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Chairman
Australian Energy Market Commission
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Dear Mr Pierce

TransGrid request for participant derogation — rate of return decisions

TransGrid seeks a participant derogation under section 91(5) of the National Electricity Law ("the NEL") from aspects of the rate of return decision making processes of the Australian Energy Regulator ("the AER") as set out in Chapter 6A of the National Electricity Rules ("the NER").

TransGrid notes that:

- the current Chapter 6A rate of return framework leads to inefficient outcomes by being inflexible and by not providing for merits review of relevant AER decisions;
- the AEMC is currently considering how best to address those issues as part of its assessment of the AER and Energy Users Rule Change Committee's ("the EURCC's") *Economic regulation of Network Service Provider* Rule change proposals; and
- uncertainty as to the timing and outcomes of the AEMC's assessment process risks the AER making incorrect decisions regarding TransGrid's regulated rate of return as part of its upcoming revenue reset determination but leaving TransGrid with no means to remedy the problem.

To provide certainty, TransGrid submits that the AEMC should make a Rule ("the proposed Rule") such that, for revenue determinations to be made by the AER in respect of TransGrid during the proposed derogation period, the NER will:

- provide for the AER to depart from a value, methodology or level included in a review made by the AER under rule 6A.6.2(f) of the NER, when making a decision on the rate of return under rule 6A.6.2(b), if there is persuasive evidence to do so, and
- provide TransGrid access to merits review by the Australian Competition Tribunal ("the Tribunal") of the AER's rate of return decisions under rule 6A.6.2(b) that are included in a revenue determination made by the AER in respect of TransGrid's transmission networks.

The proposed Rule, once made, would then be included in Chapter 8A of the NER (Participant Derogations) as new rule 8A.1.

Details of the application for the proposed Rule are set in Attachment A with a draft Rule included at Attachment B.

Should you wish to discuss any aspect of this application, please contact Anthony Englund, Regulatory Strategy Manager on (02) 9284 3148 or anthony.englund@transgrid.com.au.

Yours sincerely

Philip Gall 26/6/2012

Philip Gall

General Manager, Corporate and Regulatory Strategy

ATTACHMENT A

1. APPLICATION FOR PARTICIPANT DEROGATION

The applicant is TransGrid, a State Owned Corporation of NSW, ABN 19 622 755 774.

TransGrid's address is:

201 Elizabeth Street
PO Box A1000
Sydney South NSW 1235

2. POWER TO MAKE RULE

TransGrid submits that the AEMC has the power to make the proposed Rule, pursuant to section 34(3)(m) of the NEL.

In particular, the matters dealt with in the proposed Rule come within the matters set out items 15, 16(1) and (2), items 17 – 20, and items 22 – 24 of Schedule 1 to the NEL.

3. DESCRIPTION OF THE PROPOSED RULE

The AEMC should make the proposed Rule in such a way that, for revenue determinations to be made by the AER in respect of TransGrid during the derogation period, the NER will:

- (a) provide for the AER to depart from a value, methodology or level included in a review made by the AER under rule 6A.6.2(f) of the NER, when making a decision on the rate of return under rule 6A.6.2(b), if there is persuasive evidence to do so; and
- (b) through the operation of Part 6, Division 3 of the NEL and the designation in the Rules of the content of AER decisions, provide TransGrid access to merits review by the Tribunal of the AER's rate of return decisions under rule 6A.6.2(b) that are included in a revenue determination made by the AER in respect of TransGrid's transmission network.

4. DEROGATION PERIOD

The period of the participant derogation is proposed to commence on the day the proposed Rule is made until and would continue until the earlier of:

- (a) 4 years from the date the proposed Rule is made;
- (b) if AEMC makes another rule amending Chapter 6A in a way consistent with the proposed Rule, the date that other Rule becomes effective; and
- (c) the date TransGrid (or its successor) ceases to engage in the activity of owning, controlling or operating a transmission system.

5. STATEMENT OF ISSUES

5.1 Background

The current transmission revenue regulation framework

Currently, transmission network service providers ("TNSPs") such as TransGrid are subject to the framework set out in Chapter 6A of the NER for determining the regulated revenues they may earn for providing prescribed transmission services. This includes an allowance for the rate of return on capital.

