider and must be calculated as a nominal post-tax *weighted average cost of capital* ("WACC") in accordance with the following formula:

$$\text{WACC} = k_e \frac{E}{V} + k_d \frac{D}{V}$$

where:

$k_e$  is the return on equity (determined using the Capital Asset Pricing Model) and is calculated as:

$$r_f + \beta_e \times \text{MRP}$$

where:

$r_f$  is the nominal risk free rate for the *regulatory control period* determined in accordance with paragraph (c);

$\beta_e$  (the equity beta) is deemed to be 1.0; and

MRP (the market risk premium) is deemed to be 6.0%;

$k_d$  is the return on debt and is calculated as:

$r_f + \text{DRP}$

where:

DRP is the debt risk premium for the *regulatory control period* determined in accordance with paragraph (e);

$E/V$  is the value of equity as a proportion of the value of equity and debt, which is  $1 - D/V$ ; and

$D/V$  (the value of debt as a proportion of the value of equity and debt) is deemed to be 0.6.

#### Meaning of nominal risk free rate

(c) The nominal risk free rate for a *regulatory control period* is the rate determined for that *regulatory control period* by the AER on a moving average basis from the annualised yield on Commonwealth Government bonds with a maturity of 10 years using:

- (1) the indicative mid rates published by the Reserve Bank of Australia; and
- (2) a period of time which is either:
  - (i) a period ('the **agreed period**') proposed by the relevant *Distribution Network Service Provider*, and agreed by the AER (such agreement is not to be unreasonably withheld); or
  - (ii) a period specified by the AER, and notified to the provider within a reasonable time prior to the commencement of that period, if the period proposed by the provider is not agreed by the AER under subparagraph (i),

and, for the purposes of subparagraph (i):

- (iii) the start date and end date for the agreed period may be kept confidential, but only until the expiration of the agreed period; and
- (iv) the AER must notify the *Distribution Network Service Provider* whether or not it agrees with the proposed period within 30 *business days* of the date of submission of the *building block proposal*.

- (d) If there are no Commonwealth Government bonds with a maturity of 10 years on any day in the period referred to in paragraph (c)(2), the *AER* must determine the nominal risk free rate for the *regulatory control period* by interpolating on a straight line basis from the two Commonwealth Government bonds closest to the 10 year term and which also straddle the 10 year expiry date.

#### Meaning of debt risk premium

- (e) The debt risk premium for a *regulatory control period* is the premium determined for that *regulatory control period* by the *AER* as the margin between the 10 year Commonwealth annualised bond rate and the observed annualised Australian benchmark corporate bond rate for corporate bonds which have a maturity of 10 years and a credit rating of BBB+ from Standard and Poors.

### 6.5.3 Estimated cost of corporate income tax

The estimated cost of corporate income tax of a *Distribution Network Service Provider* for each *regulatory year* ( $ETC_t$ ) must be calculated in accordance with the following formula:

$$ETC_t = (ETI_t \times r_t) (1 - \gamma)$$

where:

$ETI_t$  is an estimate of the taxable income for that *regulatory year* that would be earned by a benchmark efficient entity as a result of the provision of *standard control services* if such an entity, rather than the *Distribution Network Service Provider*, operated the business of the *Distribution Network Service Provider*, such estimate being determined in accordance with the *post-tax revenue model*;

$r_t$  is the expected statutory income tax rate for that *regulatory year* as determined by the *AER*; and

$\gamma$  (the assumed utilisation of imputation credits) is deemed to be 0.5.

For these purposes:

- (1) the cost of debt must be based on that of a benchmark efficient *Distribution Network Service Provider*; and
- (2) the estimate must take into account the estimated depreciation for that *regulatory year* for tax purposes, for a benchmark efficient *Distribution Network Service Provider*, of assets where the value of those assets is included in the regulatory asset base for the relevant *distribution system* for that *regulatory year*.

**6.5.4** \*\*\*\*\*

**6.5.5 Depreciation**

- (a) The depreciation for each *regulatory year*:
- (1) must be calculated on the value of the assets as included in the regulatory asset base, as at the beginning of that *regulatory year*, for the relevant *distribution system*; and
  - (2) must be calculated:
    - (i) providing such depreciation schedules conform with the requirements set out in paragraph (b), using the depreciation schedules for each asset or category of assets that are nominated in the relevant *Distribution Network Service Provider's building block proposal*; or
    - (ii) to the extent the depreciation schedules nominated in the provider's *building block proposal* do not so conform, using the depreciation schedules determined for that purpose by the *AER*.
- (b) The depreciation schedules referred to in paragraph (a) must conform to the following requirements:
- (1) the schedules must depreciate using a profile that reflects the nature of the assets or category of assets over the economic life of that asset or category of assets;
  - (2) the sum of the real value of the depreciation that is attributable to any asset or category of assets over the economic life of that asset or category of assets (such real value being calculated as at the time the value of that asset or category of assets was first included in the regulatory asset base for the relevant *distribution system*) must be equivalent to the value at which that asset or category of assets was first included in the regulatory asset base for the relevant *distribution system*;
  - (3) the economic life of the relevant assets and the depreciation methods and rates underpinning the calculation of depreciation for a given *regulatory control period* must be consistent with those determined for the same assets on a prospective basis in the distribution determination for that period.

**6.5.6 Forecast operating expenditure**

- (a) A *building block proposal* must include the total forecast operating expenditure for the relevant *regulatory control period* which the

*Distribution Network Service Provider* considers is required in order to achieve each of the following (the *operating expenditure objectives*):

- (1) meet or manage the expected demand for *standard control services* over that period;
  - (2) comply with all applicable *regulatory obligations or requirements* associated with the provision of *standard control services*;
  - (3) maintain the quality, reliability and security of supply of *standard control services*;
  - (4) maintain the reliability, safety and security of the *distribution system* through the supply of *standard control services*.
- (b) The forecast of required operating expenditure of a *Distribution Network Service Provider* that is included in a *building block proposal* must:
- (1) comply with the requirements of any relevant *regulatory information instrument*; and
  - (2) be for expenditure that is properly allocated to *standard control services* in accordance with the principles and policies set out in the Cost Allocation Method for the *Distribution Network Service Provider*; and
  - (3) include both:
    - (i) the total of the forecast operating expenditure for the relevant *regulatory control period*; and
    - (ii) the forecast of the operating expenditure for each *regulatory year* of the relevant *regulatory control period*.
- (c) The *AER* must accept the forecast of required operating expenditure of a *Distribution Network Service Provider* that is included in a *building block proposal* if the *AER* is satisfied that the total of the forecast operating expenditure for the *regulatory control period* reasonably reflects:
- (1) the efficient costs of achieving the *operating expenditure objectives*; and
  - (2) the costs that a prudent operator in the circumstances of the relevant *Distribution Network Service Provider* would require to achieve the *operating expenditure objectives*; and
  - (3) a realistic expectation of the demand forecast and cost inputs required to achieve the *operating expenditure objectives*.

(the *operating expenditure criteria*).

- (d) If the *AER* is not satisfied as referred to in paragraph (c), it must not accept the forecast of required operating expenditure of a *Distribution Network Service Provider* that is included in a *building block proposal*.
- (e) In deciding whether or not the *AER* is satisfied as referred to in paragraph (c), the *AER* must have regard to the following (the *operating expenditure factors*):
  - (1) the information included in or accompanying the *building block proposal*;
  - (2) submissions received in the course of consulting on the *building block proposal*;
  - (3) analysis undertaken by or for the *AER* and *published* before the distribution determination is made in its final form;
  - (4) benchmark operating expenditure that would be incurred by an efficient *Distribution Network Service Provider* over the *regulatory control period*;
  - (5) the actual and expected operating expenditure of the *Distribution Network Service Provider* during any preceding *regulatory control periods*;
  - (6) the relative prices of operating and capital inputs;
  - (7) the substitution possibilities between operating and capital expenditure;
  - (8) whether the total labour costs included in the capital and operating expenditure forecasts for the *regulatory control period* are consistent with the incentives provided by the applicable *service target performance incentive scheme* in respect of the *regulatory control period*;
  - (9) the extent the forecast of required operating expenditure of the *Distribution Network Service Provider* is referable to arrangements with a person other than the provider that, in the opinion of the *AER*, do not reflect arm's length terms;
  - (10) the extent the *Distribution Network Service Provider* has considered, and made provision for, efficient non-network alternatives.

### 6.5.7 Forecast capital expenditure

- (a) A *building block proposal* must include the total forecast capital expenditure for the relevant *regulatory control period* which the *Distribution Network Service Provider* considers is required in order to achieve each of the following (the *capital expenditure objectives*):
- (1) meet or manage the expected demand for *standard control services* over that period;
  - (2) comply with all applicable *regulatory obligations or requirements* associated with the provision of *standard control services*;
  - (3) maintain the quality, reliability and security of supply of *standard control services*;
  - (4) maintain the reliability, safety and security of the *distribution system* through the supply of *standard control services*.
- (b) The forecast of required capital expenditure of a *Distribution Network Service Provider* that is included in a *building block proposal* must:
- (1) comply with the requirements of any relevant *regulatory information instrument*; and
  - (2) be for expenditure that is properly allocated to *standard control services* in accordance with the principles and policies set out in the Cost Allocation Method for the *Distribution Network Service Provider*; and
  - (3) include both:
    - (i) the total of the forecast capital expenditure for the relevant *regulatory control period*; and
    - (ii) the forecast of the capital expenditure for each *regulatory year* of the relevant *regulatory control period*; and
  - (4) identify any forecast capital expenditure that is for an option that has satisfied the *regulatory test*.
- (c) The *AER* must accept the forecast of required capital expenditure of a *Distribution Network Service Provider* that is included in a *building block proposal* if the *AER* is satisfied that the total of the forecast capital expenditure for the *regulatory control period* reasonably reflects:
- (1) the efficient costs of achieving the *capital expenditure objectives*; and

- (2) the costs that a prudent operator in the circumstances of the relevant *Distribution Network Service Provider* would require to achieve the *capital expenditure objectives*; and
- (3) a realistic expectation of the demand forecast and cost inputs required to achieve the *capital expenditure objectives*.

(the *capital expenditure criteria*)

- (d) If the *AER* is not satisfied as referred to in paragraph (c), it must not accept the forecast of required capital expenditure of a *Distribution Network Service Provider*.
- (e) In deciding whether or not the *AER* is satisfied as referred to in paragraph (c), the *AER* must have regard to the following ('the *capital expenditure factors*'):
  - (1) the information included in or accompanying the *building block proposal*;
  - (2) submissions received in the course of consulting on the *building block proposal*;
  - (3) analysis undertaken by or for the *AER* and *published* before the distribution determination is made in its final form;
  - (4) benchmark capital expenditure that would be incurred by an efficient *Distribution Network Service Provider* over the *regulatory control period*;
  - (5) the actual and expected capital expenditure of the *Distribution Network Service Provider* during any preceding *regulatory control periods*;
  - (6) the relative prices of operating and capital inputs;
  - (7) the substitution possibilities between operating and capital expenditure;
  - (8) whether the total labour costs included in the capital and operating expenditure forecasts for the *regulatory control period* are consistent with the incentives provided by the applicable *service target performance incentive scheme* in respect of the *regulatory control period*;
  - (9) the extent the forecast of required capital expenditure of the *Distribution Network Service Provider* is referable to arrangements with a person other than the provider that, in the opinion of the *AER*, do not reflect arm's length terms;



- (10) the extent the *Distribution Network Service Provider* has considered, and made provision for, efficient non-network alternatives.

### 6.5.8 Efficiency benefit sharing scheme

- (a) The *AER* may develop and *publish* a scheme or schemes (*efficiency benefit sharing scheme*) that provide for a fair sharing between NSW and ACT *Distribution Network Service Providers* and *Distribution Network Users* of:
- (1) the efficiency gains derived from the operating expenditure of *Distribution Network Service Providers* for a *regulatory control period* being less than; and
  - (2) the efficiency losses derived from the operating expenditure of *Distribution Network Service Providers* for a *regulatory control period* being more than,
- the forecast operating expenditure accepted or substituted by the *AER* for that *regulatory control period*.
- (b) An *efficiency benefit sharing scheme* may (but is not required to) be developed to cover efficiency gains and losses related to capital expenditure or *distribution losses*.
- (c) In developing and implementing an *efficiency benefit sharing scheme*, the *AER* must have regard to:
- (1) the need to ensure that benefits to consumers likely to result from the scheme are sufficient to warrant any reward or penalty under the scheme for *Distribution Network Service Providers*; and
  - (2) the need to provide *Distribution Network Service Providers* with a continuous incentive, so far as is consistent with economic efficiency, to reduce operating expenditure and, if the scheme extends to capital expenditure, capital expenditure; and
  - (3) the desirability of both rewarding *Distribution Network Service Providers* for efficiency gains and penalising *Distribution Network Service Providers* for efficiency losses; and
  - (4) any incentives that *Distribution Network Service Providers* may have to capitalise expenditure; and
  - (5) the possible effects of the scheme on incentives for the implementation of non-network alternatives.
- (d) The *AER* may, from time to time and with the agreement of each affected *Distribution Network Service Provider*, amend or replace an *efficiency benefit sharing scheme*.

- (e) The *AER* must *publish* a written statement, when it *publishes* its first *efficiency benefit sharing scheme* (if any), setting out how it proposes the *efficiency benefit sharing scheme* will operate for the next distribution determination. The statement may be included in the first *efficiency benefit sharing scheme* or may be *published* separately.
- (f) However, despite *publishing* an *efficiency benefit sharing scheme*, the *AER* need not apply the scheme to one or more *Distribution Network Service Providers* in the relevant distribution determination or determinations.
- (g) The *AER* may carry out such consultation in connection with the preparation of an *efficiency benefit sharing scheme* as the *AER* thinks appropriate and may take into consideration any consultation carried out before the commencement date.
- (h) If an *efficiency benefit sharing scheme* applicable to a NSW or ACT Distribution Network Service Provider is not *published* before 1 March 2008 or the date that is one month after the commencement date (whichever is the later), no *efficiency benefit sharing scheme* may be applied to the *Distribution Network Service Provider* in its distribution determination for the regulatory control period 2009-2014.
- (i) The *AER* may monitor and collect information from any or all of the NSW and ACT Distribution Network Service Providers on matters relevant to be included in an *efficiency benefit sharing scheme* for the purpose of developing, amending or applying an *efficiency benefit sharing scheme* for the regulatory control period commencing on 1 July 2014.

