



Australian Energy Market Commission

## CONSULTATION PAPER ON SAVINGS AND TRANSITIONAL ARRANGEMENTS

Draft National Electricity Amendment  
(Economic Regulation of Network Service  
Providers) Rule 2012

Draft National Gas Amendment (Price and  
Revenue Regulation of Gas Services) Rule  
2012

### **Rule Proponents**

Australian Energy Regulator  
Energy Users Rule Change Committee - Amcor, Australian Paper, Rio Tinto, Simplot,  
Wesfarmers, Westfield and Woolworths

14 September 2012

RULE  
CHANGE

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## **About the AEMC**

The Council of Australian Governments (COAG), through its then Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005. In June 2011, COAG established the Standing Council on Energy and Resources (SCER) to replace the MCE. The AEMC has two principal functions. We make and amend the national electricity, gas and energy retail rules, and we conduct independent reviews of the energy markets for the SCER.

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# **1 Introduction**

## **1.1 Rule change requests**

In September 2011 the Australian Energy Regulator (AER) submitted two rule change requests to the Australian Energy Market Commission (AEMC or Commission) seeking to amend the rules for the economic regulation of network services, one in respect of electricity and one in respect of gas. In October 2011, the Energy Users Rule Change Committee (EURCC), a committee of large energy consumers, comprising Amcor, Australian Paper, Rio Tinto, Simplot, Wesfarmers, Westfield and Woolworths, also submitted a rule change request relating to economic regulation of network services in electricity. The rule change requests in respect of electricity were consolidated and are being dealt with together.

## **1.2 Draft rule determination**

On 23 August 2012 the Commission published a draft rule determination in respect of these rule change requests, along with a draft rule for electricity and a draft rule for gas. The areas covered by the draft rule determination are:

- rate of return (under the National Electricity Rules (NER) and National Gas Rules (NGR));
- capital expenditure (capex) incentives (under the NER);
- capex and operating expenditure (opex) allowances (under the NER); and
- regulatory determination process (under the NER).

The draft determination mentioned the need for transitional arrangements and that the Commission would in mid-September publish a proposal to transition a number of service providers to the new rules proposed in the draft determination.

## **1.3 Consultation paper**

This consultation paper proposes transitional arrangements to transition a number of service providers to the new rules proposed in the draft rule determination. Draft rules for electricity and gas covering savings and transitional arrangements will be published in amending rule format after a stakeholder workshop (see below).

The Commission encourages stakeholders to make submissions on any alternative approaches that are consistent with the principles set out in section 2.4 below. Where alternative approaches are proposed, the Commission would particularly value submissions where these approaches have already been discussed with the AER. Any alternative approaches proposed should also be flagged with the Commission as soon as possible. As well as comments on the overall approach the Commission also seeks

comments on specific issues relating to individual service providers that may need be taken into account in transitioning service providers to the new arrangements.

#### **1.4 Timeframes and next steps**

The Commission will conduct a workshop on the proposed transitional arrangements in Sydney on 26 September 2012. A notice setting out the details of this workshop has been published with this consultation paper.

Close of submissions on this consultation paper is 25 October 2012.

After considering submissions in response to this consultation paper, as well as submissions received in response to the draft rule determination, the Commission will make a final rule determination. The Commission intends to publish the final rule determination on 15 November 2012.

#### **1.5 Process for making a submission**

The AEMC will take into account submissions lodged within the timeframe specified above as part of its decision making. Where submissions are received by the AEMC after the closing date, the AEMC endeavours to have regard to these late submissions. However as the AEMC is itself subject to statutory time constraints for its decision making, it may not be possible for the AEMC to give late submissions the same level of consideration as submissions lodged within time, and the AEMC would therefore urge persons making submissions to lodge within the specified time period.

Submissions should quote project number "ERC0134/ERC0135/GRC0011" and may be lodged online at [www.aemc.gov.au](http://www.aemc.gov.au) or by mail to:

Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

All enquiries on this project should be addressed to Richard Khoe on (02) 8296 7800.

#### **1.6 Structure of this consultation paper**

The remainder of this consultation paper is structured as follows:

- chapter 2 sets out the background as to why transitional arrangements are needed and the Commission's overall approach for the making of savings and transitional provisions;
- chapter 3 sets out the proposed transitional arrangements for electricity; and
- chapter 4 sets out the proposed transitional arrangements for gas.