In particular, Chapter 6A requires the AER to apply a nominal post-tax weighted average cost of capital ("WACC") in accordance with the formula set out in rule 6A.6.2(b) or, where the AER has conducted a review of the matters contained in rule 6A.6.2(i), in accordance with any revised values, methodologies or levels set out in that review.

The AER has previously made a revenue determination in respect of TransGrid, with the regulatory control period of that determination due to expire on 30 June 2014. Accordingly, TransGrid must submit a revenue proposal in respect of the upcoming 2014-2019 regulatory control period to the AER by 31 May 2013¹.

The AEMC is currently considering Rule change proposals by the AER and EURCC in relation to the economic regulation of TNSPs and distribution network service providers ("DNSPs"). This includes reviewing aspects of the framework for setting the WACC².

The key issue, and basis for this derogation application, is that the uncertainty regarding the timing and outcomes of the AEMC's assessment risks the AER making incorrect decisions regarding TransGrid's regulated rate of return as part of its upcoming revenue reset determination. This issue is explained further below.

Before doing so, it is important to note two problems with the current Chapter 6A framework that also have the potential to lead to inefficient outcomes from the AER's future revenue decisions for TransGrid and other TNSPs. These are inflexibility and the lack of merits review. Each is briefly described below.

Inflexibility

Under Chapter 6A, the AER is limited to conducting reviews of the rate of return matters at 5 yearly intervals³, with the last review conducted in 2009⁴ and the next review due to be concluded by 31 March 2014. There is no scope for the AER to depart from the method for determining the rate of return, as set out either in the NER directly or any AER review when making a revenue determination in respect of a specific TNSP, such as TransGrid.

This is in contrast to the approach set out in Chapter 6 of the NER, which allows the AER to depart from its *statement of regulatory intent* settings for determining a rate of return for DNSPs at their respective resets, where there is persuasive evidence to do so.

¹ NER, clause 6A.10.1(a)(i).

² See <http://www.aemc.gov.au/electricity/rule-changes/open/economic-regulation-of-network-service-providers-.html>.

³ NER, clause 6A.6.2(g).

⁴ AER, *Review of the weighted average cost of capital (WACC) parameters*, May 2009.

The inflexibility will, in all likelihood, result in a WACC being set by the AER for TransGrid for its upcoming regulatory control period that doesn't reflect the changed economic circumstances in which TransGrid will be operating and in which investors will be making capital investment decisions.

This is because the AER is unable to depart from the rate of return settings included in its 2009 review when making a subsequent revenue determination, even if the prevailing market circumstances have changed at the time of making that determination, such as is likely to be the case when TransGrid's revenue determination is made.

Two important examples can be provided.

First, since the 1998 Global Financial Crisis ("the GFC") and continuing on into the current EuroDebt Crisis ("the EDC"), there has been an unprecedented fall in the risk free rate. The regulated risk free rate is a forward looking parameter assessed by reference to the financial market. It is combined with the Market Risk Premium ("MRP") to calculate the cost of equity WACC parameter. The MRP is assessed over the longer-term. As such, it does not compensate for the recent sharp fall in the risk free rate.

The rate of return setting methodologies used by the AER under Chapter 6A provide no flexibility to adjust for this gap. The result is that TransGrid's regulated WACC for the upcoming regulatory control period will be set by the AER at a level significantly below the true market cost of capital. This is *not* the case for the DNSPs which, under Chapter 6, are able to argue that the methodologies and/or parameter values should change at their next reset to take this problem into account.

The second example is that, for the whole of its upcoming regulatory control period, TransGrid will be subject to a gamma of 0.65 being included in its applicable WACC, notwithstanding that the AER has departed from its *statement of regulatory intent* to apply a more appropriate gamma of 0.25 in respect of recent DNSP determinations⁵.

The AEMC has itself also stated that the Chapter 6A framework provides less scope to react to changes in evidence about parameter values⁶ and has the capacity to produce outcomes that are to the detriment of the long term interests of TransGrid's customers⁷.

Lack of merits review

TNSPs are also unable to access the merits review processes provided by the Tribunal under the NEL in respect of the AER's rate of return decisions in a revenue determination made under Chapter 6A. Again, by contrast, DNSPs are able to make applications for review by the Tribunal in respect of the AER's rate of return decisions under Chapter 6 of the NER.

