

Making of National Electricity (Economic Regulation of Distribution Services) Amendment Rules 2007

National Electricity Law - Section 90A

I, Patrick Conlon, Minister for Energy for the Crown in right of the State of South Australia, as the Minister administering the *National Electricity (South Australia) Act 1996* of South Australia, hereby make the National Electricity (Economic Regulation of Distribution Services) Amendment Rules 2007 under section 90A(1) of the National Electricity Law on the recommendation of the Ministerial Council on Energy.

These Rules have been signed by me for the purposes of identification as the National Electricity (Economic Regulation of Distribution Services) Amendment Rules 2007.



**HON PATRICK CONLON MP
MINISTER FOR ENERGY**

16 December 2007

NATIONAL ELECTRICITY (ECONOMIC
SERVICES) AMEN
Statutory Legis
TABLE OF
**National Electricity
(Economic Regulation of
Distribution Services)
Amendment Rules 2007**

January 2008

NATIONAL ELECTRICITY (ECONOMIC REGULATION OF DISTRIBUTION SERVICES) AMENDMENT RULES 2007

TRANSITIONAL PROVISIONS FOR NEW SOUTH WALES AND THE AUSTRALIAN CAPITAL TERRITORY

1. Insert in Part M of Chapter 11:

Division 2 Special provisions applying to New South Wales and the Australian Capital Territory for the Regulatory Control Period 2009-2014

11.15 Special provisions applying to New South Wales and the Australian Capital Territory

11.15.1 Regulatory control period 2009-2014 for NSW and ACT

There is to be a regulatory control period of 5 years for the NSW and ACT Distribution Network Service Providers commencing on 1 July 2009, which is referred to in this Division 2 as the regulatory control period 2009-2014.

11.15.2 Application of Chapter 6 to NSW and ACT for regulatory control period 2009-2014

- (a) Chapter 6 of the *Rules* applies in relation to the NSW and ACT Distribution Network Service Providers in respect of the regulatory control period 2009-2014 as if that Chapter were amended so as to be in the form set out in Appendix 1 to the *Rules*.
- (b) However, anything required to be done by or in relation to the NSW and ACT Distribution Network Service Providers during the regulatory control period 2009-2014 for the purposes of the *regulatory control period* commencing on 1 July 2014 is to be done in accordance with general Chapter 6, but (where appropriate) taking into account anything done under transitional Chapter 6.
- (c) Accordingly general Chapter 6 does not apply in relation to the NSW and ACT Distribution Network Service Providers in respect of the regulatory control period 2009-2014 except:
 - (1) as provided by paragraphs (a) and (b); and
 - (2) to the extent that a provision of transitional Chapter 6 expressly applies a provision of general Chapter 6 or expressly provides that an act, matter or thing has to be done in accordance with a provision of or a procedure in general

Chapter 6.

- (d) For the avoidance of doubt, this rule 11.15 and transitional Chapter 6 do not apply to *Distribution Network Service Providers* not referred to in paragraph (c).
- (e) References in the *Rules* (other than Chapter 6 and this rule 11.15) to Chapter 6 or a provision of Chapter 6 are references to transitional Chapter 6 or a provision of transitional Chapter 6 so far as the references relate to the regulatory control period 2009-2014 for the NSW and ACT Distribution Network Service Providers.
- (f) In this rule 11.15:
 - “general Chapter 6” means Chapter 6 as in force apart from this rule 11.15.
 - “transitional Chapter 6” means Chapter 6 in the form set out in Appendix 1 to the Rules.

2. Insert at the end of the *Rules*:

Appendix 1 Form in which Chapter 6 applies to New South Wales and the Australian Capital Territory for the Regulatory Control Period 2009-2014

Note:

*This Appendix contains transitional Chapter 6 and is based on general Chapter 6. Matter omitted from numbered provisions of general Chapter 6 is indicated by a row of asterisks (*****).*

Chapter 6 Economic Regulation of Distribution Services

Part A Introduction

6.1 Introduction to Chapter 6

6.1.1 AER's regulatory responsibility

The *AER* is responsible, in accordance with this Chapter, for the economic regulation of *distribution services* provided by means of, or in connection with, *distribution systems* that form part of the *national grid*.

6.1.2 Structure of this Chapter

- (a) This Chapter deals with the classification and economic regulation of *distribution services*.
- (b) It is divided into parts as follows:
 - (1) this Part is introductory;
 - (2) Part B provides for the classification of *distribution services* and forms of control for *standard control services* and confers power on the AER to determine the forms of control for *alternative control services*, and to make distribution determinations;
 - (3) Part C sets out the building block approach to the regulation of services classified as *standard control services*;
 - (4) Part D regulates the prices that may be charged by EnergyAustralia for the provision of services classified as *negotiated distribution services*;
 - (4A) Part DA regulates the prices for negotiable components of *direct control services* (NSW and ACT);
 - (5) Part E sets out the procedures for making a distribution determination;
 - (6) Part F regulates cost allocation;
 - (7) *****
 - (8) Part H deals with ring-fencing;
 - (9) Part I deals with *tariff classes* and tariffs;
 - (10) Part J deals with billing and settlements;
 - (11) Part K deals with prudential requirements, prepayments and capital contributions;
 - (12) Part L deals with dispute resolution;
 - (13) Part M deals with the disclosure of transmission and distribution charges.

6.1.3 Access to direct control services and negotiated distribution services

- (a) Subject to and in accordance with the *Rules*:

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- (1) a person (a *Service Applicant*) may apply to a *Distribution Network Service Provider* for provision of *direct control services* or *negotiated distribution services*;
 - (2) a *Distribution Network Service Provider* must provide *direct control services* or *negotiated distribution services* (as the case may be) on *terms and conditions of access* as determined under Chapters 4, 5, this Chapter 6 and Chapter 7 of the Rules.
- (b) The *terms and conditions of access* are:
- (1) in relation to *negotiated distribution services*:
 - (i) the price of those services (including, if relevant, *access charges*); and
 - (ii) other terms and conditions for the provision of those services;
 - (2) in relation to *direct control services*:
 - (i) subject to Part DA:
 - (A) the price of those services under the *approved pricing proposal*, except as provided by subsubparagraph (B); and
 - (B) in the case of EnergyAustralia's prescribed (transmission) standard control services, the price of those services under EnergyAustralia's approved pricing methodology; and
 - (ii) other terms and conditions for the provision of those services.

6.1.4 Prohibition of DUOS charges for the export of energy

- (a) A *Distribution Network Service Provider* must not charge a *Distribution Network User* *distribution use of system charges* for the export of electricity generated by the user into the *distribution network*.
- (b) This does not, however, preclude charges for the provision of *connection services*.

6.1.5 Application of this Chapter to certain transmission assets – ActewAGL, Country Energy and Integral Energy Australia

- (a) This clause 6.1.5 applies to ActewAGL, Country Energy and Integral Energy Australia (each of which is a “relevant provider” for the purposes of this clause).
- (b) For the purposes of the regulatory control period 2009-2014:
 - (1) each part of a relevant provider’s *network* that would, but for this clause, be part of the provider’s *transmission network* is deemed to be part of the provider’s *distribution network* for the purposes of this Chapter 6 and Chapter 6A; and
 - (2) despite anything in those Chapters, those Chapters have effect accordingly.
- (c) This clause 6.1.5 does not affect the operation of the *Rules*, apart from:
 - (1) this Chapter 6 and Chapter 6A; and
 - (2) the definitions of *distribution network* and *transmission network* in Chapter 10 in relation to this Chapter 6 and Chapter 6A.
- (d) However, the relevant providers are not required to submit revenue proposals under clause 6A.10.1.

6.1.6 Application of this Chapter to the EnergyAustralia transmission support network

- (a) This clause 6.1.6 applies to EnergyAustralia.
- (b) For the purposes of the regulatory control period 2009-2014:
 - (1) the EnergyAustralia transmission support network is deemed to be part of EnergyAustralia’s *distribution network* for the purposes of this Chapter and Chapter 6A; and
 - (2) despite anything in those Chapters, those Chapters have effect accordingly.
- (c) A service that is provided by EnergyAustralia by means of, or in connection with, the EnergyAustralia transmission support network and that, but for this clause, would be a *prescribed transmission service* is:
 - (1) deemed to be classified as a *direct control service* and further

classified as a *standard control service*; and

- (2) referred to in this Chapter as an “EnergyAustralia prescribed (transmission) standard control service”.
- (d) A service that is provided by EnergyAustralia by means of, or in connection with, the EnergyAustralia transmission support network and that, but for this clause, would be a *negotiated transmission service* is:
 - (1) deemed to be classified as a *negotiated distribution service*;
 - (2) referred to in the Rules as an “EnergyAustralia negotiated distribution service”.
- (e) Part J of Chapter 6A applies to EnergyAustralia prescribed (transmission) standard control services to the exclusion of Parts I, J and K, and so applies as if:
 - (1) references in Part J of Chapter 6A to a *prescribed transmission service* were references to Energy Australia prescribed (transmission) standard control services; and
 - (2) the reference in clause 6A.22.1 to clause 6A.3.2 were a reference to rules 6.6 and 6.13;

and with any other necessary modifications.

- (f) This clause 6.1.6 does not affect the operation of the *Rules*, apart from:
 - (1) this Chapter 6 and Chapter 6A; and
 - (2) the definitions of *distribution network* and *transmission network* in Chapter 10 in relation to this Chapter 6 and Chapter 6A.

6.1.7 Definitions

- (a) In this Chapter (including Schedules 6.1 and 6.2):

“ActewAGL” means the joint venture between ACTEW Distribution Limited ACN 073 025 224 and Alinta GCA Pty Ltd ACN 008 552 663 providing *distribution services* in the Australian Capital Territory, or any successor or successors of that joint venture.

“commencement date” means the date of commencement of transitional Chapter 6.

“Cost Allocation Method” means:

- (a) for NSW Distribution Network Service Providers – the Cost Allocation Method approved under clause 6.15.6 as in force from time to time; or
- (b) for the ACT Distribution Network Service Provider – the Cost Allocation Method approved under clause 6.15.8 as in force from time to time.

“Country Energy” means the energy services corporation of that name, which is constituted under section 7 of the Energy Services Corporations Act 1995 (NSW) and specified in Part 2 of Schedule 1 to that Act, or any successor or successors of that corporation.

“EnergyAustralia” means the energy services corporation of that name, which is constituted under section 7 of the Energy Services Corporations Act 1995 (NSW) and specified in Part 2 of Schedule 1 to that Act, or any successor or successors of that corporation.

“EnergyAustralia negotiated distribution service” – see clause 6.1.6(d).

“EnergyAustralia prescribed (transmission) standard control service” – see clause 6.1.6(c).

“EnergyAustralia transmission support network” means any part of a network owned, controlled or operated by EnergyAustralia and operating between 66 kV and 220 kV that operates in parallel to and provides support to the higher voltage *transmission network*.

“ICRC” means the Independent Competition and Regulatory Commission of the Australian Capital Territory, which is established under section 5(1) of the Independent Competition and Regulatory Commission Act 1997 (ACT).

“Integral Energy Australia” means the energy services corporation of that name, which is constituted under section 7 of the Energy Services Corporations Act 1995 (NSW) and specified in Part 2 of Schedule 1 to that Act, or any successor or successors of that corporation.

“IPART” means the Independent Pricing and Regulatory Tribunal of New South Wales, which is established under section 5(1) of the Independent Pricing and Regulatory Tribunal Act 1992 (NSW).

“regulatory control period 2004-2009” means the regulatory control period of 5 years commencing on 1 July 2004.

“regulatory control period 2009-2014” means the regulatory control period of 5 years commencing on 1 July 2009 and referred to in rule 11.15.

“transitional Chapter 6” means this Chapter (being transitional Chapter 6 as defined in rule 11.15).

- (b) In this Chapter and in rule 11.15:
- (1) a reference to the NSW Distribution Network Service Providers is a reference to Country Energy, EnergyAustralia and Integral Energy Australia; and
 - (2) a reference to the ACT Distribution Network Service Provider is a reference to ActewAGL.

Part B Classification of Distribution Services and Distribution Determinations

Division 1 Classification of distribution services

6.2 Classification

6.2.1 *****

6.2.2 *****

6.2.3 *****

6.2.3A Classes and subclasses of distribution services

- (a) *Distribution services* to be provided by a *Distribution Network Service Provider* are divided into the following 3 classes:

- (1) *direct control services*;
- (2) *negotiated distribution services*;
- (3) *unregulated distribution services*.

Note:

Certain services provided by means of, or in connection with, the EnergyAustralia transmission support network (which is deemed by clause 6.1.6(b) to be part of EnergyAustralia’s distribution network) are deemed by clause 6.1.6(d) to be classified as negotiated distribution services for certain purposes.

- (b) *Direct control services* are further divided into the following 2 subclasses:

(1) *standard control services*; and

(2) *alternative control services*.

6.2.3B Classification for NSW Distribution Network Service Providers

- (a) A *distribution service* that is provided by a NSW Distribution Network Service Provider and that was determined by the IPART to be a prescribed distribution service (for the purposes of the regulatory control period 2004-2009) is deemed (for the purposes of the regulatory control period 2009-2014) to be classified as a *direct control service* and further classified as a *standard control service*.

Note:

The IPART's Final Determination No 2, 2004 (relating to NSW Electricity Distribution Pricing 2004/05 to 2008/09) provided that prescribed distribution services include:

- *Distribution Use of System Services*
- *Private Power Line Inspections and Customer Installation Inspections*
- *certain Monopoly Services*
- *certain Miscellaneous Services*
- *certain Emergency Recoverable Works*.

- (b) A *distribution service* that is provided by a NSW Distribution Network Service Provider and that was determined by the IPART to be an excluded distribution service (for the purposes of the regulatory control period 2004-2009) is deemed (for the purposes of the regulatory control period 2009-2014):

(1) in the case of the excluded distribution service of the construction and maintenance of public lighting infrastructure – to be classified as a *direct control service* and further classified as an *alternative control service*;

(2) in the case of any other excluded distribution service – to be classified as:

- (i) an unregulated *distribution service*, unless the AER has made a determination under paragraph (e) in relation to that *distribution service*; or
- (ii) an *alternative control service*, if the AER has made a determination under paragraph (e) in relation to that *distribution service*.

Note:

1. *Other distribution services provided by a NSW Distribution Network Service*

Provider are unclassified and not regulated under the Rules.

2. The IPART's Final Determination No 2, 2004 (relating to NSW Electricity Distribution Pricing 2004/2005 to 2008/2009) determined that the following Distribution Services are Excluded Distribution Services):

- *the construction and maintenance of Public Lighting Infrastructure*
- *Customer Funded Connections*
- *Customer Specific Services*
- *Type 1 to 4 Metering Services.*

- (c) A NSW Distribution Network Service Provider is, in relation to a *distribution service* classified as an unregulated *distribution service*, required to comply substantially with the relevant requirements of the provisions of Rule 2004/1 (Regulation of Excluded Distribution Services) made by the IPART in relation to the regulatory control period 2004-2009.

Note:

Distribution services provided by a NSW Distribution Network Service Provider that are unclassified are not regulated under the Rules, and accordingly are not required to comply with the requirements of Rule 2004/1.

- (d) For the purposes of paragraph (c), the provisions of Rule 2004/1 have effect as if references to the IPART were references to the AER and references to the regulatory control period 2004-2009 were references to the regulatory control period 2009-2014, and with any other necessary modifications.
- (e) The AER may, at any time during the regulatory control period 2009-2014, determine that a NSW Distribution Network Service Provider is not or has ceased to be in substantial compliance with the requirements of the provisions referred to in paragraph (c) if the AER has:
- (1) given the provider a written notice inviting the provider to show cause within a specified period of at least 2 weeks why the AER should not make the determination and setting out the grounds on which the AER would make the determination; and
 - (2) taken into consideration any written submissions made by the provider to the AER within that period in response to the notice.
- (f) Once a *distribution service* has been classified as an *alternative control service* because of a determination by the AER under paragraph (e), the *distribution service* cannot during the remainder of the regulatory control period 2009-2014 be classified again as an unregulated *distribution service*, unless it appears to the AER that the determination is affected by a material error or deficiency of a

kind referred to in rule 6.13(a).

- (g) Provisions having effect as referred to in paragraph (c) may be included in a distribution determination in any appropriate format.
- (h) Once a *distribution service* has been classified as an *alternative control service* because of a determination by the *AER* under paragraph (e), the *AER* must make such amendments to the relevant distribution determination as are necessary to regulate the *distribution service* as an *alternative control service*.
- (i) When making the distribution determination for a NSW Distribution Network Service Provider, the *AER* may, with the agreement of the provider, vary the deemed classification effected by this clause 6.2.3B of a *distribution service* provided by the provider.
- (j) A deemed or varied classification under this clause 6.2.3B forms part of a distribution determination and operates for the regulatory control period 2009-2014.

6.2.3C Classification for ACT Distribution Network Service Provider

- (a) A *distribution service* that is provided by the ACT Distribution Network Service Provider and that was determined by the ICRC to be a prescribed distribution service (for the purposes of the regulatory control period 2004-2009) is deemed (for the purposes of the regulatory control period 2009-2014) to be classified as a *direct control service* and further classified as a *standard control service*.
- (b) A *distribution service* that is provided by the ACT Distribution Network Service Provider and that was determined by the ICRC to be an excluded distribution service (for the purposes of the regulatory control period 2004-2009) is deemed (for the purposes of the regulatory control period 2009-2014) to be classified as a *direct control service* and further classified as an *alternative control service*.
- (c) When making the distribution determination for the ACT Distribution Network Service Provider, the *AER* may, with the agreement of the provider, vary the deemed classification effected by this clause 6.2.3C of a *distribution service* provided by the provider.
- (d) A deemed or varied classification under this clause 6.2.3C forms part of a distribution determination and operates for the regulatory control period 2009-2014.

