



National Electricity Amendment (Cost pass through arrangements for Network Service Providers) Rule 2012 No. 4

under the National Electricity Law as applied by:

- (a) the National Electricity (South Australia) Act 1996;
- (b) the Electricity (National Scheme) Act 1997 of the Australian Capital Territory;
- (c) the Electricity - National Scheme (Queensland) Act 1997 of Queensland;
- (d) the Electricity - National Scheme (Tasmania) Act 1999 of Tasmania;
- (e) the National Electricity (New South Wales) Act 1997 of New South Wales;
- (f) the National Electricity (Victoria) Act 2005 of Victoria; and
- (g) the Australian Energy Market Act 2004 of the Commonwealth.

The Australian Energy Market Commission makes the following Rule under the National Electricity Law.

John Pierce
Chairman
Australian Energy Market Commission

National Electricity Amendment (Cost pass through arrangements for Network Service Providers) Rule 2012 No. 4

1 Title of Rule

This Rule is the *National Electricity Amendment (Cost pass through arrangements for Network Service Providers) Rule 2012 No.4.*

2 Commencement

This Rule commences operation on 2 August 2012.

3 Amendment of the National Electricity Rules

The National Electricity Rules are amended as set out in Schedule 1.

4 Amendment of the National Electricity Rules

The National Electricity Rules are amended as set out in Schedule 2.

5 Savings and Transitional Amendments to the National Electricity Rules

The National Electricity Rules are amended as set out in Schedule 3.

Schedule 1 Amendment to the National Electricity Rules

[1] 6.5 Matters relevant to the making of building block determination

After clause 6.5.9, insert:

6.5.10 Pass through events

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

[2] 6.6.1 Cost pass through

Before clause 6.6.1 (a), insert:

- (a1) *Any of the following is a pass through event for a distribution determination:*
 - (1) *a regulatory change event;*
 - (2) *a service standard event;*
 - (3) *a tax change event;*
 - (4) *a retailer insolvency event; and*
 - (5) *any other event specified in a distribution determination as a pass through event for the determination.*

[3] 6.6.1 Cost pass through

Omit clause 6.6.1(c)(5) and substitute:

- (5) *the amount of the positive pass through amount that the provider proposes should be passed through to Distribution Network Users in the regulatory year in which, and each regulatory year after that in which, the positive change event occurred; and*

[4] 6.6.1 Cost pass through

In clause 6.6.1(c)(6)(iii), omit “.” and insert “; and”.

[5] 6.6.1 Cost pass through

Omit clause 6.6.1(d)(2) and substitute:

- (2) the amount of that *approved pass through amount* that should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred,

[6] 6.6.1 Cost pass through

Omit clause 6.6.1(e)(2) and substitute:

- (2) the amount of that *positive pass through amount* that the provider proposes in its statement under paragraph (c) should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred, is the amount that should be so passed through in each such *regulatory year*.

[7] 6.6.1 Cost pass through

Omit clause 6.6.1(f)(3) and substitute:

- (3) the costs in the provision of *direct control services* that the provider has saved and is likely to save as a result of the *negative change event* until:
 - (i) unless subparagraph (ii) applies – the end of the *regulatory control period* in which the *negative change event* occurred; or
 - (ii) if the distribution determination for the *regulatory control period* following that in which the *negative change event* occurred does not make any allowance for the pass through of those cost savings - the end of the *regulatory control period* following that in which the *negative change event* occurred; and

[8] 6.6.1 Cost pass through

Omit clause 6.6.1(f)(5) and substitute:

- (5) the amount of the costs referred to in subparagraph (4) the provider proposes should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *negative change event* occurred; and

[9] 6.6.1 Cost pass through

Omit clause 6.6.1(g)(2)(ii) and substitute:

- (ii) the amount of that *negative pass through amount* that should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *negative change event* occurred.

[10] 6.6.1 Cost pass through

Omit clause 6.6.1(j)(2) and substitute:

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

[11] 6.6.1 Cost pass through

Omit clause 6.6.1(j)(4) and substitute:

- (4) the time cost of money based on the *weighted average cost of capital* for the provider for the *regulatory control period* in which the *pass through event* occurred; and

[12] 6.6.1 Cost pass through

Omit clause 6.6.1(j)(7) and substitute:

- (7) whether the costs of the *pass through event* have already been factored into the calculation of the provider's *annual revenue requirement* for the *regulatory control period* in which the *pass through event* occurred or will be factored into the calculation of the provider's *annual revenue requirement* for a subsequent *regulatory control period*; and
- (7A) the extent to which the costs that the provider has incurred and is likely to incur are the subject of a previous determination made by the *AER* under this clause 6.6.1; and

[13] 6.12.1 Constituent decisions

In clause 6.12.1(14), after “*regulatory control period*” insert “in accordance with clause 6.5.10”.

