



Australian Energy Market Commission

## **RULE DETERMINATION**

National Electricity Amendment (Application of rate of return guidelines to TasNetworks) Rule 2017

**Rule Proponent(s)**

Tasmanian Networks Pty Ltd

26 September 2017

**RULE  
CHANGE**

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## **About the AEMC**

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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# 1 TasNetworks' rule change request

On 9 June 2017, Tasmanian Networks Pty Ltd (TasNetworks) made a request to the Australian Energy Market Commission (AEMC or Commission) to make a rule change regarding the timing of the application of the Rate of Return Guidelines' (Guideline) revision,<sup>1</sup> scheduled to commence by 17 December 2018, to its distribution business.

## 1.1 Relevant background

TasNetworks, Tasmania's distribution and transmission network service provider, commenced operations on 1 July 2014. TasNetworks operates its distribution and transmission network businesses jointly and these business activities are regulated by the Australian Energy Regulator (AER).

National electricity market (NEM) network service providers are subject to the Guideline. The Guideline sets out the AER's approach to estimating the returns on equity and debt for electricity transmission and distribution network service providers (including TasNetworks)<sup>2</sup> in accordance with the allowed rate of return objective<sup>3</sup> in the National Electricity Rules (NER). The Guideline is not binding on the AER in terms of how it determines the allowed rate of return for distribution or transmission network service providers; nor is it binding on network service providers (such as TasNetworks) regarding how they form their revenue proposals. However, if either decides to depart from the Guideline, it must provide reasons for doing so.<sup>4</sup>

The rule change request relates to the implementation of the Rate of Return Guidelines Review rule change which inserted the transitional rule 11.93 into the NER.<sup>5</sup> Clause 11.93 of the NER stipulates that the current 2013 Guideline will apply to the regulatory control period following TasNetworks' distribution and transmission regulatory control periods that commenced prior to the rule taking effect on 20 October 2016.

An earlier rule change to the NER aligned TasNetworks' transmission and distribution regulatory control periods from 1 July 2019.<sup>6</sup> This alignment was achieved by shortening TasNetworks' distribution regulatory control period commencing 1 July 2017 from the minimum of five years to two years.

For further information, refer to TasNetworks' rule change request.<sup>7</sup>

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1 National Electricity Amendment (Rate of Return Guidelines Review) Rule 2016 No. 9.

2 AER, *Better Regulation: rate of return guideline*, AER, Melbourne, 2013, p. 1.

3 Clause 6.5.2(c) and 6A.6.2(c) of the NER.

4 AER, *Explanatory Statement: Rate of Return Guideline*, AER, Melbourne, 2013, p. 7.

5 National Electricity Amendment (Rate of Return Guidelines Review) Rule 2016 No. 9.

6 National Electricity Amendment (Aligning TasNetworks' regulatory control periods) Rule 2015 No. 6.

7 The rule change request can be found on the Commission's website: [www.aemc.gov.au](http://www.aemc.gov.au).

## 1.2 Rationale for the rule change request

The effect of clause 11.93 of the NER given TasNetworks' distribution and transmission regulatory control period alignment from 1 July 2019 is that the 2013 Guideline will apply to TasNetworks' two year distribution regulatory control period which commenced 1 July 2017, and apply to its five year transmission regulatory control period commencing 1 July 2019. The 2018 Guideline will apply to TasNetworks' distribution and transmission regulatory control periods after these. As a result, the 2018 Guideline will commence application in different regulatory control periods for TasNetworks' distribution and transmission businesses.

In the rule change request TasNetworks sought to address this unintended consequence of having a different Guideline apply to its five year transmission and distribution regulatory control periods commencing 1 July 2019 under clause 11.93 of the NER.

TasNetworks stated in its rule change request that applying different Guidelines to each of its transmission and distribution revenue determinations will cause timing issues and inconvenience to TasNetworks and create further complications for stakeholders. TasNetworks further stated that it "is important to TasNetworks that its customers and stakeholders have the best possible opportunity to understand and provide feedback on its regulatory proposals".<sup>8</sup>

A related issue raised in the rule change request concerns the 2018 Guideline taking effect by 17 December 2018.<sup>9</sup> TasNetworks' revised regulatory proposal for its five year aligned distribution and transmission regulatory control period commencing 1 July 2019 is due December 2018 (under an indicative timetable<sup>10</sup>), which is when it expects to have completed customer and stakeholder consultation.