⁵ It should be noted that in November 2011, the AER departed from its *statement of regulatory intent* for DNSPs to apply a different MRP to a DNSP (Aurora Energy) based upon the AER accepting there was persuasive evidence to do so in view of the changed market circumstances.

⁶ AEMC, *Directions Paper: National Electricity Amendment (Economic regulation of Network Service Providers) Rule 2012*, 2 March 2012, p 86.

⁷ *Ibid*, p 80.

The capacity provided by a merits review process to correct errors made by the regulator in respect of such a crucial element of revenue generation is consistent with:

- ensuring that TransGrid is provided with a reasonable rate of return without unnecessary or arbitrary regulatory delay, to enable it to keep pace with its obligations to maintain and upgrade its network for its customers; and
- the AER developing, over time, the necessarily sophisticated procedures and decision-making skills inherently required in such an important area of the national electricity market regulation.

Accordingly, it is appropriate that a TNSP is able to access the Tribunal's merits review processes in circumstances where it considers that the AER has made an error in calculating its WACC estimate or that more effective methodologies, values or levels are available to be used by the AER in calculating that estimate but have not been applied.

TransGrid notes that if the AER makes an error in calculating the WACC estimate in TransGrid's next revenue determination, the only available options currently open to the business are:

- to accept the regulatory error for the 5 year regulatory period covered by that determination, notwithstanding the possible extension of merits review to other TNSPs in relation to revenue determinations during that period; or
- challenge the validity of the 2009 review through a costly application for judicial review of those instruments.

In circumstances where the AER's review in respect of the rate of return for TNSPs remains unreviewable by the Tribunal, the ability to access merits review for the individual revenue determination the AER makes in respect of TransGrid would enable it to have an equivalent level of involvement in decisions that ultimately affect TransGrid's customers and investors, as is currently made available to DNSPs.

The AER and EURCC Rule change proposals

As noted above, the AEMC is currently considering Rule change proposals by the AER and EURCC in relation to the economic regulation of TNSPs and DNSPs. The AER's proposal includes a suggestion to amend the Chapter 6 framework to remove the discretion provided to the AER to:

- depart from any rate of return settings contained in its *statement of regulatory intent* for DNSPs, notwithstanding the existence of persuasive evidence to do so, and
- curtail any access to merits review by DNSP's in respect of the AER's rate of return decisions.

The AER has also proposed that its next WACC review be brought forward and concluded by 30 September 2013⁸. Accordingly, and inclusive of the extended 100 business day consideration period for the AER set out in its proposed amendment to the transmission consultation procedures, the period for submissions to the AER's draft 2013 WACC review would take place in April to early May 2013.

Currently, TransGrid is required to submit its Revenue Proposal in May 2013, being 13 months before the expiry of its current transmission determination. It should be noted though that, were the AER's full proposal accepted, TransGrid may be required by the AER to submit its revenue proposal a full 16 months prior to the expiry of its existing transmission determination⁹.

In making submissions to the AEMC on the AER and EURCC's Rule change proposals, TransGrid and other network businesses have requested that, due to their complexity and importance, three aspects of the proposals should be addressed in separate reviews rather than as part of the statutorily time-limited Rule change assessment process. Two of those aspects (the processes used to set the WACC and the appropriate methodology for calculating the cost of debt) are directly relevant to this derogation proposal.

The AEMC was originally scheduled to make its final decision on the two Rule change proposals in October 2012. However, it has recently decided to extend the date for publishing its draft decision by one month (from July to August 2012) with the implication that the final decision will also be delayed by at least one month. Further extensions are possible.

5.2 Issue: uncertainty

TransGrid considers that it will be subject to a high degree of uncertainty in respect of the applicable rate of return framework when preparing its next revenue proposal. This is due to:

- the closeness in time between when the AEMC might make a final decision and Rule in respect of the AER and EURCC's current proposals and when the TransGrid's next revenue determination process commences; and/or
- the AEMC adopting as part of its final decision the AER's proposal to bring forward its next WACC review as set out above.

Either (or both) of these outcomes mean that TransGrid will not have:

- a reasonable opportunity to understand the AEMC's final Rule change decision including any changes to the NER concerning the WACC framework;
- a reasonable opportunity to take into account any resulting changes by the AER to its approaches to assessing the regulated WACC cost of capital; or
- adequate time to develop its reset proposal to the AER in light of those changes.

