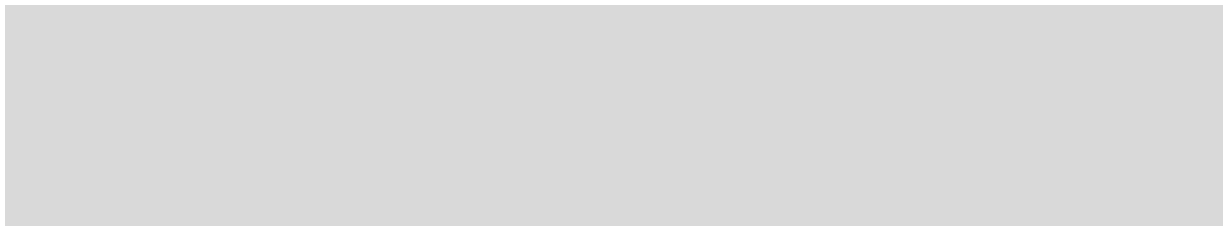


National Electricity Rules Version 53
Status Information

This indicative consolidated version of the National Electricity Rules includes a mark-up of amendments made to Chapter 6 of the National Electricity Rules by the final Rules for the Economic Regulation of Network Service Providers rule change request.

This indicative consolidation is based on the latest electronically available version of the National Electricity Rules as at 29 November 2012.

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 consolidated version.



CHAPTER 6

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*.

6.1.1A Definitions

~~In this Chapter:~~ [\[Deleted\]](#)

~~**demand management incentive and embedded generation connection scheme** means an incentive scheme for certain *Distribution Network Service Providers* developed and published by the *AER* under clause 6.6.3.~~

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 confers power on the *AER* to classify *distribution services*, to determine the forms of control for *distribution 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 *Distribution Network Service Providers* for the provision of services classified as *negotiated distribution services*;
 - (4A) Part DA deals with the preparation of, requirements for and approval of, *connection policies*;
 - (5) Part E sets out the ~~procedures for making~~ [procedure and approach for the making of](#) a distribution determination;
 - (6) Part F regulates cost allocation;
 - (7) Part G contains the distribution consultation procedures;
 - (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; ~~and~~
- (14) Part N provides for services provided by, or in connection with, *dual function assets* to be the subject of distribution determinations; and
- (15) Part O sets out the requirements to prepare *annual benchmarking reports*.

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) the price of those services under the *approved pricing proposal*; 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*.

Part B Classification of Distribution Services and Distribution Determinations

6.2 Classification

6.2.1 Classification of distribution services

- (a) The *AER* may classify a *distribution service* to be provided by a *Distribution Network Service Provider* as:
 - (1) a *direct control service*; or
 - (2) a *negotiated distribution service*.

Note

If the *AER* decides against classifying a *distribution service*, the service is, subject to Chapter 5A, not regulated under the *Rules*.

- (b) The *AER* may group *distribution services* together for the purpose of classification and, if it does so, a single classification made for the group applies to each service comprised in the group as if it had been separately classified.
- (c) The *AER* must, in classifying a *distribution service* or *distribution services*, have regard to:
 - (1) the form of regulation factors; and
 - (2) the form of regulation (if any) previously applicable to the relevant service or services and, in particular, any previous classification under the present system of classification or under the previous regulatory system (as the case requires); and
 - (3) the desirability of consistency in the form of regulation for similar services (both within and beyond the relevant jurisdiction); and
 - (4) any other relevant factor.
- (d) In classifying *distribution services* that have previously been subject to regulation under the present or earlier legislation, the *AER* must act on the basis that, unless a different classification is clearly more appropriate:

- (1) there should be no departure from a previous classification (if the services have been previously classified); and
 - (2) if there has been no previous classification – the classification should be consistent with the previously applicable regulatory approach.
- (e) If the *Rules*, however, require that a particular classification be assigned to a *distribution service* of a specified kind, a *distribution service* of the relevant kind is to be classified in accordance with that requirement.

6.2.2 Classification of direct control services as standard control services or alternative control services

- (a) *Direct control services* are to be further divided into 2 subclasses:
- (1) *standard control services*; and
 - (2) *alternative control services*.
- (b) The *AER* may group *direct control services* together for the purpose of classification and, if it does so, a single classification made for the group applies to each service comprised in the group as if it had been separately classified.
- (c) The *AER* must, in classifying a *direct control service* as a *standard control service* or an *alternative control service*, have regard to:
- (1) the potential for development of competition in the relevant market and how the classification might influence that potential; and
 - (2) the possible effects of the classification on administrative costs of the *AER*, the *Distribution Network Service Provider* and users or potential users; and
 - (3) the regulatory approach (if any) applicable to the relevant service immediately before the commencement of the distribution determination for which the classification is made; and
 - (4) the desirability of a consistent regulatory approach to similar services (both within and beyond the relevant jurisdiction); and
 - (5) the extent the costs of providing the relevant service are directly attributable to the person to whom the service is provided; and

Example:

In circumstances where a service is provided to a small number of identifiable customers on a discretionary or infrequent basis, and costs can be directly attributed to those customers, it may be more appropriate to classify the service as an alternative control service than as a standard control service.

- (6) any other relevant factor.

- (d) In classifying *direct control services* that have previously been subject to regulation under the present or earlier legislation, the *AER* must act on the basis that, unless a different classification is clearly more appropriate:
 - (1) there should be no departure from a previous classification (if the services have been previously classified); and
 - (2) if there has been no previous classification – the classification should be consistent with the previously applicable regulatory approach.
- (e) If the *Rules*, however, require that a *direct control service* of a specified kind be classified either as a *standard control service* or as an *alternative control service*, a *direct control service* of the relevant kind is to be classified in accordance with that requirement.

6.2.3 Term for which classification operates

A classification forms part of a distribution determination and operates for the *regulatory control period* for which the distribution determination is made.

Note:

The classification is to be reviewed in the course of the making of the next distribution determination, and (subject to these Rules) a reclassification may be made for the purposes of that determination.

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) If more than one *distribution system* is owned, controlled or operated by a *Distribution Network Service Provider*, then, unless the *AER* otherwise determines, a separate distribution determination is to be made for each *distribution system*.
- (d) If 2 or more parts of the same *distribution system* were separately regulated at the commencement of this Chapter, then, unless the *AER* otherwise determines, a separate distribution determination is to be made for each of those parts of the *distribution system*.

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) The control mechanism may consist of:
 - (1) a schedule of fixed prices; ~~or~~

- (2) caps on the prices of individual services; ~~or~~
 - (3) caps on the revenue to be derived from a particular combination of services; ~~or~~
 - (4) tariff basket price control; ~~or~~
 - (5) revenue yield control; or
 - (6) a combination of any of the above.
- (c) In deciding on a control mechanism for *standard control services*, the *AER* must have regard to:
- (1) the need for efficient tariff structures; 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.
- (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.

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 Negotiated distribution services

Negotiated distribution services are regulated in accordance with Part D.

6.2.8 Guidelines

- ~~(a) The AER may publish guidelines as to:
 - ~~(1) the classification of *distribution services*; and~~
 - ~~(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~~
 - ~~(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) In making or amending a guideline, the AER must follow the *distribution consultation procedures* in Part G.~~

- (a) The AER:
- (1) must make and publish the Shared Asset Guidelines, the Capital Expenditure Incentive Guidelines, the Rate of Return Guidelines, the Expenditure Forecast Assessment Guidelines, the Distribution Confidentiality Guidelines and the Cost Allocation Guidelines in accordance with these Rules; and
 - (2) may, in accordance with the distribution consultation procedures, make and publish guidelines as to any other matters relevant to this Chapter.
- (b) A guideline may relate to a specified Distribution Network Service Provider or Distribution Network Service Providers of a specified class.
- (c) Except as otherwise provided in this Chapter, a guideline is not mandatory (and so does not bind the AER or anyone else) but, if the AER makes a distribution determination that is not in accordance with the guideline, the AER must state, in its reasons for the distribution determination, the reasons for departing from the guideline.
- (d) If a guideline indicates that there may be a change of regulatory approach in future distribution determinations, the guideline should also (if practicable) indicate how transitional issues are to be dealt with.
- (e) Subject to paragraph (f), the AER may, from time to time and in accordance with the distribution consultation procedures, amend or replace a guideline.
- (f) The AER may make administrative or minor amendments to any guideline without complying with the distribution consultation procedures.
- (g) This clause 6.2.8 does not apply to the Distribution Ring-Fencing Guidelines.

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~~The procedure and approach for the making of 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 other relevant requirements of this Part; ~~and~~
- (2) must comply with the requirements of, and must contain or be accompanied by the information required by, any relevant *regulatory information instrument*; and
- (3) must be prepared in accordance with Schedule 6.1.

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 and embedded generation connection incentive scheme are to apply to the *Distribution Network Service Provider*;~~
 - (3) how any applicable efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme, demand management and embedded generation connection incentive scheme or small-scale incentive scheme is to apply to the *Distribution Network Service Provider*;
 - (4) the commencement and length of the *regulatory control period*; and
 - (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~~ *Distribution Network Service Provider's* *building block proposal* and those based on the *AER's* own estimates or assumptions).
- (b) A *regulatory control period* must be not less than 5 *regulatory years*.

6.4 Post-tax revenue model

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

- (a) The *AER* must, in accordance with the *distribution consultation procedures*, prepare and *publish* a *post-tax revenue model*.
- (b) The *AER* may, from time to time and in accordance with the *distribution consultation procedures*, amend or replace the *post-tax revenue model*.

- (c) The *AER* must develop and *publish* the first *post-tax revenue model* within 6 months after the commencement of this clause and there must be such a model in force at all times after that date.

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~~ *Distribution Network Service 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 *efficiency benefit sharing scheme*, the *service target performance incentive scheme* and the *demand management and embedded generation connection incentive scheme* – see paragraph (b)(5); and~~
- (5) the revenue increments or decrements (if any) for that year arising from the application of any *efficiency benefit sharing scheme*, *capital expenditure sharing scheme*, *service target performance incentive*

scheme, demand management and embedded generation connection incentive scheme or small-scale incentive scheme – see subparagraph (b)(5);

- (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~~

(6A) the revenue decrements (if any) for that year arising from the use of assets that provide standard control services to provide certain other services – see subparagraph (b)(6a); and

- (7) the forecast operating expenditure for that year – see paragraph (b)(7).

(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~~

Note:

~~A statement of regulatory intent may be relevant to the calculation (See clause 6.5.4).~~

- (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~~

Note:

~~A statement of regulatory intent may be relevant to the calculation (See clause 6.5.4).~~

~~(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 efficiency benefit sharing scheme, service target performance incentive scheme or demand management and embedded generation connection incentive scheme as referred to in clauses 6.5.8, 6.6.2 and 6.6.3; and~~

(5) the revenue increments or decrements referred to in subparagraph (a)(5) are those that arise as a result of the operation of an applicable efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme, demand management

and embedded generation connection incentive scheme or small-scale incentive scheme as referred to in clauses 6.5.8, 6.5.8A, 6.6.2, 6.6.3 and 6.6.4;

- (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*;
- (6A) the revenue decrements (if any) referred to in paragraph (a)(6A) are those that are determined by the AER under clause 6.4.4 as a result of assets that provide *standard control services* being used to provide:
 - (i) *distribution services* that are not classified under clause 6.2.1; or
 - (ii) services that are neither *distribution services* nor services that are provided by means of, or in connection with, *dual function assets*; 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.

6.4.4 Shared assets

- (a) Where an asset is used to provide both *standard control services* and either:
 - (1) *distribution services* that are not classified under clause 6.2.1; or
 - (2) services that are neither:
 - (i) *distribution services*; nor
 - (ii) services that are provided by means of, or in connection with, *dual function assets* that are owned, operated or controlled by the *Distribution Network Service Provider*,

the AER may, in a distribution determination for a *regulatory control period*, reduce the *annual revenue requirement* for that *Distribution Network Service Provider* for a *regulatory year* in that *regulatory control period* by such amount as it considers reasonable to reflect such part of the costs of that asset as the *Distribution Network Service Provider* is recovering through charging for the provision of a service referred to in subparagraph (1) or (2).
- (b) In making a decision under paragraph (a), the AER must have regard to the *shared asset principles* and the *Shared Asset Guidelines*.
- (c) The *shared asset principles* are as follows:

- (1) the *Distribution Network Service Provider* should be encouraged to use assets that provide *standard control services* for the provision of other kinds of services where that use is efficient and does not materially prejudice the provision of those services;
 - (2) a shared asset cost reduction should not be dependent on the *Distribution Network Service Provider* deriving a positive commercial outcome from the use of the asset other than for *standard control services*;
 - (3) a shared asset cost reduction should be applied where the use of the asset other than for *standard control services* is material;
 - (4) regard should be had to the manner in which costs have been recovered or revenues reduced in respect of the relevant asset in the past and the reasons for adopting that manner of recovery or reduction;
 - (5) a shared asset cost reduction should be compatible with the *Cost Allocation Principles* and *Cost Allocation Method*; and
 - (6) any reduction effected under paragraph (a) should be compatible with other incentives provided under the *Rules*.
- (d) The *AER* must, in accordance with the *distribution consultation procedures*, make and *publish* guidelines (the *Shared Asset Guidelines*) that set out the approach the *AER* proposes to take in applying the *shared asset principles* (which may include a methodology that the *AER* proposes to use to determine reductions for the purposes of paragraph (a)).
- (e) There must be *Shared Asset Guidelines* in force at all times after the date on which the *AER* first *publishes* the *Shared Asset Guidelines* under these *Rules*.

6.4.5 Expenditure Forecast Assessment Guidelines

- (a) The *AER* must, in accordance with the *distribution consultation procedures*, develop and *publish* guidelines (the *Expenditure Forecast Assessment Guidelines*) that specify the approach the *AER* proposes to use to assess the forecasts of operating expenditure and capital expenditure that form part of *Distribution Network Service Providers' regulatory proposals* and the information the *AER* requires for the purposes of that assessment.
- (b) There must be *Expenditure Forecast Assessment Guidelines* in force at all times after the date on which the *AER* first *publishes* the *Expenditure Forecast Assessment Guidelines* under these *Rules*.

6.4A Capital expenditure incentive mechanisms

- (a) The *capital expenditure incentive objective* is to ensure that, where the value of a regulatory asset base is subject to adjustment in accordance with the

Rules, then (except as otherwise provided in the Rules) the only capital expenditure that is included in an adjustment that increases the value of that regulatory asset base is capital expenditure that reasonably reflects the capital expenditure criteria.

- (b) The AER must, in accordance with the distribution consultation procedures, make and publish guidelines (the Capital Expenditure Incentive Guidelines) that set out:
- (1) any capital expenditure sharing schemes developed by the AER in accordance with clause 6.5.8A, and how the AER has taken into account the capital expenditure sharing scheme principles in developing those schemes;
 - (2) the manner in which it proposes to make determinations under clause S6.2.2A(a) if the overspending requirement is -satisfied;
 - (3) the manner in which it proposes to determine whether depreciation for establishing a regulatory asset base as at the commencement of a regulatory control period is to be based on actual or forecast capital expenditure;
 - (4) the manner in which it proposes to make determinations under clause S6.2.2A(i) if the margin requirement is satisfied; and
 - (5) the manner in which it proposes to make determinations under clause S6.2.2A(j) if the capitalisation requirement is satisfied; and.
 - (6) how each scheme and proposal referred to in subparagraphs (1) to (5), and all of them taken together, are consistent with the capital expenditure incentive objective.
- (c) There must be Capital Expenditure Incentive Guidelines in force at all times after the date on which the AER first publishes the Capital Expenditure Incentive Guidelines under these Rules.

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 *Distribution Network Service Provider* ~~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, in accordance with the *distribution consultation procedures*, 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 in accordance with the *distribution consultation procedures*, amend or replace the *roll forward model*.
- (d) The *AER* must develop and *publish* the first *roll forward model* within 6 months after the commencement of this clause, and 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.

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 year* that is determined in accordance with this clause 6.5.2 (the *allowed rate of return*) 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).

Allowed rate of return

(b) The *allowed rate of return* is to be determined such that it achieves the *allowed rate of return objective*.

(c) The *allowed rate of return objective* is that the rate of return for a *Distribution Network Service Provider* is to be commensurate with the *efficient financing costs* of a benchmark efficient entity with a similar degree of risk as that which applies to the *Distribution Network Service Provider* in respect of the provision of *standard control services* (the *allowed rate of return objective*).

