



## **National Electricity Amendment (Payments under Feed-in Schemes and Climate Change Funds) Rule 2010 No. 7**

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 (Payments under Feed-in Schemes and Climate Change Funds) Rule 2010**

### **1 Title of Rule**

This Rule is the *National Electricity Amendment (Payments under Feed-in Schemes and Climate Change Funds) Rule 2010 No. 7*.

### **2 Commencement**

This Rule commences operation on 1 July 2010.

### **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.

### **6 Notes**

Notes do not form part of this Rule.

## Schedule 1      Amendments of the National Electricity Rules

(Clause 3)

### [1] New Clause 6.6.1A      Reporting on jurisdictional schemes

After clause 6.6.1, insert:

#### 6.6.1A      Reporting on jurisdictional schemes

- (a) If during a *regulatory control period*:
- (1) a scheme becomes a *jurisdictional scheme*; or
  - (2) a *Distribution Network Service Provider* first becomes subject to *jurisdictional scheme obligations* under a *jurisdictional scheme*; and
  - (3) the relevant *jurisdictional scheme* is not an *approved jurisdictional scheme*,

then a *Distribution Network Service Provider* may request the *AER* to determine how the *Distribution Network Service Provider* is to report to the *AER* on its recovery of *jurisdictional scheme amounts* in respect of that scheme for each *regulatory year* of the *regulatory control period* and on the adjustments to be made to subsequent *pricing proposals* to account for over or under recovery of those amounts.

- (b) To make a request under paragraph (a), a *Distribution Network Service Provider* must submit to the *AER*, as soon as practicable after the event referred to in subparagraph (a)(1) or (2), a written statement which specifies:
- (1) the name of the relevant *jurisdictional scheme*;
  - (2) the date of the event referred to in subparagraph (a)(1) or (2);
  - (3) details of how the *Distribution Network Service Provider* proposes to:
    - (i) estimate the *jurisdictional scheme amounts* for the relevant *jurisdictional scheme* for the purposes of clause 6.18.7A(b);
    - (ii) carry out any adjustments to *jurisdictional scheme amounts* for the relevant *jurisdictional scheme* for the purposes of clause 6.18.7A(b); and

- (iii) report to the *AER* on the recovery process under clause 6.18.7A (a) to (c).
- (c) The *AER* must as soon as practicable after receiving a statement under paragraph (b), *publish* the statement.
- (d) Before making a determination under paragraph (e), the *AER* may consult with the relevant *Distribution Network Service Provider* and such other persons as the *AER* considers appropriate, on any matters arising out of the statement the *AER* considers appropriate.
- (e) Within 60 *business days* of receiving the statement under paragraph (b), the *AER* must make a determination on how the *Distribution Network Service Provider* is to report to the *AER* on its recovery of *jurisdictional scheme amounts* for the relevant *jurisdictional scheme* for each *regulatory year* of the *regulatory control period* and on the adjustments to be made to subsequent *pricing proposals* to account for over or under recovery of those amounts.
- (f) If the *AER* does not make the determination referred to in paragraph (e) within 60 *business days* of receiving the statement under paragraph (b) then, on expiry of that period, the *AER* is taken to have approved the process proposed in the *Distribution Network Service Provider's* statement.

## **[2] Clause 6.12.1 Constituent decisions**

In clause 6.12.1(19), omit "." and substitute:

; and

- (20) a decision on how the *Distribution Network Service Provider* is to report to the *AER* on its recovery of *jurisdictional scheme amounts* for each *regulatory year* of the *regulatory control period* and on the adjustments to be made to subsequent *pricing proposals* to account for over or under recovery of those amounts. A decision under this subparagraph (20) must be made in relation to each *jurisdictional scheme* under which the *Distribution Network Service Provider* has *jurisdictional scheme obligations* at the time the decision is made.

## **[3] Clause 6.18.2 Pricing proposals**

After clause 6.18.2(b)(6), insert:

- (6A) set out how *jurisdictional scheme amounts* for each *approved jurisdictional scheme* are to be passed on to customers and any adjustments to tariffs resulting from over or under recovery of those amounts; and

(6B) describe how each *approved jurisdictional scheme* that has been amended since the *last jurisdictional scheme approval date* meets the *jurisdictional scheme eligibility criteria*; and

#### **[4] Clause 6.18.6 Side constraints on tariffs for standard control services**

In clause 6.18.6(d)(2), omit "." and substitute:

; and

(3) the recovery of revenue to accommodate pass through of *jurisdictional scheme amounts* for *approved jurisdictional schemes*.

