24 November 2011

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

Project number: ERC0129

Dear Mr Pierce,

RE: DISTRIBUTION NETWORK PLANNING AND EXPANSION FRAMEWORK

The Victorian DNSPs (CitiPower and Powercor Australia, United Energy, SP AusNet and Jemena Electricity Networks) welcome this opportunity to respond to the AEMC's (**the Commission**) Consultation Paper entitled 'National Electricity Amendment (Distribution Network Planning and Expansion Framework) Rule 2011' (**Consultation Paper**) dated 29 September 2011.

The Consultation Paper follows on from a review conducted by the Commission, which provided a final report on 23 September 2009 (**Final Report**) to the Ministerial Council on Energy (**MCE**). The MCE expressed its support for the Commission's findings in the Final Report and has now sought a formal rule change request on that basis. The Victorian DNSPs (**the Businesses**) note that a Draft Rule Determination is expected to be released by the Commission in March 2012.

The Businesses concur with the submission lodged by the Energy Networks Association (**ENA**) under separate cover.

This submission sets out the Businesses' comments on the following issues:

- Section 1 relates to the proposed annual planning and reporting requirements, including the Demand Side Engagement Strategy, and seeks to address queries raised by the Commission in section 5 of the Consultation Paper;

- Section 2 relates to the proposed Regulatory Investment Test for Distribution (**RIT-D**), and seeks to address queries raised by the Commission in section 6.1 of the Consultation Paper;

- Section 3 relates to the dispute resolution process, and seeks to address queries raised by the Commission in section 6.2 of the Consultation Paper;

- Section 4 relates to implementation and transition issues, and seeks to address specific queries raised by the Commission in section 7 of the Consultation Paper.

- Attachment 1 sets out further detailed comments on the proposed Rules.

- Attachment 2 sets out the Businesses' responses to each question contained in the Consultation Paper.

1. Annual planning and reporting requirements

1.1. Annual planning process

Under the Rule change proposal, Distribution Network Service Providers (**DNSPs**) would be required to undertake an annual planning process covering a minimum forward planning period of five years for assets in their networks. DNSPs would be required to undertake forecasts, identify system limitations, and consider non-network alternatives in Distribution Annual Planning Reports (**DAPRs**).

Victorian DNSPs have reported consistently on a calendar year basis for the past 10 years. Distribution System Planning Reports (**DSPRs**) and Transmission Connection Planning Reports (TCPRs) are currently published by the Businesses in December each year, immediately prior to the summer peak loading season. The process of preparing DSPRs is well established within the Businesses.

Therefore, the Businesses support the Commission's recommendation to require DAPRs to be published by 31 December each year. However, the Businesses do not agree that aligning planning periods across jurisdictions is desirable or appropriate, for the following reasons

- Firstly, the Businesses disagree with the Consultation Paper's suggestion that useful comparisons of the activities of DNSPs operating in different jurisdictions will be provided if the planning periods of all DNSPs are aligned. There may be a variety of factors that affect the plans of a particular network business, and which differentiate it from other network businesses. In the absence of proper consideration of these factors, comparisons across DNSPs will have little, if any, validity.

- Secondly, from a Victorian perspective it is important that the publication timeframe is aligned with the Victorian summer peak. Altering the current timeframe would also cause significant disruption within the Businesses in terms of planning and budgeting.

The Businesses therefore also strongly support the proposal to allow each jurisdiction to determine the start date for the annual planning period.

1.2. Demand side engagement strategy

Under the Rule change proposal DNSPs would be required to publish a Demand Side Engagement Strategy which would outline each DNSP's processes for considering non-network proposals and engaging with non-network providers. This Strategy would be reviewed and published at least once every three years. It is also proposed that DNSPs be required to establish a database of non-network case studies and proposals, and a register of interested participants.

The Businesses currently detail the process for assessing non-network proposals in their annual Distribution System Planning Reports. The Businesses support the development of a published strategy to engage demand side solutions, and they are supportive of the flexible approach adopted in the proposed Rules for DNSPs to formulate the Demand Side Engagement Strategy. The Businesses consider that a more prescriptive approach would impede a DNSP's ability to respond quickly to changes in the industry over time.

However, the Businesses do not agree with the proposal to require DNSPs to establish a database of non-network case studies and proposals. The Businesses will be unable to publish information that is commercially sensitive and confidential, and consequently the database will lack substance and provide limited insight into the decision making process of DNSPs.