The likely result is that the AER's revenue decision in respect of TransGrid's upcoming regulatory control period will not be correct in terms of providing a fair return on investment and, thereby, efficient charges to customers.

In this regard, it is important to note that:

- the return on capital allowance makes up a significant proportion of TNSPs overall regulated revenues — even minor differences in the WACC parameters can have a material impact on a TNSP's ability to make capital investments and provide appropriate returns to its debt and equity holders. This is clearly demonstrated in Appendix C of the AEMC's Directions Paper; and

⁹ AER, *Revised Draft Rule for AEMC Directions Paper; Economic regulation of Network Service Providers*, May 2012, new rule 6A.10.1(a)(2).

- the development of a reset proposal is a complex, expensive and time consuming task — in particular, a well-constructed proposal in relation to the regulated WACC requires the procurement of considerable expert advice and supporting financial and economic data.

In theory, TransGrid could prepare its reset proposal on the basis of the existing, unsatisfactory Chapter 6A framework using the outcomes of the 2009 WACC review. However, given the amount of work involved, it would be unreasonable to expect that it could then adequately adapt that proposal to address changes to the framework and the AER's approaches within the time remaining (noting the potential wide range of changes).

This would also be exacerbated if the AER's Rule proposal to bring its next WACC review forward was adopted. TransGrid would have only approximately a 2 week period to take into account the draft settings in the AER's draft 2013 WACC proposal and any submissions made in respect of that proposal by other stakeholders, while also having had to prepare its own submissions to the draft 2013 WACC proposal in the period before submitting its revenue proposal.

6. HOW THE PROPOSED RULE ADDRESSES THE ISSUE

The proposed Rule provides certainty to TransGrid, the regulator and other stakeholders by setting out a clear framework for assessing the regulated WACC for TransGrid for its upcoming 2014-2019 regulatory control period.

In doing so, it would also avoid the well-understood problems of the Chapter 6A framework by placing TransGrid in the same position as a DNSP under Chapter 6 of the NER.

This would provide flexibility by allowing the AER, under Chapter 6A, to depart from the rate of return parameters and methodologies set out in its 2009 WACC review, when making the revenue determination for TransGrid's 2014-2019 regulatory period.

Under the proposed Rule the AER would be provided discretion to, if it considered there were persuasive reasons to do so, depart from the those rate of return parameters and methodologies:

- on its own initiative; or
- based on TransGrid's revenue proposals submitted to it.

Through enabling the AER to adjust the rate of return parameters and methodologies it uses in reaching a WACC estimate for TransGrid's next regulatory period, both the regulator and TransGrid will be able to take into account the changes in WACC parameter values and methodologies that have occurred since 2009 and may yet arise prior to TransGrid's next regulatory period, when preparing their respective submissions and decisions.

If the AEMC makes the proposed Rule, the AER and TransGrid will be put in a position where both parties can approach the next regulatory reset process with a degree of certainty as to the approaches each party will take.

By providing the AER with the discretion to adjust the parameters and methodologies it uses for calculating the WACC, if there is persuasive evidence to do so, the proposed Rule would also enliven the merits review provisions of the NEL¹⁰.

Accordingly, TransGrid would be able to access those merits review procedures and apply to the Tribunal for review in circumstances where TransGrid considers that, in making its next revenue determination for the 2014 – 2019 regulatory control period, the AER has:

- made an error of fact in its findings of facts, and that error of fact was material to the making of the decision;
- made more than one error of fact in its findings of facts, and that those errors of fact, in combination, were material to the making of the decision;
- exercised its discretion incorrectly, having regard to all the circumstances;
- made a decision that was unreasonable, having regard to all the circumstances.

By enabling merits review, the proposed Rule will ensure that TransGrid, in the event that the AER makes an error or decision as described above, can take action to correct that mistake or decision.

The capacity to do this will ensure that TransGrid is not adversely prevented from being able to generate a fair return for its investors and maintain, upgrade or extend its transmission network for the benefit of its customers, over the 5 year regulatory period in which the determination will operate, due to a regulatory error being made and, for arbitrary reasons, not being able to be "unmade".