#### **[5] New Clause 6.18.7A Recovery of jurisdictional scheme amounts**

After clause 6.18.7, insert:

##### **6.18.7A Recovery of jurisdictional scheme amounts**

###### **Pricing proposal**

- (a) A *pricing proposal* must provide for tariffs designed to pass on to customers a *Distribution Network Service Provider's jurisdictional scheme amounts* for *approved jurisdictional schemes*.
- (b) The amount to be passed on to customers for a particular *regulatory year* (year t) must not exceed the estimated amount of *jurisdictional scheme amounts* for a *Distribution Network Service Provider's approved jurisdictional schemes* for year t adjusted for over or under recovery in accordance with paragraph (c).
- (c) The extent of the over or under recovery is the sum of:
  - (1) the difference between:
    - (i) the *Distribution Network Service Provider's* estimate of its *jurisdictional scheme amounts* in year t – 1; and
    - (ii) the *Distribution Network Service Provider's* estimate of the amount passed on to customers in respect of *jurisdictional scheme amounts* by the *Distribution Network Service Provider* in year t – 1; and
  - (2) the difference between:

- (i) the actual amount of the *Distribution Network Service Provider's jurisdictional scheme amounts* in year  $t - 2$ ; and
  - (ii) the estimate of the *Distribution Network Service Provider's jurisdictional scheme amounts* in year  $t - 2$  that was used for the purposes of paragraph (c)(1)(i) when preparing the *Distribution Network Service Provider's pricing proposal* for year  $t - 1$ ; and
- (3) the difference between:
- (i) the actual amount passed on to customers in respect of *jurisdictional scheme amounts* by the *Distribution Network Service Provider* in year  $t - 2$ ; and
  - (ii) the estimate of the amount passed on to customers in respect of *jurisdictional scheme amounts* by the *Distribution Network Service Provider* in year  $t - 2$  that was used for the purposes of paragraph (c)(1)(ii) when preparing the *Distribution Network Service Provider's pricing proposal* for year  $t - 1$ .

(c1) For the purposes of paragraph (c):

“year  $t - 1$ ” means the *regulatory year* immediately prior to year  $t$  or, where year  $t$  is the first year of a *regulatory control period*, the last *regulatory year* of the *previous regulatory control period*.

“year  $t - 2$ ” means the *regulatory year* immediately prior to year  $t - 1$  or, where year  $t$  is the:

- (1) first year of a *regulatory control period*, the penultimate *regulatory year* of the *previous regulatory control period*;
- (2) second year of a *regulatory control period*, the last *regulatory year* of the *previous regulatory control period*.

### **Jurisdictional schemes**

(d) A scheme is a *jurisdictional scheme* if:

- (1) the scheme is specified in paragraph (e); or
- (2) the *AER* has determined under clause paragraph (1) that the scheme is a *jurisdictional scheme*,

and the *AER* has not determined under paragraph (u) that the scheme has ceased to be a *jurisdictional scheme*.

- (e) For the purposes of paragraph (d)(1), the following schemes are *jurisdictional schemes*:
- (1) schemes established under the following laws of participating jurisdictions:
    - (i) Electricity Feed-in (Renewable Energy Premium) Act 2008 (ACT);
    - (ii) Division 3AB of the Electricity Act 1996 (SA);
    - (iii) Section 44A of the Electricity Act 1994 (Qld);
    - (iv) Electricity Industry Amendment (Premium Solar Feed-in Tariff) Act 2009 (Vic);
  - (2) the Solar Bonus Scheme established under the Electricity Supply Act 1995 (NSW); and
  - (3) the Climate Change Fund established under the Energy and Utilities Administration Act 1987 (NSW).