(d) Subject to paragraph (b), the *allowed rate of return* for a *regulatory year* must be:

(1) a weighted average of the return on equity for the *regulatory control period* in which that *regulatory year* occurs (as estimated under paragraph (f)) and the return on debt for that *regulatory year* (as estimated under paragraph (h)); and

(2) determined on a nominal vanilla basis that is consistent with the estimate of the value of imputation credits referred to in clause 6.5.3.

(e) In determining the *allowed rate of return*, regard must be had to:

(1) relevant estimation methods, financial models, market data and other evidence;

(2) the desirability of using an approach that leads to the consistent application of any estimates of financial parameters that are relevant to the estimates of, and that are common to, the return on equity and the return on debt; and

(3) any interrelationships between estimates of financial parameters that are relevant to the estimates of the return on equity and the return on debt.

Return on equity

(f) The return on equity for a *regulatory control period* must be estimated such that it contributes to the achievement of the *allowed rate of return objective*.

(g) In estimating the return on equity under paragraph (f), regard must be had to the prevailing conditions in the market for equity funds.

Return on debt

(h) The return on debt for a *regulatory year* must be estimated such that it contributes to the achievement of the *allowed rate of return objective*.

- (i) The return on debt may be estimated using a methodology which results in either:

 - (1) the return on debt for each *regulatory year* in the *regulatory control period* being the same; or
 - (2) the return on debt (and consequently the *allowed rate of return*) being, or potentially being, different for different *regulatory years* in the *regulatory control period*.

- (j) Subject to paragraph (h), the methodology adopted to estimate the return on debt may, without limitation, be designed to result in the return on debt reflecting:

 - (1) the return that would be required by debt investors in a benchmark efficient entity if it raised debt at the time or shortly before the making of the distribution determination for the *regulatory control period*;
 - (2) the average return that would have been required by debt investors in a benchmark efficient entity if it raised debt over an historical period prior to the commencement of a *regulatory year* in the *regulatory control period*; or
 - (3) some combination of the returns referred to in subparagraphs (1) and (2).

- (k) In estimating the return on debt under paragraph (h), regard must be had to the following factors:

 - (1) the desirability of minimising any difference between the return on debt and the return on debt of a benchmark efficient entity referred to in the *allowed rate of return objective*;
 - (2) the interrelationship between the return on equity and the return on debt;
 - (3) the incentives that the return on debt may provide in relation to capital expenditure over the *regulatory control period*, including as to the timing of any capital expenditure; and
 - (4) any impacts (including in relation to the costs of servicing debt across *regulatory control periods*) on a benchmark efficient entity referred to in the *allowed rate of return objective* that could arise as a result of changing the methodology that is used to estimate the return on debt from one *regulatory control period* to the next.

- (l) If the return on debt is to be estimated using a methodology of the type referred to in paragraph (i)(2) then a resulting change to the *Distribution Network Service Provider's annual revenue requirement* must be effected through the automatic application of a formula that is specified in the *distribution determination*.

~~(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:~~

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

~~where:~~

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

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

~~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:~~

$$\del{r_f + DRP}$$

~~where:~~

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

~~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.~~

Meaning of nominal risk free rate

~~(c) The nominal risk free rate for a regulatory control period is (unless some different provision is made by a relevant statement of regulatory intent) 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 (unless some different provision is made by a relevant *statement of regulatory intent*) 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.~~

Rate of Return Guidelines

(m) The *AER* must, in accordance with the *distribution consultation procedures*, make and *publish* guidelines (the *Rate of Return Guidelines*).

(n) The *Rate of Return Guidelines* must set out:

(1) the methodologies that the *AER* proposes to use in estimating the *allowed rate of return*, including how those methodologies are proposed to result in the determination of a return on equity and a return on debt in a way that is consistent the *allowed rate of return objective*; and

(2) the estimation methods, financial models, market data and other evidence the *AER* proposes to take into account in estimating the

return on equity, the return on debt and the value of imputation credits referred to in clause 6.5.3.

- (o) There must be *Rate of Return Guidelines* in force at all times after the date on which the AER first publishes the *Rate of Return Guidelines* under these *Rules*.
- (p) The AER must, in accordance with the *distribution consultation procedures*, review the *Rate of Return Guidelines*:
 - (1) at intervals not exceeding three years, with the first interval starting from the date that the first *Rate of Return Guidelines* are published under these *Rules*; and
 - (2) at the same time as it reviews the *Rate of Return Guidelines* made under clause 6A.6.2.
- (q) For the avoidance of doubt, nothing prevents the AER from publishing the *Rate of Return Guidelines* made under this clause 6.5.2 in the same document as the *Rate of Return Guidelines* made under clause 6A.6.2.

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 estimated 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

γ is the value of imputation credits.

~~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~~

~~γ is the assumed utilisation of imputation credits.~~

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 ~~Review of rate of return~~

- ~~(a) The *AER* must, in accordance with the *distribution consultation procedures* and this clause, carry out reviews of the matters referred to in paragraph (d).~~
- ~~(b) The first review is to be concluded by 1 May 2009 and further reviews are to follow at intervals not exceeding, in any case, five years with the first interval starting from 31 March 2009.~~
- ~~(c) The *AER* must, in consequence of a review, issue a statement (a *statement of regulatory intent*) adopting values, methods and credit rating levels for *Distribution Network Service Providers* or for specified classes of *Distribution Network Service Providers*.~~
- ~~(d) The following matters (and the method of their calculation) may form the subject of a review:
 - ~~(1) the nominal risk free rate referred to in clause 6.5.2(c);~~
 - ~~(2) the equity beta referred to in clause 6.5.2(b);~~
 - ~~(3) the market risk premium referred to in clause 6.5.2(b);~~
 - ~~(4) the maturity period and bond rates referred to in clause 6.5.2(d);~~
 - ~~(5) the ratio of the value of debt to the value of equity and debt referred to in clause 6.5.2(b);~~
 - ~~(6) credit rating levels referred to in clause 6.5.2(e);~~
 - ~~(7) the assumed utilisation of imputation credits referred to in clause 6.5.3.~~~~

- ~~(e) In undertaking a review, the AER must have regard to:~~
- ~~(1) the need for the rate of return calculated for the purposes of clause 6.5.2(b) to be a forward looking rate of return that is commensurate with prevailing conditions in the market for funds and the risk involved in providing *standard control services*; and~~
 - ~~(2) the need for the return on debt to reflect the current cost of borrowings for comparable debt; and~~
 - ~~(3) the need for the credit rating levels or the values attributable to, or the methods of calculating, the parameters referred to in paragraph (d) that vary according to the efficiency of the *Distribution Network Service Provider* to be based on a benchmark efficient *Distribution Network Service Provider*; and~~
 - ~~(4) where the credit rating levels or the values attributable to, or the method of calculating, parameters referred to in paragraph (d) cannot be determined with certainty:
 - ~~(i) the need to achieve an outcome that is consistent with the *national electricity objective*; and~~
 - ~~(ii) the need for persuasive evidence before adopting a credit rating level or a value for, or a method of calculating, that parameter that differs from the credit rating level, value or the method of calculation that has previously been adopted for it.~~~~
- ~~(f) A *statement of regulatory intent* adopting a revised value, method, or credit rating level applies only for the purposes of a *building block proposal* submitted to the AER after publication of the *statement of regulatory intent*.~~
- ~~(g) A distribution determination to which a *statement of regulatory intent* is applicable must be consistent with the statement unless there is persuasive evidence justifying a departure, in the particular case, from a value, method or credit rating level set in the statement.~~
- ~~(h) In deciding whether a departure from a value, method or credit rating level set in a *statement of regulatory intent* is justified in a distribution determination, the AER must consider:~~
- ~~(1) the criteria on which the value, method or credit rating level was set in the *statement of regulatory intent* (the **underlying criteria**); and~~
 - ~~(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 statement inappropriate.~~
- ~~(i) If the AER, in making a distribution determination, in fact departs from a value, method or credit rating level set in a *statement of regulatory intent*, 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. [\[Deleted\]](#)~~

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 [Distribution Network Service Provider's](#) ~~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*; and
 - (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 ~~each of the following~~ (the operating expenditure criteria):
- (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;~~[Deleted]

- (2) ~~submissions received in the course of consulting on the building block proposal;~~[Deleted]

- (3) ~~analysis undertaken by or for the AER and published before the distribution determination is made in its final form;~~[Deleted]

- ~~(4) benchmark operating expenditure that would be incurred by an efficient *Distribution Network Service Provider* over the regulatory control period;~~

- (4) the most recent annual benchmarking report that has been published under rule 6.27 and the benchmark operating expenditure that would be incurred by an efficient *Distribution Network Service Provider* over the relevant regulatory control period;

- (5) the actual and expected operating expenditure of the *Distribution Network Service Provider* during any preceding regulatory control periods;

- (5A) the extent to which the operating expenditure forecast includes expenditure to address the concerns of any electricity consumers to the extent those concerns have been identified by the *Distribution Network Service Provider* in the course of its engagement with electricity consumers;

- (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;~~

- (8) whether the operating expenditure forecast is consistent with any incentive scheme or schemes that apply to the *Distribution Network Service Provider* under clauses 6.5.8 or 6.6.2 to 6.6.4;
- ~~(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;~~
- (9) the extent the operating expenditure forecast is referable to arrangements with a person other than the *Distribution Network Service Provider* that, in the opinion of the *AER*, do not reflect arm's length terms;
- (9A) whether the operating expenditure forecast includes an amount relating to a project that should more appropriately be included as a *contingent project* under clause 6.6A.1(b);
- (10) the extent the *Distribution Network Service Provider* has considered, and made provision for, efficient and prudent non-*network* alternatives; and
- (11) [Note: Clause left intentionally blank]
- (12) any other factor the *AER* considers relevant and which the *AER* has notified the *Distribution Network Service Provider* in writing, prior to the submission of its revised *regulatory proposal* under clause 6.10.3, is an *operating expenditure factor*.

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*; and
 - (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 for the relevant regulatory control period 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 each of the following (the capital expenditure criteria):
- (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;~~
 - (1) [Deleted]
 - ~~(2) submissions received in the course of consulting on the building block proposal;~~
 - (2) [Deleted]

- ~~(3) analysis undertaken by or for the AER and published before the distribution determination is made in its final form;~~
- (3) [Deleted]
- ~~(4) benchmark capital expenditure that would be incurred by an efficient Distribution Network Service Provider over the regulatory control period;~~
- (4) the most recent annual benchmarking report that has been published under rule 6.27 and the benchmark capital expenditure that would be incurred by an efficient Distribution Network Service Provider over the relevant regulatory control period;
- (5) the actual and expected capital expenditure of the Distribution Network Service Provider during any preceding regulatory control periods;
- (5A) the extent to which the capital expenditure forecast includes expenditure to address the concerns of any electricity consumers to the extent those concerns have been identified by the Distribution Network Service Provider in the course of its engagement with electricity consumers;
- (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.~~
- (8) whether the capital expenditure forecast is consistent with any incentive scheme or schemes that apply to the Distribution Network Service Provider under clauses 6.5.8A or 6.6.2 to 6.6.4;
- (9) the extent the capital expenditure forecast is referable to arrangements with a person other than the Distribution Network Service Provider that, in the opinion of the AER, do not reflect arm's length terms;

- (9A) whether the capital expenditure forecast includes an amount relating to a project that should more appropriately be included as a *contingent project* under clause 6.6A.1(b);
- (10) the extent the *Distribution Network Service Provider* has considered, and made provision for, efficient and prudent non-*network* alternatives; and
- (11) [Note: clause left intentionally blank]
- (12) any other factor the *AER* considers relevant and which the *AER* has notified the *Distribution Network Service Providers* in writing, prior to the submission of its revised *regulatory proposal* under clause 6.10.3, is a *capital expenditure factor*.

Forecast capital expenditure and contingent projects

- (f) Paragraphs (g) - (j) apply where:
 - (1) in a *regulatory control period* (the **first regulatory control period**), the *AER* determines under clause 6.6A.2(e)(1)(iii) that the likely completion date for a *contingent project* is a date which occurs in the immediately following *regulatory control period* (the **second regulatory control period**); and
 - (2) there is an unspent amount of capital expenditure for that *contingent project* under paragraph (g).
- (g) A *Distribution Network Service Provider's regulatory proposal* for the second *regulatory control period* must include in the forecast of required capital expenditure referred to in paragraph (a) an amount of any unspent capital expenditure for each *contingent project* as described in paragraph (f)(2), that equals the difference (if any) between:
 - (1) the total capital expenditure for that *contingent project*, as determined by the *AER* in the first *regulatory control period* under clause 6.6A.2(e)(1)(ii); and
 - (2) the total of the capital expenditure actually incurred (or estimated capital expenditure for any part of the first *regulatory control period* for which actual capital expenditure is not available) in the first *regulatory control period* for that *contingent project*.
- (h) The *AER* must include in any forecast capital expenditure for the second *regulatory control period* which is accepted in accordance with paragraph (c) or substituted in accordance with clause 6.12.1(3)(ii) (as the case may be) the amount of any unspent capital expenditure calculated in accordance with paragraph (g).
- (i) Without limiting the requirement in paragraph (h), in deciding whether or not to accept the forecast of required capital expenditure of a *Distribution*

Network Service Provider for the second regulatory control period in accordance with this clause 6.5.7, the AER must not:

- (1) assess the reasonableness of the amount of unspent capital expenditure for a contingent project referred to in paragraph (g) or the remaining period to which the contingent project applies;
 - (2) assess the reasonableness of the timing of the unspent capital expenditure within the remaining period for a contingent project referred to in paragraph (g) except as part of the assessment of the total forecast capital expenditure under paragraph (c); or
 - (3) take into account any amount which represents for a contingent project referred to in paragraph (g) the difference between:
 - (i) the amount representing the sum of the forecast capital expenditure for that contingent project for each year of the immediately preceding regulatory control period referred to in clause 6.6A.2(e)(1)(i); and
 - (ii) the total capital expenditure actually incurred (or estimated capital expenditure for any part of the preceding regulatory control period for which actual capital expenditure is not available) in the immediately preceding regulatory control period for that contingent project.
- (j) A regulatory proposal in respect of the second regulatory control period must not include in the forecast of required capital expenditure referred to in paragraph (a) any capital expenditure for a contingent project for the first regulatory control period:
- (1) to the extent that the capital expenditure was included in the amount of capital expenditure for that contingent project as determined in the first regulatory control period under clause 6.6A.2(e)(1)(i); and
 - (2) the capital expenditure actually incurred (or estimated capital expenditure for any part of the first regulatory control period for which actual capital expenditure is not available) in the first regulatory control period for that contingent project exceeded the capital expenditure referred to in subparagraph (1).

6.5.8 Efficiency benefit sharing scheme

- (a) The AER must, in accordance with the *distribution consultation procedures*, develop and publish ~~a scheme~~ an incentive scheme or schemes (*efficiency benefit sharing scheme*) that provide for a fair sharing between *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 electricity 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 in accordance with the *distribution consultation procedures*, amend or replace an *efficiency benefit sharing scheme*.

6.5.8A Capital expenditure sharing scheme

- (a) A capital expenditure sharing scheme is a scheme that provides *Distribution Network Service Providers* with an incentive to undertake efficient capital expenditure during a regulatory control period.
- (b) If the AER develops a capital expenditure sharing scheme in accordance with this clause, the capital expenditure sharing scheme must be consistent with the capital expenditure incentive objective.
- (c) In developing a capital expenditure sharing scheme, the AER must take into account the following principles (the capital expenditure sharing scheme principles):

- (1) *Distribution Network Service Providers* should be rewarded or penalised for improvements or declines in efficiency of capital expenditure; and
 - (2) the rewards and penalties should be commensurate with the efficiencies or inefficiencies in capital expenditure, but a reward for efficient capital expenditure need not correspond in amount to a penalty for the same amount of inefficient capital expenditure.
- (d) In developing a *capital expenditure sharing scheme*, the AER must also take into account:
 - (1) the interaction of the scheme with other incentives that *Distribution Network Service Providers* may have in relation to undertaking efficient operating or capital expenditure; and
 - (2) the *capital expenditure objectives* and, if relevant, the *operating expenditure objectives*.
- (e) In deciding:
 - (1) whether to apply a *capital expenditure sharing scheme* to a *Distribution Network Service Provider* for a *regulatory control period*; and
 - (2) the nature and details of any *capital expenditure sharing scheme* that is to apply to a *Distribution Network Service Provider* for a *regulatory control period*,

the AER must:

 - (3) make that decision in a manner that contributes to the achievement of the *capital expenditure incentive objective*; and
 - (4) take into account:
 - (i) both the *capital expenditure sharing scheme principles*, and the matters referred to in paragraph (d), as they apply to the *Distribution Network Service Provider*; and
 - (ii) the circumstances of the *Distribution Network Service Provider*.

