

**CHAPTER 6**





## 6. Economic Regulation of Distribution Services

### Part A Introduction

#### 6.0 Operation of Chapter 6 in this jurisdiction

- (a) This rule applies if a *Distribution Network Service Provider* owns, controls or operates more than one *distribution system* in this jurisdiction.
- (b) Despite any other provision of this Chapter:
  - (1) for all of those *distribution systems* there must be, in respect of a particular *regulatory control period*, only one:
    - (i) draft distribution determination and final distribution determination;
    - (ii) *framework and approach paper*;
    - (iii) *building block proposal* and *building block determination*;
    - (iv) *regulatory proposal*;
    - (v) proposed and final *tariff structure statement*; and
    - (vi) regulatory asset base value; and
  - (2) all of those *distribution systems* must be treated as a single *distribution system* for the purposes of clause 6.5.1 and schedule 6.2.

#### 6.0A Interpretation

- (a) this rule applies in relation to the following:
  - (1) the provisions of this Chapter;
  - (2) the provisions of Chapters 11 and 11A, to the extent the provisions operate in relation to this Chapter;
  - (3) an instrument made under or for the purposes of this Chapter; and
  - (4) the definitions in Chapter 10, to the extent the definitions are mentioned in a provision or instrument mentioned in subparagraph (1), (2) or (3).
- (b) Unless the context or subject matter otherwise indicates or requires:
  - (1) a *prescribed transmission service* will be taken to be a *direct control service* under a provision or instrument mentioned in paragraph (a); and
  - (2) a *negotiated transmission service* will be taken to be a *negotiated distribution service* under a provision or instrument mentioned in paragraph (a).
- (c) Unless the context or subject matter otherwise indicates or requires, in a provision or instrument mentioned in paragraph (a):
  - (1) a reference to a "*distribution network*" must be regarded as including a reference to a "*transmission network*";

- (2) a reference to a "*distribution system*" must be regarded as including a reference to a "*transmission system*";
- (3) a reference to a "*Distribution Network User*" must be regarded as including a reference to a "*Transmission Network User*";
- (4) a reference to a "*Distribution Network Service Provider*" must be regarded as including a reference to a "*Transmission Network Service Provider*";
- (5) a reference to a "*distribution service*" must be regarded as including a reference to a "*transmission service*";
- (6) a reference to an "*embedded generating unit*" must be regarded as a reference to a "*generating unit*";
- (7) a reference to an "*Embedded Generator*" must be regarded as a reference to a "*Generator*"; and
- (8) a reference to a "*Distribution Customer*" must be regarded as including a reference to a "*Transmission Customer*".

## **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*.

#### **6.1.1A [Deleted]**

### **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 confers power on the *AER* to classify *distribution services*, to determine the forms of control for *distribution 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 *Distribution Network Service Providers* for the provision of services classified as *negotiated distribution services*;
  - (4A) Part DA deals with the preparation of, requirements for and approval of, *connection policies*;
  - (5) Part E sets out the procedure and approach for the making of a distribution determination;
  - (6) Part F regulates cost allocation;

- (7) Part G contains the distribution consultation procedures;
- (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;
- (14) Part N provides for services provided by, or in connection with, *dual function assets* to be the subject of distribution determinations; and
- (15) Part O sets out the requirements to prepare *annual benchmarking reports*.

### 6.1.3 Access to direct control services and negotiated distribution services

- (a) Subject to and in accordance with the *Rules*:
  - (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 5, 6 and 7A of the *Rules* and under *jurisdictional electricity legislation*.

**Note:**

The terms and conditions of access in *jurisdiction electricity legislation* will be terms and conditions that correspond to matters set out in Chapter 4 of the *Rules* applying in other *participating jurisdictions*. The application of paragraph (a) will be revisited as part of the phased implementation of the *Rules* in this jurisdiction.

- (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) the price of those services under the *approved pricing proposal*; 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*.

## Part B Classification of Distribution Services and Distribution Determinations

### 6.2 Classification

#### 6.2.1 Classification of distribution services

- (a) The *AER* may classify a *distribution service* to be provided by a *Distribution Network Service Provider* as:
  - (1) a *direct control service*; or
  - (2) a *negotiated distribution service*.

**Note**

If the *AER* decides against classifying a *distribution service*, the service is, subject to Chapters 5 and 5A, not regulated under the *Rules*.

- (b) The *AER* may group *distribution services* together for the purpose of classification and, if it does so, a single classification made for the group applies to each service comprised in the group as if it had been separately classified.
- (c) The *AER* must, in classifying a *distribution service* or *distribution services*, have regard to:
  - (1) the form of regulation factors; and
  - (2) the form of regulation (if any) previously applicable to the relevant service or services and, in particular, any previous classification under the present system of classification or under the previous regulatory system (as the case requires); and
  - (3) the desirability of consistency in the form of regulation for similar services (both within and beyond the relevant jurisdiction); and
  - (4) any other relevant factor.
- (d) **[Deleted]**
- (e) If the *Rules*, however, require that a particular classification be assigned to a *distribution service* of a specified kind, a *distribution service* of the relevant kind is to be classified in accordance with that requirement.

#### 6.2.2 Classification of direct control services as standard control services or alternative control services

- (a) *Direct control services* are to be further divided into 2 subclasses:
  - (1) *standard control services*; and

- (2) *alternative control services*.
- (b) The *AER* may group *direct control services* together for the purpose of classification and, if it does so, a single classification made for the group applies to each service comprised in the group as if it had been separately classified.
- (c) The *AER* must, in classifying a *direct control service* as a *standard control service* or an *alternative control service*, have regard to:
- (1) the potential for development of competition in the relevant market and how the classification might influence that potential; and
  - (2) the possible effects of the classification on administrative costs of the *AER*, the *Distribution Network Service Provider* and users or potential users; and
  - (3) the regulatory approach (if any) applicable to the relevant service immediately before the commencement of the distribution determination for which the classification is made; and
  - (4) the desirability of a consistent regulatory approach to similar services (both within and beyond the relevant jurisdiction); and
  - (5) the extent the costs of providing the relevant service are directly attributable to the person to whom the service is provided; and

**Example:**

In circumstances where a service is provided to a small number of identifiable customers on a discretionary or infrequent basis, and costs can be directly attributed to those customers, it may be more appropriate to classify the service as an alternative control service than as a standard control service.

- (6) any other relevant factor.
- (d) **[Deleted]**
- (e) If the *Rules*, however, require that a *direct control service* of a specified kind be classified either as a *standard control service* or as an *alternative control service*, a *direct control service* of the relevant kind is to be classified in accordance with that requirement.

### 6.2.3 Term for which classification operates

A classification forms part of a distribution determination and operates for the *regulatory control period* for which the distribution determination is made.

**Note:**

The classification is to be reviewed in the course of the making of the next distribution determination, and (subject to the *Rules*) a reclassification may be made for the purposes of that determination.

### 6.2.3A Distribution Service Classification Guidelines

- (a) The *AER* must, in accordance with the *distribution consultation procedures*, develop, maintain and *publish* guidelines (the *Distribution Service Classification Guidelines*) that set out the approach the *AER* proposes to take when classifying *distribution services* as:

- (1) *direct control services* or *negotiated distribution services* under clause 6.2.1(a); and
  - (2) *standard control services* or *alternative control services* under clause 6.2.2(a).
- (b) The *Distribution Service Classification Guidelines* must set out an explanation of the *AER's* proposed approach (including worked examples) to:
- (1) determining whether to classify a *distribution service*;
  - (2) applying the factors set out in:
    - (i) clause 6.2.1(c), when classifying *distribution services* as *direct control services* or *negotiated distribution services*; and
    - (ii) clause 6.2.2(c), when classifying *direct control services* as *standard control services* or *alternative control services*; and
  - (3) distinguishing between *distribution services* (including, but not limited to, those that are classified as *direct control services*) and the operating and capital inputs that are used to provide such services.
- (c) Nothing prevents the *AER* from *publishing* the *Distribution Service Classification Guidelines* in the same document as another guideline *published* under this Chapter.

#### **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) If more than one *distribution system* is owned, controlled or operated by a *Distribution Network Service Provider*, then, unless the *AER* otherwise determines, a separate distribution determination is to be made for each *distribution system*.
- (d) If 2 or more parts of the same *distribution system* were separately regulated at the commencement of this Chapter, then, unless the *AER* otherwise determines, a separate distribution determination is to be made for each of those parts of the *distribution system*.

#### **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) The control mechanism 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; or
  - (6) a combination of any of the above.
- (c) In deciding on a control mechanism for *standard control services*, the *AER* must have regard to:
- (1) the need for efficient tariff structures; 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
  - (2A) for a distribution determination for a *Distribution Network Service Provider* in this jurisdiction that will apply during the *1st regulatory control period* – the regulatory arrangements in the *2014 NT Network Price Determination*; and
  - (3) for a distribution determination for a *Distribution Network Service Provider* in this jurisdiction that will apply after the *1st regulatory control period* – 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.

**Note:**

The modifications to this paragraph expire on 1 July 2024.

- (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
  - (2A) for a distribution determination for a *Distribution Network Service Provider* in this jurisdiction that will apply during the *1st regulatory control period* – the regulatory arrangements in the *2014 NT Network Price Determination*); and
  - (3) for a distribution determination for a *Distribution Network Service Provider* in this jurisdiction that will apply after the *1st regulatory control period* – 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.

**Note:**

The modifications to this paragraph expire on 1 July 2024.

### 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 Negotiated distribution services

*Negotiated distribution services* are regulated in accordance with Part D.

### 6.2.8 Guidelines

- (a) The *AER*:
- (1) must make and *publish* the *Shared Asset Guidelines*, the *Capital Expenditure Incentive Guidelines*, the *Expenditure Forecast Assessment Guidelines*, the *Distribution Confidentiality Guidelines*, the *Distribution Service Classification Guidelines*, the *Asset Exemption Guidelines* and the *Cost Allocation Guidelines* in accordance with the *Rules*; and
  - (2) may, in accordance with the *distribution consultation procedures*, make and *publish* guidelines as to any other matters relevant to this Chapter.
- (b) A guideline may relate to a specified *Distribution Network Service Provider* or *Distribution Network Service Providers* of a specified class.
- (c) Except as otherwise provided in this Chapter, a guideline is not mandatory (and so does not bind the *AER* or anyone else) but, if the *AER*:
- (1) makes a distribution determination that is not in accordance with the guideline, the *AER* must state, in its reasons for the distribution determination, the reasons for departing from the guideline;
  - (2) makes a decision in respect of an *asset exemption* under clause 6.4B.1(a)(3) or (4) that is not made in accordance with the *Asset Exemption Guidelines*, the *AER* must state, in its reasons for that decision, the reasons for departing from that guideline; and
  - (3) makes a *framework and approach paper* that is not in accordance with the *Distribution Service Classification Guidelines*, the *AER* must state,

in the relevant *framework and approach paper*, the reasons for departing from that guideline.

- (d) If a guideline indicates that there may be a change of regulatory approach in future distribution determinations, the guideline should also (if practicable) indicate how transitional issues are to be dealt with.
- (e) Subject to paragraph (f), the *AER* may, from time to time and in accordance with the *distribution consultation procedures*, amend or replace a guideline.
- (f) The *AER* may make administrative or minor amendments to any guideline without complying with the *distribution consultation procedures*.
- (g) This clause 6.2.8 does not apply to the *Distribution Ring-Fencing Guidelines* or the *Distribution Reliability Measures Guidelines*.

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

#### 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, capital expenditure sharing scheme, service target performance incentive scheme, demand management incentive scheme, demand management innovation allowance mechanism* or *small-scale incentive scheme* is to apply to the *Distribution Network Service Provider*;
  - (4) the commencement and length of the *regulatory control period*; and

- (5) any other amounts, values or inputs on which the *building block determination* is based (differentiating between those contained in, or inferred from, the *Distribution Network Service Provider's building block proposal* and those based on the *AER's* own estimates or assumptions).

- (b) A *regulatory control period* must be not less than 5 *regulatory years*.

## 6.4 Post-tax revenue model

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

- (a) The *AER* must, in accordance with the *distribution consultation procedures*, prepare and *publish* a *post-tax revenue model*.
- (b) The *AER* may, from time to time and in accordance with the *distribution consultation procedures*, amend or replace the *post-tax revenue model*.
- (c) The *AER* must develop and *publish* the first *post-tax revenue model* within 6 months after the commencement of this clause and there must be such a model in force at all times after that date.
- (ca) For the application of these *Rules* in this jurisdiction:
  - (1) the *post-tax revenue model* that is in force in the other *participating jurisdictions* on 1 July 2016 is taken:
    - (i) to be the *post-tax revenue model* in force in this jurisdiction (subject to any amendment or replacement under these *Rules*); and
    - (ii) to have been prepared and *published* by the *AER* on 1 July 2016; and
  - (2) the *AER* is taken to have complied with the requirements of paragraphs (a) and (c) in preparing and *publishing* 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);
- (2) a return on capital for that year – see paragraph (b)(2);
- (3) the depreciation for that year – see paragraph (b)(3);
- (4) the estimated cost of corporate income tax of the *Distribution Network Service Provider* for that year – see paragraph (b)(4);
- (5) the revenue increments or decrements (if any) for that year arising from the application of any *efficiency benefit sharing scheme*, *capital expenditure sharing scheme*, *service target performance incentive scheme*, *demand management incentive scheme*, *demand management innovation allowance mechanism* or *small-scale incentive scheme* – see subparagraph (b)(5);
- (5A) for a distribution determination for a *Distribution Network Service Provider* in this jurisdiction that will apply during the *1st regulatory control period* – the other revenue increments or decrements (if any) for that year arising from the application during the *2014-19 NT regulatory control period* of the control mechanism in the *2014 NT Network Price Determination*, as modified by the *2014 NT Ministerial Direction* – see paragraph (b)(5A); and
- (6) for a distribution determination for a *Distribution Network Service Provider* in this jurisdiction that will apply after the *1st regulatory control period* – 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);
- (6A) the revenue decrements (if any) for that year arising from the use of assets that provide *standard control services* to provide certain other services – see subparagraph (b)(6A); and
- (7) the forecast operating expenditure for that year – see paragraph (b)(7).

**Note:**

The modifications to this paragraph expires on 1 July 2024.

#### (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;
- (3) the depreciation is calculated in accordance with clause 6.5.5;
- (4) the estimated cost of corporate income tax is determined in accordance with clause 6.5.3;
- (5) the revenue increments or decrements referred to in subparagraph (a)(5) are those that arise as a result of the operation of an applicable *efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme, demand management incentive scheme, demand management innovation allowance mechanism* or *small-scale incentive scheme* as referred to in clauses 6.5.8, 6.5.8A, 6.6.2, 6.6.3A 6.6.3 and 6.6.4;
- (5A) the other revenue increments or decrements referred to in paragraph (a)(5A) are those that are to be carried forward to the *1st regulatory control period* as a result of the application during the *2014-19 NT regulatory control period* of the control mechanism in the *2014 NT Network Price Determination*, as modified by the *2014 NT Ministerial Direction* and are apportioned to the relevant year under the distribution determination for the *1st regulatory control period*;

**Note:**

This subparagraph expires on 1 July 2024

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

**6.4.4 Shared assets**

- (a) Where an asset is used to provide both *standard control services* and either:
  - (1) *distribution services* that are not classified under clause 6.2.1; or
  - (2) services that are neither:
    - (i) *distribution services*; nor

- (ii) services that are provided by means of, or in connection with, *dual function assets* that are owned, operated or controlled by the *Distribution Network Service Provider*,

the *AER* may, in a distribution determination for a *regulatory control period*, reduce the *annual revenue requirement* for that *Distribution Network Service Provider* for a *regulatory year* in that *regulatory control period* by such amount as it considers reasonable to reflect such part of the costs of that asset as the *Distribution Network Service Provider* is recovering through charging for the provision of a service referred to in subparagraph (1) or (2).

- (b) In making a decision under paragraph (a), the *AER* must have regard to the *shared asset principles* and the *Shared Asset Guidelines*.
- (c) The *shared asset principles* are as follows:
  - (1) the *Distribution Network Service Provider* should be encouraged to use assets that provide *standard control services* for the provision of other kinds of services where that use is efficient and does not materially prejudice the provision of those services;
  - (2) a shared asset cost reduction should not be dependent on the *Distribution Network Service Provider* deriving a positive commercial outcome from the use of the asset other than for *standard control services*;
  - (3) a shared asset cost reduction should be applied where the use of the asset other than for *standard control services* is material;
  - (4) regard should be had to the manner in which costs have been recovered or revenues reduced in respect of the relevant asset in the past and the reasons for adopting that manner of recovery or reduction;
  - (5) a shared asset cost reduction should be compatible with the *Cost Allocation Principles* and *Cost Allocation Method*; and
  - (6) any reduction effected under paragraph (a) should be compatible with other incentives provided under the *Rules*.
- (d) The *AER* must, in accordance with the *distribution consultation procedures*, make and *publish* guidelines (the *Shared Asset Guidelines*) that set out the approach the *AER* proposes to take in applying the *shared asset principles* (which may include a methodology that the *AER* proposes to use to determine reductions for the purposes of paragraph (a)).
- (e) There must be *Shared Asset Guidelines* in force at all times after the date on which the *AER* first *publishes* the *Shared Asset Guidelines* under the *Rules*.
- (ea) For the application of these *Rules* in this jurisdiction:
  - (1) the *Shared Asset Guidelines* that are in force in the other *participating jurisdictions* on 1 July 2016 are taken:
    - (i) to be the *Shared Asset Guidelines* in force in this jurisdiction (subject to any amendment or replacement under these *Rules*); and

- (ii) to have been made and *published* by the *AER* on 1 July 2016; and
- (2) the *AER* is taken to have complied with the requirements of paragraph (d) in making and publishing the *Shared Asset Guidelines*.

#### **6.4.5 Expenditure Forecast Assessment Guidelines**

- (a) The *AER* must, in accordance with the *distribution consultation procedures*, develop and *publish* guidelines (the *Expenditure Forecast Assessment Guidelines*) that specify the approach the *AER* proposes to use to assess the forecasts of operating expenditure and capital expenditure that form part of *Distribution Network Service Providers' regulatory proposals* and the information the *AER* requires for the purposes of that assessment.
- (b) There must be *Expenditure Forecast Assessment Guidelines* in force at all times after the date on which the *AER* first *publishes* the *Expenditure Forecast Assessment Guidelines* under the *Rules*.
- (ba) For the application of these *Rules* in this jurisdiction:
  - (1) the *Expenditure Forecast Assessment Guidelines* that are in force in the other *participating jurisdictions* on 1 July 2016 are taken:
    - (i) to be the *Expenditure Forecast Assessment Guidelines* in force in this jurisdiction (subject to any amendment or replacement under these *Rules*); and
    - (ii) to have been developed and *published* by the *AER* on 1 July 2016; and
  - (2) the *AER* is taken to have complied with the requirements of paragraph (a) in developing and *publishing* the *Expenditure Forecast Assessment Guidelines*.

