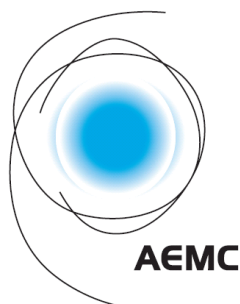


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Draft National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006

under the National Electricity Law as applied by:

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

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National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006

1. Title of Rule

This Rule is the *National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006*.

2. Commencement

This Rule commences operation on [to be advised].

3. Amendment of the National Electricity Rules

Chapters 6, 10 and 11 of the National Electricity Rules are amended as set out in Schedule 1.

4. Consequential amendments

Chapters 2, 5, 6, 8, 9 and 10 of the National Electricity Rules are amended as set out in Schedule 2.

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Schedule 1 Amendment of National Electricity Rules

(Clause 3)

[1] Chapter 6 heading

Omit the heading and substitute:

6. ECONOMIC REGULATION OF TRANSMISSION AND DISTRIBUTION SERVICES

[2] Chapter 6 note

Insert after the heading to Chapter 6:

This Chapter contains three Parts, together with a number of Schedules. Part A covers the economic regulation of transmission services (dealing with the regulation of the revenue that may be earned from and the prices that may be charged for prescribed transmission services, and the regulation of the prices that may be charged for negotiated transmission services). Part B covers the economic regulation of distribution services (dealing with the regulation of the revenue that may be earned from those services and the pricing of those services). Part C covers some general matters.

[3] Chapter 6 Parts A to C

Omit Parts A to G and substitute:

PART A – ECONOMIC REGULATION OF TRANSMISSION SERVICES

Division 1 – Introduction

6.1 Introduction to Part A

6.1.1 Economic regulation of transmission services generally

Divisions 2 and 3 regulate:

- (a) the revenues that may be earned by *Transmission Network Service Providers* from; and
- (b) the prices that may be charged by *Transmission Network Service Providers* for, the provision by them of certain *transmission services*.

6.1.2 Prescribed transmission services – revenue regulation

Subdivision 1 of Division 2 regulates the revenues that may be earned by *Transmission Network Service Providers* from the provision by them of *prescribed transmission services*.

[6.1.3 Prescribed transmission services – pricing regulation

Subdivision 2 of Division 2 regulates the prices that may be charged by *Transmission Network Service Providers* for the provision by them of *prescribed transmission services*, and also covers the following related matters:

- (a) prudential requirements for receipt of *transmission services*, which are set out in clause 6.6;

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- (b) billing and settlements procedures associated with *transmission services*, which are set out in clause 6.7;
- (c) specifications relating to *transmission service* pricing software, which are set out in clause 6.8; and
- (d) the collection of data which is necessary for the determination of *transmission service* prices, which is dealt with in clause 6.9.]

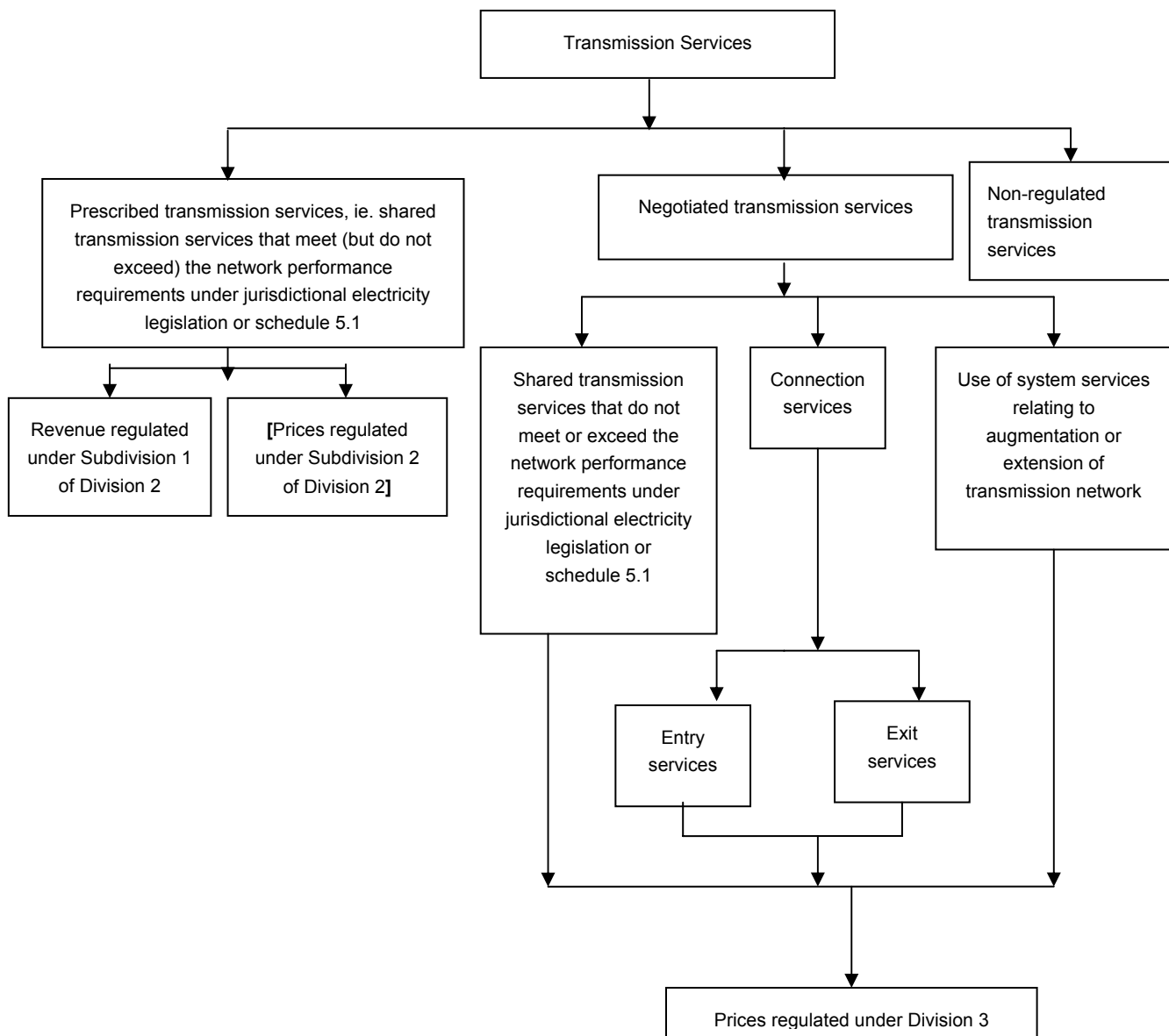
6.1.4 Negotiated transmission services – pricing regulation

Division 3 regulates the prices that may be charged by *Transmission Network Service Providers* for the provision by them of *negotiated transmission services*.

6.1.5 Diagrammatical illustration of transmission regulation

The regulation of revenues and pricing under Divisions 2 and 3 is illustrated diagrammatically as follows:

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6.1.6 National regulatory arrangements

- (a) The AER is, in accordance with this Chapter, responsible for the economic regulation of services provided by *Transmission Network Service Providers* by means of, or in connection with, *transmission systems* that form part of the *national grid*.
- (b) Subject to the agreement of the AER and the relevant *Jurisdictional Regulator*, those parts of a *transmission network* operating at nominal *voltages* between 66kV and 220kV that:
 - (1) do not operate in parallel to; and
 - (2) do not provide support to,

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the higher voltage *transmission network* may be deemed by the relevant *Transmission Network Service Provider* to be subject to the regulatory arrangements for *distribution service* pricing set out in Part B.

6.1.7 Application of Division 3

To the extent that a matter is dealt with under the *negotiating framework* for a *Transmission Network Service Provider*, the *negotiating framework* applies to the exclusion of the negotiating framework which is established under clause 6.5.9 and, to the extent there is any inconsistency between Division 3 and clause 6.5.9, Division 3 prevails.

6.1.8 Contents of Division 4

- (a) Subdivision 1 of Division 4 sets out the procedure that applies for the purposes of the *AER* making a *transmission determination*.
- (b) Subdivisions 2 – 4 of Division 4 contain provisions regarding the disclosure of information, cost allocation and the *transmission guideline procedures*.

6.1.9 Application of Part A to Market Network Service Providers

- (a) Notwithstanding anything contained in this Chapter 6:
 - (1) Divisions 2 and 3 do not regulate the revenues that may be earned by *Market Network Service Providers* from, or the prices that may be charged by *Market Network Service Providers* for, the provision by them of *market network services*; and
 - (2) Division 4 does not apply to *Market Network Service Providers*.
- (b) Subdivision 2 of Division 2 does not regulate the prices that may be charged by *Transmission Network Service Providers* for *network services* provided to:
 - (1) a *Market Network Service Provider*; or
 - (2) another *Network Service Provider* for electricity delivered to a *Market Network Service Provider* through the *network* of the other *Network Service Provider* (except for any such electricity which is ultimately consumed within the other *Network Service Provider's network*).
- (c) Charges for the *network services* referred to in clause 6.1.9(b) are governed by the applicable provisions of clauses 5.4A, 5.5A, 6.14.7 and Division 3 only.

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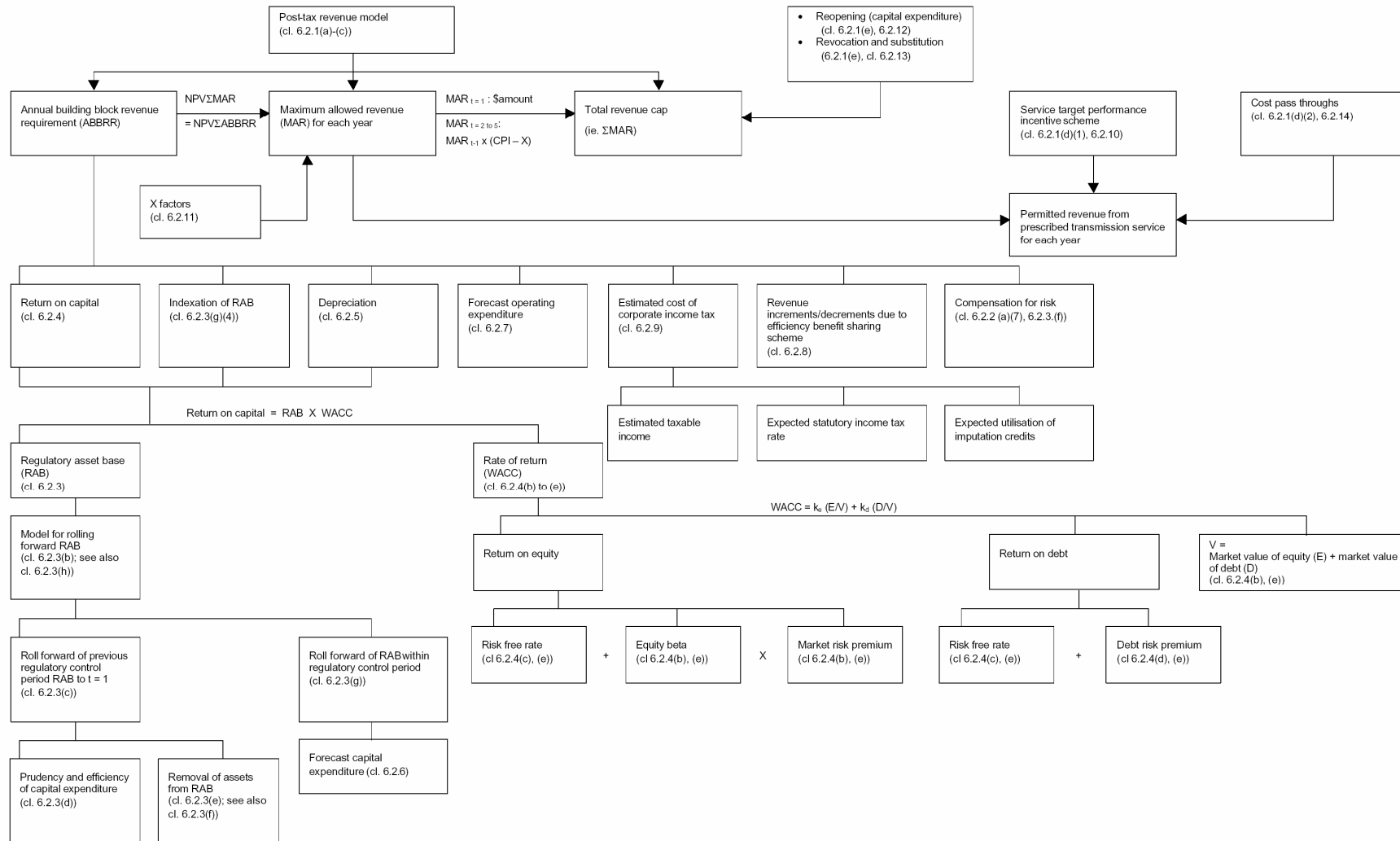
Division 2 – Prescribed Transmission Services

A prescribed transmission service is defined in the Glossary in Chapter 10 as a *shared transmission service* that meets (but does not exceed) specified performance requirements and is not a *negotiated transmission service* or a *market network service*.

Subdivision 1 – Prescribed Transmission Services – Regulation of Revenue

Set out below is a diagrammatical illustration of the contents of this Subdivision 1.

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6.2 Revenue regulation

6.2.1 Post-tax revenue model and regulatory control period

- (a) The AER must, in accordance with the *transmission guideline procedures* and by 31 December 2006, develop and *publish* a post-tax revenue model that sets out the manner in which:
- (1) the *total revenue cap* for a *Transmission Network Service Provider* for a *regulatory control period*;
 - (2) the *maximum allowed revenue* for a *Transmission Network Service Provider* for each *regulatory year* of a *regulatory control period*; and
 - (3) the *annual building block revenue requirement* for a *Transmission Network Service Provider* for each *regulatory year* of a *regulatory control period*,

are to be calculated (such amounts in each case only to include revenues or costs, as the case may be, that are referable to the provision of *prescribed transmission services*). The AER may, from time to time and in accordance with the *transmission guideline procedures*, amend the model.

- (b) The model referred to in clause 6.2.1(a) must be such that:
- (1) the net present value of the expected *maximum allowed revenue* for a *Transmission Network Service Provider* for each *regulatory year* of a *regulatory control period* is equal to the net present value of the *annual building block revenue requirement* for that *Transmission Network Service Provider* for each *regulatory year* of that *regulatory control period*;
 - (2) the *maximum allowed revenue* for a *Transmission Network Service Provider* for the first *regulatory year* of a *regulatory control period* is expressed as a dollar amount;
 - (3) the *maximum allowed revenue* for a *Transmission Network Service Provider* for each *regulatory year* (other than the first *regulatory year*) of a *regulatory control period* is calculated by escalating the *maximum allowed revenue* for that *Transmission Network Service Provider* for the previous *regulatory year* using a CPI – X methodology; and
 - (4) the *total revenue cap* for a *Transmission Network Service Provider* for a *regulatory control period* is calculated as the sum of the *maximum allowed revenues* for that *Transmission Network Service Provider* for each *regulatory year* of that *regulatory control period* (as calculated in accordance with this clause 6.2.1).

For these purposes:

- (i) the X factor for each *regulatory year* is that determined in accordance with clause 6.2.11; and
 - (ii) the *annual building block revenue requirement* for a *Transmission Network Service Provider* for a *regulatory year* of a *regulatory control period* must be determined in accordance with clause 6.2.2(a).
- (c) The model referred to in clause 6.2.1(a) must specify:

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- (1) the manner in which the expected rate of inflation over the relevant *regulatory control period* is to be calculated;
 - (2) the timing assumptions and associated discount rates that are to apply in relation to the calculation of the building blocks referred to in clause 6.2.2(a);
 - (3) the manner (if any) in which working capital is to be treated;
 - (4) the manner in which the estimated cost of corporate income tax is to be calculated; and
 - (5) the CPI – X methodology that is to be applied in escalating the *maximum allowed revenue* for a *Transmission Network Service Provider* for each *regulatory year* (other than the first *regulatory year*) of a *regulatory control period*.
- (d) The revenue that a *Transmission Network Service Provider* may earn in any *regulatory year* of a *regulatory control period* from the provision of *prescribed transmission services*:
- (1) is subject to adjustment in accordance with the operation of the applicable *service target performance incentive scheme*; and
 - (2) may be increased or decreased as a result of the operation of clause 6.2.14 (cost pass throughs).
- (e) The *maximum allowed revenue* for a *Transmission Network Service Provider* for each *regulatory year* of a *regulatory control period* may be changed as a result of the revocation and substitution of a *revenue cap determination* in accordance with clauses 6.2.12 or 6.2.13.
- (f) A *regulatory control period* in respect of a *Transmission Network Service Provider* must be not less than 5 *regulatory years* but must consist of a whole number of *regulatory years*.
- (g) Unless otherwise determined by the AER a *total revenue cap* may not relate to more than one *transmission system* that is owned, controlled or operated by a *Transmission Network Service Provider*.

6.2.2 Building blocks approach

- (a) The *annual building block revenue requirement* for a *Transmission Network Service Provider* for each *regulatory year* of a *regulatory control period* must be determined using a building blocks approach under which the building blocks are:
- (1) a return on capital for that *regulatory year* calculated in accordance with clause 6.2.4;
 - (2) indexation of the regulatory asset base for the relevant *transmission system* for that *regulatory year* (the regulatory asset base being calculated in accordance with clause 6.2.3), such building block comprising a negative adjustment equal to the amount referred to in clause 6.2.3(g)(4) for that *regulatory year*;
 - (3) the depreciation for that *regulatory year* calculated in accordance with clause 6.2.5;
 - (4) the forecast operating expenditure accepted or determined by the AER for that *regulatory year* in accordance with clause 6.2.7(b) or clause 6.16.2(b)(3) (as the case may be) ;

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- (5) the estimated cost of corporate income tax of the *Transmission Network Service Provider* for that *regulatory year* determined in accordance with clause 6.2.9;
- (6) the revenue increments or decrements for that *regulatory year* which arise as a result of the operation of the applicable *efficiency benefit sharing scheme*; and
- (7) such amounts as the *AER* determines are necessary for that *regulatory year* to compensate the *Transmission Network Service Provider* for risks that are not otherwise compensated for in the return on capital, including the risk referred to in clause 6.2.3(f).

6.2.3 Regulatory asset base

- (a) The regulatory asset base for a *transmission system* owned, controlled or operated by a *Transmission Network Service Provider* is the value of those assets that are used by the *Transmission Network Service Provider* to provide *prescribed transmission services*, but only to the extent that they are used to provide such services.

Model for rolling forward regulatory asset base

- (b) The *AER* must, in accordance with the *transmission guideline procedures* and by 31 December 2006, develop and *publish* a model for the roll forward of the regulatory asset base for *transmission systems*:
 - (1) from one *regulatory control period* to a subsequent *regulatory control period*, so as to establish the value of the regulatory asset base as at the beginning of the first *regulatory year* of that subsequent *regulatory control period*; and
 - (2) from one *regulatory year* in a *regulatory control period* to a subsequent *regulatory year* in that same *regulatory control period*, so as to establish the value of the regulatory asset base as at the beginning of the subsequent *regulatory year* of that *regulatory control period*,

under which:

- (3) the roll forward of the regulatory asset base from one *regulatory control period* to the beginning of the first *regulatory year* of a subsequent *regulatory control period* entails the value of the first-mentioned regulatory asset base being adjusted for outturn inflation, with such outturn inflation being measured by reference to the *CPI* as at the relevant time; and
- (4) the inflation adjustment that is made in rolling forward the regulatory asset base from one *regulatory control period* to the beginning of the first *regulatory year* of the immediately succeeding *regulatory control period* is consistent with the methodology that was used in the *transmission determination* (if any) for the first-mentioned *regulatory control period* for the indexation of the regulatory asset base during that *regulatory control period*.

The *AER* may, from time to time and in accordance with the *transmission guideline procedures*, amend the model.

Establishment of opening regulatory asset base

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- (c) In so far as the model referred to in clause 6.2.3(b) rolls forward the regulatory asset base for a *transmission system* from one *regulatory control period* to a subsequent *regulatory control period* so as to establish the value of the regulatory asset base as at the beginning of the first *regulatory year* of that subsequent *regulatory control period*, it must provide for that value to be established in accordance with the following requirements:
- (1) In the case of a *transmission system* owned, controlled or operated by one of the following *Transmission Network Service Providers* as at 16 February 2006, the value of the regulatory asset base for that *transmission system* as at the beginning of that first *regulatory year* must be determined by rolling forward the regulatory asset base for that *transmission system*, as set out in the table below, in accordance with the following provisions of this clause 6.2.3:

Transmission Network Service Provider	Regulatory Asset Base (\$m)
EnergyAustralia	635.6 (as at 1 July 2004)
TransGrid	3,012.76 (as at 1 July 2004)
Powerlink	2,276.87 (as at 1 July 2001)
ElectraNet	823.75 (as at 1 January 2003)
Transend	603.6 (as at 31 December 2003)
SP AusNet	1,835.60 (as at 1 January 2003)
Murraylink Transmission Company	102.96 (as at 1 October 2003)
Directlink	[#] (as at 1 July 2005)

and subject to the values in the table above being adjusted for the difference between:

- (i) any estimated capital expenditure which is included in those values for any part of a previous *regulatory control period*; and
- (ii) the actual capital expenditure for that part of the previous *regulatory control period*, but excluding such of that actual capital expenditure as is determined by the *AER* not to be prudent or efficient in accordance with clause 6.2.3(d)

(such adjustment must also remove any benefit or penalty associated with the return on capital arising from any difference between such estimated and actual capital expenditure).

- (2) Except as provided in paragraph (3), in the case of a *transmission system* which is not referred to in paragraph (1), the value of the regulatory asset base for that *transmission system*, as at the beginning of the first *regulatory year* of the first *regulatory control period* for which *prescribed transmission services* that are provided by means of, or in connection with, that *transmission system* are to be regulated under a *revenue cap determination*, is the prudent and efficient value of the assets that are used by the *Transmission Network Service Provider* to provide

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those *prescribed transmission services* (but only to the extent that they are used to provide such services). This value must be determined by the *AER* having regard to the matters referred to in clause 6.2.3(d). The value of the regulatory asset base for that *transmission system* as at the beginning of the first *regulatory year* of any subsequent *regulatory control period* must be determined by rolling forward the value of the regulatory asset base for that *transmission system* as at the beginning of the first *regulatory year* of the first *regulatory control period* in accordance with the following provisions of this clause 6.2.3.

(3) In the case of a *transmission system* where any services provided by means of, or in connection with, that *transmission system* are determined to be *prescribed transmission services* under clause 2.5.2(c), the value of the regulatory asset base for that *transmission system*, as at the beginning of the first *regulatory year* of the first *regulatory control period* for which those services are to be regulated under a *revenue cap determination*, is the amount which is determined by the *AER* as the lesser of:

- (i) the prudent and efficient value of the assets that are used by the relevant *Transmission Network Service Provider* to provide those *prescribed services* (but only to the extent they are used to provide such services), such value being determined by the *AER* having regard to the matters referred to in clause 6.2.3(d); and
- (ii) the sum of:
 - (A) the net present value of the revenue that it is expected would be earned by the relevant *Transmission Network Service Provider* from the provision of those services, over the remaining life of the assets that are used by the *Transmission Network Service Provider* to provide those services, if those services had not been determined to be *prescribed transmission services*; and
 - (B) to the extent that such market benefit is not included in the expected revenue referred to in paragraph (3)(ii)(A), the net present value of the market benefit to *Registered Participants* of the services being determined to be *prescribed transmission services* compared to being continued to be treated as services that are not *prescribed transmission services*,

reduced by the net present value of the total operating expenditure over the remaining life of the *transmission system* which the *AER* considers to be reasonably required for the purposes referred to in clause 6.2.7(a). For the purposes of paragraph (3)(ii)(B) the net present value of the market benefit is the present value of the market benefit less the present value of costs, as those terms are defined for the purposes of the *regulatory test*.

The value of the regulatory asset base for such a *transmission system* as at the beginning of the first *regulatory year* of any subsequent *regulatory control period* must be determined by rolling forward the value of the regulatory asset base for that *transmission system* as at the beginning of the first *regulatory year* of the first

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regulatory control period in accordance with the following provisions of this clause 6.2.3.