Note:

The ICRC's Final Decision-Investigation into prices for electricity distribution services in the ACT-Report No 6 of 2004 (relating to ACT Electricity Distribution

Pricing 2004/2005 to 2008/2009) provided that prescribed distribution services include all distribution services provided by ActewAGL, with the exception of the provision of and servicing of meters for customers consuming fewer than 160 megawatt hours per annum, including:

- meter testing
- meter reading
- meter checking
- the processing of metering data
- the provision of non-standard meters.

The services covered by the exception are accordingly Excluded Distribution Services.

Division 2 Distribution determinations

6.2.4 Duty of AER to make distribution determinations

- (a) The AER must make a distribution determination for each *Distribution Network Service Provider*.
- (b) When the AER makes a distribution determination it must follow the process set out in Part E.
- (c) *****
- (d) *****

6.2.5 Control mechanisms for direct control services

- (a) A distribution determination is to impose controls over the prices of *direct control services*, the revenue to be derived from *direct control services* or both.
- (b) *****
- (c) *****
- (c1) The control mechanism for:
 - (1) subject to subparagraph (3), *standard control services* provided by a NSW Distribution Network Service Provider in the regulatory control period 2009-2014:
 - (i) must be substantially the same as that determined by the IPART for the corresponding prescribed distribution services provided in the regulatory control period 2004-2009; and
 - (ii) may, with the agreement of the provider, apply differently

for different categories of services; and

- (2) *standard control services* provided by the ACT Distribution Network Service Provider in the regulatory control period 2009-2014 must be substantially the same as that determined by the ICRC for prescribed distribution services provided in the regulatory control period 2004-2009; and
 - (3) EnergyAustralia prescribed (transmission) standard control services provided in the regulatory control period 2009-2014 and referred to in clause 6.1.6(c) must be substantially the same as that determined by the ACCC for the corresponding *prescribed transmission services* provided in the regulatory control period 2004-2009.
- (c2) The control mechanism for *alternative control services* may consist of:
- (1) a schedule of fixed prices;
 - (2) caps on the prices of individual services;
 - (3) caps on the revenue to be derived from a particular combination of services;
 - (4) tariff basket price control;
 - (5) revenue yield control;
 - (6) a combination of any of the above.
- (d) In deciding on a control mechanism for *alternative control services*, the AER must have regard to:
- (1) the potential for development of competition in the relevant market and how the control mechanism might influence that potential; and
 - (2) the possible effects of the control mechanism on administrative costs of the AER, the *Distribution Network Service Provider* and users or potential users; and
 - (3) the regulatory arrangements (if any) applicable to the relevant service immediately before the commencement of the distribution determination; and
 - (4) the desirability of consistency between regulatory arrangements for similar services (both within and beyond the relevant jurisdiction); and

(5) any other relevant factor.

- (e) The *AER* must, before 1 March 2008 or the date that is one month after the commencement date (whichever is the later), *publish* a statement indicating its likely approach to the control mechanisms for *alternative control services*. In preparing the statement, the *AER* may carry out such consultation as the *AER* thinks appropriate and may take into consideration any consultation carried out before the commencement date.

6.2.6 Basis of control mechanisms for direct control services

- (a) For *standard control services*, the control mechanism must be of the prospective CPI minus X form, or some incentive-based variant of the prospective CPI minus X form, in accordance with Part C.
- (b) For *alternative control services*, the control mechanism must have a basis stated in the distribution determination.
- (c) The control mechanism for *alternative control services* may (but need not) utilise elements of Part C (with or without modification).

Examples:

The control mechanism might be based on the building block approach.

The distribution determination might provide for the application of clause 6.6.1 to pass through events with necessary adaptations and specified modifications.

6.2.7 EnergyAustralia negotiated distribution services

Negotiated distribution services provided by EnergyAustralia are regulated in accordance with Part D.

6.2.7A Negotiable components of direct control services (NSW and ACT)

Despite anything in this Division 2, the control mechanism for *direct control services* may include elements referred to as negotiable components of *direct control services*, as provided in Part DA.

Division 3 Guidelines

6.2.8 Guidelines

- (a) The *AER* may *publish* guidelines as to:
- (1) *****
 - (2) the control mechanisms for *direct control services*; and
 - (3) the calculation of stand-alone, avoidable and long-run

marginal costs; and

- (4) the *AER's* likely approach to determining materiality in the context of possible *pass through events*; and
 - (4A) the transition from pre-tax to post-tax revenue regulation; and
 - (5) other matters relevant to this Chapter.
- (b) The guidelines may relate to a specified *Distribution Network Service Provider* or *Distribution Network Service Providers* of a specified class.
 - (c) The guidelines are not mandatory (and hence do not bind the *AER* or anyone else) but, if the *AER* makes a distribution determination that is not in accordance with a relevant guideline, the *AER* must state, in its reasons for the distribution determination, the reasons for departing from the guideline.
 - (d) If the guidelines indicate that there may be a change of regulatory approach in future distribution determinations, the guidelines should also (if practicable) indicate how transitional issues are to be dealt with.
 - (e) *****
 - (f) In making or amending a guideline, the *AER* may carry out such consultation as the *AER* thinks appropriate and may take into consideration any consultation carried out before the commencement date.

Part C Building Block Determinations for standard control services

6.3 Building block determinations

6.3.1 Introduction

- (a) A *building block determination* is a component of a distribution determination.
- (b) The procedure for making a *building block determination* is contained in Part E of this Chapter and involves the submission of a *building block proposal* to the *AER* by the *Distribution Network Service Provider*.
- (c) The *building block proposal*:

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- (1) must be prepared in accordance with the *post-tax revenue model*, other relevant requirements of this Part, and Schedule 6.1; and
 - (2) must comply with the requirements of, and must contain or be accompanied by the information required by, any relevant *regulatory information instrument*.

6.3.2 Contents of building block determination

(a) A *building block determination* for a *Distribution Network Service Provider* is to specify, for a *regulatory control period*, the following matters:

- (1) the *Distribution Network Service Provider's annual revenue requirement* for each *regulatory year* of the *regulatory control period*;
- (2) appropriate methods for the indexation of the regulatory asset base;
- (3) how any applicable *efficiency benefit sharing scheme*, *service target performance incentive scheme*, or *demand management incentive scheme* are to apply to the *Distribution Network Service Provider*;
- (4) the commencement and length of the *regulatory control period*;
- (5) any other amounts, values or inputs on which the *building block determination* is based (differentiating between those contained in, or inferred from, the service provider's *building block proposal* and those based on the *AER's* own estimates or assumptions).

(b) *****

6.4 Post-tax revenue model

6.4.1 Preparation, publication and amendment of post-tax revenue model

(a) The *AER* must prepare and *publish* a *post-tax revenue model*.

(b) *****

(c) *****

(d) The *AER* must *publish* the first *post-tax revenue model* before 1

February 2008 or the date that is one month after the commencement date (whichever is the later), and may carry out such consultation in connection with the preparation of the model as the *AER* thinks appropriate and may take into consideration any consultation carried out before the commencement date.

- (e) The *AER* may, from time to time and with the agreement of each affected *Distribution Network Service Provider*, amend or replace the *post-tax revenue model*.

6.4.2 Contents of post-tax revenue model

- (a) The *post-tax revenue model* must set out the manner in which the *Distribution Network Service Provider's annual revenue requirement* for each *regulatory year* of a *regulatory control period* is to be calculated.
- (b) The contents of the *post-tax revenue model* must include (but are not limited to):
 - (1) a method that the *AER* determines is likely to result in the best estimates of expected inflation; and
 - (2) the timing assumptions and associated discount rates that are to apply in relation to the calculation of the building blocks referred to in clause 6.4.3; and
 - (3) the manner in which working capital is to be treated; and
 - (4) the manner in which the estimated cost of corporate income tax is to be calculated.

6.4.3 Building block approach

- (a) Building blocks generally

The *annual revenue requirement* for a *Distribution Network Service Provider* for each *regulatory year* of a *regulatory control period* must be determined using a building block approach, under which the building blocks are:

- (1) indexation of the regulatory asset base – see paragraph (b)(1); and
- (2) a return on capital for that year – see paragraph (b)(2); and
- (3) the depreciation for that year – see paragraph (b)(3); and
- (4) the estimated cost of corporate income tax of the provider for

that year – see paragraph (b)(4); and

- (5) the revenue increments or decrements (if any) for that year arising from the application of the *service target performance incentive scheme* and the *demand management incentive scheme* – see paragraph (b)(5); and
- (6) the other revenue increments or decrements (if any) for that year arising from the application of a control mechanism in the previous *regulatory control period* – see paragraph (b)(6); and
- (7) the forecast operating expenditure for that year – see paragraph (b)(7); and
- (8) certain revenue increments or decrements for that year arising from the D-factor carry forward – see paragraph (b)(8).

(b) Details of the building blocks

For the purposes of paragraph (a):

- (1) for indexation of the regulatory asset base:
 - (i) the regulatory asset base is calculated in accordance with clause 6.5.1 and schedule 6.2; and
 - (ii) the building block comprises a negative adjustment equal to the amount referred to in clause S6.2.3(c)(4) for that year; and
- (2) the return on capital is calculated in accordance with clause 6.5.2; and
- (3) the depreciation is calculated in accordance with clause 6.5.5; and
- (4) the estimated cost of corporate income tax is determined in accordance with clause 6.5.3; and
- (5) the revenue increments or decrements referred to in paragraph (a)(5) are those that arise as a result of the operation of an applicable *service target performance incentive scheme* or *demand management incentive scheme* as referred to in clauses 6.6.2 and 6.6.3; and
- (6) the other revenue increments or decrements referred to in paragraph (a)(6) are those that are to be carried forward to the current *regulatory control period* as a result of the application of a control mechanism in the previous *regulatory control*

period and are apportioned to the relevant year under the distribution determination for the current *regulatory control period*; and

- (7) the forecast operating expenditure for the year is the forecast operating expenditure as accepted or substituted by the *AER* in accordance with clause 6.5.6; and
 - (8) the revenue increments or decrements are those that arise as a result of the operation of the arrangements in clause 11 of the IPART's Final Determination No 2, 2004 (relating to NSW Electricity Distribution Pricing 2004/05 to 2008/09) for expenditure or foregone revenue in each of the last 2 *regulatory years* of the regulatory control period 2004-2009.
- (c) The arrangements referred to in paragraph (b)(8) have effect in relation to expenditure or foregone revenue in each of the last 2 *regulatory years* of the regulatory control period 2004-2009:
- (1) as if references to the IPART were references to the *AER* and references to the regulatory control period 2004-2009 were references to the regulatory control period 2009-2014; and
 - (2) with any other necessary modifications.

6.5 Matters relevant to the making of building block determinations

6.5.1 Regulatory asset base

Nature of regulatory asset base

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

Preparation, publication and amendment of model for rolling forward regulatory asset base

- (b) The *AER* must develop and *publish* a model for the roll forward of the regulatory asset base for *distribution systems*, referred to as the *roll forward model*.
- (c) The *AER* may, from time to time and with the agreement of each affected *Distribution Network Service Provider*, amend or replace the *roll forward model*.

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- (d) The *AER* must develop and *publish* the first *roll forward model*, before 1 February 2008 or the date that is one month after the commencement date (whichever is the later), and may carry out such consultation in connection with the preparation of the model as the *AER* thinks appropriate and may take into consideration any consultation carried out before the commencement date. There must be such a model available at all times after that date.

Contents of roll forward model

- (e) The *roll forward model* must set out the method for determining the roll forward of the regulatory asset base for *distribution systems*:
- (1) from the immediately preceding *regulatory control period* to the beginning of the first year of the subsequent *regulatory control period*, so as to establish the value of the regulatory asset base as at the beginning of the first *regulatory year* of that subsequent *regulatory control period*; and
 - (2) from one *regulatory year* in a *regulatory control period* to a subsequent *regulatory year* in that same *regulatory control period*, so as to establish the value of the regulatory asset base as at the beginning of that subsequent *regulatory year*;

under which:

- (3) the roll forward of the regulatory asset base from the immediately preceding *regulatory control period* to the beginning of the first *regulatory year* of a subsequent *regulatory control period* entails the value of the first mentioned regulatory asset base being adjusted for actual inflation, consistently with the method used for the indexation of the control mechanism (or control mechanisms) for *standard control services* during the preceding *regulatory control period*.

Other provisions relating to regulatory asset base

- (f) Other provisions relating to regulatory asset bases are set out in schedule 6.2.
- (g) For the purpose of establishing the value of the regulatory asset base (as referred to in paragraph (e)(1)) as at the beginning of the first *regulatory year* of the regulatory control period 2009-2014 for the ACT Distribution Network Service Provider, and despite clause S6.2.1(e), the *roll forward model* must apply the approach adopted by the ICRC in the distribution determination for the regulatory control period 2004-2009, but taking into account any written

representations by the ICRC to the ACT Distribution Network Service Provider before the commencement date.

- (h) For the purpose of establishing the value of the regulatory asset base (as referred to in paragraph (e)(1)) as at the beginning of the first *regulatory year* of the regulatory control period 2009-2014 for EnergyAustralia, the *roll forward model* in respect of transmission network support assets must be applied as if the *AER* were separately regulating EnergyAustralia's transmission system under the relevant provisions of Chapter 6A.

6.5.2 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 *Distribution Network Service Provider* for that *regulatory control period* (calculated in accordance with this clause 6.5.2) to the value of the regulatory asset base for the relevant *distribution system* as at the beginning of that *regulatory year* (as established in accordance with clause 6.5.1 and schedule 6.2).

Weighted average cost of capital

- (b) The rate of return for a *Distribution Network Service Provider* for a *regulatory control period* is the cost of capital as measured by the return required by investors in a commercial enterprise with a similar nature and degree of non-diversifiable risk as that faced by the *distribution* business of the provider and must be calculated as a nominal post-tax *weighted average cost of capital* ("WACC") in accordance with the following formula:

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

where:

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

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

where:

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

β_e (the equity beta) is deemed to be 1.0; and

MRP (the market risk premium) is deemed to be 6.0%;

k_d is the return on debt and is calculated as:

$r_f + \text{DRP}$

where:

DRP is the debt risk premium for the *regulatory control period* determined in accordance with paragraph (e);

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

D/V (the value of debt as a proportion of the value of equity and debt) is deemed to be 0.6.

Meaning of nominal risk free rate

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

(1) the indicative mid rates published by the Reserve Bank of Australia; and

(2) a period of time which is either:

(i) a period ('the **agreed period**') proposed by the relevant *Distribution Network Service Provider*, and agreed by the AER (such agreement is not to be unreasonably withheld); or

(ii) a period specified by the AER, and notified to the provider within a reasonable time prior to the commencement of that period, if the period proposed by the provider is not agreed by the AER under subparagraph (i),

and, for the purposes of subparagraph (i):

(iii) the start date and end date for the agreed period may be kept confidential, but only until the expiration of the agreed period; and

(iv) the AER must notify the *Distribution Network Service Provider* whether or not it agrees with the proposed period within 30 *business days* of the date of submission

of the *building block proposal*.

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

Meaning of debt risk premium

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

6.5.3 Estimated cost of corporate income tax

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

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

where:

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

γ (the assumed utilisation of imputation credits) is deemed to be 0.5.

For these purposes:

- (1) the cost of debt must be based on that of a benchmark efficient *Distribution Network Service Provider*; and
- (2) the estimate must take into account the estimated depreciation for that *regulatory year* for tax purposes, for a

benchmark efficient *Distribution Network Service Provider*, of assets where the value of those assets is included in the regulatory asset base for the relevant *distribution system* for that *regulatory year*.

6.5.4 *****

6.5.5 Depreciation

- (a) The depreciation for each *regulatory year*:
- (1) must be calculated on the value of the assets as included in the regulatory asset base, as at the beginning of that *regulatory year*, for the relevant *distribution system*; and
 - (2) must be calculated:
 - (i) providing such depreciation schedules conform with the requirements set out in paragraph (b), using the depreciation schedules for each asset or category of assets that are nominated in the relevant *Distribution Network Service Provider's building block proposal*; or
 - (ii) to the extent the depreciation schedules nominated in the provider's *building block proposal* do not so conform, using the depreciation schedules determined for that purpose by the *AER*.
- (b) The depreciation schedules referred to in paragraph (a) must conform to the following requirements:
- (1) the schedules must depreciate using a profile that reflects the nature of the assets or category of assets over the economic life of that asset or category of assets;
 - (2) the sum of the real value of the depreciation that is attributable to any asset or category of assets over the economic life of that asset or category of assets (such real value being calculated as at the time the value of that asset or category of assets was first included in the regulatory asset base for the relevant *distribution system*) must be equivalent to the value at which that asset or category of assets was first included in the regulatory asset base for the relevant *distribution system*;
 - (3) the economic life of the relevant assets and the depreciation methods and rates underpinning the calculation of depreciation for a given *regulatory control period* must be consistent with those determined for the same assets on a prospective basis in the distribution determination for that

period.

6.5.6 Forecast operating expenditure

- (a) A *building block proposal* must include the total forecast operating expenditure for the relevant *regulatory control period* which the *Distribution Network Service Provider* considers is required in order to achieve each of the following (the *operating expenditure objectives*):
- (1) meet or manage the expected demand for *standard control services* over that period;
 - (2) comply with all applicable *regulatory obligations or requirements* associated with the provision of *standard control services*;
 - (3) maintain the quality, reliability and security of supply of *standard control services*;
 - (4) maintain the reliability, safety and security of the *distribution system* through the supply of *standard control services*.
- (b) The forecast of required operating expenditure of a *Distribution Network Service Provider* that is included in a *building block proposal* must:
- (1) comply with the requirements of any relevant *regulatory information instrument*; and
 - (2) be for expenditure that is properly allocated to *standard control services* in accordance with the principles and policies set out in the Cost Allocation Method for the *Distribution Network Service Provider*; and
 - (3) include both:
 - (i) the total of the forecast operating expenditure for the relevant *regulatory control period*; and
 - (ii) the forecast of the operating expenditure for each *regulatory year* of the relevant *regulatory control period*.
- (c) The *AER* must accept the forecast of required operating expenditure of a *Distribution Network Service Provider* that is included in a *building block proposal* if the *AER* is satisfied that the total of the forecast operating expenditure for the *regulatory control period* reasonably reflects:

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- (1) the efficient costs of achieving the *operating expenditure objectives*; and
 - (2) the costs that a prudent operator in the circumstances of the relevant *Distribution Network Service Provider* 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*.