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

- (a) The *capital expenditure incentive objective* is to ensure that, where the value of a regulatory asset base is subject to adjustment in accordance with the *Rules*, then the only capital expenditure that is included in an adjustment that increases the value of that regulatory asset base is capital expenditure that reasonably reflects the *capital expenditure criteria*.
- (b) The *AER* must, in accordance with the *distribution consultation procedures*, make and *publish* guidelines (the *Capital Expenditure Incentive Guidelines*) that set out:
  - (1) any *capital expenditure sharing schemes* developed by the *AER* in accordance with clause 6.5.8A, and how the *AER* has taken into account the *capital expenditure sharing scheme principles* in developing those schemes;
  - (2) the manner in which it proposes to make determinations under clause S6.2.2A(a) if the *overspending requirement* is satisfied;
  - (3) the manner in which it proposes to determine whether depreciation for establishing a regulatory asset base as at the commencement of a



- regulatory control period* is to be based on actual or forecast capital expenditure;
- (4) the manner in which it proposes to make determinations under clause S6.2.2A(i) if the *margin requirement* is satisfied; and
  - (5) the manner in which it proposes to make determinations under clause S6.2.2A(j) if the *capitalisation requirement* is satisfied; and
  - (6) how each scheme and proposal referred to in subparagraphs (1) to (5), and all of them taken together, are consistent with the *capital expenditure incentive objective*.
- (c) There must be *Capital Expenditure Incentive Guidelines* in force at all times after the date on which the *AER* first publishes the *Capital Expenditure Incentive Guidelines* under the *Rules*.
- (ca) For the application of these *Rules* in this jurisdiction:
- (1) the *Capital Expenditure Incentive Guidelines* that are in force in the other *participating jurisdictions* on 1 July 2016 are taken:
    - (i) to be the *Capital Expenditure Incentive Guidelines* in force in this jurisdiction (subject to any amendment or replacement under these *Rules*); and
    - (ii) to have been made and *published* by the *AER* on 1 July 2016; and
  - (2) the *AER* is taken to have complied with the requirements of paragraph (b) in making and *publishing* the *Capital Expenditure Incentive Guidelines*.

## **6.4B Asset exemptions**

### **6.4B.1 Asset exemption decisions and Asset Exemption Guidelines**

- (a) The *AER* may, following receipt of an *exemption application* and in accordance with this Chapter, approve:
- (1) for the purpose of clause 6.5.7(c)(2), the inclusion of *expenditure for a restricted asset* in a *Distribution Network Service Provider's* forecast of required capital expenditure;
  - (2) for the purpose of clause 6.6A.1(b1), the inclusion of *expenditure for a restricted asset* in a *Distribution Network Service Provider's* *proposed contingent capital expenditure* for a *proposed contingent project*;
  - (3) for the purpose of clause 6.6.1(d2), the inclusion of *expenditure for a restricted asset* in a *Distribution Network Service Provider's* *positive pass through amount* for a *positive change event*; and
  - (4) for the purpose of clause 6.6.5(f1), the inclusion of *expenditure for a restricted asset* in the *Distribution Network Service Provider's* proposed capital expenditure,
- (each being an *asset exemption*).

- (b) In considering whether to approve an *asset exemption*, the *AER* must have regard to:
  - (1) the likely impacts on the development of competition in markets for energy related services if the *Distribution Network Service Provider* invests in the assets the subject of the *asset exemption*; and
  - (2) the *Asset Exemption Guidelines*.
- (c) The *AER* must, in accordance with the *distribution consultation procedures*, develop, maintain and *publish* guidelines (the *Asset Exemption Guidelines*) that set out:
  - (1) the approach the *AER* proposes to take when determining whether to grant an *asset exemption*; and
  - (2) the information the *AER* requires from a *Distribution Network Service Provider* (in addition to that set out in clause 6.4B.2(c)(1) to (4)) in order to assess a request for an *asset exemption*.
- (d) Nothing prevents the *AER* from *publishing* the *Asset Exemption Guidelines* in the same document as another guideline *published* under this Chapter.

#### **6.4B.2 Exemption applications**

- (a) A *Distribution Network Service Provider* may request an *asset exemption* from the *AER* in respect of a specific asset or class of asset by submitting a written request in accordance with this Chapter (an *exemption application*).
- (b) A *Distribution Network Service Provider* must have regard to the *Asset Exemption Guidelines* when preparing and submitting an *exemption application*.
- (c) An *exemption application* must include:
  - (1) details of the type of *asset exemption* which is being sought by the *Distribution Network Service Provider* under clause 6.4B.1(a);
  - (2) a description of the asset or class of asset in respect of which the proposed *asset exemption* would apply, including the location and anticipated or known cost of the proposed asset or class of asset;
  - (3) details of the *standard control services* that would be provided by the asset or class of asset in respect of which the proposed *asset exemption* would apply;
  - (4) the likely impacts on the development of competition in markets for energy related services if the *Distribution Network Service Provider* invests in the assets the subject of the *asset exemption*; and
  - (5) any additional information that must be submitted by a *Distribution Network Service Provider* under the *Asset Exemption Guidelines*.

## 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 *Distribution Network Service 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, in accordance with the *distribution consultation procedures*, 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 in accordance with the *distribution consultation procedures*, amend or replace the *roll forward model*.
- (d) The *AER* must develop and *publish* the first *roll forward model* within 6 months after the commencement of this clause, and there must be such a model available at all times after that date.
- (da) For the application of these *Rules* in this jurisdiction:
- (1) the *roll forward model* that is in force in the other *participating jurisdictions* on 1 July 2016 is taken:
    - (i) to be the *roll forward model* in force in this jurisdiction (subject to any amendment or replacement under these *Rules*); and
    - (ii) to have been developed and *published* by the *AER* on 1 July 2016; and
  - (2) the *AER* is taken to have complied with the requirements of paragraphs (b), (d) and (e) in developing and *publishing* the *roll forward model*.

#### 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.

**6.5.2 Return on capital**

The return on capital for a *Distribution Network Service Provider* for a *regulatory year* ( $RC_t$ ) is to be calculated using the following formula:

$$RC_t = a_t \times v_t$$

where:

$a_t$  is the *allowed rate of return* for the *Distribution Network Service Provider* for the *regulatory year*; and

$v_t$  is the value, as at the beginning of the *regulatory year*, of the regulatory asset base for the *distribution system* owned, controlled or operated by the *Distribution Network Service Provider* (as established in accordance with clause 6.5.1 and schedule 6.2).

**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 estimated 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

$\gamma$  is the *allowed imputation credits* for the *Distribution Network Service Provider* for the *regulatory year*.

**6.5.4 [Deleted]**

**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 *Distribution Network Service 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) to the extent that there is no applicable *regulatory obligation or requirement* in relation to:
    - (i) the quality, reliability or security of supply of *standard control services*; or

- (ii) the reliability or security of the *distribution system* through the supply of *standard control services*,  
to the relevant extent:
  - (iii) maintain the quality, reliability and security of supply of *standard control services*; and
  - (iv) maintain the reliability and security of the *distribution system* through the supply of *standard control services*; and
- (4) maintain the safety 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*;
  - (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 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 each of the following (the *operating expenditure criteria*):
  - (1) the efficient costs of achieving the *operating expenditure objectives*; and
  - (2) the costs that a prudent operator would require to achieve the *operating expenditure objectives*; and
  - (3) a realistic expectation of the demand forecast and cost inputs required to achieve the *operating expenditure objectives*.
- (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) **[Deleted]**
  - (2) **[Deleted]**
  - (3) **[Deleted]**

- (4) the most recent *annual benchmarking report* that has been *published* under rule 6.27 and the benchmark operating expenditure that would be incurred by an efficient *Distribution Network Service Provider* over the relevant *regulatory control period*;
- (5) the actual and expected operating expenditure of the *Distribution Network Service Provider* during any preceding *regulatory control periods*;
- (5A) the extent to which the operating expenditure forecast includes expenditure to address the concerns of electricity consumers as identified by the *Distribution Network Service Provider* in the course of its engagement with electricity consumers;
- (6) the relative prices of operating and capital inputs;
- (7) the substitution possibilities between operating and capital expenditure;
- (8) whether the operating expenditure forecast is consistent with any incentive scheme or schemes that apply to the *Distribution Network Service Provider* under clauses 6.5.8 or 6.6.2 to 6.6.4;
- (9) the extent the operating expenditure forecast is referable to arrangements with a person other than the *Distribution Network Service Provider* that, in the opinion of the *AER*, do not reflect arm's length terms;
- (9A) whether the operating expenditure forecast includes an amount relating to a project that should more appropriately be included as a *contingent project* under clause 6.6A.1(b);
- (10) the extent the *Distribution Network Service Provider* has considered, and made provision for, efficient and prudent *non-network options*; and
- (11) any relevant *final project assessment report* (as defined in clause 5.10.2) *published* under clause 5.17.4(o), (p) or (s);
- (12) any other factor the *AER* considers relevant and which the *AER* has notified the *Distribution Network Service Provider* in writing, prior to the submission of its revised *regulatory proposal* under clause 6.10.3, is an *operating expenditure factor*.

### 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) to the extent that there is no applicable *regulatory obligation or requirement* in relation to:
    - (i) the quality, reliability or security of supply of *standard control services*; or
    - (ii) the reliability or security of the *distribution system* through the supply of *standard control services*,  
to the relevant extent:
      - (iii) maintain the quality, reliability and security of supply of *standard control services*; and
      - (iv) maintain the reliability and security of the *distribution system* through the supply of *standard control services*; and
  - (4) maintain the safety 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*;
  - (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*;
  - (3) include both:
    - (i) the total of the forecast capital expenditure for the relevant *regulatory control period*; and
    - (ii) the forecast capital expenditure for each *regulatory year* of the relevant *regulatory control period*; and
  - (4) identify any forecast capital expenditure for the relevant *regulatory control period* that is for an option that has satisfied the *regulatory investment test for transmission* or the *regulatory investment test for distribution* (as the case may be); and
  - (5) not include *expenditure for a restricted asset*, unless:
    - (i) to the extent that any such expenditure includes an amount of unspent capital expenditure for a *contingent project* in accordance with paragraph (g), an *asset exemption* has been granted by the *AER* under clause 6.4B.1(a)(2) in respect of that asset or that class of asset for that *contingent project*;
    - (ii) to the extent that any such expenditure relates to a *positive pass through amount*, an *asset exemption* has been granted by the *AER* under clause 6.4B.1(a)(3) in respect of that asset or that class of asset for that *positive pass through amount*; or
    - (iii) otherwise, the *Distribution Network Service Provider* has submitted an *exemption application* with the *regulatory proposal* requesting an *asset exemption* under clause



6.4B.1(a)(1) for the *regulatory control period* in respect of that asset or class of asset.

- (c) The *AER* must:
- (1) subject to subparagraph (c)(2), 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 each of the following (the *capital expenditure criteria*):
    - (i) the efficient costs of achieving the *capital expenditure objectives*;
    - (ii) the costs that a prudent operator would require to achieve the *capital expenditure objectives*; and
    - (iii) a realistic expectation of the demand forecast and cost inputs required to achieve the *capital expenditure objectives*.
  - (2) not accept the forecast of required capital expenditure of a *Distribution Network Service Provider* that is included in a *building block proposal* if that forecast includes *expenditure for a restricted asset*, unless:
    - (i) to the extent that any such expenditure includes an amount of unspent capital expenditure for a *contingent project* in accordance with paragraph (g), an *asset exemption* has been granted by the *AER* under clause 6.4B.1(a)(2) in respect of that asset or that class of asset for that *contingent project*;
    - (ii) to the extent that any such expenditure relates to a *positive pass through amount*, an *asset exemption* has been granted by the *AER* under clause 6.4B.1(a)(3) in respect of that asset or that class of asset for that *positive pass through amount*; or
    - (iii) otherwise:
      - (A) that *Distribution Network Service Provider* has requested an *asset exemption* under subparagraph (b)(5) in respect of that asset or that class of asset; and
      - (B) the *AER* has granted that *asset exemption*.
- (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) [Deleted]
  - (2) [Deleted]
  - (3) [Deleted]

- (4) the most recent *annual benchmarking report* that has been *published* under rule 6.27 and the benchmark capital expenditure that would be incurred by an efficient *Distribution Network Service Provider* over the relevant *regulatory control period*;
- (5) the actual and expected capital expenditure of the *Distribution Network Service Provider* during any preceding *regulatory control periods*;
- (5A) the extent to which the capital expenditure forecast includes expenditure to address the concerns of electricity consumers as identified by the *Distribution Network Service Provider* in the course of its engagement with electricity consumers;
- (6) the relative prices of operating and capital inputs;
- (7) the substitution possibilities between operating and capital expenditure;
- (8) whether the capital expenditure forecast is consistent with any incentive scheme or schemes that apply to the *Distribution Network Service Provider* under clauses 6.5.8A or 6.6.2 to 6.6.4;
- (9) the extent the capital expenditure forecast is referable to arrangements with a person other than the *Distribution Network Service Provider* that, in the opinion of the *AER*, do not reflect arm's length terms;
- (9A) whether the capital expenditure forecast includes an amount relating to a project that should more appropriately be included as a *contingent project* under clause 6.6A.1(b);
- (10) the extent the *Distribution Network Service Provider* has considered, and made provision for, efficient and prudent *non-network options*;
- (11) any relevant *final project assessment report* (as defined in clause 5.10.2) *published* under clause 5.17.4(o), (p) or (s); and
- (12) any other factor the *AER* considers relevant and which the *AER* has notified the *Distribution Network Service Provider* in writing, prior to the submission of its revised *regulatory proposal* under clause 6.10.3, is a *capital expenditure factor*.

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

- (f) Paragraphs (g) - (j) apply where:
  - (1) in a *regulatory control period* (the **first regulatory control period**), the *AER* determines under clause 6.6A.2(e)(1)(iii) that the likely completion date for a *contingent project* is a date which occurs in the immediately following *regulatory control period* (the **second regulatory control period**); and
  - (2) there is an unspent amount of capital expenditure for that *contingent project* under paragraph (g).
- (g) Subject to paragraphs (ga) and (j), a *Distribution Network Service Provider's regulatory proposal* for the second *regulatory control period* must include in the forecast of required capital expenditure referred to in

paragraph (a) an amount of any unspent capital expenditure for each *contingent project* as described in subparagraph (f)(2), that equals the difference (if any) between:

- (1) the total capital expenditure for that *contingent project*, as determined by the *AER* in the first *regulatory control period* under clause 6.6A.2(e)(1)(ii); and
  - (2) the total of the capital expenditure actually incurred (or estimated capital expenditure for any part of the first *regulatory control period* for which actual capital expenditure is not available) in the first *regulatory control period* for that *contingent project*.
- (ga) For the purposes of calculating any unspent capital expenditure in accordance with paragraph (g), the total or estimate of capital expenditure referred to in subparagraph (g)(2) must not include *expenditure for a restricted asset*, unless:
- (1) the *Distribution Network Service Provider* has submitted an *exemption application* under clause 6.6A.1(a1) for the previous *regulatory control period*, which requested an *asset exemption* under clause 6.4B.1(a)(2) in respect of that asset or class of asset for that *contingent project*; and
  - (2) the *AER* has granted that *asset exemption*.
- (h) The *AER* must include in any forecast capital expenditure for the second *regulatory control period* which is accepted in accordance with paragraph (c) or substituted in accordance with clause 6.12.1(3)(ii) (as the case may be) the amount of any unspent capital expenditure calculated in accordance with paragraph (g).
- (i) Without limiting the requirement in paragraph (h), in deciding whether or not to accept the forecast of required capital expenditure of a *Distribution Network Service Provider* for the second *regulatory control period* in accordance with this clause 6.5.7, the *AER* must not:
- (1) assess the reasonableness of the amount of unspent capital expenditure for a *contingent project* referred to in paragraph (g) or the remaining period to which the *contingent project* applies;
  - (2) assess the reasonableness of the timing of the unspent capital expenditure within the remaining period for a *contingent project* referred to in paragraph (g) except as part of the assessment of the total forecast capital expenditure under paragraph (c); or
  - (3) take into account any amount which represents for a *contingent project* referred to in paragraph (g) the difference between:
    - (i) the amount representing the sum of the forecast capital expenditure for that *contingent project* for each year of the immediately preceding *regulatory control period* referred to in clause 6.6A.2(e)(1)(i); and
    - (ii) the total capital expenditure actually incurred (or estimated capital expenditure for any part of the preceding *regulatory control period* for which actual capital expenditure is not

available) in the immediately preceding *regulatory control period* for that *contingent project*.

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

### 6.5.8 Efficiency benefit sharing scheme

- (a) The *AER* must, in accordance with the *distribution consultation procedures*, develop and *publish* an incentive scheme or schemes (*efficiency benefit sharing scheme*) that provide for a fair sharing between *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 *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 electricity consumers likely to result from the scheme are sufficient to warrant any reward or penalty under the scheme for *Distribution Network Service Providers*;
  - (2) the need to provide *Distribution Network Service Providers* with a continuous incentive, so far as is consistent with economic efficiency, to reduce operating expenditure;
  - (3) the desirability of both rewarding *Distribution Network Service Providers* for efficiency gains and penalising *Distribution Network Service Providers* for efficiency losses;
  - (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 options* .
- (d) The *AER* may, from time to time and in accordance with the *distribution consultation procedures*, amend or replace an *efficiency benefit sharing scheme*.
- (da) For the application of these *Rules* in this jurisdiction:
  - (1) the *efficiency benefit sharing scheme* that is in force in the other *participating jurisdictions* on 1 July 2016 is taken:
    - (i) to be the *efficiency benefit sharing scheme* in force in this jurisdiction (subject to any amendment or replacement under these *Rules*); and
    - (ii) to have been developed and *published* by the *AER* on 1 July 2016; and
  - (2) the *AER* is taken to have complied with the requirements of paragraphs (a) and (c) in developing and *publishing* the *efficiency benefit sharing scheme*.

#### **6.5.8A Capital expenditure sharing scheme**

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

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

the *AER* must:

- (3) make that decision in a manner that contributes to the achievement of the *capital expenditure incentive objective*; and
  - (4) take into account:
    - (i) both the *capital expenditure sharing scheme principles*, and the matters referred to in paragraph (d), as they apply to the *Distribution Network Service Provider*; and
    - (ii) the circumstances of the *Distribution Network Service Provider*.
- (ea) For the application of these *Rules* in this jurisdiction:
- (1) the *capital expenditure sharing scheme* that is in force in the other *participating jurisdictions* on 1 July 2016 is taken:
    - (i) to be the *capital expenditure sharing scheme* in force in this jurisdiction (subject to any amendment or replacement under these *Rules*); and
    - (ii) to have been developed by the *AER* on 1 July 2016; and
  - (2) the *AER* is taken to have complied with the requirements of paragraphs (b), (c) and (d) in developing the *capital expenditure sharing scheme*.

### 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.

### 6.5.10 Pass through events

- (a) A *building block proposal* may include a proposal as to the events that should be defined as *pass through events* under clause 6.6.1(a1)(5) having regard to the *nominated pass through event considerations*.
- (b) In determining whether to accept the pass through events nominated by a *Distribution Network Service Provider* in its *building block proposal* under paragraph (a), the *AER* must take into account the *nominated pass through event considerations*.

## 6.6 Adjustments after making of building block determination.

### 6.6.1 Cost pass through

**Note:**

Clause 6.6.1(a1)(4), (c)(6)(iii), (l) and (m) have no effect in this jurisdiction until the *National Energy Retail Law* is applied as a law of this jurisdiction (see regulation 5A of the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations*).

- (a1) Any of the following is a *pass through event* for a distribution determination:

- (1AA) a local event prescribed by the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations*;

**Notes:**

1 See Part 3 of the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations* for modifications to the operation of this clause 6.6.1 in relation to a local event.

