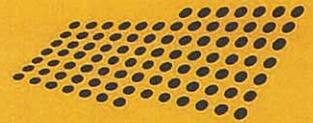


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**EnergyAustralia**<sup>®</sup>

21 January 2011

Mr John Pierce  
Chairman  
Australian Energy Market Commission  
PO Box A2449  
Sydney South  
NSW 1235

Dear Mr Pierce

**EnergyAustralia submission on AEMC draft Rule for transmission related charges**

Please find attached EnergyAustralia's submission on the AEMC's draft Rule for DNSP recovery of transmission related charges. EnergyAustralia strongly supports the AEMC's draft determination and the intent of the draft Rule. In particular, we agree with the AEMC that the Rule only clarifies the charges that DNSPs are currently allowed to recover. We support the proposed Rule on the grounds that it would remove ambiguity in the Rules and provide regulatory certainty in respect of cost recovery, consistent with the Revenue and Pricing Principles in the National Electricity Law.

EnergyAustralia's submission focuses on suggested changes to the draft Rule which we believe will improve the outcomes of the amending Rule, consistent with the AEMC's draft determination. A key suggestion is that the Transitional Chapter 6 Rules include a new provision which makes clear that the amending Rule applies to future pricing proposals, and that the Rule applies to the extent of any inconsistency with EnergyAustralia's current regulatory determination.

EnergyAustralia also considers that there is an error in the prescribed calculation of under/over recovery amounts in the draft Rule. We are working to identify the nature and implications of the error and will inform the AEMC of our concerns in due course.

If you have any questions regarding our submission please contact Ms Catherine O'Neill on (02) 9269 4171.

Yours sincerely

**Craig Moody**  
Executive General Manager (Acting)  
System Planning and Regulation



## Submission on AEMC's draft Rule for transmission related charges

JANUARY 2011

## Key recommendations in EnergyAustralia's submission

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EnergyAustralia strongly supports the AEMC's draft determination. Our submission focuses on suggested changes to the draft Rule which we believe will improve outcomes consistent with the AEMC's draft determination. We propose changes to the amending Rule to provide more certainty on the commencement and application of the amending Rule for NSW distributors in the current regulatory period. We also suggest changes to General and Transitional Chapter 6 of the draft Rule to ensure the arrangements provide for accurate over/under recovery amounts, and accommodate new charges and payments in the future.

Our suggested amendments to the draft Rule are set out below.

### Savings and Transitional Rules

- Transitional Chapter 6 should be amended to expressly provide that only the new Rules will apply to future pricing proposals in the current regulatory control period. This involves:
  1. clearly stating that the Rules as amended by the final Rule (for this Rule change proposal) is to be applied to the first pricing proposal submitted by a distributor after the commencement of the Rule and should also be applied to subsequent pricing proposals of the current regulatory control period;
  2. excluding the application of the distribution determination to future pricing proposals to the extent that the determination currently applies to the pass through of designated pricing proposal charges;
  3. making consequential amendments to (transitional) Chapter 6 so that the amendment referred in to in point 2 above can flow through to other provisions. In particular, transitional clause 6.18.8 will need to be amended so that the AER cannot reject the pricing proposal because it does not comply with the distribution determination;
  4. including a provision which replicates new clause 11.[XX].4 of the draft Rule in respect of the over-under recovery adjustment to be applied by the distributor in respect of the first pricing proposal after the commencement of the Rule.
- Clause 6.12.1(19) of the current Transitional Chapter 6 Rules should not be amended.