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~~ *Distribution Network Service 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 *Distribution Network Service Provider's* ~~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~~ for different regulatory years of the regulatory control period; and
 - (2) if there are 2 or more control mechanisms – for each control mechanism.

6.5.10 Pass through events

- (a) A *building block proposal* may include a proposal as to the events that should be defined as *pass through events* under clause 6.6.1(a1)(5) having regard to the *nominated pass through event considerations*.
- (b) In determining whether to accept the pass through events nominated by a *Distribution Network Service Provider* in its *building block proposal* under paragraph (a), the *AER* must take into account the *nominated pass through event considerations*.

6.6 Adjustments after making of building block determination.

6.6.1 Cost pass through

- (a1) Any of the following is a *pass through event* for a distribution determination:
- (1) a *regulatory change event*;
 - (2) a *service standard event*;
 - (3) a *tax change event*;
 - (4) a *retailer insolvency event*; and
 - (5) any other event specified in a distribution determination as a *pass through event* for the determination.
- (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 *Distribution Network Service Provider* ~~provider~~ proposes in relation to the *positive change event*; ~~and~~
 - (5) the amount of the *positive pass through amount* that the *Distribution Network Service Provider* ~~provider~~ proposes should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred; ~~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~~
- (iii) in relation to a *retailer insolvency event*, of :
 - (A) the amount to which the *Distribution Network Service Provider* is entitled under any relevant *credit support*; and
 - (B) the maximum amount of *credit support* (if any) that the *Distribution Network Service Provider* was entitled to request the *retailer* to provide under the *credit support rules*; and
 - (C) any amount that the *Distribution Network Service Provider* is likely to receive on a winding-up of the *retailer*; 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 the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred,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:~~

(e) Subject to paragraph (k1), if the AER does not make the determinations referred to in paragraph (d) within 40 business days from the later of the date it receives the *Distribution Network Service Provider's* statement and accompanying evidence under paragraph (c), and the date it receives any additional information required under paragraph (e1), 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 *Distribution Network Service Provider's* ~~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 *Distribution Network Service Provider* ~~provider~~ proposes in its statement under paragraph(c) should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred, is the amount that should be so passed through in each such *regulatory year*.

(e1) A *Distribution Network Service Provider* must provide the AER with such additional information as the AER requires for the purpose of making a determination under paragraph (d) within the time specified by the AER in a notice provided to the *Distribution Network Service Provider* by the AER for that purpose.

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 *Distribution Network Service Provider* ~~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 *direct control services* that the *Distribution Network Service Provider* ~~provider~~ has saved and is likely to save as a result of the *negative change event* until:
 - (i) unless subparagraph (ii) applies – the end of the *regulatory control period* in which the *negative change event* occurred; or
 - (ii) if the distribution determination for the *regulatory control period* following that in which the *negative change event* occurred does not make any allowance for the pass through of those cost savings - the end of the *regulatory control period* following that in which the *negative change event* occurred; ~~and~~
 - (4) the aggregate amount of those saved costs that the *Distribution Network Service Provider* ~~provider~~ proposes should be passed through to *Distribution Network Users*; ~~and~~
 - (5) the amount of the costs referred to in subparagraph (4) the *Distribution Network Service Provider* ~~provider~~ proposes should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *negative change event* occurred; and
 - (6) such other information as may be required under any relevant *regulatory information instrument*.

(f1) If the occurrence of the *negative change event* is not notified by the *Distribution Network Service Provider* to the AER under paragraph (f) then, as soon as is reasonably practicable and before making a determination referred to in paragraph (g), the AER must notify the *Distribution Network Service Provider* of the occurrence of that *negative change event*.

(g) If a *negative change event* occurs (whether or not the occurrence of that *negative change event* is notified by the *Distribution Network Service Provider* ~~provider~~ to the AER under paragraph (f)) and the AER determines to impose a requirement on the *Distribution Network Service Provider* ~~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 the *regulatory year* in which, and each *regulatory year* after that in which, the *negative change event* occurred.

(g1) Subject to paragraph (k1), if the AER does not make the determinations referred to in paragraph (g) within 40 *business days* from:

- (1) where the *Distribution Network Service Provider* notifies the AER of the occurrence of the *negative change event* under paragraph (f) - the later of the date the AER receives the *Distribution Network Service Provider's* statement under paragraph (f) and the date the AER receives any information required by the AER under paragraph (h); or
- (2) where the *Distribution Network Service Provider* does not notify the AER of the occurrence of the *negative change event* under paragraph (f) – the later of the date the AER notifies the *Distribution Network Service Provider* under paragraph (g1) and the date the AER receives any information required by the AER under paragraph (h),

then the AER is taken to have determined that the required pass through amount is zero.

(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 *Distribution Network Service Provider* ~~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 *Distribution Network Service Provider* ~~provider~~ under paragraph (c) or (f); ~~and~~
 - (2) in the case of a *positive change event*, the increase in costs in the provision of *direct control services* that, as a result of the *positive change event*, the *Distribution Network Service Provider* ~~provider~~ has incurred and is likely to incur until:
 - (i) unless subparagraph(ii) applies – the end of the *regulatory control period* in which the *positive change event* occurred; or
 - (ii) if the distribution determination for the *regulatory control period* following that in which the *positive change event* occurred does not make any allowance for the recovery of that increase in costs – the end of the *regulatory control period* following that in which the *positive change event* occurred; ~~and~~
 - (2A) in the case of a *negative change event*, the costs in the provision of *direct control services* that, as a result of the *negative change event*, the *Distribution Network Service Provider* ~~provider~~ has saved and is likely to save until:
 - (i) unless subparagraph(ii) applies – the end of the *regulatory control period* in which the *negative change event* occurred; or
 - (ii) if the distribution determination for the *regulatory control period* following that in which the *negative change event* occurred does not make any allowance for the pass through of those cost savings to *Distribution Network Users* – the end of the *regulatory control period* following that in which the *negative change event* occurred; ~~and~~
 - (3) in the case of a *positive change event*, the efficiency of the *Distribution Network Service Provider's* ~~provider's~~ decisions and actions in relation to the risk of the *positive change event*, including whether the *Distribution Network Service Provider* ~~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 *Distribution Network Service*

- ~~Provider 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~~ allowed rate of return for the Distribution Network Service Provider ~~provider~~ for the *regulatory control period* in which the *pass through event* occurred; ~~and~~
 - (5) the need to ensure that the Distribution Network Service Provider ~~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 Distribution Network Service Provider's ~~provider's~~ *annual revenue requirement* for the *regulatory control period* in which the *pass through event* occurred or will be factored into the calculation of the Distribution Network Service Provider's ~~provider's~~ *annual revenue requirement* for a subsequent *regulatory control period*; ~~and~~
 - (7A) the extent to which the costs that the Distribution Network Service Provider ~~provider~~ has incurred and is likely to incur are the subject of a previous determination made by the *AER* under this clause 6.6.1; and
 - (8) any other factors that 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(e) or clause 6.6.1(f)~~ paragraph (c) or (f) if the *AER* is satisfied that the difficulty of assessing or quantifying the effect of the relevant *pass through event* justifies the extension.
 - (k1) If the *AER* is satisfied that the making of a determination under paragraph (d) or (g) involves issues of such complexity or difficulty that the time limit fixed in paragraph (e) or (g) should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the *Distribution Network Service Provider* of that extension not later than 10 *business days* before the expiry of that time limit.
 - (k2) If the *AER* extends a time limit under paragraph (k1), it must make available on its website a notice of that extension as soon as is reasonably practicable.

- (k3) Subject to paragraph (k6), if the AER gives a written notice to the Distribution Network Service Provider stating that it requires information from an Authority in order to make a determination under paragraph (d) or (g) then, for the purpose of calculating elapsed time, the period between when the AER gives that notice to the Distribution Network Service Provider and when the AER receives that information from that Authority is to be disregarded.
- (k4) Subject to paragraph (k6), if the AER gives a written notice to the Distribution Network Service Provider stating that, in order to make a determination under paragraph (d) or (g), it requires information that it anticipates will be made publicly available by a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the AER gives that notice to the Distribution Network Service Provider and when that information is made publicly available is to be disregarded.
- (k5) Where the AER gives a notice to the Distribution Network Service Provider under paragraph (k3) or (k4), it must:
- (1) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (k3) or (k4), as the case may be, has commenced;
 - (2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (k3) or (k4), as the case may be, has ended; and
 - (3) if the information specified in that notice is required from an Authority, promptly request that information from the relevant Authority.
- (k6) Paragraphs (k3) and (k4) do not apply if the AER gives the notice specified in those paragraphs to the Distribution Network Service Provider later than 10 business days before the expiry of the time limit fixed in paragraphs (e) or (g1).

retailer insolvency event

- (l) For the purposes of calculating the *eligible pass through* amount in relation to a *positive change event* which is a *retailer insolvency event*, the increase in costs is the *retailer insolvency costs* excluding:
 - (i) any amount recovered or recoverable from a *retailer* or a guarantor of a *retailer* under any relevant *credit support*; and
 - (ii) amounts that the *Distribution Network Service Provider* is likely to receive on a winding-up of the *retailer*; and
 - (iii) any costs that are recoverable under a *RoLR cost recovery scheme distributor payment* determination.

- (m) The amount the *AER* determines should be passed through to *Distribution Network Users* in respect of a *retailer insolvency event* must be taken to be a cost that can be passed through and not a revenue impact of the event.

6.6.1A Reporting on jurisdictional schemes

- (a) If during a *regulatory control period*:
 - (1) a scheme becomes a *jurisdictional scheme*; or
 - (2) a *Distribution Network Service Provider* first becomes subject to *jurisdictional scheme obligations* under a *jurisdictional scheme*; and
 - (3) the relevant *jurisdictional scheme* is not an *approved jurisdictional scheme*,

then a *Distribution Network Service Provider* may request the *AER* to determine how the *Distribution Network Service Provider* is to report to the *AER* on its recovery of *jurisdictional scheme amounts* in respect of that scheme 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 amounts.

- (b) To make a request under paragraph (a), a *Distribution Network Service Provider* must submit to the *AER*, as soon as practicable after the event referred to in subparagraph (a)(1) or (2), a written statement which specifies:
 - (1) the name of the relevant *jurisdictional scheme*;
 - (2) the date of the event referred to in subparagraph (a)(1) or (2);
 - (3) details of how the *Distribution Network Service Provider* proposes to:
 - (i) estimate the *jurisdictional scheme amounts* for the relevant *jurisdictional scheme* for the purposes of clause 6.18.7A(b);
 - (ii) carry out any adjustments to *jurisdictional scheme amounts* for the relevant *jurisdictional scheme* for the purposes of clause 6.18.7A(b); and
 - (iii) report to the *AER* on the recovery process under clause 6.18.7A (a) to (c).
- (c) The *AER* must as soon as practicable after receiving a statement under paragraph (b), *publish* the statement.
- (d) Before making a determination under paragraph (e), 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 statement the *AER* considers appropriate.

- (e) Within 60 *business days* of receiving the statement under paragraph (b), the *AER* must make a determination on how the *Distribution Network Service Provider* is to report to the *AER* on its recovery of *jurisdictional scheme amounts* for the relevant *jurisdictional scheme* 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 amounts.
- (f) If the *AER* does not make the determination referred to in paragraph (e) within 60 *business days* of receiving the statement under paragraph (b) then, on expiry of that period, the *AER* is taken to have approved the process proposed in the *Distribution Network Service Provider's* statement.

6.6.2 Service target performance incentive scheme

- (a) The *AER* must, in accordance with the *distribution consultation procedures*, develop and *publish* an incentive scheme or ~~incentive schemes~~ 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 electricity 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~~Distribution Network 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 in accordance with the *distribution consultation procedures*, amend or replace any scheme that is developed and *published* under this clause.

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 and embedded generation connection incentive scheme

- (a) The *AER*, may in accordance with the *distribution consultation procedures*, develop and *publish* ~~a demand management and embedded generation connection scheme or schemes~~an incentive scheme or schemes (demand management and embedded generation connection incentive scheme) to provide incentives for *Distribution Network Services Providers* to implement efficient non-network alternatives, or to manage the expected demand for *standard control services* in some other way, or to efficiently connect *Embedded Generators*.
- (b) In developing and implementing a demand management and embedded generation connection incentive scheme, the *AER* must have regard to:
- (1) the need to ensure that benefits to electricity 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 and embedded generation connection incentive scheme and other incentive schemes under clauses 6.5.8, 6.5.8A, 6.6.2 and 6.6.4;
 - (5) the willingness of the customer or end user to pay for increases in costs resulting from implementation of the scheme; and
 - (6) the effect of classification of *distribution services*, as determined in accordance with clause 6.2.1, on a *Distribution Network Service Provider's* incentive to adopt or implement efficient *Embedded Generator connections*.
- (c) The *AER* may, from time to time and in accordance with the *distribution consultation procedures*, 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.~~ **[Deleted]**

6.6.4 Small-scale incentive scheme

- (a) The *AER* may, in accordance with the *distribution consultation procedures*, develop and *publish* an incentive scheme or schemes (*small-scale incentive scheme*) that provides *Distribution Network Service Providers* with incentives to provide *standard control services* in a manner that contributes to the achievement of the *national electricity objective*.
- (b) In developing and applying a *small-scale incentive scheme*, the *AER* must have regard to the following matters:
- (1) *Distribution Network Service Providers* should be rewarded or penalised for efficiency gains or losses in respect of their *distribution systems*;
 - (2) the rewards and penalties should be commensurate with the efficiency gains or efficiency losses in respect of a *distribution system*, but a reward for efficiency gains need not correspond in amount to a penalty for efficiency losses;
 - (3) the benefits to electricity consumers that are likely to result from efficiency gains in respect of a *distribution system* should warrant the rewards provided under the scheme, and the detriments to electricity consumers that are likely to result from efficiency losses in respect of a *distribution system* should warrant the penalties provided under the scheme;
 - (4) the interaction of the scheme with other incentives that *Distribution Network Service Providers* may have under the *Rules*; and
 - (5) the *capital expenditure objectives* and the *operating expenditure objectives*.

- (c) The AER may, from time to time and in accordance with the *distribution consultation procedures*, amend or replace any *small-scale incentive scheme*.
- (d) Where the AER applies a *small-scale incentive scheme* to a *Distribution Network Service Provider* for a *regulatory control period*:
- (1) the aggregate rewards or penalties for a *regulatory year* in that *regulatory period* that are provided or imposed under that scheme and any other *small-scale incentive schemes* that apply to that *Distribution Network Service Provider* must not exceed 0.5% of the *annual revenue requirement* for the *Distribution Network Service Provider* for that *regulatory year* unless the *Distribution Network Service Provider* consents to the contrary, in which case that aggregate must not exceed 1% of the *annual revenue requirement* for the *Distribution Network Service Provider* for that *regulatory year*; and
 - (2) the *small-scale incentive scheme* must cease to provide rewards or impose penalties in respect of a *regulatory year* after the expiry of such a period as is determined by the AER, being a period that is not more than two *regulatory control periods* after the commencement of that scheme.
- (e) Notwithstanding anything else contained in this clause, the AER may require a *Distribution Network Service Provider* to participate in a trial of a *small-scale incentive scheme* under which, for the duration of that trial, the *Distribution Network Service Provider* is not required to bear any penalty and is not entitled to earn any reward.