[14] S6.1.3 Additional information and matters

Omit clause S6.1.3(2) and substitute “[Deleted]”.

[15] 6A.6 Matters relevant to the making of revenue determinations

After clause 6A.6.8, insert:

6A.6.9 Pass through events

- (a) A *Revenue Proposal* may include a proposal as to the events that should be defined as *pass through events* under clause 6A.7.3(a1)(5) having regard to the *nominated pass through event considerations*.
- (b) In determining whether to accept the pass through events nominated by a *Transmission Network Service Provider* in its *Revenue Proposal* under paragraph (a), the *AER* must take into account the *nominated pass through event considerations*.

[16] 6A.7.3 Cost pass through

Before clause 6A.7.3(a) insert:

- (a1) Any of the following is a *pass through event* for a *transmission determination*:

- (1) a *regulatory change event*;
- (2) a *service standard event*;
- (3) a *tax change event*;
- (4) an *insurance event*; and
- (5) any other event specified in a *transmission determination* as a *pass through event* for the determination.

[17] 6A.7.3 Cost pass through

Omit clause 6A.7.3(c)(5) and substitute:

- (5) the amount of the *positive pass through amount* that the provider proposes should be passed through to *Transmission Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred;

[18] 6A.7.3 Cost pass through

Omit clause 6A.7.3(d)(2) and substitute:

- (2) the amount of that *approved pass through amount* that should be passed through to *Transmission Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred,

[19] 6A.7.3 Cost pass through

Omit clause 6A.7.3(e)(2) and substitute:

- (2) the amount of that *positive pass through amount* that the provider proposes in its statement under paragraph (c) should be passed through to *Transmission Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred, is the amount that should be so passed through in each such *regulatory year*.

[20] 6A.7.3 Cost pass through

Omit clause 6A.7.3(f)(3) and substitute:

- (3) the costs in the provision of *prescribed transmission services* that the provider has saved and is likely to save as a result of the *negative change event* until:

- (i) unless sub paragraph (ii) applies – the end of the *regulatory control period* in which the *negative change event* occurred; or
- (ii) if the *transmission determination* for the *regulatory control period* following that in which the *negative change event* occurred does not make any allowance for the pass through of the cost savings - the end of the *regulatory control period* following that in which the *negative change event* occurred;

[21] 6A.7.3 Cost pass through

Omit clause 6A.7.3(f)(5) and substitute:

- (5) the amount of the costs referred to in subparagraph (4) the provider proposes should be passed through to *Transmission Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *negative change event* occurred; and

[22] 6A.7.3 Cost pass through

Omit clause 6A.7.3(g)(2)(ii) and substitute:

- (ii) the amount of that *negative pass through amount* that should be passed through to *Transmission Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *negative change event* occurred.

[23] 6A.7.3 Cost pass through

Omit clause 6A.7.3(j)(2) and substitute:

- (2) in the case of a *positive change event*, the increase in costs in the provision of *prescribed transmission services* that, as a result of the *positive change event*, the provider has incurred and is likely to incur until:
 - (i) unless subparagraph (ii) applies – the end of the *regulatory control period* in which the *positive change event* occurred; or
 - (ii) if the *transmission determination* for the *regulatory control period* following that in which the *positive change event* occurred does not make any allowance for the recovery of that increase in costs – the end of the *regulatory control period* following that in which the *positive change event* occurred;

(2A) in the case of a *negative change event*, the costs in the provision of *prescribed transmission services* that, as a result of the *negative change event*, the provider has saved and is likely to save until:

- (i) unless subparagraph (ii) applies – the end of the *regulatory control period* in which the *negative change event* occurred; or
- (ii) if the *transmission determination* for the *regulatory control period* following that in which the *negative change event* occurred does not make any allowance for the pass through of those cost savings to *Transmission Network Users* – the end of the *regulatory control period* following that in which the *negative change event* occurred;

[24] 6A.7.3 Cost pass through

Omit clause 6A.7.3(j)(4) and substitute:

- (4) the time cost of money based on the *weighted average cost of capital* for the provider for the *regulatory control period* in which the *pass through event* occurred;

[25] 6A.7.3 Cost pass through

In clause 6A.7.3(j)(6), omit “and” where last occurring.