This means that it is likely that the 2018 Guideline would be published near the time that revised regulatory proposals are due under the AER's indicative timeline. Accordingly, it is possible that the 2018 Guideline is published before TasNetworks' revised regulatory proposal submission, due later in the same month. If this is the case, it may leave TasNetworks insufficient time to prepare its revised regulatory proposal to take into account any differences between the 2013 Guideline and 2018 Guideline for its distribution regulatory control period commencing 1 July 2019.

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<sup>8</sup> TasNetworks rule change request, p. 2.

<sup>9</sup> The AER has developed a timeline for the review of the Guideline. It expects to have the final 2018 Guideline published and commenced by no later than 17 December 2018. See: AER, *Consultation paper: Process for reviewing the rate of return guidelines*, AER, Melbourne, 2017, p. 7.

<sup>10</sup> Please note that the timeline is only indicative. For further information, please see: AER, *Preliminary framework and approach: TasNetworks electricity transmission and distribution Regulatory control period commencing 1 July 2019*, AER, Melbourne, 2017, p. 9.

### **1.3 Solution proposed in the rule change request**

TasNetworks sought to address the issues discussed above by proposing a rule (the proposed rule) that seeks to resolve having a different Guideline apply to its transmission and distribution businesses for its five year aligned distribution and transmission regulatory control period commencing 1 July 2019.

The proposed rule amends the definition of "current regulatory control period" in clause 11.93 of the NER as it applies to TasNetworks to be the regulatory control period "which ends on 30 June 2019". The effect of this will be that TasNetworks' current 1 July 2017 to 30 June 2019 distribution regulatory control period will be considered the "current regulatory control period" rather than its 1 July 2012 to 30 June 2017 distribution regulatory control period.

This means the 2013 Guideline rather than the 2018 Guideline will apply to the five year distribution regulatory control period commencing 1 July 2019. As TasNetworks' "current regulatory control period" for transmission would also end 30 June 2019, the corresponding transmission regulatory control period would also be subject to the 2013 Guideline. The proposed rule would therefore create consistency with respect to the Guideline that applies to TasNetworks' network businesses for the five year regulatory control period commencing 1 July 2019, compared with clause 11.93 of the NER as it is currently drafted.

### **1.4 The rule making process**

On 22 August 2017, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.<sup>11</sup> A consultation paper identifying specific issues for consultation was also published. Submissions closed on 19 September 2017. The Commission received no submissions on the consultation paper.

The Commission accepted that the rule change request was a request for a non-controversial rule as defined in s. 96 of the National Electricity Law (NEL). Accordingly, the Commission commenced an expedited rule change process, subject to any written requests not to do so.

The closing date for receipt of written requests was 5 September 2017. No requests to not carry out an expedited rule change process were received. Accordingly, the rule change request was considered under an expedited process.<sup>12</sup>

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<sup>11</sup> This notice was published under s. 95 of the NEL.

<sup>12</sup> Section 96 of the NEL.

## 2 Final rule determination

This chapter outlines:

- the Commission's final rule
- the rule making test for changes to the NER
- the assessment framework for considering the rule change request
- the Commission's consideration of the final rule against the national electricity objective.

### 2.1 The Commission's final rule

The Commission's final rule determination is to make the final rule as proposed by TasNetworks, with minor amendments. The final rule will amend the NER to have the 2013 Guideline apply to TasNetworks' five year distribution regulatory control period commencing 1 July 2019. As a result, the same Guideline will apply to TasNetworks' distribution and transmission businesses from 1 July 2019.

The final rule made by the Commission is attached to, and published with, this final rule determination. It will commence on 3 October 2017. The key changes made under the final rule are:

- TasNetworks' distribution business is separately defined from other affected distribution network service providers for the purposes of clause 11.93 of the NER
- the definition of "current regulatory control period" in clause 11.93.1 of the NER has been amended such that in respect of TasNetworks' distribution business, it is the regulatory control period ending on 30 June 2019
- the definition of "subsequent regulatory control period" in clause 11.93.1 of the NER has been amended such that in respect of TasNetworks' distribution business, it is the regulatory control period following the "current regulatory control period" (as newly defined above)
- clause 11.93.2 of the NER applies the 2013 Guideline to TasNetworks distribution business' subsequent regulatory control period, commencing 1 July 2019 and ending 30 June 2024.

The effect of all of these changes is that the 2013 Guideline will apply to TasNetworks' five year distribution regulatory control period commencing 1 July 2019 and the 2018 Guideline will apply to TasNetworks' distribution business from 1 July 2024. The 2018 Guideline will apply to TasNetworks' transmission business from 1 July 2024 as currently provided.

The Commission's reasons for making this final rule determination are set out in section 2.4.

Further information on the legal requirements for making this final rule determination is set out in Appendix A.