### 6.5.9 The X factor

- (a) A *building block determination* is to include the X factor for each control mechanism for each *regulatory year* of the *regulatory control period*.
- (b) The X factor:
  - (1) must be set by the *AER* with regard to the *Distribution Network Service Provider's* total *revenue requirement* for the *regulatory control period*; and
  - (2) must be such as to minimise, as far as reasonably possible, variance between expected revenue for the last *regulatory year* of the *regulatory control period* and the *annual revenue requirement* for that last *regulatory year*; and
  - (3) must conform with whichever of the following requirements is applicable:

- (i) if the control mechanism relates generally to *standard control services* – the X factor must be designed to equalise (in terms of net present value) the revenue to be earned by the *Distribution Network Service Provider* from the provision of *standard control services* over the *regulatory control period* with the provider's *total revenue requirement* for the *regulatory control period*;
  - (ii) if there are separate control mechanisms for different *standard control services* – the X factor for each control mechanism must be designed to equalise (in terms of net present value) the revenue to be earned by the *Distribution Network Service Provider* from the provision of *standard control services* to which the control mechanism relates over the *regulatory control period* with the portion of the provider's *total revenue requirement* for the *regulatory control period* attributable to those services.
- (c) There may be different X factors:
- (1) for different regulatory years of the regulatory control period; and
  - (2) if there are 2 or more control mechanisms – for each control mechanism.

## 6.6 Adjustments after making of building block determination

### 6.6.1 Cost pass through

- (a) If a *positive change event* occurs, a *Distribution Network Service Provider* may seek the approval of the *AER* to pass through to *Distribution Network Users* a *positive pass through amount*.
- (b) If a *negative change event* occurs, the *AER* may require the *Distribution Network Service Provider* to pass through to *Distribution Network Users* a *negative pass through amount* as determined by the *AER* under paragraph (g).

#### Positive pass through

- (c) To seek the approval of the *AER* to pass through a *positive pass through amount*, a *Distribution Network Service Provider* must submit to the *AER*, within 90 *business days* of the relevant *positive change event* occurring, a written statement which specifies:
  - (1) the details of the *positive change event*; and
  - (2) the date on which the *positive change event* occurred; and

- (3) the *eligible pass through amount* in respect of that *positive change event*; and
  - (4) the *positive pass through amount* the provider proposes in relation to the *positive change event*; and
  - (5) the amount of the *positive pass through amount* that the provider proposes should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*; and
  - (6) evidence:
    - (i) of the actual and likely increase in costs referred to in subparagraph (3); and
    - (ii) that such costs occur solely as a consequence of the *positive change event*; and
  - (7) such other information as may be required under any relevant *regulatory information instrument*.
- (d) If the *AER* determines that a *positive change event* has occurred in respect of a statement under paragraph (c), the *AER* must determine:
- (1) the *approved pass through amount*; and
  - (2) the amount of that *approved pass through amount* that should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*,
- taking into account the matters referred to in paragraph (j).
- (e) If the *AER* does not make the determinations referred to in paragraph (d) within 60 *business days* from the date it receives the *Distribution Network Service Provider's* statement and accompanying evidence under paragraph (c), then, on the expiry of that period, the *AER* is taken to have determined that:
- (1) the *positive pass through amount* as proposed in the provider's statement under paragraph (c) is the *approved pass through amount* in respect of that *positive change event*; and
  - (2) the amount of that *positive pass through amount* that the provider proposes in its statement under paragraph (c) should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*, is the amount that should be so passed through in each such *regulatory year*.

### **Negative pass through**

- (f) A *Distribution Network Service Provider* must submit to the *AER*, within 90 *business days* of becoming aware of the occurrence of a *negative change event* for the provider, a written statement which specifies:
- (1) the details of the *negative change event* concerned; and
  - (2) the date the *negative change event* occurred; and
  - (3) the costs in the provision of *standard control services* that the provider has saved and is likely to save until the end of the *regulatory control period* as a result of the *negative change event*; and
  - (4) the aggregate amount of those saved costs that the provider proposes should be passed through to *Distribution Network Users*; and
  - (5) the amount of the costs referred to in subparagraph (4) the provider proposes should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*; and
  - (6) such other information as may be required under any relevant *regulatory information instrument*.
- (g) If a *negative change event* occurs (whether or not the occurrence of that *negative change event* is notified by the provider to the *AER* under paragraph (f)) and the *AER* determines to impose a requirement on the provider in relation to that *negative change event* as described in paragraph (b), the *AER* must determine:
- (1) the *required pass through amount*; and
  - (2) taking into account the matters referred to in paragraph (j):
    - (i) how much of that *required pass through amount* should be passed through to *Distribution Network Users* (the *negative pass through amount*); and
    - (ii) the amount of that *negative pass through amount* that should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*.
- (h) A *Distribution Network Service Provider* must provide the *AER* with such information as the *AER* requires for the purpose of making a determination under paragraph (g) within the time specified by the *AER* in a notice provided to the provider by the *AER* for that purpose.

### **Consultation**

- (i) Before making a determination under paragraph (d) or (g), the *AER* may consult with the relevant *Distribution Network Service Provider* and such

other persons as the *AER* considers appropriate, on any matters arising out of the relevant *pass through event* the *AER* considers appropriate.

### **Relevant factors**

- (j) In making a determination under paragraph (d) or (g) in respect of a *Distribution Network Service Provider*, the *AER* must take into account:
- (1) the matters and proposals set out in any statement given to the *AER* by the provider under paragraph (c) or (f); and
  - (2) in the case of a *positive change event*, the increase in costs in the provision of *standard control services* that the provider has incurred and is likely to incur until the end of the *regulatory control period* as a result of the *positive change event*; and
  - (3) in the case of a *positive change event*, the efficiency of the provider's decisions and actions in relation to the risk of the *positive change event*, including whether the provider has failed to take any action that could reasonably be taken to reduce the magnitude of the *eligible pass through amount* in respect of that *positive change event* and whether the provider has taken or omitted to take any action where such action or omission has increased the magnitude of the amount in respect of that *positive change event*; and
  - (4) the time cost of money based on the *weighted average cost of capital* for the provider for the relevant *regulatory control period*; and
  - (5) the need to ensure that the provider only recovers any actual or likely increment in costs under this paragraph (j) to the extent that such increment is solely as a consequence of a *pass through event*; and
  - (6) in the case of a *tax change event*, any change in the way another *tax* is calculated, or the removal or imposition of another *tax*, which, in the *AER*'s opinion, is complementary to the *tax change event* concerned; and
  - (7) whether the costs of the *pass through event* have already been factored into the calculation of the provider's *annual revenue requirement*; and
  - (8) any other factors the *AER* considers relevant.

### **Extension of time limits**

- (k) The *AER* must, by written notice to a *Distribution Network Service Provider*, extend a time limit fixed in clause 6.6.1(c) or clause 6.6.1(f) if the *AER* is satisfied that the difficulty of assessing or quantifying the effect of the relevant *pass through event* justifies the extension.

### **Contributions to Climate Change Fund (NSW)**

- (l) Neither a requirement by an order under the Energy and Utilities Administration Act 1987 of New South Wales to make a payment to the Climate Change Fund established under that Act, nor the making of a payment to that Fund, is a *pass through event* in relation to a NSW Distribution Network Service Provider, but the amount is recoverable in the following *regulatory year* under clause 6.18.2(b)(5A).

### **6.6.2 Service target performance incentive scheme**

- (a) The AER may develop and *publish* an incentive scheme or incentive schemes (*service target performance incentive scheme*) to provide incentives (which may include targets) for *Distribution Network Service Providers* to maintain and improve performance.
- (b) In developing and implementing a *service target performance incentive scheme*, the AER:
  - (1) must consult with the authorities responsible for the administration of relevant *jurisdictional electricity legislation*; and
  - (2) must ensure that service standards and service targets (including guaranteed service levels) set by the scheme do not put at risk the *Distribution Network Service Provider's* ability to comply with relevant service standards and service targets (including guaranteed service levels) as specified in *jurisdictional electricity legislation*; and

*Note:*

*A service target performance incentive scheme operates concurrently with any average or minimum service standards and guaranteed service level schemes that apply to the Distribution Network Service Provider under jurisdictional electricity legislation.*

- (3) must take into account:
  - (i) the need to ensure that benefits to consumers likely to result from the scheme are sufficient to warrant any reward or penalty under the scheme for *Distribution Network Service Providers*; and
  - (ii) any *regulatory obligation or requirement* to which the *Distribution Network Service Provider* is subject; and
  - (iii) the past performance of the *distribution network*; and

- (iv) any other incentives available to the *Distribution Network Service Provider* under the *Rules* or a relevant distribution determination; and
  - (v) the need to ensure that the incentives are sufficient to offset any financial incentives the service provider may have to reduce costs at the expense of service levels; and
  - (vi) the willingness of the customer or end user to pay for improved performance in the delivery of services; and
  - (vii) the possible effects of the scheme on incentives for the implementation of non-network alternatives.
- (c) The *AER* may, from time to time and with the agreement of each affected *Distribution Network Service Provider*, amend or replace any scheme that is developed and *published* under this clause.
- (d) The *AER* must *publish* a written statement, when it *publishes* its first *service target performance incentive scheme* (if any), setting out how it proposes the *service target performance incentive scheme* will operate for the next distribution determination. The statement may be included in the first *service target performance incentive scheme* or may be *published* separately.
- (e) However, despite *publishing* a *service target performance incentive scheme*, the *AER* need not apply the scheme to one or more *Distribution Network Service Providers* in the relevant distribution determination or determinations.
- (f) The *AER* may carry out such consultation in connection with the preparation of a *service target performance incentive scheme* as the *AER* thinks appropriate and may take into consideration any consultation carried out before the commencement date.
- (g) If a *service target performance incentive scheme* applicable to a NSW or ACT *Distribution Network Service Provider* is not *published* before 1 March 2008 or the date that is one month after the commencement date (whichever is the later), no *service target performance incentive scheme* may be applied to the *Distribution Network Service Provider* in its distribution determination for the regulatory control period 2009-2014.
- (h) The *AER* must monitor and collect information from any or all of the NSW and ACT *Distribution Network Service Providers* on matters relevant to be included in a *service target performance incentive scheme* for the purpose of developing, amending or applying a *service target performance incentive scheme* for the *regulatory control period* commencing on 1 July 2014.



- (i) The *AER* may, in connection with the application of a *service target performance incentive scheme* applying to EnergyAustralia in respect of EnergyAustralia prescribed (transmission) standard control services provided in the regulatory control period 2009-2014, adopt relevant provisions of the *service target performance incentive scheme* prepared and published by the *AER* under Chapter 6A so far as it is applicable to the service.
- (j) A *service target performance incentive scheme* applying to EnergyAustralia in respect of EnergyAustralia prescribed (transmission) standard control services should ensure that the maximum revenue increment or decrement as a result of the operation of the *service target performance incentive scheme* will fall within a range that is between 1% and 5% of the maximum allowed revenue for the relevant *regulatory year*.
- (k) A *service target performance incentive scheme* applying to the ACT Distribution Network Service Provider must not, without the agreement of the provider, confer financial rewards or impose financial penalties on the provider for the regulatory control period 2009-2014, but this paragraph does not affect the operation of paragraph (h).

*Note:*

*A Distribution Network Service Provider is not precluded from entering into a contract with a third party (such as a network support service provider) under which the benefits of a service target performance incentive scheme are passed on to the third party, or the third party is required to indemnify the provider for penalties to which the provider becomes liable under the scheme.*

### 6.6.3 Demand management incentive scheme

- (a) The *AER* may develop and publish an incentive scheme or schemes (*demand management incentive scheme*) to provide incentives for *Distribution Network Service Providers* to implement efficient non-network alternatives or to manage the expected demand for *standard control services* in some other way.
- (b) In developing and implementing a *demand management incentive scheme*, the *AER* must have regard to:
  - (1) the need to ensure that benefits to consumers likely to result from the scheme are sufficient to warrant any reward or penalty under the scheme for *Distribution Network Service Providers*; and
  - (2) the effect of a particular control mechanism (i.e. price – as distinct from revenue – regulation) on a *Distribution Network Service*

- Provider's* incentives to adopt or implement efficient non-network alternatives; and
- (3) the extent the *Distribution Network Service Provider* is able to offer efficient pricing structures; and
  - (4) the possible interaction between a *demand management incentive scheme* and other incentive schemes; and
  - (5) the willingness of the customer or end user to pay for increases in costs resulting from implementation of the scheme.
- (c) The *AER* may, from time to time and with the agreement of each affected *Distribution Network Service Provider*, amend or replace any scheme that is developed and *published* under this clause.
  - (d) Nothing in this clause limits the content of an *efficiency benefit sharing scheme*.
  - (e) The *AER* must *publish* a written statement, when it *publishes* its first *demand management incentive scheme* (if any), setting out how it proposes the *demand management incentive scheme* will operate for the next distribution determination. The statement may be included in the first *demand management incentive scheme* or may be *published* separately.
  - (f) The *AER* may carry out such consultation in connection with the preparation of the *demand management incentive scheme* as the *AER* thinks appropriate and may take into consideration any consultation carried out before the commencement date.
  - (g) If a *demand management incentive scheme* applicable to a NSW or ACT *Distribution Network Service Provider* is not *published* by the *AER* before 1 March 2008 or the date that is one month after the commencement date (whichever is the later), no *demand management incentive scheme* may be applied to the *Distribution Network Service Provider* in its distribution determination for the regulatory control period 2009-2014.
  - (h) Nothing in this clause affects the application of the D-factor carry forward referred to in clause 6.4.3(a)(8) and clause 6.4.3(b)(8).

## **Part D EnergyAustralia negotiated distribution services**

### **6.7 Negotiated distribution services**

This rule applies only to EnergyAustralia negotiated distribution services.