The Businesses further submit that the existence of a database will not of itself increase demand side participation, which is one of the primary goals of the proposed Rule change. Attempts to regulate the administration of demand side policies do not address the limited effectiveness of incentives under Chapter 6 of the National Electricity Rules (**the Rules**) in encouraging investment in non-network alternatives. To the contrary, it is possible that mandatory requirements to establish and maintain databases will simply add to the cost of implementing demand side options.

1.3. Distribution annual planning report

Under the Rule change proposal, DNSPs would be required to publish a **DAPR**, which will detail outcomes of DNSPs' network planning processes. The Rule change proponent's intention is that these annual planning reporting requirements will replace any jurisdictional requirements governing DNSPs' reporting. The Commission has also proposed a requirement to hold a public forum on request by any interested parties within three months following publication of a DAPR.

The Businesses support the proposal to require DNSPs to publish DAPRs and agree with the Commission that adequate incentives in the current regulatory regime already exist to ensure the DNSPs' forecasts are accurate. The Businesses assure the Commission that data cited in any submissions to authorities are robust and subject to rigorous internal review and analysis. The Businesses consider that certification of the DAPR by the CEO and a Director or Company Secretary is an inappropriately onerous requirement on what will be an on-going operational requirement of the business. It is suggested that certification by the Chief Operating Officer or a relevant General Manager would be appropriate.

The Businesses agree with the Commission that load forecasts for zone substations are the most appropriate micro-level forecast. The Businesses highlight that load forecasts below the zone substation level are generally not informative because they exhibit a higher degree of volatility in range. The Businesses do not agree, however, that load forecasts for the network as a whole are necessary. Such forecasts do not inform the decision making processes of the Businesses regarding options to relieve network constraints, and they provide no useful information for intending demand side proponents about potential opportunities. Additionally, in higher density networks it is not feasible to prepare distribution feeder forecasts of growth, due to the inter-meshing of the feeders.

The Businesses do not agree with the proposal to require DNSPs to hold a public forum on the DAPR. Public forums are not an effective or informative method for communicating highly technical documents which require careful consideration of details and facts set out in the reports. While the Businesses have, and remain happy to, accommodate specific requests to discuss the DAPR with the Australian Energy Regulator (**AER**), the Australian Energy Market Operator (**AEMO**), and Registered Participants, a public forum called on request by any member of the public may be open to vexatious claims which serve no benefit to any stakeholder.

1.4. Joint planning requirements

The Rule change contains provisions relating to the conduct of joint planning between TNSPs and DNSPs. The proposed Rule will require DNSPs and TNSPs to meet regularly to assess the adequacy of existing transmission-distribution connection points, and undertake joint planning in relation to proposals which relate to both networks. The Businesses support the proposed Rule change, and highlight that the Businesses have agreed a Memorandum of Understanding (**MOU**) with AEMO to provide a clear framework around joint planning arrangements.

In previous submissions to the Commission, the Businesses have noted the need for the Rules to provide for a regulatory investment test to be applied to transmission-to-distribution connection decisions. The MCE's Rule change proposal states that the RIT-T would be applied to any investments identified through the joint planning process, including transmission-distribution connection projects. However, contrary to the MCE's intention, clause 5.6.5C(a)(8) of the proposed Rule states that the RIT-T is not to be applied where the proposed joint network investment will be a connection asset. In addition to correcting this apparent error, the Commission should also consider adopting a definition of joint investment that explicitly includes all transmission-distribution connection projects.

2. Regulatory Investment Test for Distribution

The Rule change proponent proposes to introduce a Regulatory Investment Test for Distribution (**RIT-D**) that requires DNSPs to undertake assessment and consultations for distribution investments. The RIT-D will not apply to investment where the estimated capital cost of the most expensive technically and economically feasible option is less than $5 million. The Rule change also proposes that provisions should

be included in relation to AER audits of projects which DNSPs have identified as not meeting the threshold test.

The Businesses support the inclusion of an appropriate threshold below which a RIT-D will not be required. The threshold recognises that cost, time and effort are required to complete the RIT-D. However, the Businesses submit that a threshold based on the most expensive option does not serve to limit the scope of the threshold in a practical way. The Businesses consider that a threshold test based on the capital cost of the preferred option is more practicable and appropriate. The Businesses consider this threshold is more clearly defined and less likely to lead to unnecessary disputes and project delays, over interpretations of 'most expensive technically and economically feasible option'.

The Businesses disagree with the proposal to require DNSPs to provide a minimum of four months for parties to make submissions on the project specification report. This proposed rule, together with a further minimum consultation period of 30 business days for the draft project assessment report and the minimum periods for dispute resolution, results in a minimum period of five months being added to the lead-time for project delivery on top of the lead times associated with the preparation of a RIT-D analysis. While the Businesses recognise that projects of an urgent nature may be exempt from the RIT-D process, such delays impede the Businesses' ability to respond effectively to market changes by forcing DNSPs to commit to a particular set of proposals and increasing the transaction costs of adjusting or amending proposals in response to market changes.