Attached to this consultation paper are two charts which show the current timetable for electricity network service providers' (NSPs) revenue determination processes and then the timetable for NSPs if the transitional arrangements proposed in this paper were put in place.

## 2 General approach to transitional arrangements

### 2.1 Introduction

The draft rules provide for significant changes regarding capital expenditure incentives, the determination of the rate of return and the overall regulatory determination process; the latter involving changes to timing as well as aspects of the process.<sup>1</sup> Some of these apply to electricity and some apply to gas.

The package of changes included in the draft rules requires a period of time for implementation.<sup>2</sup> For example, the rate of return provisions involve the AER and the Economic Regulation Authority of Western Australia (ERA) making a guideline, which is the reference point for the service provider's proposal on what the regulator considers should be its allowed rate of return.<sup>3</sup> This guideline must be made by 30 November 2013. Also the AER must make capex incentive guidelines by 30 August 2013, setting out the capex incentive tools and how it proposes to apply them. The draft rules allow the AER more than six months to make these two guidelines. The time the AER has been provided with to make these guidelines reflects the complexity of the subject matter and the need to consult thoroughly with stakeholders. There are also a range of other guidelines, schemes and documents that must be developed and published as part of the implementation of these rule changes.

Some of these implementation tasks will not be finalised by the time a number of service providers' regulatory proposals are due.<sup>4</sup> Therefore additional provisions are required to enable these service providers to transition to the new arrangements under the new rules. Without these additional provisions the new rules would not be able to come into effect until 2019 for a significant number of service providers.

The purpose of this consultation paper is to explain the proposed transitional arrangements that the Commission proposes to apply to a number of service providers in respect of which the regulatory determination process is due to commence before the new rules are fully implemented.

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<sup>1</sup> This consultation paper refers extensively to the "regulatory determination process" and the "regulatory period". The regulatory determination process is the process the regulator follows in determining prices, revenues or tariffs for a regulatory period. The regulatory period is the set period of time, often five years, during which those prices, revenues or tariffs apply. Before the end of one regulatory period the regulatory determination process to set the prices, revenues or tariffs for the next regulatory period must be completed.

<sup>2</sup> In this consultation paper the term "new rules" has been used to refer collectively the draft and final rules, though where specific reference needs to be made to either the draft or the final rules these terms are used instead. The draft rules comprise a draft rule for electricity and a draft rule for gas, and the final rules will comprise a final rule for electricity and a final rule for gas.

<sup>3</sup> In this consultation paper, "service provider" refers to both an electricity NSP and a gas service provider.

<sup>4</sup> In this consultation paper, "regulatory proposal" refers to a regulatory proposal under the Chapter 6 of the NER, a revenue proposal under Chapter 6A of the NER, or an access arrangement under the NGR.

The transitional arrangements set out in this chapter have been formulated on the basis of the draft rules published by the Commission on 23 August 2012. This should not be taken as any indication that the final rules published in November 2012 will be identical to those draft rules. To the extent the final rules differ from the draft rules, the transitional arrangements may need to be adjusted accordingly.

## **2.2 Service providers due to submit proposals in the near future**

In the near future the following NSPs will be subject to the regulatory determination process under Chapter 6 or 6A of the NER:

- the Victorian Transmission Network Service Provider (TNSP) (SP AusNet) must submit its regulatory proposal by 28 February 2013 for its next regulatory period commencing 1 April 2014;
- the New South Wales and Tasmanian TNSPs (TransGrid and Transend) must submit their regulatory proposals by 31 May 2013 for their next regulatory periods commencing 1 July 2014;
- the Australian Capital Territory and New South Wales Distribution Network Service Providers (DNSPs) (ActewAGL, Ausgrid, Endeavour Energy and Essential Energy) must submit their regulatory proposals by 31 May 2013 for their next regulatory periods commencing 1 July 2014. The AER is currently developing the framework and approach paper for these NSPs. The framework and approach paper must be finalised by 30 November 2012;
- the Queensland and South Australian DNSPs (Ergon Energy, ENERGEX and SA Power (formerly ETSA Utilities)) must submit their regulatory proposals by 31 May 2014 for their next regulatory periods commencing 1 July 2015. Their framework and approach paper must be finalised by 30 November 2013;
- the Victorian DNSPs must submit their regulatory proposals by 30 November 2014 for their next regulatory periods commencing 1 January 2016. Their framework and approach paper must be finalised by 31 May 2014; and
- the Queensland TNSP (Powerlink) and Tasmanian DNSP (Aurora Energy) must submit their regulatory proposals by 31 May 2016 for their next regulatory periods commencing 1 July 2017.