**AER requested to determine that scheme is a jurisdictional scheme**

- (f) Any person may request the *AER* to determine whether a scheme is a *jurisdictional scheme*.
- (g) A request made under paragraph (f) must contain the following information:
- (1) the name and address of the person making the request;
  - (2) details of the law of a *participating jurisdiction* under which the relevant scheme is established;
  - (3) the commencement date of the relevant scheme; and
  - (4) an explanation of how the relevant scheme meets the *jurisdictional scheme eligibility criteria*.
- (h) The *AER* must as soon as practicable after receiving the request under paragraph (f) *publish* the request.

**AER may assess whether a scheme is a jurisdictional scheme**

- (i) The *AER* may at any time initiate an assessment of whether a scheme is a *jurisdictional scheme*.
- (j) If the *AER* decides to initiate an assessment under paragraph (i) it must *publish* details of the scheme it is considering and the reasons for initiating the assessment.

**AER to determine whether a scheme is a jurisdictional scheme**

- (k) Before making a determination under paragraph (l), the *AER* may consult with the relevant *Distribution Network Service Provider* and such other persons as the *AER* considers appropriate, on any matters arising out of the request or the assessment the *AER* considers appropriate.
- (l) The *AER* must within 20 *business days* of:
  - (1) receiving a request under paragraph (f); and
  - (2) *publishing* details of an assessment under paragraph (j),determine in accordance with paragraph (n) if the relevant scheme is a *jurisdictional scheme* and *publish* its decision (including the reasons).
- (m) The *AER* may extend the time limit fixed in paragraph (l) if it considers that the difficulty of assessing whether a scheme is a *jurisdictional scheme*, or the complexity of the issues raised during any consultation under paragraph (k), justifies the extension.
- (n) The *AER* must only determine that a scheme is a *jurisdictional scheme* under paragraph (l) if it considers that the scheme meets the *jurisdictional scheme eligibility criteria*.

**AER requested to determine that scheme should cease to be a jurisdictional scheme**

- (o) Any person may request the *AER* to determine that a scheme is no longer a *jurisdictional scheme*.
- (p) A request made under paragraph (o) must contain the following information:
  - (1) the name and address of the person making the request;
  - (2) the law of a *participating jurisdiction* under which the relevant scheme is established;
  - (3) the commencement date of the relevant scheme; and
  - (4) an explanation of why the scheme no longer meets the *jurisdictional scheme eligibility criteria*.
- (q) The *AER* must as soon as practicable after receiving the request under paragraph (o) *publish* the request.

**AER may assess whether a scheme should cease to be a jurisdictional scheme**

- (r) The *AER* may at any time consider whether a scheme should cease to be a *jurisdictional scheme*.
- (s) If the *AER* decides to initiate an assessment of whether a scheme should cease to be *jurisdictional scheme* under paragraph (r) it must *publish* details of the scheme it is considering and the reasons for initiating the assessment.

**AER to determine whether a scheme should cease to be a jurisdictional scheme**

- (t) Before making a determination under paragraph (u), the *AER* may consult with the relevant *Distribution Network Service Provider* and such other persons as the *AER* considers appropriate, on any matters arising out of the request or the assessment the *AER* considers appropriate.
- (u) The *AER* must within 20 *business days* of:
  - (1) receiving a request under paragraph (o); or
  - (2) *publishing* details of an assessment under paragraph (s),determine in accordance with paragraph (w) if the relevant scheme should cease to be a *jurisdictional scheme* and *publish* its decision (including the reasons).
- (v) The *AER* may extend the time limit fixed in paragraph (u) if it considers that the difficulty of assessing whether a scheme should cease to be a *jurisdictional scheme*, or the complexity of the issues raised during any consultation under paragraph (t), justifies the extension.
- (w) The *AER* must only determine that a scheme has ceased to be a *jurisdictional scheme* under paragraph (u) if it considers that the scheme no longer meets the *jurisdictional scheme eligibility criteria*.

**Jurisdictional scheme eligibility criteria**

- (x) The following are the *jurisdictional scheme eligibility criteria*:
  - (1) the *jurisdictional scheme obligations* require a *Distribution Network Service Provider* to:
    - (i) pay a person;
    - (ii) pay into a fund established under an Act of a *participating jurisdiction*;
    - (iii) credit against charges payable by a person; or
    - (iv) reimburse a person,

an amount specified in, or determined in accordance with, the *jurisdictional scheme obligations*;

- (2) the *jurisdictional scheme obligations* are imposed on a *Distribution Network Service Provider* in its capacity as a *Distribution Network Service Provider*;
- (3) the amount referred to in subparagraph (1) is not in the nature of a fine, penalty or incentive payment for the *Distribution Network Service Provider*; and
- (4) except as provided in these Rules, the *Distribution Network Service Provider* has no right to recover the amount referred to in subparagraph (1) from any person.