In addition, we note that clause 5.6.5CB(c) exempts the RIT-D from being applied to "urgent and unforeseen" projects, which are defined as projects that are required to be operational within 6 months of the DNSP identifying an urgent and unforeseen need. The Businesses are concerned that no projects would realistically satisfy the threshold requirement to be operational within 6 months. We therefore propose that the threshold for exemption be extended to projects that are required to be operational within 12 months.

3. Dispute resolution process

The Rule change proposes to allow any party who may be impacted by a DNSP's decisions under the RIT-D, including any non-network providers and interested parties, to raise a dispute with the AER. The proposed dispute resolution process would allow the AER to dismiss disputes which are misconceived or lacking in substance.

The Businesses consider the scope of parties that may seek to raise a dispute is too broad. While the Businesses acknowledge that the dispute resolution process is limited to considering whether a DNSP has complied with the Rules, the Businesses do not consider that such a rule will effectively limit the potential for vexatious claims to be lodged. Vexatious claims have the potential to create delays of up to 30 business days as parties will be permitted to lodge a dispute up to 30 business days from the publication of the final project assessment report.

Further, in processing such a claim the AER may take several months to adjudicate on the matter. This creates the potential for significant delays to the construction of a critical project. The Businesses consider that this timeframe, together with the generous consultation timeframes outlined above, will unduly delay projects and impede the Businesses' ability to coordinate and manage capital expenditure. The Businesses urge the Commission to narrow the scope of potential dispute applicants to the connection applicants, AEMO, and affected Registered Participants.

In addition, the Businesses support the proposal set out in the ENA's submission, which suggests that the definition of persons who can raise a dispute should exclude persons who did not make a submission on the Draft Project Assessment Report.

4. Implementation and transition

The Consultation Paper notes the Commission's intention that DNSPs will not be required to comply simultaneously with existing jurisdictional arrangements and the proposed new framework, if implemented. However, the Rule change request does not address the issue of the rolling back of jurisdictional planning arrangements to accommodate the possible introduction of the proposed national framework.

The Businesses welcome the Commission's assurances that duplication of the national and jurisdictional regulations will be avoided. However, it will be important for the Commission to work with the jurisdictions over the coming months to ensure that the implementation timetable for the national framework takes due account of the timetables of the jurisdictions to roll back existing jurisdictional frameworks.

The Consultation Paper notes an intention to provide a minimum transitional period of nine months, following the making of the final Rule, before DNSPs will be required to publish DAPRs. The Businesses concur that a period of at least nine months would be required for the preparation of the first DAPR following the commencement date of the new Rule. As noted in section 1.1 above, the Rule change proponent has proposed that the jurisdictions be empowered to determine the start date for the annual planning period, and the Businesses strongly support that proposal.

In addition, the Rule change proposes to provide a transitional period of 12 months before the RIT-D will be required to be applied to investment projects

The Businesses support the Commission's proposal for a 12 month transitional period for the RIT-D.

As currently drafted, the proposed Rule would require the application of the RIT-T to joint investments from the commencement date. The reasons for this are not set out in the Consultation Paper. It would be highly desirable for the Rules to provide a 12 month transition period (consistent with the proposed period for transition to the RIT-D), so that the RIT-T would begin to be applied to joint investment from 12 months after the commencement date.

It is noted that the Commission is considering implementing the Rule change at the same time as the National Energy Customer Framework (**NECF**). The Businesses do not consider that there are any substantive benefits from aligning the implementation of the new Rules to the implementation of the NECF. The Businesses are concerned that an expedited Rule change process will impact on the Commission's ability to meaningfully consider submissions and consider that the Commission be permitted to freely determine the timeframe for the full course of consultation on the Rule change proposal.

5. Closing

The Businesses appreciate the opportunity to make this submission and would welcome the opportunity to discuss any of the matters raised in this submission. Further detailed comments on the proposed Rules are set out in Attachment 1. The Businesses' responses to each question contained in the Consultation paper are set out in Attachment 2.

If you have any questions, please contact Vivienne Pham on (03) 9683 2023 or by email at vpham@powercor.com.au.