A chart showing the current timetable of regulatory determination processes for NSPs under the existing NER is provided in attachment A to this paper.

Similarly, in the next two years the following gas service providers are due to submit access arrangements under Part 9 of the NGR:

- ATCO Gas is due to submit its access arrangement in respect of the Mid-West and South-West Gas Distribution System on 1 July 2013; and

- APA Group is due to submit its access arrangement in respect of the Goldfields Gas Pipeline on 1 January 2014.

All other gas service providers' access arrangements are due to be submitted from mid-2014 onwards.

## 2.3 Submissions

In the course of public consultation for this rule change request, two TNSPs, TransGrid and Transend, have made submissions concerning transitional arrangements.<sup>5</sup> Their submissions relate to the rate of return framework to apply to their next regulatory periods. Their regulatory proposals are due to be submitted to the AER by the end of May 2013.

TransGrid submitted a participant derogation request, effectively requesting rate of return arrangements based on the approach set out in Chapter 6 of the NER to apply to its next regulatory period. In support of this request, TransGrid cited dissatisfaction with the existing Chapter 6A arrangements for determining the rate of return and referred to uncertainty regarding the conclusion of this rule change request process. The Commission considered it desirable to treat this participant derogation request as a submission to the consolidated rule change request.<sup>6</sup>

Transend has provided a letter supporting the approach set out in TransGrid's participant derogation request and requests that similar arrangements should apply to it for the rate of return component of its next regulatory determination.<sup>7</sup>

The Energy Networks Association has also made a submission concerning transitional arrangements.<sup>8</sup>

## 2.4 Commission's general approach to transitional arrangements

For reasons of practicality, timing and procedural fairness, provisions will be required to transition the relevant service providers to the new rules. Among other things this recognises that a regulator applies the rules in a regulatory determination, and it only makes a regulatory determination for a particular service provider once every few years (in most cases, the regulatory period is five years).<sup>9</sup>

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<sup>5</sup> TransGrid, Participant derogation request - rate of return decisions, dated 26 June 2012; Transend, letter regarding TransGrid's participant derogation request, dated 17 July 2012.

<sup>6</sup> Section 93(1)(b) of the NEL provides that if the Commission considers it necessary or desirable that 2 or more requests for the making of a rule should be dealt with together, it may treat any later request as a submission to the earlier request.

<sup>7</sup> Transend letter regarding Transgrid's participant derogation request, dated 17 July 2012

<sup>8</sup> Energy Networks Association, Draft National Electricity Amendment Rule 2012 - Transitional arrangements, dated 10 September 2012.

<sup>9</sup> In this consultation paper, "regulatory determination" refers to distribution determinations under Chapter 6 of the NER, price and revenue determinations under Chapter 6A of the NER, and access arrangement determinations under the NGR.

The Commission has considered its general approach to the transitional arrangements. In its view, the following principles represent the most important considerations in developing these arrangements:

- the final rules when made in November 2012 should apply to all service providers as soon as possible. This includes those service providers currently due to submit regulatory proposals in February and May 2013;
- where any transitional arrangements are made regarding determination processes that require consultation, the arrangements should allow for sufficient time for stakeholder consultation;
- the transitional arrangements should allow service providers to recover their efficient costs; and
- any transitional arrangements should be practicable having regard to the regulators' resourcing constraints, as well as the resourcing capacity of other stakeholders.

The proposed transitional arrangements are set out below, separated into those applying in electricity (section 3) and those applying in gas (section 4). The transitional arrangements proposed in electricity are discussed in terms of the delay to NSPs' regulatory periods (section 3.1), the application of the final rules to the delayed NSP regulatory periods (section 3.2), and the interim arrangements (section 3.3). A diagram setting out the revised timing arrangements for NSPs is attached to this consultation paper.