### General Chapter 6 and consequential amendments to Transitional Chapter 6

- Clause 6.18.7(c) of General and Transitional Chapter 6 should include a new provision which requires that the under-over recovery amount be appropriately adjusted for inflation and the time value of money. The AEMC should also review the under-over method to ensure there is no error in the calculation.
- The new definitions for "designated pricing proposal charges" in Chapter 10 of the draft Rule should include an additional category termed "other applicable charges and payments as decided by the AER in a regulatory determination". The Rules should clearly set out principles to guide the AER on the applicable charges and payments that may be identified in a regulatory determination.
- Clause 6A.27.1 of the Rules should be amended to require a Coordinating TNSP to notify a DNSP of how the charging parameters in a price list and bill directly relate to the recovery of prescribed exit services, prescribed common transmission services, prescribed TUOS (locational component) services, and prescribed TUOS (adjusted non-locational component) services. Similarly, Clause 6.20.2 the current Transitional and General Chapter 6 of the Rules should be amended to require a distributor to identify the charges to be incurred by another distributor, including the charges incurred for prescribed transmission services or standard control services.
- The AEMC should consider whether the definition of inter-DNSP payments set out in the new definitions of Chapter 10 should omit the term "prescribed transmission services" and substitute with "designated pricing proposal services".

## Structure of EnergyAustralia's submission

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EnergyAustralia strongly supports the AEMC's draft determination and the intent of the draft Rule. Our submission raises issues with the drafting of the Rule and suggests amendments to address these issues to ensure the AEMC's intention behind the draft Rule is correctly reflected in the drafting. The submission is structured in 2 parts:

- Part 1 of our submission identifies issues with the amendments to the Savings and Transitional Rules, in particular the amendments to Transitional Chapter 6 (appendix 1 of Chapter 11) of the Rules which apply to NSW and ACT distributors in the 2009-14 period
- Part 2 of our submission identifies general issues with the drafting applied to both the General and Transitional Chapter 6 Rules.

### 1 Issues with Transitional Chapter 6 of the Rules

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EnergyAustralia supports amending the Transitional Chapter 6 Rules to clarify that NSW and ACT distributors are able to recover designated pricing proposal charges in our current regulatory period. However we wish to raise two issues with the draft Rule.

#### 1.1 Application of the Rule to EnergyAustralia's future pricing proposals

We consider the draft Rule could provide more clarity on how the Rule is to apply for NSW distributors for future pricing proposals in the 2009-14 regulatory period. We consider that clear, express provisions regarding the application of the Rule will mitigate the risk of the AEMC's intention behind the Rule not being reflected in the drafting.

In order to give effect to the AEMC's intention, we consider the amending Rule should include an express provision in the Transitional Chapter 6 Rules to clarify that the amending Rule applies from the commencement date of the Rule. We note that new clause 11.[XX].2 of the draft Rule provides this level of certainty for Victorian distributors. We consider that a similar express provision should also be included in the Transitional Chapter 6 Rules to provide certainty that the amending Rule applies to the first pricing proposal submitted by a NSW or ACT distributor after the commencement of the Rule.

While we support the AEMC's approach, we note that there are complexities that arise from amending the pricing provisions part way through a regulatory control period. A key issue is the inherent linkages between elements of the current AER's determination and the distribution pricing provisions in Part I of the Transitional Chapter 6 Rules.

In particular, we note that Clause 6.18.8(a)(1) of the Rules states the AER must approve a pricing proposal if the AER is satisfied that the proposal complies with Part I of the Rules and any applicable determination. We consider that the AER may have difficulty in complying with clause 6.18.8 of Transitional Chapter 6 if there are inconsistencies between the amending Rule and the AER's regulatory determination.

In this respect we note that the applicable determination is slightly inconsistent with the amending Rule. Under the AER's regulatory determination, EnergyAustralia must comply with Appendix I of the AER's final decision for NSW distributors<sup>1</sup> when submitting our annual pricing proposal. Appendix I sets out the reporting requirements for recovering transmission charges and associated payments and the adjustments for over and under recovery of these payments.

The key difference between the applicable determination and the amending Rule relates to the method to calculate over-under recovery amounts from previous regulatory years. The draft Rule does not include a time value of money adjustment and uses different terminology compared to the AER's regulatory determination.<sup>2</sup>

The inconsistency between the draft Rule and the AER's regulatory determination may be problematic for the AER when making a decision to accept or substitute the forthcoming pricing proposals of NSW distributors. There is a risk that the AER may not accept a pricing proposal on the grounds that the proposal does not comply with the determination.