- (4) Except as otherwise provided in paragraphs (1), (2) or (3), the value of the regulatory asset base for a *transmission system* as at the beginning of the first *regulatory year* of a *regulatory control period* must be calculated by adjusting the value of the regulatory asset base for that *transmission system* as at the beginning of the first *regulatory year* of the immediately preceding *regulatory control period* as follows:
- (i) subject to paragraph (ii), the value of the regulatory asset base as at the beginning of the first *regulatory year* of the immediately preceding *regulatory control period* must be increased by the amount of all capital expenditure incurred during that preceding *regulatory control period* (regardless of whether it is above or below the forecast capital expenditure for that *regulatory year* that is adopted for the purposes of the *transmission determination* (if any) for that preceding *regulatory control period*);
 - (ii) capital expenditure incurred during the preceding *regulatory control period* must not be included in the increase referred to in paragraph (i) to the extent that the capital expenditure is determined by the *AER* not to be prudent or efficient in accordance with clause 6.2.3(d);
 - (iii) the value of the regulatory asset base as at the beginning of the first *regulatory year* of the immediately preceding *regulatory control period* must be increased by the amount of the estimated capital expenditure approved by the *AER* for any part of that preceding *regulatory control period* for which actual capital expenditure is not available;
 - (iv) the value of the regulatory asset base as at the beginning of the first *regulatory year* of the immediately preceding *regulatory control period* must be adjusted for the difference between:
 - (A) the estimated capital expenditure for any part of a previous *regulatory control period* where that estimated capital expenditure has been included in that value; and
 - (B) the actual capital expenditure for that part of the previous *regulatory control period*, but excluding such of that actual capital expenditure as is determined by the *AER* not to be prudent or efficient in accordance with clause 6.2.3(d)(such adjustment must also remove any benefit or penalty associated with the return on capital arising from any difference between such estimated and actual capital expenditure);
 - (v) the value of the regulatory asset base as at the beginning of the first *regulatory year* of the immediately preceding *regulatory control period* must only be increased by actual or estimated capital expenditure to the extent that all such capital expenditure is properly allocated to the provision of *prescribed transmission services* in accordance with the *Cost Allocation Methodology* for the relevant *Transmission Network Service Provider*;

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- (vi) the value of the regulatory asset base as at the beginning of the first *regulatory year* of the immediately preceding *regulatory control period* must be reduced by the amount of regulatory depreciation allowed for during that preceding *regulatory control period* in the *transmission determination* (if any) for that preceding *regulatory control period* and, for these purposes, that amount must be adjusted for the difference between the estimated inflation for that preceding *regulatory control period* as used in that *transmission determination* and outturn inflation;
- (vii) the value of the regulatory asset base as at the beginning of the first *regulatory year* of the immediately preceding *regulatory control period* must be reduced by the disposal value of any asset where that asset has been disposed of during that preceding *regulatory control period*;
- (viii) the value of the regulatory asset base as at the beginning of the first *regulatory year* of the immediately preceding *regulatory control period* must be reduced by the value of any asset where the *AER* determines that the value of that asset should be removed in accordance with clause 6.2.3(e); and
- (ix) without prejudice to the application of any other provision of this paragraph (c), the value of the regulatory asset base as at the beginning of the first *regulatory year* of the immediately preceding *regulatory control period* may be increased by the inclusion of past capital expenditure that has not been included in that value because:
 - (A) that capital expenditure has previously been determined by the *AER* not to be prudent or efficient in accordance with clause 6.2.3(d), in which case such capital expenditure must only be included to the extent that the *AER* determines that capital expenditure to be prudent and efficient in accordance with clause 6.2.3(d); or
 - (B) that capital expenditure was incurred in connection with the provision of services that are not *prescribed transmission services*, in which case such capital expenditure must only be included to the extent the asset in respect of which that capital expenditure was incurred is subsequently used for the provision of *prescribed transmission services* and then only to the extent that the *AER* determines that capital expenditure to be prudent and efficient in accordance with clause 6.2.3(d).

Prudency and efficiency of capital expenditure

- (d) In determining the prudency or efficiency of capital expenditure under clauses 6.2.3(c)(1), (2), (3) or (4)(ii), (iv) or (ix), the *AER* must have regard to:
 - (1) the need to provide a reasonable opportunity for the relevant *Transmission Network Service Provider* to recover the efficient costs of complying with all

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applicable *regulatory obligations* associated with the provision of *prescribed transmission services*;

- (2) the need to provide effective incentives to the *Transmission Network Service Provider* to promote economic efficiency in the provision of *prescribed transmission services*;
- (3) whether the relevant project in respect of which capital expenditure was made was evaluated against, and satisfied, the *regulatory test*;
- (4) whether the *Transmission Network Service Provider* undertook the capital expenditure in a manner consistent with good business practice and so as to practicably achieve the lowest sustainable cost of delivering the *prescribed transmission services* to be provided as a consequence of that capital expenditure;
- (5) the desirability of minimising investment uncertainty for the *Transmission Network Service Provider*; and
- (6) the need to provide incentives to the *Transmission Network Service Provider* to avoid undertaking inefficient capital expenditure.

Except for the purposes of clause 6.2.3(c)(4)(ix), in determining the prudence or efficiency of capital expenditure the *AER* must only take into account information and analysis that the *Transmission Network Service Provider* could reasonably be expected to have considered or undertaken at the time that it undertook the relevant capital expenditure.

Removal of assets from regulatory asset base

- (e) For the purposes of rolling forward the regulatory asset base for a *transmission system* as described in clause 6.2.3(b)(1), the *AER* may only determine to remove, from the regulatory asset base for a *transmission system*, the value of an asset (or group of assets):
 - (1) to the extent that:
 - (i) the asset (or group of assets) is dedicated to one *Transmission Network User* or a small group of *Transmission Network Users*; and
 - (ii) the value of the asset (or group of assets), as included in the value of that regulatory asset base as at the beginning of the first *regulatory year* of the current *regulatory control period*, exceeds the *indexed amount*, as at the time of the *AER's* determination, of \$20 million;
 - (2) if the *AER* determines that the asset (or group of assets) is no longer contributing to the provision of *prescribed transmission services*; and
 - (3) if the *AER* determines that the relevant *Transmission Network Service Provider* has not adequately sought to manage the risk of that asset (or that group of assets) no longer contributing to the provision of *prescribed transmission services* by:
 - (i) seeking to negotiate the payment of a lower price by the relevant *Transmission Network Users* for those *prescribed transmission services* in accordance with clause 6.5.8(b); or

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- (ii) in the case of assets committed to be constructed on or after 16 February 2006, seeking to enter into arrangements which provide for a reasonable allocation of the risks of the value of that asset (or that group of assets) no longer contributing to the provision of *prescribed transmission services*.

For the purposes of paragraph (e)(3)(ii), an asset is, and is only, to be taken to be committed to be constructed if it satisfies the criteria which a project needs to satisfy to be a "committed project" for the purposes of the *regulatory test*.

- (f) The AER may determine a separate amount which is to be included in the *annual building block revenue requirement* for a *Transmission Network Service Provider* for each *regulatory year* of a *regulatory control period* so as to compensate that *Transmission Network Service Provider* for the risk of the value of assets being removed from the regulatory asset base for the relevant *transmission system*, but only if it is satisfied that:
 - (1) such risk is not otherwise addressed through another provision of the *Rules*;
 - (2) the *Transmission Network Service Provider* has taken all the steps that a prudent *Transmission Network Service Provider* would take to manage that risk; and
 - (3) the *total revenue cap* for the *Transmission Network Service Provider* for that *regulatory control period* does not adequately reflect risks that cannot be reasonably managed.

Inter-regulatory control period roll forward of regulatory asset base

- (g) In so far as the model referred to in clause 6.2.3(b) rolls forward the regulatory asset base for a *transmission system* from one *regulatory year* in a *regulatory control period* to a subsequent *regulatory year* in that same *regulatory control period* so as to establish the value of the regulatory asset base as at the beginning of that subsequent *regulatory year*, it must provide for that value to be established in accordance with the following requirements:
 - (1) the value of the regulatory asset base as at the beginning of the immediately preceding *regulatory year* must be increased by the amount of forecast capital expenditure accepted or determined by the AER for that *regulatory year* in accordance with clause 6.2.6(b) or clause 6.16.2(b)(3) (as the case may be);
 - (2) the value of the regulatory asset base as at the beginning of the immediately preceding *regulatory year* must be reduced by the amount of depreciation included in the *annual building block revenue requirement* for that *regulatory year*;
 - (3) the value of the regulatory asset base as at the beginning of the immediately preceding *regulatory year* must be reduced by the disposal value of any asset included in that value of the regulatory asset base where that asset is forecast to be disposed of during that *regulatory year*; and
 - (4) the value of the regulatory asset base as at the beginning of the immediately preceding *regulatory year* must be increased by an amount necessary to maintain the real value of the regulatory asset base as at the beginning of the subsequent *regulatory year* by adjusting that value for inflation.

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If the AER determines that it is appropriate to do so, it may include an allowance for working capital in the regulatory asset base for a *transmission system* which is rolled forward in accordance with this paragraph (g).

Restrictions on adjustment of regulatory asset base

- (h) Where, in accordance with clause 6.2.3(c)(4)(i) or (iii), the value of the regulatory asset base is increased by capital expenditure for a *regulatory year* which is:
- (1) greater than the forecast capital expenditure for that *regulatory year* that was adopted for the purposes of the *transmission determination* (if any) for the *regulatory control period* in which that *regulatory year* occurs, the value of the regulatory asset base must not be increased for the foregone real return on capital as a result of that difference; and
 - (2) less than the forecast capital expenditure for that *regulatory year* that was adopted for the purposes of the *transmission determination* (if any) for the *regulatory control period* in which that *regulatory year* occurs, the value of the regulatory asset base must not be adjusted to remove the real return on capital, allowed under that previous *transmission determination*, on that capital expenditure.

6.2.4 Return on capital and rate of return

- (a) The return on capital for each *regulatory year* of a *regulatory control period* must be calculated by applying a rate of return for the relevant *Transmission Network Service Provider* for that *regulatory control period* (calculated in accordance with clauses 6.2.4(b) to (e)) to the value of the regulatory asset base for the relevant *transmission system* as at the beginning of that *regulatory year* (as established in accordance with clause 6.2.3).

Weighted average cost of capital

- (b) The rate of return for a *Transmission Network Service Provider* for a *regulatory control period* is the cost of capital as measured by the return required by investors in a commercial enterprise with a similar nature and degree of systemic business risk as that faced by the transmission business of the *Transmission Network Service Provider* and, subject to clause 6.2.4(e), must be calculated as a nominal post-tax weighted average cost of capital ("WACC") in accordance with the following formula:

$$\text{WACC} = k_e \frac{E}{V} + k_d \frac{D}{V}$$

where:

k_e is the return on equity (determined using the Capital Asset Pricing Model) and is calculated as:

$$r_f + \beta_e \times \text{MRP}$$

where:

r_f is the nominal risk free rate for the *regulatory control period* determined in accordance with clause 6.2.4(c);

β_e is the equity beta, which is deemed to be 1.0; and

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MRP is the market risk premium, which is deemed to be 6.0%;

k_d is the return on debt and is calculated as:

$$r_f + \text{DRP}$$

where:

DRP is the debt risk premium for the *regulatory control period* determined in accordance with clause 6.2.4(d);

E/V is the market value of equity as a proportion of the market value of equity and debt, which is $1 - D/V$; and

D/V is the market value of debt as a proportion of the market value of equity and debt, which is deemed to be 0.6.

Nominal risk free rate

(c) The nominal risk free rate for a *regulatory control period* is the nominal risk free rate determined for that *regulatory control period* by the AER on a moving average basis from the annualised yield on Commonwealth Government bonds with a maturity of 10 years using:

- (1) the indicative mid rates published by the Reserve Bank of Australia; and
- (2) a period of between five and 40 days:
 - (i) which expires seven days before the *publication* of the AER's final decision on the *Transmission Network Service Provider's Revenue Proposal* under clause 6.16.2(d); and
 - (ii) the length of which is nominated by the relevant *Transmission Network Service Provider* in its *Revenue Proposal*.

If there are no Commonwealth Government bonds with a maturity of 10 years in any day in the period referred to in paragraph (2), the AER must determine the nominal risk free rate for the *regulatory control period* by interpolating on a straight line basis from the two Commonwealth Government bonds closest to the 10 year term and which also straddle the 10 year expiry date.

Debt risk premium

(d) The debt risk premium for a *regulatory control period* is the debt risk premium determined for that *regulatory control period* by the AER as the margin between the 10 year Commonwealth annualised bond rate and the observed annualised Australian benchmark corporate bond rate for corporate bonds which have a BBB credit rating from Standard and Poors and a maturity of 10 years.

Review of rate of return parameters

(e) The AER must, in accordance with the *transmission guideline procedures* and prior to both 1 July 2011 and the expiry of each subsequent five year period thereafter, review:

- (1) the values of and methodologies used to calculate:
 - (i) the nominal risk free rate;

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- (ii) the equity beta;
- (iii) the market risk premium;
- (iv) the maturity periods and bond rates referred to in clause 6.2.4(d); and
- (v) the ratio of the market value of debt to the market value of equity and debt, as set out in this clause 6.2.4 or as subsequently revised under this paragraph (e); and

- (2) the use of a BBB credit rating as referred to in clause 6.2.4(d).

The values attributed to the parameters referred to in paragraphs (1)(ii) and (v) must be based on a benchmark efficient *Transmission Network Service Provider*. If, as a consequence of a review under this paragraph (e), the *AER* decides to adopt revised values or methodologies, it must use those revised values and methodologies for the purposes of any *revenue cap determination* made after 1 July 2011 or after the expiry of that subsequent five year period (as the case may be).

6.2.5 Depreciation

- (a) The depreciation for each *regulatory year* of a *regulatory control period*:
 - (1) must be calculated on the value of the assets as included in the regulatory asset base, as at the beginning of that *regulatory year*, for the relevant *transmission system*; and
 - (2) must be calculated:
 - (i) providing such depreciation schedules conform with the requirements set out in clause 6.2.5(b), using the depreciation schedules for each asset or category of assets that are nominated in the relevant *Transmission Network Service Provider's Revenue Proposal*; or
 - (ii) to the extent the depreciation schedules nominated in the *Transmission Network Service Provider's Revenue Proposal* do not so conform, using the depreciation schedules determined for that purpose by the *AER* in its final decision on the *Transmission Network Service Provider's Revenue Proposal*.
- (b) The depreciation schedules referred to in clause 6.2.5(a) must conform with the following requirements:
 - (1) except as provided in clause 6.2.5(c), they must depreciate the value of each asset or category of assets over the economic life of that asset or category of assets; and
 - (2) the sum of the real value of the depreciation that is attributable to any asset or category of assets over the economic life of that asset or category of assets (such real value being calculated as at the time the value of that asset or category of assets was first included in the regulatory asset base for the relevant *transmission system*) must be equivalent to the value at which that asset or category of assets was first included in the regulatory asset base for the relevant *transmission system*.
- (c) To the extent that:

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- (1) an asset (or group of assets) the value of which forms part of the regulatory asset base for a *transmission system* is dedicated to one *Transmission Network User* or a small group of *Transmission Network Users*; and
- (2) the value of the assets (or group of assets), as included in the value of that regulatory asset base as at the beginning of the first *regulatory year* of the current *regulatory control period*, exceeds the *indexed amount*, as at the commencement of that *regulatory control period*, of \$20 million,

that asset (or group of assets) must be depreciated on a straight line basis over the life at which that asset (or group of assets) was first included in the regulatory asset base for that *transmission system*.

6.2.6 Forecast capital expenditure

- (a) A *Revenue Proposal* must include a forecast of the capital expenditure for each *regulatory year* of the relevant *regulatory control period* which the *Transmission Network Service Provider* considers is reasonably required to be undertaken in order to:
 - (1) efficiently meet the expected demand for *prescribed transmission services* over that period;
 - (2) comply with all applicable *regulatory obligations* associated with the provision of *prescribed transmission services*;
 - (3) maintain the quality, reliability and security of supply of *prescribed transmission services*; and
 - (4) maintain the reliability, safety and security of the *transmission system* through the supply of *prescribed transmission services*.
- (b) The *AER* must accept the forecast capital expenditure for each *regulatory year* as provided under clause 6.2.6(a) if:
 - (1) the forecast capital expenditure is for expenditure that is properly allocated to *prescribed transmission services* in accordance with the principles and policies set out in the *Cost Allocation Methodology* for the *Transmission Network Service Provider*;
 - (2) subject to paragraph (3):
 - (i) the forecast capital expenditure is identified in the *Revenue Proposal* as a *reliability augmentation*;
 - (ii) the forecast capital expenditure is necessary for the *Transmission Network Service Provider* to comply with all applicable *regulatory obligations* associated with the provision of *prescribed transmission services*; or
 - (iii) the forecast capital expenditure has satisfied the *regulatory test*;
 - (3) the total of the forecast capital expenditure for the *regulatory control period* as provided under clause 6.2.6(a) (being both capital expenditure referred to in clause 6.2.6(b)(2) and all other capital expenditure referred to in clause 6.2.6(a)) is determined by the *AER* to be a reasonable estimate of the *Transmission Network*

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Service Provider's required capital expenditure for the *regulatory control period*, taking into account:

- (i) the information included in or accompanying the submission of the *Revenue Proposal*;
 - (ii) the need to comply with all applicable *regulatory obligations* associated with the provision of *prescribed transmission services*;
 - (iii) submissions received in the course of consulting on the *Revenue Proposal*;
 - (iv) such analysis as is undertaken by or for the *AER* and is *published* prior to or as part of the draft decision of the *AER* on the *Revenue Proposal* under clause 6.15.1(a) or the final decision of the *AER* on the *Revenue Proposal* under clause 6.16.1(a) (as the case may be);
 - (v) the actual and expected capital expenditure of the *Transmission Network Service Provider* during any preceding *regulatory control periods*;
 - (vi) reasonable estimates of the benchmark capital expenditure that would be incurred by an efficient *Transmission Network Service Provider* over the *regulatory control period*;
 - (vii) the reasonableness of the demand forecasts on which the forecast capital expenditure is based;
 - (viii) the relative prices of operating and capital inputs;
 - (ix) efficient substitution possibilities between operating and capital expenditure; and
 - (x) whether the total labour costs included in the capital and operating expenditure forecasts for the *regulatory control period* are consistent with the incentives provided by the *service target performance incentive scheme* that is to apply to the *Transmission Network Service Provider* in respect of the *regulatory control period*; and
- (4) the capital expenditure forecasts and the information provided in relation to them comply with the requirements of the guidelines made under clause 6.12.1(c).
- (c) If a *Transmission Network Service Provider* proposes to undertake capital expenditure during a *regulatory control period*, the result of which is reasonably likely to be that the actual capital expenditure for that *regulatory control period* exceeds the forecast capital expenditure accepted or determined by the *AER* for that *regulatory control period* in accordance with clause 6.2.6(b) or clause 6.16.2(b)(3) (as the case may be), the *Transmission Network Service Provider* may be entitled to apply for the revocation and substitution of the *revenue cap determination* that applies to it, pursuant to clause 6.2.12.

6.2.7 Forecast operating expenditure

- (a) A *Revenue Proposal* must include a forecast of the operating expenditure for each *regulatory year* of the relevant *regulatory control period* which the *Transmission Network Service Provider* considers is reasonably required to be undertaken in order to:

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- (1) efficiently meet the expected demand for *prescribed transmission services* over that period;
 - (2) comply with all applicable *regulatory obligations* associated with the provision of *prescribed transmission services*;
 - (3) maintain the quality, reliability and security of supply of *prescribed transmission services*; and
 - (4) maintain the reliability, safety and security of the *transmission system* through the supply of *prescribed transmission services*.
- (b) The *AER* must accept the forecast operating expenditure for each *regulatory year* as provided under clause 6.2.7(a) if:
- (1) the forecast operating expenditure is for expenditure that is properly allocated to *prescribed transmission services* in accordance with the principles and policies set out in the *Cost Allocation Methodology* for the *Transmission Network Service Provider*;
 - (2) the total of the forecast operating expenditure for the *regulatory control period* as provided under clause 6.2.7(a) is determined by the *AER* to be a reasonable estimate of the *Transmission Network Service Provider's* required operating expenditure for the *regulatory control period*, taking into account:
 - (i) the information included in or accompanying the submission of the *Revenue Proposal*;
 - (ii) the need to comply with all applicable *regulatory obligations* associated with the provision of *prescribed transmission services*;
 - (iii) submissions received in the course of consulting on the *Revenue Proposal*;
 - (iv) such analysis as is undertaken by or for the *AER* and is *published* prior to or as part of the draft decision of the *AER* on the *Revenue Proposal* under clause 6.15.1(a) or the final decision of the *AER* on the *Revenue Proposal* under clause 6.16.1(a) (as the case may be);
 - (v) the actual and expected operating expenditure of the *Transmission Network Service Provider* during any preceding *regulatory control periods*;
 - (vi) reasonable estimates of the benchmark operating expenditure that would be incurred by an efficient *Transmission Network Service Provider* over the *regulatory control period*;
 - (vii) the reasonableness of the demand forecasts on which the forecast operating expenditure is based;
 - (viii) the relative prices of operating and capital inputs;
 - (ix) efficient substitution possibilities between operating and capital expenditure; and

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- (x) whether the total labour costs included in the capital and operating expenditure forecasts for the *regulatory control period* are consistent with the incentives provided by the *service target performance incentive scheme* that is to apply to the *Transmission Network Service Provider* in respect of the *regulatory control period*; and
- (3) the operating expenditure forecasts and the information provided in relation to them comply with the requirements of the guidelines made under clause 6.12.1(c).

6.2.8 Efficiency benefit sharing scheme

- (a) The *AER* must, in accordance with the *transmission guideline procedures*, develop and *publish* a scheme (an "*efficiency benefit sharing scheme*") that provides for a fair sharing between *Transmission Network Service Providers* and *Transmission Network Users* of:
 - (1) the efficiency gains derived from the operating expenditure of *Transmission Network Service Providers* for a *regulatory control period* being less than; and
 - (2) the efficiency losses derived from the operating expenditure of *Transmission Network Service Providers* for a *regulatory control period* being more than, the forecast operating expenditure accepted or determined by the *AER* for that *regulatory control period* in accordance with clause 6.2.7(b) or clause 6.16.2(b)(3) (as the case may be). In developing and implementing such a scheme, the *AER* must have regard to:
 - (3) the need to provide *Transmission Network Service Providers* with a continuous incentive (that is equal in each year of any *regulatory control period*) to reduce operating expenditure;
 - (4) the desirability of both rewarding *Transmission Network Service Providers* for efficiency gains and penalising *Transmission Network Service Providers* for efficiency losses; and
 - (5) any incentives that *Transmission Network Service Providers* may have to inappropriately capitalise operating expenditure.
- (b) At the same time as it *publishes* an *efficiency benefit sharing scheme* under this clause 6.2.8, the *AER* must also *publish* those parameters of the *efficiency benefit sharing scheme* (the "*efficiency benefit sharing scheme parameters*") the values for which must be included as part of any *Revenue Proposal* where that *Revenue Proposal* is required to be submitted under clause 6.12.1(a) at a time that is no less than 2 months after the *publication* of the *efficiency benefit sharing scheme*. For the avoidance of doubt, unless the *AER* provides otherwise in that scheme, such values may differ as between *Transmission Network Service Providers* and over time.
- (c) The *AER* must set out in each *efficiency benefit sharing scheme* any requirements with which the values attributed to the *efficiency benefit sharing scheme parameters* must comply, but such requirements must not be inconsistent with those factors to which the *AER* must have regard under clause 6.2.8(a).
- (d) The *AER* must develop and *publish* the first *efficiency benefit sharing scheme* under the *Rules* by 31 December 2006.

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- (e) The *AER* may, from time to time and in accordance with the *transmission guideline procedures*, amend any scheme that is developed and *published* under this clause 6.2.8, except that no such amendment may change the application of the scheme to a *Transmission Network Service Provider* in respect of a *regulatory control period* that has commenced prior to, or that will commence within 15 months of, the amendment coming into operation.

6.2.9 Estimated cost of corporate income tax

- (a) The estimated cost of corporate income tax of a *Transmission Network Service Provider* for each *regulatory year* of a *regulatory control period* (ETC_t) must be calculated in accordance with the following formula:

$$ETC_t = (ETI_t \times r_t) (1 - \gamma)$$

where:

r_t is the expected statutory income tax rate for that *regulatory year* as determined by the *AER*;

γ is the assumed utilisation of imputation credits, which is deemed to be 0.5; and

ETI_t is an estimate of the *Transmission Network Service Provider's* taxable income for that *regulatory year* earned as a result of the provision of *prescribed transmission services* as determined in accordance with the model referred to in clause 6.2.1(a). For these purposes:

- (i) the cost of debt must be based on the cost of debt of a benchmark efficient *Transmission Network Service Provider*; and
 - (ii) the estimate must take into account the estimated depreciation for tax purposes for that *regulatory year* of assets where the value of those assets is included in the regulatory asset base for the relevant *transmission system* for that *regulatory year*.
- (b) The *AER* must, in accordance with the *transmission guideline procedures* and prior to both 1 July 2011 and the expiry of each subsequent five year period thereafter, review the value of and methodology used to calculate the assumed utilisation of imputation credits as referred to in clause 6.2.9(a) or as subsequently revised under this paragraph (b). If, as a consequence of a review under this paragraph (b), the *AER* decides to adopt a revised value or methodology, it must use that revised value or methodology for the purposes of any *revenue cap determination* made after 1 July 2011 or after the expiry of that subsequent five year period (as the case may be).