7. CONTRIBUTION TO ACHIEVING THE NEO

The National Electricity Objective ("the NEO") is set out in section 7 of the NEL and is reproduced below:

The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

The proposed Rule will contribute to achieving the NEO in the following ways:

- (a) through the introduction of a flexible framework for calculating the WACC in respect of TransGrid's future determination, the Rule will mitigate the sub-optimal WACC estimates currently delivered by the existing TNSP framework and so realign that framework to enable it to produce efficient outcomes for TransGrid and its customers¹¹;
- (b) the application to TransGrid of a WACC estimate that is commensurate with the market conditions prevailing when its next revenue determination is made will assist TransGrid to attract investment capital to implement the maintenance and upgrade

¹⁰ See the definition of "reviewable regulatory decision" in section 71A of the NEL.

¹¹ AEMC, *Directions Paper: National Electricity Amendment (Economic regulation of Network Service Providers) Rule 2012*, 2 March 2012, p 80. The AEMC notes that the existing Chapter 6A frameworks do not provide optimal WACC estimates.

programs that are anticipated be required in the next regulatory control period and give effect to TransGrid's obligations to provide a transmission network in keeping with good electricity industry practice;

- (c) the application to TransGrid of a WACC estimate that is commensurate with the market conditions prevailing when its next revenue determination is made will ensure that the regulated prices applied to TransGrid's customers are efficient and will not lead to customers paying too much for their electricity service from TransGrid;
- (d) the continued adherence to a regulatory framework in Chapter 6A for rate of return decisions made in respect of TransGrid on the basis that the framework is working well, in the absence of evidence to support that contention, is inconsistent with promoting the efficient investment in TransGrid's transmission network;
- (e) the ability to access the merits review procedures under the NEL will ensure that TransGrid is able to ensure existing investors that an error in the next revenue determination for the 2014–2019 period can be corrected and so preserve TransGrid's capacity to maintain a reasonable rate of return on otherwise efficient investments;
- (f) by providing an early opportunity for the AER to consider other parameters, values and methodologies it may apply in making TransGrid's next transmission determination, and if circumstances arise in which the AER is required to respond to an application for merits review of its next revenue determination for TransGrid, the proposed Rule will enhance and test the AER's administrative and deliberative functions applicable to those considerations, ahead of any extension of the Chapter 6 (or similar) framework to all TNSPs; and
- (g) the AEMC will be able to separately undertake its review of the cost of debt and equity, ensuring that the review is able to be undertaken in a methodical and considered way and independent of administrative or commercial considerations inherent in rate of return decisions, particularly in the context of the impending revenue determinations for TransGrid and other TNSPs.

8. EXPECTED BENEFITS, COSTS AND IMPACT OF THE CHANGE

TransGrid anticipates the proposed Rule will benefit TransGrid, its existing investors and the long term interests of current and future electricity customers through the improved capacity of TransGrid to obtain a regulated WACC in its next revenue determination that promotes efficient:

- investment in TransGrid's transmission networks; and
- regulated prices to be paid by TransGrid customers,

by having a reasonable opportunity to argue to the AER, and have the regulator take into account, prevailing market circumstances or including enhanced methodologies or parameter values.

By making the proposed Rule, TransGrid will be provided an appropriate amount of time and regulatory certainty in respect of the rate of return settings environment that would be applicable to it, to be able to submit a considered and reasonably informed Revenue Proposal.

In the absence of the proposed Rule, elements of TransGrid's Revenue Proposal will in effect be rendered nugatory. This is because the AER's proposed Rule, would if made, apply WACC settings in TransGrid's transmission determination for the next regulatory period in relation to which TransGrid's Revenue Proposal will not have been able to properly address, solely as a result of the AER's proposed decision-making process and timings.

TransGrid submits that this would be inconsistent with the procedural fairness settings built into the NER in both the determination making process and the *transmission consultation procedures* and would have a harsh and unfair effect on TransGrid's ability to be involved in a decision (the rate of return on capital) that the AEMC considers to be a significant component of the revenue generated by a TNSP¹².

The proposed Rule will also go to addressing the potential for allocative inefficiencies resulting from the inequitable treatment of DNSPs and TNSPs in respect of their regulated revenues.

It is acknowledged that there will be increased costs for both the AER and TransGrid, in having to consider other parameter values, methodologies or levels than those contained in the AER'S 2009 WACC review¹³, when preparing revenue proposals and draft or final decisions.

The AER may also incur additional costs in responding to any merits review applications that may be made by TransGrid following TransGrid's next revenue determination.