## 2.2 Rule making test

Under the NEL the Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national electricity objective (NEO).<sup>13</sup> This is the decision making framework that the Commission must apply.

The NEO is:

“to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

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

From 1 July 2016, the NER, as amended from time to time, apply in the Northern Territory (NT), subject to derogations set out in Regulations made under the NT legislation adopting the NEL.<sup>14</sup> Under those Regulations, only certain parts of the NER have been adopted in the NT.<sup>15</sup> Because the proposed rule's impact is limited to Tasmania and will not have any impact on the NT, the Commission has not assessed the proposed rule against additional elements required by NT legislation.<sup>16</sup>

## 2.3 Assessment framework

In assessing the proposed rule against the NEO, the Commission considered the following principles to guide its assessment:

- whether the proposed changes improve the **transparency of information** and enhance **regulatory certainty**
- whether the proposed changes reduce **regulatory and administrative burden**.

These principles are covered in more detail in the following sections (2.3.1 and 2.3.2).

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<sup>13</sup> Section 88 of the NEL.

<sup>14</sup> National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations.

<sup>15</sup> For the version of the NER that applies in the Northern Territory, refer to: [http://www.aemc.gov.au/Energy-Rules/National-electricity-rules/National-Electricity-Rules-\(Northern-Territory\)](http://www.aemc.gov.au/Energy-Rules/National-electricity-rules/National-Electricity-Rules-(Northern-Territory)).

### **2.3.1 Transparency of information and regulatory certainty**

Transparency of information and regulatory certainty refers to clear, accountable and relevant information to stakeholders in order to provide greater regulatory certainty to support the efficient investment in electricity.

The important consideration for this criterion in regard to this rule change request is the uncertainty around the 2018 Guideline being scheduled to take effect by around the time TasNetworks' revised distribution regulatory proposal is due to be submitted to the AER for the regulatory control period commencing 1 July 2019. The 2018 Guideline is due to commence after TasNetworks expects customer and stakeholder consultations for its revised regulatory proposal would have already been completed based on the 2013 Guideline.

While these dates are flexible, it is possible that TasNetworks may submit its revised distribution regulatory proposal in December after the revised Guideline commences earlier that month. TasNetworks has suggested this creates a lack of transparency of information and reduces regulatory certainty. This is because it may have insufficient time to consider the 2018 Guideline in its revised regulatory proposal submission or be able to conduct further consultations with stakeholders for its five year distribution regulatory control period commencing 1 July 2019.

### **2.3.2 Regulatory and administrative burden**

Regulatory and administrative burden for this rule change request refers to whether the implementation of the rule change would either reduce or increase the regulatory or administrative burden on stakeholders. If regulation is excessive or complex, it increases costs for businesses, market bodies and other relevant stakeholders which are likely to be passed through to consumers in the form of higher prices.

The Commission considers the following aspects of the proposed rule to be relevant to this criterion (with respect to the five year regulatory control period commencing 1 July 2019):

- Whether there are benefits of having consistency in the Guideline applying to TasNetworks' transmission and distribution businesses. For example, this may provide TasNetworks with the ability to consult stakeholders jointly.
- Whether the implementation of the proposed rule has the potential to reduce some costs for the AER in assessing TasNetworks' transmission and distribution proposals against one Guideline rather than two.

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<sup>16</sup> National Electricity (Northern Territory) (National Uniform Legislation) Act 2015.

## 2.4 Commission's reasons

Having regard to the issues raised in the rule change request the Commission is satisfied that the final rule will, or is likely to, contribute to the achievement of the NEO for the following reasons:

- it contributes to regulatory certainty and transparency for TasNetworks' five year aligned regulatory control period by mitigating the potential for TasNetworks' short timeframe to consider the 2018 Guideline revised regulatory proposal for the distribution regulatory control period commencing 1 July 2019<sup>17</sup>
- it is expected to reduce regulatory and administrative burden for TasNetworks in preparing its revenue determination for the five year aligned distribution and transmission regulatory control period
- it may reduce the AER's administrative burden in assessing TasNetworks' revenue proposal for its transmission and distribution businesses for the five year regulatory control period commencing 1 July 2019 against one Guideline rather than two.

The Commission's reasons for making the rule against the assessment framework are covered in more detail in sections 2.4.1 and 2.4.2.

### 2.4.1 Transparency of information and regulatory certainty

The Commission considers the final rule should improve transparency of information and regulatory certainty. The final rule will allow the delivery of accountable and relevant information to stakeholders in order to provide greater regulatory certainty to support the efficient investment in electricity.