6.2.10 Service target performance incentive scheme

- (a) The *AER* must, in accordance with the *transmission guideline procedures*, develop and *publish* an incentive scheme (a "*service target performance incentive scheme*") that complies with the following principles:
- (1) it should provide incentives for each *Transmission Network Service Provider* to:
 - (i) provide greater reliability of the *transmission system* that is owned, controlled or operated by it at all times when *Transmission Network Users* place greatest value on the reliability of that *transmission system*; and

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- (ii) improve and maintain the reliability of those elements of the *transmission system* that are most important to determining *spot prices*;
 - (2) it should result in a potential adjustment to the revenue that the *Transmission Network Service Provider* may earn, from the provision of *prescribed transmission services*, in each *regulatory year* of the *regulatory control period* in respect of which the *service target performance incentive scheme* applies;
 - (3) the maximum revenue increment or decrement as a result of the operation of the *target performance incentive scheme* must be no more than 1% of the *maximum allowed revenue* for the relevant *regulatory year* of the relevant *regulatory control period*;
 - (4) it should take into account the *regulatory obligations* with which *Transmission Network Service Providers* must comply;
 - (5) it should take into account any other incentives provided in accordance with the *Rules* that *Transmission Network Service Providers* have to minimise capital or operating expenditure; and
 - (6) it should take into account the age and ratings of the assets comprising the relevant *transmission system*.
- (b) At the same time as it *publishes* a *service target performance incentive scheme* under this clause 6.2.10, the *AER* must also *publish* those parameters of the *service target performance incentive scheme* (the "*performance incentive scheme parameters*") the values for which must be included as part of any *Revenue Proposal* where that *Revenue Proposal* is required to be submitted under clause 6.12.1(a) at a time that is no less than 2 months after the *publication* of the *service target performance incentive scheme*. For the avoidance of doubt, unless the *AER* provides otherwise in that scheme, such values may differ as between *Transmission Network Service Providers* and over time.
- (c) The *AER* must set out in each *service target performance incentive scheme* any requirements with which the values attributed to the *performance incentive scheme parameters* must comply, but such requirements must not be inconsistent with the principles referred to in clause 6.2.10(a).
- (d) The *AER* must develop and *publish* the first *service target performance incentive scheme* under the *Rules* by 31 December 2006.
- (e) The *AER* may, from time to time and in accordance with the *transmission guideline procedures*, amend any scheme that is developed and *published* under this clause 6.2.10, except that no such amendment may change the application of the scheme to a *Transmission Network Service Provider* in respect of a *regulatory control period* that has commenced prior to, or that will commence within 15 months of, the amendment coming into operation.

6.2.11 X factor

- (a) The X factors for each *regulatory year* of a *regulatory control period* must be:

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- (1) providing they comply with the requirements set out in clause 6.2.11(b), the X factors for those *regulatory years* that are nominated in the relevant *Transmission Network Service Provider's Revenue Proposal*; or
 - (2) to the extent the X factors nominated in the *Transmission Network Service Provider's Revenue Proposal* do not so comply, the X factors determined for that purpose by the AER in its final decision on the *Transmission Network Service Provider's Revenue Proposal*.
- (b) The X factor for each *regulatory year* of a *regulatory control period* must be such that:
- (1) the net present value of the expected *maximum allowed revenue* for the relevant *Transmission Network Service Provider* for each *regulatory year* of the *regulatory control period* (as calculated in accordance with clause 6.2.1) is equal to the net present value of the *annual building block revenue requirement* for the *Transmission Network Service Provider* for each *regulatory year* of that *regulatory control period* (as calculated in accordance with clause 6.2.1);
 - (2) the expected *maximum allowed revenue* for the *Transmission Network Service Provider* for the last *regulatory year* of the *regulatory control period* (as calculated in accordance with clause 6.2.1) is as close as reasonably possible to the *annual building block revenue requirement* for the *Transmission Network Service Provider* for that *regulatory year* (as calculated in accordance with clause 6.2.1).
- (c) For the avoidance of doubt there may be a different X factor that applies for different *regulatory years* of the *regulatory control period*.

6.2.12 Reopening of revenue cap for capital expenditure

- (a) Subject to clause 6.2.12(b), a *Transmission Network Service Provider* may, during a *regulatory control period*, apply to the AER to revoke and substitute a *revenue cap determination* that applies to it where it proposes to undertake capital expenditure:
- (1) which, if undertaken, is reasonably likely (in the absence of any other reduction in capital expenditure) to result in its total actual capital expenditure for that *regulatory control period* exceeding the total of the forecast capital expenditure for that *regulatory control period* as accepted or determined by the AER in accordance with clause 6.2.6(b) or clause 6.16.2(b)(3) (as the case may be);
 - (2) which is for a project that:
 - (i) constitutes a *reliability augmentation*;
 - (ii) is for the purposes of satisfying an applicable *regulatory obligation* associated with the provision of *prescribed transmission services*; or
 - (iii) has satisfied the *regulatory test*; and
 - (3) the total of which represents at least 5% of the value of the regulatory asset base for the relevant *transmission system* as at the beginning of the first year of the *regulatory control period*.
- (b) An application referred to in clause 6.2.12(a) must not be made within 90 *business days* prior to the end of a *regulatory year* of a *regulatory control period*.

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- (c) Following its receipt of an application made in accordance with clauses 6.2.12(a) and (b), the *AER* must:
- (1) consult with the *Transmission Network Service Provider* and such other persons as it considers appropriate in relation to the application; and
 - (2) make its decision on the application within 60 *business days* of that application being made.
- (d) The *AER* must, and must only, revoke a *revenue cap determination* following an application made in accordance with clauses 6.2.12(a) and (b) if the *AER* is satisfied that the *Transmission Network Service Provider* is not reasonably able to fund the relevant capital expenditure:
- (1) by reducing its capital expenditure on other items such that its total actual capital expenditure for the *regulatory control period* (including that which is the subject of its application) is reasonably likely to be less than or equal to the total of the forecast capital expenditure for that *regulatory control period* as accepted or determined by the *AER* in accordance with clause 6.2.6(b) or clause 6.16.2(b)(3) (as the case may be); or
 - (2) within the total of the forecast capital expenditure for that *regulatory control period* as accepted or determined by the *AER* in accordance with clause 6.2.6(b) or clause 6.16.2(b)(3) (as the case may be) without reducing its capital expenditure on other items,
- without in either case detrimentally affecting the ability to operate the *transmission system* safely and reliably.
- (e) If the *AER* revokes a *revenue cap determination* under clause 6.2.12(d), then the *AER* must make a new *revenue cap determination* in substitution for the revoked *revenue cap determination* to apply for the remainder of the *regulatory control period* for which the revoked *revenue cap determination* was to apply. Such substituted *revenue cap determination* must:
- (1) only vary from the revoked *revenue cap determination* to the extent necessary:
 - (i) to adjust the forecast capital expenditure for that *regulatory control period* to accommodate the amount of the requested additional capital expenditure which the *AER* determines is appropriate (in which case the amount of that adjustment will be deemed to have been accepted by the *AER* in accordance with clause 6.2.6(b)); and
 - (ii) to reflect the effect of any resultant increase in forecast capital expenditure on:
 - (A) the forecast operating expenditure for the remainder of the *regulatory control period*;
 - (B) the *maximum allowed revenue* for each *regulatory year* in the remainder of the *regulatory control period*; and
 - (C) the X-factor for each of the remaining *regulatory years* of the *regulatory control period*; and

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- (2) take into account the impact of any resultant increase in forecast capital expenditure on the operating expenditure that the *Transmission Network Service Provider* reasonably requires for the purposes set out in clause 6.2.7(a).
- (f) If the AER revokes and substitutes a *revenue cap determination* under clause 6.2.12(e), that revocation and substitution must take effect from the commencement of the next year of the *regulatory control period*.

6.2.13 Revocation of revenue cap

- (a) Except as provided in clause 6.2.12, the AER may only revoke a *revenue cap determination* during a *regulatory control period* where it appears to the AER that:
 - (1) the *total revenue cap* was set on the basis of information provided by or on behalf of the relevant *Transmission Network Service Provider* to the AER that was false or misleading in a material particular; or
 - (2) there was a material error in the setting of the *total revenue cap* and the prior written consent of the relevant *Transmission Network Service Provider* has been obtained by the AER.
- (b) If the AER revokes a *revenue cap determination* under clause 6.2.13(a), then the AER must make a new *revenue cap determination* in substitution for the revoked *revenue cap determination* to apply for the remainder of the *regulatory control period* for which the revoked *revenue cap determination* was to apply.
- (c) If the AER revokes a *revenue cap determination* under clause 6.2.13(a)(2), then the substituted *revenue cap determination* must only vary from the revoked *revenue cap determination* to the extent necessary to correct the relevant error.
- (d) The AER may only revoke and substitute a *revenue cap determination* under this clause 6.2.13, if it has first consulted with the relevant *Transmission Network Service Provider* and such other persons as it considers appropriate.

6.2.14 Cost pass throughs

- (a) If a *Positive Change Event* for a *Transmission Network Service Provider* occurs, the *Transmission Network Service Provider* may seek the AER's approval to pass through to *Transmission Network Users* an amount ("*Positive Pass Through Amount*") that is not greater than the *Eligible Pass Through Amount* (as calculated by the *Transmission Network Service Provider*) in respect of that *Positive Change Event*.
- (b) If a *Negative Change Event* for a *Transmission Network Service Provider* occurs, the AER may require the *Transmission Network Service Provider* to pass through to *Transmission Network Users* an amount ("*Negative Pass Through Amount*") that is not greater than the *Required Pass Through Amount* (as determined by the AER) in respect of that *Negative Change Event*.

Positive pass throughs

- (c) To seek the AER's approval to pass through a *Positive Pass Through Amount* under clause 6.2.14(a), a *Transmission Network Service Provider* must give the AER, within 60 *business days* of the relevant *Positive Change Event* occurring, a written statement which specifies:

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- (1) the details of the *Positive Change Event* concerned;
- (2) the date the *Positive Change Event* occurred;
- (3) the increase in costs in the provision of *prescribed transmission services* that the *Transmission Network Service Provider* has incurred and is likely to incur until the end of the *regulatory control period* as a result of the *Positive Change Event* (ie. the *Eligible Pass Through Amount* (as calculated by the *Transmission Network Service Provider*) in respect of that *Positive Change Event*);
- (4) the *Positive Pass Through Amount* the *Transmission Network Service Provider* proposes in relation to the *Positive Change Event*;
- (5) the amount of that *Positive Pass Through Amount* the *Transmission Network Service Provider* proposes should be passed through to *Transmission Network Users* in each *regulatory year* during the *regulatory control period*; and
- (6) such other information as is required to be provided pursuant to guidelines made from time to time for that purpose, and in accordance with the *transmission guideline procedures*, by the *AER*,

and which is accompanied by evidence:

- (7) of the actual and likely increase in costs referred to in clause 6.2.14(c)(3); and
 - (8) that such costs occur solely as a consequence of the *Positive Change Event*.
- (d) If the *AER* receives a statement under clause 6.2.14(c) in relation to a *Positive Change Event*:
- (1) the *AER* must determine whether that *Positive Change Event* occurred; and
 - (2) if the *AER* determines that the *Positive Change Event* occurred, the *AER*, taking into account the matters referred to in clause 6.2.14(j), must determine:
 - (i) how much of the *Eligible Pass Through Amount* (as calculated by the *Transmission Network Service Provider*) in respect of the *Positive Change Event* should be passed through to *Transmission Network Users* (the "*Approved Pass Through Amount*" in respect of that *Positive Change Event* for the *Transmission Network Service Provider*); and
 - (ii) the amount of that *Approved Pass Through Amount* that should be passed through to *Transmission Network Users* in each *regulatory year* during the *regulatory control period*.
- (e) If the *AER* does not make the determinations referred to in clause 6.2.14(d) within 60 *business days* from the date it receives the *Transmission Network Service Provider's* statement and accompanying evidence under clause 6.2.14(c) then, on the expiry of that period, the *AER* is deemed to have determined that:
- (1) the *Positive Pass Through Amount* proposed by the *Transmission Network Service Provider* in relation to that *Positive Change Event* in the *Transmission Network Service Provider's* statement under clause 6.2.14(c) is the *Approved Pass Through Amount* in respect of that *Positive Change Event*; and

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- (2) the amount of that *Positive Pass Through Amount* that the *Transmission Network Service Provider* proposes in its statement under clause 6.2.14(c) should be passed through to *Transmission Network Users* in each *regulatory year* during the *regulatory control period* is the amount that should be so passed through in each such *regulatory year*.

Negative pass throughs

- (f) A *Transmission Network Service Provider* must give the *AER*, within 60 *business days* of becoming aware of the occurrence of a *Negative Change Event* for the *Transmission Network Service Provider*, a written statement which specifies:
 - (1) the details of the *Negative Change Event* concerned;
 - (2) the date the *Negative Change Event* occurred;
 - (3) the costs in the provision of *prescribed transmission services* that the *Transmission Network Service Provider* has saved and is likely to save until the end of the *regulatory control period* as a result of the *Negative Change Event*;
 - (4) the aggregate amount of those saved costs that the *Transmission Network Service Provider* proposes should be passed through to *Transmission Network Users*;
 - (5) the amount of the costs referred to in clause 6.2.14(f)(4) the *Transmission Network Service Provider* proposes should be passed through to *Transmission Network Users* in each *regulatory year* during the *regulatory control period*; and
 - (6) such other information as is required to be provided pursuant to guidelines made from time to time for that purpose, and in accordance with the *transmission guideline procedures*, by the *AER*.
- (g) If a *Negative Change Event* for a *Transmission Network Service Provider* occurs (whether or not the occurrence of that *Negative Change Event* is notified by the *Transmission Network Service Provider* to the *AER* under clause 6.2.14(f)) and the *AER* determines to impose a requirement on the *Transmission Network Service Provider* in relation to that *Negative Change Event* as described in clause 6.2.14(b), the *AER* must determine:
 - (1) the *Required Pass Through Amount* in respect of that *Negative Change Event* for the *Transmission Network Service Provider*, and
 - (2) taking into account the matters referred to in clause 6.2.14(j):
 - (i) how much of that *Required Pass Through Amount* should be passed through to *Transmission Network Users* (the *Negative Pass Through Amount* in respect of that *Negative Change Event* for the *Transmission Network Service Provider*); and
 - (ii) the amount of that *Negative Pass Through Amount* that should be passed through to *Transmission Network Users* in each *regulatory year* during the *regulatory control period*.
- (h) A *Transmission Network Service Provider* must provide the *AER* with such information as the *AER* requires for the purpose of making a determination under clause 6.2.14(g) within

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the time specified by the *AER* in a notice provided to the *Transmission Network Service Provider* by the *AER* for that purpose.

Consultation

- (i) Prior to making a determination under clause 6.2.14(d) or clause 6.2.14(g), the *AER* must consult on such matters arising out of the relevant *Pass Through Event* as the *AER* considers appropriate with the relevant *Transmission Network Service Provider* and such other persons as the *AER* considers appropriate.

Relevant factors

- (j) In making a determination under clause 6.2.14(d) or clause 6.2.14(g), the *AER* must take into account:
 - (1) the matters and proposals set out in any statement given to the *AER* by the relevant *Transmission Network Service Provider* under clause 6.2.14(c) or clause 6.2.14(f) (as the case may be);
 - (2) in the case of a *Positive Change Event*, the increase in costs in the provision of *prescribed transmission services* that the *Transmission Network Service Provider* has incurred and is likely to incur until the end of the *regulatory control period* as a result of the *Positive Change Event*;
 - (3) in the case of a *Positive Change Event*, the efficiency of the *Transmission Network Service Provider's* decisions and actions in relation to the risk of the *Positive Change Event*, including whether the *Transmission Network Service Provider* has failed to take any action that could reasonably be taken to reduce the magnitude of the *Eligible Pass Through Amount* in respect of that *Positive Change Event* and whether the *Transmission Network Service Provider* has taken or omitted to take any action where such action or omission has increased the magnitude of the *Eligible Pass Through Amount* in respect of that *Positive Change Event*;
 - (4) the time cost of money based on the *weighted average cost of capital* for the *Transmission Network Service Provider* for the relevant *regulatory control period*;
 - (5) the need to ensure that the *Transmission Network Service Provider* only recovers any actual or likely increment in costs under this clause 6.2.4(j) to the extent that such increment is solely as a consequence of a *Pass Through Event*;
 - (6) in the case of a *Tax Change Event*, any change in the way another *Tax* is calculated, or the removal or imposition of another *Tax*, which, in the *AER's* opinion, is complementary to the *Tax Change Event* concerned; and
 - (7) any other factors the *AER* considers relevant.

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Subdivision 2 – Prescribed Transmission Services – Regulation of Pricing

[To insert existing Part C]

Division 3 – Negotiated Transmission Services – Regulation of Pricing

A negotiated transmission service is defined in the Glossary in Chapter 10 to mean a *shared transmission service* that exceeds or does not meet specified performance requirements, and *connection services* and *use of system services* that are referable to a *transmission system*, but does not include a *market network service*.

6.10 Regulation of pricing

6.10.1 Pricing principles for negotiated transmission services

- (a) The following principles constitute the *Negotiated Transmission Service Pricing Principles*:
- (1) the price for a *negotiated transmission service* should be based on the costs incurred in providing that service, determined in accordance with the principles and policies set out in the *Cost Allocation Methodology* for the relevant *Transmission Network Service Provider*;
 - (2) subject to paragraphs (3) and (4), the price for a *negotiated transmission service* should be above the avoided cost of providing it but below the cost of providing it on a stand alone basis;
 - (3) if the *negotiated transmission service* is the provision of a *shared transmission service* that:
 - (i) exceeds the *network* performance requirements (if any) which that *shared transmission service* is required to meet under any *jurisdictional electricity legislation*; or
 - (ii) exceeds the *network* performance requirements set out in schedule 5.1, then the differential between the price for that service and the price for the *shared transmission service* which meets (but does not exceed) the *network* performance requirements under any *jurisdictional electricity legislation* or as set out in schedule 5.1 (as the case may be) should reflect the increase in the *Transmission Network Service Provider's* incremental cost of providing that service;
 - (4) if the *negotiated transmission service* is the provision of a *shared transmission service* that does not meet (and does not exceed) the *network* performance requirements set out in schedule 5.1, then the differential between the price for that service and the price for the *shared transmission service* which meets (but does not exceed) the *network* performance requirements set out in schedule 5.1 should reflect the amount of the *Transmission Network Service Provider's* avoided cost of providing that service,
 - (5) the price for a *negotiated transmission service* must be the same for all *Transmission Network Users* unless there is a material difference in the costs of

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providing the *negotiated transmission service* to different *Transmission Network Users* or classes of *Transmission Network Users*;

- (6) the price for a *negotiated transmission service* should be based on terms and conditions which are consistent with the safe and *reliable* operation of the *power system* in accordance with the *Rules*;
- (7) the price for a *negotiated transmission service* should be such as to enable the *Transmission Network Service Provider* to recover the efficient costs of complying with all *regulatory obligations* associated with the provision of the *negotiated transmission service*;
- (8) the price for a *negotiated transmission service* should take into account the potential for that service to be provided by others; and
- (9) the price for a *negotiated transmission service* should take into account the need for the service to be provided in a manner that does not adversely affect the safe and *reliable* operation of the *power system* in accordance with the *Rules*.

6.10.2 Pricing criteria for negotiated transmission services

- (a) The *AER* must, in each *transmission determination* made under clause 6.11, set out the criteria that are to be applied:
 - (1) by the relevant *Transmission Network Service Provider* in negotiating:
 - (i) the prices that are to be charged for the provision of *negotiated transmission services* by that *Transmission Network Service Provider* for the relevant *regulatory control period*; and
 - (ii) any *access charges* which are negotiated by the *Transmission Network Service Provider* during that *regulatory control period*; and
 - (2) by a *commercial arbitrator* in resolving any dispute, between the relevant *Transmission Network Service Provider* and a person who wishes to receive a *negotiated transmission service*, in relation to:
 - (i) the price that is to be charged for the provision of that *negotiated transmission service* by the *Transmission Network Service Provider*; and
 - (ii) any *access charges* that are to be paid to or by the *Transmission Network Service Provider*.

Such criteria constitute the *Negotiated Transmission Service Pricing Criteria* which are applicable to that *Transmission Network Service Provider* under the *transmission determination*. They must give effect to and be consistent with the *Negotiated Transmission Service Pricing Principles*.

6.10.3 Determination of prices for negotiated transmission services

- (a) In addition to complying with the other requirements of the *Rules*, including the requirements of:
 - (1) clauses 5.3, 5.4A, 6.4.7 and 6.5.9 when negotiating for the provision of *connection services* and the associated *connection service charges*; and

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- (2) clause 5.4A when negotiating the *use of system services* charges and *access charges* to be paid to or by a *Transmission Network User*,

a *Transmission Network Service Provider* must also comply with the requirements of the *negotiating framework* approved by the AER as part of the *transmission determination* relating to that *Transmission Network Service Provider*.

6.10.4 Negotiating framework for negotiated transmission services

- (a) Clause 6.10.4(b) sets out the minimum requirements to be followed during negotiations between a *Transmission Network Service Provider* and any person who wishes to receive a *negotiated transmission service* from that *Transmission Network Service Provider* (the "*Service Applicant*") as to the price at which that service is to be provided. These requirements must be set out in a document that is prepared for that purpose by the *Transmission Network Service Provider*, such document being referred to as the "*negotiating framework*" for that *Transmission Network Service Provider*.
- (b) The *negotiating framework* for a *Transmission Network Service Provider* must specify:
- (1) a requirement for the *Transmission Network Service Provider* and the *Service Applicant* to negotiate in good faith the price at which the *negotiated transmission service* is to be provided;
 - (2) a requirement for the *Transmission Network Service Provider* to provide all such commercial information as the *Service Applicant* may reasonably require to enable the *Service Applicant* to engage in effective negotiation with the *Transmission Network Service Provider* as to the price at which the *negotiated transmission service* is to be provided, including the cost information described in clause 6.10.4(b)(3);
 - (3) a requirement for the *Transmission Network Service Provider* to:
 - (i) identify, and inform the *Service Applicant* of, the reasonable costs, and/or the increase or decrease in costs (as appropriate), of providing the *negotiated transmission service*; and
 - (ii) demonstrate to the *Service Applicant* that its charges for providing the *negotiated transmission service* reflect those costs and/or the cost increment or decrement (as appropriate);
 - (4) a requirement for the *Service Applicant* to provide all such commercial information as the *Transmission Network Service Provider* may reasonably require to enable the *Transmission Network Service Provider* to engage in effective negotiation with the *Service Applicant* as to the price at which the *negotiated transmission service* is to be provided;
 - (5) a reasonable period of time for commencing, progressing and finalising negotiations with, the *Service Applicant* as to the price at which the *negotiated transmission service* is to be provided, and a requirement that each party to the negotiation must use its reasonable endeavours to adhere to those time periods during the negotiation;

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- (6) a process for dispute resolution which provides that all disputes as to the price at which *negotiated transmission services* are to be provided are to be dealt with in accordance with clause 6.10.5; and
- (7) the arrangements for payment by the *Service Applicant* of the *Transmission Network Service Provider's* reasonable direct expenses incurred in processing the application to provide the *negotiated transmission service*.

Notwithstanding the foregoing, the *negotiating framework* must not be inconsistent with any of the requirements of clauses 5.3, 5.4A, 5.5, 5.5A, 6.4.7 and Subdivision 1 of Division 2 and, in the event of any inconsistency, the requirements of clauses 5.3, 5.4A, 5.5, 5.5A, 6.4.7 and Subdivision 1 of Division 2 will prevail. A reference in this clause 6.10.4(b) to the price at which a service is to be provided is to be taken to include a reference to an *access charge*.

- (c) Each *Transmission Network Service Provider* and *Service Applicant* who is negotiating for the provision of a *negotiated transmission service* by the *Transmission Network Service Provider* must comply with the requirements of the *negotiating framework* in accordance with its terms.

Confidential information

- (d) Commercial information which is required to be provided to a *Service Applicant* in accordance with clause 6.10.4(b)(2):
 - (1) does not include confidential information provided to the *Transmission Network Service Provider* by another person; and
 - (2) may be provided subject to a condition that the *Service Applicant* must not provide any part of that commercial information to any other person without the consent of the *Transmission Network Service Provider* which provided the information to the *Service Applicant*.
- (e) Commercial information which is required to be provided to a *Transmission Network Service Provider* in accordance with clause 6.10.4(b)(4):
 - (1) does not include confidential information provided to the *Service Applicant* by another person; and
 - (2) may be provided subject to a condition that the *Transmission Network Service Provider* must not provide any part of that commercial information to any other person without the consent of the *Service Applicant* which provided the information to the *Transmission Network Service Provider*.

6.10.5 Commercial arbitration for negotiated transmission services

- (a) This clause 6.10.5 applies to any dispute which may arise between a *Transmission Network Service Provider* and a *Service Applicant* as to the price which the *Transmission Network Service Provider* proposes to charge the *Service Applicant* for a *negotiated transmission service* or as to the amount of any *access charge*.

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Notification of dispute

- (b) A *Transmission Network Service Provider* or a *Service Applicant* may notify the AER in writing that a dispute exists.
- (c) On receiving a notification under clause 6.10.5(b), the AER must give notice in writing of the dispute to the other party to the dispute.
- (d) A *Transmission Network Service Provider* or a *Service Applicant* who has given notice of a dispute under clause 6.10.5(b) may withdraw notification of the dispute at any time by written notice to the AER and the other party to the dispute.
- (e) If the notification of a dispute is withdrawn under clause 6.10.5(d), it is taken for the purposes of this clause 6.10.5 to never have been given.