However, the detrimental impact of these costs would be offset overall by the improved efficiency in regulated prices for customers and the attainment of reasonable rates of return for existing and future investors in TransGrid's transmission network.

The AER may in any event incur the costs of putting in place a system to respond to TNSP review applications, if the current Rule proposal on economic regulation of network service providers is made consistent with the AEMC's initial view in its Directions Paper and the AER exposed to future merits review applications by TNSP's under a revised Chapter 6A process.

Overall, TransGrid considers that the proposed Rule promotes the long term interests of electricity customers by ensuring that the business is able to effectively propose, and the AER is able to accurately determine, a regulated rate of return on TransGrid's investments that reflects prevailing market conditions at the time the next revenue determination is made. This in turn enables capital to be invested in the timeframes and amounts required to deliver efficient outcomes for customers over the long term.

¹² AEMC, *Directions Paper: National Electricity Amendment (Economic regulation of Network Service Providers) Rule 2012*, 2 March 2012, p 82.

¹³ Whether independently or upon the submission by TransGrid of a revenue proposal containing alternative WACC parameters and methodologies.

ATTACHMENT B

DRAFT RULE

Schedule 1 Amendment of National Electricity Rules

[1] Chapter 8A Participant Derogations

Insert

8A.1 Derogation from rules 6A.6.2 and 6A.14.1

8A.1.1 Definitions

In this *participant derogation*, rule 8A.1:

derogation period means the period commencing when this rule is made and ending on the earlier of:

- (a) 4 years from the date this rule is made;
- (b) if the AEMC amends the Rules or Chapter 6A [in a way consistent with this derogation], the date those amendments become effective; and
- (c) the date TransGrid (or its successor) ceases to engage in the activity of owning, controlling or operating a transmission system.

TransGrid means the body corporate of that name established by section 6A of the *Energy Services Corporations Act 1995* (NSW).

8A.1.2 Application

This participant derogation applies to the AER for the duration of the derogation period.

8A.1.3 Derogation from rule 6A.6.2

- (a) When the AER calculates a return on capital for TransGrid under rule 6A.6.2, substitute paragraph (b) with the following:
 - (b) The rate of return for a *Transmission 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 *transmission* business of the provider and, subject to any revised values, methodologies and levels arising from a review under paragraphs (f)-(j) or paragraph (k), must be calculated as a nominal post-tax *weighted average cost of capital* (WACC) in accordance with the following formula:

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

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);

β_e is the equity beta; and

MRP is the market risk premium;

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 is the value of debt as a proportion of the value of equity and debt.

- (b) When the AER calculates a return on capital for TransGrid under rule 6A.6.2, the following paragraph is included in that rule:
- (k) A transmission determination to which a review under paragraphs (f) – (i) applies must be consistent with that review unless there is persuasive evidence justifying a departure, in the particular case, from a value, methodology or level set in the review.
 - (l) In deciding whether a departure from a value, method or credit rating level set in a review undertaken by the AER under paragraph (f) – (i) is justified in a transmission determination the AER must consider:
 - (1) the criteria on which the value, method or credit rating level was set in circumstances since the date of the review or any other relevant factor, now makes a value, method of or credit rating level set in a review inappropriate;
 - (2) whether, in the light of the underlying criteria, a material change in circumstances since the date of the statement, or any other relevant factor, now makes a value, method or credit rating level set in the review inappropriate,
 - (m) if the AER, in making a transmission determination, in fact departs from a value, method or credit rating level set in a review it must:

- (1) state the substitute value, method or credit rating level in the determination; and
- (2) demonstrate, in its reasons for the departure, that the departure is justified on the basis of the underlying criteria.

8A.1.4 Derogation from rule 6A.14.1

When the *AER* makes a draft decision under rule 6A.12.1 or a final decision under rule 6A.13.1 in respect of TransGrid, the following paragraph is included in rule 6A.14.1:

- (9) a decision in relation to the rate of return on whether to apply or depart from a value, methodology or level set out or provided for in rule 6A.6.2;

8A.1.5 Derogation from rule S6A.1.3

When TransGrid submits a revenue proposal, the following paragraph is included in rule S6A.1.3:

- (11) the provider's calculation of the proposed rate of return, including any proposed departure from the value, methodology or level set out or provided for in rule 6A.6.2;