2 Subparagraph (1AA) expires when the *National Energy Retail Law* is applied as a law of this jurisdiction.

- (1AB) a NT transitional regulatory change event prescribed by the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations*;

**Note:**

1 See Part 3 of the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations for modifications to the operation of this clause 6.6.1 in relation to a NT transitional regulatory change event

2 Subparagraph (1AB) expires on 1 July 2024.

- (1) a *regulatory change event*;
  - (2) a *service standard event*;
  - (3) a *tax change event*;
  - (4) a *retailer insolvency event*; and
  - (5) any other event specified in a distribution determination as a *pass through event* for the determination.
- (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*;
  - (2) the date on which the *positive change event* occurred;
  - (3) the *eligible pass through amount* in respect of that *positive change event*;
  - (4) the *positive pass through amount* the *Distribution Network Service Provider* proposes in relation to the *positive change event*;
  - (5) the amount of the *positive pass through amount* that the *Distribution Network Service Provider* proposes should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred;
  - (6) evidence:
    - (i) of the actual and likely increase in costs referred to in subparagraph (3);
    - (ii) that such costs occur solely as a consequence of the *positive change event*; and
    - (iii) in relation to a *retailer insolvency event*, of:
      - (A) the amount to which the *Distribution Network Service Provider* is entitled under any relevant *credit support*;



- (B) the maximum amount of *credit support* (if any) that the *Distribution Network Service Provider* was entitled to request the *retailer* to provide under the *credit support* rules; and
    - (C) any amount that the *Distribution Network Service Provider* is likely to receive on a winding-up of the *retailer*; and
  - (7) such other information as may be required under any relevant *regulatory information instrument*.
- (c1) The *positive pass through amount* proposed by the *Distribution Network Service Provider* under subparagraph (c)(4) must not, in whole or in part, be in respect of *expenditure for a restricted asset*, unless the *Distribution Network Service Provider* has submitted an *exemption application* with the statement under paragraph (c), which requests an *asset exemption* under clause 6.4B.1(a)(3) in respect of that asset or class of asset for the *positive pass through amount*.
- (d) If the *AER* determines that a *positive change event* has occurred in respect of a statement under paragraph (c), the *AER* must:
  - (1) determine:
    - (i) the *approved pass through amount*; and
    - (ii) the amount of that *approved pass through amount* that should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred,taking into account the matters referred to in paragraph (j); and
  - (2) determine whether or not to grant the *asset exemption* requested under paragraph (c1).
- (d1) The *AER* must *publish*:
  - (1) the reasons for its determination under subparagraph (d)(2); and
  - (2) any content required under clause 6.2.8(c)(2),at the same time as making its determination under subparagraph (d)(1).
- (d2) The *AER* must not determine an *approved pass through amount* that is, in whole or in part, in respect of *expenditure for a restricted asset*, unless:
  - (1) the *Distribution Network Service Provider* has requested an *asset exemption* under paragraph (c1) in respect of that asset or that class of asset for the *positive pass through amount*; and
  - (2) the *AER* has granted that *asset exemption* under subparagraph (d)(2).
- (e) Subject to paragraph (k1), if the *AER* does not make the determinations referred to in paragraph (d) within 40 *business days* from the later of the date it receives the *Distribution Network Service Provider's* statement and accompanying evidence under paragraph (c), and the date it receives any additional information required under paragraph (e1), then, on the expiry of that period, the *AER* is taken to have determined that:

- (1) the *positive pass through amount* as proposed in the *Distribution Network Service Provider's* statement under paragraph (c) is the *approved pass through amount* in respect of that *positive change event*;
  - (2) the amount of that *positive pass through amount* that the *Distribution Network Service Provider* proposes in its statement under paragraph (c) should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred, is the amount that should be so passed through in each such *regulatory year*; and
  - (3) the *asset exemption* requested under paragraph (c1) is granted.
- (e1) A *Distribution Network Service Provider* must provide the *AER* with such additional information as the *AER* requires for the purpose of making a determination under paragraph (d) within the time specified by the *AER* in a notice provided to the *Distribution Network Service Provider* by the *AER* for that purpose.

### **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 *Distribution Network Service Provider*, a written statement which specifies:
- (1) the details of the *negative change event* concerned;
  - (2) the date the *negative change event* occurred;
  - (3) the costs in the provision of *direct control services* that the *Distribution Network Service Provider* has saved and is likely to save as a result of the *negative change event* until:
    - (i) unless subparagraph (ii) applies – the end of the *regulatory control period* in which the *negative change event* occurred; or
    - (ii) if the distribution determination for the *regulatory control period* following that in which the *negative change event* occurred does not make any allowance for the pass through of those cost savings - the end of the *regulatory control period* following that in which the *negative change event* occurred;
  - (4) the aggregate amount of those saved costs that the *Distribution Network Service Provider* proposes should be passed through to *Distribution Network Users*;
  - (5) the amount of the costs referred to in subparagraph (4) the *Distribution Network Service Provider* proposes should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *negative change event* occurred; and
  - (6) such other information as may be required under any relevant *regulatory information instrument*.

- (f1) If the occurrence of the *negative change event* is not notified by the *Distribution Network Service Provider* to the *AER* under paragraph (f) then, as soon as is reasonably practicable and before making a determination referred to in paragraph (g), the *AER* must notify the *Distribution Network Service Provider* of the occurrence of that *negative change event*.
- (g) If a *negative change event* occurs (whether or not the occurrence of that *negative change event* is notified by the *Distribution Network Service 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 the *regulatory year* in which, and each *regulatory year* after that in which, the *negative change event* occurred.
- (g1) Subject to paragraph (k1), if the *AER* does not make the determinations referred to in paragraph (g) within 40 *business days* from:
- (1) where the *Distribution Network Service Provider* notifies the *AER* of the occurrence of the *negative change event* under paragraph (f) - the later of the date the *AER* receives the *Distribution Network Service Provider's* statement under paragraph (f) and the date the *AER* receives any information required by the *AER* under paragraph (h); or
  - (2) where the *Distribution Network Service Provider* does not notify the *AER* of the occurrence of the *negative change event* under paragraph (f) - the later of the date the *AER* notifies the *Distribution Network Service Provider* under paragraph (g1) and the date the *AER* receives any information required by the *AER* under paragraph (h),

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

- (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 *Distribution Network Service 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 *Distribution Network Service Provider* under paragraph (c) or (f); and
  - (2) in the case of a *positive change event*, the increase in costs in the provision of *direct control services* that, as a result of the *positive change event*, the *Distribution Network Service Provider* has incurred and is likely to incur until:
    - (i) unless subparagraph(ii) applies – the end of the *regulatory control period* in which the *positive change event* occurred; or
    - (ii) if the distribution determination for the *regulatory control period* following that in which the *positive change event* occurred does not make any allowance for the recovery of that increase in costs – the end of the *regulatory control period* following that in which the *positive change event* occurred;
  - (2A) in the case of a *negative change event*, the costs in the provision of *direct control services* that, as a result of the *negative change event*, the *Distribution Network Service Provider* has saved and is likely to save until:
    - (i) unless subparagraph(ii) applies – the end of the *regulatory control period* in which the *negative change event* occurred; or
    - (ii) if the distribution determination for the *regulatory control period* following that in which the *negative change event* occurred does not make any allowance for the pass through of those cost savings to *Distribution Network Users* – the end of the *regulatory control period* following that in which the *negative change event* occurred;
  - (3) in the case of a *positive change event*, the efficiency of the *Distribution Network Service Provider's* decisions and actions in relation to the risk of the *positive change event*, including whether the *Distribution Network Service Provider* has failed to take any action that could reasonably be taken to reduce the magnitude of the *eligible pass through amount* in respect of that *positive change event* and whether the *Distribution Network Service 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*;
  - (4) the time cost of money based on the *allowed rate of return* for the *Distribution Network Service Provider* for the *regulatory control period* in which the *pass through event* occurred;
  - (5) the need to ensure that the *Distribution Network Service 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*;

- (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;
- (7) whether the costs of the *pass through event* have already been factored into the calculation of the *Distribution Network Service Provider's annual revenue requirement* for the *regulatory control period* in which the *pass through event* occurred or will be factored into the calculation of the *Distribution Network Service Provider's annual revenue requirement* for a subsequent *regulatory control period*;
- (7A) the extent to which the costs that the *Distribution Network Service Provider* has incurred and is likely to incur are the subject of a previous determination made by the *AER* under this clause 6.6.1 or clause 6.6.1AB; and

**Note:**

The modification to this paragraph (7A) expires on 1 July 2024.

- (8) any other factors that 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 paragraph (c) or (f) if the *AER* is satisfied that the difficulty of assessing or quantifying the effect of the relevant *pass through event* justifies the extension.
- (k1) If the *AER* is satisfied that the making of a determination under paragraph (d) or (g) involves issues of such complexity or difficulty that the time limit fixed in paragraph (e) or (g1) should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the *Distribution Network Service Provider* of that extension not later than 10 *business days* before the expiry of that time limit.
- (k2) If the *AER* extends a time limit under paragraph (k1), it must make available on its website a notice of that extension as soon as is reasonably practicable.
- (k3) Subject to paragraph (k6), if the *AER* gives a written notice to the *Distribution Network Service Provider* stating that it requires information from an *Authority* in order to make a determination under paragraph (d) or (g) then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Distribution Network Service Provider* and when the *AER* receives that information from that *Authority* is to be disregarded.
- (k4) Subject to paragraph (k6), if the *AER* gives a written notice to the *Distribution Network Service Provider* stating that, in order to make a determination under paragraph (d) or (g), it requires information that it anticipates will be made publicly available by a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Distribution Network Service Provider* and when that information is made publicly available is to be disregarded.

- (k5) Where the *AER* gives a notice to the *Distribution Network Service Provider* under paragraph (k3) or (k4), it must:
- (1) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (k3) or (k4), as the case may be, has commenced;
  - (2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (k3) or (k4), as the case may be, has ended; and
  - (3) if the information specified in that notice is required from an *Authority*, promptly request that information from the relevant *Authority*.
- (k6) Paragraphs (k3) and (k4) do not apply if the *AER* gives the notice specified in those paragraphs to the *Distribution Network Service Provider* later than 10 *business days* before the expiry of the time limit fixed in paragraphs (e) or (g1).

#### **Retailer insolvency event**

- (l) For the purposes of calculating the *eligible pass through amount* in relation to a *positive change event* which is a *retailer insolvency event*, the increase in costs is the *retailer insolvency costs* excluding:
- (i) any amount recovered or recoverable from a *retailer* or a guarantor of a *retailer* under any relevant *credit support*; and
  - (ii) amounts that the *Distribution Network Service Provider* is likely to receive on a winding-up of the *retailer*; and
  - (iii) any costs that are recoverable under a *RoLR cost recovery scheme distributor payment determination*.
- (m) The amount the *AER* determines should be passed through to *Distribution Network Users* in respect of a *retailer insolvency event* must be taken to be a cost that can be passed through and not a revenue impact of the event.

#### **6.6.1AA Cost pass through – deemed determinations**

- (a) On and from 1 July 2019, an amount that:
- (1) under clause 3.1.3(a)(ii) of Part B of the *2014 NT Network Price Determination*, the *AER* had determined, on or after 1 July 2018, should be passed through to network users in a *regulatory year* of the *1st regulatory control period* or a subsequent *regulatory control period*; or
  - (2) under clause 3.1.3(d)(ii) of Part B of the *2014 NT Network Price Determination*, should be passed through to network users in a *regulatory year* of the *1st regulatory control period* or a subsequent *regulatory control period* as a result of the *AER*, on or after 1 July 2018, failing to make a determination within the prescribed period,
- is taken to be an amount determined under clause 6.6.1(d)(2).
- (b) On and from 1 July 2019, an amount that, under clause 3.1.5(a)(ii)(B) of Part B of the *2014 NT Network Price Determination*, the *AER* had

determined, on or after 1 July 2018, should be passed through to network users in a *regulatory year* of the *1st regulatory control period* or a subsequent *regulatory control period* is taken to be an amount determined under clause 6.6.1(g)(2)(ii).

**Note:**

This clause expires on 1 July 2024.

**6.6.1AB Cost pass through – NT events**

- (a) A *Distribution Network Service Provider* may seek the approval of the *AER* to pass through to *Distribution Network Users* a *positive pass through amount* in relation to an *NT positive change event*.

**Note:**

See Part 3 of the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations* for modifications to the operation of this clause 6.6.1AB in relation to certain *NT positive change events*.

- (b) The *AER* may require a *Distribution Network Service Provider* to pass through to *Distribution Network Users* a *negative pass through amount* in relation to an *NT negative change event* 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* in relation to an *NT positive change event*, a *Distribution Network Service Provider* must submit to the *AER*, within 90 *business days* after the commencement of the *1st regulatory control period*, a written statement that specifies:
- (1) the details of the *NT positive change event*;
  - (2) the date on which the *NT positive change event* occurred;
  - (3) the *eligible pass through amount* in respect of that *NT positive change event*;
  - (4) the *positive pass through amount* the *Distribution Network Service Provider* proposes in relation to the *NT positive change event*;
  - (5) the amount of the *positive pass through amount* that the *Distribution Network Service Provider* proposes should be passed through to *Distribution Network Users* in each *regulatory year* after the *NT positive change event* occurred;
  - (6) evidence:
    - (i) of the actual and likely increase in costs referred to in subparagraph (3);
    - (ii) that such costs occur solely as a consequence of the *NT positive change event*; and
  - (7) such other information as may be required under any relevant *regulatory information instrument*.

- (d) If the *AER* determines that an *NT positive change event* has occurred in respect of a statement under paragraph (c), the *AER* must determine:
- (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* after the *NT positive change event* occurred,
- taking into account the matters referred to in paragraph (j).
- (e) Subject to paragraph (k1), if the *AER* does not make the determinations referred to in paragraph (d) within 40 *business days* from the later of the date it receives the *Distribution Network Service Provider's* statement and accompanying evidence under paragraph (c), and the date it receives any additional information required under paragraph (e1), then, on the expiry of that period, the *AER* is taken to have determined that:
- (1) the *positive pass through amount* as proposed in the *Distribution Network Service Provider's* statement under paragraph (c) is the *approved pass through amount* in respect of that *NT positive change event*; and
  - (2) the amount of that *positive pass through amount* that the *Distribution Network Service Provider* proposes in its statement under paragraph (c) should be passed through to *Distribution Network Users* in each *regulatory year* after the *NT positive change event* occurred, is the amount that should be so passed through in each such *regulatory year*.
- (e1) A *Distribution Network Service Provider* must provide the *AER* with such additional information as the *AER* requires for the purpose of making a determination under paragraph (d) within the time specified by the *AER* in a notice provided to the *Distribution Network Service Provider* by the *AER* for that purpose.

### **Negative pass through**

- (f) A *Distribution Network Service Provider* must submit to the *AER*, within 90 *business days* after the later of the commencement of the *1st regulatory control period* and the date on which the provider becomes aware of the occurrence of an *NT negative change event* for the provider, a written statement that specifies:
- (1) the details of the *NT negative change event*;
  - (2) the date on which the *NT negative change event* occurred;
  - (3) the costs in the provision of *direct control services* and *NT equivalent services* that the *Distribution Network Service Provider* has saved and is likely to save as a result of the *negative change event* until the end of the *1st regulatory control period*;
  - (4) the aggregate amount of those saved costs that the *Distribution Network Service Provider* proposes should be passed through to *Distribution Network Users*;
  - (5) the amount of the costs referred to in subparagraph (4) the *Distribution Network Service Provider* proposes should be passed



- through to *Distribution Network Users* in each *regulatory year* after the *NT negative change event* occurred; and
- (6) such other information as may be required under any relevant *regulatory information instrument*.
  - (f1) If the occurrence of the *NT negative change event* is not notified by the *Distribution Network Service Provider* to the *AER* under paragraph (f) then, as soon as is reasonably practicable and before making a determination referred to in paragraph (g), the *AER* must notify the *Distribution Network Service Provider* of the occurrence of that *NT negative change event*.
  - (g) If an *NT negative change event* occurs (whether or not the occurrence of that *NT negative change event* is notified by the *Distribution Network Service Provider* to the *AER* under paragraph (f)) and the *AER* determines to impose a requirement on the provider in relation to that *NT 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* after the *NT negative change event* occurred.
  - (g1) Subject to paragraph (k1), if the *AER* does not make the determinations referred to in paragraph (g) within 40 *business days* from:
    - (1) where the *Distribution Network Service Provider* notifies the *AER* of the occurrence of the *NT negative change event* under paragraph (f) – the later of the date the *AER* receives the *Distribution Network Service Provider's* statement under paragraph (f) and the date the *AER* receives any information required by the *AER* under paragraph (h); or
    - (2) where the *Distribution Network Service Provider* does not notify the *AER* of the occurrence of the *NT negative change event* under paragraph (f) – the later of the date the *AER* notifies the *Distribution Network Service Provider* under paragraph (f1) and the date the *AER* receives any information required by the *AER* under paragraph (h),then the *AER* is taken to have determined that the *required pass through amount* is zero.
  - (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 *Distribution Network Service 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 *NT positive change event* or *NT negative change 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 *Distribution Network Service Provider* under paragraph (c) or (f); and
  - (2) in the case of an *NT positive change event*, the increase in costs in the provision of *direct control services* or *NT equivalent services* that, as a result of the *NT positive change event*, the *Distribution Network Service Provider* has incurred and is likely to incur until the end of the *1st regulatory control period*;
  - (2A) in the case of a *NT negative change event*, the costs in the provision of *direct control services* or *NT equivalent services* that, as a result of the *NT negative change event*, the *Distribution Network Service Provider* has saved and is likely to save until the end of the *1st regulatory control period*;
  - (3) in the case of an *NT positive change event*, the efficiency of the *Distribution Network Service Provider's* decisions and actions in relation to the risk of the *NT positive change event*, including whether the *Distribution Network Service Provider* has failed to take any action that could reasonably be taken to reduce the magnitude of the *eligible pass through amount* in respect of that *NT positive change event* and whether the *Distribution Network Service 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 *NT positive change event*;
  - (4) the time cost of money based on the *allowed rate of return* for the *Distribution Network Service Provider* for the *1st regulatory control period*;
  - (5) the need to ensure that the *Distribution Network Service 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 an *NT positive change event* or *NT negative change event*;
  - (6) in the case of a tax change event (as defined in Part B of the *2014 NT Network Price Determination*), 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;
  - (7) whether the costs of the *NT positive change event* or *NT negative change event* have already been factored into the calculation of the *Distribution Network Service Provider's annual revenue requirement* for the *1st regulatory control period* or will be factored into the calculation of the *Distribution Network Service Provider's annual revenue requirement* for a subsequent *regulatory control period*;

- (7A) the extent to which the costs that the *Distribution Network Service Provider* has incurred and is likely to incur are the subject of a previous determination made by the *AER* under this clause or clause 6.6.1; and
- (8) any other factors that 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 paragraph (c) or (f) if the *AER* is satisfied that the difficulty of assessing or quantifying the effect of the relevant *NT positive change event* or *NT negative change event* justifies the extension
- (k1) If the *AER* is satisfied that the making of a determination under paragraph (d) or (g) involves issues of such complexity or difficulty that the time limit fixed in paragraph (e) or (g1) should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the *Distribution Network Service Provider* of that extension not later than 10 *business days* before the expiry of that time limit.
- (k2) If the *AER* extends a time limit under paragraph (k1), it must make available on its website a notice of that extension as soon as is reasonably practicable.
- (k3) Subject to paragraph (k6), if the *AER* gives a written notice to the *Distribution Network Service Provider* stating that it requires information from an *Authority* in order to make a determination under paragraph (d) or (g) then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Distribution Network Service Provider* and when the *AER* receives that information from that *Authority* is to be disregarded.
- (k4) Subject to paragraph (k6), if the *AER* gives a written notice to the *Distribution Network Service Provider* stating that, in order to make a determination under paragraph (d) or (g), it requires information that it anticipates will be made publicly available by a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Distribution Network Service Provider* and when that information is made publicly available is to be disregarded.
- (k5) Where the *AER* gives a notice to the *Distribution Network Service Provider* under paragraph (k3) or (k4), it must:
  - (1) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (k3) or (k4), as the case may be, has commenced;
  - (2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (k3) or (k4), as the case may be, has ended; and
  - (3) if the information specified in that notice is required from an *Authority*, promptly request that information from the relevant *Authority*.