Appointment of commercial arbitrator

- (f) On receiving a notification under clause 6.10.5(b), the AER must request the *Transmission Network Service Provider* and the *Service Applicant*, by a time specified by the AER, to nominate to the AER two persons each for appointment as the *commercial arbitrator* to determine the dispute.
- (g) As soon as is reasonably practicable after the expiry of the time specified by the AER under clause 6.10.5(f), the AER must appoint:
 - (1) one of the persons (if any) nominated to the AER by the *Transmission Network Service Provider* or the *Service Applicant* under clause 6.10.5(f); or
 - (2) if neither the *Transmission Network Service Provider* or the *Service Applicant* nominate any such person within the time specified by the AER under clause 6.10.5(f) or all of the persons so nominated do not qualify for appointment under clause 6.10.5(h) or are not eligible for appointment under clause 6.10.5(i), a person determined by the AER,as the *commercial arbitrator* to determine the dispute, and must refer the dispute to that *commercial arbitrator*. A decision of the AER as to the appointment of the *commercial arbitrator* is final and binding on the *Transmission Network Service Provider* and the *Service Applicant*.
- (h) The AER may only appoint a person as the *commercial arbitrator* if that person is experienced or trained in dispute resolution techniques.
- (i) A person is not eligible for appointment as the *commercial arbitrator* if that person has any interest that may conflict with, or which may be seen to conflict with, the impartial resolution of the dispute. Where the person who is appointed as the *commercial arbitrator* becomes aware of such conflict after that person commences the hearing of the dispute, the person must advise the parties to that effect.
- (j) Where:
 - (1) the *Transmission Network Service Provider* or *Service Applicant* believes that the person appointed as the *commercial arbitrator* has an interest which may conflict with the impartial resolution of the dispute; or

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- (2) the person appointed as the *commercial arbitrator* discloses the existence of such an interest,

the person must not continue to hear and determine the dispute, except with the written consent of the *Transmission Network Service Provider* and the *Service Applicant*.

Procedures of commercial arbitrator

- (k) The *commercial arbitrator* may give to the parties such directions as it considers necessary:
- (1) for the proper conduct of the proceedings, including in relation to the provision of documents and information to the other party and the making of oral and written submissions;
 - (2) relating to the use and disclosure of information obtained from the other party to the dispute (including a direction to keep information confidential); and
 - (3) in relation to the role (if any) that the parties' legal representatives may take in the proceedings.
- (l) The *commercial arbitrator* must observe the rules of natural justice, but is not bound by the rules of evidence and may inform itself in any manner it thinks fit.

Determination of dispute

- (m) In determining the dispute, the *commercial arbitrator* must apply the *Negotiated Transmission Service Pricing Criteria* that are applicable to that dispute in accordance with the relevant *transmission determination*, but this does not limit the other matters to which the *commercial arbitrator* may have regard.
- (n) Subject to clause 6.10.5(o), the *commercial arbitrator* must determine the dispute as quickly as possible, and in any case it must do so within 30 *business days* after the dispute is referred to the *commercial arbitrator*. The determination of the *commercial arbitrator* must specify:
- (1) the price at which the *negotiated transmission service* is to be provided or the amount of the *access charge* (as the case may be); and
 - (2) the terms and conditions on which the *negotiated transmission service* is to be provided at that price or the terms and conditions on which an *access charge* of that amount is to be payable (as the case may be), to the extent that such terms and conditions have not been agreed for the purposes of the dispute between the *Transmission Network Service Provider* and the *Service Applicant*.
- (o) The *commercial arbitrator* may extend the period referred to in clause 6.10.5(n) if the *Transmission Network Service Provider* and the *Service Applicant* so agree in writing.
- (p) The *commercial arbitrator* may at any time terminate the proceedings without making a decision if it considers that:
- (1) the dispute is misconceived or lacking in substance;
 - (2) the notification of the dispute to the *AER* under clause 6.10.5(b) was vexatious; or

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- (3) the party who notified the dispute to the *AER* under clause 6.10.5(b) has not negotiated in good faith or has notified the dispute prematurely or unreasonably.

Costs of dispute

- (q) The fees and costs of the *commercial arbitrator* must be borne equally by the *Transmission Network Service Provider* and the *Service Applicant* unless:
- (1) clause 6.10.5(r) applies; or
 - (2) otherwise agreed between the *Transmission Network Service Provider* and the *Service Applicant*.
- (r) The costs of determining the dispute (including the legal costs of either of the parties) may be allocated by the *commercial arbitrator* for payment as between the parties as part of any determination. In deciding to allocate costs against one of the parties to the dispute, the *commercial arbitrator* may have regard to any relevant matters including (but not limited to) whether the conduct of that party unreasonably prolonged or escalated the dispute or otherwise increased the costs of resolving the dispute.

Enforcement of agreement or determination and requirement for reasons

- (s) Where the *Transmission Network Service Provider* and the *Service Applicant* reach agreement (whether or not the matter is before a *commercial arbitrator*), the parties may execute a written agreement recording their resolution of that dispute.
- (t) The *commercial arbitrator* must give its decision determining the dispute, together with its reasons for that decision, in writing and must provide a copy of its determination:
- (1) to the *Transmission Network Service Provider* and the *Service Applicant*;
 - (2) (save to the extent that it contains confidential information) to the *AER* for publication.
- (u) An agreement that is recorded in accordance with clause 6.10.5(s) and a determination of the *commercial arbitrator* are binding on the *Transmission Network Service Provider* and the *Service Applicant*, and any failure to comply with such an agreement or determination is a breach of the *Rules* in respect of which the *AER* may take action in accordance with the *National Electricity Law*.

Miscellaneous

- (v) To the extent permitted by law, a person who is appointed as a *commercial arbitrator* is not liable for any loss, damage or liability suffered or incurred by any person as a consequence of any act or omission of that person which was done in good faith in connection with the dispute.
- (w) A person who is appointed as a *commercial arbitrator* may, before acting in relation to the dispute, require the parties to the dispute (or any one of them) to execute a release and indemnity in relation to any loss, damage or liability that that person would, but for the release or indemnity, suffer or incur as a consequence of any act or omission done in good faith in connection with the dispute.

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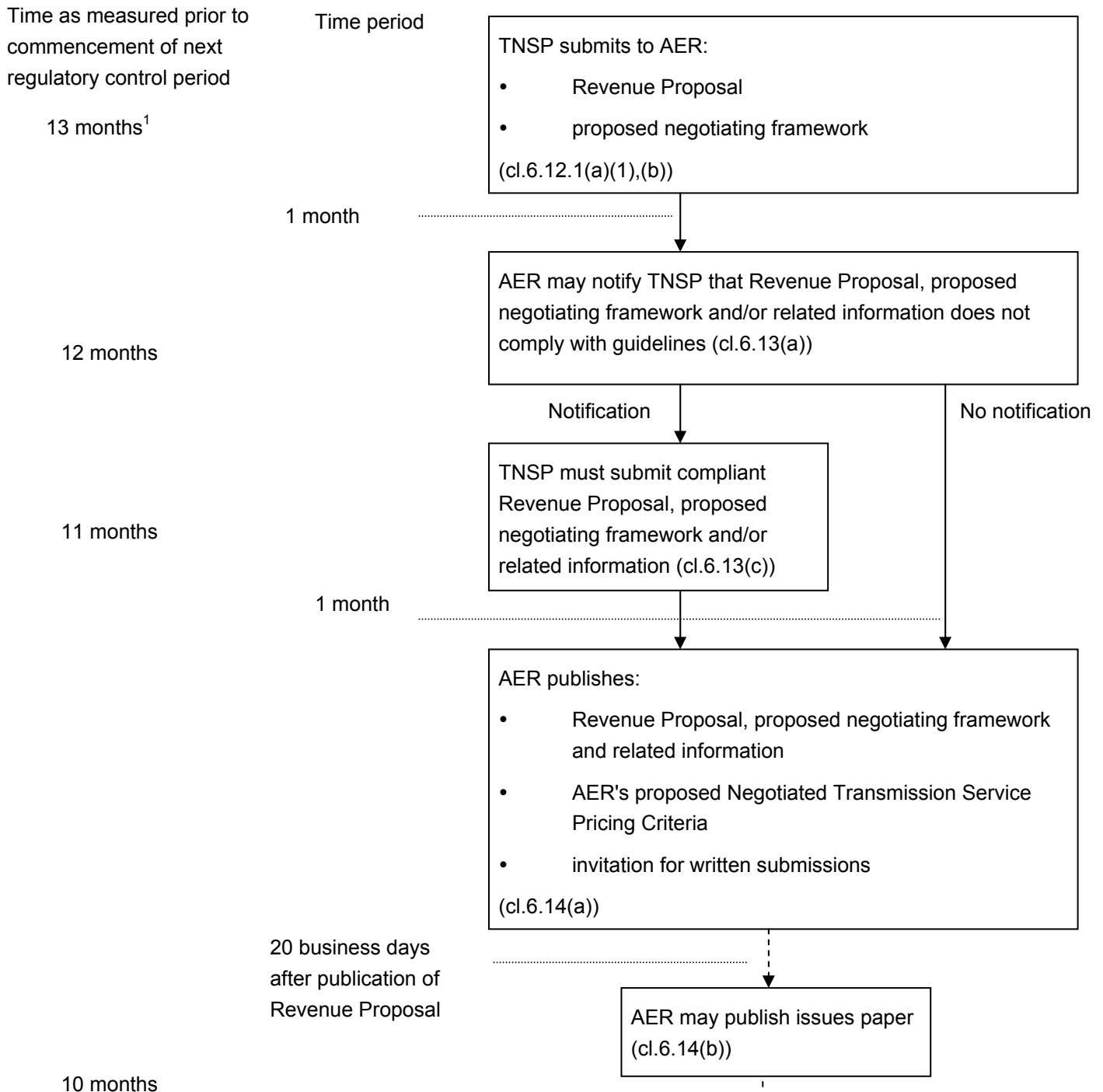
Division 4 - General

Subdivision 1 – Transmission Determinations - Procedure

Set out below is a diagrammatical illustration of the time line for the making of a *transmission determination* as detailed in this Subdivision 1.

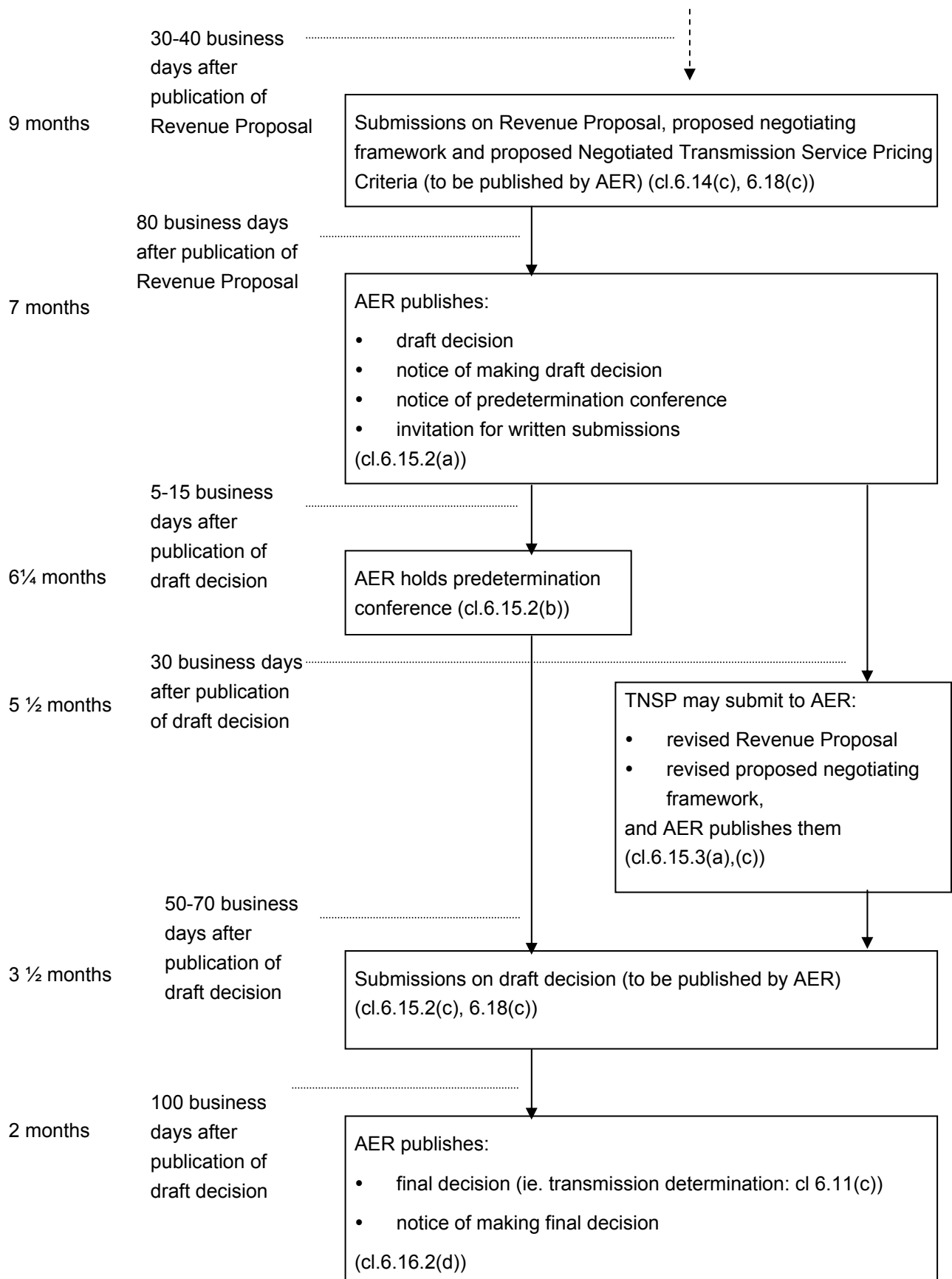
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This timeline sets out maximum time periods only and because some time periods are expressed in business days in the relevant provisions of this Part, the references in this timeline to months might not be entirely accurate. For the precise time periods reference must be made to the relevant provisions of this Subdivision 1 and not to this timeline.



1. Or, in certain circumstances, 3 months after being required to do so by AER (cl 6.12.1(a)(2))

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6.11 Making and contents of transmission determination

- (a) The AER must make a determination (a "*revenue cap determination*") that specifies, for a *regulatory control period* in respect of a *Transmission Network Service Provider*:
- (1) the estimated *total revenue cap* for the *Transmission Network Service Provider* for the *regulatory control period*;
 - (2) the *maximum allowed revenue* for the *Transmission Network Service Provider* for each *regulatory year* of the *regulatory control period*;
 - (3) the values that are to be attributed to the *performance incentive scheme parameters* for the purposes of the application to the *Transmission Network Service Provider* of any *service target performance incentive scheme* that applies in respect of the *regulatory control period*;
 - (4) the values that are to be attributed to the *efficiency benefit sharing scheme parameters* for the purposes of the application to the *Transmission Network Service Provider* of any *efficiency benefit sharing scheme* that applies in respect of the *regulatory control period*;
 - (5) the length of the *regulatory control period*; and
 - (6) such amounts, values or inputs as have been used by the AER in place of those referred to in clause 6.12.2(a)(9).
- (b) At the same time as it makes a *revenue cap determination* for a *Transmission Network Service Provider*, the AER must also make a determination that specifies:
- (1) the *negotiating framework* for the *Transmission Network Service Provider*; and
 - (2) the *Negotiated Transmission Service Pricing Criteria* that apply to the *Transmission Network Service Provider*.
- (c) The *revenue cap determination* referred to in clause 6.11(a) and the determinations referred to in clause 6.11(b) together constitute the *transmission determination* for that *Transmission Network Service Provider* that is to apply for the relevant *regulatory control period*, and the AER must make that *transmission determination* in accordance with the requirements of this Subdivision, Subdivision 1 of Division 2, and Division 3 (as applicable).

6.12 Revenue Proposal and proposed negotiating framework

6.12.1 Submission of Revenue Proposal and proposed negotiating framework

- (a) A *Transmission Network Service Provider* must submit a *Revenue Proposal* relating to the *prescribed transmission services* that are provided by means of, or in connection with, a *transmission system* that is owned, controlled or operated by it to the AER:
- (1) if any of those *prescribed transmission services* are subject to a *transmission determination*, 13 months before the expiry of the period in respect of which that *transmission determination* applies; or
 - (2) if any of those *prescribed transmission services* are not subject to a *transmission determination*, 3 months after being required to do so by the AER.

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- (b) At the same time as it submits its *Revenue Proposal* under clause 6.12.1(a), the *Transmission Network Service Provider* must also submit to the *AER* its proposed *negotiating framework*.
- (c) The *Revenue Proposal* and proposed *negotiating framework* must comply with the requirements of, and must contain or be accompanied by such information as is required to be contained or provided with them in accordance with the requirements of, guidelines made for that purpose by the *AER*.

6.12.2 Guidelines

- (a) The guidelines referred to in clause 6.12.1(c) must specify:
 - (1) the form which the *Revenue Proposal* or *negotiating framework* is to take;
 - (2) the requirements for any information contained in or accompanying the *Revenue Proposal* to be audited or otherwise verified;
 - (3) what parts (if any) of the *Revenue Proposal* or the information accompanying it will not be publicly disclosed without the consent of the relevant *Transmission Network Service Provider*, with the presumption being that at least the matters referred to in clauses S6.9.1, S6.9.2 and S6.9.3(a) to (c), (d)(i), (d)(ii), (f), (h) and (i) of schedule 6.9 and in clauses 6.12.2(a)(7) and (8) will be publicly disclosed;
 - (4) that the *Revenue Proposal* must contain at least the information and matters relating to capital expenditure set out in clause S6.9.1 of schedule 6.9;
 - (5) that the *Revenue Proposal* must contain at least the information and matters relating to operating expenditure set out in clause S6.9.2 of schedule 6.9;
 - (6) that the *Revenue Proposal* must contain at least the additional information and matters set out in clause S6.9.3 of schedule 6.9;
 - (7) that the *Revenue Proposal* must be accompanied by such information as is necessary to enable the *AER* and other interested parties to understand the manner in which the *Transmission Network Service Provider* proposes that negotiations as to the price of *negotiated transmission services* or the amount of *access charges* will be conducted in accordance with the *Transmission Network Service Provider's* proposed *negotiating framework*;
 - (8) such other information as the *AER* considers should be contained in, or should accompany, a *Revenue Proposal* on the basis that such information is necessary to enable the *AER* and other interested parties to:
 - (i) understand how the *Transmission Network Service Provider* derived the elements of its *Revenue Proposal*; and
 - (ii) form an opinion as to whether the *Revenue Proposal* complies with the requirements of this Subdivision 1 and Subdivision 1 of Division 2; and
 - (9) in the case of amounts, values or inputs that:
 - (i) are required to be estimated, approved or otherwise determined by the *AER* but are not so estimated, approved or otherwise determined prior to the submission of the *Revenue Proposal* in accordance with

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clause 6.12.1(a) or a revised *Revenue Proposal* in accordance with clause 6.15.3(a); or

- (ii) cannot be determined prior to the submission of the *Revenue Proposal* in accordance with clause 6.12.1(a) or a revised *Revenue Proposal* in accordance with clause 6.15.3(a),

what amounts, values or inputs are to be used in their place for the purposes of the *Revenue Proposal* or revised *Revenue Proposal* (as the case may be).

- (b) The guidelines referred to in clause 6.12.1(c):
 - (1) must be made by the *AER* by 31 December 2006; and
 - (2) may be amended by the *AER* from time to time,in accordance with the *transmission guideline procedures*.

6.13 Preliminary examination of Revenue Proposal, proposed negotiating framework and required information

- (a) If the *AER* determines that:
 - (1) a *Revenue Proposal* or proposed *negotiating framework* submitted by a *Transmission Network Service Provider* pursuant to clauses 6.12.1(a) or (b) (as the case may be); or
 - (2) information contained in or accompanying such a *Revenue Proposal* or proposed *negotiating framework* pursuant to clause 6.12.1(c),does not comply with the requirements of the guidelines referred to in clause 6.12.1(c), then the *AER* must notify the *Transmission Network Service Provider* of that determination within one month of receiving that *Revenue Proposal*, proposed *negotiating framework* or information.
- (b) A determination referred to in clause 6.13(a) must be accompanied by written reasons that set out:
 - (1) the respects in which the *Revenue Proposal*, proposed *negotiating framework* or information does not comply with the requirements of the relevant guidelines and the provisions of those guidelines that have not been complied with; and
 - (2) in the case of information which does not comply with those requirements, the reason that the submission of information in accordance with those requirements would assist the *AER* in assessing the *Revenue Proposal* or proposed *negotiating framework*.
- (c) If the *AER* notifies a *Transmission Network Service Provider* of a determination under clause 6.13(b), the *Transmission Network Service Provider* must resubmit its *Revenue Proposal* or proposed *negotiating framework* or the required information (as the case may be) in a form that complies with the requirements of the relevant guidelines within such period as is required by the *AER* for that purpose, being a period that is not more than one month after the *AER* so notifies the *Transmission Network Service Provider* of its determination.

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6.14 Consultation

(a) Except to the extent that the guidelines referred to in clause 6.12.1(c) provide it will not be publicly disclosed (and, in that case, the relevant *Transmission Network Service Provider* has not otherwise consented), the *AER* must *publish*:

- (1) the *Revenue Proposal*;
- (2) the proposed *negotiating framework*; and
- (3) the information

submitted or resubmitted to it by the *Transmission Network Service Provider* under clause 6.12.1(a) or clause 6.13(c) (as the case may be), together with:

- (4) the *AER's* proposed *Negotiated Transmission Service Pricing Criteria* for the *Transmission Network Service Provider*; and
- (5) an invitation for written submissions on the documents and information referred to in paragraphs (1), (2), (3) and (4),

as soon as practicable after the *AER* determines that the *Revenue Proposal*, proposed *negotiating framework* and information comply with the requirements of the guidelines referred to in clause 6.12.1(c) and in any event not later than two months after the date referred to in clause 6.12.1(a).

(b) The *AER* may *publish* an issues paper examining the issues raised in connection with the *Revenue Proposal*, the proposed *negotiating framework* and the proposed *Negotiated Transmission Service Pricing Criteria* for the *Transmission Network Service Provider* within 20 *business days* after the invitation for submissions is *published* under clause 6.14(a)(5).

(c) Any person may make a written submission to the *AER* on the *Revenue Proposal*, the proposed *negotiating framework* or the proposed *Negotiated Transmission Service Pricing Criteria* for the *Transmission Network Service Provider* within the time specified in the invitation referred to in clause 6.14(a)(5), which must be not earlier than 30 *business days*, and not later than 40 *business days*, after the invitation for submissions is *published* under clause 6.14(a)(5).

6.15 Draft decision and further consultation

6.15.1 Making and contents of draft decision

(a) Subject to clause 6.18(a), the *AER* must consider any written submissions made under clause 6.14(c) and must make a draft decision:

- (1) on the *Transmission Network Service Provider's Revenue Proposal* in which it either approves or refuses to approve:
 - (i) the *total revenue cap* for the *Transmission Network Service Provider* for the *regulatory control period*;
 - (ii) the *maximum allowed revenue* for the *Transmission Network Service Provider* for each *regulatory year* of the *regulatory control period*;
 - (iii) the values that are to be attributed to the *performance incentive scheme parameters* for the *service target performance incentive scheme* that is to

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apply to the *Transmission Network Service Provider* in respect of the *regulatory control period*;

- (iv) the values that are to be attributed to the *efficiency benefit sharing scheme parameters* for the *efficiency benefit sharing scheme* that is to apply to the *Transmission Network Service Provider* in respect of the *regulatory control period*; and
- (v) the length of the *regulatory control period* that has been proposed by the *Transmission Network Service Provider*,

as set out in the *Revenue Proposal* submitted or resubmitted to it by the *Transmission Network Service Provider* under clause 6.12.1(a) or clause 6.13(c) (as the case may be), setting out reasons for its draft decision and including, if the *AER* refuses to approve any of the amounts or values referred to in this paragraph (1), details of the changes required or matters to be addressed before the *AER* will approve those amounts or values;

(2) in which it determines:

- (i) whether the total of the forecast capital expenditure for the *regulatory control period* as set out in the *Revenue Proposal* submitted or resubmitted to it by the *Transmission Network Service Provider* under clause 6.12.1(a) or clause 6.13(c) (as the case may be) is a reasonable estimate of the *Transmission Network Service Provider's* required capital expenditure for the *regulatory control period*, taking into account the matters referred to in clause 6.2.6(b)(3); and
- (ii) if the *AER* determines that it is not a reasonable estimate, its reasons for that determination and an estimate of the *Transmission Network Service Provider's* required capital expenditure for the *regulatory control period* that the *AER* considers to be reasonable taking into account the matters referred to in clause 6.2.6(b)(3), together with its reasons for that conclusion;

(3) in which it determines:

- (i) whether the total of the forecast operating expenditure for the *regulatory control period* as set out in the *Revenue Proposal* submitted or resubmitted to it by the *Transmission Network Service Provider* under clause 6.12.1(a) or clause 6.13(c) (as the case may be) is a reasonable estimate of the *Transmission Network Service Provider's* required operating expenditure for the *regulatory control period*, taking into account the matters referred to in clause 6.2.7(b)(2); and
- (ii) if the *AER* determines that it is not a reasonable estimate, its reasons for that determination and an estimate of the *Transmission Network Service Provider's* required operating expenditure for the *regulatory control period* that the *AER* considers to be reasonable taking into account the matters referred to in clause 6.2.7(b)(2), together with its reasons for that conclusion;

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- (4) in which it sets out the amounts, values or inputs that it has used in place of those referred to in clause 6.12.2(a)(9);
 - (5) on the *Transmission Network Service Provider's* proposed *negotiating framework* submitted or resubmitted to it by the *Transmission Network Service Provider* under clause 6.12.1(b) or clause 6.13(c) (as the case may be), in which it either approves or refuses to approve the proposed *negotiating framework*, setting out reasons for its decision and including, if the *AER* refuses to approve the proposed *negotiating framework*, details of the changes required or matters to be addressed before the *AER* will approve it; and
 - (6) in which it specifies the *Negotiated Transmission Service Pricing Criteria* for the *Transmission Network Service Provider*, setting out the reasons for its decision.
- (b) The *AER's* draft decision referred to in clause 6.15.1(a) must be made in accordance with, and must comply with, the relevant requirements of clause 6.17.