Yours sincerely,

Brent Cleeve
Manager Regulation, Citipower and Powercor Australia
on behalf of the Victorian Electricity Distribution Businesses

Attachment 1: Victorian Distribution Businesses' comments on the proposed Rules

Clause	Provision	Comments / Issues
5.6.2AA(e)	The minimum forward planning period for the purposes of the distribution annual planning review is 5 years for distribution assets, and 10 years for transmission assets and dual function assets.	The Businesses support the planning process covering a minimum of 5 years for distribution assets and a minimum of 10 years for transmission connection assets. The specification of a "minimum" planning horizon is supported because the Businesses may wish to adopt a longer planning horizon to undertake a RIT-D earlier in some circumstances where significant lead times may be involved.
5.6.2AA(h)	This provision sets out matters relating to the conduct of joint planning.	The Businesses currently have obligations (under clauses 3.4 and 3.5, respectively of the Victorian Electricity Distribution Code) to publish separate annual transmission connection and distribution system planning reports. The Businesses have a preference for keeping the distribution system planning report and transmission connection asset planning report separate, but under the banner of a DAPR, modified to meet the requirements of a DAPR. This is because preparation of the current transmission connection planning report involves a joint planning process between all Victorian DNSPs as well as the relevant Victorian TNSPs. The process works well. If each DNSP were to prepare their own connection asset planning reports (incorporated into their DAPRs), this will complicate the process and may result in inconsistencies between Businesses' plans, particularly at shared terminal stations. The Rules should therefore be drafted in a way that readily accommodates the publication by DNSPs of separate transmission connection planning reports and DAPRs.
5.6.2AA(h)(3)	In the case of the declared shared network of an adoptive jurisdiction, the relevant declared transmission system operator, the relevant Distribution Network Service Provider, AEMO and any interested party that has informed AEMO of its interest in the relevant plans, shall conduct joint planning.	The inclusion of "any interested party that has informed AEMO of its interest in the relevant plans" as a party to joint network planning has the potential to significantly increase the time and resources involved in conducting joint planning. This provision would apply only in Victoria, so its inclusion is at odds with the AEMC's stated criterion of "harmonisation of jurisdictional requirements". The rationale for this provision is unclear. It is highly doubtful whether such a provision would contribute to the achievement of the National Electricity Objective. The provision should be removed.

Clause	Provision	Comments / Issues
5.6.2AA(l)(12)	Each Distribution Network Service Provider must prepare and make available a Demand Side Engagement document which must include at least the methodology to be used for determining avoided customer transmission use of system charges, in accordance with clauses 5.5 and 5.6.2(k1)	To the extent that non-network solutions may defer or avoid the need for augmentation of transmission-to-distribution connection facilities, avoided transmission-to-distribution connection charges should also be considered.
5.6.2AA	Each Distribution Network Service Provider must establish, maintain and publish a database of non-network proposals and/or case studies that demonstrate economic assessments undertaken by the Distribution Network Service Provider in its consideration of non-network proposals.	The database is unlikely to provide useful information for decision-makers and proponents of non-network solutions. It is questionable whether the requirement on DNSPs to establish such a database would be likely to contribute to the achievement of the National Electricity Objective.
5.6.2AA(t) to (w)	(t) The Distribution Annual Planning Report must satisfy the requirements of clause S5.8, subject to clauses 5.6.2AA(u), (v) and (w) (u) A Distribution Network Service Provider may apply to the AER for an exemption from or variations to any requirement of clause S5.8. (v) An application for an exemption or variation under paragraph (u) must demonstrate that, due to its operational or network characteristics, the costs of preparing the data would manifestly exceed any benefit that may reasonably be obtained from reporting the relevant data. (w) The AER must: (i) respond to an application under paragraph (u) within 30 business days; and (ii) grant an exemption or variation to the requirements of clause S5.8 if satisfied that the Distribution Network Service Provider has met the test under paragraph (v).	Schedule S5.8 sets out extensive information requirements. As a minimum there should be exemptions for situations in which the costs of collating and publishing the required information would exceed the benefits. These provisions are therefore reasonable, and consistent with the National Electricity Objective.