- (k6) Paragraphs (k3) and (k4) do not apply if the *AER* gives the notice specified in those paragraphs to the *Distribution Network Service Provider* later than 10 *business days* before the expiry of the time limit fixed in paragraphs (e) or (g1).

**Note:**

This clause expires on 1 July 2024.

### 6.6.1A Reporting on jurisdictional schemes

- (a) If during a *regulatory control period*:
- (1) a scheme becomes a *jurisdictional scheme*; or
  - (2) a *Distribution Network Service Provider* first becomes subject to *jurisdictional scheme obligations* under a *jurisdictional scheme*; and
  - (3) the relevant *jurisdictional scheme* is not an *approved jurisdictional scheme*,
- then a *Distribution Network Service Provider* may request the *AER* to determine how the *Distribution Network Service Provider* is to report to the *AER* on its recovery of *jurisdictional scheme amounts* in respect of that scheme for each *regulatory year* of the *regulatory control period* and on the adjustments to be made to subsequent *pricing proposals* to account for over or under recovery of those amounts.
- (b) To make a request under paragraph (a), a *Distribution Network Service Provider* must submit to the *AER*, as soon as practicable after the event referred to in subparagraph (a)(1) or (2), a written statement which specifies:
- (1) the name of the relevant *jurisdictional scheme*;
  - (2) the date of the event referred to in subparagraph (a)(1) or (2);
  - (3) details of how the *Distribution Network Service Provider* proposes to:
    - (i) estimate the *jurisdictional scheme amounts* for the relevant *jurisdictional scheme* for the purposes of clause 6.18.7A(b);
    - (ii) carry out any adjustments to *jurisdictional scheme amounts* for the relevant *jurisdictional scheme* for the purposes of clause 6.18.7A(b); and
    - (iii) report to the *AER* on the recovery process under clause 6.18.7A(a) to (c).
- (c) The *AER* must as soon as practicable after receiving a statement under paragraph (b), *publish* the statement.
- (d) Before making a determination under paragraph (e), the *AER* may consult with the relevant *Distribution Network Service Provider* and such other persons as the *AER* considers appropriate, on any matters arising out of the statement the *AER* considers appropriate.
- (e) Within 60 *business days* of receiving the statement under paragraph (b), the *AER* must make a determination on how the *Distribution Network Service Provider* is to report to the *AER* on its recovery of *jurisdictional scheme*

*amounts* for the relevant *jurisdictional scheme* for each *regulatory year* of the *regulatory control period* and on the adjustments to be made to subsequent *pricing proposals* to account for over or under recovery of those amounts.

- (f) If the *AER* does not make the determination referred to in paragraph (e) within 60 *business days* of receiving the statement under paragraph (b) then, on expiry of that period, the *AER* is taken to have approved the process proposed in the *Distribution Network Service Provider's* statement.

### 6.6.2 Service target performance incentive scheme

- (a) The *AER* must, in accordance with the *distribution consultation procedures*, develop and *publish* an incentive scheme or 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 electricity 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 *Distribution Network 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 options*; and
- (4) must have regard to the *Distribution Reliability Measures Guidelines*.
- (c) The *AER* may, from time to time and in accordance with the *distribution consultation procedures*, amend or replace any scheme that is developed and *published* under this clause.

**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.

- (ca) For the application of these *Rules* in this jurisdiction:
  - (1) the *service target performance incentive scheme* that is in force in the other *participating jurisdictions* on 1 July 2016 is taken:
    - (i) to be the *service target performance incentive scheme* in force in this jurisdiction (subject to any amendment or replacement under these *Rules*); and
    - (ii) to have been developed and *published* by the *AER* on 1 July 2016; and
  - (2) the *AER* is taken to have complied with the requirements of paragraphs (a) and (b) in developing and *publishing* the *service target performance incentive scheme*.

### 6.6.3 Demand management incentive scheme

- (a) The *AER* must develop a *demand management incentive scheme* consistent with the *demand management incentive scheme objective*.
- (b) The objective of the *demand management incentive scheme* is to provide *Distribution Network Service Providers* with an incentive to undertake efficient expenditure on relevant *non-network options* relating to demand management (the *demand management incentive scheme objective*).
- (c) In developing, and applying, any *demand management incentive scheme*, the *AER* must take into account the following:
  - (1) the scheme should be applied in a manner that contributes to the achievement of the *demand management incentive scheme objective*;
  - (2) the scheme should reward *Distribution Network Service Providers* for implementing relevant *non-network options* that deliver net cost savings to *retail customers*;
  - (3) the scheme should balance the incentives between expenditure on *network options* and *non-network options* relating to demand management. In doing so, the *AER* may take into account the net economic benefits delivered to all those who produce, consume and transport electricity via a *transmission or distribution system* in this jurisdiction associated with implementing relevant *non-network options*;

- (4) the level of the incentive:
  - (i) should be reasonable, considering the long term benefit to *retail customers*;
  - (ii) should not include costs that are otherwise recoverable from any another source, including under a relevant distribution determination; and
  - (iii) may vary by *Distribution Network Service Provider* and over time;
- (5) penalties should not be imposed on *Distribution Network Service Providers* under any scheme;
- (6) the incentives should not be limited by the length of a *regulatory control period*, if such limitations would not contribute to the achievement of the *demand management incentive scheme objective*; and
- (7) the possible interaction between the scheme and:
  - (i) any other incentives available to the *Distribution Network Service Provider* in relation to undertaking efficient expenditure on, or implementation of, relevant *non-network options*;
  - (ii) particular control mechanisms and their effect on a *Distribution Network Service Provider's* available incentives referred to in sub-paragraph (i); and
  - (iii) meeting any *regulatory obligation or requirement*.
- (d) The *AER*:
  - (1) must develop and *publish* the scheme; and
  - (2) may, from time to time, amend or replace the scheme developed and *published* under this clause,in accordance with the *distribution consultation procedures*.

### 6.6.3A Demand management innovation allowance mechanism

- (a) The *AER* must develop a *demand management innovation allowance mechanism* for *Distribution Network Service Providers* consistent with the *demand management innovation allowance objective*.
- (b) The objective of the *demand management innovation allowance mechanism* is to provide *Distribution Network Service Providers* with funding for research and development in demand management projects that have the potential to reduce long term *network costs* (the *demand management innovation allowance objective*).
- (c) In developing and applying any *demand management innovation allowance mechanism*, the *AER* must take into account the following:
  - (1) the mechanism should be applied in a manner that contributes to the achievement of the *demand management innovation allowance objective*;
  - (2) demand management projects, the subject of the allowance, should:

- (i) have the potential to deliver ongoing reductions in demand or peak demand; and
  - (ii) be innovative and not be otherwise efficient and prudent *non-network options* that a *Distribution Network Service Providers* should have provided for in its *regulatory proposal*;
- (3) the level of the allowance:
  - (i) should be reasonable, considering the long term benefit to *retail customers*;
  - (ii) should only provide funding that is not available from any another source, including under a relevant distribution determination; and
  - (iii) may vary by *Distribution Network Service Provider* and over time;
- (4) the allowance may fund demand management projects which occur over a period longer than a *regulatory control period*.
- (d) Any mechanism developed and applied by the *AER* must require *Distribution Network Service Providers* to *publish* reports on the nature and results of demand management projects the subject of the allowance.
- (e) The *AER*:
  - (1) must develop and *publish* the mechanism; and
  - (2) may, from time to time, amend or replace any mechanism developed and *published* under this clause,in accordance with the *distribution consultation procedures*.

#### 6.6.4 Small-scale incentive scheme

- (a) The *AER* may, in accordance with the *distribution consultation procedures*, develop and *publish* an incentive scheme or schemes (*small-scale incentive scheme*) that provides *Distribution Network Service Providers* with incentives to provide *standard control services* in a manner that contributes to the achievement of the *national electricity objective*.
- (ab) For the purposes of paragraph (a), the *AER* must regard the reference to "the national electricity system" in the national electricity objective stated in section 7 of the Law as including a reference to one or more, or all, of the local electricity systems, as the case requires.
- (b) In developing and applying a *small-scale incentive scheme*, the *AER* must have regard to the following matters:
  - (1) *Distribution Network Service Providers* should be rewarded or penalised for efficiency gains or losses in respect of their *distribution systems*;
  - (2) the rewards and penalties should be commensurate with the efficiency gains or efficiency losses in respect of a *distribution system*, but a reward for efficiency gains need not correspond in amount to a penalty for efficiency losses;



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

### 6.6.5 Reopening of distribution determination for capital expenditure

- (a) Subject to paragraph (b), a *Distribution Network Service Provider* may, during a *regulatory control period*, apply to the *AER* to revoke and substitute a distribution determination that applies to it where:
  - (1) an event that is beyond the reasonable control of the *Distribution Network Service Provider* has occurred during that *regulatory control period* and the occurrence of that event during that period (or of an event of a similar kind) could not reasonably have been foreseen by the *Distribution Network Service Provider* at the time of the making of the distribution determination ('**the event**');

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

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

- (b) An application referred to in paragraph (a) must not be made within 90 *business days* prior to the end of a *regulatory year*.
- (b1) The capital expenditure that the *Distribution Network Service Provider* proposes to undertake for the purposes of subparagraph (a)(3) must not include *expenditure for a restricted asset*, unless that *Distribution Network Service Provider* has submitted an *exemption application* with the application referred to in paragraph (a), which requests an *asset exemption* under clause 6.4B.1(a)(4) for the *regulatory control period* in respect of that asset or class of asset.
- (c) Following its receipt of an application made in accordance with paragraphs (a) and (b) and an *exemption application* (if any) made in accordance with paragraph (b1), the *AER* must:
  - (1) consult with the *Distribution Network Service Provider* and such other persons as it considers appropriate in relation to the applications; and
  - (2) make its decision on the application made in accordance with paragraphs (a) and (b) and the *exemption application* (if any) within

40 *business days* from the later of the date the *AER* receives the applications and the date the *AER* receives any information required by the *AER* under paragraph (g).

- (c1) The *AER* must *publish*:
  - (1) the reasons for its decision on the *exemption application* under subparagraph (c)(2); and
  - (2) any content required under clause 6.2.8(c)(2),  
at the same time as making its decision on the application made under paragraph (a).
- (d) The *AER* must, and must only, revoke a distribution determination following an application made in accordance with paragraphs (a) and (b) if the *AER* is satisfied of each of the matters referred to in paragraph (a).
- (e) If the *AER* revokes a distribution determination under paragraph (d), the *AER* must make a new distribution determination in substitution for the revoked determination to apply for the remainder of the *regulatory control period* for which the revoked determination was to apply.
- (f) The substituted distribution determination must only vary from the revoked distribution determination to the extent necessary:
  - (1) to adjust the forecast capital expenditure for that *regulatory control period* to accommodate the amount of such additional capital expenditure as the *AER* determines is appropriate (in which case the amount of that adjustment will be taken to be accepted by the *AER* under clause 6.5.7(c)); and
  - (2) to reflect the effect of any resultant increase in forecast capital expenditure on:
    - (i) the forecast operating expenditure for the remainder of the *regulatory control period*;
    - (ii) the *annual revenue requirement* for each *regulatory year* in the remainder of the *regulatory control period*; and
    - (iii) the X factor for each of the remaining *regulatory years* of the *regulatory control period*.
- (f1) The *AER* must not include an adjustment for additional expenditure under subparagraph (f)(1) that includes *expenditure for a restricted asset*, unless:
  - (1) the *Distribution Network Service Provider* has requested an *asset exemption* under paragraph (b1) for the *regulatory control period* in respect of that asset or that class of asset; and
  - (2) the *AER* has granted that *asset exemption* under paragraph (c).
- (g) A *Distribution Network Service Provider* must provide the *AER* with such additional information as the *AER* requires for the purpose of making a decision on an application made by that *Distribution Network Service Provider* under paragraph (a) within the time specified by the *AER* in a notice provided to the *Distribution Network Service Provider* by the *AER* for that purpose.

### **Extension of time limit**

- (h) If the *AER* is satisfied that the revocation and substitution of a distribution determination under paragraphs (d) and (e) involves issues of such complexity or difficulty that the time limit fixed in subparagraph (c)(2) should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the *Distribution Network Service Provider* of that extension not later than 10 *business days* before the expiry of that time limit.
- (i) If the *AER* extends the time limit under paragraph (h), it must make available on its website a notice of that extension as soon as is reasonably practicable.
- (j) Subject to paragraph (11), if the *AER* gives a written notice to the *Distribution Network Service Provider* stating that it requires information from an *Authority* in order to make a decision on an application made by the *Distribution Network Service Provider* under paragraph (a) then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Distribution Network Service Provider* and when the *AER* receives that information from that *Authority* is to be disregarded.
- (k) Subject to paragraph (11), if the *AER* gives a written notice to the *Distribution Network Service Provider* stating that, in order to make a decision on an application made by the *Distribution Network Service Provider* under paragraph (a), it requires information that it anticipates will be made publicly available by a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Distribution Network Service Provider* and when that information is made publicly available is to be disregarded.
- (l) Where the *AER* gives a notice to the *Distribution Network Service Provider* under paragraph (j) or (k), it must:
  - (1) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (j) or (k), as the case may be, has commenced;
  - (2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (j) or (k), as the case may be, has ended; and
  - (3) if the information specified in that notice is required from an *Authority*, promptly request that information from the relevant *Authority*.
- (11) Paragraphs (j) and (k) do not apply if the *AER* gives the notice specified in those paragraphs to the *Distribution Network Service Provider* later than 10 *business days* before the expiry of the time limit fixed in subparagraph (c)(2).

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

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

## 6.6A Contingent Projects

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

- (a) Subject to paragraph (a1), a *regulatory proposal* may include *proposed contingent capital expenditure*, which the *Distribution Network Service Provider* considers is reasonably required for the purpose of undertaking a *proposed contingent project*.
- (a1) *Proposed contingent capital expenditure* that is included in a *regulatory proposal* of a *Distribution Network Service Provider* must not include *expenditure for a restricted asset*, unless that *Distribution Network Service Provider* has submitted an *exemption application* with the *regulatory proposal*, which requests an *asset exemption* under clause 6.4B.1(a)(2) in respect of that asset or class of asset for the *contingent project*.
- (b) Subject to paragraph (b1), the *AER* must determine that a *proposed contingent project* is a *contingent project* if the *AER* is satisfied that:
- (1) the *proposed contingent project* is reasonably required to be undertaken in order to achieve any of the *capital expenditure objectives*;
  - (2) the *proposed contingent capital expenditure*:
    - (i) is not otherwise provided for (either in part or in whole) in the total of the forecast capital expenditure for the relevant *regulatory control period* which is accepted in accordance with clause 6.5.7(c) or substituted in accordance with clause 6.12.1(3)(ii) (as the case may be);
    - (ii) reasonably reflects the *capital expenditure criteria*, taking into account the *capital expenditure factors*, in the context of the *proposed contingent project* as described in the *regulatory proposal*; and
    - (iii) exceeds either \$15 million or 5% of the value of the *annual revenue requirement* for the relevant *Distribution Network Service Provider* for the first year of the relevant *regulatory control period*, whichever is the larger amount;
  - (3) the *proposed contingent project* and the *proposed contingent capital expenditure*, as described or set out in the *regulatory proposal*, and the information provided in relation to these matters, complies with the relevant requirements of any relevant *regulatory information instrument*; and
  - (4) the *trigger events* in relation to the *proposed contingent project* which are proposed by the *Distribution Network Service Provider* in its *regulatory proposal* are appropriate.
- (b1) The *AER* must not determine that a *proposed contingent project* is a *contingent project* if the *proposed contingent capital expenditure* for that *proposed contingent project* includes *expenditure for a restricted asset*, unless:

- (1) the relevant *Distribution Network Service Provider* has requested an *asset exemption* under paragraph (a1) in respect of that asset or that class of asset; and
  - (2) the *AER* has granted that *asset exemption*.
- (c) In determining whether a *trigger event* in relation to a *proposed contingent project* is appropriate for the purposes of subparagraph (b)(4), the *AER* must have regard to the need for a *trigger event*:
- (1) to be reasonably specific and capable of objective verification;
  - (2) to be a condition or event, which, if it occurs, makes the undertaking of the *proposed contingent project* reasonably necessary in order to achieve any of the *capital expenditure objectives*;
  - (3) to be a condition or event that generates increased costs or categories of costs that relate to a specific location rather than a condition or event that affects the *distribution network* as a whole;
  - (4) to be described in such terms that the occurrence of that event or condition is all that is required for the distribution determination to be amended under clause 6.6A.2; and
  - (5) to be an event or condition, the occurrence of which is probable during the *regulatory control period*, but the inclusion of capital expenditure in relation to it under clause 6.5.7 is not appropriate because:
    - (i) it is not sufficiently certain that the event or condition will occur during the *regulatory control period* or if it may occur after that *regulatory control period* or not at all; or
    - (ii) subject to the requirement to satisfy subparagraph (b)(2)(iii), the costs associated with the event or condition are not sufficiently certain.

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

- (a) Subject to paragraph (a1), a *Distribution Network Service Provider* may, during a *regulatory control period*, apply to the *AER* to amend a distribution determination that applies to that *Distribution Network Service Provider* where a *trigger event* for a *contingent project* in relation to that distribution determination has occurred.
  - (a1) An application referred to in paragraph (a) must be made as soon as practicable after the occurrence of the *trigger event*, but cannot be made:
    - (1) within 90 *business days* prior to the end of the penultimate *regulatory year* of the *regulatory control period*; and
    - (2) at any time in the final *regulatory year* of the *regulatory control period*.
- (b) Subject to paragraph (b1), an application made under paragraph (a) must contain the following information:
  - (1) an explanation that substantiates the occurrence of the *trigger event*;

- (2) a forecast of the total capital expenditure for the *contingent project*;
  - (3) a forecast of the capital and incremental operating expenditure, for each remaining *regulatory year* which the *Distribution Network Service Provider* considers is reasonably required for the purpose of undertaking the *contingent project*;
  - (4) how the forecast of the total capital expenditure for the *contingent project* meets the threshold as referred to in clause 6.6A.1(b)(2)(iii);
  - (5) the intended date for commencing the *contingent project* (which must be during the *regulatory control period*);
  - (6) the anticipated date for completing the *contingent project* (which may be after the end of the *regulatory control period*); and
  - (7) an estimate of the incremental revenue which the *Distribution Network Service Provider* considers is likely to be required to be earned in each remaining *regulatory year* of the *regulatory control period* as a result of the *contingent project* being undertaken as described in subparagraph (3), which must be calculated:
    - (i) in accordance with the requirements of the *post-tax revenue model* referred to in clause 6.4.1;
    - (ii) in accordance with the requirements of the *roll forward model* referred to in clause 6.5.1(b);
    - (iii) using the *allowed rate of return* for that *Distribution Network Service Provider* for the *regulatory control period* as determined in accordance with clause 6.5.2;
    - (iv) in accordance with the requirements for depreciation referred to in clause 6.5.5; and
    - (v) on the basis of the capital expenditure and incremental operating expenditure referred to in subparagraph (b)(3).
- (b1) The forecast total capital expenditure referred to in paragraph (b) must not include *expenditure for a restricted asset*, unless:
- (1) the relevant *Distribution Network Service Provider* has requested an *asset exemption* under clause 6.6A.1(a1) for that asset or class of asset in respect of the *contingent project*; and
  - (2) the *AER* has granted that *asset exemption*.
- (c) As soon as practicable after its receipt of an application made in accordance with paragraphs (a), (a1) and (b), the *AER* must *publish* the application, together with an invitation for written submissions on the application.
- (d) The *AER* must consider any written submissions made under paragraph (c) and must make its decision on the application within 40 *business days* from the later of the date the *AER* receives the application and the date the *AER* receives any information required by the *AER* under paragraph (i). In doing so the *AER* may also take into account such other information as it considers appropriate, including any analysis (such as benchmarking) that is undertaken by it for that purpose.

