



## **Draft National Electricity Amendment (Economic Regulation of Network Service Providers) Rule 2012**

under the National Electricity Law as applied by:

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

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

John Pierce  
Chairman  
Australian Energy Market Commission

## **Draft National Electricity Amendment (Economic Regulation of Network Service Providers) Rule 2012**

### **1 Title of Rule**

This Rule is the *Draft National Electricity Amendment (Economic Regulation of Network Service Providers) Rule #Year#*.

### **2 Commencement**

This Rule commences operation on [COMMENCEMENT\_DATE].

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

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

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

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

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

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

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

The National Electricity Rules are amended as set out in Schedule 4.

## **Schedule 1          Amendment to the National Electricity Rules**

### **[1] Clause 6.1.1A      Definitions**

Omit clause 6.1.1A, including the heading and substitute "[Deleted]".

### **[2] Clause 6.1.2          Structure of this Chapter**

In clause 6.1.2(b)(5) omit "procedures for making" and substitute "procedure and approach for the making of".

### **[3] Clause 6.1.2          Structure of this Chapter**

In clause 6.1.2(b)(13), omit, "and" where last occurring.

### **[4] Clause 6.1.2          Structure of this Chapter**

In clause 6.1.2(b)(14), omit "." and substitute ";and".

### **[5] Clause 6.1.2          Structure of this Chapter**

After clause 6.1.2(b)(14), insert:

(15) Part O sets out the requirements to prepare *annual benchmarking reports*.

### **[6] Insertion of “and” in the second last list item in various clauses**

In clauses 6.3.2(a)(4), 6.5.6(a)(3) and 6.5.7(a)(3), after “;” insert “and”.

### **[7] Omission of “and” in list items other than the second last list item in various clauses**

In clauses 6.4.3(a)(1) to (4), 6.4.3(b)(1)(i), 6.4.3(b)(2) to (5), 6.5.6(b)(1), 6.5.7(b)(1) and (2), 6.5.7(c)(1), 6.5.8(c)(1) to (3), 6.6.1(c)(1) to (5), 6.6.1(c)(6)(i), 6.6.1(f)(1) to (4), 6.6.1(j)(2)(ii), 6.6.1(j)(2A)(ii), 6.6.1(j)(3) to (7), 6.6.3(b)(1) to (3), 6.8.2(c)(1)(ii), 6.8.2(c)(2) to (5), 6.10.2(a)(1) to (3), 6.11.2(1), 6.11.3(b)(1), 6.12.1(19), 6.15.3(c)(1) and (2), S6.1.1(1)(iii), S6.1.3(6)(i), S6.1.3(7)(i), and S6.1.3(12)(iii), after “;” omit “and”.

### **[8] Insertion of “or” in the second last list item in various clauses**

In rule 6.13(a)(3), after “;” insert “or”.

### **[9] Reference to “service provider” in various clauses**

In clauses 6.3.2(a)(5), 6.6.2(b)(3)(v), in the note for clause 6.6.2(c) and 6.8.2(b)(1) and (2), omit “service provider” and substitute “*Distribution Network Service Provider*”.

### **[10] Reference to “provider” in various clauses**

In clauses 6.4.3(a)(4), 6.5.1(a), 6.5.5(a)(2)(ii), 6.6.1(c)(4) and (5), 6.6.1(e)(2), 6.6.1(f), 6.6.1(f)(3) to (5), 6.6.1(g) and (h), 6.6.1(j)(1) to (5) (including subparagraph (2A)), 6.6.1(j)(7) and (7A), 6.8.2(c)(1)(i), 6.9.1(a), 6.9.3(a), 6.9.3(a)(1), 6.12.1(2)(i), 6.12.1(7), 6.12.1(15), 6.12.1(21), S6.1.3(6), S6.1.3(7)(i), S6.1.3(12)(iii), S6.2.2(2), S6.2.2(4) to (6) and the paragraph that follows S6.2.2(7), omit “provider” and substitute “*Distribution Network Service Provider*”.

### **[11] Reference to “provider’s” in various clauses**

In clauses 6.6.1(e)(1), 6.6.1(j)(7), 6.8.2(a), 6.8.2(c)(1)(i), 6.12.3(d), S6.1.3(6), S6.1.3(7) and S6.1.3(11), omit “provider’s” and substitute “*Distribution Network Service Provider’s*”.

### **[12] Omission of reference “of the Rules” in various clauses**

In clauses 6.18.8(a), S6.1.1(1), S6.1.2(1), S6.1.3(7), S6.1.3(7)(ii), S6.1.3(12), S6.1.3(12)(iv) and S6.2.3(b), omit “of the *Rules*”.

### **[13] Clause 6.2.8 Guidelines**

Omit clauses 6.2.8(a) to (e), and substitute:

- (a) The *AER*:
  - (1) must make and *publish* the *Shared Asset Guidelines*, the *Capital Expenditure Incentive Guidelines*, the *Rate of Return Guidelines*, the *Distribution Confidentiality Guidelines* and the *Cost Allocation Guidelines* in accordance with this Chapter; and
  - (2) may, in accordance with the *distribution consultation procedures*, make and *publish* guidelines as to any other matters relevant to this Chapter.
- (b) A guideline may relate to a specified *Distribution Network Service Provider* or *Distribution Network Service Providers* of a specified class.
- (c) Except as otherwise provided in this Chapter, a guideline is not mandatory (and so does not bind the *AER* or anyone else) but, if the *AER* makes a distribution determination that is not in accordance with the guideline, the *AER* must state, in its reasons for the distribution determination, the reasons for departing from the guideline.
- (d) If a guideline indicates that there may be a change of regulatory approach in future distribution determinations, the guideline should

also (if practicable) indicate how transitional issues are to be dealt with.

- (e) Subject to paragraph (f), the *AER* may, from time to time and in accordance with the *distribution consultation procedures*, amend or replace a guideline.
- (f) The *AER* may make administrative or minor amendments to any guideline without complying with the *distribution consultation procedures*.
- (g) This clause 6.2.8 does not apply to the *Distribution Ring-Fencing Guidelines*.

#### **[14] Clause 6.3.1 Introduction**

In clause 6.3.1(b), omit "The procedure for making a" and substitute "The procedure and approach for the making of a".

#### **[15] Clause 6.3.1 Introduction**

In clause 6.3.1(c)(1), omit ", other relevant requirements of this Part, and Schedule 6.1; and" and substitute "and other relevant requirements of this Part;".

#### **[16] Clause 6.3.1 Introduction**

In clause 6.3.1(c)(1), omit ", and Schedule 6.1; and" and substitute ";".

#### **[17] Clause 6.3.1 Introduction**

In clause 6.3.1(c)(2), omit "." and substitute "; and".

#### **[18] Clause 6.3.1 Introduction**

After clause 6.3.1(c)(2), insert:

- (3) must be prepared in accordance with Schedule 6.1.

#### **[19] Clause 6.3.2 Contents of building block determination**

Omit clause 6.3.2(a)(3) and substitute:

- (3) how any applicable *efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme, demand management and embedded generation connection incentive scheme* or *small-scale incentive scheme* is to apply to the *Distribution Network Service Provider*;

#### **[20] Clause 6.4.3 Building block approach**

Omit clause 6.4.3(a)(5) and substitute:

- (5) the revenue increments or decrements (if any) for that year arising from the application of any *efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme, demand management and embedded generation connection incentive scheme* or *small-scale incentive scheme* – see subparagraph (b)(5);

### **[21] Clause 6.4.3 Building block approach**

After clause 6.4.3(a)(6), insert:

- (6A) the revenue decrements (if any) for that year arising from the use of assets that provide *standard control services* to provide certain other services – see subparagraph (b)(6A); and

### **[22] Clause 6.4.3 Building block approach**

Omit the notes in clauses 6.4.3(b)(2) and 6.4.3(b)(4).

### **[23] Clause 6.4.3 Building block approach**

Omit clause 6.4.3(b)(5) and substitute:

- (5) the revenue increments or decrements referred to in subparagraph (a)(5) are those that arise as a result of the operation of an applicable *efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme, demand management and embedded generation connection incentive scheme* or *small-scale incentive scheme* as referred to in clauses 6.5.8, 6.5.8A, 6.6.2, 6.6.3 and 6.6.4;

### **[24] Clause 6.4.3 Building block approach**

After clause 6.4.3(b)(6), insert:

- (6A) the revenue decrements (if any) referred to in paragraph (a)(6A) are those that are determined by the *AER* under clause 6.4.4 as a result of assets that provide *standard control services* being used to provide:
  - (i) *distribution services* that are not classified under clause 6.2.1; or
  - (ii) services that are neither *distribution services* nor services that are provided by means of, or in connection with, *dual function assets*; and

## **[25] New Clause 6.4.4 Shared assets**

After clause 6.4.3(b)(7), insert:

### **6.4.4 Shared assets**

- (a) Where an asset is used to provide both *standard control services* and either:
- (1) *distribution services* that are not classified under clause 6.2.1;  
or
  - (2) services that are neither:
    - (i) *distribution services*; nor
    - (ii) services that are provided by means of, or in connection with, *dual function assets* that are owned, operated or controlled by the *Distribution Network Service Provider*,
- the *AER* may, in a distribution determination for a *regulatory control period*, reduce the *annual revenue requirement* for that *Distribution Network Service Provider* for a *regulatory year* in that *regulatory control period* by such amount as it considers reasonable to reflect such part of the costs of that asset as the *Distribution Network Service Provider* is recovering through charging for the provision of a service referred to in subparagraph (1) or (2).
- (b) In making a decision under paragraph (a), the *AER* must have regard to the *shared asset principles* and the *Shared Asset Guidelines*.
- (c) The *shared asset principles* are as follows:
- (1) the *Distribution Network Service Provider* should be encouraged to use assets that provide *standard control services* for the provision of other kinds of services where that use is efficient and does not materially prejudice the provision of those services;
  - (2) a shared asset cost reduction should not be dependent on the *Distribution Network Service Provider* deriving a positive commercial outcome from the use of the asset other than for *standard control services*;
  - (3) a shared asset cost reduction should be applied where the use of the asset other than for *standard control services* is material;
  - (4) regard should be had to the manner in which costs have been recovered or revenues reduced in respect of the relevant asset in the past and the reasons for adopting that manner of recovery or reduction;

- (5) a shared asset cost reduction should be compatible with the *Cost Allocation Principles* and *Cost Allocation Method*; and
- (6) any reduction effected under paragraph (a) should be compatible with other incentives provided under the *Rules*.
- (d) The AER must, in accordance with the *distribution consultation procedures*, make and *publish* guidelines (the *Shared Asset Guidelines*) that set out the approach the AER proposes to take in applying the *shared asset principles* (which may include a methodology that the AER proposes to use to determine reductions for the purposes of paragraph (a)).
- (e) The AER must publish the first *Shared Asset Guidelines* by [28 June 2013], and there must be *Shared Asset Guidelines* in force at all times after that date.

#### **6.4.5 Expenditure forecast methodology**

- (a) The AER must, in accordance with the *distribution consultation procedures*, develop and *publish* a methodology for the preparation of forecasts of operating expenditure and capital expenditure that are included in *Distribution Network Service Providers' regulatory proposals* (the *standard expenditure forecasting methodology*).
- (b) Subject to paragraph (c), the AER may, from time to time and in accordance with the *distribution consultation procedures*, amend the *standard expenditure forecasting methodology*.
- (c) The AER may make administrative or minor amendments to the *standard expenditure forecasting methodology* without complying with the *distribution consultation procedures*.
- (d) The AER must *publish* the first *standard expenditure forecasting methodology* by [30 June 2013], and there must be a *standard expenditure forecasting methodology* in force at all times after that date.

#### **6.4A Capital expenditure incentive mechanisms**

- (a) The *capital expenditure incentive objective* is to ensure that, where the value of a regulatory asset base is subject to adjustment in accordance with the *Rules*, then the only capital expenditure that is included in an adjustment that increases the value of that regulatory asset base is capital expenditure that reasonably reflects the *capital expenditure criteria*.
- (b) The AER must, in accordance with the *distribution consultation procedures*, make and *publish* guidelines (the *Capital Expenditure Incentive Guidelines*) that set out:



- (1) any *capital expenditure sharing schemes* developed by the *AER* in accordance with clause 6.5.8A, and how the *AER* has taken into account the *capital expenditure sharing scheme principles* in developing those schemes;
  - (2) the manner in which it proposes to make determinations under clause 6.2.2A(a) if the *overspending requirement* is satisfied ;
  - (3) the manner in which it proposes to determine whether depreciation for establishing a regulatory asset base as at the commencement of a *regulatory control period* is to be based on actual or forecast capital expenditure;
  - (4) the manner in which it proposes to assess capital expenditure that represents a margin that is paid by a *Distribution Network Service Provider* in circumstances where the margin is referable to arrangements that, in the opinion of the *AER*, do not reflect arm's length terms; and
  - (5) how each scheme and proposal referred to in subparagraphs (1) to (4), and all of them taken together, are consistent with the *capital expenditure incentive objective*.
- (c) The *AER* must publish the first *Capital Expenditure Incentive Guidelines* by [30 August 2013], and there must be *Capital Expenditure Incentive Guidelines* in force at all times after that date.

### **[26] Clause 6.5.2      Return on capital**

In clause 6.5.2(a), omit "*regulatory control period* (calculated" and substitute "*regulatory year* that is determined".

### **[27] Clause 6.5.2      Return on capital**

In clause 6.5.2(a), after "clause 6.5.2" insert "(the *allowed rate of return*)".

### **[28] Clause 6.5.2      Return on capital**

Omit clauses 6.5.2(b) to (d), including the subheadings, and substitute:

#### **Allowed rate of return**

- (b) The *allowed rate of return* for a *Distribution Network Service Provider* must correspond to the efficient financing costs of a benchmark efficient entity with a similar degree of risk as that which applies to the *Distribution Network Service Provider* in respect of the provision of *standard control services* (the *allowed rate of return objective*).

- (c) The *allowed rate of return* for a *regulatory year* must be determined:
- (1) as a weighted average of the return on equity for the *regulatory control period* in which that *regulatory year* occurs (as estimated under paragraph (e)) and the return on debt for that *regulatory year* (as estimated under paragraph (f)) where the weights applied to compute the average reflect the relative proportions of equity and debt finance that would be employed by an efficiently financed benchmark efficient entity with a similar degree of risk as that which applies to the *Distribution Network Service Provider* in respect of the provision of *standard control services*;
  - (2) on a nominal post-tax basis that is consistent with the estimate of the value of imputation credits referred to in clause 6.5.3; and
  - (3) taking into account relevant estimation methods, financial models, market data and other evidence.
- (d) In determining the *allowed rate of return*, regard must be had to:
- (1) the desirability of using an approach that leads to the consistent application of any estimates of financial parameters that are relevant to the estimates of, and that are common to, the return on equity and the return on debt; and
  - (2) any interrelationships between estimates of financial parameters that are relevant to the estimates of the return on equity and the return on debt.

#### **Return on equity**

- (e) The return on equity for a *regulatory control period* must be estimated:
- (1) in a way that is consistent with the *allowed rate of return objective*; and
  - (2) taking into account the prevailing conditions in the market for equity funds.

#### **Return on debt**

- (f) The return on debt for a *regulatory year* must be estimated:
- (1) in a way that is consistent with the *allowed rate of return objective*; and
  - (2) using a methodology under which:

- (i) the return on debt for each *regulatory year* in the *regulatory control period* is the same; or;
  - (ii) the return on debt for a *regulatory year* (other than the first *regulatory year* in the *regulatory control period*) is estimated using a methodology which complies with paragraph (i).
- (g) Subject to paragraph (f), the methodology adopted to estimate the return on debt may, without limitation, be designed to result in the return on debt reflecting:
  - (1) the return that would be required by debt investors in a benchmark efficient entity if it raised debt at the time or shortly before the making of the distribution determination for the *regulatory control period*;
  - (2) the average return that would have been required by debt investors in a benchmark efficient entity if it raised debt over an historical period prior to the time when the distribution determination for that *regulatory control period* is made; or
  - (3) some combination of the returns referred to in subparagraphs (1) and (2).
- (h) In determining whether the return on debt for a *regulatory year* is estimated in a way that is consistent with the *allowed rate of return objective*, regard must be had to the following factors:
  - (1) the likelihood of any significant differences between the costs of servicing debt of a benchmark efficient entity referred to in subparagraph (c)(1) and the return on debt over the *regulatory control period*;
  - (2) the impact on electricity consumers, including due to any impact on the return on equity of a benchmark efficient entity referred to in subparagraph (c)(1);
  - (3) the incentive effects of inefficiently delaying or bringing forward capital expenditure; and
  - (4) the impact of changing the methodology for estimating the return on debt across *regulatory control periods*.
- (i) A methodology referred to in paragraph (f)(2)(ii) must provide for any change in the *Distribution Network Service Provider's annual revenue requirement* for the *regulatory year* that would result from a change to the *allowed rate of return* for that *regulatory year*, as a result of the return on debt for that *regulatory year* being different from that estimated under subparagraph (f), to be effected through

the automatic application of a formula that is specified in the distribution determination.

### **Rate of Return Guidelines**

- (j) The *AER* must, in accordance with the *distribution consultation procedures*, make and *publish* guidelines (the *Rate of Return Guidelines*), except that the first *Rate of Return Guidelines* must be made in accordance with paragraph (m) and not the *distribution consultation procedures*.
- (k) The *Rate of Return Guidelines* must set out:
  - (1) the methodologies that the *AER* proposes to use in estimating the *allowed rate of return*, including how those methodologies are proposed to result in the determination of a return on equity and a return on debt in a way that is consistent the *allowed rate of return objective*; and
  - (2) the estimation methods, financial models, market data and other evidence the *AER* proposes to take into account in estimating the return on equity, the return on debt and the value of imputation credits referred to in clause 6.5.3.
- (l) The *AER* must publish the first *Rate of Return Guidelines* by [29 August 2013] and there must be *Rate of Return Guidelines* in force at all times after that date.
- (m) For the purpose of making the first *Rate of Return Guidelines*, the *AER* must:
  - (1) by no later than [29 March 2013], *publish* a consultation paper that sets out its preliminary views on the material issues that are to be addressed by the *Rate of Return Guidelines*;
  - (2) *publish* an invitation for written submissions on the consultation paper, with such submissions to be made within the time specified in the invitation (which must not be earlier than 30 *business days* after the invitation for submissions is *published*);
  - (3) by no later than [31 July 2013], *publish* a draft of the *Rate of Return Guidelines*; and
  - (4) *publish* an invitation for written submissions on the draft *Rate of Return Guidelines*, with such submissions to be made within the time specified in the invitation (which must not be earlier than 30 *business days* after the invitation for submissions is *published*).

- (n) The *AER* must, in accordance with the *distribution consultation procedures*, review the *Rate of Return Guidelines*:
  - (1) at intervals not exceeding three years, with the first interval starting from the date referred to in paragraph (l); and
  - (2) at the same time as it reviews the *Rate of Return Guidelines* made under clause 6A.6.2.
- (o) For the avoidance of doubt, nothing prevents the *AER* from *publishing* the *Rate of Return Guidelines* made under this clause 6.5.2 in the same document as the *Rate of Return Guidelines* made under clause 6A.6.2.

### **[29] Clause 6.5.3 Estimated cost of corporate income tax**

Omit clause 6.5.3 and substitute:

The estimated cost of corporate income tax of a *Distribution Network Service Provider* for each *regulatory year* (**ETC<sub>t</sub>**) must be estimated in accordance with the following formula:

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

where:

ETI<sub>t</sub> is an estimate of the taxable income for that *regulatory year* that would be earned by a benchmark efficient entity as a result of the provision of *standard control services* if such an entity, rather than the *Distribution Network Service Provider*, operated the business of the *Distribution Network Service Provider*, such estimate being determined in accordance with the *post-tax revenue model*;

r<sub>t</sub> is the expected statutory income tax rate for that *regulatory year* as determined by the *AER*; and

γ is the value of imputation credits.

### **[30] Clause 6.5.4 Review of rate of return**

Omit clause 6.5.4, including the heading, and substitute "[Deleted]".

### **[31] Clause 6.5.6 Forecast operating expenditure**

In clause 6.5.6(b)(3)(ii), omit "of the" after "the forecast".

### **[32] Clause 6.5.6 Forecast operating expenditure**

In clause 6.5.6(c), after "reflects" insert "each of the following (the *operating expenditure criteria*)" .

**[33] Clause 6.5.6 Forecast operating expenditure**

In clause 6.5.6(c)(2), omit "in the circumstances of the relevant *Distribution Network Service Provider*".

**[34] Clause 6.5.6 Forecast operating expenditure**

After clause 6.5.6(c)(3), omit "(the *operating expenditure criteria*)".

**[35] Clause 6.5.6 Forecast operating expenditure**

Omit clause 6.5.6(e) and substitute:

- (e) In deciding whether or not the *AER* is satisfied as referred to in paragraph (c), the *AER* must have regard to the following (the operating expenditure factors):
  - (1) **[Deleted]**
  - (2) **[Deleted]**
  - (3) **[Deleted]**
  - (4) the most recent *annual benchmarking report* that has been *published* under rule 6.27 and the benchmark operating expenditure that would be incurred by an efficient *Distribution Network Service Provider* over the relevant *regulatory control period*;
  - (5) the actual and expected operating expenditure of the *Distribution Network Service Provider* during any preceding *regulatory control periods*;
  - (5A) the extent to which the operating expenditure forecast includes expenditure to address the concerns of electricity consumers as identified by the *Distribution Network Service Provider* in the course of its engagement with electricity consumers;
  - (6) the relative prices of operating and capital inputs;
  - (7) the substitution possibilities between operating and capital expenditure;
  - (8) whether the operating expenditure forecast is consistent with any incentive scheme or schemes that apply to the *Distribution Network Service Provider* under clauses 6.5.8 or 6.6.2 to 6.6.4;
  - (9) the extent the operating expenditure forecast is referable to arrangements with a person other than the *Distribution*

*Network Service Provider* that, in the opinion of the *AER*, do not reflect arm's length terms;

- (9A) whether the operating expenditure forecast includes an amount relating to a project that should more appropriately be included as a *contingent project* under clause 6.6A.1(b);
- (10) the extent the *Distribution Network Service Provider* has considered, and made provision for, efficient and prudent non-*network* alternatives; and
- (11) any other factor the *AER* considers relevant and which the *AER* has notified the *Distribution Network Service Provider* in writing, prior to the submission of its *regulatory proposal* under clause 6.8.2, is an *operating expenditure factor*.

### **[36] Clause 6.5.7 Forecast capital expenditure**

In clause 6.5.7(b)(4), after "forecast capital expenditure" insert "for the relevant *regulatory control period*".