6.15.2 Publication of draft decision and consultation

- (a) The *AER* must, not later than six months after the date referred to in clause 6.12.1(a), *publish*:
- (1) its draft decision and reasons under clause 6.15.1(a);
 - (2) notice of the making of the draft decision;
 - (3) notice of a predetermination conference, which is to be held not more than 15 *business days*, and not less than 5 *business days*, after the *publication* of its draft decision; and
 - (4) an invitation for written submissions on its draft decision.
- (b) The *AER* must hold a predetermination conference at the time, date and place specified in the notice under clause 6.15.2(a)(3) for the purposes of explaining its draft decision and receiving oral submissions from interested parties. Any person may attend such a predetermination conference but the procedure to be adopted at the conference will be at the discretion of the senior *AER* representative in attendance.
- (c) Any person may make a written submission to the *AER* on the draft decision within the time specified in the invitation referred to in clause 6.15.2(a)(4), which must be not earlier than 45 *business days*, and not later than 55 *business days*, after the holding of the predetermination conference under clause 6.15.2(b).

6.15.3 Revised Revenue Proposal or proposed negotiating framework

- (a) In addition to making such other written submissions as it considers appropriate, the *Transmission Network Service Provider* may, not more than 30 *business days* after the *publication* of the draft decision, submit to the *AER*:
- (1) a revised *Revenue Proposal*; or
 - (2) a revised proposed *negotiating framework*.
- (b) A revised *Revenue Proposal* or revised proposed *negotiating framework* submitted under clause 6.15.3(a) must comply with the requirements of, and must contain or be

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accompanied by such information as is required to be contained in or provided with them in accordance with the requirements of, the guidelines referred to in clause 6.12.1(c).

- (c) Except to the extent that the guidelines referred to in clause 6.12.1(c) provide it will not be publicly disclosed (and, in that case, the *Transmission Network Service Provider* has not otherwise consented), the *AER* must *publish*:

- (1) any revised *Revenue Proposal*; or
- (2) any revised proposed *negotiating framework*;

as the case may be, that is submitted to it by the *Transmission Network Service Provider* under clause 6.15.3(a), together with the accompanying information, as soon as practicable after they are received by the *AER*.

6.16 Final decision

6.16.1 Making and contents of final decision

- (a) Subject to clause 6.18(a), the *AER* must consider any oral submissions made under clause 6.15.2(b) and any written submissions made under clause 6.15.2(c) on the draft decision, or on any revised *Revenue Proposal* or revised proposed *negotiating framework* submitted to it under clause 6.15.3(a), and must make a final decision:

- (1) on the *Transmission Network Service Provider's Revenue Proposal* in which it either approves or refuses to approve:
 - (i) the *total revenue cap* for the *Transmission Network Service Provider* for the *regulatory control period*;
 - (ii) the *maximum allowed revenue* for the *Transmission Network Service Provider* for each *regulatory year* of the *regulatory control period*;
 - (iii) the values that are to be attributed to the *performance incentive scheme parameters* for the *service target performance incentive scheme* that is to apply to the *Transmission Network Service Provider* in respect of the *regulatory control period*;
 - (iv) the values that are to be attributed to the *efficiency benefit sharing scheme parameters* for the *efficiency benefit sharing scheme* that is to apply to the *Transmission Network Service Provider* in respect of the *regulatory control period*; and
 - (v) the length of the *regulatory control period* that has been proposed by the *Transmission Network Service Provider*,

as set out in the revised *Revenue Proposal* submitted under clause 6.15.3(a) or (if the *Transmission Network Service Provider* did not submit such a revised *Revenue Proposal*) the *Revenue Proposal* submitted or resubmitted under clause 6.12.1(a) or clause 6.13(c) (as the case may be), setting out the reasons for its final decision;

- (2) in which it determines:
 - (i) whether the total of the forecast capital expenditure for the *regulatory control period* as set out in the revised *Revenue Proposal* submitted under

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- clause 6.15.3(a) or (if the *Transmission Network Service Provider* did not submit such a revised *Revenue Proposal*) the *Revenue Proposal* submitted or resubmitted under clause 6.12.1(a) or clause 6.13(c) (as the case may be) is a reasonable estimate of the *Transmission Network Service Provider's* required capital expenditure for the *regulatory control period*, taking into account the matters referred to in clause 6.2.6(b)(3); and
- (ii) if the *AER* determines that it is not a reasonable estimate, its reasons for that determination and an estimate of the *Transmission Network Service Provider's* required capital expenditure for the *regulatory control period* that the *AER* considers to be reasonable taking into account the matters referred to in clause 6.2.6(b)(3), together with its reasons for that conclusion;
- (3) in which it determines:
- (i) whether the total of the forecast operating expenditure for the *regulatory control period* as set out in the revised *Revenue Proposal* submitted under clause 6.15.3(a) or (if the *Transmission Network Service Provider* did not submit such a revised *Revenue Proposal*) the *Revenue Proposal* submitted or resubmitted under clause 6.12.1(a) or clause 6.13(c) (as the case may be) is a reasonable estimate of the *Transmission Network Service Provider's* required operating expenditure for the *regulatory control period*, taking into account the matters referred to in clause 6.2.7(b)(2); and
- (ii) if the *AER* determines that it is not a reasonable estimate, its reasons for that determination and an estimate of the *Transmission Network Service Provider's* required operating expenditure for the *regulatory control period* that the *AER* considers to be reasonable taking into account the matters referred to in clause 6.2.7(b)(2), together with its reasons for that conclusion;
- (4) in which it sets out the amounts, values or inputs that it has used in place of those referred to in clause 6.12.2(a)(9);
- (5) on the *Transmission Network Service Provider's* proposed *negotiating framework* submitted under clause 6.15.3(a) or (if the *Transmission Network Service Provider* did not submit such a revised proposed *negotiating framework*) the proposed *negotiating framework* submitted or resubmitted under clause 6.12.1(b) or clause 6.13(c) (as the case may be), setting out the reasons for its decision; and
- (6) in which it specifies the *Negotiated Transmission Service Pricing Criteria* for the *Transmission Network Service Provider*, setting out the reasons for its decision.
- (b) The *AER's* final decision referred to in clause 6.16.1(a) must be made in accordance with, and must comply with, the relevant requirements of clause 6.17.

6.16.2 Refusal to approve

- (a) If the *AER's* final decision is to refuse to approve an amount or value referred to in clause 6.16.1(a)(1), then the *AER* must include in its final decision a substitute amount or value which, except as provided in clause 6.16.2(b), is:

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- (1) based on the revised *Revenue Proposal* submitted under clause 6.15.3(a) or (if the *Transmission Network Service Provider* did not submit such a revised *Revenue Proposal*) the *Revenue Proposal* submitted or resubmitted under clause 6.12.1(a) or clause 6.13(c) (as the case may be); and
 - (2) amended from the basis in clause 6.16.2(a)(1) only to the extent necessary to enable it to be approved in accordance with the *Rules*.
- (b) If the *AER's* final decision is to refuse to approve an amount or value referred to in clause 6.16.1(a)(1) for the reason that, or a reason which includes the reason that, the *AER* is not satisfied that:
- (1) the forecast capital expenditure for any *regulatory year* of the *regulatory control period* is reasonably required for the purposes set out in clause 6.2.6(a) (the *AER* not being otherwise required to accept that forecast capital expenditure under clause 6.2.6(b)); or
 - (2) the forecast operating expenditure for any *regulatory year* of the *regulatory control period* is reasonably required for the purposes set out in clause 6.2.7(a) (the *AER* not being otherwise required to accept that forecast operating expenditure under clause 6.2.7(b)),
- then the *AER* must:
- (3) include in its final decision the forecast capital or operating expenditure for that *regulatory year* of the *regulatory control period* (as the case may be) which it determines to be reasonably required for the purposes set out in clause 6.2.6(a) or 6.2.7(a) respectively; and
 - (4) must use that amount (and its components) in place of the forecast capital or operating expenditure for that *regulatory year* of the *regulatory control period* contained in the relevant *Revenue Proposal* for the purposes of calculating the amount or value that it has refused to approve in its final decision.
- (c) If the *AER's* final decision is to refuse to approve the proposed *negotiating framework* referred to in clause 6.16.1(a)(5), then the *AER* must include in its final decision a *negotiating framework* in place of that referred to in clause 6.16.1(a)(5), which is:
- (1) based on the revised proposed *negotiating framework* submitted under clause 6.15.3(a) or (if the *Transmission Network Service Provider* did not submit such a revised proposed *negotiating framework*) the proposed *negotiating framework* submitted or resubmitted under clause 6.12.1(b) or clause 6.13(c) (as the case may be); and
 - (2) amended from the basis in clause 6.16.2(c)(1) only to the extent necessary to enable it to be approved in accordance with the *Rules*.
- (d) The *AER* must, not later than two months prior to the commencement of the relevant *regulatory control period*, *publish*:
- (1) its final decision and reasons under clause 6.16.1(a); and
 - (2) notice of the making of the final decision.

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6.17 Requirements relating to draft and final decisions

6.17.1 Reasons for decisions

- (a) The reasons given by the *AER* for a draft decision under clause 6.15.1(a) or a final decision under clause 6.16.1(a) must set out the basis and rationale of the decision, including:
- (1) details of the qualitative and quantitative methodologies applied in any calculations and formulae, including in the determination by the *AER* of the amount of capital expenditure and operating expenditure of the *Transmission Network Service Provider* for the *regulatory control period* which is reasonable (such amount may be determined by reference to a range);
 - (2) the values adopted by the *AER* for each of the input variables in any calculations and formulae, including:
 - (i) whether those values have been taken or derived from the *Transmission Network Service Provider's Revenue Proposal* submitted or resubmitted under clause 6.12.1(a) or clause 6.13(c) or from any revised *Revenue Proposal* submitted under clause 6.15.3(a), as the case may be; and
 - (ii) if not, the rationale for the adoption of those values;
 - (3) details of any assumptions made by the *AER* in undertaking any material qualitative and quantitative analyses for the purposes of the decision; and
 - (4) reasons for the making of any decisions, the giving or withholding of any approvals, and the exercise of any discretions, as referred to in Subdivision 1 of Division 2, for the purposes of the decision.

6.17.2 Circumstances in which approval must be given

- (a) Paragraphs (b) to (g) of this clause 6.17.2 set out the circumstances in which the *AER* must approve certain matters for the purposes of a draft or final decision under clause 6.15.1(a) or clause 6.16.1(a) (as the case may be). If the *AER* is not required to approve such a matter in accordance with these paragraphs then it may, but is not required to, refuse to approve that matter.
- (b) The *AER* must approve:
- (1) the *total revenue cap* for a *Transmission Network Service Provider* for a *regulatory control period*; and
 - (2) the *maximum allowed revenue* for the *Transmission Network Service Provider* for each *regulatory year* of the *regulatory control period*,
- as set out in:
- (3) in the case of a draft decision under clause 6.15.1(a), the *Revenue Proposal* submitted or resubmitted to the *AER* by the *Transmission Network Service Provider* under clause 6.12.1(a) or clause 6.13(c) (as the case may be); or
 - (4) in the case of a final decision under clause 6.16.1(a), the revised relevant *Revenue Proposal* submitted under clause 6.15.3(a) or (if the *Transmission Network Service*

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Provider did not submit such a revised *Revenue Proposal*) the relevant *Revenue Proposal* referred to in paragraph (3),

if the *AER* is satisfied that:

- (5) those amounts have been properly calculated using the model referred to in clause 6.2.1(a);
 - (6) those amounts, and any amount required to be calculated or determined for the purposes of calculating those amounts, have otherwise been calculated or determined in accordance with the requirements of Subdivision 1 of Division 2;
 - (7) the total of the forecast capital expenditure for the *regulatory control period* as set out in the relevant *Revenue Proposal* is a reasonable estimate of the *Transmission Network Service Provider's* required capital expenditure for the *regulatory control period*; and
 - (8) the total of the forecast operating expenditure for the *regulatory control period* as set out in the relevant *Revenue Proposal* is a reasonable estimate of the *Transmission Network Service Provider's* required operating expenditure for the *regulatory control period*.
- (c) If a revised *Revenue Proposal* submitted under clause 6.15.3(a) includes:
- (1) an amount of total forecast capital expenditure for the *regulatory control period* that is the same as that determined by the *AER* in a draft decision under clause 6.15.1(a) to be a reasonable estimate of the *Transmission Network Service Provider's* required capital expenditure for the *regulatory control period*; or
 - (2) an amount of total forecast operating expenditure for the *regulatory control period* that is the same as that determined by the *AER* in a draft decision under clause 6.15.1(a) to be a reasonable estimate of the *Transmission Network Service Provider's* required operating expenditure for the *regulatory control period*,
- then:
- (3) except to the extent that:
 - (i) other changes have been made, in the revised *Revenue Proposal*, to the *Revenue Proposal* submitted or resubmitted to the *AER* by the *Transmission Network Service Provider* under clause 6.12.1(a) or clause 6.13(c) (as the case may be); or
 - (ii) the information contained in or accompanying the revised *Revenue Proposal* differs from that contained in or accompanying the *Revenue Proposal* submitted or resubmitted to the *AER* by the *Transmission Network Service Provider* under clause 6.12.1(a) or clause 6.13(c) (as the case may be); and
 - (4) such changes would justify the *AER*, in its final decision, in determining that the relevant amount is not a reasonable estimate of the *Transmission Network Service Provider's* required capital expenditure or operating expenditure (as the case may be) for the *regulatory control period*, taking into account the matters referred to in clause 6.2.6(b)(3) or clause 6.2.7(b)(2), respectively,

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the *AER*, in its final decision must determine that those amounts are reasonable estimates.

(d) The *AER* must approve:

- (1) the values that are to be attributed to the *performance incentive scheme parameters* for the *service target performance incentive scheme* that is to apply to a *Transmission Network Service Provider* in respect of a *regulatory control period*; and
- (2) the values that are to be attributed to the *efficiency benefit sharing scheme parameters* for the *efficiency benefit sharing scheme* that is to apply to a *Transmission Network Service Provider* in respect of a *regulatory control period*,

as set out in:

- (3) in the case of a draft decision under clause 6.15.1(a), the *Revenue Proposal* submitted or resubmitted to the *AER* by the *Transmission Network Service Provider* under clause 6.12.1(a) or clause 6.13(c) (as the case may be); or
- (4) in the case of a final decision under clause 6.16.1(a), the revised *Revenue Proposal* submitted under clause 6.15.3(a) or (if the *Transmission Network Service Provider* did not submit such a revised *Revenue Proposal*) the relevant *Revenue Proposal* referred to in paragraph (3),

if the *AER* is satisfied that those values comply with the requirements relating to them set out in the *service target performance incentive scheme* or the *efficiency benefit sharing scheme* (as the case may be).

(e) The *AER* must approve the length of the *regulatory control period* as proposed by a *Transmission Network Service Provider* in:

- (1) in the case of a draft decision under clause 6.15.1(a), the *Revenue Proposal* submitted or resubmitted to the *AER* by the *Transmission Network Service Provider* under clause 6.12.1(a) or clause 6.13(c) (as the case may be); or
- (2) in the case of a final decision under clause 6.16.1(a), the revised *Revenue Proposal* submitted under clause 6.15.3(a) or (if the *Transmission Network Service Provider* did not submit such a revised *Revenue Proposal*) the relevant *Revenue Proposal* referred to in paragraph (1),

if the length of the *regulatory control period* as so proposed is five *regulatory years*.

(f) The *AER* must approve:

- (1) in the case of a draft decision under clause 6.15.1(a), the proposed *negotiating framework* submitted or resubmitted to the *AER* by the *Transmission Network Service Provider* under clause 6.12.1(b) or clause 6.13(c) (as the case may be); or
- (2) in the case of a final decision under clause 6.16.1(a), the revised proposed *negotiating framework* submitted under clause 6.15.3(a) or (if the *Transmission Network Service Provider* did not submit such a revised proposed *negotiating framework*) the relevant proposed *negotiating framework* referred to in paragraph (1),

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if the *AER* is satisfied that the relevant proposed *negotiating framework* meets the requirements set out in clause 6.10.4(b).

- (g) If a revised *Revenue Proposal* or revised proposed *negotiating framework* (as the case may be) submitted under clause 6.15.3(a):
- (1) contains the changes required under clause 6.15.1(a)(1) or (5) (as the case may be); or
 - (2) does not contain those changes but otherwise (in the *AER*'s view) adequately addresses the matters which prompted the *AER* to require those changes,
- then:
- (3) except to the extent that:
 - (i) other changes have been made, in the revised *Revenue Proposal* or the revised proposed *negotiating framework*, to the *Revenue Proposal* or proposed *negotiating framework* submitted or resubmitted to the *AER* by the *Transmission Network Service Provider* under clause 6.12.1(a) or (b) or clause 6.13(c) (as the case may be); or
 - (ii) the information contained in or accompanying the revised *Revenue Proposal* or revised proposed *negotiating framework* differs from that contained in or accompanying the *Revenue Proposal* or proposed *negotiating framework* submitted or resubmitted to the *AER* by the *Transmission Network Service Provider* under clause 6.12.1(a) or (b) or clause 6.13(c) (as the case may be); and
 - (4) such changes would justify the *AER*, in its final decision, refusing to approve the amounts or values referred to in clause 6.16.1(a)(1) or the proposed *negotiating framework* referred to in clause 6.16.1(a)(5),

the *AER*'s final decision must be to approve the amounts or values referred to in clause 6.16.1(a)(1) or the proposed *negotiating framework* referred to in clause 6.16.1(a)(5) (as the case may be).

- (h) The *AER* must only specify criteria as *Negotiated Transmission Service Pricing Criteria* for a *Transmission Network Service Provider* in a draft or final decision under clause 6.15.1(a) or clause 6.16.1(a) (as the case may be) where those criteria give effect to and are consistent with the *Negotiated Transmission Service Pricing Principles*.

6.18 Miscellaneous

- (a) The *AER* may, but is not required to, consider any submission made pursuant to an invitation for submissions after the time for making the submission has expired.
- (b) Nothing in this Subdivision 1 is to be construed as precluding the *AER* from *publishing* any issues, consultation and discussion papers, or holding any conferences and information sessions, that the *AER* considers appropriate.
- (c) Subject to clause 6.18(d), as soon as reasonably practicable after the *AER* receives a submission in response to an invitation referred to in clause 6.14(a)(5) or clause

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6.15.2(a)(4) (whether or not such submission was made before the time for making it has expired), the *AER* must *publish* that submission.

- (d) The *AER* must not *publish* a submission referred to in clause 6.18(c) to the extent it contains information which has been clearly identified as confidential by the person making that submission.
- (e) Clause 6.18(d) does not apply to the extent that any other provision of the *Rules* permits or requires such information to be publicly released by the *AER*.

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Subdivision 2 – Information Collection

6.19 Information disclosure by Transmission Network Service Providers

- (a) A *Transmission Network Service Provider* must submit certified annual financial statements to the *AER* (in a form and by a date to be determined by the *AER*) which provide a true and fair statement of the financial and operating performance of the *Transmission Network Service Provider* in a reporting period.
- (b) The certified annual financial statements submitted by the *Transmission Network Service Provider* under clause 6.19(a) must include:
- (1) such information as the *AER* may reasonably require to prepare and publish:
 - (A) annual performance statistics in relation to the service standards published by the *Transmission Network Service Provider* under clause 6.5.7(b); and
 - (B) annual statistics regarding the performance of the *Transmission Network Service Provider* under any *service target performance incentive scheme* that applies to it in respect of the reporting period;
 - (2) information on the amount of each instance, during the relevant reporting period, of a reduction under clause 6.5.8(b) in the prices payable by a *Transmission Network User* for the relevant *prescribed transmission services* provided by the *Transmission Network Service Provider*, including reductions in a *Transmission Customer's Customer TUOS general charges* and/or *common service charges*;
 - (3) information on each instance, during the relevant reporting period, of a reduction in the *Customer TUOS general charges* and/or *common service charges* that were recovered from other *Transmission Customers* through their *Customer TUOS general charges* and/or *common service charges* (as appropriate) under clause 6.5.8(c); and
 - (4) information to substantiate any claim by the *Transmission Network Service Provider* that the information provided to the *AER* with respect to reductions in the prices payable by a *Transmission Network User* for the relevant *prescribed transmission services* under clause 6.19(b)(2) or (3) is confidential information.

[Note: whether clauses 6.19(b)(1)(A), (2)-(4) are to be retained or modified, including the reference to Transmission Customers (rather than Transmission Network Users) and the scope of Customer TUOS general charges, will be considered as part of stage 2 of the Rule review process.]

- (c) The certified annual financial statements submitted by the *Transmission Network Service Provider* to the *AER* may be used by the *AER* to:
- (1) monitor the compliance of the *Transmission Network Service Provider* with the *total revenue cap* for the *Transmission Network Service Provider* for a *regulatory control period* and with the *maximum allowed revenue* for the *Transmission Network Service Provider* for each *regulatory year* of a *regulatory control period*;

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- (2) assess the allocation of costs between services which are subject to regulation under a *revenue cap determination* and services or activities which are not subject to regulation under the *revenue cap determination*, and identify any cross-subsidy between these different types of services or activities;
- (3) collate data regarding the financial, economic and operational performance of the *Transmission Network Service Provider* to be used as input to the *AER's* decision-making regarding the setting of revenue caps or other regulatory controls to apply in future *regulatory control periods*;
- (4) prepare and *publish*:
 - (A) annual performance statistics in relation to the service standards published by the *Transmission Network Service Provider* under clause 6.5.7(b); and
 - (B) annual statistics regarding the performance of the *Transmission Network Service Provider* under any *service target performance incentive scheme* that applies to it; and
- (5) *publish* aggregate information on the amount of any reductions, during the relevant reporting period, in the prices payable by a *Transmission Network User* for the relevant *prescribed transmission services* provided by the *Transmission Network Service Provider*, including any reductions under clause 6.5.8 in *Customer TUOS general charges* and/or *common service charges*, and the percentage of the reductions in the *Customer TUOS general charges* and/or *common service charges* (if any) that were recovered from other *Transmission Customers* through their *Customer TUOS general charges* and/or *common service charges*, respectively, under clause 6.5.8(c).

[Note: whether clause 6.19(c)(5) is to be retained or modified, including the reference to *Transmission Customers* (rather than *Transmission Network Users*) and the scope of *Customer TUOS general charges*, will be considered as part of stage 2 of the Rule review process.]

- (d) In addition to the certified annual financial statements referred to in clause 6.19(a), the *AER* may require a *Transmission Network Service Provider* to provide any other information the *AER* reasonably requires to perform its regulatory functions in a manner and by a date it considers to be consistent with the requirements of this Division, Subdivision 1 of Division 2 or Division 3.
- (e) The *AER* may request or undertake verification and/or independent audit of any information sought by it, or provided to it, under this clause 6.19.
- (f) Subject to clauses 6.19(g) and (h), information provided to the *AER* by a *Transmission Network Service Provider* pursuant to this clause 6.19 must be treated as confidential by the *AER* and must not be publicly released without the prior written consent of the *Transmission Network Service Provider* which provided that information unless the procedures set out in clauses 6.20(a) to (c) have been followed.
- (g) Clause 6.19(f) does not prevent that *AER* from *publishing* the information referred to in clauses 6.19(c)(4) or (5).

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- (h) Clause 6.19(f) does not apply to any information which is required to be provided in accordance with the guidelines referred to in clause 6.12.1(c) where those guidelines do not specify that the information will not be publicly disclosed.