The final rule will have the 2013 Guideline rather than the 2018 Guideline apply to TasNetworks' five year distribution regulatory control period commencing 1 July 2019. The final rule aims to mitigate the issues associated with the 2018 Guideline's commencement (17 December 2018) and the indicative deadline for TasNetworks' revised regulatory proposal occurring in the same month (December 2018). It does this by requiring TasNetworks to continue to apply the 2013 Guideline throughout the entire distribution revenue determination process for its five year aligned regulatory control period commencing 1 July 2019.

The Commission considers that in doing so, there is likely to be greater transparency and regulatory certainty than would otherwise be the case. This is because under the final rule TasNetworks will not have to consider the revised 2018 Guideline in its revised regulatory proposal submission for its five year distribution regulatory control period commencing 1 July 2019 within a short time frame. Nor will it need to conduct further consultations with stakeholders. This should yield greater transparency and

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<sup>17</sup> At the time of writing, the Guideline is due to be published 17 December 2018 as per the requirement in the NER.

certainty for TasNetworks in preparing its distribution revenue determination for this period.

#### **2.4.2 Regulatory and administrative burden**

The Commission considers the final rule is likely to reduce the regulatory and administrative burden on TasNetworks and its stakeholders. The final rule assists TasNetworks in efficiently preparing its revenue proposals for its five year aligned distribution and transmission regulatory control period commencing 1 July 2019 as it is only required to have regard to one Guideline rather than a different Guideline for each of its businesses.

The Commission considers having the same Guideline apply for TasNetworks' five year aligned regulatory control period will provide the opportunity to prepare a revised revenue proposal more efficiently. For example, TasNetworks will be able to consult stakeholders jointly. It may also have additional benefits in reducing regulatory and administrative burden for the AER in assessing TasNetworks' revenue proposal for this regulatory control period against one Guideline rather than two.

## Abbreviations

2013 Guideline	The current version of the Australian Energy Regulator's Rate of Return Guidelines, developed in 2013
2018 Guideline	Australian Energy Regulator's revision of the Rate of Return Guidelines scheduled to commence by 17 December 2018
AEMC or Commission	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
COAG	Council of Australian Governments
Guideline	The Australian Energy Regulator's Rate of Return Guidelines
MCE	Ministerial Council on Energy
NER	National Electricity Rules
NEL	National Electricity Law
NEM	national electricity market
NEO	national electricity objective
NT	Northern Territory
TasNetworks	Tasmanian Networks Pty Ltd

## **A Legal requirements under the NEL**

This appendix sets out the relevant legal requirements under the NEL for the AEMC to make this final rule determination.

### **A.1 Final rule determination**

In accordance with s. 102 of the NEL the Commission has made this final rule determination in relation to TasNetworks' Application of rate of return guidelines to TasNetworks rule change request.

In accordance with s. 103 of the NEL, the Commission has determined to make, with amendments, the rule proposed by the rule proponent.

The Commission's reasons for making this final rule determination are set out in section 2.4 and its key changes are described in section 2.1. A copy of the final rule is attached to, and published with, this final rule determination.

### **A.2 Power to make the rule**

The Commission is satisfied that the final rule falls within the subject matter about which the Commission may make rules. The final rule falls within s. 34 of the NEL as it relates to the activities of persons (including registered participants) participating in the national electricity market or involved in the operation of the national electricity system (s. 34(1)(a)(iii)). Further, the final rule falls within the matters set out in Schedule 1 to the NEL as it relates to transmission and distribution system revenue and pricing because it concerns the timing of the application of revised regulatory economic methodologies used in the regulatory determination process for transmission and distribution network service providers.<sup>18</sup>

### **A.3 Commission's considerations**

In assessing the rule change request, the Commission considered:

- its powers under the NEL to make the rule
- the rule change request
- submissions received during consultation
- the Commission's analysis as to the ways in which the proposed rule will, or is likely to, contribute to the NEO.

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<sup>18</sup> NEL Schedule 1, Part 20 and 26D.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.<sup>19</sup>

The Commission may only make a rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed rule is compatible with the proper performance of Australian Energy Market Operator's (AEMO) declared network functions.<sup>20</sup> The final rule is compatible with AEMO's declared network functions because it does not affect the performance of the functions at all.

#### **A.4 Civil penalties**

The final rule does not amend any clauses that are currently classified as civil penalty provisions under the NEL or National Electricity (South Australia) Regulations. The Commission does not recommend to the COAG Energy Council that any of the proposed amendments made by the rule be classified as civil penalty provisions.

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<sup>19</sup> Under s. 33 of the NEL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for Energy. On 1 July 2011 the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated council is now called the COAG Energy Council.

<sup>20</sup> Section 91(8) of the NEL.