[26] 6A.7.3 Cost pass through

After clause 6A.7.3(j)(6) insert:

- (6A) whether the costs of the *pass through event* have already been factored into the calculation of the provider's *maximum allowed revenues* for the *regulatory control period* in which the *pass through event* occurred or will be factored into the calculation of the provider's *maximum allowed revenues* for a subsequent *regulatory control period*;
- (6B) the extent to which the costs that the provider has incurred and is likely to incur are the subject of a previous determination made by the *AER* under this clause 6A.7.3; and

[27] 6A.14.1 Contents of decisions

In clause 6A.14.1(7), omit “and” where last occurring.

[28] 6A.14.1 Contents of decisions

In clause 6A.14.1(8), omit “.” and insert “; and”

[29] 6A.14.1 Contents of decisions

After clause 6A.14.1(8), insert:

- (9) on the additional *pass through events* that are to apply for the *regulatory control period* in accordance with clause 6A.6.9.

[30] Chapter 10 Substituted definitions

In Chapter 10, substitute the following definitions:

eligible pass through amount

In respect of a *positive change event* for a *Transmission Network Service Provider*, the increase in costs in the provision of *prescribed transmission services* that, as a result of that *positive change event*, the *Transmission Network Service Provider* has incurred and is likely to incur (as opposed to the revenue impact of that event) until:

- (a) unless paragraph (b) applies – the end of the *regulatory control period* in which the *positive change event* occurred; or
- (b) if the *transmission determination* for the *regulatory control period* following that in which the *positive change event* occurred does not make any allowance for the recovery of that increase in costs (whether or not in the forecast operating expenditure or forecast capital expenditure accepted or substituted by the *AER* for that *regulatory control period*) – the end of the *regulatory control period* following that in which the *positive change event* occurred.

In respect of a *positive change event* for a *Distribution Network Service Provider*, the increase in costs in the provision of *direct control services* that, as a result of that *positive change event*, the *Distribution Network Service Provider* has incurred and is likely to incur (as opposed to the revenue impact of that event) until:

- (a) unless paragraph (b) applies – the end of the *regulatory control period* in which the *positive change event* occurred; or
- (b) if the distribution determination for the *regulatory control period* following that in which the *positive change event* occurred does not make any allowance for the recovery of that increase in costs (whether or not in the forecast operating expenditure or forecast capital expenditure accepted or substituted by the *AER* for that *regulatory control period*) – the end of the *regulatory control period* following that in which the *positive change event* occurred.

pass through event

For a distribution determination - the events specified in clause 6.6.1(a1).

For a *transmission determination* – the events specified in clause 6A.7.3 (a1).

materially

For the purposes of the application of clause 6A.7.3, an event (other than a *network support event*) results in a *Transmission Network Service Provider* incurring materially higher or materially lower costs if the change in costs (as opposed to the revenue impact) that the *Transmission Network Service Provider* has incurred and is likely to incur in any *regulatory year* of a *regulatory control period*, as a result of that event, exceeds 1% of the *maximum allowed revenue* for the *Transmission Network Service Provider* for that *regulatory year*. In other contexts, the word has its ordinary meaning.

required pass through amount

In respect of a *negative change event* for a *Transmission Network Service Provider*, the costs in the provision of *prescribed transmission services* that, as a result of that *negative change event*, the *Transmission Network Service Provider* has saved and is likely to save (as opposed to the revenue impact of that event) until:

- (a) unless paragraph (b) applies – the end of the *regulatory control period* in which the *negative change event* occurred; or
- (b) if the *transmission determination* for the *regulatory control period* following that in which the *negative change event* occurred does not make any allowance for the pass through of the saved costs (whether or not in the forecast operating expenditure or forecast capital expenditure accepted or substituted by the *AER* for that *regulatory control period*) – the end of the *regulatory control period* following that in which the *negative change event* occurred.

In respect of a *negative change event* for a *Distribution Network Service Provider*, the costs in the provision of *direct control services* that, as a result of the *negative change event*, the *Distribution Network Service Provider* has saved and is likely to save (as opposed to the revenue impact of that event) until:

- (a) unless paragraph (b) applies – the end of the *regulatory control period* in which the *negative change event* occurred; or
- (b) if the distribution determination for the *regulatory control period* following that in which the *negative change event* occurred does not make any allowance for the pass through of the saved costs (whether or not in the forecast operating expenditure or forecast capital expenditure accepted or substituted by the *AER* for that *regulatory control period*) – the end of the *regulatory control period* following that in which the *negative change event* occurred.