- (e) Subject to paragraph (e1), if the *AER* is satisfied that the *trigger event* has occurred, and that the forecast of the total capital expenditure for the *contingent project* meets the threshold as referred to in clause 6.6A.1(b)(2)(iii), it must:
- (1) determine:
    - (i) the amount of capital and incremental operating expenditure, for each remaining *regulatory year*, which the *AER* considers is reasonably required for the purpose of undertaking the *contingent project*;
    - (ii) the total capital expenditure which the *AER* considers is reasonably required for the purpose of undertaking the *contingent project*;
    - (iii) the likely commencement and completion dates for the *contingent project*; and
    - (iv) the incremental revenue which is likely to be required by the *Distribution Network Service Provider* in each remaining *regulatory year* as a result of the *contingent project* being undertaken as described in subparagraphs (i) and (ii), such estimate being calculated in accordance with subparagraph (2);
  - (2) calculate the estimate referred to in subparagraph (1)(iv):
    - (i) on the basis of the capital expenditure and incremental operating expenditure referred to in subparagraph (1)(i); and
    - (ii) otherwise in accordance with subparagraph (b)(7); and
  - (3) amend the distribution determination in accordance with paragraph (h).
- (e1) The capital expenditure referred to in subparagraph (e)(1) must not include *expenditure for a restricted asset*, unless:
- (1) the relevant *Distribution Network Service Provider* requested an *asset exemption* under clause 6.6A.1(a1) for that asset or class of asset in respect of the *contingent project*; and
  - (2) the *AER* granted that *asset exemption*.
- (f) In making the determinations referred to in subparagraph (e)(1), the *AER* must accept the relevant amounts and dates, contained in the *Distribution Network Service Provider's* application, as referred to in subparagraph (b)(2) to (b)(7), if the *AER* is satisfied that:
- (1) the forecast of the total capital expenditure for the *contingent project* meets the threshold as referred to in clause 6.6A.1(b)(2)(iii) and complies with paragraph (b1);
  - (2) the amounts of forecast capital expenditure and incremental operating expenditure reasonably reflect the *capital expenditure criteria* and the *operating expenditure criteria*, taking into account the *capital expenditure factors* and the *operating expenditure factors* respectively, in the context of the *contingent project*;



- (3) the estimates of incremental revenue are reasonable; and
  - (4) the dates are reasonable.
- (g) In making the determinations referred to in subparagraph (e)(1) and paragraph (f), the *AER* must have regard to:
- (1) the information included in or accompanying the application;
  - (2) submissions received in the course of consulting on the application;
  - (3) such analysis as is undertaken by or for the *AER*;
  - (4) the expenditure that would be incurred in respect of a *contingent project* by an efficient and prudent *Distribution Network Service Provider* in the circumstances of the *Distribution Network Service Provider*;
  - (5) the actual and expected capital expenditure of the *Distribution Network Service Provider* for *contingent projects* during any preceding *regulatory control periods*;
  - (6) the extent to which the forecast capital expenditure for the *contingent project* is referable to arrangements with a person other than the *Distribution Network Service Provider* that, in the opinion of the *AER*, do not reflect arm's length terms;
  - (7) the relative prices of operating and capital inputs in relation to the *contingent project*;
  - (8) the substitution possibilities between operating and capital expenditure in relation to the *contingent project*; and
  - (9) whether the capital and operating expenditure forecasts for the *contingent project* are consistent with any incentive scheme or schemes that apply to the *Distribution Network Service Provider* under clauses 6.5.8, 6.5.8A or 6.6.2 to 6.6.4.
- (h) Amendments to a distribution determination referred to in subparagraph (e)(3) must only vary the determination to the extent necessary:
- (1) to adjust the forecast capital expenditure for that *regulatory control period* to accommodate the amount of capital expenditure determined under subparagraph (e)(1)(i) (in which case the amount of that adjustment will be taken to be accepted by the *AER* under clause 6.5.7(c));
  - (2) to adjust the forecast operating expenditure for that *regulatory control period* to accommodate the amount of incremental operating expenditure determined under subparagraph (e)(1)(i) (in which case the amount of that adjustment will be taken to be accepted by the *AER* under clause 6.5.6(c));
  - (3) to reflect the effect of any resultant increase in forecast capital and operating expenditure on:
    - (i) the *annual revenue requirement* for each *regulatory year* in the remainder of the *regulatory control period*; and

- (ii) the X factor for each *regulatory year* in the remainder of the *regulatory control period*.
- (i) A *Distribution Network Service Provider* must provide the *AER* with such additional information as the *AER* requires for the purpose of making a decision on an application made by that *Distribution Network Service Provider* under paragraph (a) within the time specified by the *AER* in a notice provided to the *Distribution Network Service Provider* by the *AER* for that purpose.

**Extension of time limit**

- (j) If the *AER* is satisfied that amending a distribution determination under subparagraph (e)(3) and paragraph (h) involves issues of such complexity or difficulty that the time limit fixed in paragraph (d) should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the *Distribution Network Service Provider* of that extension no later than 10 *business days* before the expiry of that time limit.
- (k) If the *AER* extends the time limit under paragraph (j), it must make available on its website a notice of that extension as soon as is reasonably practicable.
- (l) Subject to paragraph (n1), if the *AER* gives a written notice to the *Distribution Network Service Provider* stating that it requires information from an *Authority* in order to make a decision on an application made by the *Distribution Network Service Provider* under paragraph (a) then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Distribution Network Service Provider* and when the *AER* receives that information from that *Authority* is to be disregarded.
- (m) Subject to paragraph (n1), if the *AER* gives a written notice to the *Distribution Network Service Provider* stating that, in order to make a decision on an application made by the *Distribution Network Service Provider* under paragraph (a), it requires information from a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Distribution Network Service Provider* and when that information is made publicly available is to be disregarded.
- (n) Where the *AER* gives a notice to the *Distribution Network Service Provider* under paragraph (l) or (m), it must:
  - (1) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (l) or (m), as the case may be, has commenced;
  - (2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (l) or (m), as the case may be, has ended; and
  - (3) if the information specified in that notice is required from an *Authority*, promptly request that information from the relevant *Authority*.

- (n1) Paragraphs (l) and (m) do not apply if the *AER* gives the notice specified in those paragraphs to the *Distribution Network Service Provider* later than 10 *business days* before the expiry of the time limit fixed in paragraph (d).

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

- (o) Except where paragraph (p) applies, if the *AER* amends a distribution determination under paragraph (h), that amendment must take effect from the commencement of the next *regulatory year*.
- (p) If a *Distribution Network Service Provider* submits an application under paragraph (a) within 90 *business days* of the end of a *regulatory year* (where this is permitted in accordance with paragraph (a1)), an amendment to the distribution determination must take effect from the second *regulatory year* that commences after the application is submitted.

## **Part D Negotiated distribution services**

### **6.7 Negotiated distribution services**

#### **6.7.1 Principles relating to access to negotiated distribution services**

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

- (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 exceeds the network performance requirements (if any) which that shared distribution service is required to meet under any jurisdictional electricity legislation, 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 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 *jurisdictional electricity legislation*, 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;

**Note:**

The performance requirements in *jurisdiction electricity legislation* will be performance requirements that correspond to matters set out in schedules 5.1a and 5.1 of the *Rules* applying in other *participating jurisdictions*.

- (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*:
  - (A) in respect of providing *distribution network user access* to *distribution services* should be based on the costs reasonably incurred by the *Distribution Network Service Provider* in providing that access and, in the case of compensation referred to in clauses 5.3AA(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; and
  - (B) for the *declared transmission system* of an *adoptive jurisdiction*, in respect of providing *transmission network user access* to *negotiated distribution services* which would have been treated as *negotiated transmission services* were it not for the operation of clause 6.24.2(c), should be based on the costs reasonably incurred by the *Distribution Network Service Provider* in providing that access and, in the case of compensation referred to in clauses 5.4A(h) - (j) (as preserved under clause 11.98.8(a)(2)), 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*.
- (12) in relation to *negotiated transmission services* that are taken to be *negotiated distribution services*, principles (11), (12) and (13) in schedule 5.11 that apply for the purposes of this Chapter.

### **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, 5.3A and 5.3AA, when negotiating for the provision of *connection services* and the associated *connection service charges* in respect of the provision of *negotiated distribution services*;
  - (2) rules 5.3 and 5.3A, when negotiating for the provision of *connection services* and the associated *connection service charges* in respect of the provision of *negotiated transmission services* that are taken to be *negotiated distribution services*;
  - (3) rule 5.3AA, when negotiating the *use of system services charges* and *access charges* to be paid to or by a *Distribution Network User* in respect of the provision of *negotiated distribution services*; and
  - (4) for the *declared transmission system* of an *adoptive jurisdiction*, rule 5.4A (as preserved under clause 11.98.8(a)(2)), when negotiating the *use of system services charges* and *access charges* to be paid to or by a *Distribution Network User* in respect of the provision of *negotiated distribution services* which would have been treated as *negotiated transmission services* were it not for the operation of clause 6.24.2(c).

### **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
    - (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
  - (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 *NEL* 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:
- (1) rules 5.3, 5.3A and 5.3AA insofar as the *negotiating framework* applies to *negotiated distribution services*; and

- (2) rules 5.3 and 5.3A, insofar as the *negotiating framework* applies to *negotiated transmission services* that are taken to be *negotiated distribution services*,

and any other relevant provisions of this Chapter 6 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 Connection policies

### 6.7A Connection policy requirements

This *Rule* deals with the preparation of, requirements for and approval of *connection policies*.

#### 6.7A.1 Preparation of, and requirements for, connection policy

- (a) A *Distribution Network Service Provider* must prepare a document (its proposed *connection policy*) setting out the circumstances in which it may require a *retail customer* or *real estate developer* to pay a *connection charge*, for the provision of a *connection service* under Chapter 5A.
- (b) The proposed *connection policy*:
  - (1) must be consistent with:
    - (i) the *connection charge principles*; and
    - (ii) the *connection charge guidelines*; and
  - (2) must specify:



- (i) the categories of persons that may be required to pay a *connection charge* and the circumstances in which such a requirement may be imposed; and
- (ii) the aspects of a *connection service* for which a *connection charge* may be made; and

**Example**

The *Distribution Network Service Provider* might (for example) make separate *connection charges* for the provision of a *distribution connection asset* and for making a necessary *extension* to, or other *augmentation* of, the *distribution network*.

- (iii) the basis on which *connection charges* are determined; and
- (iv) the manner in which *connection charges* are to be paid (or equivalent consideration is to be given); and

**Examples**

The payment (or equivalent consideration) might take the form of a capital contribution, prepayment or financial guarantee.

- (v) a threshold (based on capacity or any other measure identified in the *connection charge guidelines*) below which a *retail customer* (not being a non-registered *embedded generator* or a *real estate developer*) will not be liable for a *connection charge* for an *augmentation* other than an *extension*.

## Part E Regulatory proposal and proposed tariff structure statement

### 6.8 Regulatory proposal and proposed tariff structure statement

#### 6.8.1 AER's framework and approach paper

- (a) The *AER* must make and *publish* a document (a *framework and approach paper*) that applies in respect of a distribution determination for a matter listed in paragraph (b) in accordance with this clause if:
  - (1) there is no *framework and approach paper* that applies in respect of that distribution determination for that matter; or
  - (2) there is a *framework and approach paper* that would apply in respect of that distribution determination for that matter, but the *AER* has *published* a notice under paragraph (c)(3) stating that it will make an amended or replacement *framework and approach paper* with respect to that matter.
- (b) A *framework and approach paper* that applies in respect of a distribution determination must set out:
  - (1) the *AER's* decision (together with its reasons for the decision), for the purposes of the forthcoming distribution determination, on the following matters:
    - (i) the form (or forms) of the control mechanisms; and

- (ii) as to whether or not Part J of Chapter 6A is to be applied to determine the pricing of *transmission standard control services* provided by any *dual function assets* owned, controlled or operated by the *Distribution Network Service Provider*; and
- Note:**
- See clause 6.25(b).
- (2) the *AER's* proposed approach (together with its reasons for the proposed approach), in the forthcoming distribution determination, to the following matters:
    - (i) the classification of *distribution services* under this Chapter;
    - (ii) the formulae that give effect to the control mechanisms referred to in subparagraph (1)(i);
    - (iii) the application to the *Distribution Network Service Provider* of any *service target performance incentive scheme*;
    - (iv) the application to the *Distribution Network Service Provider* of any *efficiency benefit sharing scheme*;
    - (v) the application to the *Distribution Network Service Provider* of any *capital expenditure sharing scheme*;
    - (vi) the application to the *Distribution Network Service Provider* of any *demand management incentive scheme* or *demand management innovation allowance mechanism*;
    - (vii) the application to the *Distribution Network Service Provider* of any *small-scale incentive scheme*;
    - (viii) the application to the *Distribution Network Service Provider* of the *Expenditure Forecast Assessment Guidelines*;
    - (ix) whether depreciation for establishing the regulatory asset base for the relevant *distribution system* as at the commencement of the following *regulatory control period* is to be based on actual or forecast capital expenditure in accordance with clause S6.2.2B; and
  - (3) any content required under clause 6.2.8(c)(3).
- (c) If there is a *framework and approach paper* that would apply in respect of the distribution determination for a matter listed in paragraph (b) then:
    - (1) no later than 32 months before the end of the *regulatory control period* that precedes that for which the distribution determination is to be made, the *Distribution Network Service Provider* may request the *AER* in writing to make an amended or replacement *framework and approach paper* in respect of a matter. The request must specify the *Distribution Network Service Provider's* reasons for making that request;
    - (2) no later than 31 months before the end of the *regulatory control period* that precedes that for which the distribution determination is to be made, the *AER* must *publish* a notice inviting submissions on whether it is necessary or desirable to amend or replace that

- framework and approach paper* in so far as it relates to a matter (other than any matter specified in a request from the *Distribution Network Service Provider* under subparagraph (1)); and
- (3) no later than 30 months before the end of the *regulatory control period* that precedes that for which the distribution determination is to be made, the *AER* must make and *publish* a notice that:
- (i) states that it will make an amended or replacement *framework and approach paper* in respect of the matters specified in a request from the *Distribution Network Service Provider* under subparagraph (1) (if any);
  - (ii) if subparagraph (i) applies, is accompanied by a copy of the request from the *Distribution Network Service Provider* under subparagraph (1); and
  - (iii) states whether it will make an amended or replacement *framework and approach paper* in respect of any matter other than any matters referred to in subparagraph (i) above and, if so, the reasons why it considers that it is necessary or desirable to make an amended or replacement *framework and approach paper* in respect of that matter.
- (d) In making the decision referred to in paragraph (c)(3)(iii), the *AER* must have regard to any submissions made in response to the invitation under paragraph (c)(2).
- (e) Where paragraph (a) applies then, at least 23 months before the end of the current *regulatory control period*, the *AER* must, after consulting with the relevant *Distribution Network Service Provider* and other persons as the *AER* considers appropriate, make, amend or replace the *framework and approach paper*, as the case may be, and:
- (1) give a copy of it to the relevant *Distribution Network Service Provider*; and
  - (2) *publish* it,
- as soon as is reasonably practicable.
- (f) Subject to clauses 6.12.3 and 6.25(d), a *framework and approach paper* is not binding on the *AER* or a *Distribution Network Service Provider*.
- (g) The *AER* may make and *publish* a *framework and approach paper* that applies in respect of a distribution determination for a matter that is not listed in paragraph (b) and, if it does so, this clause 6.8.1 applies as if that matter were listed in paragraph (b).

#### **6.8.1A Notification of approach to forecasting expenditure**

- (a) A *Distribution Network Service Provider* must inform the *AER* of the methodology it proposes to use to prepare the forecasts of operating expenditure and capital expenditure that form part of its *regulatory proposal*.
- (b) A *Distribution Network Service Provider* must submit the information referred to in paragraph (a):

- (1) at least 24 months before the expiry of a distribution determination that applies to the *Distribution Network Service Provider*; or
- (2) if no distribution determination applies to the *Distribution Network Service Provider*, within 3 months after being required to do so by the *AER*.

### 6.8.2 Submission of regulatory proposal, tariff structure statement and exemption application

- (a) A *Distribution Network Service Provider* must, whenever required to do so under paragraph (b), submit to the *AER* a *regulatory proposal* and a proposed *tariff structure statement* related to the *distribution services* provided by means of, or in connection with, the *Distribution Network Service Provider's distribution system*.
- (a1) A *Distribution Network Service Provider* must submit to the *AER* any *exemption application* for an *asset exemption* under clause 6.4B.1(a)(1) or 6.4B.1(a)(2) for the *regulatory control period* at the same time as submitting the relevant *regulatory proposal* under paragraph (a).
- (b) A *regulatory proposal*, a proposed *tariff structure statement* and, if required under paragraph (a1), an *exemption application* must be submitted:
  - (1) at least 17 months before the expiry of a distribution determination that applies to the *Distribution Network Service Provider*; or
  - (2) if no distribution determination applies to the *Distribution Network Service Provider*, within 3 months after being required to do so by the *AER*.
- (c) A *regulatory proposal* must include (but need not be limited to) the following elements:
  - (1) a classification proposal:
    - (i) showing how the *distribution services* to be provided by the *Distribution Network Service Provider* should, in the *Distribution Network Service Provider's* opinion, be classified under this Chapter; and
    - (ii) if the proposed classification differs from the classification suggested in the relevant *framework and approach paper* – including the reasons for the difference;
  - (2) for *direct control services* classified under the proposal as *standard control services* – a *building block proposal*;
  - (3) for *direct control services* classified under the proposal as *alternative control services* – a demonstration of the application of the control mechanism, as set out in the *framework and approach paper*, and the necessary supporting information;
  - (4) **[Deleted]**.
  - (5) for services classified under the proposal as *negotiated distribution services* – the proposed *negotiating framework*;
  - (5A) the proposed *connection policy*;

- (6) an identification of any parts of the *regulatory proposal* the *Distribution Network Service Provider* claims to be confidential and wants suppressed from publication on that ground in accordance with the *Distribution Confidentiality Guidelines*; and

**Note:**

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

- (7) a description (with supporting materials) of how the proposed *tariff structure statement* complies with the *pricing principles for direct control services* including:
- (i) a description of where there has been any departure from the pricing principles set out in paragraphs 6.18.5(e) to (g); and
  - (ii) an explanation of how that departure complies with clause 6.18.5(c).
- (c1) The *regulatory proposal* must be accompanied by an overview paper which includes each of the following matters:
- (1) a summary of the *regulatory proposal* the purpose of which is to explain the *regulatory proposal* in reasonably plain language to electricity consumers;
  - (2) a description of how the *Distribution Network Service Provider* has engaged with electricity consumers in developing the *regulatory proposal* and has sought to address any relevant concerns identified as a result of that engagement;
  - (3) a description of the key risks and benefits of the *regulatory proposal* for electricity consumers; and
  - (4) a comparison of the *Distribution Network Service Provider's* proposed *total revenue requirement* with its *total revenue requirement* for the current *regulatory control period* and an explanation for any material differences between the two amounts;
- (c1a) The overview paper must also include a description of how the *Distribution Network Service Provider* has engaged with *retail customers* and *retailers* in developing the proposed *tariff structure statement* and has sought to address any relevant concerns identified as a result of that engagement.
- (c2) The *regulatory proposal* must be accompanied by information required by the *Expenditure Forecast Assessment Guidelines* as set out in the *framework and approach paper*.
- (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*.
- (d1) The proposed *tariff structure statement* must be accompanied by an *indicative pricing schedule*.
- (d2) The proposed *tariff structure statement* must comply with the *pricing principles for direct control services*.