### **[37] Clause 6.5.7 Forecast capital expenditure**

In clause 6.5.7(c), after "reasonably reflects" insert "each of the following (the *capital expenditure criteria*)".

### **[38] Clause 6.5.7 Forecast capital expenditure**

In clause 6.5.7(c)(2), omit "in the circumstances of the relevant *Distribution Network Service Provider*".

### **[39] Clause 6.5.7 Forecast capital expenditure**

In clause 6.5.7(c)(3), omit "(the *capital expenditure criteria*)".

### **[40] Clause 6.5.7 Forecast capital expenditure**

- (e) In deciding whether or not the *AER* is satisfied as referred to in paragraph (c), the *AER* must have regard to the following (the capital expenditure factors):
  - (1) [Deleted]
  - (2) [Deleted]
  - (3) [Deleted]
  - (4) the most recent *annual benchmarking report* that has been *published* under rule 6.27 and the benchmark capital expenditure that would be incurred by an efficient *Distribution*

*Network Service Provider* over the relevant *regulatory control period*;

- (5) the actual and expected capital expenditure of the *Distribution Network Service Provider* during any preceding *regulatory control periods*;
- (5A) the extent to which the capital expenditure forecast includes expenditure to address the concerns of electricity consumers as identified by the *Distribution Network Service Provider* in the course of its engagement with electricity consumers;
- (6) the relative prices of operating and capital inputs;
- (7) the substitution possibilities between operating and capital expenditure;
- (8) whether the capital expenditure forecast is consistent with any incentive scheme or schemes that apply to the *Distribution Network Service Provider* under clauses 6.5.8A or 6.6.2 to 6.6.4;
- (9) the extent the capital expenditure forecast is referable to arrangements with a person other than the *Distribution Network Service Provider* that, in the opinion of the *AER*, do not reflect arm's length terms;
- (9A) whether the capital expenditure forecast includes an amount relating to a project that should more appropriately be included as a *contingent project* under clause 6.6A.1(b);
- (10) the extent the *Distribution Network Service Provider* has considered, and made provision for, efficient and prudent *non-network* alternatives; and
- (11) any other factor the *AER* considers relevant and which the *AER* has notified the *Distribution Network Service Provider* in writing, prior to the submission of its *regulatory proposal* under clause 6.8.2, is a *capital expenditure factor*.

#### **Forecast capital expenditure and contingent projects**

- (f) Paragraphs (g) - (j) apply where:
  - (1) in a *regulatory control period* (the **first regulatory control period**), the *AER* determines under clause 6.6A.2(e)(1)(iii) that the likely completion date for a *contingent project* is a date which occurs in the immediately following *regulatory control period* (the **second regulatory control period**); and



- (2) there is an unspent amount of capital expenditure for that *contingent project* under paragraph (g).
- (g) A *Distribution Network Service Provider's regulatory proposal* for the second *regulatory control period* must include in the forecast of required capital expenditure referred to in paragraph (a) an amount of any unspent capital expenditure for each *contingent project* as described in subparagraph (f)(2), that equals the difference (if any) between:
- (1) the total capital expenditure for that *contingent project*, as determined by the *AER* in the first *regulatory control period* under clause 6.6A.2(e)(1)(ii); and
  - (2) the total of the capital expenditure actually incurred (or estimated capital expenditure for any part of the first *regulatory control period* for which actual capital expenditure is not available) in the first *regulatory control period* for that *contingent project*.
- (h) The *AER* must include in any forecast capital expenditure for the second *regulatory control period* which is accepted in accordance with paragraph (c) or substituted in accordance with clause 6.12.1(3)(ii) (as the case may be) the amount of any unspent capital expenditure calculated in accordance with paragraph (g).
- (i) Without limiting the requirement in paragraph (h), in deciding whether or not to accept the forecast of required capital expenditure of a *Distribution Network Service Provider* for the second *regulatory control period* in accordance with this clause 6.5.7, the *AER* must not:
- (1) assess the reasonableness of the amount of unspent capital expenditure for a *contingent project* referred to in paragraph (g) or the remaining period to which the *contingent project* applies;
  - (2) assess the reasonableness of the timing of the unspent capital expenditure within the remaining period for a *contingent project* referred to in paragraph (g) except as part of the assessment of the total forecast capital expenditure under paragraph (c); or
  - (3) take into account any amount which represents for a *contingent project* referred to in paragraph (g) the difference between:
    - (i) the amount representing the sum of the forecast capital expenditure for that *contingent project* for each year of the immediately preceding *regulatory control period* referred to in clause 6.6A.2(e)(1)(i); and

- (ii) the total capital expenditure actually incurred (or estimated capital expenditure for any part of the preceding *regulatory control period* for which actual capital expenditure is not available) in the immediately preceding *regulatory control period* for that *contingent project*.
- (j) A *regulatory proposal* in respect of the second *regulatory control period* must not include in the forecast of required capital expenditure referred to in paragraph (a) any capital expenditure for a contingent project for the first *regulatory control period*:
  - (1) to the extent that the capital expenditure was included in the amount of capital expenditure for that *contingent project* as determined in the first *regulatory control period* under clause 6.6A.2(e)(1)(i); and
  - (2) the capital expenditure actually incurred (or estimated capital expenditure for any part of the first *regulatory control period* for which actual capital expenditure is not available) in the first *regulatory control period* for that *contingent project* exceeded the capital expenditure referred to in subparagraph (1).

**[41] Clause 6.5.8      Efficiency benefit sharing scheme**

In clause 6.5.8(a), omit "a scheme" where first occurring and substitute "an incentive scheme".

**[42] Clause 6.5.8      Efficiency benefit sharing scheme**

In clause 6.5.8(b), omit "capital expenditure or".

**[43] Clause 6.5.8      Efficiency benefit sharing scheme**

In clause 6.5.8(c)(1), after "benefits to" insert "electricity".

**[44] Clause 6.5.8      Efficiency benefit sharing scheme**

In clause 6.5.8(c)(2), omit "and, if the scheme extends to capital expenditure, capital expenditure; and" and substitute ";".

**[45] New Clause 6.5.8A      Capital expenditure sharing scheme**

After clause 6.5.8(d), insert:

### 6.5.8A Capital expenditure sharing scheme

- (a) A *capital expenditure sharing scheme* is a scheme that provides *Distribution Network Service Providers* with an incentive to undertake efficient capital expenditure during a *regulatory control period*.
- (b) If the AER develops a *capital expenditure sharing scheme* in accordance with this clause, the *capital expenditure sharing scheme* must be consistent with the *capital expenditure incentive objective*.
- (c) In developing a *capital expenditure sharing scheme*, the AER must take into account the following principles (the *capital expenditure sharing scheme principles*):
  - (1) *Distribution Network Service Providers* should be rewarded for undertaking efficient capital expenditure and penalised for undertaking inefficient capital expenditure;
  - (2) the rewards and penalties should be commensurate with the efficiencies or inefficiencies in capital expenditure, but a reward for efficient capital expenditure need not correspond in amount to a penalty for the same amount of inefficient capital expenditure; and
  - (3) penalties should not be imposed on *Distribution Network Service Providers* that undertake capital expenditure in an efficient manner, in terms of both its amount and timing.
- (d) In developing a *capital expenditure sharing scheme*, the AER must also take into account:
  - (1) the interaction of the scheme with other incentives that *Distribution Network Service Providers* may have in relation to undertaking efficient operating or capital expenditure; and
  - (2) any applicable *regulatory obligations or requirements* associated with the provision of *standard control services*.
- (e) In deciding:
  - (1) whether to apply a *capital expenditure sharing scheme* to a *Distribution Network Service Provider* for a *regulatory control period*; and
  - (2) the nature and details of any *capital expenditure sharing scheme* that is to apply to a *Distribution Network Service Provider* for a *regulatory control period*,

the AER must:

- (3) make that decision in a manner that contributes to the achievement of the *capital expenditure incentive objective*; and
- (4) take into account:
  - (i) both the *capital expenditure sharing scheme principles*, and the matters referred to in paragraph (d), as they apply to the *Distribution Network Service Provider*; and
  - (ii) the circumstances of the *Distribution Network Service Provider*.

#### **[46] Clause 6.6.1 Cost pass through**

Omit clause 6.6.1(e), but not subparagraphs (1) and (2), and substitute:

- (e) Subject to paragraph (k1), if the *AER* does not make the determinations referred to in paragraph (d) within 40 *business days* from the later of the date it receives the *Distribution Network Service Provider's* statement and accompanying evidence under paragraph (c), and the date it receives any additional information required under paragraph (e1), then, on the expiry of that period, the *AER* is taken to have determined that:

#### **[47] Clause 6.6.1 Cost pass through**

After clause 6.6.1(e), insert:

- (e1) A *Distribution Network Service Provider* must provide the *AER* with such additional information as the *AER* requires for the purpose of making a determination under paragraph (d) within the time specified by the *AER* in a notice provided to the *Distribution Network Service Provider* by the *AER* for that purpose.

#### **[48] Clause 6.6.1 Cost pass through**

After clause 6.6.1(f), insert:

- (f1) If the occurrence of the *negative change event* is not notified by the *Distribution Network Service Provider* to the *AER* under paragraph (f) then, as soon as is reasonably practicable and before making a determination referred to in paragraph (g), the *AER* must notify the *Distribution Network Service Provider* of the occurrence of that *negative change event*.

#### **[49] Clause 6.6.1 Cost pass through**

After clause 6.6.1(g), insert:

(g1) Subject to paragraph (k1), if the *AER* does not make the determinations referred to in paragraph (g) within 40 *business days* from:

- (1) where the *Distribution Network Service Provider* notifies the *AER* of the occurrence of the *negative change event* under paragraph (f) - the later of the date the *AER* receives the *Distribution Network Service Provider's* statement under paragraph (f) and the date the *AER* receives any information required by the *AER* under paragraph (h); or
- (2) where the *Distribution Network Service Provider* does not notify the *AER* of the occurrence of the *negative change event* under paragraph (f) – the later of the date the *AER* notifies the *Distribution Network Service Provider* under paragraph (g1) and the date the *AER* receives any information required by the *AER* under paragraph (h),

then the *AER* is taken to have determined that the *required pass through amount* is zero.

#### **[50] Clause 6.6.1 Cost pass through**

In clause 6.6.1(j)(4), omit "*weighted average cost of capital*" and substitute "*allowed rate of return*".

#### **[51] Clause 6.6.1 Cost pass through**

In clause 6.6.1(j)(8), after "other factors" insert "that".

#### **[52] Clause 6.6.1 Cost pass through**

In clause 6.6.1(k), omit "clause 6.6.1(c) or clause 6.6.1(f)" and substitute "paragraph (c) or (f)".

#### **[53] Clause 6.6.1 Cost pass through**

After clause 6.6.1(k), insert:

- (k1) If the *AER* is satisfied that the making of a determination under paragraph (d) or (g) involves issues of such complexity or difficulty that the time limit fixed in paragraph (e) or (g1) should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the *Distribution Network Service Provider* of that extension not later than 10 *business days* before the expiry of that time limit.

- (k2) If the *AER* extends a time limit under paragraph (k1), it must make available on its website a notice of that extension as soon as is reasonably practicable.
- (k3) If the *AER* gives a written notice to the *Distribution Network Service Provider* stating that it requires information from an *Authority* in order to make a determination under paragraph (d) or (g) then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Distribution Network Service Provider* and when the *AER* receives that information from that *Authority* is to be disregarded.
- (k4) If the *AER* gives a written notice to the *Distribution Network Service Provider* stating that, in order to make a determination under paragraph (d) or (g), it requires information that it anticipates will be made publicly available by a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Distribution Network Service Provider* and when that information is made publicly available is to be disregarded.
- (k5) Where the *AER* gives a notice to the *Distribution Network Service Provider* under paragraph (k3) or (k4), it must:
  - (1) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (k3) or (k4), as the case may be, has commenced;
  - (2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (k3) or (k4), as the case may be, has ended; and
  - (3) if the information specified in that notice is required from an *Authority*, promptly request that information from the relevant *Authority*.

**[54] Clause 6.6.2      Service target performance incentive  
scheme**

In clause 6.6.2(a), omit "incentive schemes" and substitute "schemes".

**[55] Clause 6.6.2      Service target performance incentive  
scheme**

In clause 6.6.2(b)(3)(i), after "benefits to" insert "electricity".

**[56] Clause 6.6.3 Demand management and embedded generation connection incentive scheme**

In clause 6.6.3(a), omit "a demand management and embedded generation connection scheme or schemes" and substitute "an incentive scheme or schemes (*demand management and embedded generation connection incentive scheme*)".

**[57] Clause 6.6.3 Demand management and embedded generation connection incentive scheme**

In clause 6.6.3(b)(1), after "benefits to" insert "electricity".

**[58] Clause 6.6.3 Demand management and embedded generation connection incentive scheme**

In clause 6.6.3(b)(4), after "incentive schemes" insert "under clauses 6.5.8, 6.5.8A, 6.6.2 and 6.6.4".

**[59] Clause 6.6.3 Demand management and embedded generation connection incentive scheme**

Omit clause 6.6.3(d) and substitute "[Deleted]".

**[60] New Clause 6.6.4 Small-scale incentive scheme**

After clause 6.6.3, insert:

**6.6.4 Small-scale incentive scheme**

- (a) The *AER* may, in accordance with the *distribution consultation procedures*, develop and *publish* an incentive scheme or schemes (*small-scale incentive scheme*) that provides *Distribution Network Service Providers* with incentives to provide *standard control services* in a manner that contributes to the achievement of the *national electricity objective*.
- (b) In developing a *small-scale incentive scheme*, the *AER* must have regard to the following requirements:
  - (1) *Distribution Network Service Providers* should be rewarded for efficiency gains in respect of their *distribution systems*, and penalised for efficiency losses in respect of their *distribution systems*;
  - (2) the rewards and penalties should be commensurate with the efficiency gains or efficiency losses in respect of a *distribution system*, but a reward for efficiency gains need not correspond in amount to a penalty for efficiency losses;

- (3) penalties should not be imposed on *Distribution Network Service Providers* that act in an efficient manner, in terms of both the degree and timing of that action;
  - (4) the benefits to electricity consumers that are likely to result from efficiency gains in respect of a *distribution system* should warrant the rewards provided under the scheme, and the detriments to electricity consumers that are likely to result from efficiency losses in respect of a *distribution system* should warrant the penalties provided under the scheme;
  - (5) the scheme should be consistent with other incentives that *Distribution Network Service Providers* may have under the *Rules*; and
  - (6) the scheme should not be inconsistent with any applicable *regulatory obligations or requirements* associated with the provision of *standard control services*.
- (c) The *AER* may, from time to time and in accordance with the *distribution consultation procedures*, amend or replace any *small-scale incentive scheme*.
- (d) Where the *AER* applies a *small-scale incentive scheme* to a *Distribution Network Service Provider* for a *regulatory control period*:
- (1) the aggregate rewards or penalties for a *regulatory year* in that *regulatory period* that are provided or imposed under that scheme and any other *small-scale incentive schemes* that apply to that *Distribution Network Service Provider* must not exceed 0.5% of the *annual revenue requirement* for the *Distribution Network Service Provider* for that *regulatory year* unless the *Distribution Network Service Provider* consents to the contrary, in which case that aggregate must not exceed 1% of the *annual revenue requirement* for the *Distribution Network Service Provider* for that *regulatory year*; and
  - (2) the *small-scale incentive scheme* must cease to provide rewards or impose penalties in respect of a *regulatory year* after the expiry of such a period as is determined by the *AER*, being a period that is not more than two *regulatory control periods* after the commencement of that scheme.
- (e) Notwithstanding anything else contained in this clause, the *AER* may require a *Distribution Network Service Provider* to participate in a trial of a *small-scale incentive scheme* under which, for the duration of that trial, the *Distribution Network Service Provider* is not required to bear any penalty and is not entitled to earn any reward.



### 6.6.5 Reopening of distribution determination for capital expenditure

- (a) Subject to paragraph (b), a *Distribution Network Service Provider* may, during a *regulatory control period*, apply to the *AER* to revoke and substitute a distribution determination that applies to it where:
- (1) an event that is beyond the reasonable control of the *Distribution Network Service Provider* has occurred during that *regulatory control period* and the occurrence of that event during that period (or of an event of a similar kind) could not reasonably have been foreseen by the *Distribution Network Service Provider* at the time of the making of the distribution determination (**'the event'**);
  - (2) no forecast capital expenditure was accepted or substituted by the *AER* for that period under clauses 6.5.7(c) or 6.12.1(3)(ii) (as the case may be) in relation to the event that has occurred;
  - (3) the *Distribution Network Service Provider* proposes to undertake capital expenditure to rectify the adverse consequences of the event;
  - (4) the total of the capital expenditure required during the *regulatory control period* to rectify the adverse consequences of the event:
    - (i) exceeds 5% of the value of the regulatory asset base for the relevant *Distribution Network Service Provider* for the first year of the relevant *regulatory control period*;
    - (ii) is such that, if undertaken, it is reasonably likely (in the absence of any other reduction in capital expenditure) to result in the 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 substituted by the *AER* in accordance with clauses 6.5.7(c) or 6.12.1(3)(ii) (as the case may be);
  - (5) the *Distribution Network Service Provider* can demonstrate that it is not able to reduce capital expenditure in other areas to avoid the consequence referred to in subparagraph (a)(4)(ii) without materially adversely affecting the *reliability* and security of the relevant *distribution system*;
  - (6) a failure to rectify the adverse consequences of the event would be likely to materially adversely affect the *reliability* and security of the relevant *distribution system*; and
  - (7) the event is not a *pass through event* or a *contingent project*.

In this paragraph (a), a reference to an event includes a series of events or a state of affairs, which may include a greater than anticipated increase in demand.

- (b) An application referred to in paragraph (a) must not be made within 90 *business days* prior to the end of a *regulatory year*.
- (c) Following its receipt of an application made in accordance with paragraphs (a) and (b), the *AER* must:
  - (1) consult with the *Distribution 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 40 *business days* from the later of the date the *AER* receives the application and the date the *AER* receives any information required by the *AER* under paragraph (g).
- (d) The *AER* must, and must only, revoke a distribution determination following an application made in accordance with paragraphs (a) and (b) if the *AER* is satisfied of each of the matters referred to in paragraph (a).
- (e) If the *AER* revokes a distribution determination under paragraph (d), the *AER* must make a new distribution determination in substitution for the revoked determination to apply for the remainder of the *regulatory control period* for which the revoked determination was to apply.
- (f) The substituted distribution determination must only vary from the revoked distribution determination to the extent necessary:
  - (1) to adjust the forecast capital expenditure for that *regulatory control period* to accommodate the amount of such additional capital expenditure as the *AER* determines is appropriate (in which case the amount of that adjustment will be taken to be accepted by the *AER* under clause 6.5.7(c)); and
  - (2) to reflect the effect of any resultant increase in forecast capital expenditure on:
    - (i) the forecast operating expenditure for the remainder of the *regulatory control period*;
    - (ii) the *annual revenue requirement* for each *regulatory year* in the remainder of the *regulatory control period*; and
    - (iii) the X factor for each of the remaining *regulatory years* of the *regulatory control period*.

- (g) A *Distribution Network Service Provider* must provide the *AER* with such additional information as the *AER* requires for the purpose of making a decision on an application made by that *Distribution Network Service Provider* under paragraph (a) within the time specified by the *AER* in a notice provided to the *Distribution Network Service Provider* by the *AER* for that purpose.

**Extension of time limit**

- (h) If the *AER* is satisfied that the revocation and substitution of a distribution determination under paragraphs (d) and (e) involves issues of such complexity or difficulty that the time limit fixed in subparagraph (c)(2) should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the *Distribution Network Service Provider* of that extension not later than 10 *business days* before the expiry of that time limit.
- (i) If the *AER* extends the time limit under paragraph (h), it must make available on its website a notice of that extension as soon as is reasonably practicable.
- (j) If the *AER* gives a written notice to the *Distribution Network Service Provider* stating that it requires information from an *Authority* in order to make a decision on an application made by the *Distribution Network Service Provider* under paragraph (a) then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Distribution Network Service Provider* and when the *AER* receives that information from that *Authority* is to be disregarded.
- (k) If the *AER* gives a written notice to the *Distribution Network Service Provider* stating that, in order to make a decision on an application made by the *Distribution Network Service Provider* under paragraph (a), it requires information that it anticipates will be made publicly available by a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Distribution Network Service Provider* and when that information is made publicly available is to be disregarded.
- (l) Where the *AER* gives a notice to the *Distribution Network Service Provider* under paragraph (j) or (k), it must:
  - (1) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (j) or (k), as the case may be, has commenced;
  - (2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (j) or (k), as the case may be, has ended; and

- (3) if the information specified in that notice is required from an *Authority*, promptly request that information from the relevant *Authority*.

#### **Revocation and substitution of distribution determination**

- (m) If the *AER* revokes and substitutes a distribution determination under paragraph (e), that revocation and substitution must take effect from the commencement of the next *regulatory year*.

### **6.6A Contingent Projects**

#### **6.6A.1 Acceptance of a contingent project in a distribution determination**

- (a) A *regulatory proposal* may include *proposed contingent capital expenditure*, which the *Distribution Network Service Provider* considers is reasonably required for the purpose of undertaking a *proposed contingent project*.
- (b) The *AER* must determine that a *proposed contingent project* is a *contingent project* if the *AER* is satisfied that:
  - (1) the *proposed contingent project* is reasonably required to be undertaken in order to achieve any of the *capital expenditure objectives*;
  - (2) the *proposed contingent capital expenditure*:
    - (i) is not otherwise provided for (either in part or in whole) in the total of the forecast capital expenditure for the relevant *regulatory control period* which is accepted in accordance with clause 6.5.7(c) or substituted in accordance with clause 6.12.1(3)(ii) (as the case may be);
    - (ii) reasonably reflects the *capital expenditure criteria*, taking into account the *capital expenditure factors*, in the context of the *proposed contingent project* as described in the *regulatory proposal*; and
    - (iii) exceeds either the cost threshold referred to in clause 5.17.3(a)(2) (as varied in accordance with a final determination under clause 5.15.3(i)) or 5% of the value of the *annual revenue requirement* for the relevant *Distribution Network Service Provider* for the first year of the relevant *regulatory control period*, whichever is the larger amount;

- (3) the *proposed contingent project* and the *proposed contingent capital expenditure*, as described or set out in the *regulatory proposal*, and the information provided in relation to these matters, complies with the relevant requirements of any relevant *regulatory information instrument*; and
  - (4) the *trigger events* in relation to the *proposed contingent project* which are proposed by the *Distribution Network Service Provider* in its *regulatory proposal* are appropriate.
- (c) In determining whether a *trigger event* in relation to a *proposed contingent project* is appropriate for the purposes of subparagraph (b)(4), the *AER* must have regard to the need for a *trigger event*:
- (1) to be reasonably specific and capable of objective verification;
  - (2) to be a condition or event, which, if it occurs, makes the undertaking of the *proposed contingent project* reasonably necessary in order to achieve any of the *capital expenditure objectives*;
  - (3) to be a condition or event that generates increased costs or categories of costs that relate to a specific location rather than a condition or event that affects the *distribution network* as a whole;
  - (4) to be described in such terms that the occurrence of that event or condition is all that is required for the distribution determination to be amended under clause 6.6A.2; and
  - (5) to be an event or condition, the occurrence of which is probable during the *regulatory control period*, but the inclusion of capital expenditure in relation to it under clause 6.5.7 is not appropriate because:
    - (i) it is not sufficiently certain that the event or condition will occur during the *regulatory control period* or if it may occur after that *regulatory control period* or not at all; or
    - (ii) subject to the requirement to satisfy subparagraph (b)(2)(iii), the costs associated with the event or condition are not sufficiently certain.