Clause	Provision	Comments / Issues
Definition of "joint network investment"	Joint network investment means "An investment identified under clause 5.6.2AA(t) which affects both a transmission network and distribution network or an investment which would require action by the Transmission Network Service Provider and the Distribution Network Service Provider".	Clause 5.6.2AA(t), which is referenced in the definition, specifies the distribution annual reporting requirements. The definition of "joint network investment" would be improved if a more suitable, clearer cross-reference were included. For the avoidance of doubt, it would be preferable that the definition states explicitly that "joint network investment" includes all transmission-to-distribution connection assets. Moreover, the term contains the word "network", which is defined in the NER to explicitly exclude connection assets. The proposed definition is therefore a source of potential confusion because the intention is to include connection assets in the definition of joint network investment. It would be preferable to delete the work "network" and to adopt the term "joint investment".
5.6.5C(a)(8)	A Transmission Network Service Provider or Distribution Network Service Provider (as the case may be) must apply the regulatory investment test for transmission to a proposed transmission investment or joint network investment (as the case may be) except in circumstances where the proposed transmission investment or joint network investment (as the case may be) will be a connection asset.	This provision states that transmission-to-distribution network connections would not be subject to the RIT-T. This is contrary to the intention of the MCE (stated on page 4 of the Rule Change Request) that "the RIT-T would be applied to any investments identified through the joint planning process that affect both the transmission and distribution networks or require action by both DNSPs and TNSPs, including transmission-distribution connection projects".
5.6.5CA(b)	The purpose of the regulatory investment test for distribution is to identify the credible option that maximises the present value of the net economic benefit to all those who produce, consume and transport electricity in the market (the preferred option).	The Businesses support the selection of projects based on an analysis of net market benefits. It is noted however that other criteria such as maximising present value benefits divided by present value costs (ie. maximising the "present value ratio" or PVR) is also used sometimes to select preferred options. This criterion can tend to favour lower cost deferral projects over larger more capital intensive projects. The businesses suggest that the Commission give consideration to including this decision criterion in the RIT-D.
5.6.5CA(i)	The AER must develop and publish the first regulatory investment test for distribution and regulatory investment test for distribution application guidelines by [insert date], and there must be a regulatory investment test for distribution and regulatory investment test for distribution application guidelines in force at all times after that date	The date specified must provide the AER with sufficient time to consult in relation to the preparation of the guidelines. The DNSP's obligation to apply the RIT-D must commence a reasonable time (say, at least 6 months) after the AER has published the first RIT-D guidelines.

Clause	Provision	Comments / Issues
5.6.5CB(a)	This provision specifies the investments that are subject to the regulatory investment test for distribution.	The Businesses consider that if a distribution project is triggered as a result of a transmission-to-distribution connection asset augmentation, then that distribution project should be included in the scope of the RIT-T, to ensure the total project costs and total project benefits are assessed as one, rather than under separate applications of the RIT-T and RIT-D.
5.6.5CB (a)(1)	This provision states that RIT-D does not have to be applied to a proposed distribution investment that is required to address an urgent and unforeseen network issue that would otherwise put at risk the reliability of the distribution network.	The Businesses agree that the RIT-D should be waived for urgent augmentations.
5.6.5CB(a)(2)	This provision requires a RIT-D to be undertaken where the estimated capital cost of the most expensive option (which is technically and economically feasible) is $5 million or more.	The threshold should be defined with reference to the estimated capital cost of the preferred option. In order to satisfy the AEMC's criterion of "proportionality", the threshold must be no lower than $5 million.
5.6.5CB(f) to (h)	(f) The AER may review a Distribution Network Service Provider's policies and procedures with regard to consideration of non-network alternatives in order to determine if non-network alternatives have been duly considered. (g) For any proposed distribution investment to which the regulatory investment test for distribution does not apply in accordance with paragraph (a)(1) – (8), the AER may audit the Distribution Network Service Provider's planning and decision making for that investment to determine the extent to which the provider gave adequate consideration to non-network solutions in accordance with the requirements of paragraph 5.6.2AA(j) and the Distribution Network Service Provider's Demand Side Engagement Strategy. (h) The AER must publish a report by 31 March each year which details the results of any review conducted under paragraph (f) and any audit conducted under paragraph (g) in the preceding calendar year.	These provisions were not contained in the AEMC's recommended Rule of September 2009. As noted in the Consultation Paper, the AER already has a number of functions and powers set out in legislation in relation to monitoring, investigating and enforcing compliance with various aspects of the national energy framework, including with the NER. The AER's compliance and enforcement strategy sets out the range of mechanisms used to monitor compliance, which include undertaking audits to assess participants' compliance with specific obligations. In addition, the AER issues quarterly compliance reports setting out the results of its monitoring and enforcement activities. In light of the AER's existing enforcement powers, it is unnecessary for the Rules to specify these further enforcement provisions.
5.6.6AB	This provision sets out the RIT-D procedures	Given the lead times associated with many distribution projects, the Businesses consider that the RIT-D procedures should be designed so that the total end-to-end RIT-D process takes no more than 6 months, unless the DNSP has identified a need for an extension of time.