- (e) If more than one *distribution system* is owned, controlled or operated by a *Distribution Network Service Provider*, then, unless the *AER* otherwise determines, a separate *regulatory proposal* and a separate *tariff structure statement* are to be submitted for each *distribution system*.
- (f) If, at the commencement of this Chapter, different parts of the same *distribution system* were separately regulated, then, unless the *AER* otherwise determines, a separate *regulatory proposal* and a separate *tariff structure statement* are to be submitted for each part as if it were a separate *distribution system*.

## 6.9 Preliminary examination and consultation

### 6.9.1 Preliminary examination

- (a) If the *AER* considers that:
  - (1) a *regulatory proposal* submitted by a *Distribution Network Service Provider*;
  - (2) a proposed *tariff structure statement* submitted by a *Distribution Network Service Provider*;
  - (3) any *exemption application* submitted with the *regulatory proposal*; or
  - (4) any information accompanying such a *regulatory proposal*, proposed *tariff structure statement* or *exemption application*,does not comply, in any respect, with a requirement of *NEL* or the *Rules*, the *AER* may notify the *Distribution Network Service Provider* that it requires resubmission of the relevant *regulatory proposal*, proposed *tariff structure statement*, *exemption application* or accompanying information.
- (b) The notice must be given as soon as practicable and must state why, and in what respects, the *AER* considers the *regulatory proposal*, proposed *tariff structure statement*, *exemption application* or the accompanying information (as the case may be) 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*, proposed *tariff structure statement*, *exemption application* or the accompanying information (as the case may be) 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*, proposed *tariff structure statement*, *exemption application* or the accompanying information (as the case may be) to address the deficiencies identified in the notice.

### 6.9.2A Confidential information

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

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

### 6.9.3 Consultation

- (a) Subject to the provisions of *NEL* and the *Rules* about the disclosure of *confidential information*, the *AER* must *publish*:
  - (1) a *regulatory proposal*;
  - (2) a proposed *tariff structure statement*;
  - (3) an *exemption application* (if any); and
  - (4) any information accompanying such a *regulatory proposal*, *proposed tariff structure statement* or *exemption application*,  
submitted or resubmitted to it (as the case may be) by the *Distribution Network Service Provider* under clause 6.8.2 or 6.9.2, together with:
    - (5) the *AER's* proposed *Negotiated Distribution Service Criteria* for the *Distribution Network Service Provider*; and
    - (6) an invitation for written submissions on the documents and information referred to in sub-paragraphs (1) to (5),  
after the *AER* decides that the *regulatory proposal*, *proposed tariff structure statement*, *exemption application* (if any) and accompanying information comply (or that there is sufficient compliance) with the requirements of *NEL* and the *Rules*.
- (b) The *AER* must *publish*:
  - (1) an issues paper not more than 40 *business days* after the submission, under clause 6.8.2, of the documents and information, but not any resubmitted documents or information, referred to in sub-paragraphs (a)(1) to (a)(4);
  - (2) an invitation for written submissions on the issues paper; and
  - (3) an invitation to attend a public forum on the issues paper.
- (b1) The issues paper referred to in paragraph (b) must identify preliminary issues, whether or not arising out of the documents and information referred to in sub-paragraphs (a)(1) to (a)(4), that the *AER* considers are likely to be relevant to its assessment of those documents or that information (however, nothing in this clause is to be taken as precluding the *AER* from considering other issues in making a distribution determination for the *Distribution Network Service Provider*).

- (b2) The *AER* must hold a public forum on the issues paper not more than 10 *business days* after the *publication* of the issues paper.
- (c) Any person may make a written submission to the *AER* on the documents and information referred to in sub-paragraphs (a)(1) to (a)(5) or the issues paper within the time specified in the invitations referred to in paragraphs (a)(6) and (b), which in each case must be not earlier than 30 *business days* after the *publication* of the issues paper.

## 6.10 Draft distribution determination and further consultation

### 6.10.1 Making of draft distribution determination

- (a) The *AER* must make a draft distribution determination in relation to the *Distribution Network Service Provider*.
- (b) In making a draft distribution determination in relation to the *Distribution Network Service Provider*, and subject to clause 6.14, the *AER* must have regard to each of the following:
  - (1) the information included in or accompanying the *regulatory proposal*, the proposed *tariff structure statement* and the *exemption application*;
  - (2) written submissions on the issues paper received under clause 6.9.3 and on the documents and information referred to in sub-paragraphs 6.9.3(a)(1) to 6.9.3(a)(5); and
  - (3) any analysis undertaken by or for the *AER* that is *published* prior to the making of the draft distribution determination or as part of the draft distribution determination.
- (ba) In addition, if the draft distribution determination will apply to a *distribution system* in this jurisdiction during the *1st regulatory control period*, the *AER* must have regard to:
  - (1) any amount that, under clause 3.1.3(a)(ii) or 3.1.5(a)(ii)(B) of Part B of the *2014 NT Network Price Determination*, the *AER* determined, before 1 July 2018, should be passed through to network users in a *regulatory year* of the *1st regulatory control period* or a subsequent *regulatory control period*; and
  - (2) any amount that, under clause 3.1.3(d)(ii) of Part B of the *2014 NT Network Price Determination*, should be passed through to network users in a *regulatory year* of the *1st regulatory control period* or a subsequent *regulatory control period* as a result of the *AER* failing, before 1 July 2018, to make a determination within the prescribed period.

**Note:**

This paragraph expires on 1 July 2024.

### 6.10.2 Publication of draft determination and consultation

- (a) The *AER* must, as soon as practicable after the relevant date referred to in clause 6.8.2(b), *publish*:
  - (1) the draft distribution determination;



- (2) notice of the making of the draft distribution determination;
  - (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;
  - (4) notice of a predetermination conference; and
  - (5) an invitation for written submissions on its draft distribution determination.
- (b) The *AER* must hold the predetermination conference at the time, date and place specified in the notice under subparagraph (a)(4) for the purpose of explaining the draft distribution determination.
- (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 45 *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 45 *business days* after the publication of the draft distribution determination, submit a revised *regulatory proposal* or a revised proposed *tariff structure statement* 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.
- (b1) A revised proposed *tariff structure statement* must comply with the *pricing principles for direct control services* and must be accompanied by a revised *indicative pricing schedule*.
- (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* or the *Rules*.
- (c1) If the *Distribution Network Service Provider* has identified any part of the revised *regulatory proposal* to the *AER* under this Part to be confidential, the *AER* must, as soon as is reasonably practicable, make available on its website a notice that sets out:
- (1) the fact that the revised *regulatory proposal* contains information over which a claim of confidentiality has been made;
  - (2) the proportion of material in the revised *regulatory proposal* that is subject to any claim of confidentiality compared to that which is not subject to any such claim; and
  - (3) the comparative proportion of material in the revised *regulatory proposal* that is subject to any claim of confidentiality compared to that which is subject to claims of confidentiality in the revised *regulatory proposals* of other *Distribution Network Service Providers*.

- (d) Subject to the provisions of *NEL* and the *Rules* about the disclosure of *confidential information*, the *AER* must *publish* a revised *regulatory proposal* or a revised proposed *tariff structure statement* 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 invite written submissions on the revised *regulatory proposal* or the revised proposed *tariff structure statement*.

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

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

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

### **6.11 Distribution determination**

#### **6.11.1 Making of distribution determination**

- (a) The *AER* must make a distribution determination in relation to the *Distribution Network Service Provider*.
- (b) In making a distribution determination in relation to the *Distribution Network Service Provider*, and subject to rule 6.14, the *AER* must have regard to each of the following:
  - (1) the information included in or accompanying the *regulatory proposal*, the proposed *tariff structure statement* and the *exemption application* (if any);
  - (2) written submissions received under this Part E; and
  - (3) any analysis undertaken by or for the *AER* that is *published* prior to the making of the distribution determination or as part of the distribution determination.
- (ba) In addition, if the distribution determination will apply to a *distribution system* in this jurisdiction during the *1st regulatory control period*, the *AER* must have regard to:
  - (1) any amount that, under clause 3.1.3(a)(ii) or 3.1.5(a)(ii)(B) of Part B of the *2014 NT Network Price Determination*, the *AER* determined, before 1 July 2018, should be passed through to network users in a *regulatory year* of the *1st regulatory control period* or a subsequent *regulatory control period*; and
  - (2) any amount that, under clause 3.1.3(d)(ii) of Part B of the *2014 NT Network Price Determination*, should be passed through to network users in a *regulatory year* of the *1st regulatory control period* or a subsequent *regulatory control period* as a result of the *AER* failing,

before 1 July 2018, to make a determination within the prescribed period.

**Note:**

This paragraph (ba) expires on 1 July 2024.

- (c) The *AER* must use its best endeavours to *publish*, a reasonable time prior to the making of the distribution determination, any analysis undertaken by or for it on which it proposes to rely, or to which it proposes to refer, for the purposes of the distribution determination.

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

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

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

For the purpose of this clause 6.11.1A, revisions or submissions may be summarised by cross-referencing to the relevant *regulatory proposal*, proposed *tariff structure statement* or submissions.

#### **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;
- (2) the distribution determination itself; and
- (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;
  - (2) the previous *approved pricing proposal* continues in force (despite any contrary provision of the *Rules*) during the intervening period and the first *regulatory year* of the later *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 *Distribution Network Service Provider*, as set out in the *building block proposal*, for each *regulatory year* of the *regulatory control period*; and
  - (ii) the commencement and length of the *regulatory control period* as proposed in the *building block proposal*;
- (2A) a decision in which the *AER* determines to either grant or reject a request for an *asset exemption* under clause 6.4B.1(a)(1) in respect of a *building block proposal* for the *regulatory control period*;
- (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(c)(2) or 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*;
- (3A) the *AER's* estimate of the total of the *Distribution Network Service Provider's* required capital expenditure referred to in subparagraph (3)(ii) must not include *expenditure for a restricted asset*, unless:
- (i) the relevant *Distribution Network Service Provider* has requested an *asset exemption* under:
- (A) clause 6.4B.1(a)(2) for the previous *regulatory control period*, to the extent any of the *AER's* estimate relates to the *Distribution Network Service Provider's* forecast for unspent capital expenditure under clause 6.5.7(g) for a *contingent project* that commenced in the previous *regulatory control period* and that unspent capital was in respect of *expenditure for a restricted asset*;
- (B) clause 6.4B.1(a)(3) for the previous *regulatory control period*, to the extent any of the *AER's* estimate relates to an *approved pass through amount* for the *Distribution Network Service Provider* for the *regulatory control period* and that *approved pass through amount* is in respect of *expenditure for a restricted asset*; or
- (C) clause 6.4B.1(a)(1) for the *regulatory control period*, to the extent any of the *AER's* estimate otherwise relates to the *Distribution Network Service Provider's* required capital expenditure for the *regulatory control period* and that capital expenditure is in respect of *expenditure for a restricted asset*,
- for that asset or class of asset; and
- (ii) the *AER* has granted the *asset exemption*.
- (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*;
- (4A) a decision in which the *AER* determines:
- (i) whether each of the *proposed contingent projects* (if any) described in the current *regulatory proposal* are *contingent projects* for the purposes of the distribution determination in which case the decision must clearly identify each of those *contingent projects*;

- (ii) the capital expenditure that it is satisfied reasonably reflects the *capital expenditure criteria*, taking into account the *capital expenditure factors*, in the context of each *contingent project* as described in the current *regulatory proposal*;
  - (iii) the *trigger events* in relation to each *contingent project* (in which case the decision must clearly specify those *trigger events*);
  - (iv) if the *AER* determines that such a *proposed contingent project* is not a *contingent project* for the purposes of the distribution determination, its reasons for that conclusion, having regard to the requirements of clause 6.6A.1(b); and
  - (v) to grant or reject a request for an *asset exemption* under clause 6.4B.1(a)(2) in respect of a *proposed contingent project*;
- (5) a decision on the *allowed rate of return* for each *regulatory year* of the *regulatory control period*;
  - (5A) a decision on the *allowed imputation credits* for each *regulatory year* of the *regulatory control period*;
  - (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 *Distribution Network Service 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*, *capital expenditure sharing scheme*, *service target performance incentive scheme*, *demand management incentive scheme*, *demand management innovation allowance mechanism* or *small-scale 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 form of the control mechanisms (including the X factor) for *standard control services* (to be in accordance with the relevant *framework and approach paper*) and on the formulae that give effect to those control mechanisms;
  - (12) a decision on the form of the control mechanisms for *alternative control services* (to be in accordance with the relevant *framework and approach paper*) and on the formulae that give effect to those control mechanisms;
  - (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* in accordance with clause 6.5.10;

- (14A) a decision on the *Distribution Network Service Provider's* proposed *tariff structure statement*, in which the *AER* either approves or refuses to approve that statement;
  - (15) a decision on the *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 *Distribution Network Service Provider*, some variant of it, or a framework substituted by the *AER*);
  - (16) a decision in which the *AER* decides the *Negotiated Distribution Service Criteria* for the *Distribution Network Service Provider*;
  - (17) a decision on the policies and procedures for assigning *retail customers* to *tariff classes*, or reassigning *retail customers* from one *tariff class* to another (including any applicable restrictions);
  - (17A) a decision on the approval of the proposed *pricing methodology* for *transmission standard control services* (if rule 6.26 applies);
  - (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;
- Note:**  
See clause S6.2.2B.
- (19) a decision on how the *Distribution Network Service Provider* is to report to the *AER* on its recovery of *designated pricing proposal 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) a decision on how the *Distribution Network Service Provider* is to report to the *AER* on its recovery of *jurisdictional scheme amounts* for each *regulatory year* of the *regulatory control period* and on the adjustments to be made to subsequent *pricing proposals* to account for over or under recovery of those amounts. A decision under this subparagraph (20) must be made in relation to each *jurisdictional scheme* under which the *Distribution Network Service Provider* has *jurisdictional scheme obligations* at the time the decision is made; and
  - (21) a decision on the *connection policy* that is to apply to the *Distribution Network Service Provider* for the *regulatory control period* (which may be the *connection policy* as proposed by the *Distribution Network Service Provider*, some variant of it, or a policy substituted by the *AER*).

## 6.12.2 Reasons for decisions

- (a) The reasons given by the *AER* for a draft distribution determination under rule 6.10 or a final distribution determination under rule 6.11 must set out the basis and rationale of the determination, including:
  - (1) details of the qualitative and quantitative methods applied in any calculations and formulae made or used by the *AER*;
  - (2) the values adopted by the *AER* for each of the input variables in any calculations and formulae, including:

- (i) whether those values have been taken or derived from the *Distribution Network Service Provider's* current building block proposal; and
    - (ii) if not, the rationale for the adoption of those values;
  - (3) details of any assumptions made by the *AER* in undertaking any material qualitative and quantitative analyses; and
  - (4) reasons for the making of any decisions, the giving or withholding of any approvals, and the exercise of any discretions as referred to in this Chapter 6, for the purposes of the determination, such reasons being expressed by reference to the requirements relating to such decisions, approvals or discretions as are contained in this Chapter.
- (b) The *AER* must include in its reasons for a draft distribution determination under rule 6.10 or a final distribution determination under rule 6.11 a statement, with supporting reasons, as to the extent to which the roll forward of the regulatory asset base as determined under clause 6.12.1(6) contributes to the achievement of the *capital expenditure incentive objective*.

### 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:
  - (1) a *regulatory proposal*;
  - (2) proposed *tariff structure statement*; or
  - (3) *exemption application* (if any).
- (b) The classification of *distribution services* must be as set out in the relevant *framework and approach paper* unless the *AER* considers that a material change in circumstances justify departing from the classification as set out in that paper.
- (c) The form of the control mechanism must be as set out in the relevant *framework and approach paper* unless the *AER*:
  - (1) has departed from the classification of a *distribution service* as set out in that paper in accordance with paragraph (b); and
  - (2) considers that no form of control mechanism set out in that paper should apply to that *distribution service*.
- (c1) The formulae that give effect to the control mechanisms set out in the relevant *framework and approach paper* must be as set out in that paper unless the *AER* considers that a material change in circumstances justify departing from the formulae as set out in that paper.
- (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 *Distribution Network Service 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) The *AER* must approve a proposed *regulatory control period* if the proposed period consists of 5 *regulatory years*.
- (f) **[Deleted]**
- (g) The *AER* must approve a proposed *negotiating framework* if the *AER* is satisfied that it adequately complies with the requirements of Part D.
- (h) If the *AER* refuses to approve the proposed *negotiating framework*, the 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 the proposed *connection policy* if the *AER* is satisfied that it adequately complies with the requirements of Part DA.
- (j) If the *AER* refuses to approve the proposed *connection policy*, the approved amended *connection policy* must be:
  - (1) determined on the basis of the current proposed *connection policy*; and
  - (2) amended from that basis only to the extent necessary to enable it to be approved in accordance with the *Rules*.
- (k) The *AER* must approve a *Distribution Network Service Provider's* proposed *tariff structure statement* unless the *AER* is reasonably satisfied that the proposed *tariff structure statement* does not comply with the *pricing principles for direct control services* or other applicable requirements of the *Rules*.
- (l) If, in making a distribution determination in relation to a *Distribution Network Service Provider*, the *AER* refuses to approve the *Distribution Network Service Provider's* proposed *tariff structure statement*, the *AER* must include in that distribution determination an amended *tariff structure statement* which is:
  - (1) determined on the basis of the *Distribution Network Service Provider's* proposed *tariff structure statement*; and
  - (2) amended from that basis only to the extent necessary to enable it to be approved in accordance with the *Rules*.

### **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 distribution 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; or
  - (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 distribution determination to apply for the remainder of the *regulatory control period* for which the revoked distribution determination was to apply.
  - (c) If the *AER* revokes and substitutes a distribution determination under paragraphs (a) and (b), the substituted distribution determination must only vary from the revoked distribution determination to the extent necessary to correct the relevant error or deficiency.
  - (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 for submissions that is made under this Chapter (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 *NEL* or the *Rules* permits or requires such information to be publicly released by the *AER*.

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

- (a) The *AER* must, in accordance with the *distribution consultation procedures*, make and *publish* guidelines (*Distribution Confidentiality Guidelines*).
- (b) The *Distribution Confidentiality Guidelines* must specify the manner in which the *Distribution Network Service Provider* may make confidentiality claims in its *regulatory proposal*, which may include categories of confidential information by reference to which *Distribution Network Service*

*Providers* must classify any claims of confidentiality in their *regulatory proposals*.