The Commission recognises that stakeholders who regularly engage in the regulatory determination process have the most practical experience around how it works. For this reason the Commission encourages stakeholders to provide submissions on the transitional arrangements described below, and in particular on the interim arrangements for the year between the end of the current regulatory period and the start of the delayed regulatory period. There may be better arrangements than those proposed here which still allow the new rules to commence as soon as possible and also take into account the workload of the relevant regulators.

## **3 Electricity transitional arrangements**

### **3.1 Delay to NSP regulatory periods**

#### **3.1.1 NSPs due to submit in 2013**

Seven NSPs are due to submit regulatory proposals in the first half of 2013. These are the DNSPs in the Australian Capital Territory and New South Wales, and the TNSPs in New South Wales, Tasmania and Victoria. If the draft rules proposed by the Commission are made as final rules, the AER and the ERA would need to make a number of guidelines and other documents throughout 2013. These include rate of return guidelines, which would be made by the AER and ERA by the end of November 2013. These guidelines are critical to the overall operation of the rules. However, it is likely that the majority of these guidelines and documents will not be finalised prior to the submission of the regulatory proposals by the seven NSPs in 2013.

In order to address this issue, it is proposed that the date for the commencement of the next full regulatory periods for those seven NSPs currently due to submit regulatory proposals in 2013 would be delayed by 12 months. In addition, the Commission proposes that the extended regulatory determination process proposed in the new rules should not apply to these NSPs for the next full regulatory determination process (see section 3.2.1 below). This would mean that the regulatory determination process for those regulatory periods, including the date for submission of the regulatory proposal, would also be delayed by 12 months.

To take Ausgrid as an example, under the current rules it is due to submit its regulatory proposal by 31 May 2013. Under the transitional arrangements proposed here, it would submit instead by 31 May 2014. Given that the last of the relevant guidelines (the rate of return guidelines) are due to be made by the AER by the end of November 2013, this would enable Ausgrid to factor the final guidelines into its regulatory proposal. To the extent Ausgrid sought to commence preparation of its regulatory proposal prior to publication of any final AER guidelines or documents, it could use the AER's draft guideline or document as the basis for this.

This arrangement would allow the majority of the new rules to be applied sooner than would otherwise be the case in respect of those seven NSPs who are due to submit their regulatory proposals in 2013. Without it the new rules would not apply to these NSPs until 2019.

The framework and approach paper process for those four DNSPs currently due to submit regulatory proposals on 31 May 2013 has already commenced. The proposed transitional arrangements described here provide for a new framework and approach paper process in 2013. While this may repeat some of the work already being done on the framework and approach paper, this is necessary to accommodate the delay of 12 months and the new rules.

The revised dates for the NSPs are set out in the table at appendix B and the chart in attachment B of this paper.

### **3.1.2 NSPs due to submit regulatory proposals after 2013**

After 2013, nine NSPs are currently due to submit regulatory proposals to the AER on or before end of May 2016. These are the DNSPs in Queensland, South Australia, Tasmania and Victoria, and the TNSP in Queensland. The current timing of the regulatory determination processes for the various NSPs is staggered so that the regulatory determination processes and subsequent regulatory periods for these NSPs overlap as little as possible. If, as set out in section 3.1.1 above, the seven NSPs due to submit in 2013 have their next full regulatory determination processes and regulatory periods delayed by a year then the interaction of the processes for all NSPs would be affected and the degree of overlap would increase. Among other things, this would mean a greater resourcing burden on the AER in terms of making the relevant regulatory determinations. There would also be a greater burden on other stakeholders seeking to participate in the regulatory determination process.

In order to avoid this increased overlap, the Commission considers that the nine NSPs due to submit regulatory proposals after 2013, but on or before the end of May 2016, should also have their next full regulatory periods delayed by 12 months. This means that all of the next full regulatory periods up to but not including ElectraNet's (for which ElectraNet is due to make a proposal to the AER on 31 May 2017) would commence 12 months later. These changes are reflected in the tables at Appendix B.

With this delay, the entirety of the final rules made in November, assuming when made they include an extended regulatory determination process, would apply to all of the nine NSPs currently due to submit regulatory proposals after 2013 and on or before the end of May 2016, as well as all NSPs due to submit after this. This is discussed further in section 3.2 below. In addition, by reducing the overlap of regulatory determination processes, there should be less likelihood of an adverse impact on the quality of the AER's decisions. Higher quality decisions promote confidence in the regulatory regime and in turn encourage efficient investment. This should contribute to achieving the NEO.