[31] Chapter 10 New definitions

In Chapter 10, insert the following new definition in alphabetical order:

nominated pass through event considerations

The *nominated pass through event considerations* are:

- (a) whether the event proposed is an event covered by a category of *pass through event* specified in clause 6.6.1(a1)(1) to (4) (in the case of a distribution determination) or clause 6A.7.3(a1)(1) to (4) (in the case of a *transmission determination*);
- (b) whether the nature or type of event can be clearly identified at the time the determination is made for the service provider;
- (c) whether a prudent service provider could reasonably prevent an event of that nature or type from occurring or substantially mitigate the cost impact of such an event;
- (d) whether the relevant service provider could insure against the event, having regard to:
 - (1) the availability (including the extent of availability in terms of liability limits) of insurance against the event on reasonable commercial terms; or
 - (2) whether the event can be self-insured on the basis that:
 - (i) it is possible to calculate the self-insurance premium; and
 - (ii) the potential cost to the relevant service provider would not have a significant impact on the service provider's ability to provide *network services*; and.
- (e) any other matter the *AER* considers relevant and which the *AER* has notified *Network Service Providers* is a nominated pass through event consideration.

[32] Chapter 10 Deleted definitions

In Chapter 10, omit the following definition:

terrorism event

An act (including, but not limited to, the use of force or violence or the threat of force or violence) of any person or group of persons (whether acting alone or on behalf of in connection with any organisation or government), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons (including the intention to influence or intimidate any

government and/or put the public, or any section of the public, in fear) and which *materially* increases the costs to a *Transmission Network Service Provider* of providing *prescribed transmission services* or the costs to a *Distribution Network Service Provider* of providing *direct control services*.

Schedule 2 Amendment to the National Electricity Rules

[1] 6.6.1 Cost pass through

Omit clause 6.6.1(c)(5) of Appendix 1 of Chapter 11 and substitute:

- (5) the amount of the *positive pass through amount* that the provider proposes should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred; and

[2] 6.6.1 Cost pass through

Omit clause 6.6.1(d)(2) of Appendix 1 of Chapter 11 and substitute:

- (2) the amount of that *approved pass through amount* that should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred,

[3] 6.6.1 Cost pass through

Omit clause 6.6.1(e)(2) of Appendix 1 of Chapter 11 and substitute:

- (2) the amount of that *positive pass through amount* that the provider proposes in its statement under paragraph (c) should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred, is the amount that should be so passed through in each such *regulatory year*.

[4] 6.6.1 Cost pass through

Omit clause 6.6.1(f)(3) of Appendix 1 of Chapter 11 and substitute:

- (3) the costs in the provision of *direct control services* that the provider has saved and is likely to save as a result of the *negative change event* until:
 - (i) unless subparagraph (ii) applies – the end of the *regulatory control period* in which the *negative change event* occurred; or
 - (ii) if the distribution determination for the *regulatory control period* following that in which the *negative change event* occurred does not make any allowance for the pass through of those cost savings - the end of the *regulatory control period* following that in which the *negative change event* occurred; and

[5] 6.6.1 Cost pass through

Omit clause 6.6.1(f)(5) of Appendix 1 of Chapter 11 and substitute:

- (5) the amount of the costs referred to in subparagraph (4) the provider proposes should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *negative change event* occurred; and

[6] 6.6.1 Cost pass through

Omit clause 6.6.1(g)(2)(ii) of Appendix 1 of Chapter 11 and substitute:

- (ii) the amount of that *negative pass through amount* that should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *negative change event* occurred.

[7] 6.6.1 Cost pass through

Omit clause 6.6.1(j)(2) of Appendix 1 of Chapter 11 and substitute:

- (2) in the case of a *positive change event*, the increase in costs in the provision of *direct control services* that, as a result of the *positive change event*, the provider has incurred and is likely to incur until:
 - (i) unless subparagraph (ii) applies – the end of the *regulatory control period* in which the *positive change event* occurred; or
 - (ii) if the distribution determination for the *regulatory control period* following that in which the *positive change event* occurred does not make any allowance for the recovery of that increase in costs – the end of the *regulatory control period* following that in which the *positive change event* occurred; and
- (2A) in the case of a *negative change event*, the costs in the provision of *direct control services* that, as a result of the *negative change event*, the provider has saved and is likely to save until:
 - (i) unless subparagraph (ii) applies – the end of the *regulatory control period* in which the *negative change event* occurred; or
 - (ii) if the distribution determination for the *regulatory control period* following that in which the *negative change event* occurred does not make any allowance for

the pass through of those cost savings to *Distribution Network Users* – the end of the *regulatory control period* following that in which the *negative change event* occurred; and