Clause	Provision	Comments / Issues
5.6.6AB(h)(3)	A Distribution Network Service Provider must prepare a report (the project specification report), which must include the relevant annual deferred augmentation charge associated with the identified need.	The term "relevant annual deferred augmentation charge associated with the identified need" appears to refer to "the annualised cost of the most economic network option proposed to address the identified need". It may be helpful to define the term "annual deferred augmentation charge".
5.6.6AB(s)	If a Distribution Network Service Provider elects to proceed with a proposed distribution investment which is for reliability corrective action, it can only do so where the proposed preferred option has a proponent. The identity of that proponent must be included in the draft project assessment report.	In many (but not all) cases, the proponent of a distribution investment which is for reliability corrective action will be the DNSP itself. The rationale for this provision is unclear.
5.6.6AC(b)	A dispute under this clause 5.6.6AC may not be raised in relation to any matters set out in the final project assessment report which: (1) are treated as externalities by the regulatory investment test for distribution; or (2) relate to an individual's personal detriment or property rights.	This provision should be redrafted along the following lines: A dispute under this clause 5.6.6AC may only be raised on the grounds that: (1) the Distribution Network Service Provider has not correctly applied the regulatory investment test for distribution in accordance with the Rules; or (2) there was a manifest error in the calculations performed by the Distribution Network Service Provider in applying the regulatory investment test for distribution. A dispute cannot be raised in relation to any matters set out in the final project assessment report which: (~~1~~3) are treated as externalities by the regulatory investment test for distribution; or (~~2~~4) relate to an individual's personal detriment or property rights.
5.6.6AC(j)	In granting an exemption from the dispute resolution process, the AER may consider if the need for the relevant distribution investment to proceed outweighs the potential benefits from conducting the dispute resolution process.	The Businesses support this provision, although it would benefit from the following clarification at the commencement of the clause: "For a particular distribution investment, a DNSP may apply to the AER for an exemption to the RIT-D dispute resolution process." The inclusion of reasonable timeframes for the AER's consideration and determination of an application for exemption would also be helpful.

Clause	Provision	Comments / Issues
S5.8(3)	This clause refers to "primary distribution feeders", which are defined as follows: "A distribution line connecting a sub-transmission asset to either other distribution lines that are not sub-transmission lines, or to distribution assets that are not sub-transmission assets. For the avoidance of doubt, a zone substation may be considered as a sub-transmission asset."	The Businesses are of the view that distribution feeders should be omitted from the DAPR because of the variability in the forecast demand at this network level. Additionally, in higher density networks it is not feasible to prepare distribution feeder forecasts of growth, due to the inter-meshing of the feeders. Furthermore, augmentations for distribution feeders will generally be less than the RIT-D threshold of $5 million, so therefore there is little point in including them in a DAPR.
Definition of "subtransmission"	The term "subtransmission" is defined as: Any part of the power system which operates to deliver electricity from the transmission network to the distribution network. For the avoidance of doubt, sub-transmission assets may form part of the distribution network.	Under this definition, transmission-to-distribution connection assets would be classified as subtransmission assets. This would be inconsistent with current practice. We consider that the definition should exclude transmission-to-distribution connection assets.
11.30.2	This clause sets out provisions relating to the period when the new Rule applies to distribution investment.	A separate and similar transitional provision should apply in relation to the application of the new Rule to joint investments. The provision should state that: • any obligation to apply the RIT-T to joint investments (including transmission-to-distribution connection investments) applies from commencement date + one year; and • any joint projects in relation to which consultation has commenced prior to commencement date + one year should continue to progress under the pre-existing Rules.

Suggested minor edits to proposed Rules

Clause	Comments / Issues
5.6.2AA(l)(15)	Delete "a" where it appears on the first line and insert "an".
5.6.6AB(a)	Delete the word "access".
S5.8(2)	Insert the words "set out" before the words "forecasts for".
Definition of "considered project"	Delete the yellow highlighted word "distribution".

Attachment 2: Victorian Distribution Businesses' responses to questions raised in the AEMC Consultation Paper