### **3.1.3 Length of regulatory period**

Under the NER, the AER is required, as part of a regulatory determination, to set the length of the regulatory period: see clauses 6.3.2(4) (for distribution) and 6A.4.2(a)(7) (for transmission). The regulatory period must not be less than five years: see clauses 6.3.2(b) (distribution) and 6A.4.2(c) (transmission). The regulatory period is a key part of the regulatory arrangements. Among other things it provides certainty to service providers and their investors, and customers about what revenues and therefore prices will apply for a certain period of time. In combination with an ex ante allowance for capex and opex, it creates incentives for NSPs since if they overspend they have to bear any financing costs for the remainder of the regulatory period and if they underspend they retain the benefits for the remainder of the regulatory period.

As described above, the next full regulatory periods for all NSPs due to submit regulatory proposals to the AER before ElectraNet's next regulatory proposal is due are proposed to be delayed. This means the overall alignment of NSPs would change to an extent. In addition, the draft rules published on 23 August 2012 propose lengthening the regulatory determination process by up to six months. This would also change the overlap between the regulatory determination processes of NSPs. In these circumstances, the Commission considers that it may be possible for the AER to optimise the alignment of the NSPs to assist with benchmarking and in terms of resourcing.

In order to achieve this, the transitional arrangements propose to permit the AER with the agreement of the relevant NSPs to set the length of the next full regulatory period at less than five years for all NSPs except for ElectraNet.

## **3.2 Application of new rules to delayed NSP regulatory periods**

### **3.2.1 General**

On the basis that the full regulatory periods for a number of the NSPs would be delayed according to these transitional arrangements, the final rules made in November 2012, if substantially similar to the draft rules, should be able to apply in their entirety to most NSPs for their next full regulatory periods.

The exception to this is the NSPs due to submit regulatory proposals in 2014 under the transitional arrangements.<sup>10</sup> While most of the draft rules could apply to these NSPs if their next full regulatory periods are delayed by a year, that would not be the case for some of the regulatory determination process changes. In particular, the draft rules propose extending the regulatory determination process by six months. If the regulatory period started a year later but the regulatory determination process took six months longer than it currently does, the net effect would be that the start date of the regulatory determination process would be six months later than it currently is. To continue the Ausgrid example used in section 3.1.1, if the extended regulatory determination process was applied to Ausgrid but its regulatory period started a year later, its date for submitting its regulatory proposal would be November 2013 rather than May 2013 under the current arrangements. This is the same time as the rate of return guidelines are due to be finalised by the AER. This would not leave Ausgrid with enough time to take into account all the relevant new guidelines or documents when preparing its regulatory proposal.

In order to deal with this problem, the extended regulatory determination process proposed in the draft rules would not apply to these NSPs for their next full regulatory determination. Instead, the 13 month regulatory determination process plus framework and approach paper currently applied to DNSPs would apply. The extended regulatory determination process would only apply for those NSPs for their

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<sup>10</sup> DNSPs in the Australian Capital Territory and New South Wales, and TNSPs in New South Wales, Tasmania and Victoria

subsequent regulatory determinations. This means that in respect of the next regulatory determination for these NSPs:

- the mandatory issues paper would not apply (though this would not prevent the AER from publishing one if it wished to);
- the framework and approach paper should be published at least 19 months before the end of the regulatory period, instead of the 25 months proposed in the draft rule; and
- the discretionary cross-submissions stage would not be included (though again this would not prevent the AER from consulting further if it chose to do so).

On this timeframe, the Commission notes that the final capex incentive guidelines may not have been published by the AER in time for it to consult on its approach to capex incentives as part of the framework and approach for these NSPs. To overcome this problem the Commission proposes that the AER publishes its proposed approach to capex incentives for these NSPs on the basis of the draft capex incentive guidelines. Its final approach would be based on final guidelines. A NSP could submit in its regulatory proposal something different if it did not agree with the final approach adopted by the AER on capex incentives.

The amended regulatory determination process is reflected in the table in appendix B and in the diagram in attachment B to this paper.