6.6.5 Reopening of distribution determination for capital expenditure

- (a) Subject to paragraph (b), a *Distribution Network Service Provider* may, during a *regulatory control period*, apply to the AER to revoke and substitute a distribution determination that applies to it where:
- (1) an event that is beyond the reasonable control of the *Distribution Network Service Provider* has occurred during that *regulatory control period* and the occurrence of that event during that period (or of an event of a similar kind) could not reasonably have been foreseen by the *Distribution Network Service Provider* at the time of the making of the distribution determination ('**the event**');
 - (2) no forecast capital expenditure was accepted or substituted by the AER for that period under clauses 6.5.7(c) or 6.12.1(3)(ii) (as the case may be) in relation to the event that has occurred;
 - (3) the *Distribution Network Service Provider* proposes to undertake capital expenditure to rectify the adverse consequences of the event;
 - (4) the total of the capital expenditure required during the *regulatory control period* to rectify the adverse consequences of the event;

- (i) exceeds 5% of the value of the regulatory asset base for the relevant *Distribution Network Service Provider* for the first year of the relevant *regulatory control period*;
- (ii) is such that, if undertaken, it is reasonably likely (in the absence of any other reduction in capital expenditure) to result in the total actual capital expenditure for that *regulatory control period* exceeding the total of the forecast capital expenditure for that *regulatory control period* as accepted or substituted by the *AER* in accordance with clauses 6.5.7(c) or 6.12.1(3)(ii) (as the case may be);
- (5) the *Distribution Network Service Provider* can demonstrate that it is not able to reduce capital expenditure in other areas to avoid the consequence referred to in subparagraph (a)(4)(ii) without materially adversely affecting the *reliability* and security of the relevant *distribution system*;
- (6) a failure to rectify the adverse consequences of the event would be likely to materially adversely affect the *reliability* and security of the relevant *distribution system*; and
- (7) the event is not a *pass through event* or a *contingent project*.

In this paragraph (a), a reference to an event includes a series of events or a state of affairs, which may include a greater than anticipated increase in demand.

- (b) An application referred to in paragraph (a) must not be made within 90 *business days* prior to the end of a *regulatory year*.
- (c) Following its receipt of an application made in accordance with paragraphs (a) and (b), the *AER* must:

 - (1) consult with the *Distribution Network Service Provider* and such other persons as it considers appropriate in relation to the application; and
 - (2) make its decision on the application within 40 *business days* from the later of the date the *AER* receives the application and the date the *AER* receives any information required by the *AER* under paragraph (g).

- (d) The *AER* must, and must only, revoke a distribution determination following an application made in accordance with paragraphs (a) and (b) if the *AER* is satisfied of each of the matters referred to in paragraph (a).
- (e) If the *AER* revokes a distribution determination under paragraph (d), 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.
- (f) The substituted distribution determination must only vary from the revoked distribution determination to the extent necessary:

- (1) to adjust the forecast capital expenditure for that *regulatory control period* to accommodate the amount of such additional capital expenditure as the *AER* determines is appropriate (in which case the amount of that adjustment will be taken to be accepted by the *AER* under clause 6.5.7(c)); and
- (2) to reflect the effect of any resultant increase in forecast capital expenditure on:
 - (i) the forecast operating expenditure for the remainder of the *regulatory control period*;
 - (ii) the *annual revenue requirement* for each *regulatory year* in the remainder of the *regulatory control period*; and
 - (iii) the *X factor* for each of the remaining *regulatory years* of the *regulatory control period*.
- (g) A *Distribution Network Service Provider* must provide the *AER* with such additional information as the *AER* requires for the purpose of making a decision on an application made by that *Distribution Network Service Provider* under paragraph (a) within the time specified by the *AER* in a notice provided to the *Distribution Network Service Provider* by the *AER* for that purpose.

Extension of time limit

- (h) If the *AER* is satisfied that the revocation and substitution of a distribution determination under paragraphs (d) and (e) involves issues of such complexity or difficulty that the time limit fixed in subparagraph (c)(2) should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the *Distribution Network Service Provider* of that extension not later than 10 *business days* before the expiry of that time limit.
- (i) If the *AER* extends the time limit under paragraph (h), it must make available on its website a notice of that extension as soon as is reasonably practicable.
- (j) Subject to paragraph (11), if the *AER* gives a written notice to the *Distribution Network Service Provider* stating that it requires information from an *Authority* in order to make a decision on an application made by the *Distribution Network Service Provider* under paragraph (a) then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Distribution Network Service Provider* and when the *AER* receives that information from that *Authority* is to be disregarded.
- (k) Subject to paragraph (11), if the *AER* gives a written notice to the *Distribution Network Service Provider* stating that, in order to make a decision on an application made by the *Distribution Network Service Provider* under paragraph (a), it requires information that it anticipates will be made publicly available by a judicial body or royal commission then, for

the purpose of calculating elapsed time, the period between when the AER gives that notice to the Distribution Network Service Provider and when that information is made publicly available is to be disregarded.

(l) Where the AER gives a notice to the Distribution Network Service Provider under paragraph (j) or (k), it must:

(1) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (j) or (k), as the case may be, has commenced;

(2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (j) or (k), as the case may be, has ended; and

(3) if the information specified in that notice is required from an Authority, promptly request that information from the relevant Authority.

(11) Paragraphs (j) and (k) do not apply if the AER gives the notice specified in those paragraphs to the Distribution Network Service Provider later than 10 business days before the expiry of the time limit fixed in subparagraph (c)(2).

Revocation and substitution of distribution determination

(m) If the AER revokes and substitutes a distribution determination under paragraph (e), that revocation and substitution must take effect from the commencement of the next regulatory year.

6.6A Contingent Projects

6.6A.1 Acceptance of a contingent project in a distribution determination

(a) A regulatory proposal may include proposed contingent capital expenditure, which the Distribution Network Service Provider considers is reasonably required for the purpose of undertaking a proposed contingent project.

(b) The AER must determine that a proposed contingent project is a contingent project if the AER is satisfied that:

(1) the proposed contingent project is reasonably required to be undertaken in order to achieve any of the capital expenditure objectives;

(2) the proposed contingent capital expenditure:

(i) is not otherwise provided for (either in part or in whole) in the total of the forecast capital expenditure for the relevant regulatory control period which is accepted in accordance with

- clause 6.5.7(c) or substituted in accordance with clause 6.12.1(3)(ii) (as the case may be);
- (ii) reasonably reflects the *capital expenditure criteria*, taking into account the *capital expenditure factors*, in the context of the *proposed contingent project* as described in the *regulatory proposal*; and
 - (iii) exceeds either \$30 million or 5% of the value of the *annual revenue requirement* for the relevant *Distribution Network Service Provider* for the first year of the relevant *regulatory control period*], whichever is the larger amount;
- (3) the *proposed contingent project* and the *proposed contingent capital expenditure*, as described or set out in the *regulatory proposal*, and the information provided in relation to these matters, complies with the relevant requirements of any relevant *regulatory information instrument*; and
- (4) the *trigger events* in relation to the *proposed contingent project* which are proposed by the *Distribution Network Service Provider* in its *regulatory proposal* are appropriate.
- (c) In determining whether a *trigger event* in relation to a *proposed contingent project* is appropriate for the purposes of subparagraph (b)(4), the *AER* must have regard to the need for a *trigger event*:
- (1) to be reasonably specific and capable of objective verification;
 - (2) to be a condition or event, which, if it occurs, makes the undertaking of the *proposed contingent project* reasonably necessary in order to achieve any of the *capital expenditure objectives*;
 - (3) to be a condition or event that generates increased costs or categories of costs that relate to a specific location rather than a condition or event that affects the *distribution network* as a whole;
 - (4) to be described in such terms that the occurrence of that event or condition is all that is required for the distribution determination to be amended under clause 6.6A.2; and
 - (5) to be an event or condition, the occurrence of which is probable during the *regulatory control period*, but the inclusion of capital expenditure in relation to it under clause 6.5.7 is not appropriate because:
 - (i) it is not sufficiently certain that the event or condition will occur during the *regulatory control period* or if it may occur after that *regulatory control period* or not at all; or

- (ii) subject to the requirement to satisfy subparagraph (b)(2)(iii), the costs associated with the event or condition are not sufficiently certain.

6.6A.2 Amendment of distribution determination for contingent project

(a) Subject to paragraph (b), a *Distribution Network Service Provider* may, during a *regulatory control period*, apply to the AER to amend a distribution determination that applies to that *Distribution Network Service Provider* where a *trigger event* for a *contingent project* in relation to that distribution determination has occurred.

(b) An application referred to in paragraph (a):

(1) must not be made within 90 *business days* prior to the end of a *regulatory year*;

(2) subject to subparagraph (1), must be made as soon as practicable after the occurrence of the *trigger event*;

(3) must contain the following information:

(i) an explanation that substantiates the occurrence of the *trigger event*;

(ii) a forecast of the total capital expenditure for the *contingent project*;

(iii) a forecast of the capital and incremental operating expenditure, for each remaining *regulatory year* which the *Distribution Network Service Provider* considers is reasonably required for the purpose of undertaking the *contingent project*;

(iv) how the forecast of the total capital expenditure for the *contingent project* meets the threshold as referred to in clause 6.6A.1(b)(2)(iii);

(v) the intended date for commencing the *contingent project* (which must be during the *regulatory control period*);

(vi) the anticipated date for completing the *contingent project* (which may be after the end of the *regulatory control period*);

(vii) an estimate of the incremental revenue which the *Distribution Network Service Provider* considers is likely to be required to be earned in each remaining *regulatory year* of the *regulatory control period* as a result of the *contingent project* being undertaken as described in subparagraph (iii); and

(4) the estimate referred to in subparagraph (3)(vii) must be calculated:

- (i) in accordance with the requirements of the *post-tax revenue model* referred to in clause 6.4.1;
 - (ii) in accordance with the requirements of the *roll forward model* referred to in clause 6.5.1(b);
 - (iii) using the *allowed rate of return* for that *Distribution Network Service Provider* for the *regulatory control period* as determined in accordance with clause 6.5.2;
 - (iv) in accordance with the requirements for depreciation referred to in clause 6.5.5; and
 - (v) on the basis of the capital expenditure and incremental operating expenditure referred to in subparagraph (3)(iii).
- (c) As soon as practicable after its receipt of an application made in accordance with paragraphs (a) and (b), the *AER* must *publish* the application, together with an invitation for written submissions on the application.
- (d) The *AER* must consider any written submissions made under paragraph (c) and must make its decision on the application within 40 *business days* from the later of the date the *AER* receives the application and the date the *AER* receives any information required by the *AER* under paragraph (i). In doing so the *AER* may also take into account such other information as it considers appropriate, including any analysis (such as benchmarking) that is undertaken by it for that purpose.
- (e) If the *AER* is satisfied that the *trigger event* has occurred, and that the forecast of the total capital expenditure for the *contingent project* meets the threshold as referred to in clause 6.6A.1(b)(2)(iii), it must:
 - (1) determine:
 - (i) the amount of capital and incremental operating expenditure, for each remaining *regulatory year*, which the *AER* considers is reasonably required for the purpose of undertaking the *contingent project*;
 - (ii) the total capital expenditure which the *AER* considers is reasonably required for the purpose of undertaking the *contingent project*;
 - (iii) the likely commencement and completion dates for the *contingent project*; and
 - (iv) the incremental revenue which is likely to be required by the *Distribution Network Service Provider* in each remaining *regulatory year* as a result of the *contingent project* being undertaken as described in subparagraphs (i) and (ii), such estimate being calculated in accordance with subparagraph (2);

- (2) calculate the estimate referred to in subparagraph (1)(iv):

 - (i) on the basis of the capital expenditure and incremental operating expenditure referred to in subparagraph (1)(i); and
 - (ii) otherwise in accordance with subparagraph (b)(4); and
- (3) amend the distribution determination in accordance with paragraph (h).
- (f) In making the determinations referred to in subparagraph (e)(1), the AER must accept the relevant amounts and dates, contained in the *Distribution Network Service Provider's* application, as referred to in subparagraph (b)(3)(ii) to (vii), if the AER is satisfied that:

 - (1) the forecast of the total capital expenditure for the *contingent project* meets the threshold as referred to in clause 6.6A.1(b)(2)(iii);
 - (2) the amounts of forecast capital expenditure and incremental operating expenditure reasonably reflect the *capital expenditure criteria* and the *operating expenditure criteria*, taking into account the *capital expenditure factors* and the *operating expenditure factors* respectively, in the context of the *contingent project*;
 - (3) the estimates of incremental revenue are reasonable; and
 - (4) the dates are reasonable.
- (g) In making the determinations referred to in subparagraph (e)(1) and paragraph (f), the AER must have regard to:

 - (1) the information included in or accompanying the application;
 - (2) submissions received in the course of consulting on the application;
 - (3) such analysis as is undertaken by or for the AER;
 - (4) the expenditure that would be incurred in respect of a *contingent project* by an efficient and prudent *Distribution Network Service Provider* in the circumstances of the *Distribution Network Service Provider*;
 - (5) the actual and expected capital expenditure of the *Distribution Network Service Provider* for *contingent projects* during any preceding *regulatory control periods*;
 - (6) the extent to which the forecast capital expenditure for the *contingent project* is referable to arrangements with a person other than the *Distribution Network Service Provider* that, in the opinion of the AER, do not reflect arm's length terms;

- (7) the relative prices of operating and capital inputs in relation to the *contingent project*;
- (8) the substitution possibilities between operating and capital expenditure in relation to the *contingent project*; and
- (9) whether the capital and operating expenditure forecasts for the *contingent project* are consistent with any incentive scheme or schemes that apply to the *Distribution Network Service Provider* under clauses 6.5.8, 6.5.8A or 6.6.2 to 6.6.4.
- (h) Amendments to a distribution determination referred to in subparagraph (e)(3) must only vary the determination to the extent necessary:

 - (1) to adjust the forecast capital expenditure for that *regulatory control period* to accommodate the amount of capital expenditure determined under subparagraph (e)(1)(i) (in which case the amount of that adjustment will be taken to be accepted by the *AER* under clause 6.5.7(c));
 - (2) to adjust the forecast operating expenditure for that *regulatory control period* to accommodate the amount of incremental operating expenditure determined under subparagraph (e)(1)(i) (in which case the amount of that adjustment will be taken to be accepted by the *AER* under clause 6.5.6(c));
 - (3) to reflect the effect of any resultant increase in forecast capital and operating expenditure on:

 - (i) the *annual revenue requirement* for each *regulatory year* in the remainder of the *regulatory control period*; and
 - (ii) the *X factor* for each *regulatory year* in the remainder of the *regulatory control period*.
- (i) A *Distribution Network Service Provider* must provide the *AER* with such additional information as the *AER* requires for the purpose of making a decision on an application made by that *Distribution Network Service Provider* under paragraph (a) within the time specified by the *AER* in a notice provided to the *Distribution Network Service Provider* by the *AER* for that purpose.

Extension of time limit

- (j) If the *AER* is satisfied that amending a distribution determination under paragraphs (e)(3) and (h) involves issues of such complexity or difficulty that the time limit fixed in paragraph (d) should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the *Distribution Network Service Provider* of that extension no later than 10 *business days* before the expiry of that time limit.

- (k) If the AER extends the time limit under paragraph (j), it must make available on its website a notice of that extension as soon as is reasonably practicable.
- (l) Subject to paragraph (n1), if the AER gives a written notice to the *Distribution Network Service Provider* stating that it requires information from an *Authority* in order to make a decision on an application made by the *Distribution Network Service Provider* under paragraph (a) then, for the purpose of calculating elapsed time, the period between when the AER gives that notice to the *Distribution Network Service Provider* and when the AER receives that information from that *Authority* is to be disregarded.
- (m) Subject to paragraph (n1), if the AER gives a written notice to the *Distribution Network Service Provider* stating that, in order to make a decision on an application made by the *Distribution Network Service Provider* under paragraph (a), it requires information from a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the AER gives that notice to the *Distribution Network Service Provider* and when that information is made publicly available is to be disregarded.
- (n) Where the AER gives a notice to the *Distribution Network Service Provider* under paragraph (l) or (m), it must:
- (1) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (l) or (m), as the case may be, has commenced;
 - (2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (l) or (m), as the case may be, has ended; and
 - (3) if the information specified in that notice is required from an *Authority*, promptly request that information from the relevant *Authority*.
- (n1) Paragraphs (l) and (m) do not apply if the AER gives the notice specified in those paragraphs to the *Distribution Network Service Provider* later than 10 *business days* before the expiry of the time limit fixed in paragraph (d).

Amendment of distribution determination

- (o) If the AER amends a distribution determination under paragraph (h), that amendment must take effect from the commencement of the next *regulatory year*.