AER Question		Draft response
Question 1: Annual planning process		
1.1	What are the implications of allowing each jurisdiction to determine the start date for the annual planning period?	As noted in the Consultation paper, the intent of this provision is to allow for the planning process to reflect the seasonal variability of electricity demand in each jurisdiction. The Businesses agree with the Rule change proponent's view that this provision would be likely to improve the efficiency of the operation and use of network services over the planning period. The Businesses consider that aligning planning periods nationally would not facilitate transparency, but would instead reduce the usefulness of published information.
1.2	Is it necessary to include a default start date for the annual planning period in the Rules?	Given the interests expressed by the jurisdictions in moving towards a national framework for distribution planning, it seems unnecessary to include a default start date for the annual planning period in the Rules.
Question 2: Demand Side Engagement Strategy		
2.1	To what extent would potential investors, non-network providers and any other interested parties find the information provided by the proposed Demand Side Engagement Strategy (specifically, the Demand Side Engagement document, the database of non-network proposals/case studies and the Demand Side Engagement register) useful?	The difficulty with the proposed database of non-network proposals is that it cannot contain commercial information. It is therefore unlikely that information published in such a database would provide meaningful guidance to potential proponents of non-network options. On this basis, the provisions relating to the proposed database of non-network proposals/case studies should be removed.
2.2	To what extent would DNSPs incur additional costs in developing and maintaining the various components of the proposed Demand Side Engagement Strategy?	These costs were examined during the recent Victorian electricity distribution price review. Section L5.5 of Appendix L of the AER's Final Decision of October 2010 sets out details of the AER's analysis.
Question 3: Distribution Annual Planning Report		
3.1	What are the implications (positive and negative) of providing DNSPs with the opportunity to apply for exemptions or variations to the annual reporting requirements?	Given the scope and volume of information that Schedule 5.8 requires DNSPs to publish in an Annual Planning Report, it is appropriate that DNSPs have an opportunity to seek exemptions or variations to those requirements. However, the proposed provisions enable an exemption or variation to be sought by a DNSP where, due to its operational or network characteristics, the costs of preparing the data would "...manifestly exceed any benefit that may reasonably be obtained from reporting the relevant data in a national regime." The inclusion of the term "manifestly" in the test is inappropriate because it sets an inappropriately high hurdle that is inconsistent with the National Electricity Objective. The term "manifestly" should be deleted.

AER Question		Draft response
3.2	Do you consider the proposed process for applying for and granting an exemption or variation to the annual reporting requirements is appropriate?	The process should require the AER to: • make and publish a draft determination on an application within a specified period (of, say, 30 business days); • provide a reasonable period (of, say, 20 business days) for interested parties to lodge submissions on the draft decision; and • make and publish a final determination within a specified period (of, say, 20 business days).
3.3	How might a DNSP demonstrate, and the AER determine, whether the costs of preparing certain reporting data would "manifestly exceed any benefit that may reasonably be obtained from reporting the relevant data in a national regime"? Is there a need to define a set of criteria to assist both parties in this assessment?	The costs of preparing the report can be estimated with a reasonable degree of accuracy using management accounting data and (possibly) external benchmarks or industry standard data. Estimating the potential benefits is necessarily more subjective, and is best addressed on a case-by-case basis.
3.4	Are there any alternative solutions which may better balance the benefits of maintaining consistency across the NEM with the costs of preparing and reporting the data under a national framework?	The alternative solutions have previously been canvassed in submissions to the AEMC by United Energy in April 2009 and by the Businesses in August 2009 (both of which are posted on the AEMC's website at http://www.aemc.gov.au/Market-Reviews/Completed/Review-of-National-Framework-for-Electricity-Distribution-Network-Planning-and-Expansion.html).
3.5	Do DNSPs face sufficient business and regulatory drivers to ensure that they carry out appropriate planning and produce accurate forecasts in their DAPRs?	DNSPs face commercial incentives under their price caps to minimise expenditure. They are also exposed to financial penalties under the Service Target Performance Incentive Scheme if service standards are compromised in the pursuit of cost reductions. These complementary incentives provide strong commercial drivers for DNSPs to carry out appropriate planning and to produce accurate forecasts in their DAPRs, as it is in the DNSPs' commercial interests to ensure that an optimal level and mix of network investment and non-network alternatives is employed to deliver network services that meet the needs and expectations of customers. In addition to the above, it is noteworthy that the AEMC has already considered and opined on this question in its 2009 draft report on its Review of National Framework for Electricity Distribution Network Planning and Expansion. Page 19 of the Consultation Paper states: "AEMC considered that it was not appropriate to extend the proposed dispute resolution process to DNSPs' annual planning process and reporting on the basis that sufficient business and regulatory drivers exist to ensure that DNSPs carry out appropriate planning and produce accurate forecasts in their DAPRs." The Businesses concur with the AEMC's views on this matter.