Our view is that the potential ambiguity can be addressed through an express provision that makes clear that the amending Rule applies to the exclusion of the distribution determination to the extent it addresses the same matters. Consequential amendments will be required to other aspects of the pricing rules to give effect to this exclusion. In particular, clause 6.18.8 should be amended so that the AER cannot reject the pricing proposal because it does not comply with the distribution determination.

On a final matter, we consider that the amending Rule would be clearer if new clause 11.[XX].4 of the draft Rule is replicated in Transitional Chapter 6 of the Rules. New clause 11.[XX].4 is necessary to ensure that the calculation for the under-over recovery amount in the first pricing proposal after the commencement of the Rule does not refer to previous pricing proposals made under the amending Rule. While we understand that 11.[XX].4 would apply to NSW and ACT distributors, we consider that the provision should be replicated in Transitional Chapter 6 of the Rules to remove any ambiguity on the application of the provision.

## **1.2 Amendments to constituent decision 6.12.1(19)**

EnergyAustralia notes that the draft Rule amends clause 6.12.1(19) of Transitional Chapter 6 of the Rules. This provision relates to the constituent decision that the AER was required to make as part of the 2009-14 regulatory determinations for ACT and NSW distributors in respect of reporting requirements for recovery of transmission and associated payments.

The draft Rule amends the current General and Transitional Chapter 6 of the Rules to omit "Transmission Use of System charges" and substitute "designated pricing proposal charges". This amendment appears appropriate for prospective AER regulatory determinations to the extent that it clarifies the charges that DNSPs are allowed to recover.

However, we do not support a consequential amendment to the Transitional Chapter 6 Rules for the following reasons:

- the amended provision is not necessary for the Rule to operate for the remaining pricing proposals of the current regulatory period (and in any event we consider the amendments we propose above are more appropriate);

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<sup>1</sup> AER, Final decision, New South Wales distribution determination 2009–10 to 2013–14: Appendices, 28 April 2009

<sup>2</sup> We also refer the AEMC to section 2.1 of our submission which shows there is an error in the under-over recovery adjustment.

- the amendment has no meaningful application, as the AER cannot re-make its determination to be consistent with the amended provision. Section 33 of Schedule 2 to the NEL prohibits retrospective application of an existing provision under which the AER made its determination; and
- The amended provision creates unnecessary ambiguity.

## 2 General drafting issues with amending Rules

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EnergyAustralia would like to raise two issues with the drafting of the amendments to the General Chapter 6 and Transitional Chapter 6 Rules.

### 2.1 Error in over-under recovery method

EnergyAustralia considers there is an error in amended provision 6.18.7(c) of the General and Transitional Chapter 6 Rules, which does not result in the correct calculation of the over-under recovery amount from previous regulatory years.

We note that the intent of the draft Rule is to 'true-up' errors in estimates of over-under recovery that occurred in the immediately preceding pricing proposal. However, we consider that the calculation method in the Rule contains an inadvertent error that amplifies rather than corrects the estimation error. EnergyAustralia is working to identify the nature and implications of the error and will inform the AEMC of our concerns in due course.

On a related issue, we note that the over-under adjustment method does not include an explicit time value of money adjustment to recognise inflation and the opportunity cost of capital related to an under-over recovery amount. The AER's determination for NSW explicitly provides for an interest rate equivalent to the nominal WACC when calculating under-over recovery amounts for transmission charges and associated payments. Similarly, the AER's distribution for Victoria seemingly incorporates a time value of money adjustment in respect of maximum transmission use of system charges.<sup>3</sup>

We consider that a time value of money adjustment mechanism is required to ensure that distributors are financially neutral in respect of over-under recovery. Without such an adjustment, distributors may have a perverse incentive to over-recover charges as part of a pricing proposal.

We consider that the amending Rule could require that the under-over recovery amount be appropriately adjusted for the time of value of money. Prospective regulatory determination made by the AER could then provide further guidance on how this adjustment should be applied by a distributor.