- (c) There must be *Distribution Confidentiality Guidelines* in force at all times after the date on which the *AER* first *publishes* the *Distribution Confidentiality Guidelines* under the *Rules*.
- (d) The *Distribution Confidentiality Guidelines* are binding on the *AER* and each *Distribution Network Service Provider* to which they apply.
- (da) For the application of these *Rules* in this jurisdiction:
  - (1) the *Distribution Confidentiality Guidelines* that are in force in the other *participating jurisdictions* on 1 July 2016 are taken:
    - (i) to be the *Distribution Confidentiality Guidelines* in force in this jurisdiction (subject to any amendment or replacement under these *Rules*); and
    - (ii) to have been made and *published* by the *AER* on 1 July 2016; and
  - (2) the *AER* is taken to have complied with the requirements of paragraphs (a) and (b) in making and *publishing* the *Distribution Confidentiality Guidelines*.

## **Part F Cost Allocation**

### **6.15 Cost allocation**

#### **6.15.1 Duty to comply with Cost Allocation Method**

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.

#### **6.15.2 Cost Allocation Principles**

The following principles constitute the *Cost Allocation Principles*:

- (1) the detailed principles and policies used by a *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;
  - (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*.

**Note:**

The *Cost Allocation Guidelines* are required by clause 6.15.3 to give effect to and be consistent with, the *Cost Allocation Principles*.

**6.15.3 Cost Allocation Guidelines**

- (a) The *AER* must, in accordance with the *distribution consultation procedures*, make and *publish* guidelines (the *Cost Allocation Guidelines*) relating to the preparation by a *Distribution Network Service Provider* of its *Cost Allocation Method*.
- (b) The *Cost Allocation Guidelines* must give effect to and be consistent with the *Cost Allocation Principles*.
- (c) Without limiting the generality of paragraph (b), the *Cost Allocation Guidelines* may specify:
  - (1) the format of a *Cost Allocation Method*;
  - (2) the detailed information that is to be included in a *Cost Allocation Method*;
  - (3) the categories of *distribution services* which are to be separately addressed in a *Cost Allocation Method*, such categories being determined by reference to the nature of those services, the persons to whom those services are provided or such other factors as the *AER* considers appropriate; and
  - (4) the allocation methods which are acceptable and the supporting information that is to be included in relation to such methodologies in a *Cost Allocation Method*.
- (d) The *Cost Allocation Guidelines* are binding on the *AER* and each *Distribution Network Service Provider* to which they apply.
- (e) The *AER* must *publish* the first *Cost Allocation Guidelines* within 6 months after the commencement of the *Rules* and there must be *Cost Allocation Guidelines* in force at all times after that date.

- (ea) For the application of these *Rules* in this jurisdiction:
- (1) the *Cost Allocation Guidelines* that are in force in the other *participating jurisdictions* on 1 July 2016 are taken:
    - (i) to be the *Cost Allocation Guidelines* in force in this jurisdiction (subject to any amendment or replacement under these *Rules*); and
    - (ii) to have been made and *published* by the *AER* on 1 July 2016; and
  - (2) the *AER* is taken to have complied with the requirements of paragraphs (a), (b) and (e) in making and *publishing* the *Cost Allocation Guidelines*.

#### 6.15.4 Cost Allocation Method

- (a) Each *Distribution Network Service Provider* in this jurisdiction must submit to the *AER* for its approval a document setting out its proposed *Cost Allocation Method* within 6 months of being required to do so by the *AER*.
- (b) The *Cost Allocation Method* proposed by a *Distribution Network Service Provider* must give effect to and be consistent with the *Cost Allocation Guidelines*.
- (c) The *AER* may approve or refuse to approve a *Cost Allocation Method* submitted under paragraph (a).
- (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 6 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 *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; and
  - (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 *Distribution Network Service Provider* must amend its *Cost Allocation Method* where the amendment is required by the *AER* to take into account any change to the *Cost Allocation Guidelines*, but the amendment only comes into effect:
  - (1) on the date that the *AER* approves that amendment, or 3 months after the submission of the amendment, whichever is the earlier; and
  - (2) subject to additional changes to the *Cost Allocation Method* (if any) the *AER* reasonably considers necessary or desirable as a result of the amendment and notifies to the *Distribution Network Service Provider* before the amendment takes effect.
- (h) A *Distribution Network Service Provider* must maintain a current copy of its *Cost Allocation Method* on its website.

## **Part G Distribution consultation procedures**

### **6.16 Distribution consultation procedures**

- (a) This rule 6.16 applies wherever the *AER* is required to comply with the *distribution consultation procedures*. For the avoidance of doubt, the *distribution consultation procedures* are separate from, and (where they are required to be complied with) apply to the exclusion of, the *Rules consultation procedures* under rule 8.9.
- (b) If the *AER* is required to comply with the *distribution consultation procedures* in preparing, making, developing, reviewing, amending or replacing any guidelines, methodologies, models, schemes, or tests, it must *publish*:
  - (1) the proposed guideline, methodology, model, scheme, test or amendment;
  - (2) an explanatory statement that sets out the provision of the *Rules* under or for the purposes of which the guideline, methodology, model, scheme, test or amendment is proposed to be prepared, made or developed or is required to be reviewed, and the reasons for the proposed guideline, methodology, model, scheme, test or amendment; and
  - (3) an invitation for written submissions on the proposed guideline, methodology, model, scheme, test or amendment, or the review, (as the case may be).
- (c) The invitation must allow no less than 30 *business days* for the making of submissions, and the *AER* is not required to consider any submission made pursuant to that invitation after this time period has expired.
- (d) The *AER* may *publish* such issues, consultation and discussion papers, and hold such conferences and information sessions, in relation to the proposed guideline, methodology, model, scheme, test or amendment, or the review, as it considers appropriate.

- (e) Within 80 *business days* of *publishing* the documents referred to in paragraph (b), the *AER* must *publish*:
  - (1) its final decision on the guideline, methodology, model, scheme, test, amendment or review that sets out:
    - (i) the guideline, methodology, model, scheme, test or amendment (if any);
    - (ii) the provision of the *Rules* under which or for the purposes of which the guideline, methodology, model, scheme, test or amendment is being prepared, made or developed or is being reviewed;
    - (iii) the reasons for the guideline, methodology, model, scheme, test or amendment; and
    - (iv) the reasons for the outcome of any review; and
  - (2) notice of the making of the final decision on the guideline, methodology, model, scheme, test, amendment or review.
- (f) Subject to paragraph (c), the *AER* must, in making its final decision referred to in paragraph (e)(1), consider any submissions made pursuant to the invitation for submissions referred to in paragraph (b)(3), and the reasons referred to in paragraph (e)(1)(iii) or (iv) must include:
  - (1) a summary of each issue raised in those submissions that the *AER* reasonably considers to be material; and
  - (2) the *AER's* response to each such issue.
- (g) The *AER* may extend the time within which it is required to publish its final decision if:
  - (1) the consultation involves issues of unusual complexity or difficulty; and
  - (2) the extension of time has become necessary because of circumstances beyond the *AER's* control.

## **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**

All *Distribution Network Service Providers* must comply with the *Distribution Ring-Fencing Guidelines* prepared in accordance with clause 6.17.2.

#### **Note**

This clause is classified as a tier 1 civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

### 6.17.1B Application of Distribution Ring-Fencing Guidelines in this jurisdiction

Despite clause 6.17.1, in this jurisdiction:

- (a) the following provisions of the *Distribution Ring-Fencing Guidelines* have no effect:
  - (1) clause 1.1.1, all words from "For the avoidance" to "DNSPs.";
  - (2) clause 1.4, definition **non-distribution services**; and (3) clauses 3.1, 4.2.1, 4.2.2 and 4.2.3; and
- (b) a reference in the *Distribution Ring-Fencing Guidelines* to "**non-distribution services**" must be regarded as a reference to "**other services**"; and
- (c) a reference in clause 3.2.1(a) of the *Distribution Ring-Fencing Guidelines* and the note to that paragraph to "**affiliated entities**" must be regarded as a reference to "**related electricity service providers**"; and
- (d) a reference in clause 6.2.1(b)(iv) of the *Distribution Ring-Fencing Guidelines* to "**affiliated entity**" must be regarded as a reference to "**related electricity service provider**".

**Note:**

This clause, and the operation of the *Distribution Ring-Fencing Guidelines* in this jurisdiction, will be revisited in the event of the introduction of contestable services (including contestable metering services) in this jurisdiction.

### 6.17.2 Development of Distribution Ring-Fencing Guidelines

- (a) Guidelines must 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 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



- (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*, *AEMO* and other *interested parties*, and such consultation must be otherwise in accordance with the *distribution consultation procedures*.

## **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*.

#### **6.18.1A Tariff structure statement**

- (a) A *tariff structure statement* of a *Distribution Network Service Provider* must include the following elements:
- (1) the *tariff classes* into which *retail customers* for *direct control services* will be divided during the relevant *regulatory control period*;
  - (2) the policies and procedures the *Distribution Network Service Provider* will apply for assigning *retail customers* to tariffs or reassigning *retail customers* from one tariff to another (including any applicable restrictions);
  - (3) the structures for each proposed tariff;
  - (4) the *charging parameters* for each proposed tariff; and
  - (5) a description of the approach that the *Distribution Network Service Provider* will take in setting each tariff in each *pricing proposal* of the *Distribution Network Service Provider* during the relevant *regulatory control period* in accordance with clause 6.18.5.
- (b) A *tariff structure statement* must comply with the *pricing principles* for *direct control services*.
- (c) A *Distribution Network Service Provider* must comply with the *tariff structure statement* approved by the *AER* and any other applicable

requirements in the *Rules*, when the provider is setting the prices that may be charged for *direct control services*.

- (d) Subject to clause 6.18.1B, a *tariff structure statement* may not be amended during a *regulatory control period*.

**Note:**

Rule 6.13 still applies in relation to a *tariff structure statement* because that rule deals with the revocation and substitution of a distribution determination (which includes a *tariff structure statement*) as opposed to its amendment.

- (e) A *tariff structure statement* must be accompanied by an *indicative pricing schedule* which sets out, for each tariff for each *regulatory year* of the *regulatory control period*, the indicative price levels determined in accordance with the *tariff structure statement*.

### 6.18.1B Amending a tariff structure statement with the AER's approval

- (a) No later than nine months before the start of a *regulatory year* (other than the first *regulatory year* of a *regulatory control period*) (**relevant regulatory year**), a *Distribution Network Service Provider* may request the *AER* to approve an amendment to its current *tariff structure statement*.
- (b) A request for an amendment to a *tariff structure statement* under paragraph (a) must include:
- (1) the proposed amended *tariff structure statement*;
  - (2) a description of the event that has occurred to cause the *Distribution Network Service Provider* to seek an amendment to its current *tariff structure statement* and why the event:
    - (i) was beyond the reasonable control of the *Distribution Network Service Provider*; and
    - (ii) could not reasonably have been foreseen by the *Distribution Network Service Provider* at the time its current *tariff structure statement* was approved by the *AER*.
  - (3) a description and justification of the differences between the proposed amended *tariff structure statement* and the *Distribution Network Service Provider's* current *tariff structure statement*;
  - (4) a description of how the differences referred to in sub-paragraph (3) would impact the other elements of the *tariff structure statement*;
  - (5) a description of how the proposed amended *tariff structure statement* would better comply with the *pricing principles for direct control services* than the current *tariff structure statement*; and
  - (6) a description of how the *Distribution Network Service Provider* has engaged with *retail customers* and *retailers* in developing the proposed amended *tariff structure statement* and has sought to address any relevant concerns identified as a result of that engagement.
- (c) The *AER* must, on receipt of a *Distribution Network Service Provider's* request for an amendment to its *tariff structure statement*, *publish* the request.

- (d) The *AER* must approve the request for an amendment to a *tariff structure statement* under paragraph (a) if the *Distribution Network Service Provider* demonstrates to the reasonable satisfaction of the *AER* that:
  - (1) an event has occurred that:
    - (i) was beyond the reasonable control of the *Distribution Network Service Provider*; and
    - (ii) could not reasonably have been foreseen by the *Distribution Network Service Provider* at the time its current *tariff structure statement* was approved by the *AER*; and
  - (2) as a result of the event referred to in sub-paragraph (1), the proposed amended *tariff structure statement* would, or would be likely to, materially better comply with the *pricing principles for direct control services* than the *Distribution Network Service Provider's* current *tariff structure statement*.
- (e) No later than four months before the start of the relevant *regulatory year*, the *AER* must either approve or refuse to approve the request for an amendment to a *tariff structure statement* under paragraph (a) and set out reasons for its decision.
- (f) If the *AER* refuses to approve the request for an amendment to a *tariff structure statement* under paragraph (a), the current *tariff structure statement* will apply for the relevant *regulatory year* and, subject to any subsequent amendment approved under this clause 6.18.1B, the remainder of the *regulatory control period*.

**Note:**

Rule 6.13 still applies in relation to a *tariff structure statement* because that rule deals with the revocation and substitution of a distribution determination (which includes a *tariff structure statement*) as opposed to its amendment.

### 6.18.1C Sub-threshold tariffs

- (a) No later than four months before the start of a *regulatory year* (other than the first *regulatory year* of a *regulatory control period*), a *Distribution Network Service Provider* may notify the *AER*, affected *retailers* and affected *retail customers* of a new proposed tariff (a **relevant tariff**) that is determined otherwise than in accordance with the *Distribution Network Service Provider's* current *tariff structure statement*, if both of the following are satisfied:
  - (1) the *Distribution Network Service Provider's* forecast revenue from the relevant tariff during each *regulatory year* in which the tariff is to apply is no greater than 0.5 per cent of the *Distribution Network Service Provider's* annual revenue requirement for that *regulatory year* (the **individual threshold**); and
  - (2) the *Distribution Network Service Provider's* forecast revenue from the relevant tariff, as well as from all other relevant tariffs, during each *regulatory year* in which those tariffs are to apply is no greater than one per cent of the *Distribution Network Service Provider's* annual

*revenue requirement* for that *regulatory year* (the **cumulative threshold**).

- (b) Notwithstanding any other provision in the *Rules* to the contrary, a relevant tariff notified by the *Distribution Network Service Provider* in accordance with paragraph (a) is, for the remainder of the *regulatory control period* in which the notification is given:
- (1) not required to comply with the *pricing principles for direct control services*; and
  - (2) for the purposes of the submission and approval of a *pricing proposal*, deemed to comply with the *Distribution Network Service Provider's* current *tariff structure statement*,

unless, at any point in time after the notification of the relevant tariff is given under paragraph (a) (the **post-notification point**), either the individual threshold or the cumulative threshold (in each case calculated using actual rather than forecast revenue) are exceeded by virtue of the amount of revenue that is attributable to the relevant tariff, in which case sub-paragraphs (1) and (2) cease to apply to the relevant tariff in relation to the *regulatory years* that commence after the post-notification point.

- (c) Where sub-paragraphs (b)(1) and (2) cease to apply to a relevant tariff in accordance with paragraph (b), then sub-paragraphs (b)(1) and (2) will be taken to continue to apply to other relevant tariffs that were notified before the post-notification point, but only to the extent that those sub-paragraphs would apply if the first-mentioned relevant tariff were not a relevant tariff.

### 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 3 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) **[Deleted]**;
  - (2) set out the proposed tariffs for each *tariff class* that is specified in the *Distribution Network Service Provider's tariff structure statement* for the relevant *regulatory control period*;
  - (3) set out, for each proposed tariff, the *charging parameters* and the elements of service to which each *charging parameter* relates;
  - (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*;

- (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;
  - (6) set out how *designated pricing proposal charges* 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*;
  - (6A) set out how *jurisdictional scheme amounts* for each *approved jurisdictional scheme* are to be passed on to customers and any adjustments to tariffs resulting from over or under recovery of those amounts;
  - (6B) describe how each *approved jurisdictional scheme* that has been amended since the *last jurisdictional scheme approval date* meets the *jurisdictional scheme eligibility criteria*;
  - (7) demonstrate compliance with the *Rules* and any applicable distribution determination, including the *Distribution Network Service Provider's tariff structure statement* for the relevant *regulatory control period*;
  - (7A) demonstrate how each proposed tariff is consistent with the corresponding indicative pricing levels for the relevant *regulatory year* as set out in the relevant *indicative pricing schedule*, or explain any material differences between them; 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.
  - (d) At the same time as a *Distribution Network Service Provider* submits a *pricing proposal* under paragraph (a), the *Distribution Network Service Provider* must submit to the *AER* a revised *indicative pricing schedule* which sets out, for each tariff and for each of the remaining *regulatory years* of the *regulatory control period*, the indicative price levels determined in accordance with the *Distribution Network Service Provider's tariff structure statement* for that *regulatory control period* and updated so as to take into account that *pricing proposal*.
  - (e) Where the *Distribution Network Service Provider* submits an annual *pricing proposal*, the revised *indicative pricing schedule* referred to in paragraph (d) must also set out, for each relevant tariff under clause 6.18.1C, the indicative price levels for that relevant tariff for each of the remaining *regulatory years* of the *regulatory control period*, updated so as to take into account that *pricing proposal*.

### 6.18.3 Tariff classes

- (a) **[Deleted]**.
- (b) Each *retail customer* for *direct control services* must be a member of 1 or more *tariff classes*.

- (c) Separate *tariff classes* must be constituted for *retail customers* to whom *standard control services* are supplied and *retail customers* to whom *alternative control services* are supplied (but a *retail 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 *retail 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 retail customers to tariff classes and assessment and review of basis of charging

- (a) In formulating provisions of a distribution determination governing the assignment of *retail customers* to *tariff classes* or the re-assignment of *retail customers* from one *tariff class* to another, the *AER* must have regard to the following principles:
  - (1) *retail 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 *retail customer's* premises as a result of a *regulatory obligation or requirement*;
  - (2) *retail customers* with a similar *connection* and usage profile should be treated on an equal basis;
  - (3) however, *retail customers* with micro-generation facilities should be treated no less favourably than *retail customers* without such facilities but with a similar load profile;
  - (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

##### Network pricing objective

- (a) The *network pricing objective* is that the tariffs that a *Distribution Network Service Provider* charges in respect of its provision of *direct control services* to a *retail customer* should reflect the *Distribution Network Service Provider's* efficient costs of providing those services to the *retail customer*.

#### **Application of the pricing principles**

- (b) Subject to paragraph (c), a *Distribution Network Service Provider's* tariffs must comply with the pricing principles set out in paragraphs (e) to (j).
- (c) A *Distribution Network Service Provider's* tariffs may vary from tariffs which would result from complying with the pricing principles set out in paragraphs (e) to (g) only:
- (1) to the extent permitted under paragraph (h); and
  - (2) to the extent necessary to give effect to the pricing principles set out in paragraphs (i) to (j).
- (d) A *Distribution Network Service Provider* must comply with paragraph (b) in a manner that will contribute to the achievement of the *network pricing objective*.