### 6.7.1 Principles relating to access to negotiated distribution services

The following principles constitute the *Negotiated Distribution Service Principles*:

- (1) the price for a *negotiated distribution service* should be based on the costs incurred in providing that service, determined in accordance with the principles and policies set out in the Cost Allocation Method for the relevant *Distribution Network Service Provider*;
- (2) subject to subparagraphs (3) and (4), the price for a *negotiated distribution service* should be at least equal to the cost that would be avoided by not providing the service but no more than the cost of providing it on a stand alone basis;
- (3) if the *negotiated distribution service* is the provision of a *shared distribution service* that:
  - (i) exceeds the *network* performance requirements (if any) which that *shared distribution service* is required to meet under any *jurisdictional electricity legislation*; or
  - (ii) exceeds the *network* performance requirements set out in schedules 5.1a and 5.1,

then the differential between the price for that service and the price for the *shared distribution service* which meets (but does not exceed) the *network* performance requirements under any *jurisdictional electricity legislation* or as set out in schedules 5.1a and 5.1 (as the case may be) should reflect the increase in the *Distribution Network Service Provider's* incremental cost of providing that service;

- (4) if the *negotiated distribution service* is the provision of a *shared distribution service* that does not meet (and does not exceed) the *network* performance requirements set out in schedules 5.1a and 5.1, the differential between the price for that service and the price for the *shared distribution service* which meets (but does not exceed) the *network* performance requirements set out in schedules 5.1a and 5.1 should reflect the cost the *Distribution Network Service Provider* would avoid by not providing that service;
- (5) the price for a *negotiated distribution service* must be the same for all *Distribution Network Users* unless there is a material difference in the costs of providing the *negotiated distribution service* to different *Distribution Network Users* or classes of *Distribution Network Users*;
- (6) the price for a *negotiated distribution service* should be subject to adjustment over time to the extent that the assets used to provide that service are subsequently used to provide services to another person, in

which case the adjustment should reflect the extent to which the costs of that asset are being recovered through charges to that other person;

- (7) the price for a *negotiated distribution service* should be such as to enable the *Distribution Network Service Provider* to recover the efficient costs of complying with all *regulatory obligations or requirements* associated with the provision of the *negotiated distribution service*;
- (8) any *access charges* should be based on the costs reasonably incurred by the *Distribution Network Service Provider* in providing *distribution network user access* and, in the case of compensation referred to in rule 5.4A(h) to (j), on the revenue that is likely to be foregone and the costs that are likely to be incurred by a person referred to in those provisions where an event referred to in those provisions occurs;
- (9) the *terms and conditions of access* for a *negotiated distribution service* should be fair and reasonable and consistent with the safe and reliable operation of the *power system* in accordance with the *Rules* (for these purposes, the price for a *negotiated distribution service* is to be treated as being fair and reasonable if it complies with principles (1) to (7) of this clause;
- (10) the *terms and conditions of access* for a *negotiated distribution service* (including, in particular, any exclusions and limitations of liability and indemnities) must not be unreasonably onerous taking into account the allocation of risk between the *Distribution Network Service Provider* and the other party, the price for the *negotiated distribution service* and the costs to the *Distribution Network Service Provider* of providing the *negotiated distribution service*;
- (11) the *terms and conditions of access* for a *negotiated distribution service* should take into account the need for the service to be provided in a manner that does not adversely affect the safe and reliable operation of the *power system* in accordance with the *Rules*.

### **6.7.2 Determination of terms and conditions of access for negotiated distribution services**

- (a) A *Distribution Network Service Provider* must comply with:

- (1) the provider's *negotiating framework*; and
- (2) the provider's *Negotiated Distribution Service Criteria*,

when the provider is negotiating the terms and conditions of access to *negotiated distribution services*.

- (b) The *Distribution Network Service Provider* must also comply with any other applicable requirements of the *Rules*, including the requirements of:
  - (1) rules 5.3 and 5.4A, when negotiating for the provision of *connection services* and the associated *connection service charges*; and
  - (2) rule 5.4A when negotiating the *use of system services charges* and *access charges* to be paid to or by a *Distribution Network User*.

### 6.7.3 Negotiating framework determination

The determination specifying requirements relating to the *negotiating framework* forming part of a distribution determination for a *Distribution Network Service Provider* is to set out requirements that are to be complied with in respect of the preparation, replacement, application or operation of its *negotiating framework*.

### 6.7.4 Negotiated Distribution Service Criteria determination

- (a) The determination by the *AER* specifying the *Negotiated Distribution Service Criteria* forming part of a distribution determination for a *Distribution Network Service Provider* is to set out the criteria that are to be applied:
  - (1) by the provider in negotiating *terms and conditions of access* including:
    - (i) the prices that are to be charged for the provision of *negotiated distribution services* by the provider for the relevant *regulatory control period*; or
    - (ii) any *access charges* which are negotiated by the provider during that *regulatory control period*; and
  - (2) by the *AER* in resolving an access dispute about *terms and conditions of access* including:
    - (i) the price that is to be charged for the provision of a *negotiated distribution service* by the provider; or
    - (ii) any *access charges* that are to be paid to or by the provider.
- (b) The *Negotiated Distribution Service Criteria* must give effect to and be consistent with the *Negotiated Distribution Service Principles* set out in clause 6.7.1.

### 6.7.5 Preparation of and requirements for negotiating framework for negotiated distribution services

- (a) A *Distribution Network Service Provider* must prepare a document (the *negotiating framework*) setting out the procedure to be followed during negotiations between that provider and any person (the *Service Applicant* or applicant) who wishes to receive a *negotiated distribution service* from the provider, as to the *terms and conditions of access* for the provision of the service.
- (b) The *negotiating framework* for a *Distribution Network Service Provider* must comply with and be consistent with:
  - (1) the applicable requirements of the relevant distribution determination; and

*Note:*

*See clause 6.7.3.*

  - (2) paragraph (c), which sets out the minimum requirements for a *negotiating framework*.
- (c) The *negotiating framework* for a *Distribution Network Service Provider* must specify:
  - (1) a requirement for the provider and a *Service Applicant* to negotiate in good faith the *terms and conditions of access* to a *negotiated distribution service*; and
  - (2) a requirement for the provider to provide all such commercial information a *Service Applicant* may reasonably require to enable that applicant to engage in effective negotiation with the provider for the provision of the *negotiated distribution service*, including the cost information described in subparagraph (3); and
  - (3) a requirement for the provider:
    - (i) to identify and inform a *Service Applicant* of the reasonable costs and/or the increase or decrease in costs (as appropriate) of providing the *negotiated distribution service*; and
    - (ii) to demonstrate to a *Service Applicant* that the charges for providing the *negotiated distribution service* reflect those costs and/or the cost increment or decrement (as appropriate); and
    - (iii) to have appropriate arrangements for assessment and review of the charges and the basis on which they are made; and

*Note:*

*If (for example) a charge, or an element of a charge, is based on a customer's actual or assumed maximum demand, the assessment and review arrangements should allow for a change to the basis of the charge so that it more closely reflects the customer's load profile where a reduction or increase in maximum demand has been demonstrated.*

- (4) a requirement for a *Service Applicant* to provide all commercial information the provider may reasonably require to enable the provider to engage in effective negotiation with that applicant for the provision of the *negotiated distribution service*; and
  - (5) a requirement that negotiations with a *Service Applicant* for the provision of the *negotiated distribution service* be commenced and finalised within specified periods and a requirement that each party to the negotiations must make reasonable endeavours to adhere to the specified time limits; and
  - (6) a process for dispute resolution which provides that all disputes as to the *terms and conditions of access* for the provision of *negotiated distribution services* are to be dealt with in accordance with the relevant provisions of the Law and the *Rules* for dispute resolution; and
  - (7) the arrangements for payment by a *Service Applicant* of the provider's reasonable direct expenses incurred in processing the application to provide the *negotiated distribution service*; and
  - (8) a requirement that the *Distribution Network Service Provider* determine the potential impact on other *Distribution Network Users* of the provision of the *negotiated distribution service*; and
  - (9) a requirement that the *Distribution Network Service Provider* must notify and consult with any affected *Distribution Network Users* and ensure that the provision of *negotiated distribution services* does not result in non-compliance with obligations in relation to other *Distribution Network Users* under the *Rules*; and
  - (10) a requirement that the *Distribution Network Service Provider* publish the results of negotiations on its website.
- (d) Notwithstanding the foregoing, the *negotiating framework* must not be inconsistent with any of the requirements of Rules 5.3 and 5.4A and other relevant provisions of this Chapter 6 and Chapter 6A and, in the event of any inconsistency, those requirements prevail.

- (e) Each *Distribution Network Service Provider* and *Service Applicant* who is negotiating for the provision of a *negotiated distribution service* by the provider must comply with the requirements of the *negotiating framework* in accordance with its terms.

### 6.7.6 Confidential information

- (a) Commercial information to be provided to a *Service Applicant* in accordance with clause 6.7.5(c)(2):
  - (1) does not include *confidential information* provided to the *Distribution Network Service Provider* by another person; and
  - (2) may be provided subject to a condition that the *Service Applicant* must not provide any part of that commercial information to any other person without the consent of the *Distribution Network Service Provider*.
- (b) Commercial information to be provided to a *Distribution Network Service Provider* in accordance with clause 6.7.5(c)(4):
  - (1) does not include *confidential information* provided to a *Service Applicant* by another person; and
  - (2) may be provided subject to a condition that the provider must not provide any part of that commercial information to any other person without the consent of the *Service Applicant*.

## Part DA Negotiable components of direct control services (NSW and ACT)

### 6.7A Negotiable components of direct control services

- (a) The *AER* may include in a *Distribution Network Service Provider's* distribution determination a decision that one or more components of the provider's *direct control services* are negotiable components.
- (b) A negotiable component may be a particular component of the *direct control service* or may relate to the terms or conditions on which a *direct control service* or a component of a *direct control service* is provided.
- (c) A reference in this rule 6.7A to the price for a negotiable component of a *direct control service* is a reference to the price for the *direct control service* if the negotiable component is successfully negotiated by the *Distribution Network Service Provider* and the *Service Applicant* concerned.



- (d) The following provisions of Rule 6.7A have effect if the *AER* decides that one or more components of *direct control services* provided by a *Distribution Network Service Provider* are negotiable components (as referred to in paragraph (a)).

### 6.7A.1 Principles relating to access to negotiable components

The following principles constitute the negotiable component principles:

- (1) the price for a negotiable component should be the price for that component in the *Distribution Network Service Provider's approved pricing proposal*, unless the terms and conditions sought for the component are so different from those used for the purposes of establishing the *approved pricing proposal* as to warrant determination of the price without regard to this subparagraph;
- (2) subject to subparagraph (1), the price for a negotiable component should be based on the costs incurred in providing that component, determined in accordance with the principles and policies set out in the Cost Allocation Method for the relevant *Distribution Network Service Provider*;
- (3) subject to subparagraphs (1), (4) and (5), the price for a negotiable component should be at least equal to the cost that would be avoided by not providing it but no more than the cost of providing it on a stand alone basis;
- (4) subject to subparagraph (1), if the *direct control service* of which the negotiable component is a component is the provision of a *shared distribution service* that:
  - (i) exceeds the *network* performance requirements (if any) which that *shared distribution service* is required to meet under any *jurisdictional electricity legislation*; or
  - (ii) exceeds the *network* performance requirements set out in schedules 5.1a and 5.1,

then the differential between the price for that *direct control service* and the price for the *shared distribution service* which meets (but does not exceed) the *network* performance requirements under any *jurisdictional electricity legislation* or as set out in schedules 5.1a and 5.1 (as the case may be) should reflect the increase in the *Distribution Network Service Provider's* incremental cost of providing that service;

- (5) subject to subparagraph (1), if the *direct control service* of which the negotiable component is a component is the provision of a *shared distribution service* that does not meet (and does not exceed) the

*network* performance requirements set out in schedules 5.1a and 5.1, then the differential between the price for that service and the price for the *shared distribution service* which meets (but does not exceed) the *network* performance requirements set out in schedules 5.1a and 5.1 should reflect the cost the *Distribution Network Service Provider* would avoid by not providing that service;

- (6) subject to subparagraph (1), the price for a negotiable component must be the same for all *Distribution Network Users* unless there is a material difference in the costs of providing the negotiable component to different *Distribution Network Users* or classes of *Distribution Network Users*;
- (7) subject to subparagraph (1), the price for a negotiable component should be subject to adjustment over time to the extent that the assets used to provide the *direct control service* are subsequently used to provide services to another person, in which case the adjustment should reflect the extent to which the costs of those assets are being recovered through charges to that other person;
- (8) subject to subparagraph (1), the price for a negotiable component should be such as to enable the *Distribution Network Service Provider* to recover the efficient costs of complying with all *regulatory obligations or requirements* associated with the provision of the negotiable component;
- (9) any *access charges* should be based on the costs reasonably incurred by the *Distribution Network Service Provider* in providing *distribution network user access* and, in the case of compensation referred to in clause 5.5(f)(4)(ii) and (iii), on the revenue that is likely to be foregone and the costs that are likely to be incurred by a person referred to in those provisions where an event referred to in those provisions occurs;
- (10) the *terms and conditions of access* for a negotiable component should be fair and reasonable and consistent with the safe and reliable operation of the *power system* in accordance with the *Rules* (for these purposes, the price for a negotiable component is to be treated as being fair and reasonable if it complies with principles (1) to (8) of this clause);
- (11) the *terms and conditions of access* for a negotiable component (including, in particular, any exclusions and limitations of liability and indemnities) must not be unreasonably onerous taking into account the allocation of risk between the *Distribution Network Service Provider* and the other party, the price for the negotiable component and the costs to the *Distribution Network Service Provider* of providing the negotiable component; and

- (12) the *terms and conditions of access* for a negotiable component should take into account the need for the *direct control service* to be provided in a manner that does not adversely affect the safe and reliable operation of the *power system* in accordance with the *Rules*.

### **6.7A.2 Determination of terms and conditions of access for negotiable components**

- (a) A *Distribution Network Service Provider* must comply with:
- (1) the provider's *negotiating framework*; and
  - (2) the provider's negotiable component criteria,
- when the provider is negotiating the *terms and conditions of access* to negotiable components.
- (b) The *Distribution Network Service Provider* must also comply with any other applicable requirements of the *Rules*, including the requirements of:
- (1) rules 5.3, 5.4A and 5.5, when negotiating for the provision of *connection services* and the associated *connection service charges*; and
  - (2) rules 5.4A and 5.5 when negotiating the *use of system services charges* and *access charges* to be paid to or by a *Distribution Network User*.

### **6.7A.3 Negotiating framework determination**

The determination specifying requirements relating to the *negotiating framework* forming part of a distribution determination for a *Distribution Network Service Provider* is to set out requirements that are to be complied with in respect of the preparation, replacement, application or operation of its *negotiating framework*.

### **6.7A.4 Negotiable component criteria determination**

- (a) The determination by the *AER* specifying the negotiable component criteria forming part of a distribution determination for a *Distribution Network Service Provider* is to set out the criteria that are to be applied:
- (1) by the provider in negotiating *terms and conditions of access* including:
    - (i) the variations to the prices that are to be charged for the provision of the negotiable component of the *direct control service* concerned by the provider for the relevant *regulatory control period*; and

- (ii) any *access charges* which are negotiated by the provider during that *regulatory control period*; and
- (2) by the *AER* in resolving an access dispute, between the *Distribution Network Service Provider* and a person who wishes to be provided with a negotiable component, in relation to *terms and conditions of access* including:
  - (i) the variation of the prices that are to be charged for the provision of the negotiable component of the *direct control service* concerned by the provider; and
  - (ii) any *access charges* that are to be paid to or by the provider.
- (b) The negotiable component criteria must give effect to and be consistent with the principles set out in clause 6.7A.1.