(the *operating expenditure criteria*).

- (d) If the *AER* is not satisfied as referred to in paragraph (c), it must not accept the forecast of required operating expenditure of a *Distribution Network Service Provider* that is included in a *building block proposal*.
- (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) the information included in or accompanying the *building block proposal*;
 - (2) submissions received in the course of consulting on the *building block proposal*;
 - (3) analysis undertaken by or for the *AER* and *published* before the distribution determination is made in its final form;
 - (4) benchmark operating expenditure that would be incurred by an efficient *Distribution Network Service Provider* over the *regulatory control period*;
 - (5) the actual and expected operating expenditure of the *Distribution Network Service Provider* during any preceding *regulatory control periods*;
 - (6) the relative prices of operating and capital inputs;
 - (7) the substitution possibilities between operating and capital expenditure;
 - (8) whether the total labour costs included in the capital and operating expenditure forecasts for the *regulatory control period* are consistent with the incentives provided by the applicable *service target performance incentive scheme* in respect of the *regulatory control period*;

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- (9) the extent the forecast of required operating expenditure of the *Distribution Network Service Provider* is referable to arrangements with a person other than the provider that, in the opinion of the *AER*, do not reflect arm's length terms;
 - (10) the extent the *Distribution Network Service Provider* has considered, and made provision for, efficient non-network alternatives.

6.5.7 Forecast capital expenditure

- (a) A *building block proposal* must include the total forecast capital expenditure for the relevant *regulatory control period* which the *Distribution Network Service Provider* considers is required in order to achieve each of the following (the *capital expenditure objectives*):
 - (1) meet or manage the expected demand for *standard control services* over that period;
 - (2) comply with all applicable *regulatory obligations or requirements* associated with the provision of *standard control services*;
 - (3) maintain the quality, reliability and security of supply of *standard control services*;
 - (4) maintain the reliability, safety and security of the *distribution system* through the supply of *standard control services*.
- (b) The forecast of required capital expenditure of a *Distribution Network Service Provider* that is included in a *building block proposal* must:
 - (1) comply with the requirements of any relevant *regulatory information instrument*; and
 - (2) be for expenditure that is properly allocated to *standard control services* in accordance with the principles and policies set out in the Cost Allocation Method for the *Distribution Network Service Provider*; and
 - (3) include both:
 - (i) the total of the forecast capital expenditure for the relevant *regulatory control period*; and
 - (ii) the forecast of the capital expenditure for each *regulatory year* of the relevant *regulatory control period*; and

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- (4) identify any forecast capital expenditure that is for an option that has satisfied the *regulatory test*.
- (c) The *AER* must accept the forecast of required capital expenditure of a *Distribution Network Service Provider* that is included in a *building block proposal* if the *AER* is satisfied that the total of the forecast capital expenditure for the *regulatory control period* reasonably reflects:
- (1) the efficient costs of achieving the *capital expenditure objectives*; and
 - (2) the costs that a prudent operator in the circumstances of the relevant *Distribution Network Service Provider* would require to achieve the *capital expenditure objectives*; and
 - (3) a realistic expectation of the demand forecast and cost inputs required to achieve the *capital expenditure objectives*.
- (the *capital expenditure criteria*)
- (d) If the *AER* is not satisfied as referred to in paragraph (c), it must not accept the forecast of required capital expenditure of a *Distribution Network Service Provider*.
- (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) the information included in or accompanying the *building block proposal*;
 - (2) submissions received in the course of consulting on the *building block proposal*;
 - (3) analysis undertaken by or for the *AER* and *published* before the distribution determination is made in its final form;
 - (4) benchmark capital expenditure that would be incurred by an efficient *Distribution Network Service Provider* over the *regulatory control period*;
 - (5) the actual and expected capital expenditure of the *Distribution Network Service Provider* during any preceding *regulatory control periods*;
 - (6) the relative prices of operating and capital inputs;
 - (7) the substitution possibilities between operating and capital

expenditure;

- (8) whether the total labour costs included in the capital and operating expenditure forecasts for the *regulatory control period* are consistent with the incentives provided by the applicable *service target performance incentive scheme* in respect of the *regulatory control period*;
- (9) the extent the forecast of required capital expenditure of the *Distribution Network Service Provider* is referable to arrangements with a person other than the provider that, in the opinion of the *AER*, do not reflect arm's length terms;
- (10) the extent the *Distribution Network Service Provider* has considered, and made provision for, efficient non-network alternatives.

6.5.8 Efficiency benefit sharing scheme

- (a) The *AER* may develop and *publish* a scheme or schemes (*efficiency benefit sharing scheme*) that provide for a fair sharing between NSW and ACT Distribution Network Service Providers and *Distribution Network Users* of:
 - (1) the efficiency gains derived from the operating expenditure of *Distribution Network Service Providers* for a *regulatory control period* being less than; and
 - (2) the efficiency losses derived from the operating expenditure of *Distribution Network Service Providers* for a *regulatory control period* being more than,

the forecast operating expenditure accepted or substituted by the *AER* for that *regulatory control period*.
- (b) An *efficiency benefit sharing scheme* may (but is not required to) be developed to cover efficiency gains and losses related to capital expenditure or *distribution losses*.
- (c) In developing and implementing an *efficiency benefit sharing scheme*, the *AER* must have regard to:
 - (1) the need to ensure that benefits to consumers likely to result from the scheme are sufficient to warrant any reward or penalty under the scheme for *Distribution Network Service Providers*; and
 - (2) the need to provide *Distribution Network Service Providers* with a continuous incentive, so far as is consistent with

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- economic efficiency, to reduce operating expenditure and, if the scheme extends to capital expenditure, capital expenditure; and
- (3) the desirability of both rewarding *Distribution Network Service Providers* for efficiency gains and penalising *Distribution Network Service Providers* for efficiency losses; and
 - (4) any incentives that *Distribution Network Service Providers* may have to capitalise expenditure; and
 - (5) the possible effects of the scheme on incentives for the implementation of non-network alternatives.
- (d) The *AER* may, from time to time and with the agreement of each affected *Distribution Network Service Provider*, amend or replace an *efficiency benefit sharing scheme*.
 - (e) The *AER* must *publish* a written statement, when it *publishes* its first *efficiency benefit sharing scheme* (if any), setting out how it proposes the *efficiency benefit sharing scheme* will operate for the next distribution determination. The statement may be included in the first *efficiency benefit sharing scheme* or may be *published* separately.
 - (f) However, despite *publishing* an *efficiency benefit sharing scheme*, the *AER* need not apply the scheme to one or more *Distribution Network Service Providers* in the relevant distribution determination or determinations.
 - (g) The *AER* may carry out such consultation in connection with the preparation of an *efficiency benefit sharing scheme* as the *AER* thinks appropriate and may take into consideration any consultation carried out before the commencement date.
 - (h) If an *efficiency benefit sharing scheme* applicable to a NSW or ACT *Distribution Network Service Provider* is not *published* before 1 March 2008 or the date that is one month after the commencement date (whichever is the later), no *efficiency benefit sharing scheme* may be applied to the *Distribution Network Service Provider* in its distribution determination for the regulatory control period 2009-2014.
 - (i) The *AER* may monitor and collect information from any or all of the NSW and ACT *Distribution Network Service Providers* on matters relevant to be included in an *efficiency benefit sharing scheme* for the purpose of developing, amending or applying an *efficiency benefit sharing scheme* for the regulatory control period

commencing on 1 July 2014.

6.5.9 The X factor

- (a) A *building block determination* is to include the X factor for each control mechanism for each *regulatory year* of the *regulatory control period*.
- (b) The X factor:
 - (1) must be set by the AER with regard to the *Distribution Network Service Provider's total revenue requirement* for the *regulatory control period*; and
 - (2) must be such as to minimise, as far as reasonably possible, variance between expected revenue for the last *regulatory year* of the *regulatory control period* and the *annual revenue requirement* for that last *regulatory year*; and
 - (3) must conform with whichever of the following requirements is applicable:
 - (i) if the control mechanism relates generally to *standard control services* – the X factor must be designed to equalise (in terms of net present value) the revenue to be earned by the *Distribution Network Service Provider* from the provision of *standard control services* over the *regulatory control period* with the provider's *total revenue requirement* for the *regulatory control period*;
 - (ii) if there are separate control mechanisms for different *standard control services* – the X factor for each control mechanism must be designed to equalise (in terms of net present value) the revenue to be earned by the *Distribution Network Service Provider* from the provision of *standard control services* to which the control mechanism relates over the *regulatory control period* with the portion of the provider's *total revenue requirement* for the *regulatory control period* attributable to those services.
- (c) There may be different X factors:
 - (1) for different regulatory years of the regulatory control period; and
 - (2) if there are 2 or more control mechanisms – for each control mechanism.

6.6 Adjustments after making of building block determination.

6.6.1 Cost pass through

- (a) If a *positive change event* occurs, a *Distribution Network Service Provider* may seek the approval of the *AER* to pass through to *Distribution Network Users* a *positive pass through amount*.
- (b) If a *negative change event* occurs, the *AER* may require the *Distribution Network Service Provider* to pass through to *Distribution Network Users* a *negative pass through amount* as determined by the *AER* under paragraph (g).

Positive pass through

- (c) To seek the approval of the *AER* to pass through a *positive pass through amount*, a *Distribution Network Service Provider* must submit to the *AER*, within 90 *business days* of the relevant *positive change event* occurring, a written statement which specifies:
 - (1) the details of the *positive change event*; and
 - (2) the date on which the *positive change event* occurred; and
 - (3) the *eligible pass through amount* in respect of that *positive change event*; and
 - (4) the *positive pass through amount* the provider proposes in relation to the *positive change event*; and
 - (5) the amount of the *positive pass through amount* that the provider proposes should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*; and
 - (6) evidence:
 - (i) of the actual and likely increase in costs referred to in subparagraph (3); and
 - (ii) that such costs occur solely as a consequence of the *positive change event*; and
 - (7) such other information as may be required under any relevant *regulatory information instrument*.
- (d) If the *AER* determines that a *positive change event* has occurred in respect of a statement under paragraph (c), the *AER* must determine:

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- (1) the *approved pass through amount*; and
 - (2) the amount of that *approved pass through amount* that should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*,

taking into account the matters referred to in paragraph (j).

- (e) If the *AER* does not make the determinations referred to in paragraph (d) within 60 *business days* from the date it receives the *Distribution Network Service Provider's* statement and accompanying evidence under paragraph (c), then, on the expiry of that period, the *AER* is taken to have determined that:

- (1) the *positive pass through amount* as proposed in the provider's statement under paragraph (c) is the *approved pass through amount* in respect of that *positive change event*; and
- (2) the amount of that *positive pass through amount* that the provider proposes in its statement under paragraph (c) should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*, is the amount that should be so passed through in each such *regulatory year*.

Negative pass through

- (f) A *Distribution Network Service Provider* must submit to the *AER*, within 90 *business days* of becoming aware of the occurrence of a *negative change event* for the provider, a written statement which specifies:

- (1) the details of the *negative change event* concerned; and
- (2) the date the *negative change event* occurred; and
- (3) the costs in the provision of *standard control services* that the provider has saved and is likely to save until the end of the *regulatory control period* as a result of the *negative change event*; and
- (4) the aggregate amount of those saved costs that the provider proposes should be passed through to *Distribution Network Users*; and
- (5) the amount of the costs referred to in subparagraph (4) the provider proposes should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*; and

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- (6) such other information as may be required under any relevant *regulatory information instrument*.
- (g) If a *negative change event* occurs (whether or not the occurrence of that *negative change event* is notified by the provider to the *AER* under paragraph (f)) and the *AER* determines to impose a requirement on the provider in relation to that *negative change event* as described in paragraph (b), the *AER* must determine:
- (1) the *required pass through amount*, and
 - (2) taking into account the matters referred to in paragraph (j):
 - (i) how much of that *required pass through amount* should be passed through to *Distribution Network Users* (the *negative pass through amount*); and
 - (ii) the amount of that *negative pass through amount* that should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*.
- (h) A *Distribution Network Service Provider* must provide the *AER* with such information as the *AER* requires for the purpose of making a determination under paragraph (g) within the time specified by the *AER* in a notice provided to the provider by the *AER* for that purpose.

Consultation

- (i) Before making a determination under paragraph (d) or (g), the *AER* may consult with the relevant *Distribution Network Service Provider* and such other persons as the *AER* considers appropriate, on any matters arising out of the relevant *pass through event* the *AER* considers appropriate.

Relevant factors

- (j) In making a determination under paragraph (d) or (g) in respect of a *Distribution Network Service Provider*, the *AER* must take into account:
- (1) the matters and proposals set out in any statement given to the *AER* by the provider under paragraph (c) or (f); and
 - (2) in the case of a *positive change event*, the increase in costs in the provision of *standard control services* that the provider has incurred and is likely to incur until the end of the *regulatory control period* as a result of the *positive change event*, and

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- (3) in the case of a *positive change event*, the efficiency of the provider's decisions and actions in relation to the risk of the *positive change event*, including whether the provider has failed to take any action that could reasonably be taken to reduce the magnitude of the *eligible pass through amount* in respect of that *positive change event* and whether the provider has taken or omitted to take any action where such action or omission has increased the magnitude of the amount in respect of that *positive change event*; and
 - (4) the time cost of money based on the *weighted average cost of capital* for the provider for the relevant *regulatory control period*; and
 - (5) the need to ensure that the provider only recovers any actual or likely increment in costs under this paragraph (j) to the extent that such increment is solely as a consequence of a *pass through event*; and
 - (6) in the case of a *tax change event*, any change in the way another *tax* is calculated, or the removal or imposition of another *tax*, which, in the *AER's* opinion, is complementary to the *tax change event* concerned; and
 - (7) whether the costs of the *pass through event* have already been factored into the calculation of the provider's *annual revenue requirement*; and
 - (8) any other factors the *AER* considers relevant.

Extension of time limits

- (k) The *AER* must, by written notice to a *Distribution Network Service Provider*, extend a time limit fixed in clause 6.6.1(c) or clause 6.6.1(f) if the *AER* is satisfied that the difficulty of assessing or quantifying the effect of the relevant *pass through event* justifies the extension.

Contributions to Climate Change Fund (NSW)

- (l) Neither a requirement by an order under the Energy and Utilities Administration Act 1987 of New South Wales to make a payment to the Climate Change Fund established under that Act, nor the making of a payment to that Fund, is a *pass through event* in relation to a NSW Distribution Network Service Provider, but the amount is recoverable in the following *regulatory year* under clause 6.18.2(b)(5A).

6.6.2 Service target performance incentive scheme

- (a) The *AER* may develop and *publish* an incentive scheme or incentive schemes (*service target performance incentive scheme*) to provide incentives (which may include targets) for *Distribution Network Service Providers* to maintain and improve performance.
- (b) In developing and implementing a *service target performance incentive scheme*, the *AER*:
 - (1) must consult with the authorities responsible for the administration of relevant *jurisdictional electricity legislation*; and
 - (2) must ensure that service standards and service targets (including guaranteed service levels) set by the scheme do not put at risk the *Distribution Network Service Provider's* ability to comply with relevant service standards and service targets (including guaranteed service levels) as specified in *jurisdictional electricity legislation*; and

Note:

A service target performance incentive scheme operates concurrently with any average or minimum service standards and guaranteed service level schemes that apply to the Distribution Network Service Provider under jurisdictional electricity legislation.

- (3) must take into account:
 - (i) the need to ensure that benefits to consumers likely to result from the scheme are sufficient to warrant any reward or penalty under the scheme for *Distribution Network Service Providers*; and
 - (ii) any *regulatory obligation or requirement* to which the *Distribution Network Service Provider* is subject; and
 - (iii) the past performance of the *distribution network*; and
 - (iv) any other incentives available to the *Distribution Network Service Provider* under the *Rules* or a relevant distribution determination; and
 - (v) the need to ensure that the incentives are sufficient to offset any financial incentives the service provider may have to reduce costs at the expense of service levels; and
 - (vi) the willingness of the customer or end user to pay for

improved performance in the delivery of services; and

- (vii) the possible effects of the scheme on incentives for the implementation of non-network alternatives.
- (c) The AER may, from time to time and with the agreement of each affected *Distribution Network Service Provider*, amend or replace any scheme that is developed and *published* under this clause.
- (d) The AER must *publish* a written statement, when it *publishes* its first *service target performance incentive scheme* (if any), setting out how it proposes the *service target performance incentive scheme* will operate for the next distribution determination. The statement may be included in the first *service target performance incentive scheme* or may be *published* separately.
- (e) However, despite *publishing* a *service target performance incentive scheme*, the AER need not apply the scheme to one or more *Distribution Network Service Providers* in the relevant distribution determination or determinations.
- (f) The AER may carry out such consultation in connection with the preparation of a *service target performance incentive scheme* as the AER thinks appropriate and may take into consideration any consultation carried out before the commencement date.
- (g) If a *service target performance incentive scheme* applicable to a NSW or ACT Distribution Network Service Provider is not *published* before 1 March 2008 or the date that is one month after the commencement date (whichever is the later), no *service target performance incentive scheme* may be applied to the *Distribution Network Service Provider* in its distribution determination for the regulatory control period 2009-2014.
- (h) The AER must monitor and collect information from any or all of the NSW and ACT Distribution Network Service Providers on matters relevant to be included in a *service target performance incentive scheme* for the purpose of developing, amending or applying a *service target performance incentive scheme* for the *regulatory control period* commencing on 1 July 2014.
- (i) The AER may, in connection with the application of a *service target performance incentive scheme* applying to EnergyAustralia in respect of EnergyAustralia prescribed (transmission) standard control services provided in the regulatory control period 2009-2014, adopt relevant provisions of the *service target performance incentive scheme* prepared and *published* by the AER under Chapter 6A so far as it is applicable to the service.