6.20 Information disclosure by the AER

- (a) The *AER*, in discharging its functions under the *Rules*, may publicly release information or the contents of documents which it has required a *Transmission Network Service Provider* to provide to it for the purposes of performing its functions under the *Rules* in circumstances where the *Transmission Network Service Provider* has declined to give written consent to its release in accordance with clause 6.19(f) if the *AER*:
- (1) is of the opinion that:
 - (i) the disclosure of the information or the contents of the documents would not cause detriment to the *Transmission Network Service Provider* who provided it; or
 - (ii) although the disclosure of the information or the contents of the documents would cause detriment to the *Transmission Network Service Provider* who provided it, the public benefit in disclosing it outweighs that detriment; and
 - (2) is of the opinion, in relation to any other person who has provided the *Transmission Network Service Provider* with information or documents that form part of the information or documents provided by the *Transmission Network Service Provider* to the *AER*, that:
 - (i) the disclosure of the information or contents of the documents would not cause detriment to that person; or
 - (ii) although the disclosure of the information or contents of the documents would cause detriment to that person, the public benefit in disclosing it outweighs the detriment,
- and the procedures set out in clauses 6.20(b) to (c) have been followed.
- (b) The *AER* must not publicly release any information or the contents of any documents under clause 6.20(a) until the expiration of 28 days from the date of receipt of a written notice sent by the *AER* to:
- (1) the *Transmission Network Service Provider* who provided the information or documents; or
 - (2) any person whom the *AER* is aware provided the *Transmission Network Service Provider* with information or documents that form part of the information or documents provided to the *AER* by the *Transmission Network Service Provider*,
- as the case may be, of the *AER*'s intention to disclose.
- (c) The notice referred to in clause 6.20(b) must:
- (1) state that the *AER* wishes to disclose the information or contents of the documents, specifying the nature of the intended disclosure and setting out detailed reasons why the *AER* wishes to make the disclosure;

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- (2) state that the *AER* is of the opinion required by clause 6.20(a) and set out detailed reasons why it is of that opinion; and
- (3) state that the *AER's* decision to disclose the information or contents of the document can be reviewed under the *ADJR Act*.
- (d) Where as a result of a review, under the *ADJR Act*, of its decision to publicly release information or documents the *AER* is not allowed to publicly release particular information or documents provided to it for the purpose of performing its functions under the *Rules*, the *AER* may nonetheless use the information or document for the purposes of performing its functions under the *Rules*.
- (e) Nothing in clauses 6.20(b) and (c) is intended to affect a *Registered Participant's* rights to seek a review under general principles of administrative law of the *AER's* decision to publicly release any information or the contents of any documents under clause 6.20(a).

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Subdivision 3 – Cost Allocation

6.21 Cost Allocation

- (a) The following principles constitute the *Cost Allocation Principles*:
- (1) the detailed principles and policies used by a *Transmission Network Service Provider* to allocate costs as between different categories of *transmission services* must be described in sufficient detail to enable the *AER* to replicate reported outcomes through the application of those principles and policies;
 - (2) the allocation of costs must be determined according to the substance of a transaction or event rather than its legal form;
 - (3) only the following costs must be allocated to a particular category of *transmission services*:
 - (i) costs which are directly attributable to the provision of those services; and
 - (ii) costs which are not directly attributable to the provision of those services but which are incurred in providing those services, in which case such costs must be allocated to the provision of those services using an appropriate allocator which should:
 - (A) except to the extent the cost is immaterial or a casual-based method of allocation cannot be established without undue cost and effort, be causation-based; and
 - (B) to the extent the cost is immaterial or a casual-based method of allocation cannot be established without undue cost and effort, be an allocator that accords with a well-accepted cost allocation methodology;
 - (4) any cost allocation methodology which is used, the reasons for using that methodology and the numeric quantity (if any) of the chosen allocator must be clearly described;
 - (5) the same cost must not be allocated more than once;
 - (6) the principles and policies, and approach, used to allocate costs must be consistent with the *Transmission Ring-Fencing Guidelines*; and
 - (7) costs which have been allocated to *prescribed transmission services* must not be reallocated to *negotiated transmission services*.
- (b) The *AER* must, by 31 December 2006 and in accordance with the *transmission guideline procedures*, make guidelines (the *Cost Allocation Guidelines*) relating to the preparation by a *Transmission Network Service Provider* of its *Cost Allocation Methodology*. Such guidelines:
- (1) must give effect to and be consistent with the *Cost Allocation Principles*; and

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- (2) may be amended by the *AER* from time to time in accordance with the *transmission guideline procedures*.
- (c) Without limiting the generality of clause 6.21(b), the *Cost Allocation Guidelines* may specify:
 - (1) the format of a *Cost Allocation Methodology*;
 - (2) the detailed information that is to be included in a *Cost Allocation Methodology*;
 - (3) the categories of *transmission services* which are to be separately addressed in a *Cost Allocation Methodology*, such categories being determined by reference to the nature of those services, the persons to whom those services are provided or such other factors as the *AER* considers appropriate; and
 - (4) the allocation methodologies which are acceptable and the supporting information that is to be included in relation to such methodologies in a *Cost Allocation Methodology*.
- (d) Each *Transmission Network Service Provider* must submit to the *AER* for its approval a document setting out its proposed *Cost Allocation Methodology*:
 - (1) by 30 June 2007; or
 - (2) in the case of an entity that is not a *Transmission Network Service Provider* as at 31 December 2006, within 6 months of being required to do so by the *AER*.
- (e) The *Cost Allocation Methodology* proposed by a *Transmission Network Service Provider* must give effect to and be consistent with the *Cost Allocation Guidelines*.
- (f) The *AER* must notify the relevant *Transmission Network Service Provider* of its decision to approve or refuse to approve the *Cost Allocation Methodology* submitted to it under clause 6.21(d) within 6 months of its submission, failing which the *AER* will be deemed to have approved it.
- (g) As part of giving any approval referred to in clause 6.21(f) the *AER* may, after consulting with the relevant *Transmission Network Service Provider*, amend the *Cost Allocation Methodology* submitted to it, in which case the *Cost Allocation Methodology* as so amended will be deemed to have been approved by the *AER*.
- (h) A *Transmission Network Service Provider* may amend its *Cost Allocation Methodology* from time to time but such amendment will only come into effect:
 - (1) 6 months after the submission of that amendment, together with detailed reasons for that amendment, to the *AER* (unless the *AER* approves that amendment earlier, in which case it will come into effect when that earlier approval is given); and
 - (2) subject to such changes to the *Cost Allocation Methodology* (including the proposed amendment) as the *AER* notifies to the *Transmission Network Service Provider* within that period, being changes that the *AER* reasonably considers are necessary or desirable as a result of that amendment.
- (i) A *Transmission Network Service Provider* must amend its *Cost Allocation Methodology* where such amendment is required by the *AER* to take into account any change to the

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Cost Allocation Guidelines, in which case such amendment must be promptly submitted to the *AER* and will come into effect:

- (1) 3 months after the submission of that amendment to the *AER* (unless the *AER* approves that amendment earlier, in which case it will come into effect when that earlier approval is given); and
 - (2) subject to such changes to the *Cost Allocation Methodology* (including the proposed amendment) as the *AER* notifies to the *Transmission Network Service Provider* within that period, being changes that the *AER* reasonably considers are necessary or desirable as a result of that amendment.
- (j) A *Transmission Network Service Provider* must comply with the *Cost Allocation Methodology* that has been approved in respect of it from time to time by the *AER*.
- (k) A *Transmission Network Service Provider* must maintain a current copy of its *Cost Allocation Methodology* on its website.

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Subdivision 4 – Transmission Guidelines

6.22 Transmission guideline procedures

- (a) This clause 6.22 applies wherever the *AER* is required to comply with the *transmission guideline procedures*. For the avoidance of doubt, the *transmission guideline procedures*:
- (1) are separate from, and do not apply to, the process for changing the *Rules* under Part 7 of the *National Electricity Law*; and
 - (2) are separate from, and (where they are required to be complied with) apply to the exclusion of, the *Rules consultation procedures*.
- (b) If the *AER* is required to comply with the *transmission guideline procedures* in making, developing or amending any guidelines, models or schemes, or in reviewing any values or methodologies, it must *publish*:
- (1) the proposed guideline, model, scheme, amendment or revised value or methodology;
 - (2) an explanatory statement that sets out the provision of the *Rules* under which the guideline, model, scheme or amendment is proposed to be made or developed or the value or methodology is required to be reviewed, and the reasons for the proposed guideline, model, scheme, amendment or revised value or methodology; and
 - (3) an invitation for written submissions on the proposed guideline, model, scheme, amendment or revised value or methodology.
- (c) The invitation referred to in clause 6.22(b)(3) must allow no less than 30 *business days* for the making of submissions, and the *AER* is not required to consider any submission made pursuant to that invitation after this time period has expired.
- (d) The *AER* may *publish* such issues, consultation and discussion papers, and hold such conferences and information sessions, in relation to the proposed guideline, model, scheme, amendment or revised value or methodology as it considers appropriate.
- (e) Within 80 *business days* of *publishing* the documents referred to in clause 6.22(b), the *AER* must *publish*:
- (1) its final decision on the guideline, model, scheme, amendment, value or methodology that sets out:
 - (i) the guideline, model, scheme, amendment or revised value or methodology (if any);
 - (ii) the provision of the *Rules* under which the guideline, model, scheme or amendment is being made or developed or the value or methodology is being reviewed; and
 - (iii) the reasons for the guideline, model, scheme, amendment or revised value or methodology; and

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- (2) notice of the making of the final decision on the guideline, model, scheme, amendment, value or methodology.
- (f) Subject to clause 6.22(c) the *AER* must, in making its final decision referred to in clause 6.22(e)(1), consider any submissions made pursuant to the invitation for submissions referred to in clause 6.22(b)(3), and the reasons referred to in clause 6.22(e)(1)(iii) must:
 - (1) summarise each issue raised in those submissions that the *AER* reasonably considers to be material; and
 - (2) the *AER*'s response to each such issue.

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PART B – ECONOMIC REGULATION OF DISTRIBUTION SERVICES

Division 1 - Introduction

6.23 Introduction to Part B

6.23.1 Summary of key principles and core objectives of distribution network pricing

- (a) Without limiting the application of any other provision of the *Rules*, this clause 6.23 summarises the key principles and core objectives which are intended to apply to the *distribution* pricing arrangements in Divisions 2 and 3.
- (b) The key principles underlying the *distribution* pricing arrangements in Divisions 2 and 3 are intended to:
 - (1) promote competition in the provision of *distribution services* wherever practicable;
 - (2) facilitate a commercial environment which is transparent and stable, and which does not discriminate between users of *distribution services*; and
 - (3) regulate the non-competitive market for *distribution services* in a way which seeks the same outcomes as those achieved in competitive markets.
- (c) The core objectives intended to be achieved by the application of the *distribution* pricing arrangements in Divisions 2 and 3 are:
 - (1) efficiency in the use, operation, and maintenance of, and investment in, *distribution systems*, and in the location of *generation* and demand;
 - (2) upstream and downstream competition;
 - (3) price stability; and
 - (4) equity.

6.23.2 Purpose

- (a) The regulatory principles for *distribution service* pricing are set out in Division 2.
- (b) The principles on which prices for *distribution services* are to be determined are set out in Division 3.

6.23.3 Distribution network pricing implementation

In addition to the method of pricing *distribution services*, Division 3 also covers the following related matters:

- (a) prudential requirements for receipt of *distribution services*, which are set out in clause [6.15] **[to be renumbered]**;
- (b) billing and settlements procedures associated with *distribution services*, which are set out in clause [6.16] **[to be renumbered]**; and
- (c) the collection of data which is necessary for the determination of *distribution service* prices, which is dealt with in clause [6.18] **[to be renumbered]**.

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6.23.4 Application of Part B to Market Network Services

- (a) Divisions 2 and 3 do not govern the principles or rules for the calculation of prices a *Market Network Service Provider* may charge for its services.
- (b) Divisions 2 and 3 do not govern the principles or rules for the calculation of prices for *network services* provided by a *Distribution Network Service Provider* to:
 - (1) a *Market Network Service Provider*; or
 - (2) another *Network Service Provider* for electricity delivered to a *Market Network Service Provider* through the *network* of the other *Network Service Provider* (except for any such electricity which is ultimately consumed within the other *Network Service Provider's network*).
- (c) Charges for the *network services* referred to in clause 6.23.4(b) are governed by the applicable provisions of clauses 5.4A, 5.5A, 6.14.7 and Division 3 of Part A only [**the reference to clause 6.14.7 will need to be renumbered**].

Division 2 – Distribution Services – Regulation of Revenue

[To insert existing Part D as renumbered]

Division 3 – Distribution Services – Pricing

[To insert existing Part E as renumbered]

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**PART C - OTHER MATTERS RELEVANT TO THE ECONOMIC REGULATION
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Division 1 – Unbundling of TUOS and DUOS Charges

[To insert existing clause 6.18A as renumbered]

Division 2 – Interconnections

[To insert the following new clause 6.19(a):

"(a) This clause [6.19] does not apply to interconnectors used to provide market network services."

To insert existing clauses 6.19(a) to (c) as clauses 6.19(b) to (d) (as renumbered), with the reference to "Part B and Part C of Chapter 6" in existing clause 6.19(b) being replaced by a reference to "Part A".]

Division 3 – Ring-Fencing Arrangements for Network Service Providers

[To insert clause 6.20 (as renumbered) and delete clause 6.20.2(c)(1)(C)(i)]

[The need for the Transmission Ring-Fencing Guidelines to address cost allocation has been superseded by the cost allocation provisions in clause 6.21.]

[Note: it may be necessary for the AER to revise the Transmission Ring-Fencing Guidelines given the changed definition of prescribed transmission services.

Comment is invited from the AER on the need for any transitional provisions for the interim period.]

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[To insert Schedules 6.1 to 6.8]

Schedule 6.9 – Information requirements for Revenue Proposals

S6.9.1 Information and matters relating to capital expenditure

A *Revenue Proposal* must contain at least the following information and matters relating to capital expenditure:

- (a) forecasts of the capital expenditure for each *regulatory year* of the relevant *regulatory control period* which comply with clause 6.2.6(a) of the *Rules* and which identify the forecast capital expenditure by reference to well-accepted categories such as:
 - (i) asset class (eg. transmission lines, substations etc); or
 - (ii) category driver (eg. regulatory obligation, replacement, reliability, net market benefit, business support etc),and which identify, in respect of proposed material assets:
 - (iii) the location of the proposed asset;
 - (iv) the anticipated or known cost of the proposed asset; and
 - (v) the categories of *transmission services* which are to be provided by the proposed asset;
- (b) the methodology used for developing the capital expenditure forecasts;
- (c) the forecasts of load growth relied upon to derive the capital expenditure forecasts and the methodology used for developing those forecasts of load growth;
- (d) the key assumptions that underlie the capital expenditure forecasts;
- (e) a certification of the reasonableness of the key assumptions by an independent and appropriately qualified expert;
- (f) a certification of the reasonableness of the capital expenditure forecasts by an independent and appropriately qualified expert;
- (g) capital expenditure for each of the first three *regulatory years* of the current *regulatory control period*, and the expected capital expenditure for each of the last two *regulatory years* of that *regulatory control period*, categorised in the same way as for the capital expenditure forecasts; and
- (h) an explanation of any significant variations in the forecast capital expenditure from historical capital expenditure.

S6.9.2 Information and matters relating to operating expenditure

A *Revenue Proposal* must contain at least the following information and matters relating to operating expenditure:

- (a) forecasts of the operating expenditure for each *regulatory year* of the relevant *regulatory control period* which comply with clause 6.2.7(a) of the *Rules* and which identify the forecast operating expenditure by reference to well-accepted categories such as:
 - (i) particular programs; or

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- (ii) types of operating expenditure (eg. maintenance, payroll, materials etc), and which identify in respect of each such category:
- (iii) to what extent that forecast expenditure is on costs that are fixed and to what extent it is on costs that are variable; and
- (iv) the categories of *transmission services* to which that forecast expenditure relates;
- (b) the methodology used for developing the operating expenditure forecasts;
- (c) the forecasts of key variables relied upon to derive the operating expenditure forecasts and the methodology used for developing those forecasts of key variables;
- (d) the methodology used for determining the cost associated with planned maintenance programs designed to improve the performance of the relevant *transmission system* for the purposes of any *service target performance incentive scheme* that is to apply to the *Transmission Network Service Provider* in respect of the relevant *regulatory control period*;
- (e) the key assumptions that underlie the operating expenditure forecasts;
- (f) a certification of the reasonableness of the key assumptions by an independent and appropriately qualified expert;
- (g) a certification of the reasonableness of the operating expenditure forecasts by an independent and appropriately qualified expert;
- (h) operating expenditure for each of the first three *regulatory years* of the current *regulatory control period*, and the expected operating expenditure for each of the last two *regulatory years* of that *regulatory control period*, categorised in the same way as for the operating expenditure forecasts; and
- (i) an explanation of any significant variations in the forecast operating expenditure from historical operating expenditure.

S6.9.3 Additional information and matters

A *Revenue Proposal* must contain at least the following additional information and matters:

- (a) an identification and explanation of any significant interactions between the forecast capital expenditure and forecast operating expenditure programs;
- (b) the values that the *Transmission Network Service Provider* proposes are to be attributed to the *performance incentive scheme parameters* for the purposes of the application to the *Transmission Network Service Provider* of the *service target performance incentive scheme* that applies in respect of the relevant *regulatory control period*, and an explanation of how the values proposed to be attributed to those parameters comply with any requirements relating to them set out in that scheme;
- (c) the values that the *Transmission Network Service Provider* proposes are to be attributed to the *efficiency benefit sharing scheme parameters* for the purposes of the application to the *Transmission Network Service Provider* of the *efficiency benefit sharing scheme* that applies in respect of the relevant *regulatory control period*, and an explanation of how the values proposed to be attributed to those parameters comply with any requirements relating to them set out in that scheme;

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- (d) the *Transmission Network Service Provider's* calculation of:
- (i) the estimated *total revenue cap* for it for the relevant *regulatory control period*; and
 - (ii) the *maximum allowed revenue* for it for each *regulatory year* of the relevant *regulatory control period*,
- using the model referred to in clause 6.2.1(a) of the *Rules*, together with:
- (iii) details of all amounts, values and other inputs used by the *Transmission Network Service Provider* for that purpose;
 - (iv) a demonstration that any such amounts, values and other inputs comply with such of the requirements of Subdivision 1 of Division 2 of Part A of Chapter 6 of the *Rules* as they are required to comply with; and
 - (v) an explanation of the calculation of the amounts referred to in paragraphs (i) and (ii) and of the amounts, values and inputs referred to in paragraph (iii);
- (e) the *Transmission Network Service Provider's* calculation of the regulatory asset base for the relevant *transmission system* for each *regulatory year* of the relevant *regulatory control period* using the model referred to in clause 6.2.3(b) of the *Rules*, together with:
- (i) details of all amounts, values and other inputs used by the *Transmission Network Service Provider* for that purpose;
 - (ii) a demonstration that any such amounts, values and other inputs comply with such of the requirements of Subdivision 1 of Division 2 of Part A of Chapter 6 of the *Rules* as they are required to comply with; and
 - (iii) an explanation of the calculation of the regulatory asset base for each *regulatory year* of the relevant *regulatory control period* and of the amounts, values and inputs referred to in paragraph (i);
- (f) the length of the period nominated by the *Transmission Network Service Provider* for the purposes of clause 6.2.4(c)(2) of the *Rules*;
- (g) the depreciation schedules nominated by the *Transmission Network Service Provider* for the purposes of clause 6.2.5 of the *Rules*, which categorise the relevant assets for these purposes by reference to well-accepted categories such as:
- (i) asset class (eg. transmission lines, substations etc); or
 - (ii) category driver (eg. regulatory obligation, replacement, reliability, net market benefit, business support etc),
- and also by location, together with:
- (iii) details of all amounts, values and other inputs used by the *Transmission Network Service Provider* to compile those depreciation schedules;
 - (iv) a demonstration that those depreciation schedules conform with the requirements set out in clause 6.2.5(b) of the *Rules*; and
 - (v) an explanation of the calculation of the amounts, values and inputs referred to in paragraph (iii);

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- (h) the X factors nominated by the *Transmission Network Service Provider* for each *regulatory year* of the relevant *regulatory control period* for the purposes of clause 6.2.11(a) of the *Rules*, together with a demonstration that those X factors comply with the requirements set out in clause 6.2.11(b) of the *Rules*; and
- (i) the length of the *regulatory control period* proposed by the *Transmission Network Service Provider*.

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[4] Chapter 10 Glossary

All definitions are new except where otherwise indicated. Where existing definitions are amended they have been marked up and, for these purposes, ^ indicates that words have been omitted and _____ indicates that new words have been inserted.

access charge

An amount described in clause 5.4A(f)(4).

annual building block revenue requirement

For a *Transmission Network Service Provider* for a *regulatory year* of a *regulatory control period*, the amount calculated for that *regulatory year* in accordance with clause 6.2.2(a).

Approved Pass Through Amount

In respect of a *Positive Change Event* for a *Transmission Network Service Provider*.

- (a) the amount which the *AER* determines should be passed through to *Transmission Network Users* in respect of that *Positive Change Event* under clause 6.2.14(d)(2); or
- (b) the amount which the *AER* is deemed to have determined to be the *Approved Pass Through Amount* in respect of that *Positive Change Event* under clause 6.2.14(e)(1),

as the case may be.

Authority

Any government, government department, instrumentality, minister, agency, statutory authority or other body in which a government has a controlling interest, and includes the *AEMC*, *NEMMCO*, the *AER* and the *ACCC* and their successors.

commercial arbitrator

A dispute resolution panel (within the meaning of section 58 of the *National Electricity Law*) established pursuant to clause 6.10.5(g).

connection service

An *entry service* (being a service provided to serve a *Generator* or a group of *Generators*, or a *Transmission Network Service Provider* or a group of *Transmission Network Service Providers*, at a single *connection point*) or an *exit service* (being a service provided to serve a *Transmission or Distribution Customer* or a group of *Transmission or Distribution Customers*, or a *Transmission Network Service Provider* or a group of *Transmission Network Service Providers*, at a single *connection point*).

Amendments to existing definition marked up

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contestable

^ In relation to *transmission services* or *distribution services*, a service which is permitted by the laws of the relevant *participating jurisdiction* to be provided by more than one *Network Service Provider* as a contestable service or on a competitive basis.

Amended to remove the references to clauses 6.2.4(f) and 9.8.4C(a1) as these clauses have been deleted

Cost Allocation Guidelines

The guidelines referred to in clause 6.21(b).

Cost Allocation Methodology

For a *Transmission Network Service Provider*, the Cost Allocation Methodology approved or deemed to be approved by the *AER* for that *Transmission Network Service Provider* under clauses 6.21(f) or (g) as amended from time to time in accordance with clauses 6.21(h) and (i).

Cost Allocation Principles

The principles set out in clause 6.21(a).

CPI

As at a particular time, the Consumer Price Index: All Groups Index Number, weighted average of eight capital cities published by the Australian Bureau of Statistics for the most recent quarter that precedes that particular time and for which the index referred to has been published by the Australian Bureau of Statistics as at that time. If that index ceases to be published or is substantially changed, *CPI* will be such other index as is determined by the *AER* as a suitable benchmark for recording general movements in prices.

Customer transmission use of system, Customer transmission use of system service

A service provided to a *Transmission Network User* for use of the *transmission network* for the conveyance of electricity (including where it has been negotiated in accordance with clause 5.4A(f)(3)) that can be reasonably allocated to a *Transmission Network User* on a locational basis, but does not include *Generator transmission use of system services*.

Amendments to existing definition marked up; consequential changes to pricing (eg. see cl.6.3.1(a)(3), (b)(3)) to cover the expansion of this concept will be address in stage 2 of the Rule review process

efficiency benefit sharing scheme

A scheme developed and *published* by the *AER* in accordance with clause 6.2.8.

efficiency benefit sharing scheme parameters

For an *efficiency benefit sharing scheme*, those parameters that are *published* by the *AER* in respect of that scheme pursuant to clause 6.2.8(b).

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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 the *Transmission Network Service Provider* has incurred and is likely to incur until the end of the *regulatory control period* as a result of that *Positive Change Event* (as opposed to the revenue impact of that event).

entry service

A service provided to serve a *Generator* or a group of *Generators*, or a *Network Service Provider* or a group of *Network Service Providers*, at a single *connection point*.

Amendments to existing definition marked up; consequential changes to pricing (eg. see cl.6.3.1(a)(1), (b)(1), 6.5.1, 6.7.1(b)(1)(i), 6.13.1(a)(1), 6.13.6(a), (e), 6.14(a), 6.14.1(a)(b), 6.16.1(a)(1)(i), schedule 6.2) to cover the expansion of this concept to connected Transmission Network Service Providers and Distribution Network Service Providers will be addressed in stage 2 of the Rule review process

exit service

A service provided to serve a *Transmission* or *Distribution Customer* or a group of *Transmission* or *Distribution Customers*, or a *Network Service Provider* or a group of *Network Service Providers*, at a single *connection point*.

Amendments to existing definition marked up; consequential changes to pricing (eg. see cl.6.3.1(a)(2), (b)(2), 6.5.2, schedule 6.2) to cover the expansion of this concept to connected Transmission Network Service Providers will be addressed in stage 2 of the Rule review process

generator access

The *power transfer capability* of the [^] *distribution network* in respect of an *Embedded Generator's* *generating units* or group of *generating units* at a *connection point* which has been negotiated between the *Embedded Generator* and the relevant *Distribution Network Service Provider* in accordance with clause 5.5.

Amendments to existing definition marked up

Generator transmission use of system, Generator transmission use of system service

A service provided to a *Generator* for:

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- (a) use of the *transmission network* which has been negotiated in accordance with clause 5.4A(f)(3)(A); or
- (b) use of a *new transmission network investment* asset for the conveyance of electricity that can be reasonably allocated to a *Generator* on a locational basis.

Amendments to existing definition marked up

indexed amount

As at any time and in relation to a dollar value that is expressly set out in Subdivision 1 of Division 2 of Part A of Chapter 6 of the *Rules*, that dollar value multiplied by CPI_a/CPI_b

where:

CPI_a is the *CPI* as at that time; and

CPI_b is the Consumer Price Index: All Groups Index Number, weighted average of eight capital cities published by the Australian Bureau of Statistics for the quarter ending 30 June 2006.