#### **6.6A.2 Amendment of distribution determination for contingent project**

- (a) Subject to paragraph (b), a *Distribution Network Service Provider* may, during a *regulatory control period*, apply to the *AER* to amend a distribution determination that applies to that *Distribution Network*

*Service Provider* where a *trigger event* for a *contingent project* in relation to that distribution determination has occurred.

- (b) An application referred to in paragraph (a):
- (1) must not be made within 90 *business days* prior to the end of a *regulatory year*;
  - (2) subject to subparagraph (1), must be made as soon as practicable after the occurrence of the *trigger event*;
  - (3) must contain the following information:
    - (i) an explanation that substantiates the occurrence of the *trigger event*;
    - (ii) a forecast of the total capital expenditure for the *contingent project*;
    - (iii) a forecast of the capital and incremental operating expenditure, for each remaining *regulatory year* which the *Distribution Network Service Provider* considers is reasonably required for the purpose of undertaking the *contingent project*;
    - (iv) how the forecast of the total capital expenditure for the *contingent project* meets the threshold as referred to in clause 6.6A.1(b)(2)(iii);
    - (v) the intended date for commencing the *contingent project* (which must be during the *regulatory control period*);
    - (vi) the anticipated date for completing the *contingent project* (which may be after the end of the *regulatory control period*);
    - (vii) an estimate of the incremental revenue which the *Distribution Network Service Provider* considers is likely to be required to be earned in each remaining *regulatory year* of the *regulatory control period* as a result of the *contingent project* being undertaken as described in subparagraph (iii); and
  - (4) the estimate referred to in subparagraph (3)(vii) must be calculated:
    - (i) in accordance with the requirements of the *post-tax revenue model* referred to in clause 6.4.1;
    - (ii) in accordance with the requirements of the *roll forward model* referred to in clause 6.5.1(b);

- (iii) using the *allowed rate of return* for that *Distribution Network Service Provider* for the *regulatory control period* as determined in accordance with clause 6.5.2;
  - (iv) in accordance with the requirements for depreciation referred to in clause 6.5.5; and
  - (v) on the basis of the capital expenditure and incremental operating expenditure referred to in subparagraph (3)(iii).
- (c) As soon as practicable after its receipt of an application made in accordance with paragraphs (a) and (b), the *AER* must *publish* the application, together with an invitation for written submissions on the application.
- (d) The *AER* must consider any written submissions made under paragraph (c) and must make its decision on the application within 40 *business days* from the later of the date the *AER* receives the application and the date the *AER* receives any information required by the *AER* under paragraph (i). In doing so the *AER* may also take into account such other information as it considers appropriate, including any analysis (such as benchmarking) that is undertaken by it for that purpose.
- (e) If the *AER* is satisfied that the *trigger event* has occurred, and that the forecast of the total capital expenditure for the *contingent project* meets the threshold as referred to in clause 6.6A.1(b)(2)(iii), it must:
  - (1) determine:
    - (i) the amount of capital and incremental operating expenditure, for each remaining *regulatory year*, which the *AER* considers is reasonably required for the purpose of undertaking the *contingent project*;
    - (ii) the total capital expenditure which the *AER* considers is reasonably required for the purpose of undertaking the *contingent project*;
    - (iii) the likely commencement and completion dates for the *contingent project*; and
    - (iv) the incremental revenue which is likely to be required by the *Distribution Network Service Provider* in each remaining *regulatory year* as a result of the *contingent project* being undertaken as described in subparagraphs (i) and (ii), such estimate being calculated in accordance with subparagraph (2);
  - (2) calculate the estimate referred to in subparagraph (1)(iv):

- (i) on the basis of the capital expenditure and incremental operating expenditure referred to in subparagraph (1)(i); and
  - (ii) otherwise in accordance with subparagraph (b)(4); and
- (3) amend the distribution determination in accordance with paragraph (h).
- (f) In making the determinations referred to in subparagraph (e)(1), the *AER* must accept the relevant amounts and dates, contained in the *Distribution Network Service Provider's* application, as referred to in subparagraph (b)(3)(ii) to (vii), if the *AER* is satisfied that:
  - (1) the forecast of the total capital expenditure for the *contingent project* meets the threshold as referred to in clause 6.6A.1(b)(2)(iii);
  - (2) the amounts of forecast capital expenditure and incremental operating expenditure reasonably reflect the *capital expenditure criteria* and the *operating expenditure criteria*, taking into account the *capital expenditure factors* and the *operating expenditure factors* respectively, in the context of the *contingent project*;
  - (3) the estimates of incremental revenue are reasonable; and
  - (4) the dates are reasonable.
- (g) In making the determinations referred to in subparagraph (e)(1) and paragraph (f), the *AER* must have regard to:
  - (1) the information included in or accompanying the application;
  - (2) submissions received in the course of consulting on the application;
  - (3) such analysis as is undertaken by or for the *AER*;
  - (4) the expenditure that would be incurred in respect of a *contingent project* by an efficient and prudent *Distribution Network Service Provider* in the circumstances of the *Distribution Network Service Provider*;
  - (5) the actual and expected capital expenditure of the *Distribution Network Service Provider* for *contingent projects* during any preceding *regulatory control periods*;
  - (6) the extent to which the forecast capital expenditure for the *contingent project* is referable to arrangements with a person



- other than the *Distribution Network Service Provider* that, in the opinion of the *AER*, do not reflect arm's length terms;
- (7) the relative prices of operating and capital inputs in relation to the *contingent project*;
  - (8) the substitution possibilities between operating and capital expenditure in relation to the *contingent project*; and
  - (9) whether the capital and operating expenditure forecasts for the *contingent project* are consistent with any incentive scheme or schemes that apply to the *Distribution Network Service Provider* under clauses 6.5.8, 6.5.8A or 6.6.2 to 6.6.4.
- (h) Amendments to a distribution determination referred to in subparagraph (e)(3) must only vary the determination to the extent necessary:
- (1) to adjust the forecast capital expenditure for that *regulatory control period* to accommodate the amount of capital expenditure determined under subparagraph (e)(1)(i) (in which case the amount of that adjustment will be taken to be accepted by the *AER* under clause 6.5.7(c));
  - (2) to adjust the forecast operating expenditure for that regulatory control period to accommodate the amount of incremental operating expenditure determined under subparagraph (e)(1)(i) (in which case the amount of that adjustment will be taken to be accepted by the *AER* under clause 6.5.6(c));
  - (3) to reflect the effect of any resultant increase in forecast capital and operating expenditure on:
    - (i) the *annual revenue requirement* for each *regulatory year* in the remainder of the *regulatory control period*; and
    - (ii) the X factor for each *regulatory year* in the remainder of the *regulatory control period*.
- (i) A *Distribution Network Service Provider* must provide the *AER* with such additional information as the *AER* requires for the purpose of making a decision on an application made by that *Distribution Network Service Provider* under paragraph (a) within the time specified by the *AER* in a notice provided to the *Distribution Network Service Provider* by the *AER* for that purpose.

#### **Extension of time limit**

- (j) If the *AER* is satisfied that amending a distribution determination under subparagraphs (e)(3) and (h) involves issues of such complexity or difficulty that the time limit fixed in paragraph (d) should be extended, the *AER* may extend that time limit by a further

period of up to 60 *business days*, provided that it gives written notice to the *Distribution Network Service Provider* of that extension no later than 10 *business days* before the expiry of that time limit.

- (k) If the *AER* extends the time limit under paragraph (j), it must make available on its website a notice of that extension as soon as is reasonably practicable.
- (l) If the *AER* gives a written notice to the *Distribution Network Service Provider* stating that it requires information from an *Authority* in order to make a decision on an application made by the *Distribution Network Service Provider* under paragraph (a) then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Distribution Network Service Provider* and when the *AER* receives that information from that *Authority* is to be disregarded.
- (m) If the *AER* gives a written notice to the *Distribution Network Service Provider* stating that, in order to make a decision on an application made by the *Distribution Network Service Provider* under paragraph (a), it requires information from a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Distribution Network Service Provider* and when that information is made publicly available is to be disregarded.
- (n) Where the *AER* gives a notice to the *Distribution Network Service Provider* under paragraph (l) or (m), it must:
  - (1) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (l) or (m), as the case may be, has commenced;
  - (2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (l) or (m), as the case may be, has ended; and
  - (3) if the information specified in that notice is required from an *Authority*, promptly request that information from the relevant *Authority*.

#### **Amendment of distribution determination**

- (o) If the *AER* amends a distribution determination under paragraph (h), that amendment must take effect from the commencement of the next *regulatory year*.

### **[61] Clause 6.8.1      AER's framework and approach paper**

Omit clauses 6.8.1(a) to (h) and substitute:

- (a) The *AER* must make and *publish* a document (a *framework and approach paper*) that applies in respect of a distribution determination for a matter listed in paragraph (b) in accordance with this clause if:
  - (1) there is no *framework and approach paper* that applies in respect of that distribution determination for that matter; or
  - (2) there is a *framework and approach paper* that would apply in respect of that distribution determination for that matter, but the *AER* considers it necessary or desirable to make and *publish* an amended or replacement *framework and approach paper* in so far as it relates to that matter.
- (b) A *framework and approach paper* that applies in respect of a distribution determination must set out:
  - (1) the *AER's* decision (together with its reasons for the decision), for the purposes of the forthcoming distribution determination, on the following matters:
    - (i) the form (or forms) of the control mechanisms;
    - (ii) as to whether or not Part J of Chapter 6A is to be applied to determine the pricing of *transmission standard control services* provided by any *dual function assets* owned, controlled or operated by the *Distribution Network Service Provider*;

**Note:**

See cl.6.25(6).

- (2) the *AER's* proposed approach (together with its reasons for the proposed approach), in the forthcoming distribution determination, to the following matters:
  - (i) the classification of *distribution services* under this Chapter;
  - (ii) the formulae that give effect to the control mechanisms referred to in subparagraph (1)(i);
  - (iii) the application to the *Distribution Network Service Provider* of any *service target performance incentive scheme*;
  - (iv) the application to the *Distribution Network Service Provider* of any *efficiency benefit sharing scheme*;

- (v) the application to the *Distribution Network Service Provider* of any *capital expenditure sharing scheme*;
  - (vi) the application to the *Distribution Network Service Provider* of any *demand management and embedded generation connection incentive scheme*;
  - (vii) the application to the *Distribution Network Service Provider* of any *small-scale incentive scheme*; and
  - (viii) the methodology that is to be used for the preparation of forecasts of operating expenditure and capital expenditure that are to be included in the *Distribution Network Service Provider's regulatory proposal*, which may be the *standard expenditure forecasting methodology* or some different methodology.
- (c) If there is a *framework and approach paper* that would apply in respect of the distribution determination for a matter listed in paragraph (b) then, no later than 32 months before the end of the *regulatory control period* that precedes that for which the distribution determination is to be made, the *AER* must *publish* a notice inviting submissions on whether it is necessary or desirable to amend or replace that *framework and approach paper* in so far as it relates to that matter.
- (d) If there is a *framework and approach paper* that would apply in respect of the distribution determination for a matter listed in paragraph (b) and the *AER* considers that it may be necessary or desirable to make an amended or replacement *framework and approach paper* that applies in respect of that matter, then, no later than 31 months before the end of the *regulatory control period* that precedes that for which the distribution determination is to be made, the *AER* must:
- (1) make and *publish* its decision that effect; and
  - (2) give its reasons for that decision.
- (d1) In making a decision under paragraph (d), the *AER* must have regard to any submissions made in response to the invitation under paragraph (c).
- (e) Where paragraph (a) applies then, at least 25 months before the end of the current *regulatory control period*, the *AER* must, after consulting with the relevant *Distribution Network Service Provider* and other persons as the *AER* considers appropriate, make, amend or replace the *framework and approach paper*, as the case may be, and:

(1) give a copy of it to the relevant *Distribution Network Service Provider*; and

(2) *publish* it,

as soon as is reasonably practicable.

(f) Subject to clauses 6.12.3 and 6.25(d), a *framework and approach paper* is not binding on the AER or a *Distribution Network Service Provider*.

(g) The AER may make and *publish* a *framework and approach paper* that applies in respect of a distribution determination for a matter that is not listed in paragraph (b) and, if it does so, this clause 6.8.1 applies as if that matter were listed in paragraph (b).

### **[62] Clause 6.8.2 Submission of regulatory proposal**

In clause 6.8.2(b)(1), omit "13 months" and substitute "19 months".

### **[63] Clause 6.8.2 Submission of regulatory proposal**

Omit clause 6.8.2(c)(6) and substitute:

(6) an identification of any parts of the *regulatory proposal* the *Distribution Network Service Provider* claims to be confidential and wants suppressed from publication on that ground including, for each such part, a classification of the information in that part in accordance with the *Distribution Confidentiality Guidelines*.

#### **Note:**

Additional information that must be included in a *regulatory proposal* is referred to in clause 6.3.1(c) and Schedule 6.1.

### **[64] Clause 6.8.2 Submission of regulatory proposal**

After clause 6.8.2(c), insert:

(c1) The *regulatory proposal* must be accompanied by an overview paper which includes each of the following matters:

(1) a summary of the *regulatory proposal* the purpose of which is to explain the *regulatory proposal* in reasonably plain language to electricity consumers;

(2) a description of how the *Distribution Network Service Provider* has engaged with electricity consumers and has sought to address any relevant concerns identified as a result of that engagement;

- (3) a description of the key risks and benefits of the *regulatory proposal* for electricity consumers; and
- (4) a comparison of the *Distribution Network Service Provider's* proposed *total revenue requirement* with its *total revenue requirement* for the current *regulatory control period* and an explanation for any material differences between the two amounts.

### **[65] Clause 6.9.1 Preliminary examination**

In clause 6.9.1(b), after "*regulatory proposal*" insert "(or the accompanying information)".

### **[66] Clause 6.9.2 Resubmission of proposal**

In clauses 6.9.2(a) and 6.9.2(b) after "*regulatory proposal*" insert "(or the accompanying information)".

### **[67] New Clause 6.9.2A Confidential Information**

After clause 6.9.2 insert:

#### **6.9.2A Confidential information**

If the *Distribution Network Service Provider* has identified any part of the *regulatory proposal* as submitted or resubmitted to the *AER* (as the case may be) under this Part to be confidential, the *AER* must, as soon as is reasonably practicable, include on its website a notice that sets out:

- (a) the fact that the *regulatory proposal* contains information over which a claim of confidentiality has been made;
- (b) the proportion of material in the *regulatory proposal* that is subject to any claim of confidentiality compared to that which is not subject to any such claim; and
- (c) the comparative proportion of material in the *regulatory proposal* that is subject to any claim of confidentiality compared to that which is subject to claims of confidentiality in the *regulatory proposals* of other *Distribution Network Service Providers*.

### **[68] Clause 6.9.3 Consultation**

In clause 6.9.3(a), after "resubmitted to it" insert "(as the case may be)".

### **[69] Clause 6.9.3 Consultation**

Omit clauses 6.9.3(b) and 6.9.3(c) and substitute:

- (b) The *AER* must *publish*:
  - (1) an issues paper not more than 40 *business days* after the submission, under clause 6.8.2, of the *regulatory proposal*;
  - (2) an invitation for written submissions on the issues paper; and
  - (3) an invitation to attend a public forum on the issues paper.
- (b1) The issues paper referred to in paragraph (b) must identify preliminary issues, whether or not arising out of the *regulatory proposal*, that the *AER* considers are likely to be relevant to its assessment of the *regulatory proposal* (however, nothing in this clause is to be taken as precluding the *AER* from considering other issues in making a distribution determination for the *Distribution Network Service Provider*).
- (b2) The *AER* must hold a public forum on the issues paper not more than 20 *business days* after the *publication* of the issues paper.
- (c) Any person may make a written submission to the *AER* on the *regulatory proposal*, the proposed *Negotiated Distribution Service Criteria* or the issues paper within the time specified in the invitations referred to in paragraphs (a)(2) and (b), which in each case must be not earlier than 60 *business days* after the *publication* of the issues paper.

### **[70] Clause 6.10.1 Making of draft distribution determination**

In clause 6.10.1 omit the paragraph and substitute:

- (a) The *AER* must make a draft distribution determination in relation to the *Distribution Network Service Provider*.
- (b) In making a draft distribution determination in relation to the *Distribution Network Service Provider*, and subject to clause 6.14, the *AER* must have regard to each of the following:
  - (1) the information included in or accompanying the *regulatory proposal*;
  - (2) written submissions on the issues paper received under clause 6.9.3, the *regulatory proposal* and the proposed *Negotiated Distribution Service Criteria*; and
  - (3) any analysis undertaken by or for the *AER* that is *published* prior to the making of the draft distribution determination or as part of the draft distribution determination.

**[71] Clause 6.10.2 Publication of draft determination and consultation**

In clause 6.10.2(a), after "The *AER* must", insert ", as soon as practicable after the relevant date referred to in clause 6.8.2(b),"

**[72] Clause 6.10.2 Publication of draft determination and consultation**

Omit clause 6.10.2(b) and substitute:

- (b) The *AER* must hold the predetermination conference at the time, date and place specified in the notice under subparagraph (a)(4) for the purpose of explaining the draft distribution determination.

**[73] Clause 6.10.2 Publication of draft determination and consultation**

In clause 6.10.2(c), omit "30 *business days*" and substitute "40 *business days*"

**[74] Clause 6.10.2 Publication of draft determination and consultation**

In clause 6.10.3(a) omit "30 *business days*" and substitute "45 *business days*"

**[75] Clause 6.10.3 Submission of revised proposal**

In clause 6.10.3(c), after "*regulatory information instrument*" insert "or the *Rules*."

**[76] Clause 6.10.3 Submission of revised proposal**

After 6.10.3(c) insert:

- (c1) If the *Distribution Network Service Provider* has identified any part of the revised *regulatory proposal* to the *AER* under this Part to be confidential, the *AER* must, as soon as is reasonably practicable, make available on its website a notice that sets out:
  - (1) the fact that the revised *regulatory proposal* contains information over which a claim of confidentiality has been made;
  - (2) the proportion of material in the revised *regulatory proposal* that is subject to any claim of confidentiality compared to that which is not subject to any such claim; and
  - (3) the comparative proportion of material in the revised *regulatory proposal* that is subject to any claim of confidentiality compared to that which is subject to claims of



confidentiality in the revised *regulatory proposals* of other  
*Distribution Network Service Providers*.

### **[77] Clause 6.10.3 Submission of revised proposal**

In clause 6.10.3(e), omit ", but need not,".

### **[78] New Clause 6.10.4 Submissions on specified matters**

After clause 6.10.3(e) insert:

#### **6.10.4 Submissions on specified matters**

If the *AER* invites submissions on a revised *regulatory proposal* under clause 6.10.3(e), the *AER* may invite further written submissions on the submissions received under clause 6.10.2(c) or 6.10.3(e) by *publishing* an invitation which specifies:

- (a) the matters in respect of which submissions are invited; and
- (b) the time for making submissions, which must not be earlier than 15 *business days* after the date on which the invitation was *published*.

### **[79] Clause 6.11.1 Making of distribution determination**

In clause 6.11.1 omit the paragraph and substitute:

- (a) The *AER* must make a distribution determination in relation to the *Distribution Network Service Provider*.
- (b) In making a distribution determination in relation to the *Distribution Network Service Provider*, and subject to rule 6.14, the *AER* must have regard to each of the following:
  - (1) the information included in or accompanying the *regulatory proposal*;
  - (2) written submissions received under this Part E; and
  - (3) any analysis undertaken by or for the *AER* that is *published* prior to the making of the distribution determination or as part of the distribution determination.
- (c) The *AER* must use its best endeavours to *publish*, a reasonable time prior to the making of the distribution determination, any analysis undertaken by or for it on which it proposes to rely, or to which it proposes to refer, for the purposes of the distribution determination.

### **6.11.1A Out of scope revised regulatory proposal or late submissions**

On or before making a distribution determination, the *AER* must make available on its website:

- (a) a summary of any revisions to the relevant *regulatory proposal* that have been made in a revised *regulatory proposal* that do not comply with clause 6.10.3(b), together with an indication of the amount of that information;
- (b) a summary of any submissions on the draft distribution determination or revised *regulatory proposal* that were made by the *Distribution Network Service Provider* and that contain information that the *Distribution Network Service Provider* was entitled to incorporate in the revised *regulatory proposal* under clause 6.10.3(b), together with an indication of the amount of that information;
- (c) a summary of any submissions that purport to be made by the *Distribution Network Service Provider* under clause 6.10.4 but are in respect of matters other than those specified by the *AER* under that clause, together with an indication of the length of those submissions; and
- (d) a summary of any submissions on the draft determination or revised *regulatory proposal* that were made by the *Distribution Network Service Provider* after the time for making the submissions has expired, together with an indication of the length of those submissions. For the purpose of this clause 6.11.1A, revisions or submissions may be summarised by cross-referencing to the relevant *regulatory proposal* or submissions.