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- (j) A *service target performance incentive scheme* applying to EnergyAustralia in respect of EnergyAustralia prescribed (transmission) standard control services should ensure that the maximum revenue increment or decrement as a result of the operation of the *service target performance incentive scheme* will fall within a range that is between 1% and 5% of the maximum allowed revenue for the relevant *regulatory year*.
- (k) A *service target performance incentive scheme* applying to the ACT Distribution Network Service Provider must not, without the agreement of the provider, confer financial rewards or impose financial penalties on the provider for the regulatory control period 2009-2014, but this paragraph does not affect the operation of paragraph (h).

Note:

A Distribution Network Service Provider is not precluded from entering into a contract with a third party (such as a network support service provider) under which the benefits of a service target performance incentive scheme are passed on to the third party, or the third party is required to indemnify the provider for penalties to which the provider becomes liable under the scheme.

6.6.3 Demand management incentive scheme

- (a) The *AER* may develop and *publish* an incentive scheme or schemes (*demand management incentive scheme*) to provide incentives for *Distribution Network Service Providers* to implement efficient non-network alternatives or to manage the expected demand for *standard control services* in some other way.
- (b) In developing and implementing a *demand management incentive scheme*, the *AER* must have regard to:
- (1) the need to ensure that benefits to consumers likely to result from the scheme are sufficient to warrant any reward or penalty under the scheme for *Distribution Network Service Providers*; and
 - (2) the effect of a particular control mechanism (i.e. price – as distinct from revenue – regulation) on a *Distribution Network Service Provider's* incentives to adopt or implement efficient non-network alternatives; and
 - (3) the extent the *Distribution Network Service Provider* is able to offer efficient pricing structures; and
 - (4) the possible interaction between a *demand management incentive scheme* and other incentive schemes; and

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- (5) the willingness of the customer or end user to pay for increases in costs resulting from implementation of the scheme.
- (c) The *AER* may, from time to time and with the agreement of each affected *Distribution Network Service Provider*, amend or replace any scheme that is developed and *published* under this clause.
- (d) Nothing in this clause limits the content of an *efficiency benefit sharing scheme*.
- (e) The *AER* must *publish* a written statement, when it *publishes* its first *demand management incentive scheme* (if any), setting out how it proposes the *demand management incentive scheme* will operate for the next distribution determination. The statement may be included in the first *demand management incentive scheme* or may be *published* separately.
- (f) The *AER* may carry out such consultation in connection with the preparation of the *demand management incentive scheme* as the *AER* thinks appropriate and may take into consideration any consultation carried out before the commencement date.
- (g) If a *demand management incentive scheme* applicable to a NSW or ACT *Distribution Network Service Provider* is not *published* by the *AER* before 1 March 2008 or the date that is one month after the commencement date (whichever is the later), no *demand management incentive scheme* may be applied to the *Distribution Network Service Provider* in its distribution determination for the regulatory control period 2009-2014.
- (h) Nothing in this clause affects the application of the D-factor carry forward referred to in clause 6.4.3(a)(8) and clause 6.4.3(b)(8).

Part D EnergyAustralia negotiated distribution services

6.7 Negotiated distribution services

This rule applies only to EnergyAustralia negotiated distribution services.

6.7.1 Principles relating to access to negotiated distribution services

The following principles constitute the *Negotiated Distribution Service Principles*:

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- (1) the price for a *negotiated distribution service* should be based on the costs incurred in providing that service, determined in accordance with the principles and policies set out in the Cost Allocation Method for the relevant *Distribution Network Service Provider*;
 - (2) subject to subparagraphs (3) and (4), the price for a *negotiated distribution service* should be at least equal to the cost that would be avoided by not providing the service but no more than the cost of providing it on a stand alone basis;
 - (3) if the *negotiated distribution service* is the provision of a *shared distribution service* that:
 - (i) exceeds the *network* performance requirements (if any) which that *shared distribution service* is required to meet under any *jurisdictional electricity legislation*; or
 - (ii) exceeds the *network* performance requirements set out in schedules 5.1a and 5.1,

then the differential between the price for that service and the price for the *shared distribution service* which meets (but does not exceed) the *network* performance requirements under any *jurisdictional electricity legislation* or as set out in schedules 5.1a and 5.1 (as the case may be) should reflect the increase in the *Distribution Network Service Provider's* incremental cost of providing that service;

- (4) if the *negotiated distribution service* is the provision of a *shared distribution service* that does not meet (and does not exceed) the *network* performance requirements set out in schedules 5.1a and 5.1, the differential between the price for that service and the price for the *shared distribution service* which meets (but does not exceed) the *network* performance requirements set out in schedules 5.1a and 5.1 should reflect the cost the *Distribution Network Service Provider* would avoid by not providing that service;
- (5) the price for a *negotiated distribution service* must be the same for all *Distribution Network Users* unless there is a material difference in the costs of providing the *negotiated distribution service* to different *Distribution Network Users* or classes of *Distribution Network Users*;
- (6) the price for a *negotiated distribution service* should be subject to adjustment over time to the extent that the assets used to provide that service are subsequently used to provide services

to another person, in which case the adjustment should reflect the extent to which the costs of that asset are being recovered through charges to that other person;

- (7) the price for a *negotiated distribution service* should be such as to enable the *Distribution Network Service Provider* to recover the efficient costs of complying with all *regulatory obligations or requirements* associated with the provision of the *negotiated distribution service*;
- (8) any *access charges* should be based on the costs reasonably incurred by the *Distribution Network Service Provider* in providing *distribution network user access* and, in the case of compensation referred to in rule 5.4A(h) to (j), on the revenue that is likely to be foregone and the costs that are likely to be incurred by a person referred to in those provisions where an event referred to in those provisions occurs;
- (9) the *terms and conditions of access* for a *negotiated distribution service* should be fair and reasonable and consistent with the safe and reliable operation of the *power system* in accordance with the *Rules* (for these purposes, the price for a *negotiated distribution service* is to be treated as being fair and reasonable if it complies with principles (1) to (7) of this clause;
- (10) the *terms and conditions of access* for a *negotiated distribution service* (including, in particular, any exclusions and limitations of liability and indemnities) must not be unreasonably onerous taking into account the allocation of risk between the *Distribution Network Service Provider* and the other party, the price for the *negotiated distribution service* and the costs to the *Distribution Network Service Provider* of providing the *negotiated distribution service*;
- (11) the *terms and conditions of access* for a *negotiated distribution service* should take into account the need for the service to be provided in a manner that does not adversely affect the safe and reliable operation of the *power system* in accordance with the *Rules*.

6.7.2 Determination of terms and conditions of access for negotiated distribution services

- (a) A *Distribution Network Service Provider* must comply with:
 - (1) the provider's *negotiating framework*; and

(2) the provider's *Negotiated Distribution Service Criteria*,

when the provider is negotiating the *terms and conditions of access to negotiated distribution services*.

(b) The *Distribution Network Service Provider* must also comply with any other applicable requirements of the *Rules*, including the requirements of:

(1) rules 5.3 and 5.4A, when negotiating for the provision of *connection services* and the associated *connection service charges*; and

(2) rule 5.4A when negotiating the *use of system services charges* and *access charges* to be paid to or by a *Distribution Network User*.

6.7.3 Negotiating framework determination

The determination specifying requirements relating to the *negotiating framework* forming part of a distribution determination for a *Distribution Network Service Provider* is to set out requirements that are to be complied with in respect of the preparation, replacement, application or operation of its *negotiating framework*.

6.7.4 Negotiated Distribution Service Criteria determination

(a) The determination by the *AER* specifying the *Negotiated Distribution Service Criteria* forming part of a distribution determination for a *Distribution Network Service Provider* is to set out the criteria that are to be applied:

(1) by the provider in negotiating *terms and conditions of access* including:

(i) the prices that are to be charged for the provision of *negotiated distribution services* by the provider for the relevant *regulatory control period*; or

(ii) any *access charges* which are negotiated by the provider during that *regulatory control period*; and

(2) by the *AER* in resolving an access dispute about *terms and conditions of access* including:

(i) the price that is to be charged for the provision of a *negotiated distribution service* by the provider; or

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- (ii) any *access charges* that are to be paid to or by the provider.
 - (b) The *Negotiated Distribution Service Criteria* must give effect to and be consistent with the *Negotiated Distribution Service Principles* set out in clause 6.7.1.

6.7.5 Preparation of and requirements for negotiating framework for negotiated distribution services

- (a) A *Distribution Network Service Provider* must prepare a document (the *negotiating framework*) setting out the procedure to be followed during negotiations between that provider and any person (the *Service Applicant* or applicant) who wishes to receive a *negotiated distribution service* from the provider, as to the *terms and conditions of access* for the provision of the service.
- (b) The *negotiating framework* for a *Distribution Network Service Provider* must comply with and be consistent with:
 - (1) the applicable requirements of the relevant distribution determination; and

Note:
See clause 6.7.3.

 - (2) paragraph (c), which sets out the minimum requirements for a *negotiating framework*.
- (c) The *negotiating framework* for a *Distribution Network Service Provider* must specify:
 - (1) a requirement for the provider and a *Service Applicant* to negotiate in good faith the *terms and conditions of access* to a *negotiated distribution service*; and
 - (2) a requirement for the provider to provide all such commercial information a *Service Applicant* may reasonably require to enable that applicant to engage in effective negotiation with the provider for the provision of the *negotiated distribution service*, including the cost information described in subparagraph (3); and
 - (3) a requirement for the provider:
 - (i) to identify and inform a *Service Applicant* of the reasonable costs and/or the increase or decrease in costs (as appropriate) of providing the *negotiated distribution service*; and

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- (ii) to demonstrate to a *Service Applicant* that the charges for providing the *negotiated distribution service* reflect those costs and/or the cost increment or decrement (as appropriate); and
 - (iii) to have appropriate arrangements for assessment and review of the charges and the basis on which they are made; and

Note:

If (for example) a charge, or an element of a charge, is based on a customer's actual or assumed maximum demand, the assessment and review arrangements should allow for a change to the basis of the charge so that it more closely reflects the customer's load profile where a reduction or increase in maximum demand has been demonstrated.

- (4) a requirement for a *Service Applicant* to provide all commercial information the provider may reasonably require to enable the provider to engage in effective negotiation with that applicant for the provision of the *negotiated distribution service*; and
- (5) a requirement that negotiations with a *Service Applicant* for the provision of the *negotiated distribution service* be commenced and finalised within specified periods and a requirement that each party to the negotiations must make reasonable endeavours to adhere to the specified time limits; and
- (6) a process for dispute resolution which provides that all disputes as to the *terms and conditions of access* for the provision of *negotiated distribution services* are to be dealt with in accordance with the relevant provisions of the Law and the *Rules* for dispute resolution; and
- (7) the arrangements for payment by a *Service Applicant* of the provider's reasonable direct expenses incurred in processing the application to provide the *negotiated distribution service*; and
- (8) a requirement that the *Distribution Network Service Provider* determine the potential impact on other *Distribution Network Users* of the provision of the *negotiated distribution service*; and
- (9) a requirement that the *Distribution Network Service Provider* must notify and consult with any affected *Distribution Network Users* and ensure that the provision of *negotiated distribution services* does not result in non-compliance with obligations in

relation to other *Distribution Network Users* under the *Rules*;
and

- (10) a requirement that the *Distribution Network Service Provider* *publish* the results of negotiations on its website.
- (d) Notwithstanding the foregoing, the *negotiating framework* must not be inconsistent with any of the requirements of Rules 5.3 and 5.4A and other relevant provisions of this Chapter 6 and Chapter 6A and, in the event of any inconsistency, those requirements prevail.
- (e) Each *Distribution Network Service Provider* and *Service Applicant* who is negotiating for the provision of a *negotiated distribution service* by the provider must comply with the requirements of the *negotiating framework* in accordance with its terms.

6.7.6 Confidential information

- (a) Commercial information to be provided to a *Service Applicant* in accordance with clause 6.7.5(c)(2):
- (1) does not include *confidential information* provided to the *Distribution Network Service Provider* by another person; and
- (2) may be provided subject to a condition that the *Service Applicant* must not provide any part of that commercial information to any other person without the consent of the *Distribution Network Service Provider*.
- (b) Commercial information to be provided to a *Distribution Network Service Provider* in accordance with clause 6.7.5(c)(4):
- (1) does not include *confidential information* provided to a *Service Applicant* by another person; and
- (2) may be provided subject to a condition that the provider must not provide any part of that commercial information to any other person without the consent of the *Service Applicant*.

Part DA Negotiable components of direct control services (NSW and ACT)

6.7A Negotiable components of direct control services

- (a) The *AER* may include in a *Distribution Network Service Provider's* distribution determination a decision that one or more components of the provider's *direct control services* are negotiable components.

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- (b) A negotiable component may be a particular component of the *direct control service* or may relate to the terms or conditions on which a *direct control service* or a component of a *direct control service* is provided.
 - (c) A reference in this rule 6.7A to the price for a negotiable component of a *direct control service* is a reference to the price for the *direct control service* if the negotiable component is successfully negotiated by the *Distribution Network Service Provider* and the *Service Applicant* concerned.
 - (d) The following provisions of Rule 6.7A have effect if the *AER* decides that one or more components of *direct control services* provided by a *Distribution Network Service Provider* are negotiable components (as referred to in paragraph (a)).

6.7A.1 Principles relating to access to negotiable components

The following principles constitute the negotiable component principles:

- (1) the price for a negotiable component should be the price for that component in the *Distribution Network Service Provider's approved pricing proposal*, unless the terms and conditions sought for the component are so different from those used for the purposes of establishing the *approved pricing proposal* as to warrant determination of the price without regard to this subparagraph;
- (2) subject to subparagraph (1), the price for a negotiable component should be based on the costs incurred in providing that component, determined in accordance with the principles and policies set out in the Cost Allocation Method for the relevant *Distribution Network Service Provider*;
- (3) subject to subparagraphs (1), (4) and (5), the price for a negotiable component should be at least equal to the cost that would be avoided by not providing it but no more than the cost of providing it on a stand alone basis;
- (4) subject to subparagraph (1), if the *direct control service* of which the negotiable component is a component is the provision of a *shared distribution service* that:
 - (i) exceeds the *network performance requirements* (if any) which that *shared distribution service* is required to meet under any *jurisdictional electricity legislation*; or

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- (ii) exceeds the *network* performance requirements set out in schedules 5.1a and 5.1,

then the differential between the price for that *direct control service* and the price for the *shared distribution service* which meets (but does not exceed) the *network* performance requirements under any *jurisdictional electricity legislation* or as set out in schedules 5.1a and 5.1 (as the case may be) should reflect the increase in the *Distribution Network Service Provider's* incremental cost of providing that service;

- (5) subject to subparagraph (1), if the *direct control service* of which the negotiable component is a component is the provision of a *shared distribution service* that does not meet (and does not exceed) the *network* performance requirements set out in schedules 5.1a and 5.1, then the differential between the price for that service and the price for the *shared distribution service* which meets (but does not exceed) the *network* performance requirements set out in schedules 5.1a and 5.1 should reflect the cost the *Distribution Network Service Provider* would avoid by not providing that service;
- (6) subject to subparagraph (1), the price for a negotiable component must be the same for all *Distribution Network Users* unless there is a material difference in the costs of providing the negotiable component to different *Distribution Network Users* or classes of *Distribution Network Users*;
- (7) subject to subparagraph (1), the price for a negotiable component should be subject to adjustment over time to the extent that the assets used to provide the *direct control service* are subsequently used to provide services to another person, in which case the adjustment should reflect the extent to which the costs of those assets are being recovered through charges to that other person;
- (8) subject to subparagraph (1), the price for a negotiable component should be such as to enable the *Distribution Network Service Provider* to recover the efficient costs of complying with all *regulatory obligations or requirements* associated with the provision of the negotiable component;
- (9) any *access charges* should be based on the costs reasonably incurred by the *Distribution Network Service Provider* in providing *distribution network user access* and, in the case of compensation referred to in clause 5.5(f)(4)(ii) and (iii), on the revenue that is likely to be foregone and the costs that are likely to be incurred by a person referred to in those provisions

where an event referred to in those provisions occurs;

- (10) the *terms and conditions of access* for a negotiable component should be fair and reasonable and consistent with the safe and reliable operation of the *power system* in accordance with the *Rules* (for these purposes, the price for a negotiable component is to be treated as being fair and reasonable if it complies with principles (1) to (8) of this clause);
- (11) the *terms and conditions of access* for a negotiable component (including, in particular, any exclusions and limitations of liability and indemnities) must not be unreasonably onerous taking into account the allocation of risk between the *Distribution Network Service Provider* and the other party, the price for the negotiable component and the costs to the *Distribution Network Service Provider* of providing the negotiable component; and
- (12) the *terms and conditions of access* for a negotiable component should take into account the need for the *direct control service* to be provided in a manner that does not adversely affect the safe and reliable operation of the *power system* in accordance with the *Rules*.

6.7A.2 Determination of terms and conditions of access for negotiable components

(a) A *Distribution Network Service Provider* must comply with:

- (1) the provider's *negotiating framework*; and
- (2) the provider's negotiable component criteria,

when the provider is negotiating the *terms and conditions of access* to negotiable components.

(b) The *Distribution Network Service Provider* must also comply with any other applicable requirements of the *Rules*, including the requirements of:

- (1) rules 5.3, 5.4A and 5.5, when negotiating for the provision of *connection services* and the associated *connection service charges*; and
- (2) rules 5.4A and 5.5 when negotiating the *use of system services charges* and *access charges* to be paid to or by a *Distribution Network User*.