Insurance Event

An event the risk of occurrence of which is the subject of insurance taken out by or for a *Transmission Network Service Provider*, for which an allowance is provided in the *total revenue cap* for the *Transmission Network Service Provider* and in respect of which:

- (a) the cost of the premium paid or required to be paid by the *Transmission Network Service Provider* in the *regulatory year* in which the cost of the premium changes is higher or lower than the premium that is provided for in the *maximum allowed revenue* for the *Transmission Network Service Provider* for that *regulatory year* by an amount of more than 1% of the *maximum allowed revenue* for the *Transmission Network Service Provider* for that *regulatory year*;
- (b) the risk eventuates and, as a consequence, the *Transmission Network Service Provider* incurs or will incur all or part of a deductible where the amount so incurred or to be so incurred in a *regulatory year* is higher or lower than the allowance for the deductible (if any) that is provided for in the *maximum allowed revenue* for the *Transmission Network Service Provider* for that *regulatory year* by an amount of more than 1% of the *maximum allowed revenue* for the *Transmission Network Service Provider* for that *regulatory year*;
- (c) insurance becomes unavailable to the *Transmission Network Service Provider*; or
- (d) insurance becomes available to the *Transmission Network Service Provider* on terms materially different to those existing as at the time the *revenue cap determination* was made (other than as a result of any act or omission of the *Transmission Network Service Provider* which is inconsistent with *good electricity industry practice*).

jurisdictional electricity legislation

Has the meaning given to that term in the *National Electricity Law*.

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market network service provider access

The *power transfer capability* of the [^] *distribution network* in respect of a *Market Network Service Provider's market network services* at a *connection point* which has been negotiated between the *Market Network Service Provider* and the relevant *Distribution Network Service Provider* in accordance with clause 5.5A(g).

Materially

For the purposes of the application of clause 6.2.14, an event (other than a *Network (Grid) 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 the *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*.

maximum allowed revenue

For a *Transmission Network Service Provider* for a *regulatory year* of a *regulatory control period*, the amount calculated as such in accordance with clause 6.2.1.

Replaces existing definition. References to this term in old Part C will need to be considered as part of stage 2 of the Rule review process
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Negative Change Event

For a *Transmission Network Service Provider*, a *Pass Through Event* which entails the *Transmission Network Service Provider* incurring *Materially* lower costs in providing *prescribed transmission services* than it would have incurred but for that event.

Negative Pass Through Amount

In respect of a *Negative Change Event* for a *Transmission Network Service Provider*, an amount that is not greater than a *Required Pass Through Amount* as referred to in clause 6.2.14(b) and determined by the *AER* under clause 6.2.14(g).

negotiated transmission service

Any of the following services:

- (a) a *shared transmission service* that:
 - (i) exceeds the *network* performance requirements (both as to quality and quantity) (if any) which that *shared transmission service* is required to meet under any *jurisdictional electricity legislation*; and
 - (ii) except to the extent that the *network* performance requirements which that *shared transmission service* is required to meet are prescribed under any *jurisdictional electricity legislation*, exceeds or does not meet the *network* performance requirements (both as to quality and quantity) set out in schedule 5.1;

[The AEMC will convene a working group to review the relevant performance requirements]

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- (b) *connection services* that:
- (i) in the case of *entry services*, are provided to serve a *Generator* or group of *Generators*, or a *Transmission Network Service Provider* or a group of *Transmission Network Service Providers*, at a single *transmission network connection point*;
 - (ii) in the case of *exit services*, are provided to serve a *Transmission Customer* or a group of *Transmission Customers*, or a *Transmission Network Service Provider* or a group of *Transmission Network Service Providers*, at a single *transmission network connection point*; and
- (c) *use of system services* provided to a *Transmission Network User* and referred to in clause 5.4A(f)(3), 5.5(f)(2) or 5.5A(g)(2) (as the case may be) in relation to *augmentations* or *extensions* required to be undertaken on a *transmission network* as described in clause 5.4A, 5.5 or 5.5A,

but does not include a *market network service*.

Negotiated Transmission Service Pricing Criteria

For a *Transmission Network Service Provider* under a *transmission determination*, the criteria set out in that *transmission determination* pursuant to clause 6.10.2.

Negotiated Transmission Service Pricing Principles

The principles set out in clause 6.10.1.

negotiated use of system charges

The charges described in clauses 5.4A(f)(3), 5.5(f)(2) or 5.5A(g)(2), respectively.

Amendments to existing definition marked up

negotiated use of system service

A *use of system service* in respect of which:

- (a) a *Connection Applicant* may negotiate with a *Transmission Network Service Provider*,
- (b) an *Embedded Generator* may negotiate with a *Distribution Network Service Provider*[^]; or
- (c) a *Market Network Service Provider* may negotiate with a *Distribution Network Service Provider*[^],

in accordance with clauses 5.4A(f)(3), 5.5(f)(2) or 5.5A(g)(2), respectively.

Amendments to existing definition marked up

negotiating framework

For a *Transmission Network Service Provider*, the negotiating framework approved or included by the AER for that *Transmission Network Service Provider* in a final decision under clause 6.16.1(a).

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The term negotiating framework is also defined in clauses 6.5.9 and 6.14.7 for the purposes of those clauses and, when used in those clauses, has the meaning given to it for those purposes **[these clause references will need to be renumbered]**.

Network (Grid) Support Event

An event which causes a change in the amount of *network support payments* by a *Transmission Network Service Provider* such that the amount of those *network support payments* for a *regulatory year* is materially higher or lower than the amount of *network support payments* (if any) that is provided for in the *annual building block revenue requirement* for the *Transmission Network Service Provider* for that *regulatory year*, except to the extent that:

- (a) the change in the amount of *network support payments* is attributable to *network support payments* that are a substitute for *network augmentation*; and
- (b) an allowance is provided in the *total revenue cap* for the *Transmission Network Service Provider* for capital expenditure in relation to that *network augmentation*.

network support payment

A payment by a *Transmission Network Service Provider* to:

- (a) any *Generator* providing *network support services* in accordance with clause 5.6.2; or
- (b) *Customers*,

to enable the safe and reliable operation of the *transmission system* owned, controlled or operated by that *Transmission Network Service Provider*.

non-regulated transmission services

A *transmission service* that is neither a *prescribed transmission service* nor a *negotiated transmission service*.

Pass Through Event

Any one of the following events:

- (a) an *Insurance Event*;
- (b) a *Service Standard Event*;
- (c) a *Tax Change Event*;
- (d) a *Terrorism Event*; or
- (e) a *Network (Grid) Support Event*.

performance incentive scheme parameters

For a *service target performance incentive scheme*, those parameters that are *published* by the *AER* in respect of that scheme pursuant to clause 6.2.10(b).

Positive Change Event

For a *Transmission Network Service Provider*, a *Pass Through Event* which entails the *Transmission Network Service Provider* incurring *Materially* higher costs in providing *prescribed transmission services* than it would have incurred but for that event.

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Positive Pass Through Amount

An amount that is not greater than an *Eligible Pass Through Amount* as referred to in clause 6.2.14(a).

prescribed transmission service

A *shared transmission service* that:

- (a) meets (but does not exceed) the *network* performance requirements (both as to quality and quantity) (if any) which that *shared transmission service* is required to meet under any *jurisdictional electricity legislation*; and
- (b) except to the extent that the *network* performance requirements which that *shared transmission service* is required to meet are prescribed under any *jurisdictional electricity legislation*, meets (but does not exceed) the *network* performance requirements (both as to quality and quantity) set out in schedule 5.1,

and is not a *negotiated transmission service* or a *market network service*.

[The AEMC will convene a working group to review the relevant performance requirements]

Replaces existing definition

publish/publication

- (a) in the case of an invitation or notice referred to in clauses 6.14(a)(5), 6.15.2(a)(3), 6.15.2(a)(4) or 6.22(b)(3), publish on the AER's website and in a newspaper circulating generally throughout Australia;
- (b) in the case of a notice referred to in clauses 6.15.2(a)(2), 6.16.2(d)(2) or 6.22(e)(2), publish on the AER's website, in the South Australian Gazette and in a newspaper circulating generally throughout Australia; and
- (c) where referred to in any other provision of Part A (other than Subdivision 2 of Division 2), publish on the AER's website and make a copy available at the offices of the AER.

In any other case, make available to Registered Participants electronically.

Amendments to existing definition marked up

regulated interconnector

An *interconnector* which is deemed to be a *regulated interconnector* under clause 6.19 **[this clause reference will need to be renumbered]** and is subject to *transmission service* regulation and pricing arrangements in Part^A of Chapter 6.

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Amendments to existing definition marked up

regulatory control period

^In respect of a *Transmission Network Service Provider*, a period in which a *total revenue cap* or other revenue cap applies to that *Transmission Network Service Provider* by virtue of a *transmission determination*. In Part^B of Chapter 6,^ a period in which a *price cap* and/or a *revenue cap* is imposed on a *Distribution Network Service Provider* by the relevant *Jurisdictional Regulator*.

Amendments to existing definition marked up

regulatory obligation

Has the meaning given to that term in the *National Electricity Law*.

regulatory year

In relation to a *regulatory control period*, each consecutive period of 12 calendar months, the first such period commencing at the beginning of the *regulatory control period*.

Relevant Tax

Any *Tax* payable by a *Transmission Network Service Provider* other than:

- (a) income tax and capital gains tax;
- (b) stamp duty, financial institutions duty and bank accounts debits tax;
- (c) penalties, charges, fees and interest on late payments, or deficiencies in payments, relating to any *Tax*; or
- (d) any *Tax* that replaces or is the equivalent of or similar to any of the *Taxes* referred to in paragraphs (a) to (b) (including any State equivalent tax).

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 the *Transmission Network Service Provider* has saved and is likely to save until the end of the *regulatory control period* as a result of that *Negative Change Event* (as opposed to the revenue impact of that event).

revenue cap

^In Part^B of Chapter 6, the *aggregate annual revenue requirement* for a year determined by the *Jurisdictional Regulator* applicable to a *Distribution Network Service Provider*.

Amendments to existing definition marked up

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revenue cap determination

A determination referred to in clause 6.11(a) as substituted (if at all) pursuant to clause 6.2.12 or 6.2.13.

Revenue Proposal

For a *Transmission Network Service Provider*, a proposal submitted or resubmitted by the *Transmission Network Service Provider* to the *AER* pursuant to clause 6.12.1(a), clause 6.13(c) or clause 6.15.3(a) (as the context requires).

Service Applicant

Has the meaning given in clause 6.10.4(a).

Service Standard Event

Any decision made by an *Authority* or any amendment to an applicable law (including, but not limited to, the *National Electricity Law*, the *Rules*, any transmission licence of a *Transmission Network Service Provider* or any applicable *jurisdictional electricity legislation* (as that term is defined in the *National Electricity Law*)) which has the effect of:

- (a) substantially varying the manner in which a *Transmission Network Service Provider* is required to provide any *prescribed transmission services* as at the date of the *revenue cap determination*;
- (b) imposing, removing or varying minimum service standards on or that apply to a *Transmission Network Service Provider* in respect of *prescribed transmission services* that are different to the minimum standards applicable to the *Transmission Network Service Provider* as at the date of the *revenue cap determination*; or
- (c) altering the nature or scope of the *prescribed transmission services* provided by a *Transmission Network Service Provider* from those as at the date of the *revenue cap determination*,

and which results in the *Transmission Network Service Provider* incurring *Materially* higher or *Materially* lower costs in providing *prescribed transmission services* than it would have incurred but for that event.

service target performance incentive scheme

A scheme developed and *published* by the *AER* in accordance with clause 6.2.10.

shared transmission service

A service provided to a *Transmission Network User* for use of a *transmission network* for the conveyance of electricity (including a service that ensures the integrity of the related *transmission system*).

Tax

Any tax, levy, impost, deduction, charge, rate, rebate, duty, fee or withholding which is levied or imposed by an *Authority*.

Tax Change Event

Any of the following:

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- (a) a change in (or a change in the application or official interpretation of) a *Relevant Tax* or the way in or rate at which a *Relevant Tax* is calculated;
 - (b) the removal of a *Relevant Tax*; or
 - (c) the imposition of a *Relevant Tax*,
- which:
- (d) occurs on or after the commencement of the *revenue cap determination* for the *regulatory control period*; and
 - (e) results in the *Transmission Network Service Provider* incurring *Materially* higher or *Materially* lower costs in providing *prescribed transmission services* than it would have incurred but for that event.

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 results in a *Transmission Network Service Provider* incurring *Materially* higher or *Materially* lower costs in providing *prescribed transmission services* than it would have incurred but for that act.

total revenue cap

For a *Transmission Network Service Provider* for a *regulatory control period*, the sum of the *maximum allowed revenues* for that *Transmission Network Service Provider* for each *regulatory year* of that *regulatory control period* as calculated in accordance with clause 6.2.1.

transmission determination

A determination made by the *AER* as described in clause 6.11(c) and any determination (or substituted determination) made, or deemed to be made, by the *AER* or the *ACCC* on or prior to [1 July 2007] in accordance with the provisions of Subdivision 1 of Division 2 of Part A of Chapter 6 of the *Rules* (as in force from time to time prior to that date) or clause 9.8.4C.

transmission guideline procedures

The procedures that must be adopted by the *AER* in making or developing guidelines, models, schemes or amendments to them, or in reviewing values or methodologies, under Part A of Chapter 6 as set out in clause 6.22.

transmission network user access

The *power transfer capability* of the *transmission network* in respect of:

- (a) *generating units* or group of *generating units*;
- (b) *network elements*; or
- (c) *plant*,

at a *connection point* which has been negotiated in accordance with clause 5.4A.

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transmission services

The services provided by means of, or in connection with, a *transmission system*.

Replaces existing definition

weighted average cost of capital

For a *Transmission Network Service Provider* for a *regulatory control period*, the return on capital for that *Transmission Network Service Provider* for that *regulatory control period* as calculated in accordance with clauses 6.2.4(b) to (e), and in any other case an amount determined in a manner consistent with schedule 6.1.

Amendments to existing definition marked up

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[5] Chapter 11 Savings and Transitional Rules

After Chapter 10 insert:

Chapter 11 Savings and Transitional Rules

11.[1] Rules consequent on making the National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006

1. Subject to clause 2, the amendments made by the provisions of the *Rules* that came into effect on [1 January 2007] do not affect any determination made, or deemed to be made, by the *AER* or the *ACCC* on or prior to [1 July 2006] for the purpose of regulating the revenues of a *Transmission Network Service Provider*, and any such determination continues in effect under the *Rules* but is subject to the *Rules* as they applied prior to [1 January 2007] and not to the *Rules* as amended on [1 January 2007].
2. Clause 6.2.12 applies as if:
 - (a) subject to paragraph (c), references in clause 6.2.12 to a *revenue cap determination* were references to a determination referred to in clause 1;
 - (b) references in clause 6.2.12 to the total of the forecast capital expenditure accepted or determined by the *AER* in accordance with clause 6.2.6(b) or clause 6.16.2(b)(3) were references to the total of the forecast capital expenditure adopted for the purposes of the determination referred to in paragraph (a);
 - (c) references in clause 6.2.12 to a new or substituted *revenue cap determination* were references to a determination made by the *AER* in accordance with the *Rules* as they applied prior to [1 January 2007];
 - (d) the phrase in parenthesis at the end of clause 6.2.12(e)(1)(i) does not apply; and
 - (e) the reference in clause 6.2.12(e)(1)(ii)(B) to the *maximum allowed revenue* were to the revenue cap under the determination referred to in paragraph (a).
3. Notwithstanding the amendments made by the provisions of the *Rules* that came into effect on [1 January 2007], clause 9.8.4G continues in operation as if those amendments did not come into effect and the *Rules* that apply are those that applied prior to [1 January 2007].
[Comments on this provision are sought particularly from VENCORP].
4. The amendments made by the provisions of the *Rules* that came into effect on [1 January 2007] do not affect the operation of clause 9.6.15 in so far as it:
 - (a) applies to deem a revenue cap for the *financial year* commencing on 1 July 2004;
 - (b) specifies the basis on which prices for certain transmission services during the *financial year* commencing on 1 July 2004 are to be determined;
 - (c) specifies the manner in which clause 6.4.3C (prior to its amendment, if any, with effect from [1 January 2007]) is to apply for the *financial year* commencing on 1 July 2005; and

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- (d) deems a revenue cap for the period commencing on 1 July 2004 until the end of 30 June 2009 to be for a period of five years,

and clause 9.6.15 continues to so operate under the *Rules* but in accordance with the *Rules* as they applied prior to [1 January 2007].

[Comments on this provision are sought particularly from TransGrid and Energy Australia.]

5. Notwithstanding the amendments made by the provisions of the *Rules* that came into effect on [1 January 2007], clause 9.48.2(a) to (e) (inclusive) continue in operation as if those amendments did not come into effect and the *Rules* that apply are those that applied prior to [1 January 2007].

[Comments on this provision are sought particularly from the relevant Tasmanian industry participants. This provision assumes that the effect of Pre-NEM Determinations will be confined to the existing transmission determinations that are preserved under clause 1.]

6. References to a *prescribed transmission service* in Part A of Chapter 6 and the associated definitions in the Glossary in Chapter 10 include a service provided by an asset used in connection with, or committed to be constructed for use in connection with, a *transmission system* as at 16 February 2006:
- (a) to the extent the value of the asset is included in the regulatory asset base for that *transmission system* under a *transmission determination* in force at that time; or
- (b) the price for that service has not been negotiated under a *negotiating framework* established pursuant to clause 6.5.9,

and, but for this clause, that service would not otherwise be a *prescribed transmission service*. Where a service is a *prescribed transmission service* by virtue of the operation of this clause it will be deemed not to be either a *negotiated transmission service* or a *non-regulated transmission service*. For the purposes of this clause 6, an asset is, and is only, to be taken to be committed to be constructed if it satisfies the criteria which a project needs to satisfy to be a "committed project" for the purposes of the *regulatory test*.

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This Schedule does not include the changed cross references as a result of the proposed renumbering of old Parts C, D and E. A savings and transitional provision will need to be made to ensure that references in other documents (eg. contracts) to clauses of the Rules the numbering of which has been changed are deemed to be references to the renumbered clauses of the Rules.

Schedule 2 Consequential Amendments

(Clause 4)

[Stage 2 of the Rule review process will address any changes to old Part C of Chapter 6 (clauses 6.3 to 6.9), and the associated schedules and definitions, as are necessary to address the following matters:

- ***the interface between these provisions and the stage 1 Rules through the use of the concepts of aggregate annual revenue requirement and annual maximum allowed revenue;***
- ***their expansion, where appropriate, to Transmission Network Users, which includes connected Transmission Network Service Providers (to the extent these provisions relate to Network Users or Transmission Customers, they do not currently extend to connected Transmission Network Service Providers);***
- ***the change in scope of prescribed transmission services;***
- ***the scope for negotiating charges for prescribed transmission services (previously addressed in the cl.6.5.9 negotiating framework);***
- ***the changes to the Victorian derogations relevant to VENCORP and included in clause 9.8.4F (including whether Division 3 of Part A should operate in respect of VENCORP and, if so, how it should be modified; and***
- ***consequential changes.***

Any consequential impacts on the Ch.9 derogations (apart from those referred to above) will also need to be taken into account.]

Chapter 2

Clause 2.5.2(a)(1)

Clause 2.5.2(a)(1) is amended by replacing "*prescribed transmission service*" with "*transmission service which is subject to a revenue cap determination or any*".

Clause 2.5.2(a)(3)(A)

Clause 2.5.2(a)(3)(A) is amended by replacing "*prescribed transmission service*" with "*transmission service to which a transmission determination has applied*".

Clause 2.5.2(c)

Clause 2.5.2(c) is amended by replacing "*revenue cap or price cap*" with "*total revenue cap, or revenue cap or price cap, as the case may be*".

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Chapter 5

Clause 5.2.2(a)

Clause 5.2.2(a) is amended by replacing "*Network User*" (where first occurring) with "*Transmission Network User, Distribution Network User*" and replacing "*Network User*" (where second occurring) with "*Transmission Network User or Distribution Network User (as the case may be)*".

Clause 5.3.6

Clause 5.3.6 is amended by replacing paragraphs (i) and (j) with the following:

- "(ha) An offer to *connect* in respect of a *transmission network* must conform with the access arrangements set out in clause 5.4A.
- (i) An offer to *connect* made to an *Embedded Generator* must conform with the access arrangements set out in clause 5.5.
- (j) An offer to *connect* made to a *Market Network Service Provider* in respect of a *distribution system* must conform with the access arrangements set out in clause 5.5A."

New clause 5.4A

5.4A Access Arrangements relating to Transmission Networks

- (a) The *Transmission Network Service Provider* referred to in this clause 5.4A is the *Network Service Provider* required under clause 5.3.3 to process and respond to a *connection* enquiry or required under clause 5.3.5 to prepare an offer to *connect* for the establishment or modification of a *connection* to the *transmission network* owned, controlled or operated by that *Transmission Network Service Provider* or for the provision of *network service*.
- (b) If requested by a *Connection Applicant*, whether as part of a *connection* enquiry, *application to connect* or the subsequent negotiation of a *connection agreement*, the *Transmission Network Service Provider* must negotiate in good faith with the *Connection Applicant* to reach agreement in respect of the *transmission network user access* arrangements sought by the *Connection Applicant*.
- (c) As a basis for negotiations under clause 5.4A(b):
 - (1) the *Connection Applicant* must provide to the *Transmission Network Service Provider* such information as is reasonably requested relating to the expected operation of its *generating units* (in the case of a *Generator*), *network elements* used in the provision of *network service* (in the case of a *Network Service Provider*) or *plant* (in the case of any other kind of *Connection Applicant*); and
 - (2) the *Transmission Network Service Provider* must provide to the *Connection Applicant* such information as is reasonably requested to allow the *Connection Applicant* to fully assess the commercial significance of the *transmission network user access* arrangements sought by the *Connection Applicant* and offered by the *Transmission Network Service Provider*.
- (d) A *Connection Applicant* may seek *transmission network user access* arrangements at any level of *power transfer capability* between zero and:

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- (1) in the case of a *Generator*, the *maximum power input* of the relevant *generating units* or group of *generating units*;
 - (2) in the case of a *Network Service Provider*, the *power transfer capability* of the relevant *network elements*; and
 - (3) in the case of any other kind of *Connection Applicant*, the *maximum demand* at the *connection point* for the relevant *plant*.
- (e) The *Transmission Network Service Provider* must use reasonable endeavours to provide the *transmission network user access* arrangements being sought by the *Connection Applicant* subject to those arrangements being consistent with *good electricity industry practice* considering:
- (1) the *connection assets* to be provided by the *Transmission Network Service Provider* or otherwise at the *connection point*; and
 - (2) the potential *augmentations* or *extensions* required to be undertaken on all affected *transmission networks* or *distribution networks* to provide that level of *power transfer capability* over the period of the *connection agreement* taking into account the amount of *power transfer capability* provided to other *Registered Participants* under *transmission network user access*, *generator access* or *market network service provider access* arrangements in respect of all affected *transmission networks* and *distribution networks*.
- (f) The *Transmission Network Service Provider* and the *Connection Applicant* must negotiate in good faith to reach agreement as appropriate on:
- (1) the *connection service charge* to be paid by the *Connection Applicant* in relation to *connection assets* to be provided by the *Transmission Network Service Provider*;
 - (2) in the case of a [Market] *Network Service Provider*, the service level standards to which the [Market] *Network Service Provider* requires the *Transmission Network Service Provider* to adhere in providing its services;
 - (3) the *use of system services charge* to be paid:
 - (A) by the *Connection Applicant* in relation to any *augmentations* or *extensions* required to be undertaken on all affected *transmission networks* and *distribution networks*; and
 - (B) where the *Connection Applicant* is a *Market Network Service Provider*, to the *Market Network Service Provider* in respect of any reduction in the long run marginal cost of *augmenting* the *transmission network* as a result of it being *connected to the transmission network* ("*negotiated use of system charges*");
 - (4) the following amounts ("*access charges*"):
 - (A) the amount to be paid by the *Connection Applicant* to the *Transmission Network Service Provider* in relation to the costs reasonably incurred by the *Transmission Network Service Provider* in providing *transmission network user access*;

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- (B) in the case of a *Generator*:
 - (1) the compensation to be provided by the *Transmission Network Service Provider* to the *Generator* in the event that the *generating units* or group of *generating units* of the *Generator* are *constrained off* or *constrained on* during a *trading interval*;
 - (ii) the compensation to be provided by the *Generator* to the *Transmission Network Service Provider* in the event that *dispatch* of the *Generator's generating units* or group of *generating units* causes another *Generator's generating units* or group of *generating units* to be *constrained off* or *constrained on* during a *trading interval*;
- (C) in the case of a *Market Network Service Provider*:
 - (1) the compensation to be provided by the *Transmission Network Service Provider* to the *Market Network Service Provider* in the event that the *transmission network user access* is not provided; and
 - (ii) the compensation to be provided by the *Market Network Service Provider* to the *Transmission Network Service Provider* in the event that *dispatch* of the relevant *market network service* causes a *Generator's generating units* or group of *generating units* to be *constrained off* or *constrained on* during a *trading interval* or causes the *dispatch* of another *market network service* to be *constrained*; and
- (D) in the case of any other kind of *Connection Applicant*, the compensation to be provided by the *Transmission Network Service Provider* to the *Connection Applicant* in the event that the *transmission network user access* is not provided.
- (g) The maximum charge that can be applied by the *Transmission Network Service Provider* in respect of *negotiated use of system charges* for the *transmission network* is that determined:
 - (1) in the case of *Generators*, in accordance with schedule 6.3; and
 - (2) in the case of any other kind of *Connection Applicant*, in accordance with the methods specified for *Generators* in schedule 6.3, except that references to "*Generators*" in that schedule are to be read as references to such other *Connection Applicants*, together with any other necessary changes.