[8] 6.6.1 Cost pass through

Omit clause 6.6.1(j)(4) of Appendix 1 of Chapter 11 and substitute:

- (4) the time cost of money based on the *weighted average cost of capital* for the provider for the *regulatory control period* in which the *pass through event* occurred; and

[9] 6.6.1 Cost pass through

Omit clause 6.6.1(j)(7) of Appendix 1 of Chapter 11 and substitute:

- (7) whether the costs of the *pass through event* have already been factored into the calculation of the provider's *annual revenue requirement* for the *regulatory control period* in which the *pass through event* occurred or will be factored into the calculation of the provider's *annual revenue requirement* for a subsequent *regulatory control period*; and
- (7A) the extent to which the costs that the provider has incurred and is likely to incur are the subject of a previous determination made by the *AER* under this clause 6.6.1; and

Schedule 3 Savings and Transitional Amendments to the National Electricity Rules

[1] Chapter 11 Savings and Transitional Rules

After Part ZR, insert:

Part ZS Cost pass through arrangements for Network Service Providers

11.49 Rules consequential on the making of National Electricity Amendment (Cost pass through arrangements for Network Service Providers) Rule 2012

11.49.1 Definitions

In this rule 11.49:

Amending Rule means the National Electricity Amendment (Cost pass through arrangements for Network Service Providers) Rule 2012.

commencement date means the date the Amending Rule commences operation.

current regulatory control period for a *Network Service Provider* means the *regulatory control period* that commenced before the commencement date and, as at the commencement date, has not ended.

next regulatory control period for a *Network Service Provider* means the *regulatory control period* that commences after the end of the current regulatory control period.

Powerlink means Queensland Electricity Transmission Corporation Ltd (ACN 078 849 233).

ElectraNet means ElectraNet Pty Ltd (ACN 094 482 416).

Murraylink means Murraylink Transmission Company Pty Ltd (ACN 089 875 605).

terrorism event means *terrorism event* as defined in Chapter 10 of the *Rules* as in force immediately before the commencement date.

11.49.2 Terrorism event is a cost pass through event in the current regulatory control period

Despite the Amending Rule, a terrorism event is a *pass through event* for a *Network Service Provider* during its current regulatory control period.

11.49.3 Transitional arrangement for Powerlink

- (a) Powerlink may, by written notice to the *AER* not later than 90 days after the commencement date, apply to amend its *transmission determination* for the current regulatory control period to include one or more nominated *pass through events*.
- (b) Within 90 business days of receiving a notice under paragraph (a), the *AER* must determine the additional *pass through events* that are to apply to Powerlink for the current regulatory control period.
- (c) In making a determination under paragraph (b), the *AER* must take into account the *nominated pass through event considerations*.
- (d) If the *AER* determines under paragraph (b) that additional *pass through events* should apply to Powerlink for the current regulatory control period, the *AER* must as soon as practicable:
 - (1) notify Powerlink of that determination in writing; and
 - (2) amend Powerlink's *transmission determination* in accordance with paragraph (e).
- (e) Amendments to a *transmission determination* referred to in paragraph (d)(2) must only vary the determination to the extent necessary to include the additional *pass through events* that the *AER* has determined will apply to Powerlink in the *transmission determination*.
- (f) If the *AER* determines under paragraph (b) that Powerlink's *transmission determination* should not include a *pass through event* nominated by Powerlink under paragraph (a), it must notify Powerlink as soon as practicable.

11.49.4 Transitional arrangements for ElectraNet and Murraylink

- (a) Each of ElectraNet and Murraylink may, not later than 30 days after the commencement date, submit to the *AER* a proposal as to the events that should be defined as *pass through events* under clause 6A.7.3(a1)(5) for the purposes of its *Revenue Proposal* for the next *regulatory control period*, having regard to the *nominated pass through event considerations*.
- (b) If within 30 days after the commencement date the *AER* receives a proposal under paragraph (a) from ElectraNet or MurrayLink, then the *AER* must treat the proposal as if it had been included in the relevant *Transmission Network Service Provider's Revenue Proposal* for the next *regulatory control period* and make a decision under clause 6A.14.1(9) in respect of that proposal.

[END OF RULE AS MADE]