6.7A.3 Negotiating framework determination

The determination specifying requirements relating to the *negotiating framework* forming part of a distribution determination for a *Distribution Network Service Provider* is to set out requirements that are to be complied with in respect of the preparation, replacement, application or operation of its *negotiating framework*.

6.7A.4 Negotiable component criteria determination

- (a) The determination by the *AER* specifying the negotiable component criteria forming part of a distribution determination for a *Distribution Network Service Provider* is to set out the criteria that are to be applied:
- (1) by the provider in negotiating *terms and conditions of access* including:
 - (i) the variations to the prices that are to be charged for the provision of the negotiable component of the *direct control service* concerned by the provider for the relevant *regulatory control period*; and
 - (ii) any *access charges* which are negotiated by the provider during that *regulatory control period*; and
 - (2) by the *AER* in resolving an access dispute, between the *Distribution Network Service Provider* and a person who wishes to be provided with a negotiable component, in relation to *terms and conditions of access* including:
 - (i) the variation of the prices that are to be charged for the provision of the negotiable component of the *direct control service* concerned by the provider; and
 - (ii) any *access charges* that are to be paid to or by the provider.
- (b) The negotiable component criteria must give effect to and be consistent with the principles set out in clause 6.7A.1.

6.7A.5 Preparation of and requirements for negotiating framework

- (a) A *Distribution Network Service Provider* must prepare a document (the *negotiating framework*) setting out the procedure to be followed during negotiations between that provider and any person (the *Service Applicant* or applicant) who wishes to be provided with a negotiable component from the provider, as to the *terms and*

conditions of access for the provision of the component.

- (b) The *negotiating framework* for a *Distribution Network Service Provider* must comply with and be consistent with:
- (1) the applicable requirements of a distribution determination applying to the provider; and
 - (2) paragraph (c), which sets out the minimum requirements for a *negotiating framework*.
- (c) The *negotiating framework* for a *Distribution Network Service Provider* must specify:
- (1) a requirement for the provider and a *Service Applicant* to negotiate in good faith the *terms and conditions of access* to a negotiable component; and
 - (2) a requirement for the provider to provide all such commercial information a *Service Applicant* may reasonably require to enable that applicant to engage in effective negotiation with the provider for the provision of the negotiable component, including the cost information described in subparagraph (3); and
 - (3) a requirement for the provider:
 - (i) to identify and inform a *Service Applicant* of the reasonable costs and/or the increase or decrease in costs (as appropriate) of providing the negotiable component; and
 - (ii) to demonstrate to a *Service Applicant* that the charges for providing the negotiable component reflect those costs and/or the cost increment or decrement (as appropriate); and
 - (iii) to have appropriate arrangements for assessment and review of the charges and the basis on which they are made;

Note:

If (for example) a charge, or an element of a charge, is based on a customer's actual or assumed maximum demand, the assessment and review arrangements should allow for a change to the basis of the charge so that it more closely reflects the customer's load profile where a reduction or increase in maximum demand has been demonstrated.

- (4) a requirement for a *Service Applicant* to provide all commercial information the provider may reasonably require

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- to enable the provider to engage in effective negotiation with that applicant for the provision of the negotiable component; and
- (5) a requirement that negotiations with a *Service Applicant* for the provision of the negotiable component be commenced and finalised within specified periods and a requirement that each party to the negotiations must make reasonable endeavours to adhere to the specified time limits; and
 - (6) a process for dispute resolution which provides that all disputes as to the *terms and conditions of access* for the provision of negotiable components are to be dealt with in accordance with the relevant provisions of the Law and the *Rules* for dispute resolution; and
 - (7) the arrangements for payment by a *Service Applicant* of the provider's reasonable direct expenses incurred in processing the application to provide the negotiable component; and
 - (8) a requirement that the *Distribution Network Service Provider* determine the potential impact on other *Distribution Network Users* of the provision of the negotiable component; and
 - (9) a requirement that the *Distribution Network Service Provider* must notify and consult with any affected *Distribution Network Users* and ensure that the provision of negotiable components does not result in non-compliance with obligations in relation to other *Distribution Network Users* under the *Rules*; and
 - (10) a requirement that the *Distribution Network Service Provider* *publish* the results of negotiations on its website.
- (d) Notwithstanding the foregoing, the *negotiating framework* must not be inconsistent with any of the requirements of Rules 5.3, 5.4A and 5.5 and other relevant provisions of this Chapter 6 and Chapter 6A and, in the event of any inconsistency, those requirements prevail.
 - (e) Each *Distribution Network Service Provider* and *Service Applicant* who is negotiating for the provision of a negotiable component by the provider must comply with the requirements of the *negotiating framework* in accordance with its terms.
 - (f) EnergyAustralia may prepare and submit a document that contains both the *negotiating framework* under this clause 6.7A.5 and the *negotiating framework* under clause 6.7.5, and both frameworks may be combined in a single framework.

6.7A.6 Confidential information

- (a) Commercial information to be provided to a *Service Applicant* in accordance with clause 6.7A.5(c)(2):
 - (1) does not include *confidential information* provided to the *Distribution Network Service Provider* by another person; and
 - (2) may be provided subject to a condition that the *Service Applicant* must not provide any part of that commercial information to any other person without the consent of the *Distribution Network Service Provider*.
- (b) Commercial information to be provided to a *Distribution Network Service Provider* in accordance with clause 6.7A.5(c)(4):
 - (1) does not include *confidential information* provided to a *Service Applicant* by another person; and
 - (2) may be provided subject to a condition that the provider must not provide any part of that commercial information to any other person without the consent of the *Service Applicant*.

Part E Regulatory proposal

6.8 Regulatory proposal

6.8.1 *****

6.8.2 Submission of regulatory proposal

- (a) A *Distribution Network Service Provider* must, whenever required to do so under paragraph (b), submit a *regulatory proposal* to the *AER* for *distribution services* provided by means of, or in connection with, the provider's *distribution system*.
- (b) A *regulatory proposal* must be submitted on or before 2 June 2008.
- (c) A *regulatory proposal* must include (but need not be limited to) the following elements:
 - (1) *****
 - (2) for *direct control services* classified as *standard control services* – a *building block proposal*; and
 - (3) *****

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- (3A) for *direct control services* classified as *alternative control services*:
- (i) the proposed control mechanism, a demonstration of the application of the proposed control mechanism, and the necessary supporting information; and
 - (ii) in the case of a departure from the *AER's* likely approach to the relevant control mechanisms for *alternative control services* (as indicated in a statement *published* under clause 6.2.5(e)) a statement of the reasons justifying the departure; and
- (4) for *direct control services* – indicative prices for each year of the *regulatory control period*; and
- (5) *****
- (6) an indication of the parts of the proposal (if any) the *Distribution Network Service Provider* claims to be confidential and wants suppressed from publication on that ground; and
- (7) for *direct control services* – a proposal as to whether any (and, if so, which) components of *direct control services* should be negotiable components; and
- (8) for negotiable components of *direct control services* classified under the proposal as *negotiated distribution services* – the proposed *negotiating framework*; and
- (9) for EnergyAustralia prescribed (transmission) standard control services - a proposed pricing methodology; and
- (10) for EnergyAustralia negotiated distribution services classified under the proposal as *negotiated distribution services* – the proposed *negotiating framework*.
- (d) The *regulatory proposal* must comply with the requirements of, and must contain or be accompanied by the information required by any relevant *regulatory information instrument*.
- (e) *****
- (f) *****

6.9 Preliminary examination and consultation

6.9.1 Preliminary examination

- (a) If the *AER* considers that a *regulatory proposal* (or the accompanying information) does not comply, in any respect, with a requirement of the Law or the *Rules*, the *AER* may notify the provider that it requires resubmission of the proposal.
- (b) The notice must be given as soon as practicable and must state why, and in what respects, the *AER* considers the *regulatory proposal* to be non-compliant.

6.9.2 Resubmission of proposal

- (a) A *Distribution Network Service Provider* must, within 20 *business days* after receiving a notice under clause 6.9.1, resubmit its *regulatory proposal* in an amended form that complies with the relevant requirements set out in the notice.
- (b) A *Distribution Network Service Provider* may only make changes to its *regulatory proposal* to address the deficiencies identified in the notice.

6.9.3 Consultation

- (a) Subject to the provisions of the Law and the *Rules* about the disclosure of *confidential information*, the *AER* must *publish* a *regulatory proposal* submitted or resubmitted to it by the *Distribution Network Service Provider* under this Part, together with:
 - (1) the *AER's* proposed negotiable component criteria for the provider; and
 - (1A) in the case of EnergyAustralia negotiated distribution services provided by EnergyAustralia - the *AER's* proposed *Negotiated Distribution Service Criteria*; and
 - (2) an invitation for written submissions on the *regulatory proposal* and the proposed *Negotiated Distribution Service Criteria* or proposed negotiable component criteria (or both),

after the *AER* decides that the *regulatory proposal* complies (or that there is sufficient compliance) with the requirements of the Law and the *Rules*.

- (b) The *AER* may *publish* an issues paper examining issues related to the *regulatory proposal* and the proposed negotiable component criteria (and, in the case of EnergyAustralia negotiated distribution

services provided by EnergyAustralia, the proposed *Negotiated Distribution Service Criteria*), at the same time as, or subsequent to, *publication* of the invitation referred to in paragraph (a)(2).

- (c) Any person may make a written submission to the *AER* on the *regulatory proposal* or the proposed negotiable component criteria (or, in the case of EnergyAustralia negotiated distribution services provided by EnergyAustralia, the proposed *Negotiated Distribution Service Criteria*) within the time specified in the invitation referred to in paragraph (a)(2), which must be not earlier than 30 *business days* after the invitation for submissions is *published* under that paragraph.

6.10 Draft distribution determination and further consultation

6.10.1 Making of draft distribution determination

Subject to rule 6.14(a), the *AER* must consider any written submissions made under rule 6.9 and must make a draft distribution determination in relation to the *Distribution Network Service Provider*.

6.10.2 Publication of draft determination and consultation

- (a) The *AER* must *publish*:
- (1) the draft distribution determination; and
 - (2) notice of the making of the draft distribution determination; and
 - (3) the *AER*'s reasons for suggesting that the distribution determination should be made as proposed including the draft constituent decisions i.e. the decisions made in accordance with rule 6.12 on which the draft distribution determination is predicated; and
 - (4) notice of a predetermination conference; and
 - (5) an invitation for written submissions on its draft distribution determination.
- (b) The *AER* must hold a predetermination conference at the time, date and place specified in the notice under paragraph (a)(4) for the purpose of explaining the draft distribution determination and receiving oral submissions from interested parties. Any person may attend such a predetermination conference but the procedure to be adopted at the conference will be at the discretion of the senior *AER* representative in attendance.

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- (c) Any person may make a written submission to the *AER* on the draft distribution determination within the time specified in the invitation referred to in paragraph (a)(5), which must be not earlier than 30 *business days* after the making of the draft determination.

6.10.3 Submission of revised proposal

- (a) In addition to making written submissions, the *Distribution Network Service Provider* may, not more than 30 *business days* after the publication of the draft distribution determination, submit a revised *regulatory proposal* to the *AER*.
- (b) A *Distribution Network Service Provider* may only make the revisions referred to in paragraph (a) so as to incorporate the substance of any changes required to address matters raised by the draft distribution determination or the *AER*'s reasons for it.
- (c) A revised *regulatory proposal* must comply with the requirements of, and must contain or be accompanied by the information required by, any relevant *regulatory information instrument*.
- (d) Subject to the provisions of the Law and the *Rules* about the disclosure of *confidential information*, the *AER* must *publish* a *regulatory proposal* submitted by the *Distribution Network Service Provider* under paragraph (a), together with the accompanying information, as soon as practicable after receipt by the *AER*.
- (e) The *AER* may, but need not, invite written submissions on the revised *regulatory proposal*.

6.11 Distribution determination

6.11.1 Making of distribution determination

Subject to rule 6.14(a), the *AER* must consider any submissions made on the draft distribution determination, or on any revised *regulatory proposal* submitted to it under clause 6.10.3, and must make a distribution determination in relation to the *Distribution Network Service Provider*.

6.11.2 Notice of distribution determination

The *AER* must as soon as practicable, but not later than 2 months before the commencement of the relevant *regulatory control period*, *publish*:

- (1) notice of the making of the distribution determination; and
- (2) the distribution determination itself; and

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- (3) the *AER's* reasons for making the distribution determination in its final form including the constituent decisions i.e. the decisions made in accordance with rule 6.12 on which the distribution determination is predicated.

6.11.3 Commencement of distribution determination

- (a) A distribution determination takes effect at the commencement of the *regulatory control period* to which it relates.
- (b) If a period intervenes between the end of one *regulatory control period* and the commencement of a new distribution determination providing for the next *regulatory control period*:
 - (1) the previous distribution determination continues in force during the intervening period; and
 - (2) the last pricing proposal approved by the IPART or ICRC, as the case requires, in the previous *regulatory control period* continues in force (despite any contrary provision of these *Rules*) during the intervening period and the first *regulatory year* of the *regulatory control period*; and
 - (3) the later distribution determination is to make provision for appropriate adjustments to the *approved pricing proposals* for subsequent *regulatory years* of the *regulatory control period*.

6.12 Requirements relating to draft and final distribution determinations

6.12.1 Constituent decisions

A distribution determination is predicated on the following decisions by the *AER* (*constituent decisions*):

- (1) a decision on the classification of the services to be provided by the *Distribution Network Service Provider* during the course of the *regulatory control period*;
- (2) a decision on the *Distribution Network Service Provider's* current *building block proposal* in which the *AER* either approves or refuses to approve:
 - (i) the *annual revenue requirement* for the provider, as set out in the *building block proposal*, for each *regulatory year* of the *regulatory control period*; and
 - (ii) *****

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- (3) a decision in which the *AER* either:
- (i) acting in accordance with clause 6.5.7(c), accepts the total of the forecast capital expenditure for the *regulatory control period* that is included in the current *building block proposal*; or
 - (ii) acting in accordance with clause 6.5.7(d), does not accept the total of the forecast capital expenditure for the *regulatory control period* that is included in the current *building block proposal*, in which case the *AER* must set out its reasons for that decision and an estimate of the total of the *Distribution Network Service Provider's* required capital expenditure for the *regulatory control period* that the *AER* is satisfied reasonably reflects the *capital expenditure criteria*, taking into account the *capital expenditure factors*;
- (4) a decision in which the *AER* either:
- (i) acting in accordance with clause 6.5.6(c), accepts the total of the forecast operating expenditure for the *regulatory control period* that is included in the current *building block proposal*; or
 - (ii) acting in accordance with clause 6.5.6(d), does not accept the total of the forecast operating expenditure for the *regulatory control period* that is included in the current *building block proposal*, in which case the *AER* must set out its reasons for that decision and an estimate of the total of the *Distribution Network Service Provider's* required operating expenditure for the *regulatory control period* that the *AER* is satisfied reasonably reflects the *operating expenditure criteria*, taking into account the *operating expenditure factors*;
- (5) a decision in relation to the rate of return in accordance with clause 6.5.2;
- (6) a decision on the regulatory asset base as at the commencement of the *regulatory control period* in accordance with clause 6.5.1 and schedule 6.2;
- (7) a decision on the estimated cost of corporate income tax to the provider for each *regulatory year* of the *regulatory control period* in accordance with clause 6.5.3;
- (8) a decision on whether or not to approve the depreciation

schedules submitted by the *Distribution Network Service Provider* and, if the *AER* decides against approving them, a decision determining depreciation schedules in accordance with clause 6.5.5(b);

- (9) a decision on how any applicable *efficiency benefit sharing scheme*, *service target performance incentive scheme*, or *demand management incentive scheme* is to apply to the *Distribution Network Service Provider*;
- (10) a decision in which the *AER* decides other appropriate amounts, values or inputs;
- (11) a decision on the control mechanism (including the X factor) for *standard control services*;
- (12) a decision on the control mechanism for *alternative control services*;
- (13) a decision on how compliance with a relevant control mechanism is to be demonstrated;
- (14) a decision on the additional *pass through events* that are to apply for the *regulatory control period*;
- (15) a decision on any *negotiating framework* that is to apply to the *Distribution Network Service Provider* for the *regulatory control period* (which may be the *negotiating framework* as proposed by the provider, some variant of it, or a framework substituted by the *AER*);
- (16) if relevant, a decision in which the *AER* decides the *Negotiated Distribution Service Criteria* for the *Distribution Network Service Provider*;
- (16A) a decision in which the *AER* decides which, if any, components of *direct control services* are negotiable components;
- (16B) if relevant, a decision in which the *AER* decides the negotiable component criteria for the *Distribution Network Service Provider*;
- (17) a decision on the procedures for assigning customers to *tariff classes*, or reassigning customers from one *tariff class* to another (including any applicable restrictions);
- (18) a decision 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;

- (19) a decision on how the *Distribution Network Service Provider* is to report to the *AER* on its recovery of *Transmission Use of System* charges for each *regulatory year* of the *regulatory control period* and on the adjustments to be made to subsequent *pricing proposals* to account for over or under recovery of those charges;
- (20) for EnergyAustralia prescribed (transmission) standard control services – a decision on the proposed pricing methodology, in which the *AER* either approves or refuses to approve that methodology and sets out reasons for its decision.

6.12.1A Division of EnergyAustralia’s revenue

- (a) The *AER* must, in the distribution determination for EnergyAustralia, divide the revenue calculated under Part C into the following two portions:
 - (1) a portion relevant to EnergyAustralia prescribed (transmission) standard control services;
 - (2) a portion relevant to other *standard control services* provided by EnergyAustralia,based on EnergyAustralia’s approved Cost Allocation Method.
- (b) The pricing rules in Part J of Chapter 6A are to be applied to the portion referred to in paragraph (a)(1) instead of the pricing rules in Part I of transitional Chapter 6.
- (c) The pricing rules in Part I of transitional Chapter 6 are to be applied to the portion referred to in paragraph (a)(2).