Amended clause 5.5:

5.5 Access Arrangements for Embedded Generators - Distribution

- (a) The *Distribution Network Service Provider* referred to in this clause 5.5 is the *Distribution Network Service Provider* required under clause 5.3.3 to process and respond to a *connection enquiry* or required under clause 5.3.5 to prepare an offer to *connect* for the

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provision of *network service* to an Embedded Generator's generating unit or group of *generating units*.

- (b) If requested by the Embedded Generator, whether as part of a *connection enquiry*, *application to connect* or the subsequent negotiation of a *connection agreement*, the Distribution Network Service Provider must negotiate in good faith with the Embedded Generator to reach agreement in respect of the *generator access* arrangements sought by the Embedded Generator.
- (c) As a basis for negotiations under clause 5.5(b):
- (1) the Embedded Generator must provide to the Distribution Network Service Provider such information as is reasonably requested relating to the expected operation of its *generating units*; and
 - (2) the Distribution Network Service Provider must provide to the Embedded Generator such information as is reasonably requested to allow the Embedded Generator to fully assess the commercial significance of the *generator access* arrangements sought by the Embedded Generator and offered by the Distribution Network Service Provider.
- (d) An Embedded Generator may seek *generator access* arrangements at any level of *power transfer capability* between zero and the *maximum power input* of the Embedded Generator's generating units or group of *generating units*.
- (e) The Distribution Network Service Provider must use reasonable endeavours to provide the *generator access* arrangements being sought by the Embedded Generator subject to those arrangements being consistent with *good electricity industry practice* considering:
- (1) the *connection assets* to be provided by the Distribution Network Service Provider or otherwise at the *connection point*; and
 - (2) the potential *augmentations* or *extensions* required to be undertaken on all affected *transmission networks* or *distribution networks* to provide that level of *power transfer capability* over the period of the *connection agreement* taking into account the amount of *power transfer capability* provided to other *Registered Participants* under *transmission network user access*, *generator access* or *market network service provider access* arrangements in respect of all affected *transmission networks* and *distribution networks*.
- (f) The Distribution Network Service Provider and the Embedded Generator must negotiate in good faith to reach agreement as appropriate on the:
- (1) *connection service charge* to be paid by the Embedded Generator in relation to *connection assets* to be provided by the Distribution Network Service Provider;
 - (2) *use of system services charge* to be paid by the Embedded Generator in relation to any *augmentations* or *extensions* required to be undertaken on all affected *transmission networks* and *distribution networks* ("*negotiated use of system charges*");
 - (3) **[Deleted]**

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- (4) amount to be paid by the *Embedded Generator* to the *Distribution Network Service Provider* in relation to the costs reasonably incurred by the *Distribution Network Service Provider* in providing *generator access*;
 - (5) compensation to be provided by the *Distribution Network Service Provider* to the *Embedded Generator* in the event that the *generating units* or group of *generating units* of the *Embedded Generator* are *constrained off* or *constrained on* during a *trading interval*; and
 - (6) compensation to be provided by the *Embedded Generator* to the *Distribution Network Service Provider* in the event that *dispatch* of the *Embedded Generator's generating units* or group of *generating units* causes another *Generator's generating units* or group of *generating units* to be *constrained off* or *constrained on* during a *trading interval*.
- (g) The maximum charge that can be applied by the *Distribution Network Service Provider* in respect of *negotiated use of system charges* for the *^distribution network* is that determined in accordance with schedule 6.3.
- (h) A *Distribution Network Service Provider* must pass through to an *Embedded Generator* the amount calculated in accordance with clause 5.5(i) for *Customer TUOS usage charges* that would have been payable by the *Distribution Network Service Provider* to a *Transmission Network Service Provider* had the *Embedded Generator* not been connected to its *distribution network* ("*avoided Customer TUOS usage charges*").
- (i) To calculate the amount to be passed through to an *Embedded Generator* in accordance with clause 5.5(h), a *Distribution Network Service Provider* must, if *Customer TUOS usage prices* were in force at the relevant *transmission network connection point* throughout the relevant *financial year*:
- (1) determine the *Customer TUOS usage charges* that would have been payable by the *Distribution Network Service Provider* for the relevant *financial year* if the *Embedded Generator* had not injected any *energy* at its *connection point* during that *financial year*; and
 - (2) determine the amount by which the charges calculated in clause 5.5(i)(1) exceed the *Customer TUOS usage charges* actually payable by the *Distribution Network Service Provider*, which amount will be the relevant amount for the purposes of clause 5.5(h).

Where *Customer TUOS usage prices* were not in force at the relevant *transmission network connection point* throughout the relevant *financial year*, the *Distribution Network Service Provider* must apply an equivalent procedure to that described above in relation to that component of its *transmission use of system service charges* which is deemed by the relevant *Transmission Network Service Provider* to represent the marginal cost of *transmission*, less an allowance for locational signals present in the *spot market*, to determine the relevant amount for the purposes of clause 5.5(h).

- (j) Any payments to *^ Embedded Generators* under clause 5.5(h) are to be included as part of the *aggregate annual revenue requirement* of the relevant *^ Distribution Network Service Provider* *^* and are to be recovered in the same manner as payments to *Embedded*

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Generators under clauses 6.13.3(c) and (d) ^ [these clause references will need to be renumbered].

Amended clause 5.5A:

5.5A Access Arrangements for Market Network Service Providers - Distribution

- (a) This clause 5.5A applies to circumstances in which a *Market Network Service Provider* has made a *connection* enquiry under clause 5.3.2 or has made an *application to connect* under clause 5.3.4 in relation to *network elements* used in the provision of a *market network service*.
- (b) The *Distribution* *Network Service Provider* referred to in this clause 5.5A is the *Distribution* *Network Service Provider* required under clause 5.3.3 to process and respond to the *connection* enquiry referred to in clause 5.5A(a) or required under clause 5.3.5 to prepare an offer to *connect* in response to the *application to connect* referred to in clause 5.5A(a).
- (c) If requested by the *Market Network Service Provider*, whether as part of the *connection* enquiry, *application to connect* or the subsequent negotiation of a *connection agreement*, the *Distribution* *Network Service Provider* must negotiate in good faith with the *Market Network Service Provider* to reach agreement in respect of the *market network service provider access* arrangements sought by the *Market Network Service Provider*.
- (d) As a basis for negotiations under clause 5.5A(c):
- (1) the *Market Network Service Provider* must provide to the *Distribution* *Network Service Provider* such information as is reasonably requested relating to the expected operation of its *network elements*; and
 - (2) the *Distribution* *Network Service Provider* must provide to the *Market Network Service Provider* such information as is reasonably requested to allow the *Market Network Service Provider* to fully assess the commercial significance of the *market network service provider access* arrangements sought by the *Market Network Service Provider* and offered by the *Distribution* *Network Service Provider*.
- (e) A *Market Network Service Provider* may seek *market network service provider access* arrangements at any level of *power transfer capability* between zero and the *power transfer capability* of the *network elements* referred to in clause 5.5A(a).
- (f) The *Distribution* *Network Service Provider* must use reasonable endeavours to provide the *market network service provider access* arrangements being sought by the *Market Network Service Provider* subject to those arrangements being consistent with *good electricity industry practice* considering:
- (1) the *connection assets* to be provided by the *Distribution* *Network Service Provider* or otherwise at the *connection point*; and
 - (2) the potential *augmentations* or *extensions* required to be undertaken on all affected *transmission networks* or *distribution networks* to provide that level of *power transfer capability* over the period of the *connection agreement* taking into account the amount of *power transfer capability* provided to other *Registered Participants* under *transmission network user access*, *generator access* or *market network*

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service provider access arrangements in respect of all affected transmission networks and distribution networks.

- (g) The Distribution Network Service Provider and the Market Network Service Provider must negotiate in good faith to reach agreement as appropriate on the:
- (1) *connection service charge to be paid by the Market Network Service Provider in relation to connection assets to be provided by the Distribution Network Service Provider;*
 - (1A) *service level standards to which the Market Network Service Provider requires the Distribution Network Service Provider to adhere in providing it services;*
 - (2) *use of system services charge to be paid:*
 - (A) *to the Market Network Service Provider in respect of any reduction in the long run marginal cost of augmenting the distribution network as a result of it being connected to the distribution network; and*
 - (B) *by the Market Network Service Provider in relation to any augmentations or extensions required to be undertaken in respect of all affected transmission networks and distribution networks.*
- ("negotiated use of system charges");*
- (3) *amount to be paid by the Market Network Service Provider to the Distribution Network Service Provider in relation to the costs reasonably incurred by the Distribution Network Service Provider in providing market network service provider access;*
 - (4) *compensation to be provided by the Distribution Network Service Provider to the Market Network Service Provider in the event that the ^ market network service provider access is not provided; and*
 - (5) *compensation to be provided by the Market Network Service Provider to the Distribution Network Service Provider in the event that dispatch of the relevant market network service causes a Generator's generating units or group of generating units to be constrained off or constrained on during a trading interval or causes the dispatch of another market network service to be constrained.*
- (h) The maximum charge that can be applied by the Distribution Network Service Provider in respect of *negotiated use of system charges* for the ^ distribution network is that determined in accordance with the methods specified for *Generators* in schedule 6.3, except that references to "*Generators*" in that schedule are to be read as references to "*Market Network Service Providers*" together with any other necessary changes.
- (i) A Distribution Network Service Provider must pass through to a Market Network Service Provider the amount calculated in accordance with clause 5.5A(j) for *Customer TUOS usage charges* that would have been payable by the Distribution Network Service Provider to a Transmission Network Service Provider had the Market Network Service Provider not been connected to its distribution network ("*avoided Customer TUOS usage charges*").
- (j) To calculate the amount to be passed through to a Market Network Service Provider in accordance with clause 5.5A(i), a Distribution Network Service Provider must, if *Customer*

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TUOS usage prices were in force at the relevant *transmission network connection point* throughout the relevant *financial year*:

- (1) determine the *Customer TUOS usage charges* that would have been payable by the *Distribution Network Service Provider* for the relevant *financial year* if the *Market Network Service Provider* had not been *connected* to the *Distribution Network Service Provider's distribution network* during that *financial year*; and
- (2) determine the amount by which the charges calculated in clause 5.5A(j)(1) exceed the *Customer TUOS usage charges* actually payable by the *Distribution Network Service Provider*, which amount will be the relevant amount for the purposes of clause 5.5A(i).

Where *Customer TUOS usage prices* were not in force at the relevant *transmission network connection point* throughout the relevant *financial year*, the *Distribution Network Service Provider* must apply an equivalent procedure to that described above in relation to that component of its *transmission use of system service charges* which is deemed by the relevant *Transmission Network Service Provider* to represent the marginal cost of *transmission*, less an allowance for locational signals present in the *spot market*, to determine the relevant amount for the purposes of clause 5.5A(i).

- (k) Any payments to *Market Network Service Providers* under clauses 5.5A(g)(2) and 5.5A(i) are to be included as part of the *aggregate annual revenue requirement* of the relevant *Distribution Network Service Provider* ^ and are to be recovered in the same manner as payments to *Embedded Generators* under clauses 6.13.3(c) and (d) ^ **[these clause references will need to be renumbered]**.

Clause 5.6.5A

Clause 5.6.5A is amended by replacing "basis of asset valuation determined by the AER for the purposes of clause 6.2.3" with "method of establishing the value of the regulatory asset base for *transmission systems* as set out in Subdivision 1 of Division 2 of Part A of Chapter 6".

Clause 5.6.6A(b)(2)

Clause 5.6.6A(b)(2) is amended by replacing "*Transmission Network Service Provider's revenue cap*" with "*total revenue cap* for the *Transmission Network Service Provider*".

Clause 5.6.6A(e)(2)

Clause 5.6.6A(e)(2) is amended by replacing "*Transmission Network Service Provider's revenue cap*" with "*total revenue cap* for the *Transmission Network Service Provider*".

Chapter 6

The consequential amendments to Chapter 6 are drafted by reference to the current provisions of Chapter 6 rather than those provisions as they will be renumbered.

Old Part C of Chapter 6

In the first paragraph of Part C of Chapter 6 delete "clause 6.1.1 and".

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Clause 6.3.1

The diagram in clause 6.3.1 is amended by replacing "Charges which Generators/MNSPs offer to pay for use of system under clauses 5.5(f)(2) and 5.5A(g)(2)" with "Charges agreed to be paid for use of system under clause 5.4A(f)(3)".

Clause 6.4.3A(a)

Clause 6.4.3A(a) is amended by replacing "clause 5.5(f)(2)" with "clause 5.4A(f)(3)".

[Stage 2 of the Rule review process will address the interaction of these costs with the relevant Transmission Network Service Provider's aggregate annual revenue requirement].

Clause 6.4.3B(b)

Clause 6.4.3B(b) is amended by replacing "Market Network Service Providers (as Market Network Services Providers pay negotiated use of system charges under clause 5.5A(g)(2))" with "Transmission Customers who pay negotiated use of system charges under clause 5.4A(f)(3)".

[Stage 2 of the Rule review process will address the allocation of a Transmission Network Service Provider's aggregate annual revenue requirement to connection points and the possible expansion of the reference to Transmission Customer to Transmission Network User]

Clause 6.4.3C(b)(2)

Clause 6.4.3C(b)(2) is amended by replacing "clause 5.5A(g)(2)" with "clause 5.4A(f)(3)".

[Stage 2 of the Rule review process will address the adjustment of the aggregate annual revenue requirement].

Clause 6.4.3C(b)(2a)

The following new clause 6.4.3C(b)(2a) is inserted:

"(2a) the estimated recovery, if any, from *negotiated use of system service charges* (other than those referred to in clause 6.4.3C(b)(1) and (2)) which are agreed in accordance with clause 5.4A(f)(3)."

[Stage 2 of the Rule review process will address the adjustment of the aggregate annual revenue requirement].

Clause 6.4.3C(b)(5)

Clause 6.4.3C(b)(5) is amended by substituting "*prescribed transmission services*" for "*prescribed services*".

Clause 6.4.3C(c)(3)

Clause 6.4.3C(c)(3) is amended by replacing "clause 5.5A(g)(2)" with "clause 5.4A(f)(3)(B)".

[Stage 2 of the Rule review process will address the allocation of a Transmission Network Service Provider's aggregate annual revenue requirement to connection points and the possible expansion of the reference to Transmission Customer to Transmission Network User]

Clause 6.4.5

Clause 6.4.5 is deleted and replaced with the following:

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"6.4.5 Transmission network user, Generator and Market Network Service Provider access

The costs of *transmission network user access*, *generator access* and *market network service provider access* may be recovered from each recipient of *transmission network user access*, *generator access* or *market network service provider access*, to the extent that there is provision for this in the relevant *connection agreement*."

Clause 6.4.7

Clause 6.4.7 is amended by inserting "in accordance with Division 3 of Part A" after the words "*Transmission Network User*".

Clause 6.4.8

Clause 6.4.8 is amended by inserting "clause 5.4A(f)(3) or" before "clause 5.5(f)(2)".

Clause 6.5.3(a)

Clause 6.5.3(a) is amended by deleting "of a *Generator* or a *Market Network Service Provider*" and replacing "clauses 5.5(f)(2) or 5.5A(g)(2) as applicable" with "clause 5.4A(f)(3)".

[State 2 of the Rule review process will address the treatment of access charges in the context of the relevant Transmission Network Service Provider's aggregate annual revenue requirement]

Clause 6.5.3(b)

Clause 6.5.3(b) is amended by replacing "*generator access* and *market network service provider access* charges" with "*access charges*" and "clauses 5.5(f)(4) and 5.5A(g)(3)" with "clause 5.4A(f)(4)".

Clause 6.5.8(e)

Clause 6.5.8(e) is amended by substituting "In setting the *total revenue cap* for a *Transmission Network Service Provider* for a *regulatory control period*" for "In setting a *revenue cap* to apply to a *Transmission Network Service Provider* for a *regulatory control period* in accordance with clause 6.2.4(b)" and by inserting "*total revenue cap*" for "*revenue cap*".

Clause 6.5.8(f)

Clause 6.5.8(f) is deleted.

Clause 6.5.9

Clause 6.5.9 is amended:

- (a) in paragraph (b)(2) by substituting "*negotiable*" for "*negotiated*";
- (b) in paragraphs (b)(3)(i) and (ii) by deleting ", except where the *negotiable* service is the provision of *prescribed transmission services* at *agreed reduced charges*";
- (c) in paragraph (b)(7) by deleting all the words after "provide *negotiable* services";
- (d) in paragraph (b)(9) by substituting "provision of a *negotiable* service" for "negotiated provision of a *prescribed transmission service*"; and
- (e) in paragraph (e)(2) by deleting all the words after "information to the *Transmission Network Service Provider*".

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Clause 6.7.1(b)(1)(ii)

Clause 6.7.1(b)(1)(ii) is amended by deleting "*generator*".

Old Part E of Chapter 6

In the first paragraph of Part E of Chapter 6 substitute "clause 6.23" for "clause 6.1.1".

Clause 6.14.1

Clause 6.14.1(c) is amended by inserting "or clause 5.4A(f)(3)" after "clause 5.5(f)(2)".

Schedule 6.1

Paragraph 4.2 of schedule 6.1 is amended by substituting "*network*" for "*transmission*".

Schedule 6.3

Schedule 6.3 is amended:

- (a) in the first paragraph, by replacing "*Generators or Market Network Service Providers*" with "*persons*" and by inserting "5.4A(f)(3)," before "5.5(f)(2)";
- (b) in the second paragraph by:
 - (i) replacing "*generator access charge with a Generator, or market network service provider access charge which a Market Network Service Provider, has agreed to pay the Network Service Provider*" with "*access charge which a person has agreed to pay a Transmission Network Service Provider, any generator access charge which an Embedded Generator, or market network service provider access charge which a Market Network Service Provider, has agreed to pay a Distribution Network Service Provider,*";
 - (ii) inserting "5.4A(f)(4)," before "5.5(f)(4) – (6)"; and
 - (iii) replacing "*revenue cap or price cap*" with "*total revenue cap, or revenue cap or price cap, as the case may be*"; and
- (c) by replacing the third paragraph with the following:

"The schedule does not apply to the prices agreed to be paid for *connection* charges which are otherwise payable under clauses 5.4A(f)(1), 5.5(f)(1) or 5.5A(g)(1)."

Schedule 6.3, item 1

The third paragraph in item 1 of schedule 6.3 is amended by deleting ", determined in accordance with clause 6.1".

Schedule 6.8

Paragraph 3(a) of schedule 6.8 is amended by inserting "*total*" before "*revenue cap*".

Chapter 8

Clause 8.2.1(h)(12)

The following new clause 8.2.1(h)(12) is inserted:

- "(12) a dispute to which clause 6.10.5 applies."

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Victorian derogations

Clause 9.3.1

In clause 9.3.1 the definition of "Information requirements guidelines" is amended by replacing the words opposite that expression in column 2 of the table with:

"The guidelines referred to in clause 6.12.1(c)."

Clause 9.8.1

Clause 9.8.1 is deleted.

[The only methodology that can be adopted is that set out in Subdivision 1 of Division 2 of Part A of Chapter 6 and the derogation addresses the non application of this methodology in clause 9.8.4C(a).]

Clause 9.8.3(a)

Clause 9.8.3(a) is deleted.

[This clause refers to deleted provisions of old Part B of Chapter 6.]

Clause 9.8.4

Clause 9.8.4(a)(2) is amended by replacing "Parts B and C" with "Part A".

[The application of these provisions to VENCORP will need to be further modified through amendments to clauses 9.8.4A to 9.8.4F (see below)].

Clause 9.8.4B(a)(1)

Clause 9.8.4B(a)(1) is amended by replacing "Part B of Chapter 6" with "Subdivision 1 of Division 2, and Division 4, of Part A of Chapter 6" and "Part B of that Chapter" with "Subdivision 1 of Division 2, and Division 4, of Part A of that Chapter".

Clause 9.8.4B(a)(2)

Clause 9.8.4B(a)(2) is amended:

- (a) by replacing "Part B of Chapter 6" with "Subdivision 1 of Division 2, and Division 4, of Part A of Chapter 6" and "Part B of that Chapter" with "Subdivision 1 of Division 2, and Division 4, of Part A of that Chapter";
- (b) in paragraph (ii), by replacing "a revenue cap" with "the maximum allowed revenue for a Transmission Network Service Provider for a regulatory year of a regulatory control period".

[This amendment needs to be considered in the context of the need for a recast derogation (see below)].

Clause 9.8.4C

Clause 9.8.4C(a) is amended by deleting ", and clauses 6.2.2 and 6.2.3 do not apply in respect of transmission services provided by VENCORP".

[The Victorian derogations proceed on the basis that the AER determines the transmission revenue regulatory regime (see cl.9.8.4C(a), (a1), 9.8.4C(e)(1), 9.8.4C(g2), (g3)), but this approach has been fundamentally altered by the new Rules. Given the revised Rules the Victorian derogations for VENCORP will need to be recast, eg. because a total revenue cap

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(as determined under Subdivision 1 of Division 2 of Part A) will not apply, but the VENC Corp revenue cap will need to be subject to reopening under cl.6.2.13, and because a procedure (like that in Subdivision 1 of Division 4 of Part A) may need to be applied for VENC Corp revenue cap determinations (noting that cl.9.8.4C(b) – (g4) set out certain procedural requirements). It may also be that the negotiated transmission service provisions in Division 3 of Part A should apply to VENC Corp. In this regard it is noted that the negotiating framework referred to in cl.6.5.9 does so apply, albeit in a modified form (see cl.9.8.4F(3)). Comments on these matters are particularly sought from VENC Corp.]

Clause 9.8.4C(a1)

Clause 9.8.4C(a1) is deleted and replaced with the following:

"(a1) Subdivision 1 of Division 2 of Part A of Chapter 6 does not apply in respect of transmission services provided by VENC Corp."

[see note above]

Clause 9.8.4C(e)(2)

Clause 9.8.4C(e)(2) is replaced with:

"(2) must comply with the requirements set out in clause 6.17.1(a) as if a determination under clause 9.8.4C(d) were a decision to which clause 6.17.1(a) applied."

[Whether this provision is necessary or appropriate will depend on how the Victorian derogation are recast: see above]

Clause 9.8.4D

Clause 9.8.4D is amended by:

- (a) replacing the reference in paragraph (a) to clause 6.2.5(c) with a reference to clause 6.19(d) and "clauses 6.2.2, 6.2.3 and 6.2.4" with "this Division, Subdivision 1 of Division 2 or Division 3"; and
- (b) replacing all references to clause 6.2.5 with references to clause 6.19.

Clause 9.8.4F(c)(3)(ii)(C)

Clause 9.8.4F(c)(3)(ii)(C) is amended by replacing "a revenue cap" with "the maximum allowed revenue for a Transmission Network Service Provider for a regulatory year of a regulatory control period".

[This amendment needs to be considered in the context of the need for a recast derogation (see above)].

South Australian derogations

Clause 9.28.3(c)

Clause 9.28.3(c) is deleted.

[This clause states that, when making system planning decisions or recommendations, the ESIPC:

- *is bound by the objectives and principles that are relevant to the regulation of transmission revenues; and*

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- *must have regard to the AER's Statement of Regulatory Principles.*

The objectives and principles have been deleted and the SRP has been superseded by new Subdivision 1 of Division 2 of Part A of Chapter 6, so this clause now seems to be irrelevant.]

Queensland derogations

Clause 9.32.1(b)

The reference to clause 6.2.1(d) is replaced by a reference to clause 6.1.6(b).

Clause 9.38.2

Clause 9.38.2 is deleted.

[This clause provides for regulatory control periods of not less than 3 years. However, it may need to be retained for the next Powerlink determination depending on the transitional arrangements that are to apply.]

Tasmanian derogations

Clause 9.48.2(f)

Clause 9.48.2(f) is deleted.

[This clause refers to the asset valuation provisions of deleted clause 6.2.3(d)(4)(iii).]

Chapter 10

Excluded transmission services

The definition of "excluded transmission services" is deleted.

Negotiable service

The definition of "negotiable service" is amended:

- (a) by substituting "*negotiated transmission services*" for all of the words after "means" in item 1; and
- (b) in paragraph (c) of item 2 by replacing "a *Generator*" with "an *Embedded Generator*".

Other matters

Regulations will need to be made under the National Electricity Law to:

- *provide for certain provisions of the (revised) Chapter 6 to be civil penalty provisions; and*
- *provide for a Service Applicant who is not a Registered participant to be a "relevant participant" for the purposes of clauses 6.10.4(c) and 6.10.5.*

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