### 2.2 Specification of recoverable charges

EnergyAustralia supports the amendments specifying the categories of charges and payments that can be recovered by a distributor. We confirm that the charges specified in the draft Rule correspond to the charges we currently recover under the AER's regulatory determination. EnergyAustralia however wishes to raise three issues in respect of the charges that can be recovered.

#### *Flexibility for the AER to include other applicable charges and payments*

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<sup>3</sup> AER, *Final decision – appendices, Victorian electricity distribution network service providers, Distribution determination 2011–2015*, October 2010.

We note that the AEMC has decided not to include 'other' applicable charges and payments when defining the types of charges that can be recovered by a distributor. The AEMC notes that such a provision may be difficult to implement and create ambiguities. EnergyAustralia recognises that there is a balance between providing certainty on the charges that can be recovered by distributors and the need to provide sufficient flexibility to cater for new charges and payments that may arise in the future.

Upon reflection, EnergyAustralia considers that there may be merit in providing the AER with the flexibility to make a decision on any other applicable charges and payments to be recovered by a distributor as part of the annual pricing proposal process. In our view, new types of charges and payments are likely to arise in the future, and as such, it would be administratively cumbersome to amend the Rules each time a new charge or payment occurs.

In support of our view, we note the unique circumstances in Victoria where certain services have the potential to be classified as negotiated transmission services, but where the distributor is likely to incur transmission charges for the services provided. Under the draft Rule, a distributor would be unable to recover these charges from customers.

A further example is the current Rule change proposal for Scale Efficient Network Extensions (SENEs). Under the proposed Rule, the services provided by a SENE would be classified as a negotiated transmission service. However, to the extent that the capacity of the SENE is not paid for by generators, customers would be required to fund the residual revenue requirements. While the proposed SENE Rule does not address this matter, it would appear that the Coordinating TNSP would need to levy charges on distributors to recover the residual amount. Under the draft Rule for transmission related charges, the distributor would not be able to recover the payment as it does not relate to a prescribed exit, common transmission or TUOS service.

To address these types of situations, we consider that the AER should have flexibility to permit a DNSP to recover these charges as part of the annual pricing process. We consider there would be sufficient regulatory oversight if the AER was required to make its decision as part of a regulatory determination, subject to guiding principles in the Rules. EnergyAustralia considers the following principles from the AEMC's draft determination could be adopted to provide guidance to the AER on how to identify applicable 'other charges and payments':

- The recovery of charges or payments must be for legitimate costs that a DNSP incurs in providing (distribution) standard control services; and
- The charges or payments to be recovered under the annual pricing proposal process should be those largely outside the control of the distributor and/ or subject to other regulatory processes.

### ***Improving transparency of transmission and distribution billing***

The strict definition of charges that can be recovered by a distributor under the draft Rule requires distributors to demonstrate that the recovery amount in a pricing proposal relates to a defined charge.

We are concerned that the current billing provisions in clause 6A.27 do not ensure transparency from a Coordinating Transmission Network Service Provider about how the charging parameters in a price list or bill relate to prescribed exit services, prescribed common transmission services, and prescribed TUOS (locational and non-locational) services. This creates administrative burden for the distributor and the AER in terms of demonstrating compliance with the amending Rule requirements.

As such, we consider that clause 6A.27 should clarify that a TNSP must identify how each charging parameter in a price list and bill relate to a category of designated pricing proposal services. This will enable a distributor to determine the transmission charges that can be legitimately recovered, and the avoided TUOS payments that should be made to embedded generators.

Similarly there should be a requirement in clause 6.20.2 of the Transitional and General Chapter 6 of the Rules for a distributor to identify charges to be incurred by another distributor, including the charges incurred for prescribed transmission services or standard control services. This would increase the transparency for a distributor recovering inter-DNSP payments.

### ***Definition of inter-DNSP payments***

EnergyAustralia notes that the definition of inter-DNSP payments refer to charges incurred by a distributor for prescribed transmission services. We note that the definition of prescribed transmission services contains more categories of transmission services than that defined in "designated pricing proposal services". We query whether the definition in the Rule is intended, or whether the definition should refer to designated pricing proposal services.