Part D Negotiated distribution services

6.7 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:
 - (A) in respect of providing *distribution network user access* to *negotiated distribution services* which would have been *negotiated distribution services* regardless of the operation of clause 6.24.2(c) should be based on the costs reasonably incurred by the *Distribution Network Service Provider* in providing that access and, in the case of compensation referred to in clauses 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; and
 - (B) in respect of providing *transmission network user access* to *negotiated distribution services* which would have been treated as *negotiated transmission services* were it not for the operation of clause 6.24.2(c) should be based on the costs reasonably incurred by the *Distribution Network Service Provider* in providing that access and, in the case of compensation referred to in clauses 5.4A(h) - (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 5.5, when negotiating for the provision of *connection services* and the associated *connection service charges* in respect of the provision of *negotiated distribution services* which would have been *negotiated distribution services* regardless of the operation of clause 6.24.2(c);
 - (2) rules 5.3 and 5.4A, when negotiating for the provision of *connection services* and the associated *connection service charges* in respect of the provision of *negotiated distribution services* which would have been treated as *negotiated transmission services* were it not for the operation of clause 6.24.2(c);
 - (3) rule 5.5, when negotiating the *use of system services charges* and *access charges* to be paid to or by a *Distribution Network User* in respect of the provision of *negotiated distribution services* which would have been *negotiated distribution services* regardless of the operation of clause 6.24.2(c); and
 - (4) rule 5.4A, when negotiating the *use of system services charges* and *access charges* to be paid to or by a *Distribution Network User* in respect of the provision of *negotiated distribution services* which would have been treated as *negotiated transmission services* were it not for the operation of clause 6.24.2(c).

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:
 - (1) rules 5.3 and 5.5 insofar as the *negotiating framework* applies to *negotiated distribution services* which would have been *negotiated distribution services* regardless of the operation of clause 6.24.2(c); and
 - (2) rules 5.3 and 5.4A insofar as the *negotiating framework* applies to *negotiated distribution services* which would have been treated as *negotiated transmission services* were it not for the operation of clause 6.24.2(c),

and any other relevant provisions of this Chapter 6 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 Connection policies

6.7A Connection policy requirements

This *Rule* deals with the preparation of, requirements for and approval of *connection policies*.

6.7A.1 Preparation of, and requirements for, connection policy

- (a) A *Distribution Network Service Provider* must prepare a document (its proposed *connection policy*) setting out the circumstances in which it may require a *retail customer* or *real estate developer* to pay a *connection charge*, for the provision of a *connection service* under Chapter 5A.
- (b) The proposed *connection policy*:
 - (1) must be consistent with:
 - (i) the *connection charge principles*; and
 - (ii) the *connection charge guidelines*; and
 - (2) must specify:
 - (i) the categories of persons that may be required to pay a *connection charge* and the circumstances in which such a requirement may be imposed; and
 - (ii) the aspects of a *connection service* for which a *connection charge* may be made; and

Example

The *Distribution Network Service Provider* might (for example) make separate *connection charges* for the provision of a *connection asset* and for making a necessary *extension* to, or other *augmentation* of, the *distribution network*.

- (iii) the basis on which *connection charges* are determined; and
- (iv) the manner in which *connection charges* are to be paid (or equivalent consideration is to be given); and

Examples

The payment (or equivalent consideration) might take the form of a capital contribution, prepayment or financial guarantee.

- (v) a threshold (based on capacity or any other measure identified in the *connection charge guidelines*) below which a *retail customer* (not being a non-registered *embedded generator* or a *real estate developer*) will not be liable for a *connection charge* for an *augmentation* other than an *extension*.

Part E Regulatory proposal

6.8 Regulatory proposal

6.8.1 AER's framework and approach paper

- ~~(a) The AER must prepare and publish a document (a framework and approach paper) in anticipation of every distribution determination.~~
- ~~(b) The framework and approach paper should set out the AER's likely approach (together with its reasons for the likely approach), in the forthcoming distribution determination, to:
 - ~~(1) the classification of distribution services in accordance with Part B; and~~
 - ~~(2) the application to the Distribution Network Service Provider of a service target performance incentive scheme or schemes; and~~
 - ~~(3) the application to the Distribution Network Service Provider of an efficiency benefit sharing scheme or schemes; and~~
 - ~~(4) the application to the Distribution Network Service Provider (if applicable) of a demand management and embedded generation connection incentive scheme; and~~
 - ~~(5) any other matters on which the AER thinks fit to give an indication of its likely approach.~~~~
- ~~(c) The framework and approach paper must state the form (or forms) of the control mechanisms to be applied by the distribution determination and the AER's reasons for deciding on control mechanisms of the relevant form (or forms).~~
- ~~(ca) The framework and approach paper must include the AER's determination under clause 6.25(b) as to whether or not Part J of Chapter 6A is to be applied to determine the pricing of transmission standard control services provided by any dual function assets owned, controlled or operated by the Distribution Network Service Provider.~~
- ~~(d) A framework and approach paper is to be prepared in consultation with the relevant Distribution Network Service Provider and with other interested stakeholders.~~
- ~~(e) The AER should complete its framework and approach paper for a particular distribution network sufficiently in advance of the making of the relevant distribution determination to enable it to be of use to the Distribution Network Service Provider in preparing its regulatory proposal.~~
- ~~(f) If a distribution determination is currently in force, the AER must commence preparation of, and consultation on, the framework and approach paper for the distribution determination that is to supersede it at least 24~~

~~months before the end of the current regulatory control period and must complete preparation at least 19 months before the end of that regulatory control period.~~

~~(g) On completing its framework and approach paper, the AER must:~~

~~(1) give a copy to the Distribution Network Service Provider; and~~

~~(2) publish it.~~

~~(h) Subject to clause 6.12.3, a framework and approach paper is not binding on the AER or a Distribution Network Service Provider.~~

(a) The AER must make and publish a document (a framework and approach paper) that applies in respect of a distribution determination for a matter listed in paragraph (b) in accordance with this clause if:

(1) there is no framework and approach paper that applies in respect of that distribution determination for that matter; or

(2) there is a framework and approach paper that would apply in respect of that distribution determination for that matter, but the AER has published a notice under paragraph (c)(3) stating that it will make an amended or replacement framework and approach paper with respect to that matter.

(b) A framework and approach paper that applies in respect of a distribution determination must set out:

(1) the AER's decision (together with its reasons for the decision), for the purposes of the forthcoming distribution determination, on the following matters:

(i) the form (or forms) of the control mechanisms;

(ii) as to whether or not Part J of Chapter 6A is to be applied to determine the pricing of transmission standard control services provided by any dual function assets owned, controlled or operated by the Distribution Network Service Provider;

Note:

See clause 6.25(b).

(2) the AER's proposed approach (together with its reasons for the proposed approach), in the forthcoming distribution determination, on the following matters:

(i) the classification of distribution services under this Chapter;

(ii) the formulae that give effect to the control mechanisms referred to in subparagraph (1)(i);

- (iii) the application to the *Distribution Network Service Provider* of any *service target performance incentive scheme*;
 - (iv) the application to the *Distribution Network Service Provider* of any *efficiency benefit sharing scheme*;
 - (v) the application to the *Distribution Network Service Provider* of any *capital expenditure sharing scheme*;
 - (vi) the application to the *Distribution Network Service Provider* of any *demand management and embedded generation connection incentive scheme*;
 - (vii) the application to the *Distribution Network Service Provider* of any *small-scale incentive scheme*;
 - (viii) the application to the *Distribution Network Service Provider* of the *Expenditure Forecast Assessment Guidelines*; and
 - (ix) whether depreciation for establishing the regulatory asset base for the relevant *distribution system* as at the commencement of the following *regulatory control period* is to be based on actual or forecast capital expenditure in accordance with clause *S6.2.2B*.
- (c) If there is a *framework and approach paper* that would apply in respect of the distribution determination for a matter listed in paragraph (b) then:
- (1) no later than 32 months before the end of the *regulatory control period* that precedes that for which the distribution determination is to be made, the *Distribution Network Service Provider* may request the *AER* in writing to make an amended or replacement *framework and approach paper* in respect of a matter. The request must specify the *Distribution Network Service Provider's* reasons for making that request;
 - (2) no later than 31 months before the end of the *regulatory control period* that precedes that for which the distribution determination is to be made, the *AER* must *publish* a notice inviting submissions on whether it is necessary or desirable to amend or replace that *framework and approach paper* in so far as it relates to a matter (other than any matter specified in a request from the *Distribution Network Service Provider* under subparagraph (1)); and
 - (3) no later than 30 months before the end of the *regulatory control period* that precedes that for which the distribution determination is to be made, the *AER* must make and *publish* a notice that:

 - (i) states that it will make an amended or replacement *framework and approach paper* in respect of the matters specified in a request from the *Distribution Network Service Provider* under subparagraph (1) (if any);

- (ii) if subparagraph (i) applies, is accompanied by a copy of the request from the *Distribution Network Service Provider* under subparagraph (1); and
 - (iii) states whether it will make an amended or replacement *framework and approach paper* in respect of any matter other than any matters referred to in subparagraph (i) above and, if so, the reasons why it considers that it is necessary or desirable to make an amended or replacement *framework and approach paper* in respect of that matter.
- (d) In making the decision referred to in paragraph (c)(3)(iii), the *AER* must have regard to any submissions made in response to the invitation under paragraph (c)(2).
- (e) Where paragraph (a) applies then, at least 23 months before the end of the current *regulatory control period*, the *AER* must, after consulting with the relevant *Distribution Network Service Provider* and other persons as the *AER* considers appropriate, make, amend or replace the *framework and approach paper*, as the case may be, and:
 - (1) give a copy of it to the relevant *Distribution Network Service Provider*; and
 - (2) publish it,as soon as is reasonably practicable.
- (f) Subject to clauses 6.12.3 and 6.25(d), a *framework and approach paper* is not binding on the *AER* or a *Distribution Network Service Provider*.
- (g) The *AER* may make and publish a *framework and approach paper* that applies in respect of a distribution determination for a matter that is not listed in paragraph (b) and, if it does so, this clause 6.8.1 applies as if that matter were listed in paragraph (b).

6.8.1A Notification of approach to forecasting expenditure

- a) A *Distribution Network Service Provider* must inform the *AER* of the methodology it proposes to use to prepare the forecasts of operating expenditure and capital expenditure that form part of its *regulatory proposal*.
- (b) A *Distribution Network Service Provider* must submit the information referred to in paragraph (a):
 - (1) at least 24 months before the expiry of a distribution determination that applies to the *Distribution Network Service Provider*; or
 - (2) if no distribution determination applies to the *Distribution Network Service Provider*, within 3 months after being required to do so by the *AER*.

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 [*Distribution Network Service Provider's*](#) ~~provider's~~ *distribution system*.
- (b) A *regulatory proposal* must be submitted:
- (1) at least ~~13 months~~ 17 months before the expiry of a distribution determination that applies to the [*Distribution Network Service Provider's*](#) ~~service provider~~; or
 - (2) if no distribution determination applies to the [*Distribution Network Service Provider's*](#) ~~service provider~~, within 3 months after being required to do so by the AER.
- (c) A *regulatory proposal* must include (but need not be limited to) the following elements:
- (1) a classification proposal:
 - (i) showing how the *distribution services* to be provided by the *Distribution Network Service Provider* should, in the [*Distribution Network Service Provider's*](#) ~~provider's~~ opinion, be classified under this Chapter; and
 - (ii) if the proposed classification differs from the classification suggested in the relevant *framework and approach paper* – including the reasons for the difference; ~~and~~
 - (2) for *direct control services* classified under the proposal as *standard control services* – a *building block proposal*; ~~and~~
 - (3) for *direct control services* classified under the proposal as *alternative control services* – a demonstration of the application of the control mechanism, as set out in the *framework and approach paper*, and the necessary supporting information; ~~and~~
 - (4) for *direct control services* – indicative prices for each year of the *regulatory control period*; ~~and~~
 - (5) for services classified under the proposal as *negotiated distribution services* – the proposed *negotiating framework*; ~~and~~
 - (5A) the proposed *connection policy*; and
 - ~~(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.~~

(6) an identification of any parts of the *regulatory proposal* the *Distribution Network Service Provider* claims to be confidential and wants suppressed from publication on that ground in accordance with the *Distribution Confidentiality Guidelines*.

Note:

Additional information that must be included in a *regulatory proposal* is referred to in clause 6.3.1(c) and Schedule 6.1.

(c1) The *regulatory proposal* must be accompanied by an overview paper which includes each of the following matters:

(1) a summary of the *regulatory proposal* the purpose of which is to explain the *regulatory proposal* in reasonably plain language to electricity consumers;

(2) a description of how the *Distribution Network Service Provider* has engaged with electricity consumers and has sought to address any relevant concerns identified as a result of that engagement;

(3) a description of the key risks and benefits of the *regulatory proposal* for electricity consumers; and

(4) a comparison of the *Distribution Network Service Provider's* proposed *total revenue requirement* with its *total revenue requirement* for the *current regulatory control period* and an explanation for any material differences between the two amounts.

(c2) The *regulatory proposal* must be accompanied by information required by the *Expenditure Forecast Assessment Guidelines* as set out in the *framework and approach paper*.

(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) If more than one *distribution system* is owned, controlled or operated by a *Distribution Network Service Provider*, then, unless the *AER* otherwise determines, a separate *regulatory proposal* is to be submitted for each *distribution system*.

(f) If, at the commencement of this Chapter, different parts of the same *distribution system* were separately regulated, then, unless the *AER* otherwise determines, a separate *regulatory proposal* is to be submitted for each part as if it were a separate *distribution system*.

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 [Distribution Network Service Provider 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* [\(or the accompanying information\)](#) 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* [\(or the accompanying information\)](#) 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* [\(or the accompanying information\)](#) to address the deficiencies identified in the notice.

6.9.2A Confidential information

If the *Distribution Network Service Provider* has identified any part of the *regulatory proposal* as submitted or resubmitted to the *AER* (as the case may be) under this Part to be confidential, the *AER* must, as soon as is reasonably practicable, include on its website a notice that sets out:-

- (a) the fact that the *regulatory proposal* contains information over which a claim of confidentiality has been made;
- (b) the proportion of material in the *regulatory proposal* that is subject to any claim of confidentiality compared to that which is not subject to any such claim; and
- (c) the comparative proportion of material in the *regulatory proposal* that is subject to any claim of confidentiality compared to that which is subject to claims of confidentiality in the *regulatory proposals* of other *Distribution Network Service Providers*.

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 provider under this Part~~ [publish a *regulatory proposal* \(and the accompanying information\) submitted or resubmitted to it \(as the case may be\) by the *Distribution Network Service Provider* under clause 6.8.2 or 6.9.2](#), together with:

- (1) the AER's proposed *Negotiated Distribution Service Criteria* for the *Distribution Network Service Provider*~~provider~~; and
- (2) an invitation for written submissions on the *regulatory proposal* and the proposed *Negotiated Distribution Service Criteria*,

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 *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 *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.~~

(b) The AER must publish:

(1) an issues paper not more than 40 *business days* after the submission, under clause 6.8.2, of the *regulatory proposal*;

(2) an invitation for written submissions on the issues paper; and

(3) an invitation to attend a public forum on the issues paper.

(b1) The issues paper referred to in paragraph (b) must identify preliminary issues, whether or not arising out of the *regulatory proposal*, that the AER considers are likely to be relevant to its assessment of the *regulatory proposal* (however, nothing in this clause is to be taken as precluding the AER from considering other issues in making a distribution determination for the *Distribution Network Service Provider*).

(b2) The AER must hold a public forum on the issues paper not more than 10 *business days* after the publication of the issues paper.

(c) Any person may make a written submission to the AER on the *regulatory proposal*, the proposed *Negotiated Distribution Service Criteria* or the issues paper within the time specified in the invitations referred to in paragraphs (a)(2) and (b), which in each case must be not earlier than 30 *business days* after the publication of the issues paper.

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*.~~

- (a) The AER must make a draft distribution determination in relation to the Distribution Network Service Provider.
- (b) In making a draft distribution determination in relation to the Distribution Network Service Provider, and subject to clause 6.14, the AER must have regard to each of the following:
 - (1) the information included in or accompanying the regulatory proposal;
 - (2) written submissions on the issues paper received under clause 6.9.3, the regulatory proposal and the proposed Negotiated Distribution Service Criteria; and
 - (3) any analysis undertaken by or for the AER that is published prior to the making of the draft distribution determination or as part of the draft distribution determination.

6.10.2 Publication of draft determination and consultation

- (a) The AER must, as soon as practicable after the relevant date referred to in clause 6.8.2(b), 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.~~
- (b) The AER must hold the predetermination conference at the time, date and place specified in the notice under subparagraph (a)(4) for the purpose of explaining the draft distribution determination.
- (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~~45 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~~^{45 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* or the Rules.
- (c1) If the *Distribution Network Service Provider* has identified any Part of the revised *regulatory proposal* to the AER under this part to be confidential, the AER must, as soon as is reasonably practicable, make available on its website a notice that sets out:
- (1) the fact that the revised *regulatory proposal* contains information over which a claim of confidentiality has been made;
 - (2) the proportion of material in the revised *regulatory proposal* that is subject to any claim of confidentiality compared to that which is not subject to any such claim; and
 - (3) the comparative proportion of material in the revised *regulatory proposal* that is subject to any claim of confidentiality compared to that which is subject to claims of confidentiality in the revised *regulatory proposals* of other *Distribution Network Service Providers*.
- (d) Subject to the provisions of the Law and the *Rules* about the disclosure of *confidential information*, the AER must *publish* a revised *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*.