6.12.2 Reasons for decisions

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*; and
- (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 provider's current *building block proposal*; and

- (ii) if not, the rationale for the adoption of those values; and
- (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.

6.12.3 Extent of *AER*'s discretion in making distribution determinations

- (a) Subject to this clause and other provisions of this Chapter 6 explicitly negating or limiting the *AER*'s discretion, the *AER* has a discretion to accept or approve, or to refuse to accept or approve, any element of a *regulatory proposal*.
- (b) *****
- (c) *****
- (d) The *AER* must approve the *total revenue requirement* for a *Distribution Network Service Provider* for a *regulatory control period*, and the *annual revenue requirement* for each *regulatory year* of the *regulatory control period*, as set out in the provider's current *building block proposal*, if the *AER* is satisfied that those amounts have been properly calculated using the *post-tax revenue model* on the basis of amounts calculated, determined or forecast in accordance with the requirements of Part C of this Chapter 6.
- (e) *****
- (f) If the *AER* refuses to approve an amount, value or methodology referred to in clause 6.12.1, the substitute amount, value or methodology on which the distribution determination is based must be:
 - (1) determined on the basis of the current *regulatory proposal*; and
 - (2) amended from that basis only to the extent necessary to enable it to be approved in accordance with the *Rules*.
- (g) The *AER* must approve a proposed *negotiating framework* if the *AER* is satisfied that it adequately complies with the requirements of Part D or DA (as the case requires).

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- (h) If the *AER* refuses to approve a proposed *negotiating framework*, any approved amended *negotiating framework* must be:
 - (1) determined on the basis of the current proposed *negotiating framework*; and
 - (2) amended from that basis only to the extent necessary to enable it to be approved in accordance with the *Rules*.
 - (i) The *AER* must approve EnergyAustralia's proposed pricing methodology for EnergyAustralia prescribed (transmission) standard control services if the *AER* is satisfied that the methodology:
 - (1) gives effect to and is consistent with the *Pricing Principles for Prescribed Transmission Services*; and
 - (2) complies with the requirements of the *pricing methodology guidelines*.

6.13 Revocation and substitution of distribution determination for wrong information or error

- (a) The *AER* may (but is not required to) revoke a distribution determination during a *regulatory control period* if it appears to the *AER* that the determination is affected by a material error or deficiency of one or more of the following kinds:
 - (1) a clerical mistake or an accidental slip or omission;
 - (2) a miscalculation or misdescription;
 - (3) a defect in form;
 - (4) a deficiency resulting from the provision of false or materially misleading information to the *AER*.
- (b) If the *AER* revokes a distribution determination under paragraph (a), the *AER* must make a new distribution determination in substitution for the revoked determination to apply for the remainder of the *regulatory control period* for which the revoked determination was to apply.
- (c) If the *AER* revokes a distribution determination under paragraph (a), the substituted determination must only vary from the revoked determination to the extent necessary to correct the relevant error or deficiency.
- (d) The *AER* may only revoke and substitute a distribution

determination under this rule 6.13, if it has first consulted with the relevant *Distribution Network Service Provider* and such other persons as it considers appropriate.

6.14 Miscellaneous

- (a) The *AER* may, but is not required to, consider any submission made pursuant to an invitation for submissions after the time for making the submission has expired.
- (b) Nothing in this Part E is to be construed as precluding the *AER* from *publishing* any issues, consultation and discussion papers, or holding any conferences and information sessions, that the *AER* considers appropriate.
- (c) Subject to paragraph (d), as soon as practicable after the *AER* receives a submission in response to an invitation referred to in clause 6.9.3(a)(2) or 6.10.2(a)(5) (whether or not the submission was made before the time for making it has expired), the *AER* must *publish* that submission.
- (d) The *AER* must not *publish* a submission referred to in paragraph (c) to the extent it contains information which has been clearly identified as confidential by the person making the submission.
- (e) The *AER* may give such weight to *confidential information* identified in accordance with paragraph (d) in a submission as it considers appropriate, having regard to the fact that such information has not been made publicly available.
- (f) Paragraph (d) does not apply to the extent that any other provision of the Law or the *Rules* permits or requires such information to be publicly released by the *AER*.

Part F Cost Allocation

6.15 Cost allocation

6.15.1 Duty to comply with Cost Allocation Method

- (a) A *Distribution Network Service Provider* must comply with the Cost Allocation Method that has been approved in respect of that provider from time to time by the *AER* under this rule 6.15 in respect of the regulatory control period 2009-2014.
- (b) A *Distribution Network Service Provider* is, during the regulatory control period 2009-2014, also subject to the requirements of Part F of general Chapter 6 but only for the

purposes of and in connection with the distribution determination to be made for the subsequent *regulatory control period*.

6.15.2 *****

6.15.3 *****

6.15.4 *****

Provisions applicable to the NSW Distribution Network Service Providers

6.15.5 Cost Allocation Guidelines (NSW)

The Accounting Separation Code for Electricity Distributors in NSW prepared by the IPART and in force immediately before the start of the regulatory control period 2009-2014 in relation to the NSW Distribution Network Service Providers are deemed to be Cost Allocation Guidelines made by the *AER* for the regulatory control period 2009-2014.

6.15.6 Cost Allocation Method (NSW)

- (a) Each NSW Distribution Network Service Provider must submit to the *AER* for its approval a document setting out its proposed Cost Allocation Method for the regulatory control period 2009-2014 within 1 month after the commencement date.
- (b) The Cost Allocation Method proposed by a NSW Distribution Network Service Provider must:
 - (1) give effect to and be consistent with the Cost Allocation Guidelines; and
 - (2) be prepared using, as far as practicable but subject to subparagraph (1), the same cost allocation method as it last used when preparing its regulatory accounts for submission to the IPART.
- (c) The *AER* may approve or refuse to approve a Cost Allocation Method submitted under paragraph (a), but must approve it if the *AER* is satisfied that it:
 - (1) gives effect to and is consistent with the Cost Allocation Guidelines; and
 - (2) has been prepared, as far as practicable but subject to subparagraph (1), using the cost allocation method the

relevant *Distribution Network Service Provider* last used when preparing its regulatory accounts for submission to the IPART.

- (d) The *AER* must notify the relevant *Distribution Network Service Provider* of its decision to approve or refuse to approve the Cost Allocation Method submitted to it under paragraph (a) within 2 months of its submission, failing which the *AER* will be taken to have approved it.
- (e) As part of giving any approval referred to in paragraph (c), the *AER* may, after consulting with the relevant *Distribution Network Service Provider*, amend the Cost Allocation Method submitted to it, in which case the Cost Allocation Method as so amended will be taken to be approved by the *AER*.
- (f) A NSW Distribution Network Service Provider may, with the *AER*'s approval, amend its Cost Allocation Method from time to time but:
 - (1) the amendment:
 - (i) may be approved on condition that the *Distribution Network Service Provider* agree to incorporate into the amendment specified additional changes to the Cost Allocation Method the *AER* reasonably considers necessary or desirable as a result of the amendment as submitted; and
 - (ii) if approved on such a condition, does not take effect unless and until the *Distribution Network Service Provider* notifies the *AER* of its agreement;
 - (2) if 6 months elapse from the date of the submission of the amendment and the *AER* has not notified the *Distribution Network Service Provider* within that period of its approval or refusal to approve the amendment, the amendment is, at the end of that period, conclusively presumed to have been unconditionally approved.
- (g) A NSW Distribution Network Service Provider must maintain a current copy of its Cost Allocation Method on its website.

Provisions applicable to the ACT Distribution Network Service Provider

6.15.7 Cost Allocation Principles (ACT)

The following principles constitute the Cost Allocation Principles for the ACT Distribution Network Service Provider:

- (1) the detailed principles and policies used by the ACT

Distribution Network Service Provider to allocate costs between different categories of *distribution services* must be described in sufficient detail to enable the AER to replicate reported outcomes through the application of those principles and policies;

- (2) the allocation of costs must be determined according to the substance of a transaction or event rather than its legal form;
- (3) only the following costs may be allocated to a particular category of *distribution services*:
 - (i) costs which are directly attributable to the provision of those services; and
 - (ii) costs which are not directly attributable to the provision of those services but which are incurred in providing those services, in which case such costs must be allocated to the provision of those services using an appropriate allocator which should:
 - (A) except to the extent the cost is immaterial or a causal based method of allocation cannot be established without undue cost and effort, be causation based; and
 - (B) to the extent the cost is immaterial or a causal based method of allocation cannot be established without undue cost and effort, be an allocator that accords with a well accepted cost allocation method;
- (4) any cost allocation method which is used, the reasons for using that method and the numeric quantity (if any) of the chosen allocator must be clearly described;
- (5) the same cost must not be allocated more than once;
- (6) the principles, policies and approach used to allocate costs must be consistent with the Distribution Ring-Fencing Guidelines;
- (7) costs which have been allocated to a particular service cannot be reallocated to another service during the course of a *regulatory control period*.

6.15.8 Cost Allocation Method (ACT)

- (a) The ACT Distribution Network Service Provider must submit to the

AER for its approval a document setting out its proposed Cost Allocation Method for the regulatory control period 2009-2014 within 1 month after the commencement date.

- (b) The Cost Allocation Method proposed by the ACT Distribution Network Service Provider must:
 - (1) be prepared using, as far as practicable, the same cost allocation method as it last used when preparing its regulatory accounts for submission to the ICRC; and
 - (2) subject to subparagraph (1), be consistent with the Cost Allocation Principles.
- (c) The *AER* may approve or refuse to approve the Cost Allocation Method submitted under paragraph (a), but must approve it if the *AER* is satisfied that it:
 - (1) has been prepared, as far as practicable, using the cost allocation method the ACT Distribution Network Service Provider last used when preparing its regulatory accounts for submission to the ICRC; and
 - (2) subject to subparagraph (1), is consistent with the Cost Allocation Principles.
- (d) The *AER* must notify the ACT Distribution Network Service Provider of its decision to approve or refuse to approve the Cost Allocation Method submitted to it under paragraph (a) within 2 months of its submission, failing which the *AER* will be taken to have approved it.
- (e) As part of giving any approval referred to in paragraph (c), the *AER* may, after consulting with the ACT Distribution Network Service Provider, amend the Cost Allocation Method submitted to it, in which case the Cost Allocation Method as so amended will be taken to be approved by the *AER*.
- (f) The ACT Distribution Network Service Provider may, with the *AER*'s approval, amend its Cost Allocation Method from time to time but:
 - (1) the amendment:
 - (i) may be approved on condition that the provider agree to incorporate into the amendment specified additional changes to the Cost Allocation Method the *AER* reasonably considers necessary or desirable as a result of the amendment as submitted; and
 - (ii) if approved on such a condition, does not take effect

unless and until the provider notifies the *AER* of its agreement;

- (2) if 6 months elapse from the date of the submission of the amendment and the *AER* has not notified the provider within that period of its approval or refusal to approve the amendment, the amendment is, at the end of that period, conclusively presumed to have been unconditionally approved.
- (g) The ACT Distribution Network Service Provider must maintain a current copy of its Cost Allocation Method on its website.

Part G *****

Part H **Ring-Fencing Arrangements for Distribution
Network Service Providers**

6.17 **Distribution Ring-Fencing Guidelines**

6.17.1 **Compliance with Distribution Ring-Fencing Guidelines**

- (a) All *Distribution Network Service Providers* must comply with the *Distribution Ring-Fencing Guidelines* prepared in accordance with clause 6.17.2.
- (b) Any Distribution Ring-Fencing Guidelines prepared by the IPART and in force immediately before the start of the regulatory control period 2009-2014 in relation to the NSW Distribution Network Service Providers are deemed to have been prepared by the *AER* under clause 6.17.2 and are to be complied with by the NSW Distribution Network Service Providers.
- (c) Any Distribution Ring-Fencing Guidelines prepared by the ICRC and in force immediately before the start of the regulatory control period 2009-2014 in relation to the ACT Distribution Network Service Provider are deemed to have been prepared by the *AER* under clause 6.17.2 and are to be complied with by the ACT Distribution Network Service Provider.
- (d) Any waiver granted by the IPART under clause 6.2 of the *Distribution Ring-Fencing Guidelines* prepared by the IPART in relation to the regulatory control period 2004-2009 and in force at the end of that period is deemed to have been given by the *AER* in relation to the regulatory control period 2009-2014.

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- (e) For the purposes of paragraphs (b) and (c), the provisions of the guidelines prepared by the IPART and ICRC respectively and referred to in those paragraphs have effect as if references to the IPART and ICRC respectively were references to the *AER*, and with any other necessary modifications.
 - (f) EnergyAustralia must, in respect of the EnergyAustralia transmission support network, comply with the *Distribution Ring-Fencing Guidelines* and the *Transmission Ring-Fencing Guidelines*.
 - (g) The guidelines referred to in paragraphs (b) and (c) continue in force during and after the end of the regulatory control period 2009-2014 subject to amendment, revocation or replacement by guidelines made under the new regulatory regime as defined in clause 11.14.2.

6.17.2 Development of Distribution Ring-Fencing Guidelines

- (a) Subject to clause 6.17.1, guidelines may be developed by the *AER* for the accounting and functional separation of the provision of *direct control services* by *Distribution Network Service Providers* from the provision of other services by *Distribution Network Service Providers* (the *Distribution Ring-Fencing Guidelines*). The guidelines may vary in application as between different *participating jurisdictions*.

Note:

Clause 11.14.5 will, subject to clause 6.17.1, have a bearing on the application of these guidelines in certain cases.

- (b) The *Distribution Ring-Fencing Guidelines* may include, but are not limited to:
 - (1) provisions defining the need for and extent of:
 - (i) legal separation of the entity through which a *Distribution Network Service Provider* provides *network services* from any other entity through which it conducts business; and
 - (ii) the establishment and maintenance of consolidated and separate accounts for *standard control services*, *alternative control services* and other services provided by the *Distribution Network Service Provider*; and
 - (iii) allocation of costs between *standard control services*, *alternative control services* and other services provided by the *Distribution Network Service Provider*; and

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- (iv) limitations on the flow of information between the *Distribution Network Service Provider* and any other person; and
 - (v) limitations on the flow of information where there is the potential for a competitive disadvantage between those parts of the *Distribution Network Service Provider's* business which provide *direct control services* and parts of the provider's business which provide any other services; and
- (2) provisions allowing the *AER* to add to or to waive a *Distribution Network Service Provider's* obligations under the *Distribution Ring-Fencing Guidelines*.
- (c) In developing or amending the *Distribution Ring-Fencing Guidelines* the *AER* must consider, without limitation, the need, so far as practicable, for consistency between the *Distribution Ring-Fencing Guidelines* and the *Transmission Ring-Fencing Guidelines*.
- (d) In developing or amending the *Distribution Ring-Fencing Guidelines*, the *AER* must consult with *participating jurisdictions, Registered Participants, NEMMCO* and other *interested parties*, and such consultation must be otherwise in accordance with the *distribution consultation procedures* in Part G of general Chapter 6.

Part I Distribution Pricing Rules

6.18 Distribution Pricing Rules

6.18.1 Application of this Part

This Part applies to tariffs and *tariff classes* related to *direct control services*.

6.18.2 Pricing proposals

- (a) A *Distribution Network Service Provider* must:
- (1) submit to the *AER*, as soon as practicable, and in any case within 15 *business days*, after *publication* of the distribution determination, a *pricing proposal* (the "*initial pricing proposal*") for the first *regulatory year* of the *regulatory control period*; and
 - (2) submit to the *AER*, at least 2 months before the commencement of the second and each subsequent *regulatory year* of the *regulatory control period*, a further

pricing proposal (an "annual *pricing proposal*") for the relevant *regulatory year*.

(b) A *pricing proposal* must:

- (1) set out the *tariff classes* that are to apply for the relevant *regulatory year*; and
- (2) set out the proposed tariffs for each *tariff class*; and
- (3) set out, for each proposed tariff, the *charging parameters* and the elements of service to which each *charging parameter* relates; and
- (4) set out, for each *tariff class* related to *standard control services*, the expected weighted average revenue for the relevant *regulatory year* and also for the current *regulatory year*; and
- (5) set out the nature of any variation or adjustment to the tariff that could occur during the course of the *regulatory year* and the basis on which it could occur; and
- (5A) in the case of a NSW Distribution Network Service Provider – set out the amount paid, or required by an order under the Energy and Utilities Administration Act 1987 of New South Wales to be paid, by the provider to the Climate Change Fund in or in respect of the relevant *regulatory year* and reflect that amount in the expected revenue for the relevant *regulatory year*; and
- (6) set out how charges incurred by the *Distribution Network Service Provider* for *transmission use of system services* are to be passed on to customers and any adjustments to tariffs resulting from over or under recovery of those charges in the previous *regulatory year*; and
- (7) demonstrate compliance with the *Rules* and any applicable distribution determination; and
- (8) describe the nature and extent of change from the previous *regulatory year* and demonstrate that the changes comply with the *Rules* and any applicable distribution determination.

(c) The *AER* must on receipt of a *pricing proposal* from a *Distribution Network Service Provider* publish the proposal.

6.18.3 Tariff classes

- (a) A *pricing proposal* must define the *tariff classes* into which customers for *direct control services* are divided.
- (b) Each customer for *direct control services* must be a member of 1 or more *tariff classes*.
- (c) Separate *tariff classes* must be constituted for customers to whom *standard control services* are supplied and customers to whom *alternative control services* are supplied (but a customer for both *standard control services* and *alternative control services* may be a member of 2 or more *tariff classes*).
- (d) A *tariff class* must be constituted with regard to:
 - (1) the need to group customers together on an economically efficient basis; and
 - (2) the need to avoid unnecessary transaction costs.