### **3.2.2 Application of review of efficiency of past capex**

The draft rules published on 23 August 2012 include a new power for the AER to review the efficiency of past capex of a NSP and, to the extent of an overspend, to reduce the capex to be rolled into the regulatory asset base. For the avoidance of doubt, if the review of the efficiency of past capex is included in the final rules it would apply immediately and no transitional rule would apply. That is, the AER would have the power to review past capex as part of any regulatory determination which is made by the AER following the commencement of the final rules. Using the Ausgrid example above, under the transitional arrangements proposed, Ausgrid would submit its regulatory proposal for its next full regulatory period by 31 May 2014. As part of assessing this proposal, the AER would consider the efficiency of Ausgrid's capex for the regulatory period commencing on 1 July 2009 (and for the "interim" 2014/15 year). Based on its assessment of the efficiency of that capex, the AER would be permitted to preclude all or part of any overspend from entering Ausgrid's regulatory asset base. Similarly, the AER could preclude inefficient related party margins from entering the RAB or where a NSP has reclassified opex as capex as a result of a change to its capitalisation policy.

### **3.3 Interim arrangements between current and delayed regulatory periods**

#### **3.3.1 Transitional determination**

As described above, under the transitional arrangements proposed here, all full regulatory periods up to but not including ElectraNet's next regulatory period (due to commence on 1 July 2018) would be delayed by 12 months. This would require interim arrangements to be put in place for the year by which the next full regulatory period is delayed. For most, but not all, NSPs the relevant guidelines and documents proposed in the draft rules would be put in place in time to be taken into account for the interim year.

The Commission has considered how these interim arrangements should work and considers that there are certain key principles that should underpin them. First, the revenues and prices that are set for this interim year must be based on the efficient expenditure requirements of the relevant NSP. That is, the NSP must be able to recover its efficient costs. Second, in setting these revenues and prices, the regulator should have adequate time to consult with stakeholders on what they should be. Third, to the extent possible, the revenues and prices should be set in accordance with the new rules, though as set out above this will not be possible for all NSPs.

The Commission's preferred mechanism is to use a "transitional determination". This means that the NSP would submit a regulatory proposal to the AER for the interim year, and the AER would make a regulatory determination for that year, but the matters covered by both the proposal and the determination would be a subset of the matters that are normally covered by a regulatory proposal and a regulatory determination. This would be achieved by deeming certain decisions made for the current regulatory period (such as service classification and control mechanisms) to apply for the interim year and excluding certain elements (such as incentive schemes) from applying during the interim year. Since there would be fewer decisions for the AER to make as part of the determination and only a need to set revenues or prices for only one year, the process for making the determination would also be shorter than the standard regulatory determination process. Set out below is a description of how this transitional determination may work. To the extent stakeholders consider there are elements of what is proposed below that may not work, or that there is a better way for the transitional determination to work, the Commission would encourage submissions setting out alternatives.

#### **3.3.2 Process for transitional determination**

The proposed dates for the transitional determination are set out in the table at Appendix A. The timing for the process for the proposed transitional determination is shorter than a normal regulatory determination process. In general:

- the AER would have three months to publish a draft determination after receiving a NSP's proposal for the interim year;

- stakeholders would have two months to make submissions on the draft determination;
- the NSP would have two months to submit a revised proposal on the draft determination;
- the AER would have two months to make a final determination; and
- the final determination would be made in sufficient time for the pricing processes that must occur prior to the interim year commencing to operate as normal.

### **3.3.3 Contents of transitional determination**

The Commission proposes that the transitional determination would operate in the following manner:

- NSPs would commence the process by providing a regulatory proposal to the AER;
- the proposal must contain opex and capex forecasts for the interim year to be assessed by the AER in accordance with the existing rules;
- the proposal must also address the rate of return. The AER would determine the rate of return in accordance with the new rules including the rate of return guidelines except for one TNSP being SP AusNet;
- the opening regulatory asset base for the interim year would be determined by the AER rolling forward the regulatory asset base from the previous year using forecast capex. A full roll forward of the regulatory asset base based on actual and estimated capex would be undertaken at the commencement of the next full regulatory period. A review of the efficiency of the capex incurred during the current regulatory period would be undertaken as part of the regulatory determination for the next full regulatory control period. Capex incurred in the interim year would also be subject to an efficiency review at this later time; and
- no incentive schemes would be applied during the interim year. This includes incentive schemes for capex, opex, service standards and demand management. However, any adjustments to revenue as a result of the application of schemes already in place for the current regulatory period may be applied in respect of the interim year.