6.10.4 Submissions on specified matters

If the AER invites submissions on a revised *regulatory proposal* under clause 6.10.3(e), the AER may invite further written submissions on the submissions received under clause 6.10.2(c) or 6.10.3(e) by *publishing* an invitation which specifies:

- (a) the matters in respect of which submissions are invited; and

- (b) the time for making submissions, which must not be earlier than 15 business days after the date on which the invitation was published.

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.~~

- (a) The AER must make a distribution determination in relation to the Distribution Network Service Provider.
- (b) In making a distribution determination in relation to the Distribution Network Service Provider, and subject to rule 6.14, the AER must have regard to each of the following:
- (1) the information included in or accompanying the regulatory proposal;
 - (2) written submissions received under this Part E; and
 - (3) any analysis undertaken by or for the AER that is published prior to the making of the distribution determination or as part of the distribution determination.
- (c) The AER must use its best endeavours to publish, a reasonable time prior to the making of the distribution determination, any analysis undertaken by or for it on which it proposes to rely, or to which it proposes to refer, for the purposes of the distribution determination.

6.11.1A Out of scope revised regulatory proposal or late submissions

On or before making a distribution determination, the AER must make available on its website:

- (a) a summary of any revisions to the relevant regulatory proposal that have been made in a revised regulatory proposal that do not comply with clause 6.10.3(b), together with an indication of the amount of that information;
- (b) a summary of any submissions on the draft distribution determination or revised regulatory proposal that were made by the Distribution Network Service Provider and that contain information that the Distribution Network Service Provider was entitled to incorporate in the revised regulatory proposal under clause 6.10.3(b), together with an indication of the amount of that information;
- (c) a summary of any submissions that purport to be made by the Distribution Network Service Provider under clause 6.10.4 but are in respect of matters

other than those specified by the AER under that clause, together with an indication of the length of those submissions; and

- (d) a summary of any submissions on the draft determination or revised regulatory proposal that were made by the Distribution Network Service Provider after the time for making the submissions has expired, together with an indication of the length of those submissions. For the purpose of this clause 6.11.1A, revisions or submissions may be summarised by cross-referencing to the relevant regulatory proposal or submissions.

For the purpose of this clause 6.11.1A, revisions or submissions may be summarised by cross-referencing to the relevant regulatory proposal or submissions.

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 previous *approved pricing proposal* continues in force (despite any contrary provision of these *Rules*) during the intervening period and the first *regulatory year* of the later *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 [Distribution Network Service Provider](#)~~provider~~, as set out in the *building block proposal*, for each *regulatory year* of the *regulatory control period*; and
 - (ii) the commencement and length of the *regulatory control period* as proposed in the *building block proposal*;
- (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 on whether to apply or depart from a value, method or credit rating level set out in a statement of regulatory intent in accordance with clause 6.5.4;~~

(4A) a decision in which the AER determines:

(i) whether each of the *proposed contingent projects* (if any) described in the current *regulatory proposal* are *contingent projects* for the purposes of the distribution determination in which case the decision must clearly identify each of those *contingent projects*;

(ii) the capital expenditure that it is satisfied reasonably reflects the *capital expenditure criteria*, taking into account the *capital expenditure factors*, in the context of each *contingent project* as described in the current *regulatory proposal*;

(iii) the *trigger events* in relation to each *contingent project* (in which case the decision must clearly specify those *trigger events*); and

(iv) if the AER determines that such a *proposed contingent project* is not a *contingent project* for the purposes of the distribution determination, its reasons for that conclusion, having regard to the requirements of clause 6.6A.1(b);

(5) a decision on the *allowed rate of return* for each *regulatory year* of the *regulatory control period* in accordance with clause 6.5.2;

(5A) a decision on whether the return on debt is to be estimated using a *methodology* referred to in clause 6.5.2(i)(2) and, if that is the case, the *formula* that is to be applied in accordance with clause 6.5.2(l);

(5B) a decision on the value of imputation credits as referred to in clause 6.5.3;

(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 *Distribution Network Service Provider* ~~provider~~ for each *regulatory year* of the *regulatory control period* in accordance with clause 6.5.3 ~~and, where relevant, a statement of regulatory intent under clause 6.5.4;~~

(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 and embedded generation connection incentive schemes* 6.1.3~~

~~is to apply to the *Distribution Network Service Provider*;~~

- (9) a decision on how any applicable *efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme, demand management and embedded generation connection incentive scheme or small-scale 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* (to be in accordance with the relevant framework and approach paper);~~
- (11) a decision on the form of the control mechanisms (including the X factor) for *standard control services* (to be in accordance with the relevant framework and approach paper) and on the formulae that give effect to those control mechanisms;
- ~~(12) a decision on the control mechanism for *alternative control services* (to be in accordance with the relevant framework and approach paper);~~
- (12) a decision on the form of the control mechanisms for *alternative control services* (to be in accordance with the relevant framework and approach paper) and on the formulae that give effect to those control mechanisms;
- (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* in accordance with clause 6.5.10;
- (15) a decision on the *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 *Distribution Network Service Provider*~~provider~~, some variant of it, or a framework substituted by the AER);
- (16) a decision in which the AER decides the *Negotiated Distribution Service Criteria* for the *Distribution Network Service Provider*;
- (17) a decision on the procedures for assigning *retail customers* to *tariff classes*, or reassigning *retail customers* from one *tariff class* to another (including any applicable restrictions);
- (17A) a decision on the approval of the proposed *pricing methodology* for *transmission standard control services* (if rule 6.26 applies);
- (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;

Note:

[See clause S6.2.2B](#)

- (19) a decision on how the *Distribution Network Service Provider* is to report to the AER on its recovery of *designated pricing proposal 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; ~~and~~
- (20) a decision on how the *Distribution Network Service Provider* is to report to the AER on its recovery of *jurisdictional scheme amounts* 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 amounts. A decision under this subparagraph (20) must be made in relation to each *jurisdictional scheme* under which the *Distribution Network Service Provider* has *jurisdictional scheme* obligations at the time the decision is made; ~~and~~.
- (21) a decision on the *connection policy* that is to apply to the *Distribution Network Service Provider* for the *regulatory control period* (which may be the *connection policy* as proposed by the [Distribution Network Service Provider](#)~~provider~~, some variant of it, or a policy substituted by the AER).

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.~~
- [\(a\) 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;
 - (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 *Distribution Network Service Provider's* current building block proposal; and
 - (ii) if not, the rationale for the adoption of those values;
 - (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, such reasons being expressed by reference to the requirements relating to such decisions, approvals or discretions as are contained in this Chapter.
- (b) The AER must include in its reasons for a draft distribution determination under rule 6.10 or a final distribution determination under rule 6.11 a statement, with supporting reasons, as to the extent to which the roll forward of the regulatory asset base as determined under clause 6.12.1(6) contributes to the achievement of the *capital expenditure incentive objective*.

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) The classification of services must be as set out in the relevant *framework and approach paper* unless the AER considers that, in the light of the *Distribution Network Service Provider's regulatory proposal* and the submissions received, there are good reasons for departing from the classification proposed in that paper.~~
- (b) The classification of *distribution services* must be as set out in the relevant *framework and approach paper* unless the AER considers that unforeseen circumstances justify departing from the classification as set out in that paper.
- ~~(c) The control mechanisms must be as set out in the relevant *framework and approach paper*.~~
- (c) The form of the control mechanisms must be as set out in the relevant *framework and approach paper*.

- (c1) The formulae that give effect to the control mechanisms referred to in paragraph (c) must be as set out in the relevant framework and approach paper unless the AER considers that unforeseen circumstances justify departing from the formulae as set out in that paper.
- (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 *Distribution Network Service Provider's 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) The AER must approve a proposed *regulatory control period* if the proposed period consists of 5 *regulatory years*.
- (f) ~~If the AER refuses to approve an amount or value referred to in clause 6.12.1, the substitute amount or value 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.
- (h) If the AER refuses to approve the proposed *negotiating framework*, the 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 the proposed *connection policy* if the AER is satisfied that it adequately complies with the requirements of Part DA.
- (j) If the AER refuses to approve the proposed *connection policy*, the approved amended *connection policy* must be:
- (1) determined on the basis of the current proposed *connection policy*; and
- (2) amended from that basis only to the extent necessary to enable it to be approved in accordance with the *Rules*.

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 [distribution](#) 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; [or](#)
 - (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 [distribution](#) determination to apply for the remainder of the *regulatory control period* for which the revoked [distribution](#) 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.~~
- (c) If the *AER* revokes and substitutes a distribution determination under paragraphs (a) and (b), the substituted distribution determination must only vary from the revoked distribution 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)~~ [for submissions that is made under this Chapter](#) (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*.

6.14A Distribution Confidentiality Guidelines

- (a) The *AER* must, in accordance with the *distribution consultation procedures*, make and *publish* guidelines (*Distribution Confidentiality Guidelines*).
- (b) The *Distribution Confidentiality Guidelines* must specify the manner in which the *Distribution Network Service Provider* may make confidentiality claims in its *regulatory proposal*, which may include categories of confidential information by reference to which *Distribution Network Service Providers* must classify any claims of confidentiality in their *regulatory proposals*.
- (c) There must be *Distribution Confidentiality Guidelines* in force at all times after the date on which the *AER* first publishes the *Distribution Confidentiality Guidelines* under these *Rules*.
- (d) The *Distribution Confidentiality Guidelines* are binding on the *AER* and each *Distribution Network Service Provider* to which they apply.

Part F Cost Allocation

6.15 Cost allocation

6.15.1 Duty to comply with Cost Allocation Method

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.

6.15.2 Cost Allocation Principles

The following principles constitute the *Cost Allocation Principles*:

- (1) the detailed principles and policies used by a *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;
 - (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*.

Note:

The *Cost Allocation Guidelines* are required by clause 6.15.3 to give effect to and be consistent with, the *Cost Allocation Principles*.

6.15.3 Cost Allocation Guidelines

- (a) The AER must, in accordance with the *distribution consultation procedures*, make [and publish](#) guidelines (the *Cost Allocation Guidelines*) relating to the preparation by a *Distribution Network Service Provider* of its *Cost Allocation Method*.

~~(b) The *Cost Allocation Guidelines*:~~

~~(1) must give effect to and be consistent with the *Cost Allocation Principles*; and~~

~~(2) may be amended by the AER from time to time in accordance with the *distribution consultation procedures*.~~

- (b) The *Cost Allocation Guidelines* must give effect to and be consistent with the *Cost Allocation Principles*.
- (c) Without limiting the generality of paragraph (b), the *Cost Allocation Guidelines* may specify:
- (1) the format of a *Cost Allocation Method*; ~~and~~
 - (2) the detailed information that is to be included in a *Cost Allocation Method*; ~~and~~
 - (3) the categories of *distribution services* which are to be separately addressed in a *Cost Allocation Method*, such categories being determined by reference to the nature of those services, the persons to whom those services are provided or such other factors as the *AER* considers appropriate; and
 - (4) the allocation methods which are acceptable and the supporting information that is to be included in relation to such methodologies in a *Cost Allocation Method*.
- ~~(d) The *AER* may, from time to time and in accordance with the *distribution consultation procedures*, amend or replace the *Cost Allocation Guidelines*.~~
- (d) *Cost Allocation Guidelines* are binding on the *AER* and each *Distribution Network Service Provider* to which they apply.
- (e) The *AER* must, ~~in accordance with the *distribution consultation procedures*, develop and~~ publish the first *Cost Allocation Guidelines* within 6 months after the commencement of these *Rules* and there must be *Cost Allocation Guidelines* ~~available~~ in force at all times after that date.

6.15.4 Cost Allocation Method

- (a) Each *Distribution Network Service Provider* must submit to the *AER* for its approval a document setting out its proposed *Cost Allocation Method*:
- (1) within 12 months after the commencement of these *Rules*; or
 - (2) in the case of an entity that becomes a *Distribution Network Service Provider* more than 6 months after the commencement of these *Rules*, within 6 months of being required to do so by the *AER*.
- (b) The *Cost Allocation Method* proposed by a *Distribution Network Service Provider* must give effect to and be consistent with the *Cost Allocation Guidelines*.
- (c) The *AER* may approve or refuse to approve a *Cost Allocation Method* submitted under paragraph (a).
- (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 6 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 *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; and
 - (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 *Distribution Network Service Provider* must amend its *Cost Allocation Method* where the amendment is required by the *AER* to take into account any change to the *Cost Allocation Guidelines*, but the amendment only comes into effect:
 - (1) on the date that the *AER* approves that amendment, or 3 months after the submission of the amendment, whichever is the earlier; and
 - (2) subject to additional changes to the *Cost Allocation Method* (if any) the *AER* reasonably considers necessary or desirable as a result of the amendment and notifies to the *Distribution Network Service Provider* before the amendment takes effect.
- (h) A *Distribution Network Service Provider* must maintain a current copy of its *Cost Allocation Method* on its website.

Part G Distribution consultation procedures

6.16 Distribution consultation procedures

- (a) This rule 6.16 applies wherever the *AER* is required to comply with the *distribution consultation procedures*. For the avoidance of doubt, the

distribution consultation procedures are separate from, and (where they are required to be complied with) apply to the exclusion of, the *Rules* consultation procedures under rule 8.9.

~~(b) If the AER is required to comply with the *distribution consultation procedures* in making, developing or amending any guidelines, models or schemes, or in reviewing any values or methods, it must *publish*:~~

~~(1) the proposed guideline, model, scheme, amendment or revised value or method; and~~

~~(2) an explanatory statement that sets out the provision of the *Rules* under or for the purposes of which the guideline, model, scheme or amendment is proposed to be made or developed or the value or method is required to be reviewed, and the reasons for the proposed guideline, model, scheme, amendment or revised value or method; and~~

~~(3) an invitation for written submissions on the proposed guideline, model, scheme, amendment or revised value or method.~~

(b) If the AER is required to comply with the *distribution consultation procedures* in preparing, making, developing, reviewing, amending or replacing any guidelines, methodologies, models, schemes, or tests, it must *publish*:

(1) the proposed guideline, methodology, model, scheme, test or amendment;

(2) an explanatory statement that sets out the provision of the *Rules* under or for the purposes of which the guideline, methodology, model, scheme, test or amendment is proposed to be prepared, made or developed or is required to be reviewed, and the reasons for the proposed guideline, methodology, model, scheme, test or amendment; and

(3) an invitation for written submissions on the proposed guideline, methodology, model, scheme, test or amendment, or the review, (as the case may be).

(c) The invitation must allow no less than 30 *business days* for the making of submissions, and the AER is not required to consider any submission made pursuant to that invitation after this time period has expired.

~~(d) The AER may *publish* such issues, consultation and discussion papers, and hold such conferences and information sessions, in relation to the proposed guideline, model, scheme, amendment or revised value or method as it considers appropriate.~~

~~(e) Within 80 *business days* of publishing the documents referred to in paragraph (b), the AER must *publish*:~~

- ~~(1) its final decision on the guideline, model, scheme, amendment, value or method that sets out:~~
- ~~(i) the guideline, model, scheme, amendment or revised value or method (if any); and~~
 - ~~(ii) the provision of the *Rules* under which or for the purposes of which the guideline, model, scheme or amendment is being made or developed or the value or method is being reviewed; and~~
 - ~~(iii) the reasons for the guideline, model, scheme, amendment value or method; and~~
- ~~(2) notice of the making of the final decision on the guideline, model, scheme, amendment, value or method.~~
- (d) The AER may *publish* such issues, consultation and discussion papers, and hold such conferences and information sessions, in relation to the proposed guideline, methodology, model, scheme, test or amendment, or the review, as it considers appropriate.
- (e) Within 80 *business days* of *publishing* the documents referred to in paragraph (b), the AER must *publish*:
- (1) its final decision on the guideline, methodology, model, scheme, test, amendment or review that sets out:
 - (i) the guideline, methodology, model, scheme, test or amendment (if any);
 - (ii) the provision of the *Rules* under which or for the purposes of which the guideline, methodology, model, scheme, test or amendment is being prepared, made or developed or is being reviewed;
 - (iii) the reasons for the guideline, methodology, model, scheme, test or amendment; and
 - (iv) the reasons for the outcome of any review; and
 - (2) notice of the making of the final decision on the guideline, methodology, model, scheme, test, amendment or review.
- (f) Subject to paragraph (c), the AER must, in making its final decision referred to in paragraph (e)(1), consider any submissions made pursuant to the invitation for submissions referred to in paragraph (b)(3), and the reasons referred to in paragraph (e)(1)(iii) or (iv) must include:
- (1) a summary of each issue raised in those submissions that the AER reasonably considers to be material; and

- (2) the *AER's* response to each such issue.
- (g) The *AER* may extend the time within which it is required to publish its final decision if:
 - ~~(1) the consultation involves questions of unusual complexity or difficulty; or~~
 - (1) the consultation involves issues of unusual complexity or difficulty; and:
 - (2) the extension of time has become necessary because of circumstances beyond the *AER's* control.