### **6.7A.5 Preparation of and requirements for negotiating framework**

- (a) A *Distribution Network Service Provider* must prepare a document (the *negotiating framework*) setting out the procedure to be followed during negotiations between that provider and any person (the *Service Applicant* or applicant) who wishes to be provided with a negotiable component from the provider, as to the *terms and conditions of access* for the provision of the component.
- (b) The *negotiating framework* for a *Distribution Network Service Provider* must comply with and be consistent with:
  - (1) the applicable requirements of a distribution determination applying to the provider; and
  - (2) paragraph (c), which sets out the minimum requirements for a *negotiating framework*.
- (c) The *negotiating framework* for a *Distribution Network Service Provider* must specify:
  - (1) a requirement for the provider and a *Service Applicant* to negotiate in good faith the *terms and conditions of access* to a negotiable component; and
  - (2) a requirement for the provider to provide all such commercial information a *Service Applicant* may reasonably require to enable that applicant to engage in effective negotiation with the provider for the provision of the negotiable component, including the cost information described in subparagraph (3); and
  - (3) a requirement for the provider:

- (i) to identify and inform a *Service Applicant* of the reasonable costs and/or the increase or decrease in costs (as appropriate) of providing the negotiable component; and
- (ii) to demonstrate to a *Service Applicant* that the charges for providing the negotiable component reflect those costs and/or the cost increment or decrement (as appropriate); and
- (iii) to have appropriate arrangements for assessment and review of the charges and the basis on which they are made;

*Note:*

*If (for example) a charge, or an element of a charge, is based on a customer's actual or assumed maximum demand, the assessment and review arrangements should allow for a change to the basis of the charge so that it more closely reflects the customer's load profile where a reduction or increase in maximum demand has been demonstrated.*

- (4) a requirement for a *Service Applicant* to provide all commercial information the provider may reasonably require to enable the provider to engage in effective negotiation with that applicant for the provision of the negotiable component; and
- (5) a requirement that negotiations with a *Service Applicant* for the provision of the negotiable component be commenced and finalised within specified periods and a requirement that each party to the negotiations must make reasonable endeavours to adhere to the specified time limits; and
- (6) a process for dispute resolution which provides that all disputes as to the *terms and conditions of access* for the provision of negotiable components are to be dealt with in accordance with the relevant provisions of the Law and the *Rules* for dispute resolution; and
- (7) the arrangements for payment by a *Service Applicant* of the provider's reasonable direct expenses incurred in processing the application to provide the negotiable component; and
- (8) a requirement that the *Distribution Network Service Provider* determine the potential impact on other *Distribution Network Users* of the provision of the negotiable component; and
- (9) a requirement that the *Distribution Network Service Provider* must notify and consult with any affected *Distribution Network Users* and ensure that the provision of negotiable components does not result in non-compliance with obligations in relation to other *Distribution Network Users* under the *Rules*; and

- (10) a requirement that the *Distribution Network Service Provider* publish the results of negotiations on its website.
- (d) Notwithstanding the foregoing, the *negotiating framework* must not be inconsistent with any of the requirements of Rules 5.3, 5.4A and 5.5 and other relevant provisions of this Chapter 6 and Chapter 6A and, in the event of any inconsistency, those requirements prevail.
- (e) Each *Distribution Network Service Provider* and *Service Applicant* who is negotiating for the provision of a negotiable component by the provider must comply with the requirements of the *negotiating framework* in accordance with its terms.
- (f) EnergyAustralia may prepare and submit a document that contains both the *negotiating framework* under this clause 6.7A.5 and the *negotiating framework* under clause 6.7.5, and both frameworks may be combined in a single framework.

#### **6.7A.6 Confidential information**

- (a) Commercial information to be provided to a *Service Applicant* in accordance with clause 6.7A.5(c)(2):
  - (1) does not include *confidential information* provided to the *Distribution Network Service Provider* by another person; and
  - (2) may be provided subject to a condition that the *Service Applicant* must not provide any part of that commercial information to any other person without the consent of the *Distribution Network Service Provider* .
- (b) Commercial information to be provided to a *Distribution Network Service Provider* in accordance with clause 6.7A.5(c)(4):
  - (1) does not include *confidential information* provided to a *Service Applicant* by another person; and
  - (2) may be provided subject to a condition that the provider must not provide any part of that commercial information to any other person without the consent of the *Service Applicant*.

## Part E Regulatory proposal

### 6.8 Regulatory proposal

#### 6.8.1 \*\*\*\*\*

#### 6.8.2 Submission of regulatory proposal

- (a) A *Distribution Network Service Provider* must, whenever required to do so under paragraph (b), submit a *regulatory proposal* to the AER for *distribution services* provided by means of, or in connection with, the provider's *distribution system*.
- (b) A *regulatory proposal* must be submitted on or before 2 June 2008.
- (c) A *regulatory proposal* must include (but need not be limited to) the following elements:
  - (1) \*\*\*\*\*
  - (2) for *direct control services* classified as *standard control services* – a *building block proposal*; and
  - (3) \*\*\*\*\*
  - (3A) for *direct control services* classified as *alternative control services*:
    - (i) the proposed control mechanism, a demonstration of the application of the proposed control mechanism, and the necessary supporting information; and
    - (ii) in the case of a departure from the AER's likely approach to the relevant control mechanisms for *alternative control services* (as indicated in a statement *published* under clause 6.2.5(e)) a statement of the reasons justifying the departure; and
  - (4) for *direct control services* – indicative prices for each year of the *regulatory control period*; and
  - (5) \*\*\*\*\*
  - (6) an indication of the parts of the proposal (if any) the *Distribution Network Service Provider* claims to be confidential and wants suppressed from publication on that ground; and
  - (7) for *direct control services* – a proposal as to whether any (and, if so, which) components of *direct control services* should be negotiable components; and

- (8) for negotiable components of *direct control services* classified under the proposal as *negotiated distribution services* – the proposed *negotiating framework*; and
  - (9) for EnergyAustralia prescribed (transmission) standard control services - a proposed pricing methodology; and
  - (10) for EnergyAustralia negotiated distribution services classified under the proposal as *negotiated distribution services* – the proposed *negotiating framework*.
- (d) The *regulatory proposal* must comply with the requirements of, and must contain or be accompanied by the information required by any relevant *regulatory information instrument*.
- (e) \*\*\*\*\*
- (f) \*\*\*\*\*

## 6.9 Preliminary examination and consultation

### 6.9.1 Preliminary examination

- (a) If the *AER* considers that a *regulatory proposal* (or the accompanying information) does not comply, in any respect, with a requirement of the Law or the *Rules*, the *AER* may notify the provider that it requires resubmission of the proposal.
- (b) The notice must be given as soon as practicable and must state why, and in what respects, the *AER* considers the *regulatory proposal* to be non-compliant.

### 6.9.2 Resubmission of proposal

- (a) A *Distribution Network Service Provider* must, within 20 *business days* after receiving a notice under clause 6.9.1, resubmit its *regulatory proposal* in an amended form that complies with the relevant requirements set out in the notice.
- (b) A *Distribution Network Service Provider* may only make changes to its *regulatory proposal* to address the deficiencies identified in the notice.

### 6.9.3 Consultation

- (a) Subject to the provisions of the Law and the *Rules* about the disclosure of *confidential information*, the *AER* must *publish* a *regulatory proposal* submitted or resubmitted to it by the *Distribution Network Service Provider* under this Part, together with:



- (1) the *AER's* proposed negotiable component criteria for the provider; and
- (1A) in the case of EnergyAustralia negotiated distribution services provided by EnergyAustralia - the *AER's* proposed *Negotiated Distribution Service Criteria*; and
- (2) an invitation for written submissions on the *regulatory proposal* and the proposed *Negotiated Distribution Service Criteria* or proposed negotiable component criteria (or both),

after the *AER* decides that the *regulatory proposal* complies (or that there is sufficient compliance) with the requirements of the Law and the *Rules*.

- (b) The *AER* may *publish* an issues paper examining issues related to the *regulatory proposal* and the proposed negotiable component criteria (and, in the case of EnergyAustralia negotiated distribution services provided by EnergyAustralia, the proposed *Negotiated Distribution Service Criteria*), at the same time as, or subsequent to, *publication* of the invitation referred to in paragraph (a)(2).
- (c) Any person may make a written submission to the *AER* on the *regulatory proposal* or the proposed negotiable component criteria (or, in the case of EnergyAustralia negotiated distribution services provided by EnergyAustralia, the proposed *Negotiated Distribution Service Criteria*) within the time specified in the invitation referred to in paragraph (a)(2), which must be not earlier than 30 *business days* after the invitation for submissions is *published* under that paragraph.

## **6.10 Draft distribution determination and further consultation**

### **6.10.1 Making of draft distribution determination**

Subject to rule 6.14(a), the *AER* must consider any written submissions made under rule 6.9 and must make a draft distribution determination in relation to the *Distribution Network Service Provider*.

### **6.10.2 Publication of draft determination and consultation**

- (a) The *AER* must *publish*:
  - (1) the draft distribution determination; and
  - (2) notice of the making of the draft distribution determination; and
  - (3) the *AER's* reasons for suggesting that the distribution determination should be made as proposed including the draft constituent decisions

- i.e. the decisions made in accordance with rule 6.12 on which the draft distribution determination is predicated; and
- (4) notice of a predetermination conference; and
  - (5) an invitation for written submissions on its draft distribution determination.
- (b) The *AER* must hold a predetermination conference at the time, date and place specified in the notice under paragraph (a)(4) for the purpose of explaining the draft distribution determination and receiving oral submissions from interested parties. Any person may attend such a predetermination conference but the procedure to be adopted at the conference will be at the discretion of the senior *AER* representative in attendance.
- (c) Any person may make a written submission to the *AER* on the draft distribution determination within the time specified in the invitation referred to in paragraph (a)(5), which must be not earlier than 30 *business days* after the making of the draft determination.

### 6.10.3 Submission of revised proposal

- (a) In addition to making written submissions, the *Distribution Network Service Provider* may, not more than 30 *business days* after the publication of the draft distribution determination, submit a revised *regulatory proposal* to the *AER*.
- (b) A *Distribution Network Service Provider* may only make the revisions referred to in paragraph (a) so as to incorporate the substance of any changes required to address matters raised by the draft distribution determination or the *AER*'s reasons for it.
- (c) A revised *regulatory proposal* must comply with the requirements of, and must contain or be accompanied by the information required by, any relevant *regulatory information instrument*.
- (d) Subject to the provisions of the Law and the *Rules* about the disclosure of *confidential information*, the *AER* must *publish a regulatory proposal* submitted by the *Distribution Network Service Provider* under paragraph (a), together with the accompanying information, as soon as practicable after receipt by the *AER*.
- (e) The *AER* may, but need not, invite written submissions on the revised *regulatory proposal*.

## **6.11 Distribution determination**

### **6.11.1 Making of distribution determination**

Subject to rule 6.14(a), the *AER* must consider any submissions made on the draft distribution determination, or on any revised *regulatory proposal* submitted to it under clause 6.10.3, and must make a distribution determination in relation to the *Distribution Network Service Provider*.

### **6.11.2 Notice of distribution determination**

The *AER* must as soon as practicable, but not later than 2 months before the commencement of the relevant *regulatory control period*, publish:

- (1) notice of the making of the distribution determination; and
- (2) the distribution determination itself; and
- (3) the *AER*'s reasons for making the distribution determination in its final form including the constituent decisions i.e. the decisions made in accordance with rule 6.12 on which the distribution determination is predicated.

### **6.11.3 Commencement of distribution determination**

- (a) A distribution determination takes effect at the commencement of the *regulatory control period* to which it relates.
- (b) If a period intervenes between the end of one *regulatory control period* and the commencement of a new distribution determination providing for the next *regulatory control period*:
  - (1) the previous distribution determination continues in force during the intervening period; and
  - (2) the last pricing proposal approved by the IPART or ICRC, as the case requires, in the previous *regulatory control period* continues in force (despite any contrary provision of these *Rules*) during the intervening period and the first *regulatory year* of the *regulatory control period*; and
  - (3) the later distribution determination is to make provision for appropriate adjustments to the *approved pricing proposals* for subsequent *regulatory years* of the *regulatory control period*.