A number of other elements would be retained from the current regulatory period for the transitional determination. These include:

- the control mechanism that apply for the final year of the current regulatory period;
- the depreciation schedules for each asset or category of assets used to calculate depreciation for the final year of the current regulatory period;

- the post-tax revenue model;
- the roll forward model;
- the additional pass-through events that apply for the current regulatory period for DNSPs;
- negotiation frameworks and criteria;
- DNSPs' connection policies; and
- pricing methodologies for TNSPs.

Arrangements imposed on NSPs at a state level through state-based legislation would continue to apply such as guaranteed service levels and the f-factor in Victoria.

Under the process set out in section 3.3.2 above, some NSPs would be required to submit proposals in respect of their transitional determinations before the first rate of return guidelines are finalised.<sup>11</sup> For most NSPs due to submit in 2013 the Commission proposes that these NSPs be required to submit a regulatory proposal for a transitional determination based on draft rate of return guidelines.<sup>12</sup> In their submissions following the AER's draft decision they may make changes to their regulatory proposals to reflect the final guidelines.

Given the timing constraints that apply to SP AusNet, the Commission proposes to apply the old Chapter 6A rules on the rate of return to SP AusNet for the shortened one year regulatory period. A final determination must be made for SP AusNet by the end of January 2014. This does not allow SP AusNet enough time to submit a revised regulatory proposal to reflect the final rate of return guidelines.

### **3.3.4 Directlink and Murraylink**

The AER is required under Chapter 6A of the NER to make a transmission determination for Murraylink (the interconnector that links the South Australian and Victorian regions in the NEM) and Directlink (the interconnector that links Queensland and New South Wales).

Murraylink recently submitted a regulatory proposal to the AER for its next regulatory period from 1 July 2013 to 30 June 2022 (ten years). The Commission proposes that the new rules would apply to the subsequent regulatory period which is the regulatory period commencing 1 July 2023.

Directlink's regulatory proposal is due to be submitted to the AER by 31 May 2014. Its current nine year regulatory period ends on 30 June 2015. Given the relative size of

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<sup>11</sup> These are the DNSPs in the Australian Capital Territory and New South Wales, and the TNSPs in New South Wales, Tasmania and Victoria .

<sup>12</sup> It is proposed that the AER would be required to make final rate of return guidelines by end of November 2013 under the draft rules.

Directlink the Commission does not propose that Directlink's next full regulatory control period be delayed by one year like the larger NSPs that are due to submit around the same time. The Commission proposes that the new rules apply to Directlink's next regulatory control period except for the extended consultation process as there would not be sufficient time to apply this.

## **4 Gas transitional arrangements**

### **4.1 General**

The scope of any new rules for gas extends only to changes to the rate of return provisions. As described above, in respect of gas only two service providers are due to submit access arrangements at a time which may mean they are affected by the timing of the implementation of the new rules: ATCO Gas (due to submit by 1 July 2013 in respect of the Mid-West and South-West Gas Distribution System) and APA Group (due to submit by 1 January 2014 in respect of the Goldfields Gas Pipeline).

The rules relating to the regulatory determination process in the NGR are different from the corresponding provisions in the NER. In particular, the process under the NGR is more flexible than that in the NER. With the more flexible process, only very limited transitional arrangements are necessary in respect of gas.

### **4.2 Arrangements for ATCO Gas**

ATCO Gas is due to submit its access arrangement by 1 July 2013. This is before the ERA would have published its final rate of return guidelines (due by 30 November 2013) and just after it would have published its draft rate of return guidelines (due by 30 June 2013). To enable the draft rules to apply to ATCO Gas the Commission proposes that ATCO Gas be given an additional month to submit its access arrangement to the ERA with the process then following the original timeframe from then on. This would enable ATCO Gas to factor in ERA's draft rate of return guidelines into its access arrangement. The ERA's final rate of return guidelines would be published by the ERA while the regulatory process for ATCO Gas is continuing. In order to accommodate any changes to the rate of return guidelines from the draft to the final guidelines, the Commission considers that transitional provisions should provide that ATCO Gas be given the opportunity to adjust its access arrangement after the final rate of return guidelines are published.