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

All *Distribution Network Service Providers* must comply with the *Distribution Ring-Fencing Guidelines* prepared in accordance with clause 6.17.2.

6.17.2 Development of Distribution Ring-Fencing Guidelines

- (a) 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 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*, *AEMO* and other *interested parties*, and such consultation must be otherwise in accordance with the *distribution consultation procedures*.

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
 - (6) set out how *designated pricing proposal charges* 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
 - (6A) set out how *jurisdictional scheme amounts* for each *approved jurisdictional scheme* are to be passed on to customers and any adjustments to tariffs resulting from over or under recovery of those amounts; and
 - (6B) describe how each *approved jurisdictional scheme* that has been amended since the *last jurisdictional scheme approval date* meets the *jurisdictional scheme eligibility criteria*; 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 *retail 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 *retail customers* to whom *standard control services* are supplied and *retail 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 *retail 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 retail customers to tariff classes and assessment and review of basis of charging

- (a) In formulating provisions of a distribution determination governing the assignment of *retail customers* to *tariff classes* or the re-assignment of *retail customers* from one *tariff class* to another, the AER must have regard to the following principles:
 - (1) *retail 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 [*retail customer's*](#)~~customer's~~ premises as a result of a *regulatory obligation or requirement*;
 - (2) *retail customers* with a similar *connection* and usage profile should be treated on an equal basis;
 - (3) however, *retail customers* with micro-generation facilities should be treated no less favourably than *retail 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 *retail customers* who belong to that class; and
 - (2) a lower bound representing the avoidable cost of not serving those *retail 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 *retail 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* in that *regulatory control period* 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 $(1 + \text{CPI})(1 - X)(1 + 2\%)$

- (2) CPI plus 2%.

Note:

The calculation is of the form $(1 + \text{CPI})(1 + 2\%)$

- (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 *designated pricing proposal charges to retail customers*; ~~and~~
 - (3) the recovery of revenue to accommodate pass through of *jurisdictional scheme amounts for approved jurisdictional schemes*; ~~and~~
and
 - (4) the recovery of revenue to accommodate any increase in the Distribution Network Service Provider's annual revenue requirement by virtue of an application of a formula referred to in clause 6.5.2(h).
- (e) This clause does not, however, limit the extent a tariff for *retail 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 designated pricing proposal charges

- (a) A *pricing proposal* must provide for tariffs designed to pass on to *retail customers* the *designated pricing proposal charges* to be incurred by the *Distribution Network Service Provider* for *transmission use of system services*.
- (b) The amount to be passed on to *retail customers* for a particular *regulatory year* must not exceed the estimated amount of the *designated pricing proposal charges* adjusted for over or under recovery in accordance with paragraph (c).
- (c) The over and under recovery amount must be calculated in a way that:
 - (1) subject to subparagraphs (2) and (3) below, is consistent with the method determined by the *AER* in the relevant distribution determination for the *Distribution Network Service Provider*;
 - (2) ensures a *Distribution Network Service Provider* is able to recover from *retail customers* no more and no less than the *designated pricing proposal charges* it incurs; and
 - (3) adjusts for an appropriate cost of capital that is consistent with the allowed rate of return used in the relevant distribution determination for the relevant *regulatory year*.

- (d) Notwithstanding anything else in this clause 6.18.7, a *Distribution Network Service Provider* may not recover charges under this clause to the extent these are:
- (1) recovered through the *Distribution Network Service Provider's annual revenue requirement*;
 - (2) recovered under clause 6.18.7A; or
 - (3) recovered from another *Distribution Network Service Provider*.

6.18.7A Recovery of jurisdictional scheme amounts

Pricing Proposal

- (a) A *pricing proposal* must provide for tariffs designed to pass on to customers a *Distribution Network Service Provider's jurisdictional scheme amounts* for approved jurisdictional schemes.
- (b) The amount to be passed on to customers for a particular *regulatory year* must not exceed the estimated amount of *jurisdictional scheme amounts* for a *Distribution Network Service Provider's approved jurisdictional schemes* adjusted for over or under recovery in accordance with paragraph (c).
- (c) The over and under recovery amount must be calculated in a way that:
 - (1) subject to subparagraphs (2) and (3) below, is consistent with the method determined by the *AER* for *jurisdictional scheme amounts* in the relevant distribution determination for the *Distribution Network Service Provider*, or where no such method has been determined, with the method determined by the *AER* in the relevant distribution determination in respect of *designated pricing proposal charges*;
 - (2) ensures a *Distribution Network Service Provider* is able to recover from customers no more and no less than the *jurisdictional scheme amounts* it incurs; and
 - (3) adjusts for an appropriate cost of capital that is consistent with the allowed rate of return used in the relevant distribution determination for the relevant *regulatory year*.

Jurisdictional schemes

- (d) A scheme is a *jurisdictional scheme* if:
- (1) the scheme is specified in paragraph (e); or
 - (2) the *AER* has determined under clause paragraph (l) that the scheme is a *jurisdictional scheme*,

and the *AER* has not determined under paragraph (u) that the scheme has ceased to be a *jurisdictional scheme*.

- (e) For the purposes of paragraph (d)(1), the following schemes are *jurisdictional schemes*:
- (1) schemes established under the following laws of participating jurisdictions:
 - (i) Electricity Feed-in (Renewable Energy Premium) Act 2008 (ACT);
 - (ii) Division 3AB of the Electricity Act 1996 (SA);
 - (iii) Section 44A of the Electricity Act 1994 (Qld);
 - (iv) Electricity Industry Amendment (Premium Solar Feed-in Tariff) Act 2009 (Vic);
 - (2) the Solar Bonus Scheme established under the Electricity Supply Act 1995 (NSW); and
 - (3) the Climate Change Fund established under the Energy and Utilities Administration Act 1987 (NSW).

AER Requested to determine that scheme is a jurisdictional scheme

- (f) Any person may request the *AER* to determine whether a scheme is a *jurisdictional scheme*.
- (g) A request made under paragraph (f) must contain the following information:
- (1) the name and address of the person making the request;
 - (2) details of the law of a *participating jurisdiction* under which the relevant scheme is established;
 - (3) the commencement date of the relevant scheme; and
 - (4) an explanation of how the relevant scheme meets the *jurisdictional scheme eligibility criteria*.
- (h) The *AER* must as soon as practicable after receiving the request under paragraph (f) *publish* the request.

AER may assess whether a scheme is a jurisdictional scheme

- (i) The *AER* may at any time initiate an assessment of whether a scheme is a *jurisdictional scheme*.
- (j) If the *AER* decides to initiate an assessment under paragraph (i) it must *publish* details of the scheme it is considering and the reasons for initiating the assessment.

AER to determine whether a scheme is a jurisdictional scheme

- (k) Before making a determination under paragraph (l), 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 request or the assessment the *AER* considers appropriate.
- (l) The *AER* must within 20 *business days* of:
 - (1) receiving a request under paragraph (f); and
 - (2) *publishing* details of an assessment under paragraph (j),determine in accordance with paragraph (n) if the relevant scheme is a *jurisdictional scheme* and *publish* its decision (including the reasons).
- (m) The *AER* may extend the time limit fixed in paragraph (l) if it considers that the difficulty of assessing whether a scheme is a *jurisdictional scheme*, or the complexity of the issues raised during any consultation under paragraph (k), justifies the extension.
- (n) The *AER* must only determine that a scheme is a *jurisdictional scheme* under paragraph (l) if it considers that the scheme meets the *jurisdictional scheme eligibility criteria*.

AER requested to determine that scheme should cease to be a jurisdictional scheme

- (o) Any person may request the *AER* to determine that a scheme is no longer a *jurisdictional scheme*.
- (p) A request made under paragraph (o) must contain the following information:
 - (1) the name and address of the person making the request;
 - (2) the law of a *participating jurisdiction* under which the relevant scheme is established;
 - (3) the commencement date of the relevant scheme; and
 - (4) an explanation of why the scheme no longer meets the *jurisdictional scheme eligibility criteria*.
- (q) The *AER* must as soon as practicable after receiving the request under paragraph (o) *publish* the request.

AER may assess whether a scheme should cease to a jurisdictional scheme

- (r) The *AER* may at any time consider whether a scheme should cease to be a *jurisdictional scheme*.

- (s) If the *AER* decides to initiate an assessment of whether a scheme should cease to be a *jurisdictional scheme* under paragraph (r) it must *publish* details of the scheme it is considering and the reasons for initiating the assessment.

AER to determine whether a scheme should cease to be a jurisdictional scheme

- (t) Before making a determination under paragraph (u), 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 request or the assessment the *AER* considers appropriate.
- (u) The *AER* must within 20 *business days* of:
- (i) receiving a request under paragraph (o); or
 - (ii) *publishing* details of an assessment under paragraph (s),
- determine in accordance with paragraph (w) if the relevant scheme should cease to be a *jurisdictional scheme* and *publish* its decision (including the reasons).
- (v) The *AER* may extend the time limit fixed in paragraph (u) if it considers that the difficulty of assessing whether a scheme should cease to be a *jurisdictional scheme*, or the complexity of the issues raised during any consultation under paragraph (t), justifies the extension.
- (w) The *AER* must only determine that a scheme has ceased to be a *jurisdictional scheme* under paragraph (u) if it considers that the scheme no longer meets the *jurisdictional scheme eligibility criteria*.

Jurisdictional scheme eligibility criteria

- (x) The following are the *jurisdictional scheme eligibility criteria*:
- (1) the *jurisdictional scheme obligations* require a *Distribution Network Service Provider* to:
 - (i) pay a person;
 - (ii) pay into a fund established under an Act of a *participating jurisdiction*;
 - (iii) credit against charges payable by a person; or
 - (iv) reimburse a person,
- an amount specified in, or determined in accordance with, the *jurisdictional scheme obligations*;

- (2) the *jurisdictional scheme obligations* are imposed on a *Distribution Network Service Provider* in its capacity as a *Distribution Network Service Provider*;
- (3) the amount referred to in subparagraph (1) is not in the nature of a fine, penalty or incentive payment for the *Distribution Network Service Provider*; and
- (4) except as provided in these Rules, the *Distribution Network Service Provider* has no right to recover the amount referred to in subparagraph (1) from any person.

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, any relevant clauses in Chapter 11 ~~of the Rules~~ 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.
- (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 *retail 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~~ transmission service charges and ~~distribution service charges~~ 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 AEMO'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) *metering 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 AEMO'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

- (a) 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.
- (b) In addition to the minimum information requirements in paragraph (a), a bill for a *network coupling point* issued by a *Distribution Network Service Provider* directly to another *Distribution Network Service Provider* must separately identify the component of *designated pricing proposal services*, if any, to which each amount charged in the bill relates.

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*.

Part L Dispute resolution

6.22 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*, the *AER* must apply:
- (1) in relation to price, the *Distribution Network Service Provider's approved pricing proposal* or, in respect of the *Distribution Network Service Provider's transmission standard control services* in respect of which the *AER* has made a determination under clause 6.25(b) that pricing in respect of those services should be regulated under Part J of Chapter 6A through the application of rule 6.26, the *Distribution Network Service Provider's approved pricing methodology*;
 - (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 *AEMO* 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~~.
- (b) In determining an access dispute about the *terms and conditions of access* to a *direct control service*, the *AER* may:
- (1) have regard to other matters the *AER* considers relevant; and
 - (2) hear evidence or receive submissions from *AEMO* 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 *AEMO* 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 *AEMO* 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.
- (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 *designated pricing proposal charges* 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 *designated pricing proposal 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 *designated pricing proposal charges* 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.

Part N Dual Function Assets

6.24 Dual Function Assets

6.24.1 Application of this Part

This Part applies to *Distribution Network Service Providers* which own, control or operate both a *distribution system* and a *dual function asset*.

6.24.2 Dual Function Assets

Subject to rule 6.26, for the purposes of Chapters 6 and 6A:

- (a) any part of a *network* owned, operated or controlled by a *Distribution Network Service Provider* which operates between 66 kV and 220 kV and which operates in parallel, and provides support, to the higher voltage *transmission network* is deemed to be a *dual function asset*;
- (b) any service that is provided by a *Distribution Network Service Provider* by means of, or in connection with, the *Distribution Network Service Provider's dual function assets* that, but for this Part, would be a *prescribed transmission service* for the purposes of Chapter 6A is deemed to be a *standard control service*;
- (c) any service that is provided by a *Distribution Network Service Provider* by means of, or in connection with, the *Distribution Network Service Provider's dual function assets* that, but for this Part, would be a *negotiated transmission service* under Chapter 6A is deemed to be a *negotiated distribution service*; and
- (d) references to *prescribed transmission services* do not include a service provided by means of, or in connection with, a *dual function asset*.

6.25 AER determination of applicable pricing regime for Dual Function Assets

- (a) A *Distribution Network Service Provider* which owns, controls or operates *dual function assets* must advise the AER at least ~~24 months~~^{323 months} prior to the end of the current *regulatory control period* of the value of that *Distribution Network Service Provider's dual function assets* which provide *standard control services* that would be *prescribed transmission services* were it not for the operation of clause 6.24.2 (referred to as *transmission standard control services*). The value to be advised is the value ascribed to the relevant *dual function assets* in the relevant *Distribution Network Service Provider's* regulatory asset base as at the start of the *regulatory year* which commences ~~24 months~~^{36 months} prior to the end of the current *regulatory control period*.
- ~~(b) The AER must review the information provided under paragraph (a) and determine, following consultation with the relevant *Distribution Network Service Provider* and with other interested parties in the course of preparing~~

~~the framework and approach paper for that Distribution Network Service Provider, whether the value of that Distribution Network Service Provider's dual function assets which provide transmission standard control services comprise such a material proportion of that Distribution Network Service Provider's regulatory asset base that pricing in respect of those services should be regulated under Part J of Chapter 6A through the application of rule 6.26.~~

(b) The AER must review the information provided under paragraph (a) and determine, in accordance with clause 6.8.1, whether the value of that Distribution Network Service Provider's dual function assets which provide transmission standard control services comprise such a material proportion of that Distribution Network Service Provider's regulatory asset base that pricing in respect of those services should be regulated under Part J of Chapter 6A through the application of rule 6.26.

(c) In making its determination under paragraph (b) the AER must consider:

(1) whether regulating the pricing of the *transmission standard control services* provided by a *Distribution Network Service Provider's dual function assets*:

(i) under Part I of Chapter 6 as though they were *prescribed distribution services*; rather than

(ii) under Part J of Chapter 6A as though they were *prescribed transmission services*,

will result in materially different prices for *Distribution Customers* (including those connected directly to the relevant *dual function assets* and those connected to other *distribution networks*);

(2) whether the materiality of the different prices is likely to impact on future consumption, production and investment decisions by actual or potential *Network Users*; and

(3) any other matter that the AER considers relevant.

~~(d) The AER's determination under paragraph (b) must be notified to the relevant Distribution Network Service Provider in the framework and approach paper applicable to that Distribution Network Service Provider.~~

(d) The AER's determination under paragraph (b), which is binding, must be included in a framework and approach paper that applies in respect of the distribution determination for the next regulatory control period.

6.26 Division of Distribution Network Service Provider's revenue

(a) This rule 6.26 applies if the AER has determined under rule 6.25(b) that pricing in respect of *transmission standard control services* provided by a *Distribution Network Service Provider's dual function assets* should be regulated under Part J of Chapter 6A.