## **[6] Clause 10                      New definitions**

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

### **approved jurisdictional scheme**

For a *Distribution Network Service Provider*, means a *jurisdictional scheme* in relation to which the *AER*:

- (a) has made a decision under clause 6.12.1(20);
- (b) has made a determination under clause 6.6.1A(e); or
- (c) is taken to have made a determination under clause 6.6.1A(f).

### **jurisdictional scheme**

Has the meaning given in clause 6.18.7A(d).

### **jurisdictional scheme amounts**

In respect of a *jurisdictional scheme*, the amounts a *Distribution Network Service Provider* is required under the *jurisdictional scheme obligations* to:

- (a) pay to a person;
- (b) pay into a fund established under an Act of a *participating jurisdiction*;
- (c) credit against charges payable by a person; or
- (d) reimburse a person,

less any amounts recovered by the *Distribution Network Service Provider* from any person in respect of those amounts other than under these Rules.

### **jurisdictional scheme eligibility criteria**

The criteria specified in clause 6.18.7A(x)

### **jurisdictional scheme obligations**

Obligations imposed on a *Distribution Network Service Provider* under:

- (a) an Act of a *participating jurisdiction* or an instrument, direction or order made under an Act of a *participating jurisdiction* (other than the *National Electricity Law* and these *Rules*); or
- (b) a condition of a distribution licence or authority held by a *Distribution Network Service Provider* in a *participating jurisdiction*.

### **last jurisdictional scheme approval date**

For an *approved jurisdictional scheme* of a *Distribution Network Service Provider*, means the later of:

- (a) if the *approved jurisdictional scheme* is a *jurisdictional scheme* referred to in clause 6.18.7A(e), 1 July 2010;
- (b) if the *approved jurisdictional scheme* is not a *jurisdictional scheme* referred to in paragraph (a), the date on which the *AER* determined under clause 6.18.7A(l) that the scheme was a *jurisdictional scheme*;
- (c) if the *approved jurisdictional scheme* is a *jurisdictional scheme* in respect of which:
  - (i) a request has been made under clause 6.18.7A(o) or an assessment initiated under clause 6.18.7A(r); and
  - (ii) the *AER* has determined under clause 6.18.7A(u) that the scheme should not cease to be a *jurisdictional scheme*,the date of that determination; or
- (d) if in a previous *pricing proposal* the *Distribution Network Service Provider* provided information in respect of that *approved jurisdictional scheme* to the *AER* under clause 6.18.2(b)(6B), the date that such a *pricing proposal* was submitted.

## Schedule 2      Amendments of the National Electricity Rules

(Clause 4)

### [1] Transitional Chapter 6 Definitions

In clause 6.1.7(a) of Appendix 1 of Chapter 11, insert the following new definitions in alphabetical order:

“applicable jurisdictional scheme” means a *jurisdictional scheme* other than the *jurisdictional scheme* established under the Energy and Utilities Administration Amendment (Climate Change Fund) Act 2007 (NSW).

"Climate Change Fund payments" means the amount paid, or required by an order under the Energy and Utilities Administration Act 1987 of New South Wales to be paid, by a NSW Distribution Network Service Provider to the Climate Change Fund.

“general Chapter 6” means Chapter 6 as in force apart from rule 11.15.

“modified clause 6.18.2(b)(6A) and (6B)” means clause 6.18.2(b)(6A) and (6B) of general Chapter 6 but as if clause 6.18.2(b)(6A) of general Chapter 6 was amended by inserting “in any previous regulatory year” before “; and”.

“modified clauses 6.18.7A(a) to (c)” means clauses 6.18.7A(a) to (c) of general Chapter 6 but as if:

- (a) the reference to “in accordance with paragraph (c)” in clause 6.18.7A(b) of general Chapter 6 was a reference to “any previous *regulatory year*”;
- (b) clause 6.18.7A(c) of general Chapter 6 was replaced with the following clause 6.18.7A(c):

“The extent of the over or under recovery is the difference between:

- (1) the actual amount of the *Distribution Network Service Provider’s jurisdictional scheme amounts* in any previous *regulatory year*; and
- (2) the amount passed on to customers in respect of *jurisdictional scheme amounts* by the *Distribution Network Service Provider* in a previous *regulatory year*.