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

Omit clause 6.12.1(5) and substitute:

- (4A) a decision in which the *AER* determines:
  - (i) whether each of the *proposed contingent projects* (if any) described in the current *regulatory proposal* are *contingent projects* for the purposes of the distribution determination in which case the decision must clearly identify each of those *contingent projects*;
  - (ii) the capital expenditure that it is satisfied reasonably reflects the *capital expenditure criteria*, taking into account the *capital expenditure factors*, in the context of each *contingent project* as described in the current *regulatory proposal*;

- (iii) the *trigger events* in relation to each *contingent project* (in which case the decision must clearly specify those *trigger events*); and
  - (iv) if the *AER* determines that such a *proposed contingent project* is not a *contingent project* for the purposes of the distribution determination, its reasons for that conclusion, having regard to the requirements of clause 6.6A.1(b);
- (5) a decision on the *allowed rate of return* for each *regulatory year* of the *regulatory control period* in accordance with clause 6.5.2;
- (5A) a decision on whether the return on debt for a *regulatory year* of the *regulatory control period* is not to be determined using a methodology referred to in clause 6.5.2(f)(2) and, if that is the case, the formula that is to be applied in accordance with clause 6.5.2(h);
- (5B) a decision on the value of imputation credits as referred to in clause 6.5.3;

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

In clause 6.12.1 (7), omit "and, where relevant, a *statement of regulatory intent* under clause 6.5.4".

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

Omit clause 6.12.1(9) and substitute:

- (9) a decision on how any applicable *efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme, demand management and embedded generation connection incentive scheme* or *small-scale incentive scheme* is to apply to the *Distribution Network Service Provider*;

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

Omit clauses 6.12.1(11) and 6.12.1(12) and substitute :

- (11) a decision on the form of the control mechanisms (including the X factor) for *standard control services* and on the formulae that give effect to those control mechanisms (to be in accordance with the relevant *framework and approach paper*);
- (12) a decision on the form of the control mechanisms for *alternative control services* and on the formulae that give

effect to those control mechanisms (to be in accordance with the relevant *framework and approach paper*);

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

After clause 6.12.1(18) insert the following note:

**Note:**

See clause S6.2.2B

### **[85] Clause 6.12.2 Reasons for decisions**

in clause 6.12.2, omit the paragraph including subparagraphs (1) to (4) and substitute:

- (a) The reasons given by the *AER* for a draft distribution determination under rule 6.10 or a final distribution determination under rule 6.11 must set out the basis and rationale of the determination, including:
  - (1) details of the qualitative and quantitative methods applied in any calculations and formulae made or used by the *AER*;
  - (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 *Distribution Network Service Provider's* current building block proposal; 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; 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 this Chapter 6, for the purposes of the determination, such reasons being expressed by reference to the requirements relating to such decisions, approvals or discretions as are contained in this Chapter.
- (b) The *AER* must include in its reasons for a draft distribution determination under rule 6.10 or a final distribution determination under rule 6.11 a statement, with supporting reasons, as to the extent to which the roll forward of the regulatory asset base as determined under clause 6.12.1(6) contributes to the achievement of the *capital expenditure incentive objective*.

### **[86] Clause 6.12.3 Extent of AER's discretion in making distribution determinations**

Omit clause 6.12.3(b) and substitute:

- (b) The classification of *distribution services* must be as set out in the relevant *framework and approach paper* unless the *AER* considers that unforeseen circumstances justify departing from the classification as set out in that paper.

**[87] Clause 6.12.3      Extent of AER's discretion in making distribution determinations**

Omit clause 6.12.3(c) and substitute:

- (c) The form of the control mechanisms must be as set out in the relevant *framework and approach paper*.
- (c1) The formulae that give effect to the control mechanisms referred to in paragraph (c) must be as set out in the relevant *framework and approach paper* unless the *AER* considers that unforeseen circumstances justify departing from the formulae as set out in that paper

**[88] Clause 6.12.3      Extent of AER's discretion in making distribution determinations**

In clause 6.12.3(f), after "6.12.1" insert "(other than those amounts or values referred to in clauses 6.12.1(3)(ii), 6.12.1(4)(ii) or 6.12.1(5))".

**[89] Rule 6.13              Revocation and substitution of distribution determination for wrong information or error**

In rule 6.13(a), after "*AER* that the" insert "distribution".

**[90] Rule 6.13              Revocation and substitution of distribution determination for wrong information or error**

In rule 6.13(b), insert "distribution" after "revoked" wherever occurring.

**[91] Rule 6.13              Revocation and substitution of distribution determination for wrong information or error**

Omit rule 6.13(c) and substitute:

- (c) If the *AER* revokes and substitutes a distribution determination under paragraphs (a) and (b), the substituted distribution determination must only vary from the revoked distribution determination to the extent necessary to correct the relevant error or deficiency.

**[92] Rule 6.14              Miscellaneous**

In rule 6.14(c) omit "referred to in clause 6.9.3(a)(2) or 6.10.2(a)(5)" and substitute "for submissions that is made under this Chapter".

### **[93] New Rule 6.14A Distribution Confidentiality Guidelines**

After rule 6.14 insert:

#### **6.14A Distribution Confidentiality Guidelines**

- (a) The *AER* must, in accordance with the *distribution consultation procedures*, make and *publish* guidelines (*Distribution Confidentiality Guidelines*).
- (b) The *Distribution Confidentiality Guidelines* must specify the manner in which the *Distribution Network Service Provider* may make confidentiality claims in its *regulatory proposal*, which may include categories of confidential information by reference to which *Distribution Network Service Providers* must classify any claims of confidentiality in their *regulatory proposals*.
- (c) The *AER* must make the first *Distribution Confidentiality Guidelines* by [30 June 2013], and there must be *Distribution Confidentiality Guidelines* in force at all times after that date.
- (d) The *Distribution Confidentiality Guidelines* are binding on the *AER* and each *Distribution Network Service Provider* to which they apply.

#### **[94] Clause 6.15.3 Cost Allocation Guidelines**

In clause 6.15.3(a), after "make" insert "and *publish*".

#### **[95] Clause 6.15.3 Cost Allocation Guidelines**

Omit clause 6.15.3(b) and substitute:

- (b) The *Cost Allocation Guidelines* must give effect to and be consistent with the *Cost Allocation Principles*.

#### **[96] Clause 6.15.3 Cost Allocation Guidelines**

Omit clause 6.15.3(d) and substitute:

- (d) *Cost Allocation Guidelines* are binding on the *AER* and each *Distribution Network Service Provider* to which they apply.

#### **[97] Clause 6.15.3 Cost Allocation Guidelines**

In clause 6.15.3(e), omit ", in accordance with the *distribution consultation procedures*, develop and".

### **[98] Clause 6.15.3 Cost Allocation Guidelines**

In clause 6.15.3(e), omit "available" and substitute "in force".

### **[99] Rule 6.16 Distribution consultation procedures**

Omit rule 6.16(b) and substitute:

- (b) If the *AER* is required to comply with the *distribution consultation procedures* in preparing, making, developing, reviewing, amending or replacing any guidelines, methodologies, models, schemes, or tests, it must *publish*:
  - (1) the proposed guideline, methodology, model, scheme, test or amendment;
  - (2) an explanatory statement that sets out the provision of the *Rules* under or for the purposes of which the guideline, methodology, model, scheme, test or amendment is proposed to be prepared, made or developed or is required to be reviewed, and the reasons for the proposed guideline, methodology, model, scheme, test or amendment; and
  - (3) an invitation for written submissions on the proposed guideline, methodology, model, scheme, test or amendment, or the review, (as the case may be).

### **[100] Rule 6.16 Distribution consultation procedures**

Omit rules 6.16(d) and (e), and substitute:

- (d) The *AER* may *publish* such issues, consultation and discussion papers, and hold such conferences and information sessions, in relation to the proposed guideline, methodology, model, scheme, test or amendment, or the review, as it considers appropriate.
- (e) Within 80 *business days* of *publishing* the documents referred to in paragraph (b), the *AER* must *publish*:
  - (1) its final decision on the guideline, methodology, model, scheme, test, amendment or review that sets out:
    - (i) the guideline, methodology, model, scheme, test or amendment (if any);
    - (ii) the provision of the *Rules* under which or for the purposes of which the guideline, methodology, model, scheme, test or amendment is being prepared, made or developed or is being reviewed;

- (iii) the reasons for the guideline, methodology, model, scheme, test or amendment; and
  - (iv) the reasons for the outcome of any review; and
- (2) notice of the making of the final decision on the guideline, methodology, model, scheme, test, amendment or review.

**[101] Rule 6.16 Distribution consultation procedures**

In rule 6.16(f), after "paragraph (e)(1)(iii)" insert "or (iv)".

**[102] Rule 6.16 Distribution consultation procedures**

Omit rule 6.16(g)(1) and substitute:

- (1) the consultation involves issues of unusual complexity or difficulty.

**[103] Clause 6.18.4 Principles governing assignment or re-assignment of customers to tariff classes and assessment and review of basis of charging**

In clause 6.18.4(a)(1)(iii), omit "customer's" and substitute "*retail customer's*".

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

In clause 6.18.6(d)(3), omit "." and substitute "; and".

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

After clause 6.18.6(d)(3), insert:

- (4) the recovery of revenue to accommodate any increase in the *Distribution Network Service Provider's annual revenue requirement* by virtue of an application of a formula referred to in clause 6.5.2(h).

**[106] Clause 6.18.7 Recovery of designated pricing proposal charges**

In clauses 6.18.7(c)(3) and 6.18.7A(c)(3), before "*rate of return*" insert "*allowed*".



**[107] Clause 6.18.7 Recovery of designated pricing proposal charges**

In clause 6.18.7A(c)(3), before "*rate of return*" insert "*allowed*" wherever occurring.

**[108] Rule 6.25 AER determination of applicable pricing regime for Dual Function Assets**

In rule 6.25(a), omit "24 months" and substitute "33 months" where first occurring.

**[109] Rule 6.25 AER determination of applicable pricing regime for Dual Function Assets**

In rule 6.25(a), omit "24 months" and substitute "36 months" where lastly occurring .

**[110] Rule 6.25 AER determination of applicable pricing regimes for Dual Function Assets**

Omit rule 6.25(b) and substitute:

- (b) The *AER* must review the information provided under paragraph (a) and determine, in accordance with clause 6.8.1, whether the value of that *Distribution Network Service Provider's dual function assets* which provide *transmission standard control services* comprise such a material proportion of that *Distribution Network Service Provider's* regulatory asset base that pricing in respect of those services should be regulated under Part J of Chapter 6A through the application of rule 6.26.

**[111] Rule 6.25 AER determination of applicable pricing regimes for Dual Function Assets**

Omit rule 6.25(d) and substitute:

- (d) The *AER's* determination under paragraph (b), which is binding, must be included in a *framework and approach paper* that applies in respect of the distribution determination for the next *regulatory control period*.

**[112] New Rule 6.27 Annual Benchmarking Report**

After rule 6.26(e), insert:

**Part O Annual Benchmarking Report**

**6.27 Annual Benchmarking Report**

- (a) The *AER* must prepare and *publish a network service provider performance report* (an *annual benchmarking report*) the purpose of

which is to describe, in reasonably plain language, the relative efficiency of each *Distribution Network Service Provider* in providing *direct control services* over a 12 month period.

- (b) Clause 8.7.4 (excluding clause 8.7.4(a)) applies in respect of the preparation of an *annual benchmarking report*.
- (c) The *AER* must *publish* an *annual benchmarking report* at least every 12 months, with the first report being *published* no later than 24 months after the commencement of the National Electricity Amendment (Economic Regulation of Network Service Providers) Rule 2012.

**[113] Clause S6.1.1 Information and matters relating to capital expenditure**

Omit clause S6.1.1(2) and substitute:

- (2) the methodology used to prepare the capital expenditure forecast – while different methodologies may be used to prepare different forecasts as referred to in paragraph (1), at least one of those methodologies must be the methodology that is specified in a *framework and approach paper* that applies in respect of the forthcoming distribution determination;

**[114] Clause S6.1.1 Information and matters relating to capital expenditure**

In clause S6.1.1(4), omit "forecast" and substitute "forecasts".

**[115] Clause S6.1.1 Information and matters relating to capital expenditure**

Omit clause S6.1.1(6) and substitute:

- (6) capital expenditure for each of the past *regulatory years* of the previous and current *regulatory control period*, and the expected capital expenditure for each of the last two *regulatory years* of the current *regulatory control period*, categorised in the same way as for the relevant capital expenditure forecast and separately identifying for each such *regulatory year*:
  - (i) margins paid or expected to be paid by the *Distribution Network Service Provider* in circumstances where those margins are referable to arrangements that do not reflect arm's length terms; and

- (ii) operating expenditure that has been capitalised otherwise than in accordance with the policy submitted in accordance with paragraph (8) for that *regulatory year*;

**[116] Clause S6.1.1 Information and matters relating to capital expenditure**

In clause S6.1.1(7), omit "." and insert "; and".

**[117] Clause S6.1.1 Information and matters relating to capital expenditure**

After clause S6.1.1(7), insert:

- (8) the policy that the *Distribution Network Service Provider* applies in capitalising operating expenditure.

**[118] Clause S6.1.2 Information and matters relating to operating expenditure**

Omit clause S6.1.2(2) and substitute:

- (2) the methodology used to prepare the operating expenditure forecast – while different methodologies may be used to prepare different forecasts as referred to in paragraph (1), at least one of those methodologies must be the methodology that is specified in a *framework and approach paper* that applies in respect of the forthcoming distribution determination;

**[119] Clause S6.1.2 Information and matters relating to operating expenditure**

In clauses S6.1.2(3) and S6.1.2(5), omit "forecast" and substitute "forecasts".

**[120] Clause S6.1.2 Information and matters relating to operating expenditure**

In clause S6.1.2(4), omit "method" and substitute "methodology".

**[121] Clause S6.1.2 Information and matters relating to operating expenditure**

In clause S6.1.2(7), omit "operating expenditure forecast" and substitute "relevant operating expenditure forecast".

**[122] Clause S6.1.3 Additional information and matters**

Omit clauses S6.1.3(3) to (5) and substitute:

- (3) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes any *efficiency benefit sharing scheme* that has been specified in a *framework and approach paper* that applies in respect of the forthcoming distribution determination should apply to it;
- (3A) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes any *capital expenditure sharing scheme* that has been specified in a *framework and approach paper* that applies in respect of the forthcoming distribution determination should apply to it;
- (4) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes any *service target performance incentive scheme* that has been specified in a *framework and approach paper* that applies in respect of the forthcoming distribution determination should apply to it;
- (5) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes any *demand management and embedded generation connection incentive scheme* that has been specified in a *framework and approach paper* that applies in respect of the forthcoming distribution determination should apply to it;
- (5A) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes any *small-scale incentive scheme* that has been specified in a *framework and approach paper* that applies in respect of the forthcoming distribution determination should apply to it;

**[123] Clause S6.1.3 Additional information  
and matters**

Omit clause S6.1.3(8) and S6.1.3(9) and substitute:

- (8) **[Deleted]**.
- (9) the *Distribution Network Service Provider's* calculation of the proposed return on equity, return on debt and *allowed rate of return*, for each *regulatory year* of the *regulatory control period*, in accordance with clause 6.5.2, including any departure from the methodologies set out in the *Rate of Return Guidelines* and the reasons for that departure;
- (9A) if the *Distribution Network Service Provider* proposes that the return on debt for a *regulatory year* of the *regulatory control*

*period* is not to be determined using the methodology referred to in clause 6.5.2(f)(2), the formula it proposes should be applied in accordance with clause 6.5.2(h);

- (9B) the *Distribution Network Service Provider's* proposed value of imputation credits as referred to in clause 6.5.3;

**[124] Clause S6.1.3 Additional information  
and matters**

In clause S6.1.3(13), omit "." and substitute "; and".

**[125] Clause S6.1.3 Additional information  
and matters**

After clause S6.1.3(13), insert:

- (14) if the *Distribution Network Service Provider* is seeking a determination by the *AER* that a *proposed contingent project* is a *contingent project* for the purposes of the relevant distribution determination:
- (i) a description of the *proposed contingent project*, including reasons why the *Distribution Network Service Provider* considers the project should be accepted as a *contingent project* for the *regulatory control period*;
  - (ii) a forecast of the capital expenditure which the *Distribution Network Service Provider* considers is reasonably required for the purpose of undertaking the proposed contingent project;
  - (iii) the methodology used for developing that forecast and the key assumptions that underlie it;
  - (iv) information that demonstrates that the undertaking of the *proposed contingent project* is reasonably required in order to achieve one or more of the *capital expenditure objectives*;
  - (v) information that demonstrates that the *proposed contingent capital expenditure* for the *proposed contingent project* complies with the requirements set out in clause 6.6A.1(b)(2); and
  - (vi) the *trigger events* which are proposed in relation to the *proposed contingent project* and an explanation of how each of those conditions or events addresses the matters referred to in clause 6.6A.1(c).

**[126] Clause S6.2.1 Establishment of opening regulatory asset base for a regulatory control period**

In clause S6.2.1(e), after "paragraph (c) or (d)" insert "and subject to paragraph (g)." .

**[127] Clause S6.2.1 Establishment of opening regulatory asset base for a regulatory control period**

Omit clauses S6.2.1(e)(1) and S6.2.1(e)(2), and substitute:

- (1) The previous value of the regulatory asset base must be:
  - (i) increased by the amount of all capital expenditure incurred during the previous control period, including any capital expenditure determined for that period under clause 6.6A.2(e)(1)(i) in relation to *contingent projects* where the distribution determination has been amended by the *AER* in accordance with clause 6.6A.2(h) (regardless of whether such capital expenditure is above or below the forecast capital expenditure for the period that is adopted for the purposes of the distribution determination (if any) for that period); and
  - (ii) reduced by the amount of any capital expenditure that has been recovered by way of a pass through under clause 6.6.1 where the amount of that capital expenditure would otherwise have been included in the value of the regulatory asset base.
- (2) The previous value of the regulatory asset base must be increased by the amount of the estimated capital expenditure approved by the *AER* for any part of the previous control period for which actual capital expenditure is not available, including any capital expenditure in relation to *contingent projects* where the *total revenue requirement* has been amended by the *AER* in accordance with clause 6.6A.2(h).

**[128] Clause S6.2.1 Establishment of opening regulatory asset base for a regulatory control period**

After clause S6.2.1(f), insert:

- (g) The previous value of the regulatory asset base must be reduced by any amount determined by the *AER* in accordance with clause S6.2.2A(f), (i) or (j).

**[129] New Clause S6.2.2A Reduction for inefficient past capital expenditure**

After clause S6.2.2, insert:

**S6.2.2A Reduction for inefficient past capital expenditure**

- (a) Prior to making a decision on the regulatory asset base for a *distribution system* as required by clause 6.12.1(6), the *AER* may determine under this clause S6.2.2A that the amount of capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) should be reduced.
- (b) The *AER* may only make a determination under paragraph (a) if any of the following requirements is satisfied:
  - (1) the requirement set out in paragraph (c) (the *overspending requirement*);
  - (2) the requirement set out in paragraph (d) (the *margin requirement*); or
  - (3) the requirement set out in paragraph (e) (the *capitalisation requirement*).
- (c) The *overspending requirement* is satisfied where the sum of:
  - (1) all capital expenditure incurred during the previous control period (excluding the last two *regulatory years* of that previous control period); and
  - (2) the actual capital expenditure incurred during the last two *regulatory years* of the *regulatory control period* preceding the previous control period,exceeds the sum of:
  - (3) the forecast capital expenditure accepted or substituted by the *AER* for the period in which the capital expenditure referred to in subparagraphs (c)(1) and (2) (the **review period**) was incurred, as such forecast capital expenditure has been adjusted in accordance with clauses 6.6.5(f) and 6.6A.2(h); and
  - (4) any capital expenditure that is recovered by way of such part of an *approved pass through amount* as is permitted to be passed through to *Distribution Network Users* during that period less any capital expenditure that is included in a *negative pass through amount* that is required to be passed through to *Distribution Network Users* during that period,

excluding any forecast or actual capital expenditure that:

- (5) represents a margin payable or paid by the *Distribution Network Service Provider* in circumstances where the margin is referable to arrangements that, in the opinion of the *AER*, do not reflect arm's length terms; or
  - (6) is constituted by the capitalisation of operating expenditure in circumstances where that capitalisation is inconsistent with the policy submitted to the *AER* under clause S6.1.1(8) in relation to that review period or any part of it.
- (d) The *margin requirement* is satisfied where the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) includes capital expenditure that represents a margin paid by the *Distribution Network Service Provider* in circumstances where the margin is referable to arrangements that, in the opinion of the *AER*, do not reflect arm's length terms.
- (e) The *capitalisation requirement* is satisfied where the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) includes capital expenditure that is constituted by the capitalisation of operating expenditure in circumstances where that capitalisation is inconsistent with the policy submitted to the *AER* under clause S6.1.1(8) in relation to that review period or any part of it.
- (f) Where the *overspending requirement* is satisfied, and subject to paragraphs (g) and (h), the *AER* may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) should be reduced by such amount as the *AER* is satisfied corresponds to capital expenditure incurred during that period that does not reasonably reflect the *capital expenditure criteria*.
- (g) The amount determined by the *AER* under paragraph (f):
- (1) must not be greater than the amount calculated in accordance with paragraph (c);
  - (2) must be determined in a manner that is consistent with the *capital expenditure incentive objective*; and
  - (3) must be determined taking into account the *Capital Expenditure Incentive Guidelines*.
- (h) In making a determination under paragraph (f), the *AER* must:



- (1) have regard to the *capital expenditure factors*; and
  - (2) only take into account information and analysis that the *Distribution Network Service Provider* could reasonably be expected to have considered or undertaken at the time that it undertook the relevant capital expenditure.
- (i) Where the *margin requirement* is satisfied, and subject to paragraph (k), the *AER* may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) should be reduced by such of the margin referred to in paragraph (d) as the *AER* is reasonably satisfied would not have been paid if the arrangements to which the margin is referable had been on arm's length terms.
  - (j) Where the *capitalisation requirement* is satisfied, and subject to paragraph (k), the *AER* may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) should be reduced by such of the capitalised operating expenditure referred to in paragraph (e) as is included in the forecast operating expenditure accepted or substituted by the *AER* for the review period.
  - (k) A determination made under paragraph (i) or (j) must be consistent with the *capital expenditure incentive objective* and, in making such a determination, the *AER* must take into account the *Capital Expenditure Incentive Guidelines*.
  - (l) Nothing in this clause S6.2.2A is to be taken to preclude the *AER* from:
    - (1) requiring a *Distribution Network Service Provider* to provide such information; or
    - (2) undertaking such analysis,

as the *AER* considers appropriate to enable it to make a statement, with supporting reasons, as referred to in clause 6.12.2(b).

### **S6.2.2B Depreciation**

- (a) Pursuant to clause 6.12.1(18), the *AER* must decide, for a distribution determination, whether depreciation for establishing the regulatory asset base for a *distribution system* as at the commencement of the following *regulatory control period* is to be based on actual or forecast capital expenditure.
- (b) The decision referred to in paragraph (a) must be consistent with the *capital expenditure incentive objective*.