AER Question		Draft response
3.6	Is there a need to consider additional measures to ensure DNSPs deliver robust, high quality DAPRs? If so, what additional measures could be put in place?	In addition to the commercial incentives described above, the Businesses face regulatory drivers under their distribution licences, the Victorian System Code and the NER to undertake appropriate planning and to deliver efficient network and non-network solutions. There is no need for additional measures to be put in place.
Question 4: Joint planning requirements		
4.1	Do you consider the proposed Rule is appropriate and sufficient in clarifying the arrangements for joint planning between DNSPs and TNSPs?	Subject to correction of clause 5.6.5C(a)(8) – which states that transmission-to-distribution network connections would not be subject to the RIT-T – the proposed Rule is sufficient in clarifying the arrangements for joint planning between DNSPs and TNSPs.
4.2	In what circumstances would DNSPs be required to undertake joint planning with other DNSPs?	As noted correctly in the Consultation Paper, DNSPs undertake joint planning where there is a need to consider any augmentation or non-network alternative that affects more than one distribution network.
4.3	Do you consider the proposed Rule is appropriate and sufficient in clarifying the arrangements for joint planning between DNSPs?	The Victorian DBs have practiced effective joint planning since their establishment over 15 years ago, in the absence of the proposed Rule. No further clarification is required.
Question 5: Regulatory Investment Test for Distribution		
5.1	Do you consider the proposed RIT-D design parameters are likely to work together to provide an effective decision making framework for DNSPs, consistent with the NEO?	The proposed RIT-D specifies a threshold that refers to the most expensive option being considered. This is inappropriate. The threshold should be set with reference to the capital cost of the preferred network investment option. In order to satisfy the AEMC's criterion of "proportionality", the threshold should be no lower than $5 million.
5.2	Do you consider it is necessary to provide the AER with additional powers to (1) review a DNSPs policies and procedures with regard to the consideration of non-network alternatives and (2) audit projects which have been identified by DNSPs as not meeting the threshold for the RIT-D?	As noted in the Consultation Paper, the AER already has a number of functions and powers set out in legislation in relation to monitoring, investigating and enforcing compliance with various aspects of the national energy framework, including with the NER. The AER's compliance and enforcement strategy sets out the range of mechanisms used to monitor compliance, which include undertaking audits to assess participants' compliance with specific obligations. In addition, the AER issues quarterly compliance reports setting out the results of its monitoring and enforcement activities. In light of the AER's existing enforcement powers, it is unnecessary for these specific provisions to be included in the Rules.
5.3	Should the AER be required to publish a separate annual report detailing the results of any audit undertaken in the preceding 12 months?	As noted above, the AER already issues quarterly compliance reports detailing the results of its enforcement activities, so it is not necessary to impose further requirements on the AER.

AER Question		Draft response
Question 6: Dispute resolution process		
6.1	Do you consider the proposed scope of parties who could raise a dispute to be appropriate?	Although the grounds for raising a dispute are well defined (see the comments in relation to clause 5.6.6AC(b)) and the AER has the power to dismiss disputes which are misconceived or lacking in substance, the scope of parties that may seek to raise a dispute is too broad, and under the proposed Rule there remains a material risk that vexatious claims may be lodged, and projects delayed.
6.2	What are the implications (positive and negative) of allowing the AER to grant exemptions from the proposed dispute resolution process?	As implied in the proposed Rule itself, there is overriding merit in permitting an exemption if the need for (ie benefit of) a proposed investment outweighs the potential benefits from conducting the dispute resolution process.
6.3	Is there a need to develop detail or specification around the process for applying to the AER for, and the AER approving, exemptions to the dispute resolution process?	The inclusion of reasonable timeframes for the AER's consideration and determination of an application for exemption would be helpful.
Question 7: Implementation and transition		
7.1	Are there any issues in respect of the rolling back of jurisdictional requirements that may need to be supported or provided for by transitional provisions in the Rules?	See the answer to question 7.3 below.
7.2	If the proposed national framework was to be introduced, are the proposed timeframes appropriate to allow for the transition to the national framework?	A transition period of one year after the Rule commences is required before DNSPs' and TNSPs' obligations to apply the RIT-T to transmission connection assets come into effect (see the comments in relation to clause 11.30.2 in Attachment 1). With the exception of this issue, the proposed timeframes will be challenging, but achievable.
7.3	Are there any other factors that should be taken into account in developing transitional provisions to enable the efficient potential application of the proposed Rule to all DNSPs?	The Commission will need to work closely with the jurisdictions to agree a timetable for the introduction of the national framework and to ensure that the roll-back of jurisdictional frameworks is coordinated seamlessly. Careful coordination by the Commission and jurisdictions will be essential to ensure that DNSPs are not required to comply simultaneously with two regulatory frameworks.
7.4	From a market participant perspective, are there any implications in not aligning the proposed introduction of the national framework with the commencement of the NECF?	No material implications are apparent at this time. However, the national distribution framework Rule change should not be rushed through in order to align its commencement with that of the NECF.