### [2] Transitional Chapter 6 Numbering

After clause 6.6.1 of Appendix 1 of Chapter 11, insert:

**6.6.1A \*\*\*\***

**[3] Transitional Chapter 6 Numbering**

Renumber clause 6.12.1(20) of Appendix 1 of Chapter 11 as clause 6.12.1(20A).

**[4] Transitional Chapter 6 Numbering**

After clause 6.12.1(19) of Appendix 1 of Chapter 11, insert:

(20) \*\*\*\*

**[5] Transitional Chapter 6 Pricing proposals**

Omit clause 6.18.2(b)(5A) of Appendix 1 of Chapter 11 and substitute:

(5A) in the case of a NSW Distribution Network Service Provider – set out how Climate Change Fund payments are to be passed on to customers and any adjustments to tariffs resulting from over or under recovery of those amounts in any previous *regulatory year*; and

**[6] Transitional Chapter 6 Pricing proposals**

After clause 6.18.2(b) of Appendix 1 of Chapter 11 insert:

(b1) In its first *pricing proposal* after 1 July 2010 the NSW Distribution Network Service Provider must detail how the provider proposes to carry out adjustments to Climate Change Fund payments for the purposes of clause 6.18.2(b)(5A) and report to the *AER* on the recovery process under clause 6.18.7B(a) to (c).

**[7] Transitional Chapter 6 Numbering**

After clause 6.18.2(b)(6) of Appendix 1 of Chapter 11, insert:

(6A) \*\*\*\*

**[8] Side constraints on tariffs for standard control services**

In clause 6.18.6(d)(2) of Appendix 1 of Chapter 11, omit “.” and insert:

(3) \*\*\*\*

(3A) the recovery of revenue to accommodate pass through of Climate Change Fund payments.

## **[9] Transitional Chapter 6 Recovery of Climate Change Fund amounts and jurisdictional scheme payments**

After clause 6.18.7 of Appendix 1 of Chapter 11, insert:

### **6.18.7A \*\*\*\***

### **6.18.7B Recovery of Climate Change Fund payments**

- (a) In the case of a NSW Distribution Network Service Provider, a *pricing proposal* must provide for tariffs designed to pass on to customers Climate Change Fund payments.
- (b) The amount to be passed on to customers for a particular *regulatory year* must not exceed the estimated amount of Climate Change Fund payments for the relevant *regulatory year* adjusted for over or under recovery in any previous *regulatory year*.
- (c) The extent of the over or under recovery is the difference between:
  - (1) the actual amount of the Climate Change Fund payments in a previous *regulatory year*; and
  - (2) the amount passed on to customers in respect of Climate Change Fund payments in that previous *regulatory year*.

### **6.18.7C Recovery of jurisdictional scheme amounts**

#### **Electing to recover jurisdictional scheme amounts under pricing proposal process**

- (a) A *Distribution Network Service Provider* may by written notice to the *AER* at least 20 *business days* before the date that a *pricing proposal* is required to be submitted under clause 6.18.2(a)(2) in respect of a *regulatory year*, elect to submit a *pricing proposal* for that *regulatory year* that complies with modified clause 6.18.2(b)(6A) and (6B) and modified clauses 6.18.7A(a) to (c).
- (b) An election under paragraph (a) is valid if:
  - (1) the election is made in relation to the second or subsequent *regulatory year* of the *regulatory control period*;
  - (2) the election is made in respect of each applicable jurisdictional scheme under which the *Distribution Network Service Provider* has *jurisdictional scheme obligations*;
  - (3) the *Distribution Network Service Provider* has complied with paragraphs (g) to (i) and the *AER* has made a decision or is

taken to have made a decision under clause 6.6.1A(e) or (f) (whichever is applicable) of general Chapter 6 in respect of each applicable jurisdictional scheme under which the *Distribution Network Service Provider* has *jurisdictional scheme obligations*; and