6.18.4 Principles governing assignment or re-assignment of customers to tariff classes and assessment and review of basis of charging

- (a) In formulating provisions of a distribution determination governing the assignment of customers to *tariff classes* or the re-assignment of customers from one *tariff class* to another, the *AER* must have regard to the following principles:
 - (1) customers should be assigned to *tariff classes* on the basis of one or more of the following factors:
 - (i) the nature and extent of their usage;
 - (ii) the nature of their *connection* to the *network*;
 - (iii) whether remotely-read interval metering or other similar metering technology has been installed at the customer's premises as a result of a *regulatory obligation or requirement*;
 - (2) customers with a similar *connection* and usage profile should be treated on an equal basis;
 - (3) however, customers with micro-generation facilities should be treated no less favourably than customers without such facilities but with a similar load profile;

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- (4) a *Distribution Network Service Provider's* decision to assign a customer to a particular *tariff class*, or to re-assign a customer from one *tariff class* to another should be subject to an effective system of assessment and review.

Note:

If (for example) a customer is assigned (or reassigned) to a tariff class on the basis of the customer's actual or assumed maximum demand, the system of assessment and review should allow for the reassignment of a customer who demonstrates a reduction or increase in maximum demand to a tariff class that is more appropriate to the customer's load profile.

- (b) If the *charging parameters* for a particular tariff result in a basis of charge that varies according to the usage or load profile of the customer, a *distribution determination* must contain provisions for an effective system of assessment and review of the basis on which a customer is charged.

6.18.5 Pricing principles

- (a) For each *tariff class*, the revenue expected to be recovered should lie on or between:
- (1) an upper bound representing the stand alone cost of serving the customers who belong to that class; and
 - (2) a lower bound representing the avoidable cost of not serving those customers.
- (b) A tariff, and if it consists of 2 or more *charging parameters*, each *charging parameter* for a *tariff class*:
- (1) must take into account the long run marginal cost for the service or, in the case of a *charging parameter*, for the element of the service to which the *charging parameter* relates; and
 - (2) must be determined having regard to:
 - (i) transaction costs associated with the tariff or each *charging parameter*, and
 - (ii) whether customers of the relevant *tariff class* are able or likely to respond to price signals.
- (c) If, however, as a result of the operation of paragraph (b), the *Distribution Network Service Provider* may not recover the expected revenue, the provider must adjust its tariffs so as to ensure recovery of expected revenue with minimum distortion to efficient

patterns of consumption.

6.18.6 Side constraints on tariffs for standard control services

- (a) This clause applies only to *tariff classes* related to the provision of *standard control services*.
- (b) The expected weighted average revenue to be raised from a *tariff class* for a particular *regulatory year* of a *regulatory control period* must not exceed the corresponding expected weighted average revenue for the preceding *regulatory year* by more than the permissible percentage.
- (c) The permissible percentage is the greater of the following:
 - (1) the CPI-X limitation on any increase in the *Distribution Network Service Provider's* expected weighted average revenue between the two *regulatory years* plus 2%;

Note:

The calculation is of the form $(1 + \text{CPI})(1 - X)(1 + 2\%)$

- (2) CPI plus 2%.

Note:

The calculation is of the form $(1 + \text{CPI})(1 + 2\%)$

- (d) In deciding whether the permissible percentage has been exceeded in a particular *regulatory year*, the following are to be disregarded:
 - (1) the recovery of revenue to accommodate a variation to the distribution determination under rule 6.6 or 6.13;
 - (2) the recovery of revenue to accommodate pass through of charges for *transmission use of system services* to customers.
- (e) This clause does not, however, limit the extent a tariff for customers with remotely-read interval metering or other similar metering technology may vary according to the time or other circumstances of the customer's usage.

6.18.7 Recovery of charges for transmission use of system services

- (a) A *pricing proposal* must provide for tariffs designed to pass on to customers the charges to be incurred by the *Distribution Network Service Provider* for *transmission use of system services*.
- (b) The amount to be passed on to customers for a particular *regulatory year* must not exceed the estimated amount of the *transmission use of system charges* for the relevant *regulatory year*

adjusted for over or under recovery in the previous *regulatory year*.

- (c) The extent of the over or under recovery is the difference between:
- (1) the amount actually paid by the *Distribution Network Service Provider* by way of *transmission use of system charges* in the previous *regulatory year*; and
 - (2) the amount passed on to customers by way of *transmission use of system charges* by the *Distribution Network Service Provider* in the previous *regulatory year*.

6.18.8 Approval of pricing proposal

- (a) The *AER* must approve a *pricing proposal* if the *AER* is satisfied that:
- (1) the proposal complies with this Part and any applicable distribution determination; and
 - (2) all forecasts associated with the proposal are reasonable.
- (b) If the *AER* determines that a *pricing proposal* is deficient:
- (1) the *AER* may require the *Distribution Network Service Provider*, within 10 *business days* after receiving notice of the determination, to re-submit the proposal with the amendments necessary to correct the deficiencies identified in the determination and (unless the *AER* permits further amendment) no further amendment; or
 - (2) the *AER* may itself make the amendments necessary to correct the deficiencies.
- (c) If the service provider fails to comply with a requirement under paragraph (b), or the resubmitted proposal fails to correct the deficiencies in the former proposal, the *AER* may itself amend the proposal to bring it into conformity with the requirements of this Part and any applicable distribution determination.
- (d) An *approved pricing proposal* takes effect:
- (1) in the case of an initial *pricing proposal* – at the commencement of the first *regulatory year* of the *regulatory control period* for which the distribution determination is made; and
 - (2) in the case of an annual *pricing proposal* – at the commencement of the *regulatory year* to which the proposal

relates.

Note:

The operation of this paragraph may, in some instances, be displaced or modified by clause 6.11.3(b).

6.18.9 Publication of information about tariffs and tariff classes

- (a) A *Distribution Network Service Provider* must maintain on its website:
 - (1) a statement of the provider's *tariff classes* and the tariffs applicable to each class; and
 - (2) for each tariff – the *charging parameters* and the elements of the service to which each *charging parameter* relates; and
 - (3) a statement of expected price trends (to be updated for each *regulatory year*) giving an indication of how the *Distribution Network Service Provider* expects prices to change over the *regulatory control period* and the reasons for the expected changes.
- (b) The information for a particular *regulatory year* must, if practicable, be posted on the website 20 *business days* before the commencement of the relevant *regulatory year* and, if that is not practicable, as soon as practicable thereafter.

6.19. Data Required for Distribution Service Pricing

6.19.1 Forecast use of networks by Distribution Customers and Embedded Generators

Any information required by *Distribution Network Service Providers* must be provided by *Service Applicants* as part of the *connection* and access requirements set out in Chapter 5.

6.19.2 Confidentiality of distribution network pricing information

- (a) Subject to the Law and the *Rules*, all information about a *Service Applicant* or *Distribution Network User* used by *Distribution Network Service Providers* for the purposes of *distribution service* pricing is confidential information and must be treated in accordance with rule 8.6.
- (b) No requirement in this Chapter 6 to publish information about a *tariff class* is to be construed as requiring publication of information about an individual customer.

Part J **Billing and Settlements**

6.20 **Billing and Settlements Process**

This clause describes the manner in which *Distribution Customers* and *Embedded Generators* are billed by *Distribution Network Service Providers* for *distribution services* and how payments for *distribution services* are settled.

6.20.1 **Billing for distribution services**

(a) A *Distribution Network Service Provider* must bill *Distribution Network Users* for *distribution services* as follows:

(1) *Embedded Generators*:

- (i) by applying the *entry charge* as a fixed annual charge to each *Embedded Generator*; and
- (ii) by applying any other charge the *Distribution Network Service Provider* makes consistently with these *Rules* and the applicable distribution determination.

(2) *Distribution Customers*:

The charges to *Distribution Customers* must be determined according to use of the *distribution network* as determined in accordance with a *metrology procedure* or, in the absence of a *metrology procedure* allowing such a determination to be made, by *meter* or by agreement between the *Distribution Customer* and the *Distribution Network Service Provider* by applying one or more of the following measures:

- (i) demand-based prices to the *Distribution Customer's* metered or agreed half-hourly demand;
- (ii) energy-based prices to the *Distribution Customer's* metered or agreed energy;
- (iii) the *Distribution Customer* charge determined under this clause as a fixed periodic charge to each *Distribution Customer*;
- (iv) a fixed periodic charge, a prepayment or other charge determined by agreement with the *Distribution Customer*;
- (v) any other measure the *Distribution Network Service Provider* is authorised to apply by the applicable

distribution determination.

- (b) Subject to paragraph (c), where a *Distribution Customer* (other than a *Market Customer*) incurs *distribution service charges*, the *Distribution Network Service Provider* must bill the *Market Customer* from whom the *Distribution Customer* purchases electricity directly or indirectly for such *distribution services* in accordance with paragraph (a)(2).
- (c) If a *Distribution Customer* and the *Market Customer* from whom it purchases electricity agree, the *Distribution Network Service Provider* may bill the *Distribution Customer* directly for *distribution services* used by that *Distribution Customer* in accordance with paragraph (a)(2).
- (d) *Distribution Network Service Providers* must:
 - (1) calculate *transmission service charges* and *distribution service charges* for all *connection points* in their *distribution network*; and
 - (2) pay to *Transmission Network Service Providers* the *transmission service charges* incurred in respect of use of a *transmission network* at each *connection point* on the relevant *transmission network*.
- (e) Charges for *distribution services* based on metered kW, kWh, kVA, or kVAh for:
 - (1) *Embedded Generators* that are *Market Generators*; and
 - (2) *Market Customer*; and
 - (3) *Second-Tier Customers*;

must be calculated by the *Distribution Network Service Provider* from:

- (1) *settlements ready data* obtained from NEMMCO's *metering database*, for those *Embedded Generators*, *Market Customers* and *Second-Tier Customers* with *connection points* that have a type 1, 2, 3 or 4 *metering installation*; and
- (2) *energy data*, in accordance with a *metrology procedure* that allows the *Distribution Network Service Provider* to use *energy data* for this purpose, or otherwise *settlements ready data* obtained from NEMMCO's *metering database*, for those *Embedded Generators*, *Market Customers* and *Second-Tier Customers* with *connection points* that have a type 5, 6 or 7

metering installation.

- (f) Charges for *distribution services* based on metered kW, kWh, kVA or kVAh for:
- (1) *Embedded Generators* that are not *Market Generators*; and
 - (2) *Non-Registered Customers*; and
 - (3) *franchise customers*,
- must be calculated by the *Distribution Network Service Provider* using data that is consistent with the *metering data* used by the relevant *Local Retailer* in determining *energy settlements*.
- (g) The *Distribution Network Service Provider* may bill the relevant *Local Retailer* for *distribution services* used by *Non-Registered Customers* and *franchise customers*.
- (h) Where the billing for a *Distribution Customer* for a particular *financial year* is based on quantities which are undefined until after the commencement of the *financial year*, charges must be estimated from the previous year's billing quantities with a reconciliation to be made when the actual billing quantities are known.
- (i) Where the previous year's billing quantities are unavailable or no longer suitable, nominated quantities may be used as agreed between the parties.

6.20.2 Minimum information to be provided in distribution network service bills

The following is the minimum information that must be provided with a bill for a *network coupling point* issued by a *Distribution Network Service Provider* directly to a *Registered Participant*:

- (1) the *network coupling point* identifier; and
- (2) the dates on which the billing period starts and ends; and
- (3) the identifier of the *distribution service* price from which the *network coupling point* charges are calculated; and
- (4) measured quantities, billed quantities, prices and amounts charged for each component of the total *distribution service* account.

6.20.3 Settlement between Distribution Network Service Providers

The billing and settlement process specified in this clause must be applied to all *Distribution Customers* including other *Distribution Network Service Providers*.

6.20.4 Obligation to pay

A *Distribution Network User* must pay *distribution service charges* properly charged to it and billed in accordance with this clause by the due date specified in the bill.

Part K Prudential requirements, capital contributions and prepayments

6.21 Distribution Network Service Provider Prudential Requirements

This clause sets out the arrangements by which *Distribution Network Service Providers* may minimise financial risks associated with investment in *network assets* and provides for adoption of cost-reflective payment options in conjunction with the use of average distribution prices. The clause also prevents *Distribution Network Service Providers* from receiving income twice for the same assets through prudential requirements and *distribution service prices*.

6.21.1 Prudential requirements for distribution network service

- (a) A *Distribution Network Service Provider* may require an *Embedded Generator* or *Distribution Customer* that requires a new *connection* or a modification in service for an existing *connection* to establish prudential requirements for *connection service* and/or *distribution use of system service*.
- (b) Prudential requirements for *connection service* and/or *distribution use of system service* are a matter for negotiation between the *Distribution Network Service Provider* and the *Embedded Generator* or *Distribution Customer* and the terms agreed must be set out in the *connection agreement* between the *Distribution Network Service Provider* and the *Embedded Generator* or *Distribution Customer*.
- (c) The *connection agreement* may include one or more of the following provisions:
 - (1) the conditions under which and the time frame within which other *Distribution Network Users* who use that part of the

-
- distribution network* contribute to refunding all or part of the payments;
- (2) the conditions under which financial arrangements may be terminated; and
 - (3) the conditions applying in the event of default by the *Distribution Customer* or *Embedded Generator*.
- (d) The prudential requirements may incorporate, but are not limited to, one or more of the following arrangements:
- (1) financial capital contributions;
 - (2) non-cash contributions;
 - (3) *distribution service* charge prepayments;
 - (4) guaranteed minimum *distribution service charges* for an agreed period;
 - (5) guaranteed minimum *distribution service* quantities for an agreed period;
 - (6) provision for financial guarantees for *distribution service charges*.

6.21.2 Capital contributions, prepayments and financial guarantees

Despite any other provision in this Chapter, in relation to capital contributions, prepayments and financial guarantees:

- (1) the *Distribution Network Service Provider* is not entitled to recover, under a mechanism for the economic regulation of *direct control services*, any component representing asset related costs for assets provided by *Distribution Network Users*; and
- (2) the *Distribution Network Service Provider* may receive a capital contribution, prepayment and/or financial guarantee up to the provider's future revenue related to the provision of *direct control services* for any new assets installed as part of a new *connection* or modification to an existing *connection*, including any *augmentation* to the *distribution network*; and
- (3) where assets have been the subject of a contribution or prepayment, the *Distribution Network Service Provider* must amend the provider's revenue related to the provision of *direct control services*.

6.21.3 Treatment of past prepayments and capital contributions

- (a) Payments made by *Distribution Customers* and *Embedded Generators* for *distribution service* prior to 13 December 1998 must be made in accordance with any contractual arrangements with the relevant *Distribution Network Service Providers* applicable at that time.
- (b) Where contractual arrangements referred to in clause 6.22.2(a) are not in place, past *distribution service* prepayments or capital contributions may be incorporated in the capital structure of the *Distribution Network Service Provider's* business.
- (c) The AER may intervene in and resolve any dispute under this clause which cannot be resolved between the relevant *Distribution Network Service Provider* and *Distribution Customer* or *Embedded Generator*.

6.21.4 Application of IPART and ICRC guidelines regarding capital contribution charges

- (a) Capital contribution charges by the NSW Distribution Network Service Providers in respect of the regulatory control period 2009-2014 are to be determined in accordance with Determination No 1 2002 made by the IPART under section 11(3) of the Independent Pricing and Regulatory Act 1992 (NSW) in 2002.
- (b) Capital contribution charges by the ACT Distribution Network Service Provider in respect of the regulatory control period 2009-2014 are to be determined in accordance with the Electricity Network Capital Contributions Code made by the ICRC in 2001.

Part L Dispute resolution

6.22.1 Dispute Resolution by the AER

- (a) A dispute between a *Distribution Network Service Provider* and a *Service Applicant* as to the *terms and conditions of access* to a *direct control service* or to a *negotiated distribution service* is an access dispute for the purposes of Part 10 of the Law.
- (b) A dispute between a *Distribution Network Service Provider* and a *Service Applicant* about *access charges* is an access dispute for the purposes of Part 10 of the Law.
- (c) A dispute between a *Distribution Network Service Provider* and a *Connection Applicant* about matters referred to in clause 5.5(f) or clause 5.5(h) is an access dispute for the purposes of Part 10 of the

Law.

6.22.2 Determination of dispute

(a) In determining an access dispute about *terms and conditions of access* to a *direct control service* (other than a negotiable component), the AER must apply:

- (1) in relation to price, the *Distribution Network Service Provider's approved pricing proposal* or (in the case of an EnergyAustralia prescribed (transmission) standard control service) EnergyAustralia's approved pricing methodology, as the case requires; and
- (2) in relation to other terms and conditions, Chapters 4, 5, this Chapter 6 and Chapter 7 of the *Rules* and any other *applicable regulatory instrument*; and
- (3) in relation to all *terms and conditions of access* (including price) the decisions of NEMMCO or the AER where those decisions relate to those terms and conditions and are made under Chapters 4, 5, this Chapter 6 and Chapter 7 of the *Rules*.

(a1) In determining an access dispute about *terms and conditions of access* to a negotiable component of a *direct control service*, the AER must apply:

- (1) in relation to price (including *access charges*), the negotiable component criteria that are applicable to the dispute in accordance with the relevant distribution determination; and
- (2) in relation to other terms and conditions, the negotiable component criteria that are applicable to the dispute and Chapters 4, 5, this Chapter 6 and Chapter 7 of the *Rules*; and
- (3) in relation to all *terms and conditions of access* (including price) the decisions of NEMMCO or the AER where those decisions relate to those terms and conditions and are made under Chapters 4, 5, this Chapter 6 and Chapter 7 of the *Rules*;

and must have regard:

- (4) to the relevant *negotiating framework* prepared by the *Distribution Network Service Provider* and approved by the AER.

(b) In determining an access dispute about the *terms and conditions of*

access to a *direct control service* (including a negotiable component), the AER may:

- (1) have regard to other matters the AER considers relevant; and
- (2) hear evidence or receive submissions from NEMMCO about *power system security* and from *Distribution Network Users* who may be adversely affected.