This approach would avoid having to delay the commencement date of the new regulatory period. Among other things, such a delay may affect the timing for the application of new tariffs by ATCO Gas, and the overall work program of the ERA.

Rule 58(3) of the NGR would allow ATCO Gas, with the consent of the ERA, to revise its access arrangement even though it is being considered by the ERA. In addition, the ERA may also consent to a service provider amending its access arrangement in response to a draft regulatory determination to address matters other than those raised in the draft regulatory determination: (see rule 60(2)).

The Commission seeks the views of stakeholders on whether the current rules described above offer enough flexibility for ATCO Gas to adjust its access arrangement to accommodate the ERA's final rate of return guidelines, or whether further transitional arrangements are required.

### **4.3 Arrangements for APA Group**

APA Group is in a similar position to ATCO Gas in respect of the Goldfields Gas Pipeline. It is due to submit its access arrangement in January 2014, only one month after the ERA would be required under the draft rules to have published its rate of return guidelines. This may not be enough time for APA Group to be able to factor in the final rate of return guidelines into its access arrangement. The Commission proposes that APA Group should prepare its access arrangement in accordance with the draft rate of return guidelines, and then to the extent of any changes from the draft rate of return guidelines to the final guidelines, APA Group should have the opportunity to adjust its access arrangement. Again, stakeholder views on whether the NGR currently offer enough flexibility for this to occur would be welcome.

## Abbreviations

AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
capex	capital expenditure
Commission	see AEMC
DNSP	Distribution Network Service Provider (electricity)
ERA	Economic Regulation Authority of Western Australia
EURCC	Energy Users Rule Change Committee
NEO	National Electricity Objective
NER	National Electricity Rules
NGR	National Gas Rules
NSP	electricity Network Service Provider
opex	operating expenditure
TNSP	Transmission Network Service Provider (electricity)

## A Timing of transitional determination processes for electricity NSPs

Table A.1

<b>NSP</b>	<b>Regulatory proposal submitted</b>	<b>Draft regulatory determination published</b>	<b>Submissions / revised proposals due</b>	<b>Final regulatory determination published</b>	<b>Regulatory period starts</b>	<b>Regulatory period ends</b>
SP AusNet	End June 2013	End Sept 2013	End Nov 2013	End Jan 2014	Beginning of Apr 2014	End Mar 2015
ActewAGL, New South Wales DNSPs, Transend, TransGrid	End Sept 2013	End Dec 2013	End Feb 2014	End Apr 2014	Beginning of July 2014	End June 2015
ENERGEX, Ergon Energy, SA Power	End Sept 2014	End Dec 2014	End Feb 2015	End Apr 2015	Beginning of July 2015	End June 2016
Victorian DNSPs	End Mar 2015	End June 2015	End Aug 2015	End Oct 2015	Beginning of Jan 2016	End Dec 2016
Aurora Energy, Powerlink	End Sept 2016	End Dec 2016	End Feb 2017	End Apr 2017	Beginning of July 2017	End June 2018

## B Timing of subsequent regulatory determination processes for NSPs who are subject to a mini determination

Table B.1

NSP	Framework and approach paper published	Regulatory proposal submitted	Final regulatory determination published	Regulatory period starts
SP AusNet	End Aug 2013	End Feb 2014	End Jan 2015	Beginning of Apr 2015
ActewAGL, New South Wales DNSPs, Transend, TransGrid	End Nov 2013	End May 2014	End Apr 2015	Beginning of July 2015
ENERGEX, Ergon Energy, SA Power	End May 2014	End Nov 2014	End Apr 2016	Beginning of July 2016
Victorian DNSPs	End Nov 2014	End May 2015	End Oct 2016	Beginning of Jan 2017
Aurora Energy, Powerlink	End May 2016	End Nov 2016	End April 2018	Beginning of July 2018

ActewAGL, the New South Wales DNSPs, SP AusNet, Transend and TransGrid would have a shorter regulatory determination process which is similar to that which is in the current Chapter 6 of the NER. This is due to the short timeframe between the AER publishing its rate of return guidelines and when the final regulatory determination needs to be made for these NSPs.