- (4) if and to the extent that any forecast or estimate of amounts payable under applicable jurisdictional schemes has been included as forecast operating expenditure in the *Distribution Network Service Provider's* distribution determination for the *regulatory control period*, the *AER* has agreed to a revocation and substitution of the distribution determination under paragraphs (j) to (m).
- (c) Not later than 10 *business days* after receiving a notice under paragraph (a), the *AER* must notify the *Distribution Network Service Provider*:
    - (1) whether it accepts the election made under paragraph (a); and
    - (2) if it does not accept the election under paragraph (a), the reasons for that decision.
  - (d) If the *AER* has not notified the *Distribution Network Service Provider* under paragraph (c) within 10 *business days* of receiving a notice under paragraph (a), the *AER* is taken to have accepted the election.
  - (e) The *AER* must accept an election under paragraph (a) if it is valid under paragraph (b).
  - (f) If the *AER* accepts a *Distribution Network Service Provider's* election under paragraph (c) or is taken to be accepted the election under paragraph (d) (whichever is applicable), the *Distribution Network Service Provider* must, in addition to its obligations under this Chapter 6, comply with:
    - (1) modified clause 6.18.2(b)(6A) and (6B) and modified clauses 6.18.7A(a) to (c) in respect of the *pricing proposal* for each *regulatory year* of the *regulatory control period* that commences after the acceptance of an election under paragraph (c) or (d) (whichever is applicable); and
    - (2) clause 6.18.6(d)(3) of general Chapter 6 in respect of each *regulatory year* of the *regulatory control period* in relation to which an election is accepted under paragraph (c) or (d) (whichever is applicable).

### **Reporting on jurisdictional schemes**

- (g) If during the *regulatory control period* a *Distribution Network Service Provider* is or becomes subject to *jurisdictional scheme obligations* under an applicable jurisdictional scheme, the *Distribution Network Service Provider* may request the *AER* to determine how it is to report to the *AER* on its recovery of *jurisdictional scheme amounts* under that scheme for each *regulatory year* of the *regulatory control period* and on the adjustments to be made to subsequent *pricing proposals* to account for over or under recovery of those amounts.
- (h) To make a request under paragraph (g), a *Distribution Network Service Provider* must submit to the *AER* a written statement which specifies:
- (1) the name of the relevant applicable jurisdictional scheme;
  - (2) the date the *Distribution Network Service Provider* became subject to *jurisdictional scheme obligations*; and
  - (3) details of how the *Distribution Network Service Provider* proposes to:
    - (i) estimate the *jurisdictional scheme amounts* for the relevant applicable jurisdictional scheme for the purposes of modified clause 6.18.7A(b);
    - (ii) carry out any adjustments to *jurisdictional scheme amounts* for the relevant *jurisdictional scheme* for the purposes of modified clause 6.18.7A(b); and
    - (iii) report to the *AER* on the recovery process under modified clauses 6.18.7A(a) to (c).
- (i) If a *Distribution Network Service Provider* makes a request under paragraph (g) and provides a statement under paragraph (h):
- (1) clauses 6.6.1A(c) to (f) of general Chapter 6 apply to the *AER* and *Distribution Network Service Provider* as if references to “a statement under paragraph (b)” in those clauses was a reference to “a statement under clause 6.18.7C(h) of Appendix 1 of Chapter 11”; and
  - (2) the *AER* and *Distribution Network Service Provider* are bound to comply with clauses 6.6.1A(c) to (f) of general Chapter 6 in respect of the determination requested under paragraph (g) as if it had been requested under clause 6.6.1A(a) of general Chapter 6 and a statement had been provided in accordance with clause 6.6.1A(b) of general Chapter 6.