Note:

Section 130 of the Law requires the AER, in making an access determination, to give effect to a network revenue or pricing determination applicable to the services that are the subject of the dispute even though the determination may not have been in force when the dispute arose.

- (c) In determining an access dispute about *terms and conditions of access to a negotiated distribution service*, the AER must apply:
 - (1) in relation to price (including *access charges*), the *Negotiated Distribution Service Criteria* that are applicable to the dispute in accordance with the relevant distribution determination; and
 - (2) in relation to other terms and conditions, the *Negotiated Distribution Service Criteria* that are applicable to the dispute and Chapters 4, 5, this Chapter 6 and Chapter 7 of the *Rules*; and
 - (3) in relation to all *terms and conditions of access* (including price) the decisions of NEMMCO or the AER where those decisions relate to those terms and conditions and are made under Chapters 4, 5, this Chapter 6 and Chapter 7 of the *Rules*;

and must have regard:

- (4) to the relevant *negotiating framework* prepared by the *Distribution Network Service Provider* and approved by the AER.
- (d) In determining an access dispute about the *terms and conditions of access to a negotiated distribution service*, the AER may:
 - (1) have regard to other matters the AER considers relevant; and
 - (2) hear evidence or receive submissions from NEMMCO and *Distribution Network Users* notified and consulted under the *Distribution Network Service Provider's negotiating framework*.
 - (e) In determining an access dispute about *access charges*, or involving *access charges*, the AER must give effect to the following

principle:

Access charges should be based on the costs reasonably incurred by the *Distribution Network Service Provider* in providing *distribution network user access* and, where they consist of compensation referred to in clause 5.5(f)(4)(ii) and (iii), on the revenue that is likely to be foregone and the costs that are likely to be incurred by a person referred to in those provisions where an event referred to in those provisions occurs.

6.22.3 Termination of access dispute without access determination

- (a) If the AER considers that an access dispute could be effectively resolved by some means other than an access determination, the AER may give the parties to the dispute notice of the alternative means of resolving the dispute.

Example:

The AER might give such a notice if of the opinion that a particular dispute could be dealt with more efficiently, and with less expense, by a jurisdictional ombudsman.

- (b) The giving of such a notice is a specified dispute termination circumstance for the purposes of section 131(3) of the Law.

Note:

It follows that the AER may exercise its power to terminate the dispute without making an access determination (See section 131(1)(d) of the Law).

Part M Separate disclosure of transmission and distribution charges

6.23 Separate disclosure of transmission and distribution charges

- (a) *A Distribution Customer:*
- (1) with a *load* greater than 10MW or 40GWh per annum; or
 - (2) with *metering* equipment capable of capturing relevant *transmission* and *distribution system* usage data,

may make a request (a **TUOS/DUOS disclosure request**) to a *Distribution Network Service Provider* to provide the *Distribution Customer* with a statement (a **TUOS/DUOS disclosure statement**) identifying the separate components of the *transmission use of system* and *distribution use of system* charges comprised in the charges for electricity supplied to the *Distribution Customer's*

connection points.

- (b) Within 10 *business days* of receipt of a *TUOS/DUOS disclosure request*, a *Distribution Network Service Provider* must notify the *Distribution Customer* of the estimated charge (including details of how the charge is calculated) for providing the *TUOS/DUOS disclosure statement*. The charge must be no greater than the reasonable costs directly incurred by the *Distribution Network Service Provider* in preparing the statement for the *Distribution Customer*.
- (c) If the *Distribution Customer* advises the *Distribution Network Service Provider* within 20 *business days* of receipt of the notice referred to in paragraph (b) that it still requires the requested *TUOS/DUOS disclosure statement*, the *Distribution Network Service Provider* must prepare the statement and provide it to the *Distribution Customer* within 20 *business days* of being so advised. The *TUOS/DUOS disclosure statement* must include detailed information on the method used to determine the *distribution use of system charges* and the allocation of the *transmission use of system charges* to the *Distribution Customer* for electricity supplied to its *connection points*. The information must be sufficient to allow the *Distribution Customer* to assess the impact on its *network charges* of a change in its *network use*.
- (d) The *TUOS/DUOS disclosure statement* must also separately identify the amounts that have been allocated to the *Distribution Customer's connection points* under Part J of Chapter 6A in respect of each of the *categories of prescribed transmission services*, where the *Distribution Customer* requests this information.
- (e) Where the *Distribution Customer* requests the information referred to in paragraph (d), the *Distribution Network Service Provider* must separately identify the component of the charge notified under paragraph (b) that relates to the provision of the additional information.
- (f) Each *Distribution Network Service Provider* must publish information annually disclosing the *transmission use of system* and *distribution use of system charges* for each of the classes of *Distribution Customers* identified for this purpose by the *Distribution Network Service Provider*, or as required by the *AER*.

Schedule 6.1 Contents of building block proposals

S6.1.1 Information and matters relating to capital expenditure

A *building block proposal* must contain at least the following information and matters relating to capital expenditure:

(1) a forecast of the required capital expenditure that complies with the requirements of clause 6.5.7 of the *Rules* and identifies the forecast capital expenditure by reference to well accepted categories such as:

- (i) asset class (eg. *distribution lines, substations* etc); or
- (ii) category driver (eg. *regulatory obligation or requirement, replacement, reliability, net market benefit, business support* etc),

and identifies, in respect of proposed material assets:

- (iii) the location of the proposed asset; and
 - (iv) the anticipated or known cost of the proposed asset; and
 - (v) the categories of *distribution services* which are to be provided by the proposed asset;
- (2) the method used for developing the capital expenditure forecast;
- (3) the forecasts of load growth relied upon to derive the capital expenditure forecasts and the method used for developing those forecasts of load growth;
- (4) the key assumptions that underlie the capital expenditure forecast;
- (5) a certification of the reasonableness of the key assumptions by the directors of the *Distribution Network Service Provider*;
- (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 capital expenditure forecast;
- (7) an explanation of any significant variations in the forecast capital expenditure from historical capital expenditure.

S6.1.2 Information and matters relating to operating expenditure

A *building block proposal* must contain at least the following information and matters relating to operating expenditure:

(1) a forecast of the required operating expenditure that complies with the requirements of clause 6.5.6 of the *Rules* and identifies the forecast operating expenditure by reference to well accepted categories such as:

- (i) particular programs; or
- (ii) types of operating expenditure (eg. maintenance, payroll, materials etc),

and identifies in respect of each such category:

- (iii) to what extent that forecast expenditure is on costs that are fixed and to what extent it is on costs that are variable; and
 - (iv) the categories of *distribution services* to which that forecast expenditure relates;
- (2) the method used for developing the operating expenditure forecast;
- (3) the forecasts of key variables relied upon to derive the operating expenditure forecast and the method used for developing those forecasts of key variables;
- (4) the method used for determining the cost associated with planned maintenance programs designed to improve the performance of the relevant *distribution system* for the purposes of any *service target performance incentive scheme* that is to apply to the *Distribution Network Service Provider* in respect of the relevant *regulatory control period*;
- (5) the key assumptions that underlie the operating expenditure forecast;
- (6) a certification of the reasonableness of the key assumptions by the directors of the *Distribution Network Service Provider*;
- (7) operating expenditure for each of the past *regulatory years* of the previous and current *regulatory control period*, and the expected operating expenditure for each of the last two *regulatory years* of the current *regulatory control period*, categorised in the same way as for the operating expenditure

forecast;

- (8) an explanation of any significant variations in the forecast operating expenditure from historical operating expenditure.

S6.1.3 Additional information and matters

A *building block proposal* must contain at least the following additional information and matters:

- (1) an identification and explanation of any significant interactions between the forecast capital expenditure and forecast operating expenditure programs;
- (2) a proposed pass through clause with a proposal as to the events that should be defined as *pass through events*;
- (3) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes the *efficiency benefit sharing scheme* should apply for the relevant *regulatory control period*;
- (4) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes the *service target performance incentive scheme* should apply for the relevant *regulatory control period*;
- (5) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes the *demand management incentive scheme* (if applicable) should apply for the relevant *regulatory control period*;
- (6) the provider's calculation of revenues or prices for the purposes of the control mechanism proposed by the provider together with:
 - (i) details of all amounts, values and inputs (including X factors) relevant to the calculation; and
 - (ii) an explanation of the calculation and the amounts, values and inputs involved in the calculation; and
 - (iii) a demonstration that the calculation and the amounts, values and inputs on which it is based comply with relevant requirements of the Law and the *Rules*;
- (7) the provider's calculation of the regulatory asset base for the relevant *distribution system* for each *regulatory year* of the relevant *regulatory control period* using the *roll forward model*

referred to in clause 6.5.1 of transitional Chapter 6, together with:

- (i) details of all amounts, values and other inputs used by the provider for that purpose; and
 - (ii) a demonstration that any such amounts, values and other inputs comply with the relevant requirements of Part C of transitional Chapter 6; and
 - (iii) an explanation of the calculation of the regulatory asset base for each *regulatory year* of the relevant *regulatory control period* and of the amounts, values and inputs referred to in subparagraph (i);
- (8) the commencement and length of the period nominated by the *Distribution Network Service Provider* for the purposes of clause 6.5.2(c)(2) of transitional Chapter 6;
 - (9) the provider's calculation of the proposed rate of return;
 - (10) the *post-tax revenue model* completed to show its application to the *Distribution Network Service Provider* and the completed *roll-forward model*;
 - (11) the provider's estimate of the cost of corporate income tax for each *regulatory year* of the *regulatory control period*;
 - (12) the depreciation schedules nominated by the *Distribution Network Service Provider* for the purposes of clause 6.5.5 of transitional Chapter 6, which categorise the relevant assets for these purposes by reference to well accepted categories such as:
 - (i) asset class (eg *distribution lines* and *substations*); or
 - (ii) category driver (eg *regulatory obligation or requirement*, *replacement*, *reliability*, *net market benefit*, and *business support*),

together with:

- (iii) details of all amounts, values and other inputs used by the provider to compile those depreciation schedules; and
- (iv) a demonstration that those depreciation schedules conform with the requirements set out in clause 6.5.5(b) of transitional Chapter 6; and

-
- (v) an explanation of the calculation of the amounts, values and inputs referred to in subparagraph (iii);

(13) *****

Schedule 6.2 Regulatory Asset Base

S6.2.1 Establishment of opening regulatory asset base for a regulatory control period

- (a) Application of this clause

This clause S6.2.1:

- (1) applies to the establishment of the value of the regulatory asset base for a *distribution system* as at the beginning of a *regulatory control period* on the roll forward of the regulatory asset base to that *regulatory control period* from the previous *regulatory control period*; and
- (2) also applies to the establishment of the value of the regulatory asset base for a *distribution system* as at the beginning of a *regulatory control period* where the *distribution system* was not immediately before that time the subject of a *building block determination*.

- (b) Roll forward model to comply with this clause

The values to be used for completing the *roll forward model* must be established in accordance with this clause and clauses S6.2.2 and S6.2.3.

- (c) Distribution systems of specific providers

- (1) In the case of a *distribution system* owned, controlled or operated by one of the following *Distribution Network Service Providers* as at the commencement of this schedule, the value of the regulatory asset base for that *distribution system* as at the beginning of that first *regulatory year* must be determined by rolling forward the regulatory asset base for that *distribution system*, as set out in the table below, in accordance with this schedule:

Jurisdiction	<i>Distribution Network Service Provider</i>	Regulatory Asset Base (\$m)
Australian	ActewAGL	510.54 (as at 1 July 2004)

Jurisdiction	<i>Distribution Network Service Provider</i>	Regulatory Asset Base (\$m)
Capital Territory		in July 2004 dollars)
New South Wales	Country Energy	2,440 (as at 1 July 2004 in July 2004 dollars)
	EnergyAustralia	4,116 (as at 1 July 2004 in July 2004 dollars); plus 635.6 (as at 1 July 2004 in July 2004 dollars) in respect of EnergyAustralia's transmission support network
	Integral Energy	2,283 (as at 1 July 2004 in July 2004 dollars)
*****	*****	*****

(2) The values in the table above are to be adjusted for the difference between:

- (i) any estimated capital expenditure that is included in those values for any part of a previous *regulatory control period*; and
- (ii) the actual capital expenditure for that part of the previous *regulatory control period*.

This adjustment must also remove any benefit or penalty associated with any difference between the estimated and actual capital expenditure.

(3) When rolling forward a regulatory asset base under subparagraph (1), the *AER* must take into account the derivation of the values in the above table from past regulatory decisions and the consequent fact that they relate only to the regulatory asset base identified in those decisions.

(d) *****

(e) Method of adjustment of value of regulatory asset base

Except as otherwise provided in paragraph (c), the value of the regulatory asset base for a *distribution system* as at the beginning

of the first *regulatory year* of a *regulatory control period* must be calculated by adjusting the value (the '**previous value**') of the regulatory asset base for that *distribution system* as at the beginning of the first *regulatory year* of the immediately preceding *regulatory control period* (the '**previous control period**') as follows:

- (1) The previous value of the regulatory asset base for each NSW Distribution Network Service Provider must be increased by the amount of all capital expenditure incurred during the previous control period.
- (1A) The previous value of the regulatory asset base for the ACT Distribution Network Service Provider must be increased by the amount of the capital expenditure incurred during the previous control period that is to be included under the ICRC approach referred to in clause 6.5.1(g) of the transitional Chapter 6.
- (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.
- (3) The previous value of the regulatory asset base must be adjusted for the difference between:
 - (i) the estimated capital expenditure for any part of a previous *regulatory control period* where that estimated capital expenditure has been included in that value; and
 - (ii) the actual capital expenditure for that part of the previous *regulatory control period*.

This adjustment must also remove any benefit or penalty associated with any difference between the estimated and actual capital expenditure.

- (4) The previous value of the regulatory asset base must only be increased by actual or estimated capital expenditure to the extent that all such capital expenditure is properly allocated to the provision of *standard control services* in accordance with the Cost Allocation Method for the relevant *Distribution Network Service Provider*.
- (5) The previous value of the regulatory asset base for each NSW Distribution Network Service Provider must be reduced by the amount of actual depreciation of the regulatory asset base during the previous *regulatory control period*, calculated in

accordance with the rates and methodologies allowed in the distribution determination for that period.

- (5A) The previous value of the regulatory asset base for the ACT Distribution Network Service Provider must be reduced by the amount of depreciation of the regulatory asset base during the previous *regulatory control period*, calculated in accordance with the distribution determination for that period.
- (6) The previous value of the regulatory asset base must be reduced by the disposal value of any asset where that asset has been disposed of during the previous *regulatory control period*.
- (7) The previous value of the regulatory asset base must be reduced by the value of an asset where the asset was previously used to provide *standard control services* (or their equivalent under the previous regulatory system) but, as a result of a change to the classification of a particular service under Part B, is not to be used for that purpose for the relevant *regulatory control period*.
- (8) The previous value of the regulatory asset base may be increased by the value of an asset to which this subparagraph applies to the extent that:
 - (i) the *AER* considers the asset to be reasonably required to achieve one or more of the *capital expenditure objectives*; and
 - (ii) the asset is properly allocated to *standard control services* in accordance with the principles and policies set out in the Cost Allocation Method for the relevant *Distribution Network Service Provider*; and
 - (iii) the value of the asset has not been otherwise recovered.

This subparagraph applies to an asset that:

- (i) was not used to provide *standard control services* (or their equivalent under the previous regulatory system) in the previous *regulatory control period* but, as a result of a change to the classification of a particular service under Part B, is to be used for that purpose for the relevant *regulatory control period*; or
- (ii) was never previously used to provide *standard control services* (or their equivalent under the previous

regulatory system) but is to be used for that purpose for the relevant *regulatory control period*.

- (f) An increase or reduction in the value of the regulatory asset base under subparagraph (7) or (8) of paragraph (e) is to be based on the value of the relevant asset as shown in independently audited and published accounts.
- (g) Despite any other provision of this clause S6.2.1, the regulatory asset base for Country Energy at the beginning of the regulatory control period 2009-2014 should reflect the deferral of depreciation allowed for Country Energy in clause 7.3.2 of the IPART's Final Report (Other Paper No 23 - June 2004) relating to NSW Electricity Distribution Pricing 2004/05 to 2008/09.

S6.2.2 *****

S6.2.3 Roll forward of regulatory asset base within the same regulatory control period

- (a) Application of this clause

This clause applies to the establishment of the value of the regulatory asset base for a *distribution system* as at the beginning of one *regulatory year* in a *regulatory control period* on the roll forward of the regulatory asset base to that *regulatory year* from the immediately preceding *regulatory year* (if any) in that *regulatory control period*.

- (b) Roll forward model to comply with this clause

The *roll forward model* referred to in clause 6.5.1 of the *Rules* must provide for that value to be established in accordance with the requirements of this clause.

- (c) Method of adjustment of value of regulatory asset base

The value of the regulatory asset base for a *distribution system* as at the beginning of the second or a subsequent year ('the **later year**') in a *regulatory control period* must be calculated by adjusting the value ('the **previous value**') of the regulatory asset base for that *distribution system* as at the beginning of the immediately preceding *regulatory year* ('the **previous year**') in that *regulatory control period* as follows:

- (1) The previous value of the regulatory asset base must be increased by the amount of forecast capital expenditure accepted or substituted by the *AER* for the previous year in accordance with clause 6.5.7(c) or clause 6.12.1(3) (as the

case may be).

- (2) The previous value of the regulatory asset base must be reduced by the amount of depreciation included in the *Distribution Network Service Provider's annual revenue requirement* for the previous year.
 - (3) The previous value of the regulatory asset base must be reduced by the disposal value of any asset included in that value where the asset is forecast to be disposed of during the previous year.
 - (4) The previous value of the regulatory asset base must be increased by an amount necessary to maintain the real value of the regulatory asset base as at the beginning of the later year by adjusting that value for inflation.
- (d) Allowance for working capital

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