- (b) The *AER* must, for the purposes of the distribution determination for the relevant *Distribution Network Service Provider*, divide the revenue calculated under Part C of Chapter 6 into the following two portions:
- (1) a portion relevant to the *Distribution Network Service Provider's transmission standard control services* provided by its *dual function assets*. This portion is defined as its *transmission standard control service revenue*; and
 - (2) a portion relevant to the other *standard control services* provided by the *Distribution Network Service Provider*. This portion is defined as its *distribution standard control service revenue*,

based on the *Distribution Network Service Provider's* approved *Cost Allocation Method*.

- (c) The relevant *Distribution Network Service Provider* must submit a proposed *pricing methodology* to the *AER* in respect of its *transmission standard control service revenue* as if it were a *Transmission Network Service Provider* as part of its regulatory proposal under Chapter 6, and Part E of Chapter 6A applies in respect of that *pricing methodology* (with the necessary changes).
- (d) The *AER* and the relevant *Distribution Network Service Provider* must apply and comply with all aspects of Part J of Chapter 6A instead of, and to the exclusion of, Parts I, J and K of Chapter 6 in respect of the *dual function assets* which provide *transmission standard control services*, subject to the following:
- (1) for the purposes of Part J of Chapter 6A:
 - (i) the *dual function assets* are relevantly deemed to be *transmission network assets* which provide *prescribed transmission services*;
 - (ii) the *Distribution Network Service Provider* which owns, controls or operates the relevant *dual function assets* is relevantly deemed to be a *Transmission Network Service Provider*;
 - (2) the *maximum allowed revenue* referred to in clause 6A.22.1 is taken to be the *transmission standard control service revenue*;
 - (3) the reference in clause 6A.22.1(1) to clause 6A.3.2 is taken to be a reference to rules 6.6 and 6.13;
 - (4) references to "*transmission determination*" are to be read as references to the relevant "*distribution determination*", with the *AER* being required to include in the distribution determination a decision to approve a proposed *pricing methodology* in relation to the *transmission standard control services* provided by the relevant *dual function assets*; and

- (5) if there is no previous method to establish prices under clause 6A.24.3(b)(3), the relevant *Distribution Network Service Provider* must apply the *pricing methodology* of the largest *Transmission Network Service Provider* operating in the *participating jurisdiction* in which that *Distribution Network Service Provider* operates the relevant *dual function assets*.
- (e) The pricing rules in Part I of Chapter 6 are to be applied to the *Distribution Network Service Provider's distribution standard control service revenue*.

Part O Annual Benchmarking Report

6.27 Annual Benchmarking Report

- (a) The AER must prepare and publish a network service provider performance report (an annual benchmarking report) the purpose of which is to describe, in reasonably plain language, the relative efficiency of each Distribution Network Service Provider in providing direct control services over a 12 month period.
- (b) Clause 8.7.4 (excluding clause 8.7.4(a)) applies in respect of the preparation of an annual benchmarking report.
- (c) Subject to paragraph (d) and (e), the AER must publish an annual benchmarking report at least every 12 months.
- (d) The first annual benchmarking report must be published by 30 September 2014.
- (e) The second annual benchmarking report must be published by 30 November 2015.

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~~forecasts;
- (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;~~
- (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 and separately identifying for each such *regulatory year*:
 - (i) margins paid or expected to be paid by the *Distribution Network Service Provider* in circumstances where those margins are referable to arrangements that do not reflect arm's length terms; and
 - (ii) expenditure that should have been treated as operating expenditure in accordance with the policy submitted under paragraph (8) for that *regulatory year*;
- (7) an explanation of any significant variations in the forecast capital expenditure from historical capital expenditure; ~~and~~;
- (8) the policy that the *Distribution Network Service Provider* applies in capitalising operating 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~~ forecasts 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~~ forecasts;
 - (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) **[Deleted]**
- ~~(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 and embedded generation connection incentive scheme* (if applicable) should apply for the relevant *regulatory control period*;~~
- (3) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes any *efficiency benefit sharing scheme* that has been specified in a *framework and approach paper* that applies in respect of the forthcoming distribution determination should apply to it;
- (3A) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes any *capital expenditure sharing scheme* that has been specified in a *framework and approach paper* that applies in respect of the forthcoming distribution determination should apply to it;
- (4) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes any *service target performance incentive scheme* that has been specified in a *framework and approach paper* that applies in respect of the forthcoming distribution determination should apply to it;
- (5) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes any *demand management and embedded generation connection incentive scheme* that has been specified in a *framework and approach paper* that applies in respect of the forthcoming distribution determination should apply to it;
- (5A) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes any *small-scale incentive scheme* that has been specified in a *framework and approach paper* that applies in respect of the forthcoming distribution determination should apply to it;
- (6) the *Distribution Network Service Provider's* ~~provider's~~ calculation of revenues or prices for the purposes of the control mechanism proposed by the *Distribution Network Service Provider* ~~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 *Distribution Network Service Provider's* ~~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 the *Rules*~~, together with:
- (i) details of all amounts, values and other inputs used by the *Distribution Network Service Provider* ~~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 Chapter 6 ~~of the *Rules*~~; 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 the *Rules*;~~
- ~~(9) the provider's calculation of the proposed rate of return, including any proposed departure from the values, methods or credit rating levels set out in an applicable *statement of regulatory intent*;~~
- (8) [Deleted].
- (9) the *Distribution Network Service Provider's* calculation of the proposed return on equity, return on debt and *allowed rate of return*, for each *regulatory year* of the *regulatory control period*, in accordance with clause 6.5.2, including any departure from the methodologies set out in the *Rate of Return Guidelines* and the reasons for that departure;
- (9A) if the *Distribution Network Service Provider* proposes that the return on debt for a *regulatory year* of the *regulatory control period* is not to be determined using the methodology referred to in clause 6.5.2(i)(2), the formula it proposes should be applied in accordance with clause 6.5.2(1);
- (9B) the *Distribution Network Service Provider's* proposed value of imputation credits as referred to in clause 6.5.3;
- (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 *Distribution Network Service Provider's* ~~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 the Rules~~, 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 *Distribution Network Service Provider* ~~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 the Rules~~; and
 - (v) an explanation of the calculation of the amounts, values and inputs referred to in subparagraph (iii);
- (13) the commencement and length of the *regulatory control period* proposed by the *Distribution Network Service Provider*; ~~and~~.
- (14) if the *Distribution Network Service Provider* is seeking a determination by the AER that a *proposed contingent project* is a *contingent project* for the purposes of the relevant distribution determination:
- (i) a description of the *proposed contingent project*, including reasons why the *Distribution Network Service Provider* considers the project should be accepted as a *contingent project* for the *regulatory control period*;
 - (ii) a forecast of the capital expenditure which the *Distribution Network Service Provider* considers is reasonably required for the purpose of undertaking the proposed contingent project;
 - (iii) the methodology used for developing that forecast and the key assumptions that underlie it;
 - (iv) information that demonstrates that the undertaking of the *proposed contingent project* is reasonably required in order to achieve one or more of the *capital expenditure objectives*;
 - (v) information that demonstrates that the *proposed contingent capital expenditure* for the *proposed contingent project* complies with the requirements set out in clause 6.6A.1(b)(2); and
 - (vi) the *trigger events* which are proposed in relation to the *proposed contingent project* and an explanation of how each of those conditions or events addresses the matters referred to in clause 6.6A.1(c).

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)
	Integral Energy	2,283 (as at 1 July 2004 in July 2004 dollars)
Queensland	ENERGEX	4,308.1 (as at 1 July 2005 in July 2005 dollars)

Jurisdiction	<i>Distribution Network Service Provider</i>	Regulatory Asset Base (\$m)
	Ergon Energy	4,198.2 (as at 1 July 2005 in July 2005 dollars) but, if the Queensland Competition Authority nominates a different amount in writing to the <i>AER</i> , the regulatory asset base is the amount so nominated.
South Australia	ETSA Utilities	2,466 (as at 1 July 2005 in December 2004 dollars)
Tasmania	Aurora Energy	981.108 (as at 1 January 2008 in July 2006 dollars)
Victoria	AGL Electricity	578.4 (as at 1 January 2006 in July 2004 dollars)
	Citipower	990.9 (as at 1 January 2006 in July 2004 dollars)
	Powercor	1,626.5 (as at 1 January 2006 in July 2004 dollars)
	SP AusNet	1,307.2 (as at 1 January 2006 in July 2004 dollars)
	United Energy	1,220.3 (as at 1 January 2006 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) **Other distribution systems**

- (1) This paragraph (d) applies to a *distribution system* not referred to in paragraphs (c) when *standard control services* that are provided by means of, or in connection with, that system are to be regulated under a *building block determination*.
- (2) The value of the regulatory asset base for that *distribution system* as at the beginning of the first *regulatory year* of the first *regulatory control period* for the relevant *Distribution Network Service Provider* is the prudent and efficient value of the assets that are used by the provider to provide those *standard control services* (but only to the extent that they are used to provide such services), as determined by the *AER*. In determining this value, the *AER* must have regard to the matters referred to in clause S6.2.2.
- (3) The value of the regulatory asset base for that *distribution system* as at the beginning of the first *regulatory year* of any subsequent *regulatory control period* must be determined by rolling forward the value of the regulatory asset base for that *distribution system* as at the beginning of the first *regulatory year* of the first *regulatory control period* in accordance with this schedule.

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

Except as otherwise provided in paragraph (c) or (d), and subject to paragraph (g), 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 must be increased by the amount of all capital expenditure incurred during the previous control period.~~

~~(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.~~

(1) The previous value of the regulatory asset base must be:

(i) increased by the amount of all capital expenditure incurred during the previous control period, including any capital expenditure determined for that period under clause 6.6A.2(e)(1)(i) in relation to *contingent projects* where the distribution determination has been amended by the *AER* in accordance with clause 6.6A.2(h) (regardless of whether such capital expenditure is above or below the forecast capital expenditure for the period that is adopted for the purposes of the distribution determination (if any) for that period); and

- (ii) reduced by the amount of any capital expenditure that has been recovered by way of a pass through under clause 6.6.1 where the amount of that capital expenditure would otherwise have been included in the previous value of the regulatory asset base.
- (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, including any capital expenditure in relation to *contingent projects* where the *total revenue requirement* has been amended by the AER in accordance with clause 6.6A.2(h).
- (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 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 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 portion of the value of the asset properly allocated, or formerly 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*. The value of the relevant asset is taken to be its value as shown in independently audited and published accounts.

(g) The previous value of the regulatory asset base must be reduced by any amount determined by the *AER* in accordance with clause S6.2.2A(f), (i) or (j).

S6.2.2 Prudency and efficiency of capital expenditure

In determining the prudency or efficiency of capital expenditure under clause S6.2.1(d)(2), the *AER* must have regard to the following:

- (1) the need to provide a reasonable opportunity for the relevant *Distribution Network Service Provider* to recover the efficient costs of complying with all applicable *regulatory obligations or requirements* associated with the provision of *standard control services*;
- (2) the need to provide effective incentives to the *Distribution Network Service Provider* ~~provider~~ to promote economic efficiency in the provision of *standard control services*;
- (3) whether the relevant project in respect of which capital expenditure was made was evaluated against, and satisfied, the *regulatory test*;
- (4) whether the *Distribution Network Service Provider* ~~provider~~ undertook the capital expenditure in a manner consistent with good business practice and so as to practicably achieve the lowest sustainable cost of delivering the *standard control services* to be provided as a consequence of that capital expenditure;

- (5) the desirability of minimising investment uncertainty for the *Distribution Network Service Provider* ~~provider~~;
- (6) the need to provide incentives to the *Distribution Network Service Provider* ~~provider~~ to avoid undertaking inefficient capital expenditure;
- (7) the value of the relevant asset as shown in independently audited and published accounts.

In determining the prudence or efficiency of capital expenditure the *AER* must only take into account information and analysis that the *Distribution Network Service Provider* ~~provider~~ could reasonably be expected to have considered or undertaken at the time that it undertook the relevant capital expenditure.

S6.2.2A Reduction for efficiency of past capital expenditure

- (a) Prior to making a decision on the regulatory asset base for a *distribution system* as required by clause 6.12.1(6), the *AER* may determine under this clause S6.2.2A that the amount of capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) should be reduced.
 - (a1) for the purposes of this clause S6.2.2A, "review period" means:
 - (1) the previous control period (excluding the last two *regulatory years* of that previous control period); and
 - (2) the last two *regulatory years* of the *regulatory control period* preceding the previous control period.
 - (b) The *AER* may only make a determination under paragraph (a) if any of the following requirements is satisfied:
 - (1) the requirement set out in paragraph (c) (the *overspending requirement*);
 - (2) the requirement set out in paragraph (d) (the *margin requirement*); or
 - (3) the requirement set out in paragraph (e) (the *capitalisation requirement*).
 - (c) The *overspending requirement* is satisfied where the sum of all capital expenditure incurred during the review period exceeds the sum of:
 - (1) the forecast capital expenditure accepted or substituted by the *AER* for the review period as such forecast capital expenditure has been adjusted in accordance with clauses 6.6.5(f) and 6.6A.2(h); and
 - (2) any capital expenditure that is recovered by way of such part of an *approved pass through amount* as is permitted to be passed through to *Distribution Network Users* during the review period less any capital expenditure that is included in a *negative pass through amount* that is

required to be passed through to *Distribution Network Users* during the review period.

- (d) The *margin requirement* is satisfied where the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) includes capital expenditure that represents a margin paid by the *Distribution Network Service Provider* in circumstances where the margin is referable to arrangements that, in the opinion of the AER, do not reflect arm's length terms.
- (e) The *capitalisation requirement* is satisfied where the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) includes expenditure that, under the *Distribution Network Service Provider's* applicable capitalisation policy submitted to the AER as part of a *regulatory proposal*, should have been treated as operating expenditure.
- (f) Where the *overspending requirement* is satisfied, and subject to paragraphs (g) and (h), the AER may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) should be reduced by such amount as the AER is satisfied corresponds to capital expenditure incurred during the review period that does not reasonably reflect the *capital expenditure criteria*.
- (g) The amount determined by the AER under paragraph (f):
- (1) must not be greater than the amount calculated in accordance with paragraph (c);
 - (2) must be determined in a manner that is consistent with the *capital expenditure incentive objective*; and
 - (3) must be determined taking into account the *Capital Expenditure Incentive Guidelines*.
- (h) In making a determination under paragraph (f), the AER must:
- (1) have regard to the *capital expenditure factors*; and
 - (2) only take into account information and analysis that the *Distribution Network Service Provider* could reasonably be expected to have considered or undertaken at the time that it undertook the relevant capital expenditure.
- (i) Where the *margin requirement* is satisfied, and subject to paragraph (k), the AER may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) should be reduced by such of the margin referred to in paragraph (d) as the AER is reasonably satisfied

would not have been paid if the arrangements to which the margin is referable had been on arm's length terms.

- (j) Where the *capitalisation requirement* is satisfied, and subject to paragraph (k), the *AER* may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) should be reduced by any or all of the amount of expenditure referred to in paragraph (e) which should have been treated as operating expenditure.
- (k) A determination made under paragraph (i) or (j) must be consistent with the *capital expenditure incentive objective* and, in making such a determination, the *AER* must take into account the *Capital Expenditure Incentive Guidelines*.
- (l) Nothing in this clause S6.2.2A is to be taken to preclude the *AER* from:

 - (1) requiring a *Distribution Network Service Provider* to provide such information; or
 - (2) undertaking such analysis,

as the *AER* considers appropriate to enable it to make a statement, with supporting reasons, as referred to in clause 6.12.2(b).

S6.2.2B Depreciation

- (a) Pursuant to clause 6.12.1(18), the *AER* must decide, for a distribution determination, whether depreciation for establishing the regulatory asset base for a *distribution system* as at the commencement of the following *regulatory control period* is to be based on actual or forecast capital expenditure.
- (b) The decision referred to in paragraph (a) must be consistent with the *capital expenditure incentive objective*.
- (c) In making the decision referred to in paragraph (a), the *AER* must have regard to:

 - (1) the incentives that the *Distribution Network Service Provider* has in relation to undertaking efficient capital expenditure, including as a result of the application of any incentive scheme or any other incentives under the *Rules*;
 - (2) the substitution possibilities between assets with relatively short economic lives and assets with relatively long economic lives and the relative benefits of such asset types;
 - (3) the extent to which any capital expenditure incurred by the *Distribution Network Service Provider* has exceeded the corresponding amount of forecast capital expenditure accepted or

substituted by the AER and the amount of that excess expenditure which is not efficient;

(4) the Capital Expenditure Incentive Guidelines; and

(5) the capital expenditure factors.

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.