- (c) In making the decision referred to in paragraph (a), the *AER* must have regard to:
- (1) the incentives that the *Distribution Network Service Provider* has in relation to undertaking efficient capital expenditure, including as a result of the application of any *service target performance incentive scheme*;
  - (2) the substitution possibilities between assets with relatively short economic lives and assets with relatively long economic lives and the relative benefits of such asset types;
  - (3) the extent to which any capital expenditure incurred by the *Distribution Network Service Provider* has exceeded the corresponding amount of forecast capital expenditure accepted or substituted by the *AER* and the amount of that excess expenditure is not efficient;
  - (4) the *Capital Expenditure Incentive Guidelines*; and
  - (5) the *capital expenditure factors*.

## **Schedule 2          Amendment of the National Electricity Rules**

### **[1] Clause 6A.1.1      Economic regulation of transmission services generally**

Omit clause 6A.1.1(d) and substitute:

- (d) Part E of this Chapter 6A sets out the procedure and approach for the making of a *transmission determination* by the AER.

### **[2] Clause 6A.1.1      Economic regulation of transmission services generally**

After clause 6A.1.1(k), insert:

- (l) Part L sets out the requirements to prepare *annual benchmarking reports*.

### **[3] Omission of "and" in list items other than the second last item in various clauses**

In clauses 6A.4.1(b)(1) and S6A.1.1(7), after “;” insert “and”.

### **[4] Reference to “providers” in various clauses**

In clauses 6A.2.2(1), (3) and (4), 6A.4.2(5) and (6), 6A.5.4(a)(4), 6A.6.1(a), 6A.7.1(a)(1), (3) and (5), 6A.7.3(c)(4), (c)(5), (f), (f)(3), (f)(4), (f)(5), (g), (h), (j)(1), (j)(2), (j)(2A), (j)(4), (j)(5) and (j)(6B), 6A.8.2(a), 6A.9.6(b)(2), 6A.10.1(a) and (b), 6A.11.1(a)(2) and (a)(3), 6A.11.2(a), 6A.14.1(i), (iii), (iv) and (v), 6A.14.3(b)(2), 6A.14.3(h)(3)(i), 6A.17.1(b)(1), (d)(1) and (d)(3), 6A.19.1, S6A.1.3(2), (3), (4)(iii), (5)(i), (7)(iii), (8), (10)(i) and (ii), S6A.2.1(d)(2) and (e)(2)(ii)(A), S6A.2.2, S6A.2.2(2), (4), (5) and (6), S6A.2.3(b), (b)(2) and (b)(3), omit “provider” and substitute “*Transmission Network Service Provider*”.

### **[5] Reference to "provider's" in various clauses**

In clauses 6A.2.2(2), 6A.6.3(a)(2)(ii), 6A.7.2(e) and (i)(3), 6A.7.3(e)(1), 6A.7.3(j)(3), omit “provider’s” and substitute “*Transmission Network Service Provider’s*”.

### **[6] Omission of reference “of the Rules” in various clauses**

In clauses 6A.9.2(b), S6A.1.1(1), S6A.1.2(1), S6A.1.3(4), S6A.1.3(4)(iv), S6A.1.3(5), S6.1.3(5)(ii), S6.1.3(7), S6.1.3(7)(iv), S6.1.3(8), S6.1.3(10)(v), S6.1.3(10)(vi), S6A.2.1(b), S6A.2.3(a) and S6A.2.4(b), omit “of the *Rules*”.

### **[7] New Clause 6A.2.3      Guidelines**

After clause 6A.2.2, insert:

### **6A.2.3 Guidelines**

- (a) The *AER*:
  - (1) must make and *publish* the *Shared Asset Guidelines*, the *Capital Expenditure Incentive Guidelines*, the *Rate of Return Guidelines*, the *Transmission Confidentiality Guidelines*, the *Cost Allocation Guidelines*, the *information guidelines* and the *pricing methodology guidelines* in accordance with this Chapter; and
  - (2) may, in accordance with the *transmission consultation procedures*, make and publish guidelines as to any other matters relevant to this Chapter.
- (b) A guideline may relate to a specified *Transmission Network Service Provider* or *Transmission Network Service Providers* of a specified class.
- (c) Except as otherwise provided in this Chapter, a guideline is not mandatory (and so does not bind the *AER* or anyone else) but, if the *AER* makes a *transmission determination* that is not in accordance with the guideline, the *AER* must state, in its reasons for the *transmission determination*, the reasons for departing from the guideline.
- (d) If a guideline indicates that there may be a change of regulatory approach in future *transmission determinations*, the guideline should also (if practicable) indicate how transitional issues are to be dealt with.
- (e) Subject to paragraph (f), the *AER* may, from time to time and in accordance with the *transmission consultation procedures*, amend or replace a guideline.
- (f) The *AER* may make administrative or minor amendments to any guideline without complying with the *transmission consultation procedures*.
- (g) This clause 6A.2.3 does not apply to the *Transmission Ring-Fencing Guidelines*.

### **[8] Clause 6A.4.1 Introduction**

Omit clause 6A.4.1(a) and(b), and substitute:

- (a) The procedure and approach for the making of a *revenue determination* for a *Transmission Network Service Provider* is contained in Part E of this Chapter 6A, and involves the submission

to the *AER* of a *Revenue Proposal* by the *Transmission Network Service Provider*.

- (b) Such a *Revenue Proposal* must comply with the requirements of this Chapter 6A, and in particular must:
- (1) be prepared using the *post-tax revenue model* referred to in rule 6A.5;
  - (2) comply with the requirements of, and contain or be accompanied by the information required by, any relevant *regulatory information instrument*; and
  - (3) contain the information and matters specified in Schedule 6A.1.

### **[9] Clause 6A.4.2 Contents of revenue determination**

After clause 6A.4.2(a)(3), insert:

- (3A) the regulatory asset base as at the commencement of the *regulatory control period*;

### **[10] Clause 6A.4.2 Contents of revenue determination**

After clause 6A.4.2(a)(6), insert:

- (6A) how any *capital expenditure sharing scheme* or *small-scale incentive scheme* is to apply to the *Transmission Network Service Provider*; and

### **[11] Clause 6A.4.2 Contents of revenue determination**

In clause 6A.4.2(a)(7), omit "; and" and substitute ".".

### **[12] Clause 6A.4.2 Contents of revenue determination**

Omit clause 6A.4.2(a)(8) and substitute "[Deleted]."

### **[13] Clause 6A.4.2 Contents of revenue determination**

After clause 6A.4.2(a), insert:

- (a1) A *revenue determination* for a *Transmission Network Service Provider* is also to specify whether depreciation for establishing the regulatory asset base as at the commencement of the following *regulatory control period* is to be based on actual or forecast capital expenditure.

### **[14] Clause 6A.5.4 Building blocks generally**

Omit clause 6A.5.4(a)(5) and substitute:

- (5) certain revenue increments or decrements for that year arising from any efficiency benefit sharing scheme, *capital expenditure sharing scheme*, *service target performance incentive scheme* or *small-scale incentive scheme* - see paragraph (b)(5);
- (5A) the revenue decrements (if any) arising from the use of assets that provide *prescribed transmission services* to provide certain other services – see paragraph (b)(5A);

## **[15] New Clause 6A.5.5      Shared assets**

After clause 6A.5.4, insert:

### **6A.5.5      Shared assets**

- (a) Where an asset is used to provide both *prescribed transmission services* and either:
  - (1) *non-regulated transmission services*; or
  - (2) services that are not *transmission services*,the *AER* may, in a *revenue determination* for a *regulatory control period*, reduce the *annual building block revenue requirement* for the *Transmission Network Service Provider* for a *regulatory year* within that *regulatory control period* by such amount as it considers reasonable to reflect such part of the costs of that asset as the *Transmission Network Service Provider* is recovering through charging for the provision of a service referred to in subparagraph (1) or (2).
- (b) In making a decision under paragraph (a), the *AER* must have regard to the *shared asset principles* and the *Shared Asset Guidelines*.
- (c) The *shared asset principles* are as follows:
  - (1) the *Transmission Network Service Provider* should be encouraged to use assets that provide *prescribed transmission services* for the provision of other kinds of services where that use is efficient and does not materially prejudice the provision of those services;
  - (2) a shared asset cost reduction should not be dependent on the *Transmission Network Service Provider* deriving a positive commercial outcome from the use of the asset other than for those services;

- (3) a shared asset cost reduction should be applied where the use of the asset other than for *prescribed transmission services* is material;
  - (4) regard should be had to the manner in which costs have been recovered or revenues reduced in respect of the relevant asset in the past and the reasons for adopting that manner of recovery or reduction;
  - (5) a shared asset cost reduction should be compatible with the *Cost Allocation Principles* and *Cost Allocation Method*; and
  - (6) any reduction effected under paragraph (a) should be compatible with other incentives provided under the *Rules*".
- (d) The *AER* must, in accordance with the *transmission consultation procedures*, make and *publish* guidelines (the *Shared Asset Guidelines*) that set out the approach the *AER* proposes to take in applying the *shared asset principles* (which may include a methodology that the *AER* proposes to use to determine reductions for the purposes of paragraph (a)).
- (e) The *AER* must *publish* the *Shared Asset Guidelines* by [28 June 2013], and there must be *Shared Asset Guidelines* in force at all times after that date.

#### **6A.5.6 Expenditure forecast methodology**

- (a) The *AER* must, in accordance with the *transmission consultation procedures*, develop and *publish* a methodology for the preparation of forecasts of operating expenditure and capital expenditure that are included in *Transmission Network Service Providers' Revenue Proposals* (the *standard expenditure forecasting methodology*).
- (b) Subject to paragraph (c), the *AER* may, from time to time and in accordance with the *transmission consultation procedures*, amend the *standard expenditure forecasting methodology*.
- (c) The *AER* may make administrative or minor amendments to the *standard expenditure forecasting methodology* without complying with the *transmission consultation procedures*.
- (d) The *AER* must *publish* the first *standard expenditure forecasting methodology* by [28 June 2013] and there must be a *standard expenditure forecasting methodology* in force at all times after that date.

#### **6A.5A Capital expenditure incentive mechanisms**

- (a) The *capital expenditure incentive objective* is to ensure that, where the value of a regulatory asset base is subject to adjustment in

accordance with the *Rules*, then the only capital expenditure that is included in an adjustment that increases the value of that regulatory asset base is capital expenditure that reasonably reflects the *capital expenditure criteria*.

- (b) The *AER* must, in accordance with the *transmission consultation procedures*, make and *publish* guidelines (the *Capital Expenditure Incentive Guidelines*) that set out:
- (1) any *capital expenditure sharing schemes* developed by the *AER* in accordance with clause 6A.6.5A, and how the *AER* has taken into account the *capital expenditure sharing scheme principles* in developing those schemes;
  - (2) the manner in which it proposes to make determinations under clause 6A.2.2A(a) if the *overspending requirement* is satisfied;
  - (3) the manner in which it proposes to determine whether depreciation for establishing a regulatory asset base as at the commencement of a *regulatory control period* is to be based on actual or forecast capital expenditure;
  - (4) the manner in which it proposes to assess capital expenditure that represents a margin that is paid by a *Transmission Network Service Provider* in circumstances where the margin is referable to arrangements that, in the opinion of the *AER*, do not reflect arm's length terms; and
  - (5) how each scheme and proposal referred to in subparagraphs (1) to (4), and all of them taken together, are consistent with the *capital expenditure incentive objective*.
- (c) The *AER* must publish the first *Capital Expenditure Incentive Guidelines* by [30 August 2012] and there must be *Capital Expenditure Incentive Guidelines* in force at all times after that date.

## **[16] Clause 6A.6.2 Return on capital**

Omit clause 6A.6.2 and substitute:

### **6A.6.2 Return on capital**

#### **Calculation of return on capital**

- (a) The return on capital for each *regulatory year* must be calculated by applying a rate of return for the relevant *Transmission Network Service Provider* for that *regulatory year* that is determined in accordance with this clause 6A.6.2 (the *allowed rate of return*) 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 6A.6.1 and schedule 6A.2).

#### **Allowed rate of return**

- (b) The *allowed rate of return* for a *Transmission Network Service Provider* must correspond to the efficient financing costs of a benchmark efficient entity with a similar degree of risk as that which applies to the *Transmission Network Service Provider* in respect of the provision of *prescribed transmission services* (the *allowed rate of return objective*).
- (c) The *allowed rate of return* for a *regulatory year* must be determined:
  - (1) as a weighted average of the return on equity for the *regulatory control period* in which that *regulatory year* occurs (as estimated under paragraph (e)) and the return on debt for that *regulatory year* (as estimated under paragraph (f)) where the weights applied to compute the average reflect the relative proportions of equity and debt finance that would be employed by an efficiently financed benchmark efficient entity with a similar degree of risk as that which applies to the *Transmission Network Service Provider* in respect of the provision of *prescribed transmission services*;
  - (2) on a nominal post-tax basis that is consistent with the estimate of the value of imputation credits referred to in clause 6A.6.4; and
  - (3) taking into account relevant estimation methods, financial models, market data and other evidence.
- (d) In determining the *allowed rate of return*, regard must be had to:
  - (1) the desirability of using an approach that leads to the consistent application of any estimates of financial parameters that are relevant to the estimates of, and that are common to, the return on equity and the return on debt; and
  - (2) any interrelationships between estimates of financial parameters that are relevant to the estimates of the return on equity and the return on debt.

#### **Return on equity**

- (e) The return on equity for a *regulatory control period* must be estimated:
  - (1) in a way that is consistent with the *allowed rate of return objective*; and

- (2) taking into account the prevailing conditions in the market for equity funds.

**Return on debt**

- (f) The return on debt for a *regulatory year* must be estimated:
  - (1) in a way that is consistent with the *allowed rate of return objective*; and
  - (2) using a methodology under which:
    - (i) the return on debt for each *regulatory year* in the *regulatory control period* is the same; or;
    - (ii) the return on debt for a *regulatory year* (other than the first *regulatory year* in the *regulatory control period*) is estimated using a methodology which complies with paragraph (i).
- (g) Subject to paragraph (f), the methodology adopted to estimate the return on debt may, without limitation, be designed to result in the return on debt reflecting:
  - (1) the return that would be required by debt investors in a benchmark efficient entity if it raised debt at the time or shortly before the making of the *revenue determination* for the *regulatory control period*;
  - (2) the average return that would have been required by debt investors in a benchmark efficient entity if it raised debt over an historical period prior to the time when the *revenue determination* for that *regulatory control period* is made; or
  - (3) some combination of the returns referred to in subparagraphs (1) and (2).
- (h) In determining whether the return on debt for a *regulatory year* is estimated in a way that is consistent with the *allowed rate of return objective*, regard must be had to the following factors:
  - (i) the likelihood of any significant differences between the costs of servicing debt of a benchmark efficient entity referred to in subparagraph (c)(1) and the return on debt over the *regulatory control period*;
  - (ii) the impact on electricity consumers, including due to any impact on the return on equity of a benchmark efficient entity referred to in subparagraph (c)(1);

- (iii) the incentive effects of inefficiently delaying or bringing forward capital expenditure; and
  - (iv) the impact of changing the methodology for estimating the return on debt across *regulatory control periods*.
- (i) A methodology referred to in paragraph (f)(2)(ii) must provide for any change in the *Transmission Network Service Provider's annual building block revenue requirement* for the *regulatory year* that would result from a change to the *allowed rate of return* for that *regulatory year*, as a result of the return on debt for that *regulatory year* being different from that estimated under subparagraph (f), to be effected through the automatic application of a formula that is specified in the *revenue determination*.

### **Rate of Return Guidelines**

- (j) The *AER* must, in accordance with the *transmission consultation procedures*, make and *publish* guidelines (the *Rate of Return Guidelines*), except that the first *Rate of Return Guidelines* must be made in accordance with paragraph (m) and not the *transmission consultation procedures*.
- (k) The *Rate of Return Guidelines* must set out:
- (1) the methodologies that the *AER* proposes to use in estimating the *allowed rate of return*, including how those methodologies are proposed to result in the determination of a return on equity and a return on debt in a way that is consistent the *allowed rate of return objective*; and
  - (2) the estimation methods, financial models, market data and other evidence the *AER* proposes to take into account in estimating the return on equity, the return on debt and the value of imputation credits referred to in clause 6A.6.4.
- (l) The *AER* must *publish* the first *Rate of Return Guidelines* by [29 November 2013], and there must be *Rate of Return Guidelines* in force at all times after that date.
- (m) For the purpose of making the first *Rate of Return Guidelines*, the *AER* must:
- (1) by no later than [29 March 2013], *publish* a consultation paper that sets out its preliminary views on the material issues that are to be addressed by the *Rate of Return Guidelines*;
  - (2) *publish* an invitation for written submissions on the consultation paper, with such submissions to be made within the time specified in the invitation (which must not be earlier

- than 30 *business days* after the invitation for submissions is *published*);
- (3) by no later than [31 July 2013], *publish* a draft of the *Rate of Return Guidelines*; and
  - (4) *publish* an invitation for written submissions on the draft *Rate of Return Guidelines*, with such submissions to be made within the time specified in the invitation (which must not be earlier than 30 *business days* after the invitation for submissions is *published*).
- (n) The *AER* must, in accordance with the *transmission consultation procedures*, review the *Rate of Return Guidelines*:
- (1) at intervals not exceeding three years, with the first interval starting from the date referred to in paragraph (l); and
  - (2) at the same time as it reviews the *Rate of Return Guidelines* made under clause 6.5.2.
- (o) For the avoidance of doubt, nothing prevents the *AER* from *publishing* the *Rate of Return Guidelines* made under this clause 6A.6.2 in the same document as the *Rate of Return Guidelines* made under clause 6.5.2.

### **[17] Clause 6A.6.3 Depreciation**

In clause 6A.6.3(b)(3), omit "actual".

### **[18] Clause 6A.6.4 Estimated cost of corporate income tax**

Omit clause 6A.6.4 and substitute:

The estimated cost of corporate income tax of a *Transmission Network Service Provider* for each *regulatory year* (**ETC<sub>t</sub>**) must be estimated in accordance with the following formula:

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

where:

ETI<sub>t</sub> is an estimate of the taxable income for that *regulatory year* that would be earned by a benchmark efficient entity as a result of the provision of *prescribed transmission services* if such an entity, rather than the *Transmission Network Service Provider*, operated the business of the *Transmission Network Service Provider*, such estimate being determined in accordance with the *post-tax revenue model*;

r<sub>t</sub> is the expected statutory income tax rate for that *regulatory year* as determined by the *AER*; and

$\gamma$  is the value of imputation credits.

### **[19] Clause 6A.6.5 Efficiency benefit sharing scheme**

In clause 6A.6.5(a), omit "a scheme (an *efficiency benefit sharing scheme*) that provides" and substitute "an incentive scheme or schemes (*efficiency benefit sharing scheme*) that provide".

### **[20] Clause 6A.6.5 Efficiency benefit sharing scheme**

Omit clauses 6A.6.5(g) and (h), and substitute "[Deleted]".

### **[21] New Clause 6A.6.5A Capital expenditure sharing scheme**

After clause 6A.6.5, insert:

- (a) *A capital expenditure sharing scheme* is a scheme that provides *Transmission Network Service Providers* with an incentive to undertake efficient capital expenditure during a *regulatory control period*.
- (b) If the *AER* develops a *capital expenditure sharing scheme* in accordance with this clause, the *capital expenditure sharing scheme* must be consistent with the *capital expenditure incentive objective*.
- (c) In developing a *capital expenditure sharing scheme*, the *AER* must take into account the following principles (the *capital expenditure sharing scheme principles*):
  - (1) *Transmission Network Service Providers* should be rewarded for undertaking efficient capital expenditure and penalised for undertaking inefficient capital expenditure;
  - (2) the rewards and penalties should be commensurate with the efficiencies or inefficiencies in capital expenditure, but a reward for efficient capital expenditure need not correspond in amount to a penalty for the same amount of inefficient capital expenditure; and
  - (3) penalties should not be imposed on *Transmission Network Service Providers* that undertake capital expenditure in an efficient manner, in terms of both its amount and timing.
- (d) In developing a *capital expenditure sharing scheme*, the *AER* must also take into account:
  - (1) the interaction of the scheme with other incentives that *Transmission Network Service Providers* may have in relation to undertaking efficient operating or capital expenditure; and

- (2) any applicable *regulatory obligations or requirements* associated with the provision of *prescribed transmission services*.

(e) In deciding:

- (1) whether to apply a *capital expenditure sharing scheme* to a *Transmission Network Service Provider* for a *regulatory control period*; and
- (2) the nature and details of any *capital expenditure sharing scheme* that is to apply to a *Transmission Network Service Provider* for a *regulatory control period*,

the *AER* must:

- (3) make that decision in a manner that contributes to the achievement of the *capital expenditure incentive objective*; and
- (4) take into account:
  - (i) both the *capital expenditure sharing scheme principles*, and the matters referred to in paragraph (d), as they apply to the *Transmission Network Service Provider*; and
  - (ii) the circumstances of the *Transmission Network Service Provider*.

## **[22] Clause 6A.6.6 Forecast operating expenditure**

In clause 6A.6.6 (a)(1), after "meet" insert "or manage".

## **[23] Clause 6A.6.6 Forecast operating expenditure**

In clause 6A.6.6(b)(1), omit "the *submission guidelines*" and substitute "any relevant *regulatory information instrument*".

## **[24] Clause 6A.6.6 Forecast operating expenditure**

In clause 6A.6.6(b)(3)(ii), omit "of the" after "the forecast".

## **[25] Clause 6A.6.6 Forecast operating expenditure**

Omit clause 6A.6.6(c) and substitute:

- (c) Subject to paragraph (c1), the *AER* must accept the forecast of required operating expenditure of a *Transmission Network Service Provider* that is included in a *Revenue Proposal* if the *AER* is

satisfied that the total of the forecast operating expenditure for the *regulatory control period* reasonably reflects each of the following (the *operating expenditure criteria*):

- (1) the efficient costs of achieving the *operating expenditure objectives*;
- (2) the costs that a prudent operator would require to achieve the *operating expenditure objectives*; and
- (3) a realistic expectation of the demand forecast and cost inputs required to achieve the *operating expenditure objectives*.

### **[26] Clause 6A.6.6 Forecast operating expenditure**

In clause 6A.6.6(d), omit "If" and substitute "Subject to paragraph (c1), if".