## 6.12 Requirements relating to draft and final distribution determinations

### 6.12.1 Constituent decisions

A distribution determination is predicated on the following decisions by the *AER* (*constituent decisions*):

- (1) a decision on the classification of the services to be provided by the *Distribution Network Service Provider* during the course of the *regulatory control period*;
- (2) a decision on the *Distribution Network Service Provider's* current *building block proposal* in which the *AER* either approves or refuses to approve:
  - (i) the *annual revenue requirement* for the provider, as set out in the *building block proposal*, for each *regulatory year* of the *regulatory control period*; and
  - (ii) \*\*\*\*\*
- (3) a decision in which the *AER* either:
  - (i) acting in accordance with clause 6.5.7(c), accepts the total of the forecast capital expenditure for the *regulatory control period* that is included in the current *building block proposal*; or
  - (ii) acting in accordance with clause 6.5.7(d), does not accept the total of the forecast capital expenditure for the *regulatory control period* that is included in the current *building block proposal*, in which case the *AER* must set out its reasons for that decision and an estimate of the total of the *Distribution Network Service Provider's* required capital expenditure for the *regulatory control period* that the *AER* is satisfied reasonably reflects the *capital expenditure criteria*, taking into account the *capital expenditure factors*;
- (4) a decision in which the *AER* either:
  - (i) acting in accordance with clause 6.5.6(c), accepts the total of the forecast operating expenditure for the *regulatory control period* that is included in the current *building block proposal*; or
  - (ii) acting in accordance with clause 6.5.6(d), does not accept the total of the forecast operating expenditure for the *regulatory control period* that is included in the current *building block proposal*, in which case the *AER* must set out its reasons for that

decision and an estimate of the total of the *Distribution Network Service Provider's* required operating expenditure for the *regulatory control period* that the *AER* is satisfied reasonably reflects the *operating expenditure criteria*, taking into account the *operating expenditure factors*;

- (5) a decision in relation to the rate of return in accordance with clause 6.5.2;
- (6) a decision on the regulatory asset base as at the commencement of the *regulatory control period* in accordance with clause 6.5.1 and schedule 6.2;
- (7) a decision on the estimated cost of corporate income tax to the provider for each *regulatory year* of the *regulatory control period* in accordance with clause 6.5.3;
- (8) a decision on whether or not to approve the depreciation schedules submitted by the *Distribution Network Service Provider* and, if the *AER* decides against approving them, a decision determining depreciation schedules in accordance with clause 6.5.5(b);
- (9) a decision on how any applicable *efficiency benefit sharing scheme*, *service target performance incentive scheme*, or *demand management incentive scheme* is to apply to the *Distribution Network Service Provider*;
- (10) a decision in which the *AER* decides other appropriate amounts, values or inputs;
- (11) a decision on the control mechanism (including the X factor) for *standard control services*;
- (12) a decision on the control mechanism for *alternative control services*;
- (13) a decision on how compliance with a relevant control mechanism is to be demonstrated;
- (14) a decision on the additional *pass through events* that are to apply for the *regulatory control period*;
- (15) a decision on any *negotiating framework* that is to apply to the *Distribution Network Service Provider* for the *regulatory control period* (which may be the *negotiating framework* as proposed by the provider, some variant of it, or a framework substituted by the *AER*);
- (16) if relevant, a decision in which the *AER* decides the *Negotiated Distribution Service Criteria* for the *Distribution Network Service Provider*;

- (16A) a decision in which the *AER* decides which, if any, components of *direct control services* are negotiable components;
- (16B) if relevant, a decision in which the *AER* decides the negotiable component criteria for the *Distribution Network Service Provider*;
- (17) a decision on the procedures for assigning customers to *tariff classes*, or reassigning customers from one *tariff class* to another (including any applicable restrictions);
- (18) a decision on whether depreciation for establishing the regulatory asset base as at the commencement of the following *regulatory control period* is to be based on actual or forecast capital expenditure;
- (19) a decision on how the *Distribution Network Service Provider* is to report to the *AER* on its recovery of *Transmission Use of System* charges for each *regulatory year* of the *regulatory control period* and on the adjustments to be made to subsequent *pricing proposals* to account for over or under recovery of those charges;
- (20) for EnergyAustralia prescribed (transmission) standard control services – a decision on the proposed pricing methodology, in which the *AER* either approves or refuses to approve that methodology and sets out reasons for its decision.

#### **6.12.1A Division of EnergyAustralia’s revenue**

- (a) The *AER* must, in the distribution determination for EnergyAustralia, divide the revenue calculated under Part C into the following two portions:
  - (1) a portion relevant to EnergyAustralia prescribed (transmission) standard control services;
  - (2) a portion relevant to other *standard control services* provided by EnergyAustralia,  
  
based on EnergyAustralia’s approved Cost Allocation Method.
- (b) The pricing rules in Part J of Chapter 6A are to be applied to the portion referred to in paragraph (a)(1) instead of the pricing rules in Part I of transitional Chapter 6.
- (c) The pricing rules in Part I of transitional Chapter 6 are to be applied to the portion referred to in paragraph (a)(2).

### 6.12.2 Reasons for decisions

The reasons given by the *AER* for a draft distribution determination under rule 6.10 or a final distribution determination under rule 6.11 must set out the basis and rationale of the determination, including:

- (1) details of the qualitative and quantitative methods applied in any calculations and formulae made or used by the *AER*; and
- (2) the values adopted by the *AER* for each of the input variables in any calculations and formulae, including:
  - (i) whether those values have been taken or derived from the provider's current *building block proposal*; and
  - (ii) if not, the rationale for the adoption of those values; and
- (3) details of any assumptions made by the *AER* in undertaking any material qualitative and quantitative analyses; and
- (4) reasons for the making of any decisions, the giving or withholding of any approvals, and the exercise of any discretions, as referred to in this Chapter 6, for the purposes of the determination.

### 6.12.3 Extent of *AER*'s discretion in making distribution determinations

- (a) Subject to this clause and other provisions of this Chapter 6 explicitly negating or limiting the *AER*'s discretion, the *AER* has a discretion to accept or approve, or to refuse to accept or approve, any element of a *regulatory proposal*.
- (b) \*\*\*\*\*
- (c) \*\*\*\*\*
- (d) The *AER* must approve the *total revenue requirement* for a *Distribution Network Service Provider* for a *regulatory control period*, and the *annual revenue requirement* for each *regulatory year* of the *regulatory control period*, as set out in the provider's current *building block proposal*, if the *AER* is satisfied that those amounts have been properly calculated using the *post-tax revenue model* on the basis of amounts calculated, determined or forecast in accordance with the requirements of Part C of this Chapter 6.
- (e) \*\*\*\*\*
- (f) If the *AER* refuses to approve an amount, value or methodology referred to in clause 6.12.1, the substitute amount, value or methodology on which the distribution determination is based must be:

- (1) determined on the basis of the current *regulatory proposal*; and
  - (2) amended from that basis only to the extent necessary to enable it to be approved in accordance with the *Rules*.
- (g) The *AER* must approve a proposed *negotiating framework* if the *AER* is satisfied that it adequately complies with the requirements of Part D or DA (as the case requires).
- (h) If the *AER* refuses to approve a proposed *negotiating framework*, any approved amended *negotiating framework* must be:
- (1) determined on the basis of the current proposed *negotiating framework*; and
  - (2) amended from that basis only to the extent necessary to enable it to be approved in accordance with the *Rules*.
- (i) The *AER* must approve EnergyAustralia's proposed pricing methodology for EnergyAustralia prescribed (transmission) standard control services if the *AER* is satisfied that the methodology:
- (1) gives effect to and is consistent with the *Pricing Principles for Prescribed Transmission Services*; and
  - (2) complies with the requirements of the *pricing methodology guidelines*.

### **6.13 Revocation and substitution of distribution determination for wrong information or error**

- (a) The *AER* may (but is not required to) revoke a distribution determination during a *regulatory control period* if it appears to the *AER* that the determination is affected by a material error or deficiency of one or more of the following kinds:
- (1) a clerical mistake or an accidental slip or omission;
  - (2) a miscalculation or misdescription;
  - (3) a defect in form;
  - (4) a deficiency resulting from the provision of false or materially misleading information to the *AER*.
- (b) If the *AER* revokes a distribution determination under paragraph (a), the *AER* must make a new distribution determination in substitution for the revoked determination to apply for the remainder of the *regulatory control period* for which the revoked determination was to apply.



- (c) If the *AER* revokes a distribution determination under paragraph (a), the substituted determination must only vary from the revoked determination to the extent necessary to correct the relevant error or deficiency.
- (d) The *AER* may only revoke and substitute a distribution determination under this rule 6.13, if it has first consulted with the relevant *Distribution Network Service Provider* and such other persons as it considers appropriate.

## 6.14 Miscellaneous

- (a) The *AER* may, but is not required to, consider any submission made pursuant to an invitation for submissions after the time for making the submission has expired.
- (b) Nothing in this Part E is to be construed as precluding the *AER* from *publishing* any issues, consultation and discussion papers, or holding any conferences and information sessions, that the *AER* considers appropriate.
- (c) Subject to paragraph (d), as soon as practicable after the *AER* receives a submission in response to an invitation referred to in clause 6.9.3(a)(2) or 6.10.2(a)(5) (whether or not the submission was made before the time for making it has expired), the *AER* must *publish* that submission.
- (d) The *AER* must not *publish* a submission referred to in paragraph (c) to the extent it contains information which has been clearly identified as confidential by the person making the submission.
- (e) The *AER* may give such weight to *confidential information* identified in accordance with paragraph (d) in a submission as it considers appropriate, having regard to the fact that such information has not been made publicly available.
- (f) Paragraph (d) does not apply to the extent that any other provision of the Law or the *Rules* permits or requires such information to be publicly released by the *AER*.

## Part F Cost Allocation

### 6.15 Cost allocation

#### 6.15.1 Duty to comply with Cost Allocation Method

- (a) A *Distribution Network Service Provider* must comply with the Cost Allocation Method that has been approved in respect of that provider from time to time by the *AER* under this rule 6.15 in respect of the regulatory control period 2009-2014.

- (b) A *Distribution Network Service Provider* is, during the regulatory control period 2009-2014, also subject to the requirements of Part F of general Chapter 6 but only for the purposes of and in connection with the distribution determination to be made for the subsequent *regulatory control period*.

**6.15.2** \*\*\*\*\*

**6.15.3** \*\*\*\*\*

**6.15.4** \*\*\*\*\*

### **Provisions applicable to the NSW Distribution Network Service Providers**

#### **6.15.5 Cost Allocation Guidelines (NSW)**

The Accounting Separation Code for Electricity Distributors in NSW prepared by the IPART and in force immediately before the start of the regulatory control period 2009-2014 in relation to the NSW Distribution Network Service Providers are deemed to be Cost Allocation Guidelines made by the *AER* for the regulatory control period 2009-2014.

#### **6.15.6 Cost Allocation Method (NSW)**

- (a) Each NSW Distribution Network Service Provider must submit to the *AER* for its approval a document setting out its proposed Cost Allocation Method for the regulatory control period 2009-2014 within 1 month after the commencement date.
- (b) The Cost Allocation Method proposed by a NSW Distribution Network Service Provider must:
  - (1) give effect to and be consistent with the Cost Allocation Guidelines; and
  - (2) be prepared using, as far as practicable but subject to subparagraph (1), the same cost allocation method as it last used when preparing its regulatory accounts for submission to the IPART.
- (c) The *AER* may approve or refuse to approve a Cost Allocation Method submitted under paragraph (a), but must approve it if the *AER* is satisfied that it:
  - (1) gives effect to and is consistent with the Cost Allocation Guidelines; and

- (2) has been prepared, as far as practicable but subject to subparagraph (1), using the cost allocation method the relevant *Distribution Network Service Provider* last used when preparing its regulatory accounts for submission to the IPART.
- (d) The *AER* must notify the relevant *Distribution Network Service Provider* of its decision to approve or refuse to approve the Cost Allocation Method submitted to it under paragraph (a) within 2 months of its submission, failing which the *AER* will be taken to have approved it.
- (e) As part of giving any approval referred to in paragraph (c), the *AER* may, after consulting with the relevant *Distribution Network Service Provider*, amend the Cost Allocation Method submitted to it, in which case the Cost Allocation Method as so amended will be taken to be approved by the *AER*.
- (f) A NSW Distribution Network Service Provider may, with the *AER*'s approval, amend its Cost Allocation Method from time to time but:
  - (1) the amendment:
    - (i) may be approved on condition that the *Distribution Network Service Provider* agree to incorporate into the amendment specified additional changes to the Cost Allocation Method the *AER* reasonably considers necessary or desirable as a result of the amendment as submitted; and
    - (ii) if approved on such a condition, does not take effect unless and until the *Distribution Network Service Provider* notifies the *AER* of its agreement;
  - (2) if 6 months elapse from the date of the submission of the amendment and the *AER* has not notified the *Distribution Network Service Provider* within that period of its approval or refusal to approve the amendment, the amendment is, at the end of that period, conclusively presumed to have been unconditionally approved.
- (g) A NSW Distribution Network Service Provider must maintain a current copy of its Cost Allocation Method on its website.

## **Provisions applicable to the ACT Distribution Network Service Provider**

### **6.15.7 Cost Allocation Principles (ACT)**

The following principles constitute the Cost Allocation Principles for the ACT Distribution Network Service Provider:

- (1) the detailed principles and policies used by the ACT Distribution Network Service Provider to allocate costs between different

categories of *distribution services* must be described in sufficient detail to enable the *AER* to replicate reported outcomes through the application of those principles and policies;

- (2) the allocation of costs must be determined according to the substance of a transaction or event rather than its legal form;
- (3) only the following costs may be allocated to a particular category of *distribution services*:
  - (i) costs which are directly attributable to the provision of those services; and
  - (ii) costs which are not directly attributable to the provision of those services but which are incurred in providing those services, in which case such costs must be allocated to the provision of those services using an appropriate allocator which should:
    - (A) except to the extent the cost is immaterial or a causal based method of allocation cannot be established without undue cost and effort, be causation based; and
    - (B) to the extent the cost is immaterial or a causal based method of allocation cannot be established without undue cost and effort, be an allocator that accords with a well accepted cost allocation method;
- (4) any cost allocation method which is used, the reasons for using that method and the numeric quantity (if any) of the chosen allocator must be clearly described;
- (5) the same cost must not be allocated more than once;
- (6) the principles, policies and approach used to allocate costs must be consistent with the Distribution Ring-Fencing Guidelines;
- (7) costs which have been allocated to a particular service cannot be reallocated to another service during the course of a *regulatory control period*.

### **6.15.8 Cost Allocation Method (ACT)**

- (a) The ACT Distribution Network Service Provider must submit to the *AER* for its approval a document setting out its proposed Cost Allocation Method for the regulatory control period 2009-2014 within 1 month after the commencement date.
- (b) The Cost Allocation Method proposed by the ACT Distribution Network Service Provider must:

- (1) be prepared using, as far as practicable, the same cost allocation method as it last used when preparing its regulatory accounts for submission to the ICRC; and
  - (2) subject to subparagraph (1), be consistent with the Cost Allocation Principles.
- (c) The *AER* may approve or refuse to approve the Cost Allocation Method submitted under paragraph (a), but must approve it if the *AER* is satisfied that it:
- (1) has been prepared, as far as practicable, using the cost allocation method the ACT Distribution Network Service Provider last used when preparing its regulatory accounts for submission to the ICRC; and
  - (2) subject to subparagraph (1), is consistent with the Cost Allocation Principles.
- (d) The *AER* must notify the ACT Distribution Network Service Provider of its decision to approve or refuse to approve the Cost Allocation Method submitted to it under paragraph (a) within 2 months of its submission, failing which the *AER* will be taken to have approved it.
- (e) As part of giving any approval referred to in paragraph (c), the *AER* may, after consulting with the ACT Distribution Network Service Provider, amend the Cost Allocation Method submitted to it, in which case the Cost Allocation Method as so amended will be taken to be approved by the *AER*.
- (f) The ACT Distribution Network Service Provider may, with the *AER*'s approval, amend its Cost Allocation Method from time to time but:
- (1) the amendment:
    - (i) may be approved on condition that the provider agree to incorporate into the amendment specified additional changes to the Cost Allocation Method the *AER* reasonably considers necessary or desirable as a result of the amendment as submitted; and
    - (ii) if approved on such a condition, does not take effect unless and until the provider notifies the *AER* of its agreement;
  - (2) if 6 months elapse from the date of the submission of the amendment and the *AER* has not notified the provider within that period of its approval or refusal to approve the amendment, the amendment is, at the end of that period, conclusively presumed to have been unconditionally approved.