**Revocation and substitution of distribution determination for jurisdictional scheme recovery**

- (j) The *AER* may revoke a distribution determination for a *Distribution Network Service Provider* during the *regulatory control period* if:
  - (1) a forecast or estimate of amounts to be paid, credited or reimbursed under one or more applicable jurisdictional schemes has been included in the *Distribution Network Service Provider's* forecast operating expenditure in its distribution determination (as adjusted under clause 6.6.1, if applicable) for the *regulatory control period*; and
  - (2) the *Distribution Network Service Provider* gives the *AER* written notice that it intends to make an election under paragraph (a).
- (k) If the *AER* revokes a distribution determination under paragraph (j), the *AER* must make a new distribution determination in substitution for the revoked determination to apply for the remainder of the *regulatory control period* for which the revoked determination was to apply.
- (l) If the *AER* revokes a distribution determination under paragraph (j), the substituted determination must only vary from the revoked determination to the extent necessary to correct for the amounts referred to in subparagraph (j)(1).
- (m) The *AER* may only revoke and substitute a distribution determination under paragraphs (j) and (k), if it has first consulted with the relevant *Distribution Network Service Provider* and such other persons as it considers appropriate.

## **Schedule 3 Savings and Transitional Amendments to the National Electricity Rules**

(Clause 5)

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

In clause 11.15.2 (e), omit “(other than Chapter 6 and this rule 11.15)” and substitute “(other than Chapter 6, this rule 11.15 and rule 11.35)”.

### **[2] Chapter 11 Savings and Transitional Rules**

After rule 11.33, insert:

#### **Part ZE Payments under Feed-in Schemes and Climate Change Funds**

**Note:** Part ZD of Chapter 11 and rule 11.34 of Chapter 11 will be inserted by the *National Electricity Amendment (Cost Recovery for Other Services Directions) Rule 2010 No.5* which commences on 1 July 2011.

### **11.35 Rules consequential on the making of the National Electricity Amendment (Payments under Feed-in Schemes and Climate Change Funds) Rule 2010**

#### **11.35.1 Definitions**

For the purposes of this rule 11.35:

**Amending Rule** means the National Electricity Amendment (Payments under Feed-in Schemes and Climate Change Funds) Rule 2010.

**commencement date** means 1 July 2010.

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

**new clause 6.6.1A(d)(3)** means clause 6.6.1A of the *Rules* as in force immediately after the commencement date.

**new clauses 6.18.2(b)(6A) and (6B)** means clauses 6.18.2(b)(6A) and (6B) of the *Rules* as in force immediately after the commencement date.

**new clause 6.18.6(d)(3)** means clause 6.18.6(d)(3) of the *Rules* as in force immediately after the commencement date.

**new clause 6.18.7A** means clause 6.18.7A of the *Rules* as in force immediately after the commencement date.

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

### 11.35.2 Application of recovery of jurisdictional scheme Rules

(a) Subject to paragraph (h), a *Distribution Network Service Provider* is not required to comply with:

- (1) new clause 6.18.2(b)(6A) and (6B); and
- (2) new clause 6.18.7A(a) to (c),

until the date that the *Distribution Network Service Provider* is required to submit a *pricing proposal* for the first *regulatory year* of the next regulatory control period.

(b) Subject to paragraph (h), the first *pricing proposal* of a *Distribution Network Service Provider* that the new clause 6.18.6(d)(3) applies to is the *pricing proposal* for the second or subsequent *regulatory year* of the next regulatory control period.

(c) A *Distribution Network Service Provider* may by written notice to the *AER* at least 20 *business days* before the date that a *pricing proposal* is required to be submitted under clause 6.18.2(a)(2) in respect of a *regulatory year* in its current regulatory control period, elect to submit a *pricing proposal* for that *regulatory year* that complies with new clauses 6.18.2(b)(6A) and (6B) and new clause 6.18.7A(a) to (c).

(d) An election under paragraph (c) is valid if:

- (1) the election is made in relation to the second or subsequent *regulatory year* of its current regulatory control period;
- (2) the *Distribution Network Service Provider* has complied with clause 11.35.3 and the *AER* has made a decision or is taken to have made a decision under new clause 6.6.1A(e) or (f) (whichever is applicable) in respect of each *jurisdictional scheme* under which the *Distribution Network Service Provider* has *jurisdictional scheme obligations*; and
- (3) if and to the extent that any forecast or estimate of amounts payable under *jurisdictional schemes* has been included as forecast operating expenditure in the *Distribution Network Service Provider's* distribution determination for the current regulatory control period, the *AER* has agreed to a revocation and substitution of the distribution determination under clause 11.35.4.