### **[27] Clause 6A.6.6 Forecast operating expenditure**

Omit clause 6A.6.6(e) and substitute:

- (e) In deciding whether or not the *AER* is satisfied as referred to in paragraph (c), the *AER* must have regard to the following (the *operating expenditure factors*):
  - (1) **[Deleted]**
  - (2) **[Deleted]**
  - (3) **[Deleted]**
  - (4) the most recent *annual benchmarking report* that has been published under clause 6A.31 and the benchmark operating expenditure that would be incurred by an efficient *Transmission Network Service Provider* over the relevant *regulatory control period*;
  - (5) the actual and expected operating expenditure of the *Transmission Network Service Provider* during any preceding *regulatory control periods*;
  - (5A) the extent to which the operating expenditure forecast includes expenditure to address the concerns of electricity consumers as identified by the *Transmission Network Service Provider* in the course of its engagement with electricity consumers;
  - (6) the relative prices of operating and capital inputs;
  - (7) the substitution possibilities between operating and capital expenditure;

- (8) whether the operating expenditure forecast is consistent with any incentive scheme or schemes that apply to the *Transmission Network Service Provider* under clauses 6A.6.5, 6A.7.4 or 6A.7.5;
- (9) the extent the operating expenditure forecast is referable to arrangements with a person other than the *Transmission Network Service Provider* that, in the opinion of the *AER*, do not reflect arm's length terms;
- (10) whether the operating expenditure forecast includes an amount relating to a project that should more appropriately be included as a *contingent project* under clause 6A.8.1(b);
- (11) the most recent NTNDP and any submissions made by AEMO, in accordance with the *Rules*, on the forecast of the *Transmission Network Service Provider's* required operating expenditure;
- (12) the extent to which the *Transmission Network Service Provider* has considered and made provision for efficient and prudent *non-network* alternatives;
- (13) any relevant *project assessment conclusions report* required under clause 5.6.6; and
- (14) any other factor the *AER* considers relevant and which the *AER* has notified the *Transmission Network Service Provider* in writing, prior to the submission of its *Revenue Proposal* under clause 6A.10.1, is an *operating expenditure factor*.

**[28] Clause 6A.6.6 Forecast operating expenditure**

Omit clause 6A.6.6(f) and substitute "[Deleted]".

**[29] Clause 6A.6.7 Forecast capital expenditure**

In clause 6A.6.7(a)(1), after "meet" insert "or manage".

**[30] Clause 6A.6.7 Forecast capital expenditure**

In clause 6A.6.7(b)(1), omit "the *submission guidelines*" and substitute "any relevant *regulatory information instrument*".

**[31] Clause 6A.6.7 Forecast capital expenditure**

In clause 6A.6.7(b)(3)(ii), after "the forecast" omit "of the" .

**[32] Clause 6A.6.7 Forecast capital expenditure**



In clause 6A.6.7(c), after "reasonably reflects" insert "each of the following (*capital expenditure criteria*)".

### **[33] Clause 6A.6.7 Forecast capital expenditure**

Omit clause 6A.6.7(c)(2), and substitute:

- (2) the costs that a prudent operator would require to achieve the *capital expenditure objectives*; and

### **[34] Clause 6A.6.7 Forecast capital expenditure**

In clause 6A.6.7(c), omit (the *capital expenditure criteria*) where last occurring.

### **[35] Clause 6A.6.7 Forecast capital expenditure**

Omit clause 6A.6.7(e) and substitute:

- (e) In deciding whether or not the *AER* is satisfied as referred to in paragraph (c), the *AER* must have regard to the following (the *capital expenditure factors*):
  - (1) **[Deleted]**
  - (2) **[Deleted]**
  - (3) **[Deleted]**
  - (4) the most recent *annual benchmarking report* that has been *published* under clause 6A.31 and benchmark capital expenditure that would be incurred by an efficient *Transmission Network Service Provider* over the relevant *regulatory control period*;
  - (5) the actual and expected capital expenditure of the *Transmission Network Service Provider* during any preceding *regulatory control periods*;
  - (5A) the extent to which the capital expenditure forecast includes expenditure to address the concerns of electricity consumers as identified by the *Transmission Network Service Provider* in the course of its engagement with electricity consumers;
  - (6) the relative prices of operating and capital inputs;
  - (7) the substitution possibilities between operating and capital expenditure;
  - (8) whether the capital expenditure forecast is consistent with any incentive scheme or schemes that apply to the *Transmission Network Service Provider* under clauses 6A.6.5A, 6A.7.4 or 6A.7.5;

- (9) the extent to which the capital expenditure forecast is referable to arrangements with a person other than the *Transmission Network Service Provider* that, in the opinion of the *AER*, do not reflect arm's length terms;
- (10) whether the capital expenditure forecast includes an amount relating to a project that should more appropriately be included as a *contingent project* under clause 6A.8.1(b);
- (11) the most recent *NTNDP*, and any submissions made by *AEMO*, in accordance with the *Rules*, on the forecast of the *Transmission Network Service Provider's* required capital expenditure;
- (12) the extent to which the *Transmission Network Service Provider* has considered and made provision for efficient and prudent non-*network* alternatives;
- (13) any relevant *project assessment conclusions report* required under clause 5.6.6; and
- (14) any other factor the *AER* considers relevant and which the *AER* has notified the *Transmission Network Service Provider* in writing, prior to the submission of its *Revenue Proposal* under clause 6A.10.1, is a *capital expenditure factor*.

### **[36] Clause 6A.6.7 Forecast capital expenditure**

Omit clause 6A.6.7(f) and substitute "[Deleted]".

### **[37] Clause 6A.7.1 Reopening of revenue determination for capital expenditure**

Omit clause 6A.7.1(c)(2) and substitute:

- (2) make its decision on the application within 40 *business days* from the later of the date the *AER* receives the application and the date the *AER* receives any information required by the *AER* under paragraph (f1).

### **[38] Clause 6A.7.1 Reopening of revenue determination for capital expenditure**

Omit clause 6A.7.1(g), and substitute:

- (f1) A *Transmission Network Service Provider* must provide the *AER* with such additional information as the *AER* requires for the purpose of making a decision on an application made by that *Transmission Network Service Provider* under paragraph (a) within the time

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

#### **Extension of time limit**

- (g) If the *AER* is satisfied that the revocation and substitution of a revenue determination under paragraphs (d) and (e) involves issues of such complexity or difficulty that the time limit fixed in subparagraph (c)(2) should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the *Transmission Network Service Provider* of that extension not later than 10 *business days* before the expiry of that time limit.
- (h) If the *AER* extends the time limit under paragraph (g), it must make available on its website a notice of that extension as soon as is reasonably practicable.
- (i) If the *AER* gives a written notice to the *Transmission Network Service Provider* stating that it requires information from an *Authority* in order to make a decision on an application made by the *Transmission Network Service Provider* under paragraph (a) then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Transmission Network Service Provider* and when the *AER* receives that information from that *Authority* is to be disregarded.
- (i1) If the *AER* gives a written notice to the *Transmission Network Service Provider* stating that, in order to make a decision on an application made by the *Transmission Network Service Provider* under paragraph (a), it requires information that it anticipates will be made publicly available by a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Transmission Network Service Provider* and when that information is made publicly available is to be disregarded
- (i2) Where the *AER* gives a notice to the *Transmission Network Service Provider* under paragraph (i) or (i1), it must:
  - (1) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (i) or (i1), as the case may be, has commenced;
  - (2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (i) or (i1), as the case may be, has ended; and
  - (3) if the information specified in that notice is required from an *Authority*, promptly request that information from the relevant *Authority*.

**Revocation and substitution of revenue determination**

- (j) If the *AER* revokes and substitutes a *revenue determination* under paragraph (e), that revocation and substitution must take effect from the commencement of the next *regulatory year*.

**[39] Clause 6A.7.2 Network support pass through**

In clause 6A.7.2(c)(4), omit "the *information guidelines* in force under clause 6A.17.2" and substitute "any relevant *regulatory information instrument*".

**[40] Clause 6A.7.2 Network support pass through**

In clause 6A.7.2(i)(3), omit "provider's" and substitute "*Transmission Network Service Provider's*".

**[41] Clause 6A.7.2 Network support pass through**

In clause 6A.7.2(i)(4), omit "*weight average cost of capital*" and substitute "*allowed rate of return*".

**[42] Clause 6A.7.3 Cost pass through**

In clause 6A.7.3(c)(7), omit "*information guidelines* in force under clause 6A.17.2" and substitute "any relevant *regulatory information instrument*".

**[43] Clause 6A.7.3 Cost pass through**

Omit clause 6A.7.3(e), but not subparagraphs (1) and (2), and substitute:

- (e) Subject to paragraph (1), the *AER* does not make the determinations referred to in paragraph (d) within 40 *business days* from the later of the date it receives the *Transmission Network Service Provider's* statement and accompanying evidence under paragraph (c), and the date it receives any additional information required under paragraph (e1), then, on the expiry of that period, the *AER* is taken to have determined that:

**[44] Clause 6A.7.3 Cost pass through**

After clause 6A.7.3(e), insert:

- (e1) A *Transmission Network Service Provider* must provide the *AER* with such additional information as the *AER* requires for the purpose of making a determination under paragraph (d) within the time specified by the *AER* in a notice provided to the *Transmission Network Service Provider* by the *AER* for that purpose.

**[45] Clause 6A.7.3 Cost pass through**

In clause 6A.7.3(f), omit "60" and substitute "90".

#### **[46] Clause 6A.7.3 Cost pass through**

In clause 6A.7.3(f)(6), omit "*information guidelines* in force under clause 6A.17.2" and substitute " any relevant *regulatory information instrument*".

#### **[47] Clause 6A.7.3 Cost pass through**

After clause 6A.7.3(f), insert:

- (f1) If the occurrence of the *negative change event* is not notified by the *Transmission Network Service Provider* to the *AER* under paragraph (f) then, as soon as is reasonably practicable and before making a determination referred to in paragraph (g), the *AER* must notify the *Transmission Network Service Provider* of the occurrence of that *negative change event*.

#### **[48] Clause 6A.7.3 Cost pass through**

After clause 6A.7.3(g), insert:

- (g1) Subject to paragraph (l), if the *AER* does not make the determinations referred to in paragraph (g) within 40 *business days* from:
  - (1) where the *Transmission Network Service Provider* notifies the *AER* of the occurrence of the negative change event under paragraph (f) - the later of the date the *AER* receives the *Transmission Network Service Provider's* statement under paragraph (f) and the date the *AER* receives any information required by the *AER* under paragraph (h); or
  - (2) where the *Transmission Network Service Provider* does not notify the *AER* of the occurrence of the negative change event under paragraph (f) – the later of the date the *AER* notifies the *Transmission Network Service Provider* under paragraph (g1) and the date the *AER* receives any information required by the *AER* under paragraph (h),

then the *AER* is taken to have determined that the required pass through amount is zero.

#### **[49] Clause 6A.7.3 Cost pass through**

In clause 6A.7.3(j)(4), omit "*weighted average cost of capital*" and substitute "*allowed rate of return*".

#### **[50] Clause 6A.7.3 Cost pass through**

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

### **Extension of time limits**

- (k) The *AER* must, by written notice to a *Transmission Network Service Provider*, extend a time limit fixed in paragraph (c) or (f) if the *AER* is satisfied that the difficulty of assessing or quantifying the effect of the relevant *pass through event* justifies the extension.
- (l) If the *AER* is satisfied that the making of a determination under paragraph (d) or (g) involves issues of such complexity or difficulty that the time limit fixed in paragraph (e) or (g1) should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the *Transmission Network Service Provider* of that extension not later than 10 *business days* before the expiry of that time limit.
- (m) If the *AER* extends a time limit under paragraph (l), it must make available on its website a notice of that extension as soon as is reasonably practicable.
- (n) If the *AER* gives a written notice to the *Transmission Network Service Provider* stating that it requires information from an *Authority* in order to make a determination under paragraph (d) or (g) then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Transmission Network Service Provider* and when the *AER* receives that information from that *Authority* is to be disregarded.
- (o) If the *AER* gives a written notice to the *Transmission Network Service Provider* stating that, in order to make a determination under paragraph (d) or (g), it requires information that it anticipates will be made publicly available by a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Transmission Network Service Provider* and when that information is made publicly available is to be disregarded.
- (p) Where the *AER* gives a notice to the *Transmission Network Service Provider* under paragraph (n) or (o), it must:
  - (1) as soon as reasonably practicable make available on its website a notice stating when the period referred to in paragraph (n) or (o), as the case may be, has commenced;
  - (2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (n) or (o), as the case may be, has ended; and
  - (3) if the information specified in that notice is required from an *Authority*, promptly request that information from the relevant *Authority*.

**[51] Clause 6A.7.4 Service target performance incentive scheme**

In clause 6A.7.4(a), omit "(a *service target performance incentive scheme*) that complies" and substitute "or schemes (*service target performance incentive scheme*) that comply".

**[52] Clause 6A.7.4 Service target performance incentive scheme**

Omit clauses 6A.7.4(f) and (g), and substitute "[Deleted]"

**[53] New Clause 6A.7.5 Small-scale incentive scheme**

After clause 6A.7.4, insert:

**6A.7.5 Small-scale incentive scheme**

- (a) The *AER* may, in accordance with the *transmission consultation procedures*, develop and *publish* an incentive scheme or schemes (*small-scale incentive scheme*) that provides *Transmission Network Service Providers* with incentives to provide *prescribed transmission services* in a manner that contributes to the achievement of the *national electricity objective*.
- (b) In developing a *small-scale incentive scheme*, the *AER* must have regard to the following requirements:
  - (1) *Transmission Network Service Providers* should be rewarded for efficiency gains in respect of their *transmission systems*, and penalised for efficiency losses in respect of their *transmission systems*;
  - (2) the rewards and penalties should be commensurate with the efficiency gains or efficiency losses in respect of a *transmission system*, but a reward for efficiency gains need not correspond in amount to a penalty for efficiency losses;
  - (3) penalties should not be imposed on *Transmission Network Service Providers* that act in an efficient manner, in terms of both the degree and timing of that action;
  - (4) the benefits to electricity consumers that are likely to result from efficiency gains in respect of a *transmission system* should warrant the rewards provided under the scheme, and the detriments to electricity consumers that are likely to result from efficiency losses in respect of a *transmission system* should warrant the penalties provided under the scheme;

- (5) the scheme should be consistent with other incentives that *Transmission Network Service Providers* may have under the *Rules*; and
  - (6) the scheme should not be inconsistent with any applicable *regulatory obligations or requirements* associated with the provision of *prescribed transmission services*.
- (c) The *AER* may, from time to time and in accordance with the *transmission consultation procedures*, amend or replace any *small-scale incentive scheme*.
- (d) Where the *AER* applies a *small-scale incentive scheme* to a *Transmission Network Service Provider* for a *regulatory control period*:
- (1) the aggregate rewards or penalties for a *regulatory year* in that *regulatory period* that are provided or imposed under that scheme and any other *small-scale incentive schemes* that apply to that *Transmission Network Service Provider* must not exceed 0.5% of the *maximum allowed revenue* for the *Transmission Network Service Provider* for that *regulatory year* unless the *Transmission Network Service Provider* consents to the contrary, in which case that aggregate must not exceed 1% of the *maximum allowed revenue* for the *Transmission Network Service Provider* for that *regulatory year*; and
  - (2) *small-scale incentive scheme* must cease to provide rewards or impose penalties in respect of a *regulatory year* after the expiry of such a period as is determined by the *AER*, being a period that is not more than two *regulatory control periods* after the commencement of that scheme.
- (e) Notwithstanding anything else contained in this clause, the *AER* may require a *Transmission Network Service Provider* to participate in a trial of a *small-scale incentive scheme* under which, for the duration of that trial, the *Transmission Network Service Provider* is not required to bear any penalty and is not entitled to earn any reward.

#### **[54] Clause 6A.8.1 Acceptance of a Contingent Project in a revenue determination**

In clause 6A.8.1(b)(2)(iii), omit "either \$10 million or" and substitute "either the cost threshold referred to in clause 5.6.5C(a)(2) (as varied in accordance with a final determination under clause 5.6.5E(f)) or".



**[55] Clause 6A.8.1 Acceptance of a Contingent Project in a revenue determination**

In clause 6A.8.1(b)(3), omit "*submission guidelines* made under clause 6A.10.2" and substitute "any relevant *regulatory information instrument*".

**[56] Clause 6A.8.1 Acceptance of a Contingent Project in a revenue determination**

In clause 6A.8.1(c), after "have regard to the need for" insert "a *trigger event*".

**[57] Clause 6A.8.1 Acceptance of a Contingent Project in a revenue determination**

In clauses 6A.8.1(c)(1) to (5), omit "a *trigger event*".

**[58] Clause 6A.8.2 Amendment of revenue determination for contingent project**

Omit clause 6A.8.2(b)(4) and substitute:

- (4) the estimate referred to in clause 6A.8.2(b)(3)(vii) must be calculated:
  - (i) in accordance with the requirement of the *post-tax revenue model* referred to in clause 6A.5.2;
  - (ii) in accordance with the requirements of the *roll forward model* referred to in clause 6A.6.1(b);
  - (iii) using the *allowed rate of return* for that *Transmission Network Service Provider* for the *regulatory control period* as determined in accordance with clause 6A.6.2;
  - (iv) in accordance with the requirements for depreciation referred to in clause 6A.6.3; and
  - (v) on the basis of the capital expenditure and incremental operating expenditure referred to in subparagraph 6A.8.2(b)(3)(iii).

**[59] Clause 6A.8.2 Amendment of revenue determination for contingent project**

Omit clause 6A.8.2(d) and substitute:

- (d) The *AER* must consider any written submissions made under paragraph (c) and must make its decision on the application within 40 *business days* from the later of the date the *AER* receives the application and the date the *AER* receives any information required by the *AER* under paragraph (h1). In doing so the *AER* may also take

into account such other information as it considers appropriate, including any analysis (such as benchmarking) that is undertaken by it for that purpose.

**[60] Clause 6A.8.2 Amendment of revenue determination for contingent project**

In clause 6A.8.2(g), omit "must take into account" and substitute "must have regard to".

**[61] Clause 6A.8.2 Amendment of revenue determination for contingent project**

In clause 6A.8.2(g)(8), omit "efficient" and substitute "the".

**[62] Clause 6A.8.2 Amendment of revenue determination for contingent project**

Omit clause 6A.8.2(g)(9) and substitute:

- (9) whether the capital and operating expenditure forecasts for the *contingent project* are consistent with any incentive scheme or schemes that apply to the *Transmission Network Service Provider* under clauses 6A.6.5, 6A.6.5A, 6A.7.4 or 6A.7.5.

**[63] Clause 6A.8.2 Amendment of revenue determination for contingent project**

In clause 6A.8.2(h)(2), after “;” insert “and”.

**[64] Clause 6A.8.2 Amendment of revenue determination for contingent project**

Omit clause 6A.8.2(h)(3)(ii) and substitute:

- (ii) the X factor for each *regulatory year* in the remainder of the *regulatory control period*.

**[65] Clause 6A.8.2 Amendment of revenue determination for contingent project**

Omit clause 6A.8.2(i) and substitute:

- (h1) A *Transmission Network Service Provider* must provide the *AER* with such additional information as the *AER* requires for the purpose of making a decision on an application made by that *Transmission Network Service Provider* under paragraph (a) within the time specified by the *AER* in a notice provided to the *Transmission Network Service Provider* by the *AER* for that purpose.

### **Extension of time limit**

- (i) If the *AER* is satisfied that amending a *revenue determination* under subparagraphs (e)(3) and paragraph (h) involves issues of such complexity or difficulty that the time limit fixed in paragraph (d) should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the *Transmission Network Service Provider* of that extension no later than 10 *business days* before the expiry of that time limit.
- (j) If the *AER* extends the time limit under paragraph (i), it must make available on its website a notice of that extension as soon as is reasonably practicable.
- (k) If the *AER* gives a written notice to the *Transmission Network Service Provider* stating that it requires information from an *Authority* in order to make a decision on an application made by the *Transmission Network Service Provider* under paragraph (a) then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Transmission Network Service Provider* and when the *AER* receives that information from that *Authority* is to be disregarded.
- (k1) If the *AER* gives a written notice to the *Transmission Network Service Provider* stating that, in order to make a decision on an application made by the *Transmission Network Service Provider* under paragraph (a), it requires information from a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Transmission Network Service Provider* and when that information is made publicly available is to be disregarded.
- (k2) Where the *AER* gives a notice to the *Transmission Network Service Provider* under paragraph (k) or (k1), it must:
  - (1) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (k) or (k1), as the case may be, has commenced;
  - (2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (k) or (k1), as the case may be, has ended; and
  - (3) if the information specified in that notice is required from an *Authority*, promptly request that information from the relevant *Authority*.

### **Amendment of revenue determination**

- (l) Amendments to a *revenue determination* take effect from the commencement of the next *regulatory year*.

## **[66] New clause 6A.10.1A AER's framework and approach paper**

After the Rule 6A.10 heading, insert:

### **6A.10.1A AER's framework and approach paper**

- (a) The *AER* must make and publish a document (a *framework and approach paper*) that applies in respect of a *revenue determination* for a matter listed in paragraph (b) in accordance with this clause if:
  - (1) there is no *framework and approach paper* that applies in respect of that *revenue determination* for that matter; or
  - (2) there is a *framework and approach paper* that applies in respect of that *revenue determination* for that matter, but the *AER* considers it necessary or desirable to make and *publish* an amended or replacement *framework and approach paper* in so far as it relates to that matter.
- (b) A *framework and approach paper* that applies in respect of a *revenue determination* must set out the *AER's* proposed approach (together with its reasons for the proposed approach), in the forthcoming *revenue determination*, to the following matters:
  - (1) the application to the *Transmission Network Service Provider* of any *service target performance incentive scheme*;
  - (2) the application to the *Transmission Network Service Provider* of any *efficiency benefit sharing scheme*;
  - (3) the application to the *Transmission Network Service Provider* of any *capital expenditure sharing scheme*;
  - (4) the application to the *Transmission Network Service Provider* of any *small-scale incentive scheme*; and
  - (5) the methodology that is to be used for the preparation of forecasts of operating expenditure and capital expenditure that are to be included in the *Transmission Network Service Provider's Revenue Proposal*, which may be the *standard expenditure forecasting methodology* or some different methodology.
- (c) If there is a *framework and approach paper* that would apply in respect of the *revenue determination* for a matter listed in paragraph (b) then, no later than 32 months before the end of the *regulatory control period* that precedes that for which the *revenue determination* is to be made, the *AER* must *publish* a notice inviting submissions on whether it is necessary or desirable to amend or

replace that *framework and approach paper* in so far as it relates to that matter.