- (g) The ACT Distribution Network Service Provider must maintain a current copy of its Cost Allocation Method on its website.

## Part G \*\*\*\*\*

## Part H Ring-Fencing Arrangements for Distribution Network Service Providers

### 6.17 Distribution Ring-Fencing Guidelines

#### 6.17.1 Compliance with Distribution Ring-Fencing Guidelines

- (a) All *Distribution Network Service Providers* must comply with the *Distribution Ring-Fencing Guidelines* prepared in accordance with clause 6.17.2.
- (b) Any Distribution Ring-Fencing Guidelines prepared by the IPART and in force immediately before the start of the regulatory control period 2009-2014 in relation to the NSW Distribution Network Service Providers are deemed to have been prepared by the *AER* under clause 6.17.2 and are to be complied with by the NSW Distribution Network Service Providers.
- (c) Any Distribution Ring-Fencing Guidelines prepared by the ICRC and in force immediately before the start of the regulatory control period 2009-2014 in relation to the ACT Distribution Network Service Provider are deemed to have been prepared by the *AER* under clause 6.17.2 and are to be complied with by the ACT Distribution Network Service Provider.
- (d) Any waiver granted by the IPART under clause 6.2 of the Distribution Ring-Fencing Guidelines prepared by the IPART in relation to the regulatory control period 2004-2009 and in force at the end of that period is deemed to have been given by the *AER* in relation to the regulatory control period 2009-2014.
- (e) For the purposes of paragraphs (b) and (c), the provisions of the guidelines prepared by the IPART and ICRC respectively and referred to in those paragraphs have effect as if references to the IPART and ICRC respectively were references to the *AER*, and with any other necessary modifications.
- (f) EnergyAustralia must, in respect of the EnergyAustralia transmission support network, comply with the *Distribution Ring-Fencing Guidelines* and the *Transmission Ring-Fencing Guidelines*.
- (g) The guidelines referred to in paragraphs (b) and (c) continue in force during and after the end of the regulatory control period 2009-2014 subject to amendment, revocation or replacement by guidelines made under the new regulatory regime as defined in clause 11.14.2.

## 6.17.2 Development of Distribution Ring-Fencing Guidelines

- (a) Subject to clause 6.17.1, guidelines may be developed by the *AER* for the accounting and functional separation of the provision of *direct control services* by *Distribution Network Service Providers* from the provision of other services by *Distribution Network Service Providers* (the *Distribution Ring-Fencing Guidelines*). The guidelines may vary in application as between different *participating jurisdictions*.

*Note:*

*Clause 11.14.5 will, subject to clause 6.17.1, have a bearing on the application of these guidelines in certain cases.*

- (b) The *Distribution Ring-Fencing Guidelines* may include, but are not limited to:
- (1) provisions defining the need for and extent of:
    - (i) legal separation of the entity through which a *Distribution Network Service Provider* provides *network services* from any other entity through which it conducts business; and
    - (ii) the establishment and maintenance of consolidated and separate accounts for *standard control services*, *alternative control services* and other services provided by the *Distribution Network Service Provider*; and
    - (iii) allocation of costs between *standard control services*, *alternative control services* and other services provided by the *Distribution Network Service Provider*; and
    - (iv) limitations on the flow of information between the *Distribution Network Service Provider* and any other person; and
    - (v) limitations on the flow of information where there is the potential for a competitive disadvantage between those parts of the *Distribution Network Service Provider's* business which provide *direct control services* and parts of the provider's business which provide any other services; and
  - (2) provisions allowing the *AER* to add to or to waive a *Distribution Network Service Provider's* obligations under the *Distribution Ring-Fencing Guidelines*.
- (c) In developing or amending the *Distribution Ring-Fencing Guidelines* the *AER* must consider, without limitation, the need, so far as practicable, for consistency between the *Distribution Ring-Fencing Guidelines* and the *Transmission Ring-Fencing Guidelines*.

- (d) In developing or amending the *Distribution Ring-Fencing Guidelines*, the AER must consult with *participating jurisdictions*, *Registered Participants*, *NEMMCO* and other *interested parties*, and such consultation must be otherwise in accordance with the *distribution consultation procedures* in Part G of general Chapter 6.

## Part I Distribution Pricing Rules

### 6.18 Distribution Pricing Rules

#### 6.18.1 Application of this Part

This Part applies to tariffs and *tariff classes* related to *direct control services*.

#### 6.18.2 Pricing proposals

- (a) A *Distribution Network Service Provider* must:
  - (1) submit to the AER, as soon as practicable, and in any case within 15 *business days*, after *publication* of the distribution determination, a *pricing proposal* (the "*initial pricing proposal*") for the first *regulatory year* of the *regulatory control period*; and
  - (2) submit to the AER, at least 2 months before the commencement of the second and each subsequent *regulatory year* of the *regulatory control period*, a further *pricing proposal* (an "*annual pricing proposal*") for the relevant *regulatory year*.
- (b) A *pricing proposal* must:
  - (1) set out the *tariff classes* that are to apply for the relevant *regulatory year*; and
  - (2) set out the proposed tariffs for each *tariff class*; and
  - (3) set out, for each proposed tariff, the *charging parameters* and the elements of service to which each *charging parameter* relates; and
  - (4) set out, for each *tariff class* related to *standard control services*, the expected weighted average revenue for the relevant *regulatory year* and also for the current *regulatory year*; and
  - (5) set out the nature of any variation or adjustment to the tariff that could occur during the course of the *regulatory year* and the basis on which it could occur; and
- (5A) in the case of a NSW Distribution Network Service Provider – set out the amount paid, or required by an order under the Energy and



Utilities Administration Act 1987 of New South Wales to be paid, by the provider to the Climate Change Fund in or in respect of the relevant *regulatory year* and reflect that amount in the expected revenue for the relevant *regulatory year*; and

- (6) set out how charges incurred by the *Distribution Network Service Provider* for *transmission use of system services* are to be passed on to customers and any adjustments to tariffs resulting from over or under recovery of those charges in the previous *regulatory year*; and
  - (7) demonstrate compliance with the *Rules* and any applicable distribution determination; and
  - (8) describe the nature and extent of change from the previous *regulatory year* and demonstrate that the changes comply with the *Rules* and any applicable distribution determination.
- (c) The *AER* must on receipt of a *pricing proposal* from a *Distribution Network Service Provider* publish the proposal.

### 6.18.3 Tariff classes

- (a) A *pricing proposal* must define the *tariff classes* into which customers for *direct control services* are divided.
- (b) Each customer for *direct control services* must be a member of 1 or more *tariff classes*.
- (c) Separate *tariff classes* must be constituted for customers to whom *standard control services* are supplied and customers to whom *alternative control services* are supplied (but a customer for both *standard control services* and *alternative control services* may be a member of 2 or more *tariff classes*).
- (d) A *tariff class* must be constituted with regard to:
  - (1) the need to group customers together on an economically efficient basis; and
  - (2) the need to avoid unnecessary transaction costs.

### 6.18.4 Principles governing assignment or re-assignment of customers to tariff classes and assessment and review of basis of charging

- (a) In formulating provisions of a distribution determination governing the assignment of customers to *tariff classes* or the re-assignment of customers from one *tariff class* to another, the *AER* must have regard to the following principles:

- (1) customers should be assigned to *tariff classes* on the basis of one or more of the following factors:
  - (i) the nature and extent of their usage;
  - (ii) the nature of their *connection* to the *network*;
  - (iii) whether remotely-read interval metering or other similar metering technology has been installed at the customer's premises as a result of a *regulatory obligation or requirement*;
- (2) customers with a similar *connection* and usage profile should be treated on an equal basis;
- (3) however, customers with micro-generation facilities should be treated no less favourably than customers without such facilities but with a similar load profile;
- (4) a *Distribution Network Service Provider's* decision to assign a customer to a particular *tariff class*, or to re-assign a customer from one *tariff class* to another should be subject to an effective system of assessment and review.

*Note:*

*If (for example) a customer is assigned (or reassigned) to a tariff class on the basis of the customer's actual or assumed maximum demand, the system of assessment and review should allow for the reassignment of a customer who demonstrates a reduction or increase in maximum demand to a tariff class that is more appropriate to the customer's load profile.*

- (b) If the *charging parameters* for a particular tariff result in a basis of charge that varies according to the usage or load profile of the customer, a distribution determination must contain provisions for an effective system of assessment and review of the basis on which a customer is charged.

### 6.18.5 Pricing principles

- (a) For each *tariff class*, the revenue expected to be recovered should lie on or between:
  - (1) an upper bound representing the stand alone cost of serving the customers who belong to that class; and
  - (2) a lower bound representing the avoidable cost of not serving those customers.
- (b) A tariff, and if it consists of 2 or more *charging parameters*, each *charging parameter* for a *tariff class*:

- (1) must take into account the long run marginal cost for the service or, in the case of a *charging parameter*, for the element of the service to which the *charging parameter* relates; and
- (2) must be determined having regard to:
  - (i) transaction costs associated with the tariff or each *charging parameter*; and
  - (ii) whether customers of the relevant *tariff class* are able or likely to respond to price signals.
- (c) If, however, as a result of the operation of paragraph (b), the *Distribution Network Service Provider* may not recover the expected revenue, the provider must adjust its tariffs so as to ensure recovery of expected revenue with minimum distortion to efficient patterns of consumption.

#### 6.18.6 Side constraints on tariffs for standard control services

- (a) This clause applies only to *tariff classes* related to the provision of *standard control services*.
- (b) The expected weighted average revenue to be raised from a *tariff class* for a particular *regulatory year* of a *regulatory control period* must not exceed the corresponding expected weighted average revenue for the preceding *regulatory year* by more than the permissible percentage.
- (c) The permissible percentage is the greater of the following:
  - (1) the CPI-X limitation on any increase in the *Distribution Network Service Provider's* expected weighted average revenue between the two *regulatory years* plus 2%;  
*Note:*  
*The calculation is of the form  $(1 + CPI)(1 - X)(1 + 2\%)$*
  - (2) CPI plus 2%.  
*Note:*  
*The calculation is of the form  $(1 + CPI)(1 + 2\%)$*
- (d) In deciding whether the permissible percentage has been exceeded in a particular *regulatory year*, the following are to be disregarded:
  - (1) the recovery of revenue to accommodate a variation to the distribution determination under rule 6.6 or 6.13;

- (2) the recovery of revenue to accommodate pass through of charges for *transmission use of system services* to customers.
- (e) This clause does not, however, limit the extent a tariff for customers with remotely-read interval metering or other similar metering technology may vary according to the time or other circumstances of the customer's usage.

#### **6.18.7 Recovery of charges for transmission use of system services**

- (a) A *pricing proposal* must provide for tariffs designed to pass on to customers the charges to be incurred by the *Distribution Network Service Provider* for *transmission use of system services*.
- (b) The amount to be passed on to customers for a particular *regulatory year* must not exceed the estimated amount of the *transmission use of system* charges for the relevant *regulatory year* adjusted for over or under recovery in the previous *regulatory year*.
- (c) The extent of the over or under recovery is the difference between:
  - (1) the amount actually paid by the *Distribution Network Service Provider* by way of *transmission use of system* charges in the previous *regulatory year*; and
  - (2) the amount passed on to customers by way of *transmission use of system* charges by the *Distribution Network Service Provider* in the previous *regulatory year*.

#### **6.18.8 Approval of pricing proposal**

- (a) The *AER* must approve a *pricing proposal* if the *AER* is satisfied that:
  - (1) the proposal complies with this Part and any applicable distribution determination; and
  - (2) all forecasts associated with the proposal are reasonable.
- (b) If the *AER* determines that a *pricing proposal* is deficient:
  - (1) the *AER* may require the *Distribution Network Service Provider*, within 10 *business days* after receiving notice of the determination, to re-submit the proposal with the amendments necessary to correct the deficiencies identified in the determination and (unless the *AER* permits further amendment) no further amendment; or
  - (2) the *AER* may itself make the amendments necessary to correct the deficiencies.

- (c) If the service provider fails to comply with a requirement under paragraph (b), or the resubmitted proposal fails to correct the deficiencies in the former proposal, the *AER* may itself amend the proposal to bring it into conformity with the requirements of this Part and any applicable distribution determination.
- (d) An *approved pricing proposal* takes effect:
  - (1) in the case of an initial *pricing proposal* – at the commencement of the first *regulatory year* of the *regulatory control period* for which the distribution determination is made; and
  - (2) in the case of an annual *pricing proposal* – at the commencement of the *regulatory year* to which the proposal relates.

*Note:*

*The operation of this paragraph may, in some instances, be displaced or modified by clause 6.11.3(b).*

### **6.18.9 Publication of information about tariffs and tariff classes**

- (a) A *Distribution Network Service Provider* must maintain on its website:
  - (1) a statement of the provider's *tariff classes* and the tariffs applicable to each class; and
  - (2) for each tariff – the *charging parameters* and the elements of the service to which each *charging parameter* relates; and
  - (3) a statement of expected price trends (to be updated for each *regulatory year*) giving an indication of how the *Distribution Network Service Provider* expects prices to change over the *regulatory control period* and the reasons for the expected changes.
- (b) The information for a particular *regulatory year* must, if practicable, be posted on the website 20 *business days* before the commencement of the relevant *regulatory year* and, if that is not practicable, as soon as practicable thereafter.

## **6.19. Data Required for Distribution Service Pricing**

### **6.19.1 Forecast use of networks by Distribution Customers and Embedded Generators**

Any information required by *Distribution Network Service Providers* must be provided by *Service Applicants* as part of the *connection* and access requirements set out in Chapter 5.

### 6.19.2 Confidentiality of distribution network pricing information

- (a) Subject to the Law and the *Rules*, all information about a *Service Applicant* or *Distribution Network User* used by *Distribution Network Service Providers* for the purposes of *distribution service* pricing is confidential information and must be treated in accordance with rule 8.6.
- (b) No requirement in this Chapter 6 to publish information about a *tariff class* is to be construed as requiring publication of information about an individual customer.

## Part J Billing and Settlements

### 6.20 Billing and Settlements Process

This clause describes the manner in which *Distribution Customers* and *Embedded Generators* are billed by *Distribution Network Service Providers* for *distribution services* and how payments for *distribution services* are settled.

#### 6.20.1 Billing for distribution services

- (a) A *Distribution Network Service Provider* must bill *Distribution Network Users* for *distribution services* as follows:
  - (1) *Embedded Generators*:
    - (i) by applying the *entry charge* as a fixed annual charge to each *Embedded Generator*; and
    - (ii) by applying any other charge the *Distribution Network Service Provider* makes consistently with these *Rules* and the applicable distribution determination.