- (e) Not later than 10 *business days* after receiving a notice under paragraph (c), the *AER* must notify the *Distribution Network Service Provider*:
  - (1) whether it accepts the election made under paragraph (c); and
  - (2) if it does not accept the election under paragraph (c), the reasons for that decision.
- (f) If the *AER* has not notified the *Distribution Network Service Provider* under paragraph (e) within 10 *business days* of receiving a notice under paragraph (c), the *AER* is taken to have accepted the election.
- (g) The *AER* must accept an election under paragraph (e) if it is valid under paragraph (d).
- (h) If the *AER* accepts a *Distribution Network Service Provider's* election under paragraph (e) or is taken to have accepted the election under paragraph (f) (whichever is applicable), the *Distribution Network Service Provider* must comply with:
  - (1) new clauses 6.18.2(b)(6A) and (6B) and new clause 6.18.7A(a) to (c) in respect of the *pricing proposal* for each *regulatory year* of the current regulatory control period that commences after the acceptance of an election under paragraph (e) or (f) (whichever is applicable); and
  - (2) new clause 6.18.6(d)(3) in respect of each *regulatory year* of the current regulatory control period in relation to which an election has been accepted under paragraph (e) or (f) (whichever is applicable).

### **11.35.3 Reporting on jurisdictional schemes**

- (a) If during the current regulatory control period a *Distribution Network Service Provider* is or becomes subject to *jurisdictional scheme obligations* under a *jurisdictional scheme*, the *Distribution Network Service Provider* may request the *AER* to determine how it is to report to the *AER* on its recovery of *jurisdictional scheme amounts* under that scheme for each *regulatory year* of the *regulatory control period* and on the adjustments to be made to subsequent *pricing proposals* to account for over or under recovery of those amounts.
- (b) To make a request under paragraph (a), a *Distribution Network Service Provider* must submit to the *AER* a written statement which specifies:
  - (1) the name of the relevant *jurisdictional scheme*;

- (2) the date the *Distribution Network Service Provider* became subject to *jurisdictional scheme obligations*; and
- (3) details of how the *Distribution Network Service Provider* proposes to:
  - (i) estimate the *jurisdictional scheme amounts* for the relevant *jurisdictional scheme* for the purposes of new clause 6.18.7A(b);
  - (ii) carry out any adjustments to *jurisdictional scheme amounts* for the relevant *jurisdictional scheme* for the purposes of new clause 6.18.7A(b); and
  - (iii) report to the *AER* on the recovery process under new clause 6.18.7A(a) and (b).
- (c) If a *Distribution Network Service Provider* makes a request under paragraph (a) and provides a statement under paragraph (b):
  - (1) clauses 6.6.1A(c) to (f) apply to the *AER* and *Distribution Network Service Provider* as if references to “a statement under paragraph (b)” in those clauses was a reference to “a statement under clause 11.35.3(b)”; and
  - (2) the *AER* and *Distribution Network Service Provider* are bound to comply with clauses 6.6.1A(c) to (f) in respect of the determination requested under paragraph (a) as if it had been requested under new clause 6.6.1A(a) and a statement had been provided in accordance with new clause 6.6.1A(b).

#### **11.35.4 Revocation and substitution of distribution determination for jurisdictional scheme recovery**

- (a) The *AER* may revoke a distribution determination for a *Distribution Network Service Provider* during the current regulatory control period if:
  - (1) a forecast or estimate of amounts to be paid, credited or reimbursed under one or more *jurisdictional schemes* has been included in the *Distribution Network Service Provider's* forecast operating expenditure in its distribution determination (as adjusted under clause 6.6.1, if applicable) for the current regulatory control period; and
  - (2) the *Distribution Network Service Provider* gives the *AER* written notice that it intends to make an election under clause 11.35.2(c).
- (b) If the *AER* revokes a distribution determination under paragraph (a), the *AER* must make a new distribution determination in substitution

for the revoked determination to apply for the remainder of the *regulatory control period* for which the revoked determination was to apply.

- (c) If the *AER* revokes a distribution determination under paragraph (a), the substituted determination must only vary from the revoked determination to the extent necessary to correct for the amounts referred to in subparagraph (a)(1).
- (d) The *AER* may only revoke and substitute a distribution determination under this clause 11.35.4, if it has first consulted with the relevant *Distribution Network Service Provider* and such other persons as it considers appropriate.

END OF RULE AS MADE

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