- (d) If there is a *framework and approach paper* that would apply in respect of the *revenue determination* for a matter listed in paragraph (b) and the *AER* considers that it may be necessary or desirable to make an amended or replacement *framework and approach paper* that applies in respect of that matter, then, no later than 31 months before the end of the *regulatory control period* that precedes that for which the *revenue determination* is to be made, the *AER* must:
  - (1) make and *publish* its decision to that effect; and
  - (2) give its reasons for that decision.
- (e) In making a decision under paragraph (d), the *AER* must have regard to any submissions made in response to the invitation under paragraph (c).
- (f) Where paragraph (a) applies then, at least 25 months before the end of the current *regulatory control period*, the *AER* must, after consulting with the relevant *Transmission Network Service Provider* and such other persons as the *AER* considers appropriate, make, amend or replace the *framework and approach paper*, as the case may be, and:
  - (1) give a copy of it to the relevant *Transmission Network Service Provider*; and
  - (2) *publish* it,as soon as is reasonably practicable.
- (g) A *framework and approach paper* is not binding on the *AER* or a *Transmission Network Service Provider*.
- (h) The *AER* may make and *publish* a *framework and approach paper* that applies in respect of a *revenue determination* for a matter that is not listed in paragraph (b) and, if it does so, this clause 6A.10.1A applies as if that matter were listed in paragraph (b).

**[67] Clause 6A.10.1 Submission of proposal, framework, pricing methodology and information**

In clause 6A.10.1(a)(1), omit "13 months" and substitute "19 months".

**[68] Clause 6A.10.1 Submission of proposal, framework, pricing methodology and information**

In clause 6A.10.1(c), omit "the *submission guidelines* made for that purpose under this rule 6A.10" and substitute "any relevant *regulatory information instrument*".

**[69] Clause 6A.10.1 Submission of proposal, framework,  
pricing methodology and information**

Omit clause 6A.10.1(f), and substitute:

- (f) The *Revenue Proposal* must also:
  - (1) include a statement of whether it is consistent with the most recent *NTNDP* and, if it is inconsistent, identify and give reasons for the inconsistency; and
  - (2) identify any parts of the *Revenue Proposal* or the proposed pricing methodology the *Transmission Network Service Provider* claims to be confidential and wants suppressed from publication on that ground including, for each such part, a classification of the information in that part in accordance with the *Transmission Confidentiality Guidelines*.

**[70] Clause 6A.10.1 Submission of proposal, framework,  
pricing methodology and information**

After clause 6A.10.1(f), insert:

- (g) The *Revenue Proposal* must be accompanied by an overview paper which includes each of the following matters:
  - (1) a summary of the *Revenue Proposal* the purpose of which is to explain the *Revenue Proposal* in reasonably plain language to electricity consumers;
  - (2) a description of how the *Transmission Network Service Provider* has engaged with electricity consumers and has sought to address any relevant concerns identified as a result of that engagement;
  - (3) a description of the key risks and benefits of the *Revenue Proposal* for electricity consumers; and
  - (4) a comparison of the *Transmission Network Service Provider's* proposed total revenue cap with its total revenue cap for the next *regulatory control period*.

**[71] Clause 6A.10.1 Submission of proposal, framework,  
pricing methodology and information**

Omit clause 6A.10.2 and substitute "[Deleted]".

**[72] Clause 6A.11.1 Preliminary examination and determination of non-compliance with relevant requirements**

Omit clauses 6A.11.1(a)(5) to (7), and substitute:

- (5) any relevant *regulatory information instrument*; or
- (6) [Deleted]
- (7) [Deleted]
- (8) the Law or the *Rules*,

**[73] Clause 6A.11.1 Preliminary examination and determination of non-compliance with relevant requirements**

In clause 6A.11.1(b)(1), omit "the *submission guidelines* clause 6A.9.5," and substitute "any relevant *regulatory information instrument*, clause 6A.9.5".

**[74] Clause 6A.11.2 Resubmission of proposal, framework, pricing methodology or information**

In clause 6A.11.2(b), omit "or".

**[75] Clause 6A.11.2 Resubmission of proposal, framework, pricing methodology or information**

In clause 6A.11.2(b), after "*pricing methodology*" insert "or the required information".

**[76] Clause 6A.11.3 Resubmission of proposal, framework, pricing methodology or information**

Omit clause 6A.11.3 and substitute:

**6A.11.2A Confidential information**

If the *Transmission Network Service Provider* has identified any part of the *Revenue Proposal* or the proposed *pricing methodology* as submitted or resubmitted to the *AER* (as the case may be) under this Part to be confidential, the *AER* must, as soon as is reasonably practicable, make available on its website a notice that sets out :

- (a) the fact that the *Revenue Proposal* or the proposed *pricing methodology* contains information over which a claim of confidentiality has been made;

- (b) the proportion of material in the *Revenue Proposal* or the proposed *pricing methodology* that is subject to any claim of confidentiality compared to that which is not subject to any such claim; and
- (c) the comparative proportion of material in the *Revenue Proposal* or the proposed *pricing methodology* that is subject to any claim of confidentiality compared to that which is subject to claims of confidentiality in the *Revenue Proposals* proposed *pricing methodologies* of other *Transmission Network Service Providers*.

### 6A.11.3 Consultation

- (a) Subject to the provisions of the Law, the *Rules* and any *pricing methodology guidelines* about the disclosure of confidential information, the *AER* must *publish*:

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

submitted or resubmitted to it (as the case may be) by the *Transmission Network Service Provider* under rule 6A.9, 6A.10 or this rule 6A.11, together with:

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

as soon as practicable after the *AER* determines that the *Revenue Proposal*, proposed *negotiating framework*, proposed *pricing methodology* and information comply with the requirements of any *relevant regulatory information instrument*, clause 6A.9.5 or clause 6A.10.1(e) (as applicable).

- (b) The *AER* must *publish*:
  - (1) an issues paper not more than 40 *business days* after the submission, under clause 6A.10.1, of the documents, but not any resubmitted documents, referred to in paragraph (a);
  - (2) an invitation for written submission on the issues paper; and
  - (3) an invitation to attend a public forum on the issues paper.



- (b1) The issues paper referred to in paragraph (b) must identify preliminary issues, whether or not arising out of the documents referred to in paragraph (a), that the *AER* considers are likely to be relevant to its assessment of those documents (however, nothing in this clause is to be taken as precluding the *AER* from considering other issues in making a *transmission determination* for the *Transmission Network Service Provider*).
- (b2) The *AER* must hold a public forum on the issues paper not more than 20 *business days* after the *publication* of the issues paper.
- (c) Any person may make a written submission to the *AER* on the *Revenue Proposal*, the proposed *negotiating framework*, the proposed *pricing methodology*, the proposed *Negotiated Transmission Service Criteria* for the *Transmission Network Service Provider* or the issues paper within the times specified in the invitations referred to in subparagraph (a)(6) and paragraph (b), which in each case must be not earlier than 60 *business days* after the *publication* of the issues paper.

#### **[77] Clause 6A.12.1 Making a draft decision**

Omit clause 6A.12.1(a) and substitute:

- (a) The *AER* must make a draft decision in relation to the *Transmission Network Service Provider*.
- (a1) In making a draft decision in relation to the *Transmission Network Service Provider*, and subject to clause 6A.16, the *AER* must have regard to each of the following:
  - (1) the information contained in or accompanying the *Revenue Proposal*, proposed *negotiating framework* and proposed *pricing methodology*;
  - (2) written submissions on the issues paper received under clause 6A.11.3, the documents referred to in subparagraph (1) and the proposed *Negotiated Transmission Service Criteria*; and
  - (3) any analysis undertaken by or for the *AER* that is *published* prior to the making of the draft decision in relation to the *Transmission Network Service Provider* or as part of that draft decision.

#### **[78] Clause 6A.12.2 Publication of draft decision and consultation**

In clause 6A.12.2(a), omit "but not later than 6 months".

**[79] Clause 6A.12.2 Publication of draft decision and consultation**

Omit clauses 6A.12.2(b) and (c), and substitute:

- (b) The *AER* must hold the predetermination conference at the time, date and place specified in the notice under subparagraph (a)(3) for the purpose of explaining its draft decision.
- (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 subparagraph (a)(4), which must be not earlier than 40 *business days* after the making of the draft decision.

**[80] Clause 6A.12.3 Submission of revised proposal, framework or pricing methodology**

In clause 6A.12.3(a), omit "30 *business days*" and substitute "45 *business days*".

**[81] Clause 6A.12.3 Submission of revised proposal, framework or pricing methodology**

In clause 6A.12.3(c), omit "the *submission guidelines*" and substitute "any relevant *regulatory information instrument* or the *Rules*".

**[82] Clause 6A.12.3 Submission of revised proposal, framework or pricing methodology**

Omit clause 6A.12.3(f) and substitute:

- (e1) If the *Transmission Network Service Provider* has identified any part of the revised *Revenue Proposal* or the revised proposed *pricing methodology* to the *AER* under this Part to be confidential, the *AER* must, as soon as is reasonably practicable, make available on its website a notice that sets out: :
  - (1) the fact that the revised *Revenue Proposal* or the revised proposed *pricing methodology* contains information over which a claim of confidentiality has been made;
  - (2) the proportion of material in the revised *Revenue Proposal* or the revised proposed *pricing methodology* that is subject to any claim of confidentiality compared to that which is not subject to any such claim; and
  - (3) the comparative proportion of material in the revised *Revenue Proposal* or the revised proposed *pricing methodology* that is subject to any claim of confidentiality compared to that which is subject to claims of confidentiality in revised *Revenue*

*Proposals* or the revised proposed *pricing methodologies* of other *Transmission Network Service Providers*.

- (f) Subject to the provisions of the Law and the *Rules* about the disclosure of confidential information, the *AER* must *publish*:
- (1) any revised *Revenue Proposal*;
  - (2) any revised proposed *negotiating framework*; or
  - (3) any revised proposed *pricing methodology*,
- (as the case may be), that is submitted by the *Transmission Network Service Provider* under paragraph (a), together with the accompanying information, as soon as practicable after receipt by the *AER*.
- (g) The *AER* may invite written submissions on the revised *Revenue Proposal*, revised proposed *negotiating framework* or revised proposed *pricing methodology*.

### **[83] New clause 6A.12.4 Submissions on specified matters**

After clause 6A.12.3(g), insert:

#### **6A.12.4 Submissions on specified matters**

If the *AER* invites further submissions on a revised *Revenue Proposal*, revised proposed *negotiating framework* or revised proposed *pricing methodology* under clause 6A.12.3(g), the *AER* may invite further written submissions on the submissions received under clause 6A.12.2(c) or 6A.12.3(g) by *publishing* an invitation which specifies:

- (a) the matters in respect of which submissions are invited; and
- (b) the time for making submissions, which must not be earlier than 15 *business days* after the date on which the invitation was *published*.

### **[84] Clause 6A.13.1 Making of final decision**

Omit clause 6A.13.1(a), and substitute:

- (a) The *AER* must make a final decision in relation to the *Transmission Network Service Provider*.
- (a1) In making a final decision in relation to the *Transmission Network Service Provider*, and subject to clause 6A.16, the *AER* must have regard to each of the following:
  - (1) the information contained in or accompanying the *Revenue Proposal*, proposed *negotiating framework* and proposed *pricing methodology*;

- (2) written submissions received under this Part E; and
  - (3) any analysis undertaken by or for the *AER* that is *published* prior to the making of the final decision or as part of the final decision.
- (a2) The *AER* must use its best endeavours to *publish*, a reasonable time prior to the making of the final decision, any analysis undertaken by or for it on which it proposes to rely, or to which it proposes to refer, for the purposes of that decision.

### **[85] Clause 6A.13.2 Refusal to approve amounts, values, framework or pricing methodology**

After clause 6A.13.2(a)(2), insert:

This paragraph (a) does not apply in respect of the determination of an *allowed rate of return* under clause 6A.6.2.

### **[86] New Clause 6A.13.2A Out of scope revised documents or late submissions**

After clause 6A.13.2(d), insert:

#### **6A.13.2A Out of scope revised documents or late submissions**

On or before making a final decision in relation to the *Transmission Network Service Provider*, the *AER* must include on its website:

- (a) a summary of any revisions to the relevant *Revenue Proposal*, proposed *negotiating framework* or proposed *pricing methodology* that have been made in a revised *Revenue Proposal*, revised proposed *negotiating framework* or revised proposed *pricing methodology* that do not comply with clause 6A.12.3(b), together with an indication of the amount of that information;
- (b) a summary of any submissions on the draft decision in relation to the *Transmission Network Service Provider* or the revised *Revenue Proposal*, revised proposed *negotiating framework* or revised proposed *pricing methodology* that were made by the *Transmission Network Service Provider* and that contain information that the *Transmission Network Service Provider* was entitled to incorporate in the revised *Revenue Proposal*, revised proposed *negotiating framework* or revised proposed *pricing methodology* under clause 6A.12.3(b), together with an indication of the amount of that information;
- (c) a summary of any submissions that purport to be made by the *Transmission Network Service Provider* under clause 6A.12.4 but are in respect of matters other than those specified by the *AER* under

that clause, together with an indication of the length of those submissions; and

- (d) a summary of any submissions on the draft decision in relation to the *Transmission Network Service Provider* or the revised *Revenue Proposal*, revised proposed *negotiating framework* or revised proposed *pricing methodology* that were made by the *Transmission Network Service Provider* after the time for making the submissions has expired, together with an indication of the length of those submissions.

For the purpose of this clause 6A.13.2A, revisions or submissions may be summarised by cross-referencing to the relevant *Revenue Proposal*, proposed *negotiating framework*, proposed *pricing methodology* or submissions.

### **[87] Clause 6A.14.1 Contents of decisions**

In clause 6A.14.1(1)(iii), omit "the *service target performance incentive scheme*" and substitute "a *service target performance incentive scheme*".

### **[88] Clause 6A.14.1 Contents of decisions**

In clause 6A.14.1(1)(iv), omit "the *efficiency benefit sharing scheme*" and substitute "an *efficiency benefit sharing scheme*".

### **[89] Clause 6A.14.1 Contents of decisions**

Omit clause 6A.14.1(5) and substitute:

- (5) **[Deleted]**
- (5A) in which the *AER* determines how any applicable *capital expenditure sharing scheme* or *small-scale incentive scheme* is to apply to the *Transmission Network Service Provider*;
- (5B) on the *allowed rate of return* for each *regulatory year* of the *regulatory control period* in accordance with clause 6A.6.2;
- (5C) on whether the return on debt for a *regulatory year* of the *regulatory control period* is not to be determined using a methodology referred to in clause 6A.6.2(f)(2) and, if that is the case, the formula that is to be applied in accordance with clause 6A.6.2(h);
- (5D) on the value of imputation credits as referred to in clause 6A.6.4,
- (5E) on the regulatory asset base as at the commencement of the *regulatory control period* in accordance with clause 6A.6.1 and Schedule 6A.2;

- (5F) on whether depreciation for establishing the regulatory asset base as at the commencement of the following *regulatory control period* is to be based on actual or forecast capital expenditure;

**Note**

See clause S6A.2.2B.

## **[90] Clause 6A.14.2 Reasons for decisions**

Omit clause 6A.14.2 and substitute:

### **6A.14.2 Reasons for decisions**

- (a) The reasons given by the *AER* for a draft decision under rule 6A.12 or a final decision under rule 6A.13 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 made or used by the *AER* for the purposes of its decision;
  - (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* current *Revenue Proposal*; 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 discretion, as referred to in this Chapter, for the purposes of the decision, such reasons being expressed by reference to the requirements relating to such decisions, approvals or discretions as are contained in this Chapter.
- (b) The *AER* must include in its reasons for a draft decision under rule 6A.12 or a final decision under rule 6A.13 a statement, with supporting reasons, as to the extent to which the roll forward of the regulatory asset base from the previous *regulatory control period* to the commencement of the *regulatory control period* contributes to the achievement of the *capital expenditure incentive objective*.

**[91] Clause 6A.14.3 Circumstances in which matters must be approved or accepted**

At the end of clause 6A.14.3(b), insert:

Nothing in this paragraph (b) is to be taken to require the *AER* to accept the *Transmission Network Service Provider's allowed rate of return* or is to be taken to constrain the *AER* in substituting its forecast or estimate of capital expenditure or operating expenditure in accordance with clauses 6A.13.2(b) or 6A.14.1(2) or (3).

**[92] Rule 6A.15 Revocation of revenue determination or amendment of pricing methodology for wrong information or error**

Omit rule 6A.15(a) and substitute:

- (a) The *AER* may (but is not required to) revoke a *revenue determination* or amend an existing *pricing methodology* during a *regulatory control period* if it appears to the *AER* that the *revenue determination* or *pricing methodology* is affected by a material error or deficiency of one or more of the following kinds:
- (1) a clerical error or an accidental slip or omission;
  - (2) a miscalculation or misdescription;
  - (3) a defect in form; or
  - (4) a deficiency resulting from the provision of false or materially misleading information to the *AER*.

**[93] Rule 6A.15 Revocation of revenue determination or amendment of pricing methodology for wrong information or error**

In rule 6A.15(b), omit "paragraph (a)(1)" and substitute "paragraph (a),"

**[94] Rule 6A.15 Revocation of revenue determination or amendment of pricing methodology for wrong information or error**

Omit rule 6A.15(c) and substitute:

- (c) If the *AER* revokes and substitutes a *revenue determination* under paragraphs (a) and (b), the substituted *revenue determination* must only vary from the revoked *revenue determination* to the extent necessary to correct the relevant error or deficiency.

**[95] Rule 6A.15            Revocation of revenue determination or amendment of pricing methodology for wrong information or error**

In rule 6A.15(d), omit "paragraph (a)(1)" and substitute "paragraph (a)".

**[96] Rule 6A.15            Revocation of revenue determination or amendment of pricing methodology for wrong information or error**

In rule 6A.15(e), omit "paragraph (a)(2)" and substitute "paragraph (a)".

**[97] Rule 6A.15            Revocation of revenue determination or amendment of pricing methodology for wrong information or error**

In rule 6A.15(e), after "relevant error" insert "or deficiency".

**[98] Rule 6A.15            Revocation of revenue determination or amendment of pricing methodology for wrong information or error**

In rule 6A.16(c), omit "referred to in clause 6A.11.3(a)(6) or 6A.12.2(a)(4)" and substitute "for submissions that is made under this Chapter".

**[99] Rule 6A.16            Miscellaneous**

In rule 6A.16(f), after "provision of" insert "the Law or".

**[100]                        New rule 6A.16A Transmission Confidentiality Guidelines**

After rule 6A.16, insert:

**6A.16A    Transmission Confidentiality Guidelines**

- (a) The *AER* must, in accordance with the *transmission consultation procedures*, make and *publish* guidelines (*Transmission Confidentiality Guidelines*).
- (b) The *Transmission Confidentiality Guidelines* must specify the manner in which the *Transmission Network Service Provider* may make confidentiality claims in its *Revenue Proposal* and proposed *pricing methodology*, which may include categories of confidential information by reference to which *Transmission Network Service Providers* must classify any claims of confidentiality in their *Revenue Proposals* and proposed *pricing methodologies*.



- (c) The *AER* must make the first *Transmission Confidentiality Guidelines* by [28 June 2013], and there must be *Transmission Confidentiality Guidelines* in force at all times after that date.
- (d) The *Transmission Confidentiality Guidelines* are binding on the *AER* and each *Transmission Network Service Provider* to which they apply.

**[101] Clause 6A.17.1 Information to be provided to AER**

Omit clause 6A.17.1(e)(4) and substitute:

- (4) to monitor and report on the performance of the *Transmission Network Service Provider* under any incentive scheme that applies to the *Transmission Network Service Provider* under clauses 6A.6.5, 6A.6.5A, 6A.7.4 or 6A.7.5; and

**[102] Clause 6A.17.2 Information guidelines**

Omit the clause 6A.17.2, including the heading and subheading, clauses 6A.17.2(a) to (c), and substitute:

**6A.17.2 Information guidelines**

**Preparation, publication and amendment of information guidelines**

- (a) The *AER* must, in accordance with the *transmission consultation procedures*, make and *publish* guidelines (*information guidelines*) that comply with this clause 6A.17.2
- (b) **[Deleted]**
- (c) The *AER* must *publish* the first *information guidelines* by 28 September 2007, and there must be *information guidelines* in force at all times after that date.

**[103] Clause 6A.17.2 Information guidelines**

Omit clause 6A.17.2(f) and substitute "[Deleted]".

**[104] Clause 6A.17.2 Information guidelines**

After clause 6A.17.2(h), insert:

- (i) The *information guidelines* are binding on the *AER* and each *Transmission Network Service Provider* to which they apply.

**[105] Clause 6A.19.3 Cost Allocation Guidelines**

In clause 6A.19.3(a), after "make" insert "and *publish*".

**[106] Clause 6A.19.3 Cost Allocation Guidelines**

Omit clause 6A.19.3(b) and substitute:

- (b) The *Cost Allocation Guidelines* must give effect to and be consistent with the *Cost Allocation Principles*.

**[107] Clause 6A.19.3 Cost Allocation Guidelines**

Omit clauses 6A.19.3(d) and (e), and substitute:

- (d) The *Cost Allocation Guidelines* are binding on the *AER* and each *Transmission Network Service Provider* to which they apply.
- (e) The *AER* must *publish* the first *Cost Allocation Guidelines* by 28 September 2007, and there must be *Cost Allocation Guidelines* in force at all times after that date.

**[108] Rule 6A.20 Transmission consultation procedures**

Omit rule 6A.20(b) and substitute:

- (b) If the *AER* or the *AEMC* is required to comply with the *transmission consultation procedures* in preparing, making, developing, reviewing, amending or replacing any guidelines, methodologies, models, schemes, tests or values, it must *publish*:
  - (1) the proposed guideline, methodology, model, scheme, test, value or amendment;
  - (2) an explanatory statement that sets out the provision of the *Rules* under or for the purposes of which the guideline, methodology, model, scheme, test, value or amendment is proposed to be prepared, made or developed or is required to be reviewed, and the reasons for the proposed guideline, methodology, model, scheme, test, value or amendment; and
  - (3) an invitation for written submissions on the proposed guideline, model, scheme, test, value or, or the review, as the case may be.

**[109] Rule 6A.20 Transmission consultation procedures**

Omit rules 6A.20(d) and (e), and substitute:

- (d) The *AER* or the *AEMC* may publish such issues, consultation and discussion papers, and hold such conferences and information sessions, in relation to the proposed guideline, methodology, model, scheme, test, value or amendment, or the review, as it considers appropriate.
- (e) Within 80 *business days* of *publishing* the documents referred to in paragraph (b), the *AER* or the *AEMC* must *publish*:
  - (1) its final decision on the guideline, methodology model, scheme, test, value, amendment or review that sets out:
    - (i) the guideline, model, methodology, scheme, test, value or amendment (if any);
    - (ii) the provision of the *Rules* under which or for the purposes of which the guideline, methodology, model, scheme, test, value or amendment is being prepared, made or developed or is being reviewed;
    - (iii) the reasons for the guideline, model, methodology, scheme, test, value or amendment; and
    - (iv) the reasons for the outcome of any review; and
  - (2) notice of the making of the final decision on the guideline, methodology, model, scheme, test, value, amendment or review.

