



## **Draft National Electricity Amendment (Cost pass through arrangements for network service providers) Rule 2012**

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.

Neville Henderson  
Acting Chairman  
Australian Energy Market Commission

## **Draft National Electricity Amendment (Cost pass through arrangements for network service providers) Rule 2012**

### **1 Title of Rule**

This Rule is the *Draft National Electricity Amendment (Cost pass through arrangements for network service providers) Rule 2012*.

### **2 Commencement**

This Rule commences operation on [COMMENCEMENT\_DATE].

### **3 Amendment of the National Electricity Rules**

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

### **4 Savings and Transitional Amendments to the National Electricity Rules**

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

### **5 Notes**

Notes do not form part of this Rule.

## Schedule 1            Amendment to the National Electricity Rules

(Clause 3)

### [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 must include a proposed pass through clause with a proposal as to the events that should be defined as pass through events 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, 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*

#### **Note**

Clause 6.6.1(a1)(4) assumes that the National Electricity (Retail Support) Amendments Rules 2010 as published by the Ministerial Council on Energy has commenced operation.

- (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”.

**Note**

This amendment assumes that the National Electricity (Retail Support) Amendment Rules 2010 as published by the Ministerial Council on Energy has commenced operation.

**[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 *standard 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;

### **[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;

### **[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 requirements* 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* must include a proposed pass through clause with a proposal as to the events that should be defined as *pass through events* 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*, 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; and

**[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 revenue* 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 revenue* 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 6.6.6(1)(a1).

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

***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 whether:

- (a) 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) the nature or type of event can be clearly identified at the time the determination is made for the service provider;
- (c) 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) a service provider could insure against the event, including:
  - (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 loss to the relevant service provider would not have a significant impact on the service provider's ability to provide *network services*.

## **[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 Savings and Transitional Amendments to the National Electricity Rules

(Clause 4)

### [1] Chapter 11 Savings and Transitional Rules

After Part Z[X], insert:

#### Part Z[X] Cost pass through arrangements for network service providers

#### 11.[xx] Rules consequential on the making of National Electricity Amendment (Cost pass through arrangements for network service providers) Rule 2012

##### 11.[xx].1 Definitions

In this rule 11.[xx]:

**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 the commencement date, has not ended.

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

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

##### 11.[xx].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.[xx].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 include in its *transmission determination* for the current regulatory control period, one or more nominated *pass through events*.

- (b) Within [x] *business days* of receiving a notice under paragraph (a), the *AER* must determine whether the *pass through events* nominated by Powerlink in the notice under paragraph (a) should be included in its *transmission determination*.
  - (c) In making a determination under paragraph (c), the *AER* must take into account the *nominated pass through event considerations*.
  - (d) If the *AER* determines under paragraph (b) that Powerlink's *transmission determination* should include a *pass through event* nominated by Powerlink, the *AER* must within [x] *business days*:
    - (1) promptly notify Powerlink of that determination in writing;  
and
    - (2) revoke and substitute Powerlink's *transmission determination*.
  - (e) The substituted *transmission determination* under paragraph (d)(2) must only vary from the revoked determination to the extent necessary to include the accepted *pass through events* 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 promptly notify Powerlink.
-