- (2) *Distribution Customers*:

The charges to *Distribution Customers* must be determined according to use of the *distribution network* as determined in accordance with a *metrology procedure* or, in the absence of a *metrology procedure* allowing such a determination to be made, by *meter* or by agreement between the *Distribution Customer* and the *Distribution Network Service Provider* by applying one or more of the following measures:

- (i) demand-based prices to the *Distribution Customer's* metered or agreed half-hourly demand;
- (ii) energy-based prices to the *Distribution Customer's* metered or agreed energy;

- (iii) the *Distribution Customer* charge determined under this clause as a fixed periodic charge to each *Distribution Customer*;
  - (iv) a fixed periodic charge, a prepayment or other charge determined by agreement with the *Distribution Customer*;
  - (v) any other measure the *Distribution Network Service Provider* is authorised to apply by the applicable distribution determination.
- (b) Subject to paragraph (c), where a *Distribution Customer* (other than a *Market Customer*) incurs *distribution service charges*, the *Distribution Network Service Provider* must bill the *Market Customer* from whom the *Distribution Customer* purchases electricity directly or indirectly for such *distribution services* in accordance with paragraph (a)(2).
- (c) If a *Distribution Customer* and the *Market Customer* from whom it purchases electricity agree, the *Distribution Network Service Provider* may bill the *Distribution Customer* directly for *distribution services* used by that *Distribution Customer* in accordance with paragraph (a)(2).
- (d) *Distribution Network Service Providers* must:
- (1) calculate *transmission service charges* and *distribution service charges* for all connection points in their *distribution network*; and
  - (2) pay to *Transmission Network Service Providers* the *transmission service charges* incurred in respect of use of a *transmission network* at each *connection point* on the relevant *transmission network*.
- (e) Charges for *distribution services* based on metered kW, kWh, kVA, or kVAh for:
- (1) *Embedded Generators* that are *Market Generators*; and
  - (2) *Market Customer*; and
  - (3) *Second-Tier Customers*;
- must be calculated by the *Distribution Network Service Provider* from:
- (1) *settlements ready data* obtained from *NEMMCO's metering database*, for those *Embedded Generators*, *Market Customers* and *Second-Tier Customers* with *connection points* that have a type 1, 2, 3 or 4 *metering installation*; and
  - (2) *energy data*, in accordance with a *metrology procedure* that allows the *Distribution Network Service Provider* to use *energy data* for this purpose, or otherwise *settlements ready data* obtained from *NEMMCO's metering database*, for those *Embedded Generators*,

*Market Customers and Second-Tier Customers with connection points that have a type 5, 6 or 7 metering installation.*

- (f) Charges for *distribution services* based on metered kW, kWh, kVA or kVAh for:
- (1) *Embedded Generators* that are not *Market Generators*; and
  - (2) *Non-Registered Customers*; and
  - (3) *franchise customers*,
- must be calculated by the *Distribution Network Service Provider* using data that is consistent with the *metering data* used by the relevant *Local Retailer* in determining *energy settlements*.
- (g) The *Distribution Network Service Provider* may bill the relevant *Local Retailer* for *distribution services* used by *Non-Registered Customers* and *franchise customers*.
- (h) Where the billing for a *Distribution Customer* for a particular *financial year* is based on quantities which are undefined until after the commencement of the *financial year*, charges must be estimated from the previous year's billing quantities with a reconciliation to be made when the actual billing quantities are known.
- (i) Where the previous year's billing quantities are unavailable or no longer suitable, nominated quantities may be used as agreed between the parties.

### **6.20.2 Minimum information to be provided in distribution network service bills**

The following is the minimum information that must be provided with a bill for a *network coupling point* issued by a *Distribution Network Service Provider* directly to a *Registered Participant*:

- (1) the *network coupling point* identifier; and
- (2) the dates on which the billing period starts and ends; and
- (3) the identifier of the *distribution service* price from which the *network coupling point* charges are calculated; and
- (4) measured quantities, billed quantities, prices and amounts charged for each component of the total *distribution service* account.



### 6.20.3 Settlement between Distribution Network Service Providers

The billing and settlement process specified in this clause must be applied to all *Distribution Customers* including other *Distribution Network Service Providers*.

### 6.20.4 Obligation to pay

A *Distribution Network User* must pay *distribution service* charges properly charged to it and billed in accordance with this clause by the due date specified in the bill.

## Part K Prudential requirements, capital contributions and prepayments

### 6.21 Distribution Network Service Provider Prudential Requirements

This clause sets out the arrangements by which *Distribution Network Service Providers* may minimise financial risks associated with investment in *network assets* and provides for adoption of cost-reflective payment options in conjunction with the use of average distribution prices. The clause also prevents *Distribution Network Service Providers* from receiving income twice for the same assets through prudential requirements and *distribution service* prices.

#### 6.21.1 Prudential requirements for distribution network service

- (a) A *Distribution Network Service Provider* may require an *Embedded Generator* or *Distribution Customer* that requires a new *connection* or a modification in service for an existing *connection* to establish prudential requirements for *connection service* and/or *distribution use of system service*.
- (b) Prudential requirements for *connection service* and/or *distribution use of system service* are a matter for negotiation between the *Distribution Network Service Provider* and the *Embedded Generator* or *Distribution Customer* and the terms agreed must be set out in the *connection agreement* between the *Distribution Network Service Provider* and the *Embedded Generator* or *Distribution Customer*.
- (c) The *connection agreement* may include one or more of the following provisions:
  - (1) the conditions under which and the time frame within which other *Distribution Network Users* who use that part of the *distribution network* contribute to refunding all or part of the payments;
  - (2) the conditions under which financial arrangements may be terminated;  
and

- (3) the conditions applying in the event of default by the *Distribution Customer* or *Embedded Generator*.
- (d) The prudential requirements may incorporate, but are not limited to, one or more of the following arrangements:
  - (1) financial capital contributions;
  - (2) non-cash contributions;
  - (3) *distribution service* charge prepayments;
  - (4) guaranteed minimum *distribution service charges* for an agreed period;
  - (5) guaranteed minimum *distribution service* quantities for an agreed period;
  - (6) provision for financial guarantees for *distribution service charges*.

### **6.21.2 Capital contributions, prepayments and financial guarantees**

Despite any other provision in this Chapter, in relation to capital contributions, prepayments and financial guarantees:

- (1) the *Distribution Network Service Provider* is not entitled to recover, under a mechanism for the economic regulation of *direct control services*, any component representing asset related costs for assets provided by *Distribution Network Users*; and
- (2) the *Distribution Network Service Provider* may receive a capital contribution, prepayment and/or financial guarantee up to the provider's future revenue related to the provision of *direct control services* for any new assets installed as part of a new *connection* or modification to an existing *connection*, including any *augmentation* to the *distribution network*; and
- (3) where assets have been the subject of a contribution or prepayment, the *Distribution Network Service Provider* must amend the provider's revenue related to the provision of *direct control services*.

### **6.21.3 Treatment of past prepayments and capital contributions**

- (a) Payments made by *Distribution Customers* and *Embedded Generators* for *distribution service* prior to 13 December 1998 must be made in accordance with any contractual arrangements with the relevant *Distribution Network Service Providers* applicable at that time.

- (b) Where contractual arrangements referred to in clause 6.22.2(a) are not in place, past *distribution service* prepayments or capital contributions may be incorporated in the capital structure of the *Distribution Network Service Provider's* business.
- (c) The *AER* may intervene in and resolve any dispute under this clause which cannot be resolved between the relevant *Distribution Network Service Provider* and *Distribution Customer* or *Embedded Generator*.

#### **6.21.4 Application of IPART and ICRC guidelines regarding capital contribution charges**

- (a) Capital contribution charges by the NSW Distribution Network Service Providers in respect of the regulatory control period 2009-2014 are to be determined in accordance with Determination No 1 2002 made by the IPART under section 11(3) of the Independent Pricing and Regulatory Act 1992 (NSW) in 2002.
- (b) Capital contribution charges by the ACT Distribution Network Service Provider in respect of the regulatory control period 2009-2014 are to be determined in accordance with the Electricity Network Capital Contributions Code made by the ICRC in 2001.

### **Part L Dispute resolution**

#### **6.22.1 Dispute Resolution by the AER**

- (a) A dispute between a *Distribution Network Service Provider* and a *Service Applicant* as to the *terms and conditions of access* to a *direct control service* or to a *negotiated distribution service* is an access dispute for the purposes of Part 10 of the Law.
- (b) A dispute between a *Distribution Network Service Provider* and a *Service Applicant* about *access charges* is an access dispute for the purposes of Part 10 of the Law.
- (c) A dispute between a *Distribution Network Service Provider* and a *Connection Applicant* about matters referred to in clause 5.5(f) or clause 5.5(h) is an access dispute for the purposes of Part 10 of the Law.

#### **6.22.2 Determination of dispute**

- (a) In determining an access dispute about *terms and conditions of access* to a *direct control service* (other than a negotiable component), the *AER* must apply:

- (1) in relation to price, the *Distribution Network Service Provider's approved pricing proposal* or (in the case of an EnergyAustralia prescribed (transmission) standard control service) EnergyAustralia's approved pricing methodology, as the case requires; and
  - (2) in relation to other terms and conditions, Chapters 4, 5, this Chapter 6 and Chapter 7 of the *Rules* and any other *applicable regulatory instrument*; and
  - (3) in relation to all *terms and conditions of access* (including price) the decisions of *NEMMCO* or the *AER* where those decisions relate to those terms and conditions and are made under Chapters 4, 5, this Chapter 6 and Chapter 7 of the *Rules*.
- (a1) In determining an access dispute about *terms and conditions of access* to a negotiable component of a *direct control service*, the *AER* must apply:
- (1) in relation to price (including *access charges*), the negotiable component criteria that are applicable to the dispute in accordance with the relevant distribution determination; and
  - (2) in relation to other terms and conditions, the negotiable component criteria that are applicable to the dispute and Chapters 4, 5, this Chapter 6 and Chapter 7 of the *Rules*; and
  - (3) in relation to all *terms and conditions of access* (including price) the decisions of *NEMMCO* or the *AER* where those decisions relate to those terms and conditions and are made under Chapters 4, 5, this Chapter 6 and Chapter 7 of the *Rules*;

and must have regard:

- (4) to the relevant *negotiating framework* prepared by the *Distribution Network Service Provider* and approved by the *AER*.
- (b) In determining an access dispute about the *terms and conditions of access* to a *direct control service* (including a negotiable component), the *AER* may:
- (1) have regard to other matters the *AER* considers relevant; and
  - (2) hear evidence or receive submissions from *NEMMCO* about *power system security* and from *Distribution Network Users* who may be adversely affected.

*Note:*

*Section 130 of the Law requires the AER, in making an access determination, to give effect to a network revenue or pricing determination*

*applicable to the services that are the subject of the dispute even though the determination may not have been in force when the dispute arose.*

- (c) In determining an access dispute about *terms and conditions of access* to a *negotiated distribution service*, the AER must apply:
- (1) in relation to price (including *access charges*), the *Negotiated Distribution Service Criteria* that are applicable to the dispute in accordance with the relevant distribution determination; and
  - (2) in relation to other terms and conditions, the *Negotiated Distribution Service Criteria* that are applicable to the dispute and Chapters 4, 5, this Chapter 6 and Chapter 7 of the *Rules*; and
  - (3) in relation to all *terms and conditions of access* (including price) the decisions of *NEMMCO* or the AER where those decisions relate to those terms and conditions and are made under Chapters 4, 5, this Chapter 6 and Chapter 7 of the *Rules*;

and must have regard:

- (4) to the relevant *negotiating framework* prepared by the *Distribution Network Service Provider* and approved by the AER.
- (d) In determining an access dispute about the *terms and conditions of access* to a *negotiated distribution service*, the AER may:
- (1) have regard to other matters the AER considers relevant; and
  - (2) hear evidence or receive submissions from *NEMMCO* and *Distribution Network Users* notified and consulted under the *Distribution Network Service Provider's negotiating framework*.
- (e) In determining an access dispute about *access charges*, or involving *access charges*, the AER must give effect to the following principle:

*Access charges* should be based on the costs reasonably incurred by the *Distribution Network Service Provider* in providing *distribution network user access* and, where they consist of compensation referred to in clause 5.5(f)(4)(ii) and (iii), on the revenue that is likely to be foregone and the costs that are likely to be incurred by a person referred to in those provisions where an event referred to in those provisions occurs.

### **6.22.3 Termination of access dispute without access determination**

- (a) If the AER considers that an access dispute could be effectively resolved by some means other than an access determination, the AER may give the

parties to the dispute notice of the alternative means of resolving the dispute.

*Example:*

*The AER might give such a notice if of the opinion that a particular dispute could be dealt with more efficiently, and with less expense, by a jurisdictional ombudsman.*

- (b) The giving of such a notice is a specified dispute termination circumstance for the purposes of section 131(3) of the Law.

*Note:*

*It follows that the AER may exercise its power to terminate the dispute without making an access determination (See section 131(1)(d) of the Law).*

## **Part M Separate disclosure of transmission and distribution charges**

### **6.23 Separate disclosure of transmission and distribution charges**

- (a) *A Distribution Customer:*
  - (1) with a *load* greater than 10MW or 40GWh per annum; or
  - (2) with *metering* equipment capable of capturing relevant *transmission* and *distribution system* usage data,

may make a request (a ***TUOS/DUOS disclosure request***) to a *Distribution Network Service Provider* to provide the *Distribution Customer* with a statement (a ***TUOS/DUOS disclosure statement***) identifying the separate components of the *transmission use of system* and *distribution use of system* charges comprised in the charges for electricity supplied to the *Distribution Customer's connection points*.

- (b) Within 10 *business days* of receipt of a *TUOS/DUOS disclosure request*, a *Distribution Network Service Provider* must notify the *Distribution Customer* of the estimated charge (including details of how the charge is calculated) for providing the *TUOS/DUOS disclosure statement*. The charge must be no greater than the reasonable costs directly incurred by the *Distribution Network Service Provider* in preparing the statement for the *Distribution Customer*.
- (c) If the *Distribution Customer* advises the *Distribution Network Service Provider* within 20 *business days* of receipt of the notice referred to in paragraph (b) that it still requires the requested *TUOS/DUOS disclosure statement*, the *Distribution Network Service Provider* must prepare the

statement and provide it to the *Distribution Customer* within 20 *business days* of being so advised. The *TUOS/DUOS disclosure statement* must include detailed information on the method used to determine the *distribution use of system charges* and the allocation of the *transmission use of system charges* to the *Distribution Customer* for electricity supplied to its *connection points*. The information must be sufficient to allow the *Distribution Customer* to assess the impact on its *network charges* of a change in its *network use*.