**[110] Rule 6A.20 Transmission consultation procedures**

Omit clause 6A.20(g)(1) and substitute:

- (1) the consultation involves issues of unusual complexity or difficulty.

**[111] Rule 6A.20 Transmission consultation procedures**

In rule 6A.20(f), after "paragraph (e)(1)(iii)" insert "or (iv)".

**[112] Rule 6A.20 Transmission consultation procedures**

After rule 6A.20(f), insert:

- (g) The *AER* or the *AEMC* may extend the time within which it is required to *publish* its final decision if:

- (1) the consultation involves questions of unusual complexity or difficulty; or
- (2) the extension of time has become necessary because of circumstances beyond the control of the *AER* or the *AEMC*.

**[113] Clause 6A.25.1 Making and amending  
of pricing methodology guidelines**

In clause 6A.25.1(a), after "make" insert "and *publish*".

**[114] Clause 6A.25.1 Making and amending  
of pricing methodology guidelines**

Omit clause 6A.25.1(b) and substitute:

- (b) The *pricing methodology guidelines* must give effect to, and be consistent with, the *Pricing Principles for Prescribed Transmission Services*.

**[115] Clause 6A.25.1 Making and amending  
of pricing methodology guidelines**

In clause 6A.25.1(c), omit "develop and".

**[116] Clause 6A.25.1 Making and amending  
of pricing methodology guidelines**

After clause 6A.25.1(d), insert:

- (e) The *pricing methodology guidelines* are binding on the *AER* and each *Transmission Network Service Provider* to which they apply.

**[117] New Rule 6A.31 Annual  
Benchmarking Report**

After clause 6A.30.8, insert:

**Part L Annual Benchmarking Report**

**6A.31 Annual Benchmarking Report**

- (a) The *AER* must prepare and *publish* a *network service provider performance report* (an *annual benchmarking report*) the purpose of which is to describe, in reasonably plain language, the relative efficiency of each *Transmission Network Service Provider* in providing *prescribed transmission services* over a 12 month period.

- (b) Clause 8.7.4 (excluding clause 8.7.4(a)) applies in respect of the preparation of an annual benchmarking report.
- (c) The *AER* must *publish* an *annual benchmarking report* at least every 12 months, with the first report being *published* no later than 24 months after the commencement of the National Electricity Amendment (Economic Regulation of Network Service Providers) Rule 2012.

**[118] Clause S6A.1.1 Information and matters relating to capital expenditure**

Omit clause S6A.1.1(2) and substitute:

- (2) the methodology used to prepare the capital expenditure forecast – while different methodologies may be used to prepare different forecasts as referred to in paragraph (1), at least one of those methodologies must be the methodology that is specified in a *framework and approach paper* that applies in respect of the forthcoming *revenue determination*;

**[119] Clause S6A.1.1 Information and matters relating to capital expenditure**

In clause S6A.1.1(4) "forecast" and substitute "forecasts".

**[120] Clause S6A.1.1 Information and matters relating to capital expenditure**

Omit clause S6A.1.1(6), including subparagraphs (i) and (ii) and substitute:

- (6) 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 separately identifying for each such *regulatory year*:
  - (i) margins paid or expected to be paid by the *Transmission Network Service Provider* in circumstances where those margins are referable to arrangements that do not reflect arm's length terms; and
  - (ii) operating expenditure that has been capitalised otherwise than in accordance with the policy submitted in accordance with paragraph (9) for that *regulatory year*;

**[121] Clause S6A.1.1 Information and matters relating to capital expenditure**

In clause 6A.1.1(8), omit "." and substitute "; and".

**[122] Clause S6A.1.1 Information and matters relating to capital expenditure**

After clause S6A.1.1(8), insert:

- (9) the policy that the *Transmission Network Service Provider* applies in capitalising operating expenditure.

**[123] Clause S6A.1.2 Information and matters relating to operating expenditure**

Omit clause S6A.1.2(2) and substitute:

- (2) the methodology used to prepare the operating expenditure forecast – while different methodologies may be used to prepare different forecasts as referred to in paragraph (1), at least one of those methodologies must be the methodology that is specified in a *framework and approach paper* that applies in respect of the forthcoming *revenue determination*;

**[124] Clause S6A.1.2 Information and matters relating to operating expenditure**

in clauses S6A.1.2(3) and (5), omit "forecast" and substitute "forecasts"

**[125] Clause S6A.1.2 Information and matters relating to operating expenditure**

In clause S6A.1.2(7), omit "operating expenditure forecast" and substitute "relevant operating expenditure forecast".

**[126] Clause S6A.1.3 Additional information and matters**

In clause S6A.1.3(2), omit "the *service target performance incentive scheme*" and substitute "any *service target performance incentive scheme* that has been specified in a *framework and approach paper* and".

**[127] Clause S6A.1.3 Additional information and matters**

In clause S6A.1.3(3), omit "the efficiency benefit sharing scheme" and substitute "any *efficiency benefit sharing scheme* that has been specified in a *framework and approach paper*".

**[128] Clause S6A.1.3 Additional information  
and matters**

After clause S6A.1.3(3), insert:

- (3A) a description, including relevant explanatory material, of how the *Transmission Network Service Provider* proposes any *capital expenditure sharing scheme* that has been specified in a *framework and approach paper* that applies in respect of the forthcoming *revenue determination* should apply to it;
- (3B) a description, including relevant explanatory material, of how the *Transmission Network Service Provider* proposes any *small-scale incentive scheme* that has been specified in a *framework and approach paper* that applies in respect of the forthcoming *revenue determination* should apply to it;

**[129] Clause S6A.1.3 Additional information  
and matters**

After clause S6A.1.3(4)(v), insert:

- (vi) where one of those amounts, values or inputs is the *allowed rate of return*, details of any departure from the *Rate of Return Guidelines* in calculating that *allowed rate of return* and the reasons for that departure;

**[130] Clause S6A.1.3 Additional information  
and matters**

After clause S6A.1.3(4), insert:

- (4A) the *Transmission Network Service Provider's* calculation of the proposed return on equity, return on debt and *allowed rate of return*, for each *regulatory year* of the *regulatory control period*, in accordance with clause 6A.6.2, including any departure from the methodologies set out in the *Rate of Return Guidelines* and the reasons for that departure;
- (4B) if the *Transmission Network Service Provider* proposes that the return on debt for a *regulatory year* of the *regulatory control period* is not to be determined using the methodology referred to in clause 6A.6.2(f)(2), the formula it proposes should be applied in accordance with clause 6A.6.2(h);
- (4C) the *Transmission Network Service Provider's* proposed value of imputation credits as referred to in clause 6A.6.2;

**[131] Clause S6A.1.3 Additional information  
and matters**

Omit clause S6A.1.3(6) and substitute "[Deleted]".

**[132] Clause S6A.2.1 Establishment of opening regulatory asset base for a regulatory control period**

In clause S6A.2.1(f), after "paragraph (c), (d) or (e)," insert "and subject to paragraph (g)"

**[133] Clause S6A.2.1 Establishment of opening regulatory asset base for a regulatory control period**

Omit clause S6A.2.1(f)(1) and substitute:

- (1) The previous value of the regulatory asset base must be:
  - (i) increased by the amount of all capital expenditure incurred during the previous control period, including any capital expenditure determined for that period under clause 6A.8.2(e)(1)(i) in relation to *contingent projects* where the *revenue determination* has been amended by the *AER* in accordance with clause 6A.8.2(h) (regardless of whether such capital expenditure is above or below the forecast capital expenditure for the period that is adopted for the purposes of the *transmission determination* (if any) for that period); and
  - (ii) reduced by the amount of any capital expenditure that has been recovered by way of a pass through under clause 6A.7.2 or clause 6A.7.3 where the amount of that capital expenditure would otherwise have been included in the value of the regulatory asset base.

**[134] Clause S6A.2.1 Establishment of opening regulatory asset base for a regulatory control period**

In clause S6A.2.1(f)(5), omit "actual".

**[135] Clause S6A.2.1 Establishment of opening regulatory asset base for a regulatory control period**

After clause S6A.2.1(f), insert:



- (g) The previous value of the regulatory asset base must be reduced by any amount determined by the *AER* in accordance with clause S6A.2.2A(f), (i) or (j).

**[136] New clause S6A.2.2A Reduction for inefficient past capital expenditure**

After clause S6A.2.2, insert:

**S6A.2.2A Reduction for inefficient past capital expenditure**

- (a) Prior to making a decision on the regulatory asset base for a *transmission system* as required by clause 6A.14.1(5E), the *AER* may determine under this clause S6.2.2A that the amount of capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) should be reduced.
- (b) The *AER* may only make a determination under paragraph (a) if any of the following requirements is satisfied:
  - (1) the requirement set out in paragraph (c) (the *overspending requirement*);
  - (2) the requirement set out in paragraph (d) (the *margin requirement*); or
  - (3) the requirement set out in paragraph (e) (the *capitalisation requirement*).
- (c) The *overspending requirement* is satisfied where the sum of:
  - (1) all capital expenditure incurred during the previous control period (excluding the last two *regulatory years* of that previous control period); and
  - (2) the actual capital expenditure incurred during the last two *regulatory years* of the *regulatory control period* preceding the previous control period,exceeds the sum of:
  - (3) the forecast capital expenditure accepted or substituted by the *AER* for the period in which the capital expenditure referred to in subparagraphs (c)(1) and (2) (the **review period**) was incurred, as such forecast capital expenditure has been adjusted in accordance with clauses 6A.7.1(f) and 6A.8.2(h); and
  - (4) any capital expenditure that is recovered by way of such part of an *approved pass through amount*, or of a *network support*

*pass through amount*, as is permitted to be passed through to *Transmission Network Users* during that period less any capital expenditure that is included in a negative pass through amount, or in a network support pass through amount, that is required to be passed through to *Transmission Network Users* during that period,

excluding any forecast or actual capital expenditure that:

- (5) represents a margin payable or paid by the *Transmission Network Service Provider* in circumstances where the margin is referable to arrangements that, in the opinion of the *AER*, do not reflect arm's length terms; or
  - (6) is constituted by the capitalisation of operating expenditure in circumstances where that capitalisation is inconsistent with the policy submitted to the *AER* under clause S6A.1.1(9) in relation to that review period or any part of it.
- (d) The *margin requirement* is satisfied where the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) includes capital expenditure that represents a margin paid by the *Transmission Network Service Provider* in circumstances where the margin is referable to arrangements that, in the opinion of the *AER*, do not reflect arm's length terms.
- (e) The *capitalisation requirement* is satisfied where the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) includes capital expenditure that is constituted by the capitalisation of operating expenditure in circumstances where that capitalisation is inconsistent with the policy submitted to the *AER* under clause S6A.1.1(9) in relation to that review period or any part of it.
- (f) Where the *overspending requirement* is satisfied, and subject to paragraphs (g) and (h), the *AER* may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) should be reduced by such amount as the *AER* is satisfied corresponds to capital expenditure incurred during that period that does not reasonably reflect the *capital expenditure criteria*.
- (g) The amount determined by the *AER* under paragraph (f):
- (1) must not be greater than the amount calculated in accordance with paragraph (c);

- (2) must be determined in a manner that is consistent with the *capital expenditure incentive objective*, and
  - (3) must be determined taking into account the *Capital Expenditure Incentive Guidelines*.
- (h) In making a determination under paragraph (f), the *AER* must:
  - (1) have regard to the *capital expenditure factors*; and
  - (2) 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.
- (i) Where the *margin requirement* is satisfied, and subject to paragraph (k), the *AER* may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) should be reduced by such of the margin referred to in paragraph (d) as the *AER* is reasonably satisfied would not have been paid if the arrangements to which the margin is referable had been on arm's length terms.
- (j) Where the *capitalisation requirement* is satisfied, and subject to paragraph (k), the *AER* may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) should be reduced by such of the capitalised operating expenditure referred to in paragraph (e) as is included in the forecast operating expenditure accepted or substituted by the *AER* for the review period.
- (k) A determination made under paragraph (i) or (j) must be consistent with the *capital expenditure incentive objective* and, in making such a determination, the *AER* must take into account the *Capital Expenditure Incentive Guidelines*.
- (l) Nothing in this clause S6A.2.2A is to be taken to preclude the *AER* from:
  - (1) requiring a *Transmission Network Service Provider* to provide such information; or
  - (2) from undertaking such analysis,as the *AER* considers appropriate to enable it to make a statement, with supporting reasons, as referred to in clause 6A.14.2(1).

### **S6A.2.2B Depreciation**

- (a) Pursuant to clause 6A.14.1(5D), the *AER* must decide, for a draft decision under rule 6A.12 or a final decision under rule 6A.13, whether depreciation for establishing the regulatory asset base for a *transmission system* as at the commencement of the following *regulatory control period* is to be based on actual or forecast capital expenditure.
- (b) The decision referred to in paragraph (a) must be consistent with the *capital expenditure incentive objective*.
- (c) In making the decision referred to in paragraph (a), the *AER* must have regard to:
  - (1) the incentives that the *Transmission Network Service Provider* has in relation to undertaking efficient capital expenditure, including as a result of the application of any *service target performance incentive scheme*;
  - (2) the substitution possibilities between assets with relatively short economic lives and assets with relatively long economic lives and the relative benefits of such asset types;
  - (3) the extent to which any capital expenditure incurred by the *Transmission Network Service Provider* has exceeded the corresponding amount of forecast capital expenditure accepted or substituted by the *AER* and the amount of that excess expenditure is not efficient;
  - (4) the *Capital Expenditure Incentive Guidelines*; and
  - (5) the *capital expenditure factors*.

### **[137] Clause S6A.2.3 Removal of assets from regulatory asset base**

In clause S6A.2.3(a), after "schedule" insert "and subject to paragraph (c)".

### **[138] Clause S6A.2.3 Removal of assets from regulatory asset base**

After clause S6A.2.3(b), insert:

- (c) Nothing in paragraph (a) is to be taken to limit the application of clause S6A.2.2A.

### **[139] Clause S6A.4.2 Exclusions, qualifications and modifications**

In clause S6A.4.2(f)(1)(c1), omit "the *submission guidelines* so far as they are relevant" and substitute "any relevant *regulatory information instrument*".

**[140] Clause S6A.4.2 Exclusions,  
qualifications and modifications**

After clause S6A.4.2(f)(1), insert:

1A. Clause 6A.10.1A (*AER's framework and approach paper*)

Clause 6A.10.1A is not applicable to *AEMO*.

**[141] Clause S6A.4.2 Exclusions,  
qualifications and modifications**

Omit clause S6A.4.2(f)(2), and substitute "[Deleted]".

## **Schedule 3            Amendment to the National Electricity Rules**

### **[1] Chapter 10            Omitted Definitions**

In Chapter 10, omit the following definitions:

#### ***statement of regulatory intent***

A statement issued by the *AER* under clause 6.5.4(c).

#### ***submission guidelines***

The guidelines made by the *AER* in accordance with rule 6A.10 for the purposes of guiding a *Transmission Network Service Provider* in the submission of a *Revenue Proposal* under Part E of Chapter 6A.

#### **WACC**

Weighted average cost of capital.

#### ***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 6A.6.2(b) to (e), and in any other case an amount determined in a manner consistent with schedule 6.1. For a *Distribution Network Service Provider* for a *regulatory control period*, the return on capital for that *Distribution Network Service Provider* for that *regulatory control period* calculated in accordance with clause 6.5.2.

### **[2] Chapter 10            Substituted Definitions**

In chapter 10, substitute the following definitions:

#### ***contingent project***

In relation to a distribution determination, a *proposed contingent project* that is determined by the *AER*, in accordance with clause 6.6A.1(b), to be a *contingent project* for the purposes of that distribution determination.

In relation to a *revenue determination*, a *proposed contingent project* that is determined by the *AER*, in accordance with clause 6A.8.1(b), to be a *contingent project* for the purposes of that *revenue determination*.

#### ***materially***

For the purposes of the application of clause 6.6.1, an event results in a *Distribution Network Service Provider* incurring materially higher or materially lower costs if the change in costs (as opposed to the revenue impact) that the *Distribution Network Service Provider* has incurred and is likely to incur in any *regulatory year* of a *regulatory control period*, as a

result of that event, exceeds 1% of the *annual revenue requirement* for the *Distribution Network Service Provider* for that *regulatory year*.

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

In other contexts, the word has its ordinary meaning.

#### ***negative change event***

For a *Distribution Network Service Provider*, a *pass through event* which entails the *Distribution Network Service Provider* incurring *materially* lower costs in providing *direct control services* than it would have incurred but for that 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.

#### ***positive change event***

For a *Distribution Network Service Provider*, a *pass through event* which entails the *Distribution Network Service Provider* incurring *materially* higher costs in providing *direct control services* than it would have incurred but for that event, but does not include a *contingent project* or an associated *trigger 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, but does not include a *contingent project* or an associated *trigger event*.

#### ***proposed contingent capital expenditure***

For a *Distribution Network Service Provider*, the total forecast capital expenditure for the relevant *proposed contingent project*, as included in the *regulatory proposal* for that project.

For a *Transmission Network Service Provider*, the total forecast capital expenditure for the relevant *proposed contingent project*, as included in the *Revenue Proposal* for that project.

***proposed contingent project***

A proposal by a *Distribution Network Service Provider* as part of a *regulatory proposal* for a project to be determined by the *AER* as a *contingent project* for the purposes of a distribution determination in accordance with clause 6.6A.1(b).

A proposal by a *Transmission Network Service Provider* as part of a *Revenue Proposal* for a project to be determined by the *AER* as a *contingent project* for the purposes of a *revenue determination* in accordance with clause 6A.8.(b)1(b).

***trigger event***

For a *Distribution Network Service Provider*, in relation to a *proposed contingent project* or a *contingent project*, a specific condition or event described in clause 6.6A.1(c), the occurrence of which, during the relevant *regulatory control period*, may result in the amendment of a distribution determination under clause 6.6A.2. For a *Transmission Network Service Provider*, in relation to a *proposed contingent project* or a *contingent project*, a specific condition or event described in clause 6A.8.1(c), the occurrence of which, during the relevant *regulatory control period*, may result in the amendment of a *revenue determination* under clause 6A.8.2.

**[3] Chapter 10            New Definitions**

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

***allowed rate of return***

Has the meaning given to it by clause 6.5.2(a) or clause 6A.6.2(a), as the case may be.

***allowed rate of return objective***

Has the meaning given to it by clause 6.5.2(b) or clause 6A.6.2(b), as the case may be.

***annual benchmarking report***

Has the meaning given to it by clause 6.2.7 or clause 6A.31, as the case may be.

***Capital Expenditure Incentive Guidelines***

Guidelines made by the *AER* under clause 6.4A(b) or clause 6A.5A(b), as the case may be.

***capital expenditure incentive objective***

Has the meaning given to it by clause 6.4A(a) or clause 6A.5A(a), as the case may be.



***capital expenditure sharing scheme***

A scheme developed and *published* by the *AER* in accordance with clause 6.5.8A or clause 6A.6.5A, as the case may be.

***capital expenditure sharing scheme principles***

Has the meaning given to it by clause 6.5.8A(c) or clause 6A.6.5(c), as the case may be.

***capitalisation requirement***

The requirement set out in clause S6.2.2A(e) or clause S6A.2.2A(e), as the case may be.

***demand management incentive and embedded generation connection scheme***

A scheme for certain *Distribution Network Service Providers* developed and *published* by the *AER* under clause 6.6.3.

***Distribution Confidentiality Guidelines***

Guidelines made by the *AER* under clause 6.14A.

***margin requirement***

The requirement set out in clause S6.2.2A(d) or clause S6A.2.2A(d), as the case may be.

***overspending requirement***

The requirement set out in clause S6.2.2A(c) or clause S6A.2.2A(c), as the case may be.

***Rate of Return Guidelines***

Guidelines made by the *AER* under clauses 6.5.2(j) or (m) or clauses 6A.6.2(j) or (m), as the case may be.

***Shared Asset Guidelines***

Guidelines made by the *AER* under clause 6.4.4(d) or clause 6A.5.5(d), as the case may be.

***shared asset principles***

Has the meaning given to it by clause 6.4.4(c) or clause 6A.5.5(c), as the case may be.

***small-scale incentive scheme***

A scheme developed and *published* by the *AER* in accordance with clause 6.6.4 or clause 6A.7.5, as the case may be.

*standard expenditure forecasting methodology*

Has the meaning given to it by clause 6.4.5(a) or clause 6A.5.6(a), as the case may be.

*Transmission Confidentiality Guidelines*

Guidelines made by the AER under clause 6A.16A.

**[4] Rule 11.1 New Rule Definitions**

After the Rule heading "Savings and Transitional Rules", omit "Part A [**Deleted**]" and substitute:

**Part A Definitions**

**Part A**

For the purposes of this Chapter:

**statement of regulatory intent** means the relevant statement adopting values, methods and credit rating levels for *Distribution Network Service Providers* or for specified classes of *Distribution Network Service Providers* issued by the AER before the commencement of the National Electricity Amendment (Economic Regulation of Network Service Providers) Rule 2012.

**submission guidelines** mean the relevant guidelines made by the AER for the purposes of guiding a *Transmission Network Service Provider* in the submission of a *Revenue Proposal* under Part E of Chapter 6A before the commencement of the National Electricity Amendment (Economic Regulation of Network Service Providers) Rule 2012.

**WACC** means the relevant weighted average cost of capital being for a *Network Service Provider* for a *regulatory control period*, being the return on capital for that *Network Service Provider* for that *regulatory control period* calculated in accordance with Chapters 6 or 6A (as the case may be) before the commencement of the National Electricity Amendment (Economic Regulation of Network Service Providers) Rule 2012.

**[5] Reference to 'WACC' in Chapter 11**

In clause 11.6.12(e), omit "WACC" and substitute "WACC".

**[6] References to 'submission guidelines' in various clauses in Chapter 11**

In clauses 11.6.17(a)(5), 11.32.3(f)(1), 11.32.3(g)(1), 11.32.3(h) and 11.32.3(i)(1) omit "*submission guidelines*" and substitute "submission guidelines".

**[7] References to 'statement of regulatory intent' in various clauses in Chapter 11**

In clauses 11.16.7(a) and (b), and 11.17.3(a), omit “*statement of regulatory intent*” and substitute "statement of regulatory intent".

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

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