- (d) The *TUOS/DUOS disclosure statement* must also separately identify the amounts that have been allocated to the *Distribution Customer's connection points* under Part J of Chapter 6A in respect of each of the *categories of prescribed transmission services*, where the *Distribution Customer* requests this information.
- (e) Where the *Distribution Customer* requests the information referred to in paragraph (d), the *Distribution Network Service Provider* must separately identify the component of the charge notified under paragraph (b) that relates to the provision of the additional information.
- (f) Each *Distribution Network Service Provider* must publish information annually disclosing the *transmission use of system* and *distribution use of system charges* for each of the classes of *Distribution Customers* identified for this purpose by the *Distribution Network Service Provider*, or as required by the *AER*.

## Schedule 6.1 Contents of building block proposals

### S6.1.1 Information and matters relating to capital expenditure

A *building block proposal* must contain at least the following information and matters relating to capital expenditure:

- (1) a forecast of the required capital expenditure that complies with the requirements of clause 6.5.7 of the *Rules* and identifies the forecast capital expenditure by reference to well accepted categories such as:
  - (i) asset class (eg. *distribution lines, substations* etc); or
  - (ii) category driver (eg. *regulatory obligation or requirement, replacement, reliability, net market benefit, business support* etc),

and identifies, in respect of proposed material assets:

- (iii) the location of the proposed asset; and
- (iv) the anticipated or known cost of the proposed asset; and

- (v) the categories of *distribution services* which are to be provided by the proposed asset;
- (2) the method used for developing the capital expenditure forecast;
- (3) the forecasts of load growth relied upon to derive the capital expenditure forecasts and the method used for developing those forecasts of load growth;
- (4) the key assumptions that underlie the capital expenditure forecast;
- (5) a certification of the reasonableness of the key assumptions by the directors of the *Distribution Network Service Provider*;
- (6) capital expenditure for each of the past *regulatory years* of the previous and current *regulatory control period*, and the expected capital expenditure for each of the last two *regulatory years* of the current *regulatory control period*, categorised in the same way as for the capital expenditure forecast;
- (7) an explanation of any significant variations in the forecast capital expenditure from historical capital expenditure.

### **S6.1.2 Information and matters relating to operating expenditure**

A *building block proposal* must contain at least the following information and matters relating to operating expenditure:

- (1) a forecast of the required operating expenditure that complies with the requirements of clause 6.5.6 of the *Rules* and identifies the forecast operating expenditure by reference to well accepted categories such as:
  - (i) particular programs; or
  - (ii) types of operating expenditure (eg. maintenance, payroll, materials etc),and identifies in respect of each such category:
  - (iii) to what extent that forecast expenditure is on costs that are fixed and to what extent it is on costs that are variable; and
  - (iv) the categories of *distribution services* to which that forecast expenditure relates;
- (2) the method used for developing the operating expenditure forecast;



- (3) the forecasts of key variables relied upon to derive the operating expenditure forecast and the method used for developing those forecasts of key variables;
- (4) the method used for determining the cost associated with planned maintenance programs designed to improve the performance of the relevant *distribution system* for the purposes of any *service target performance incentive scheme* that is to apply to the *Distribution Network Service Provider* in respect of the relevant *regulatory control period*;
- (5) the key assumptions that underlie the operating expenditure forecast;
- (6) a certification of the reasonableness of the key assumptions by the directors of the *Distribution Network Service Provider*;
- (7) operating expenditure for each of the past *regulatory years* of the previous and current *regulatory control period*, and the expected operating expenditure for each of the last two *regulatory years* of the current *regulatory control period*, categorised in the same way as for the operating expenditure forecast;
- (8) an explanation of any significant variations in the forecast operating expenditure from historical operating expenditure.

### **S6.1.3 Additional information and matters**

A *building block proposal* must contain at least the following additional information and matters:

- (1) an identification and explanation of any significant interactions between the forecast capital expenditure and forecast operating expenditure programs;
- (2) a proposed pass through clause with a proposal as to the events that should be defined as *pass through events*;
- (3) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes the *efficiency benefit sharing scheme* should apply for the relevant *regulatory control period*;
- (4) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes the *service target performance incentive scheme* should apply for the relevant *regulatory control period*;

- (5) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes the *demand management incentive scheme* (if applicable) should apply for the relevant *regulatory control period*;
- (6) the provider's calculation of revenues or prices for the purposes of the control mechanism proposed by the provider together with:
  - (i) details of all amounts, values and inputs (including X factors) relevant to the calculation; and
  - (ii) an explanation of the calculation and the amounts, values and inputs involved in the calculation; and
  - (iii) a demonstration that the calculation and the amounts, values and inputs on which it is based comply with relevant requirements of the Law and the *Rules*;
- (7) the provider's calculation of the regulatory asset base for the relevant *distribution system* for each *regulatory year* of the relevant *regulatory control period* using the *roll forward model* referred to in clause 6.5.1 of transitional Chapter 6, together with:
  - (i) details of all amounts, values and other inputs used by the provider for that purpose; and
  - (ii) a demonstration that any such amounts, values and other inputs comply with the relevant requirements of Part C of transitional Chapter 6; and
  - (iii) an explanation of the calculation of the regulatory asset base for each *regulatory year* of the relevant *regulatory control period* and of the amounts, values and inputs referred to in subparagraph (i);
- (8) the commencement and length of the period nominated by the *Distribution Network Service Provider* for the purposes of clause 6.5.2(c)(2) of transitional Chapter 6;
- (9) the provider's calculation of the proposed rate of return;
- (10) the *post-tax revenue model* completed to show its application to the *Distribution Network Service Provider* and the completed *roll-forward model*;
- (11) the provider's estimate of the cost of corporate income tax for each *regulatory year* of the *regulatory control period*;

- (12) the depreciation schedules nominated by the *Distribution Network Service Provider* for the purposes of clause 6.5.5 of transitional Chapter 6, which categorise the relevant assets for these purposes by reference to well accepted categories such as:
- (i) asset class (eg *distribution lines* and *substations*); or
  - (ii) category driver (eg *regulatory obligation or requirement*, replacement, *reliability*, net market benefit, and business support),
- together with:
- (iii) details of all amounts, values and other inputs used by the provider to compile those depreciation schedules; and
  - (iv) a demonstration that those depreciation schedules conform with the requirements set out in clause 6.5.5(b) of transitional Chapter 6; and
  - (v) an explanation of the calculation of the amounts, values and inputs referred to in subparagraph (iii);
- (13) \*\*\*\*\*

## **Schedule 6.2 Regulatory Asset Base**

### **S6.2.1 Establishment of opening regulatory asset base for a regulatory control period**

- (a) Application of this clause

This clause S6.2.1:

- (1) applies to the establishment of the value of the regulatory asset base for a *distribution system* as at the beginning of a *regulatory control period* on the roll forward of the regulatory asset base to that *regulatory control period* from the previous *regulatory control period*; and
- (2) also applies to the establishment of the value of the regulatory asset base for a *distribution system* as at the beginning of a *regulatory control period* where the *distribution system* was not immediately before that time the subject of a *building block determination*.

- (b) Roll forward model to comply with this clause

The values to be used for completing the *roll forward model* must be established in accordance with this clause and clauses S6.2.2 and S6.2.3.

(c) Distribution systems of specific providers

- (1) In the case of a *distribution system* owned, controlled or operated by one of the following *Distribution Network Service Providers* as at the commencement of this schedule, the value of the regulatory asset base for that *distribution system* as at the beginning of that first *regulatory year* must be determined by rolling forward the regulatory asset base for that *distribution system*, as set out in the table below, in accordance with this schedule:

Jurisdiction	<i>Distribution Network Service Provider</i>	Regulatory Asset Base (\$m)
Australian Capital Territory	ActewAGL	510.54 (as at 1 July 2004 in July 2004 dollars)
New South Wales	Country Energy	2,440 (as at 1 July 2004 in July 2004 dollars)
	EnergyAustralia	4,116 (as at 1 July 2004 in July 2004 dollars); plus 635.6 (as at 1 July 2004 in July 2004 dollars) in respect of EnergyAustralia's transmission support network
	Integral Energy	2,283 (as at 1 July 2004 in July 2004 dollars)
*****	*****	*****

- (2) The values in the table above are to be adjusted for the difference between:
- (i) any estimated capital expenditure that is included in those values for any part of a previous *regulatory control period*; and
  - (ii) the actual capital expenditure for that part of the previous *regulatory control period*.

This adjustment must also remove any benefit or penalty associated with any difference between the estimated and actual capital expenditure.

- (3) When rolling forward a regulatory asset base under subparagraph (1), the *AER* must take into account the derivation of the values in the

above table from past regulatory decisions and the consequent fact that they relate only to the regulatory asset base identified in those decisions.

(d) \*\*\*\*\*

(e) Method of adjustment of value of regulatory asset base

Except as otherwise provided in paragraph (c), the value of the regulatory asset base for a *distribution system* as at the beginning of the first *regulatory year* of a *regulatory control period* must be calculated by adjusting the value (the '**previous value**') of the regulatory asset base for that *distribution system* as at the beginning of the first *regulatory year* of the immediately preceding *regulatory control period* (the '**previous control period**') as follows:

- (1) The previous value of the regulatory asset base for each NSW Distribution Network Service Provider must be increased by the amount of all capital expenditure incurred during the previous control period.
- (1A) The previous value of the regulatory asset base for the ACT Distribution Network Service Provider must be increased by the amount of the capital expenditure incurred during the previous control period that is to be included under the ICRC approach referred to in clause 6.5.1(g) of the transitional Chapter 6.
- (2) The previous value of the regulatory asset base must be increased by the amount of the estimated capital expenditure approved by the *AER* for any part of the previous control period for which actual capital expenditure is not available.
- (3) The previous value of the regulatory asset base must be adjusted for the difference between:
  - (i) the estimated capital expenditure for any part of a previous *regulatory control period* where that estimated capital expenditure has been included in that value; and
  - (ii) the actual capital expenditure for that part of the previous *regulatory control period*.

This adjustment must also remove any benefit or penalty associated with any difference between the estimated and actual capital expenditure.

- (4) The previous value of the regulatory asset base must only be increased by actual or estimated capital expenditure to the extent that all such capital expenditure is properly allocated to the provision of *standard*

*control services* in accordance with the Cost Allocation Method for the relevant *Distribution Network Service Provider*.

- (5) The previous value of the regulatory asset base for each NSW Distribution Network Service Provider must be reduced by the amount of actual depreciation of the regulatory asset base during the previous *regulatory control period*, calculated in accordance with the rates and methodologies allowed in the distribution determination for that period.
- (5A) The previous value of the regulatory asset base for the ACT Distribution Network Service Provider must be reduced by the amount of depreciation of the regulatory asset base during the previous *regulatory control period*, calculated in accordance with the distribution determination for that period.
- (6) The previous value of the regulatory asset base must be reduced by the disposal value of any asset where that asset has been disposed of during the previous *regulatory control period*.
- (7) The previous value of the regulatory asset base must be reduced by the value of an asset where the asset was previously used to provide *standard control services* (or their equivalent under the previous regulatory system) but, as a result of a change to the classification of a particular service under Part B, is not to be used for that purpose for the relevant *regulatory control period*.
- (8) The previous value of the regulatory asset base may be increased by the value of an asset to which this subparagraph applies to the extent that:
  - (i) the *AER* considers the asset to be reasonably required to achieve one or more of the *capital expenditure objectives*; and
  - (ii) the asset is properly allocated to *standard control services* in accordance with the principles and policies set out in the Cost Allocation Method for the relevant *Distribution Network Service Provider*; and
  - (iii) the value of the asset has not been otherwise recovered.

This subparagraph applies to an asset that:

- (i) was not used to provide *standard control services* (or their equivalent under the previous regulatory system) in the previous *regulatory control period* but, as a result of a change to the classification of a particular service under Part B, is to be used for that purpose for the relevant *regulatory control period*; or

- (ii) was never previously used to provide *standard control services* (or their equivalent under the previous regulatory system) but is to be used for that purpose for the relevant *regulatory control period*.
- (f) An increase or reduction in the value of the regulatory asset base under subparagraph (7) or (8) of paragraph (e) is to be based on the value of the relevant asset as shown in independently audited and published accounts.
- (g) Despite any other provision of this clause S6.2.1, the regulatory asset base for Country Energy at the beginning of the regulatory control period 2009-2014 should reflect the deferral of depreciation allowed for Country Energy in clause 7.3.2 of the IPART's Final Report (Other Paper No 23 - June 2004) relating to NSW Electricity Distribution Pricing 2004/05 to 2008/09.

## S6.2.2 \*\*\*\*\*

### S6.2.3 Roll forward of regulatory asset base within the same regulatory control period

- (a) Application of this clause

This clause applies to the establishment of the value of the regulatory asset base for a *distribution system* as at the beginning of one *regulatory year* in a *regulatory control period* on the roll forward of the regulatory asset base to that *regulatory year* from the immediately preceding *regulatory year* (if any) in that *regulatory control period*.

- (b) Roll forward model to comply with this clause

The *roll forward model* referred to in clause 6.5.1 of the *Rules* must provide for that value to be established in accordance with the requirements of this clause.

- (c) Method of adjustment of value of regulatory asset base

The value of the regulatory asset base for a *distribution system* as at the beginning of the second or a subsequent year ('the **later year**') in a *regulatory control period* must be calculated by adjusting the value ('the **previous value**') of the regulatory asset base for that *distribution system* as at the beginning of the immediately preceding *regulatory year* ('the **previous year**') in that *regulatory control period* as follows:

- (1) The previous value of the regulatory asset base must be increased by the amount of forecast capital expenditure accepted or substituted by the *AER* for the previous year in accordance with clause 6.5.7(c) or clause 6.12.1(3) (as the case may be).

- (2) The previous value of the regulatory asset base must be reduced by the amount of depreciation included in the *Distribution Network Service Provider's annual revenue requirement* for the previous year.
  - (3) The previous value of the regulatory asset base must be reduced by the disposal value of any asset included in that value where the asset is forecast to be disposed of during the previous year.
  - (4) The previous value of the regulatory asset base must be increased by an amount necessary to maintain the real value of the regulatory asset base as at the beginning of the later year by adjusting that value for inflation.
- (d) Allowance for working capital

If the *AER* determines that it is appropriate to do so, it may include an allowance for working capital in the regulatory asset base for a *distribution system* which is rolled forward in accordance with this clause.