#### **Pricing principles**

- (e) For each *tariff class*, the revenue expected to be recovered must lie on or between:
- (1) an upper bound representing the stand alone cost of serving the *retail customers* who belong to that class; and
  - (2) a lower bound representing the avoidable cost of not serving those *retail customers*.
- (f) Each tariff must be based on the *long run marginal cost* of providing the service to which it relates to the *retail customers* assigned to that tariff with the method of calculating such cost and the manner in which that method is applied to be determined having regard to:
- (1) the costs and benefits associated with calculating, implementing and applying that method as proposed;
  - (2) the additional costs likely to be associated with meeting demand from *retail customers* that are assigned to that tariff at times of greatest utilisation of the relevant part of the *distribution network*; and
  - (3) the location of *retail customers* that are assigned to that tariff and the extent to which costs vary between different locations in the *distribution network*.
- (g) The revenue expected to be recovered from each tariff must:
- (1) reflect the *Distribution Network Service Provider's* total efficient costs of serving the *retail customers* that are assigned to that tariff;
  - (2) when summed with the revenue expected to be received from all other tariffs, permit the *Distribution Network Service Provider* to recover the expected revenue for the relevant services in accordance with the applicable distribution determination for the *Distribution Network Service Provider*; and

- (3) comply with sub-paragraphs (1) and (2) in a way that minimises distortions to the price signals for efficient usage that would result from tariffs that comply with the pricing principle set out in paragraph (f).
- (h) A *Distribution Network Service Provider* must consider the impact on *retail customers* of changes in tariffs from the previous *regulatory year* and may vary tariffs from those that comply with paragraphs (e) to (g) to the extent the *Distribution Network Service Provider* considers reasonably necessary having regard to:
  - (1) the desirability for tariffs to comply with the pricing principles referred to in paragraphs (f) and (g), albeit after a reasonable period of transition (which may extend over more than one *regulatory control period*);
  - (2) the extent to which *retail customers* can choose the tariff to which they are assigned; and
  - (3) the extent to which *retail customers* are able to mitigate the impact of changes in tariffs through their usage decisions.
- (ha) However, for a distribution determination for a *Distribution Network Service Provider* in this jurisdiction that will apply or applies during the *1st regulatory control period*, the reference in paragraph (h) to "the previous *regulatory year*" must be regarded as a reference to "the year that precedes the relevant *regulatory year* of the *1st regulatory control period* (which may be the last year of the *2014-19 NT regulatory control period*)".

**Note:**

This paragraph expires on 1 July 2024.

- (i) The structure of each tariff must be reasonably capable of being understood by *retail customers* that are assigned to that tariff, having regard to:
  - (1) the type and nature of those *retail customers*; and
  - (2) the information provided to, and the consultation undertaken with, those *retail customers*.
- (j) A tariff must comply with the *Rules* and all *applicable regulatory instruments*.

### 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* in that *regulatory control period* 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 *designated pricing proposal charges* to retail customers;
  - (3) the recovery of revenue to accommodate pass through of *jurisdictional scheme amounts* for approved *jurisdictional schemes*.
- (e) **[Deleted]**.

#### 6.18.7 Recovery of designated pricing proposal charges

- (a) A *pricing proposal* must provide for tariffs designed to pass on to *retail customers* the *designated pricing proposal charges* to be incurred by the *Distribution Network Service Provider*.
- (b) The amount to be passed on to *retail customers* for a particular *regulatory year* must not exceed the estimated amount of the *designated pricing proposal charges* adjusted for over or under recovery in accordance with paragraph (c).
- (c) The over and under recovery amount must be calculated in a way that:
  - (1) subject to subparagraphs (2) and (3) below, is consistent with the method determined by the *AER* in the relevant distribution determination for the *Distribution Network Service Provider*;
  - (2) ensures a *Distribution Network Service Provider* is able to recover from *retail customers* no more and no less than the *designated pricing proposal charges* it incurs; and
  - (3) adjusts for an appropriate cost of capital that is consistent with the *allowed rate of return* used in the relevant distribution determination for the relevant *regulatory year*.
- (d) Notwithstanding anything else in this clause 6.18.7, a *Distribution Network Service Provider* may not recover charges under this clause to the extent these are:
  - (1) recovered through the *Distribution Network Service Provider's annual revenue requirement*;
  - (2) recovered under clause 6.18.7A; or

- (3) recovered from another *Distribution Network Service Provider*.

### 6.18.7A Recovery of jurisdictional scheme amounts

#### Pricing Proposal

- (a) A *pricing proposal* must provide for tariffs designed to pass on to customers a *Distribution Network Service Provider's jurisdictional scheme amounts* for *approved jurisdictional schemes*.
- (b) The amount to be passed on to customers for a particular *regulatory year* must not exceed the estimated amount of *jurisdictional scheme amounts* for a *Distribution Network Service Provider's approved jurisdictional schemes* adjusted for over or under recovery in accordance with paragraph (c).
- (c) The over and under recovery amount must be calculated in a way that:
- (1) subject to subparagraphs (2) and (3) below, is consistent with the method determined by the *AER* for *jurisdictional scheme amounts* in the relevant distribution determination for the *Distribution Network Service Provider*, or where no such method has been determined, with the method determined by the *AER* in the relevant distribution determination in respect of *designated pricing proposal charges*;
  - (2) ensures a *Distribution Network Service Provider* is able to recover from customers no more and no less than the *jurisdictional scheme amounts* it incurs; and
  - (3) adjusts for an appropriate cost of capital that is consistent with the *allowed rate of return* used in the relevant distribution determination for the relevant *regulatory year*.

#### Jurisdictional schemes

- (d) A scheme is a *jurisdictional scheme* if:
- (1) the scheme is specified in paragraph (e); or
  - (2) the *AER* has determined under paragraph (l) that the scheme is a *jurisdictional scheme*,
- and the *AER* has not determined under paragraph (u) that the scheme has ceased to be a *jurisdictional scheme*.
- (e) For the purposes of paragraph (d)(1), the following schemes are *jurisdictional schemes*:
- (1) schemes established under the following laws of participating jurisdictions:
    - (i) *Electricity Feed-in (Renewable Energy Premium) Act 2008* (ACT);
    - (ii) Division 3AB of the *Electricity Act 1996* (SA);
    - (iii) Section 44A of the *Electricity Act 1994* (Qld);
    - (iv) *Electricity Industry Amendment (Premium Solar Feed-in Tariff) Act 2009* (Vic);

- (2) the Solar Bonus Scheme established under the *Electricity Supply Act 1995* (NSW); and
- (3) the Climate Change Fund established under the *Energy and Utilities Administration Act 1987* (NSW).

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

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

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

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

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

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

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

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

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

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

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

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

**Jurisdictional scheme eligibility criteria**

- (x) The following are the *jurisdictional scheme eligibility criteria*:
  - (1) the *jurisdictional scheme obligations* require a *Distribution Network Service Provider* to:

- (i) pay a person;
  - (ii) pay into a fund established under an Act of a *participating jurisdiction*;
  - (iii) credit against charges payable by a person; or
  - (iv) reimburse a person,  
an amount specified in, or determined in accordance with, the *jurisdictional scheme obligations*;
- (2) the *jurisdictional scheme obligations* are imposed on a *Distribution Network Service Provider* in its capacity as a *Distribution Network Service Provider*;
  - (3) the amount referred to in subparagraph (1) is not in the nature of a fine, penalty or incentive payment for the *Distribution Network Service Provider*; and
  - (4) except as provided in the *Rules*, the *Distribution Network Service Provider* has no right to recover the amount referred to in subparagraph (1) from any person.

#### **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, any relevant clauses in Chapter 11 and any applicable distribution determination including any applicable *tariff structure statement*;
  - (2) each proposed tariff set out in the proposal is broadly consistent with the corresponding indicative pricing levels for that tariff for the relevant *regulatory year* as set out in any previously applicable *indicative pricing schedule*, or else any material differences between them have been explained by the *Distribution Network Service Provider*; and
  - (3) 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 *Distribution Network 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, any applicable distribution determination and the *Distribution Network Service Provider's tariff structure statement* for the relevant *regulatory control period*.

- (c1) For the purposes of amending a *pricing proposal* under sub-paragraph (b)(2) or paragraph (c), the *AER* may have regard to the corresponding indicative pricing levels for the relevant *regulatory year* as set out in any previously applicable *indicative pricing schedule*.
- (c2) The *AER* must, as soon as practicable after a *Distribution Network Service Provider* has submitted an initial *pricing proposal* under sub-paragraph 6.18.2(a)(1), *publish* an *approved pricing proposal* (including any amendments made by the *AER* under this clause 6.18.8) with respect to that initial *pricing proposal*.
- (c3) The *AER* must, within 30 *business days* from the date of submission of an annual *pricing proposal* by a *Distribution Network Service Provider* under sub-paragraph 6.18.2(a)(2), *publish* an *approved pricing proposal* (including any amendments made by the *AER* under this clause 6.18.8) with respect to that annual *pricing proposal*.
- (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

**Note:**

Clause 6.18.9(a)(3) has no effect in this jurisdiction until 1 July 2019 (see regulation 5A of the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations*).

- (a) A *Distribution Network Service Provider* must maintain on its website:
  - (1) its current *tariff structure statement*;
  - (2) its current *indicative pricing schedule*; and
  - (3) a statement of the provider's *tariff classes* and the tariffs applicable to each class.
- (b) A *Distribution Network Service Provider* must, within 5 *business days* from the date the *AER publishes* a distribution determination under paragraph 6.11.2(2) for that *Distribution Network Service Provider*, *publish* on its website the *tariff structure statement* approved or contained in that distribution determination and the accompanying *indicative pricing schedule*.
- (c) A *Distribution Network Service Provider* must *publish* on its website the information referred to in paragraph (a) within 5 *business days* from the date the *AER publishes* an *approved pricing proposal* under paragraphs 6.18.8(c2) or 6.18.8(c3) (as applicable) for that *Distribution Network Service Provider*.

## 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 *NEL* 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.
- (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 *retail 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 charge for *entry service* as a fixed annual charge to each *Embedded Generator*; and
- (ii) by applying any other charge the *Distribution Network Service Provider* makes consistently with the *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 schedule 7A.7 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 *Distribution Customer* who is *financially responsible* for its own connection point) incurs *distribution service charges*, the *Distribution Network Service Provider* must bill the *retailer* 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 *retailer* 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* other than *Embedded Generators* whose sent out generation is not purchased in its entirety by a *Retailer* or *Customer* located at the same connection point; and
  - (2) *Retailer*; and
  - (3) *Second-Tier Customers*;
- must be calculated by the *Distribution Network Service Provider* from:
- (4) *settlements ready data* obtained from *NTESMO's metering database*, for those *Embedded Generators*, *Market Loads*, *Retailers* and *Second-Tier Customers* with *connection points* that have a type 1, 2, 3 or 4 *metering installation*; and
  - (5) *metering data*, in accordance with schedule 7A.7 that allows the *Distribution Network Service Provider* to use *energy data* for this purpose, or otherwise *settlements ready data* obtained from *NTESMO's metering database*, for those *Embedded Generators*, *Market Loads*, *retailers* and *Second-Tier Customers* with *connection points* that have a type 4A, 5, 6 or 7 *metering installation*.
- (f) Charges for *distribution services* based on metered kW, kWh, kVA or kVAh for:
- (1) *Embedded Generators* whose sent out generation is not purchased in its entirety by a *Retailer* or *Customer* located at the same connection point; 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 *Retailer* in determining *energy settlements*.

- (g) The *Distribution Network Service Provider* may bill the relevant *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**

- (a) 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.
- (b) In addition to the minimum information requirements in paragraph (a), a bill for a *network coupling point* issued by a *Distribution Network Service Provider* directly to another *Distribution Network Service Provider* must separately identify the component of *designated pricing proposal services*, if any, to which each amount charged in the bill relates.

#### **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 1 July 2019 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 paragraph (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*.

## Part L Dispute resolution

### 6.22 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 *NEL*.
- (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 *NEL*.
- (c) A dispute between a *Distribution Network Service Provider* and a *Connection Applicant* about matters referred to in clause 5.3AA(f) or clause 5.3AA(h) is an access dispute for the purposes of Part 10 of *NEL*.

### 6.22.2 Determination of dispute

- (a) In determining an access dispute about *terms and conditions of access* to a *direct control service*, the *AER* must apply:
- (1) in relation to price, the *Distribution Network Service Provider's approved pricing proposal* and the *Distribution Network Service Provider's tariff structure statement* or, in respect of the *Distribution Network Service Provider's transmission standard control services* in respect of which the *AER* has made a determination under clause 6.25(b) that pricing in respect of those services should be regulated under Part J of Chapter 6A through the application of rule 6.26, the *Distribution Network Service Provider's approved pricing methodology*;
  - (2) in relation to other terms and conditions, Chapter 5, this Chapter 6, Chapter 7A and any other *applicable regulatory instrument* including but not limited to *jurisdictional electricity legislation*; and
  - (3) in relation to all *terms and conditions of access* (including price) the decisions of the *AER* where those decisions relate to those terms and conditions under Chapter 5, this Chapter 6, Chapter 7A and *jurisdictional electricity legislation* and are made under Chapter 5, this Chapter 6 and Chapter 7A.
- (b) In determining an access dispute about the *terms and conditions of access* to a *direct control service*, the *AER* may:
- (1) have regard to other matters the *AER* considers relevant; and
  - (2) hear evidence or receive submissions from NTESMO about *power system security* and from *Distribution Network Users* who may be adversely affected.

**Note:**

Section 130 of *NEL* 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 Chapter 5, this Chapter 6, Chapter 7A and *jurisdictional electricity legislation*; and
  - (3) in relation to all *terms and conditions of access* (including price) the decisions of the *AER* where those decisions relate to those terms and conditions under Chapter 5, this Chapter 6, Chapter 7A and *jurisdictional electricity legislation* and are made under Chapter 5, this Chapter 6 and Chapter 7;

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 *NTESMO* 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.

**Note:**

The terms and conditions of access in *jurisdiction electricity legislation* referred to in paragraphs (a)(2) and (3) and (c)(2) and (3) will be terms and conditions that correspond to matters set out in Chapter 4 of the *Rules* applying in other *participating jurisdictions*. The application of those paragraphs will be revisited as part of the phased implementation of the *Rules* in this jurisdiction.

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

**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 *NEL*).

## Part M Separate disclosure of transmission and distribution charges

**Note:**

This Part has no effect in this jurisdiction. The application of this Part will be revisited as part of the phased implementation of the *Rules* in this jurisdiction.

### 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 *designated pricing proposal charges* 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 *designated pricing proposal 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 *designated pricing proposal charges* 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*.

## Part N Dual Function Assets

### Note:

This Part has no effect in this jurisdiction. The application of this Part will be revisited as part of the phased implementation of the *Rules* in this jurisdiction.

## 6.24 Dual Function Assets

### 6.24.1 Application of this Part

This Part applies to *Distribution Network Service Providers* which own, control or operate both a *distribution system* and a *dual function asset*.

### 6.24.2 Dual Function Assets

Subject to rule 6.26, for the purposes of Chapters 6 and 6A:

- (a) any part of a *network* owned, operated or controlled by a *Distribution Network Service Provider* which operates between 66 kV and 220 kV and which operates in parallel, and provides support, to the higher voltage *transmission network* is deemed to be a *dual function asset*;
- (b) any service that is provided by a *Distribution Network Service Provider* by means of, or in connection with, the *Distribution Network Service Provider's dual function assets* that, but for this Part, would be a *prescribed transmission service* for the purposes of Chapter 6A is deemed to be a *standard control service*;
- (c) any service that is provided by a *Distribution Network Service Provider* by means of, or in connection with, the *Distribution Network Service Provider's dual function assets* that, but for this Part, would be a *negotiated transmission service* under Chapter 6A is deemed to be a *negotiated distribution service*; and
- (d) references to *prescribed transmission services* do not include a service provided by means of, or in connection with, a *dual function asset*.

## 6.25 AER determination of applicable pricing regime for Dual Function Assets

- (a) A *Distribution Network Service Provider* which owns, controls or operates *dual function assets* must advise the *AER* at least 32 months prior to the end of the current *regulatory control period* of the value of that *Distribution Network Service Provider's dual function assets* which provide *standard control services* that would be *prescribed transmission services* were it not for the operation of clause 6.24.2 (referred to as *transmission standard control services*). The value to be advised is the value ascribed to the relevant *dual function assets* in the relevant *Distribution Network Service Provider's* regulatory asset base as at the start of the *regulatory year* which commences 36 months prior to the end of the current *regulatory control period*.
- (b) The *AER* must review the information provided under paragraph (a) and determine, in accordance with clause 6.8.1, whether the value of that *Distribution Network Service Provider's dual function assets* which provide *transmission standard control services* comprise such a material proportion of that *Distribution Network Service Provider's* regulatory asset base that pricing in respect of those services should be regulated under Part J of Chapter 6A through the application of rule 6.26.
- (c) In making its determination under paragraph (b) the *AER* must consider:

- (1) whether regulating the pricing of the *transmission standard control services* provided by a *Distribution Network Service Provider's dual function assets*:
  - (i) under Part I of Chapter 6 as though they were *prescribed distribution services*; rather than
  - (ii) under Part J of Chapter 6A as though they were *prescribed transmission services*,will result in materially different prices for *Distribution Customers* (including those connected directly to the relevant *dual function assets* and those connected to other *distribution networks*);
- (2) whether the materiality of the different prices is likely to impact on future consumption, production and investment decisions by actual or potential *Network Users*; and
- (3) any other matter that the *AER* considers relevant.
- (d) The *AER's* determination under paragraph (b), which is binding, must be included in a *framework and approach paper* that applies in respect of the distribution determination for the next *regulatory control period*.

## 6.26 Division of Distribution Network Service Provider's revenue

- (a) This rule 6.26 applies if the *AER* has determined under rule 6.25(b) that pricing in respect of *transmission standard control services* provided by a *Distribution Network Service Provider's dual function assets* should be regulated under Part J of Chapter 6A.
- (b) The *AER* must, for the purposes of the distribution determination for the relevant *Distribution Network Service Provider*, divide the revenue calculated under Part C of Chapter 6 into the following two portions:
  - (1) a portion relevant to the *Distribution Network Service Provider's transmission standard control services* provided by its *dual function assets*. This portion is defined as its *transmission standard control service revenue*; and
  - (2) a portion relevant to the other *standard control services* provided by the *Distribution Network Service Provider*. This portion is defined as its *distribution standard control service revenue*,based on the *Distribution Network Service Provider's* approved *Cost Allocation Method*.
- (c) The relevant *Distribution Network Service Provider* must submit a proposed *pricing methodology* to the *AER* in respect of its *transmission standard control service revenue* as if it were a *Transmission Network Service Provider* as part of its regulatory proposal under Chapter 6, and Part E of Chapter 6A applies in respect of that *pricing methodology* (with the necessary changes).
- (d) The *AER* and the relevant *Distribution Network Service Provider* must apply and comply with all aspects of Part J of Chapter 6A instead of, and to the exclusion of, Parts I, J and K of Chapter 6 in respect of the *dual function*



*assets* which provide *transmission standard control services*, subject to the following:

- (1) for the purposes of Part J of Chapter 6A:
    - (i) the *dual function assets* are relevantly deemed to be *transmission network assets* which provide *prescribed transmission services*;
    - (ii) the *Distribution Network Service Provider* which owns, controls or operates the relevant *dual function assets* is relevantly deemed to be a *Transmission Network Service Provider*;
  - (2) the *maximum allowed revenue* referred to in clause 6A.22.1 is taken to be the *transmission standard control service revenue*;
  - (3) the reference in clause 6A.22.1(1) to clause 6A.3.2 is taken to be a reference to rules 6.6 and 6.13;
  - (4) references to "*transmission determination*" are to be read as references to the relevant "*distribution determination*", with the *AER* being required to include in the distribution determination a decision to approve a proposed *pricing methodology* in relation to the *transmission standard control services* provided by the relevant *dual function assets*; and
  - (5) if there is no previous method to establish prices under clause 6A.24.3(b)(3), the relevant *Distribution Network Service Provider* must apply the *pricing methodology* of the largest *Transmission Network Service Provider* operating in the *participating jurisdiction* in which that *Distribution Network Service Provider* operates the relevant *dual function assets*.
- (e) The pricing rules in Part I of Chapter 6 are to be applied to the *Distribution Network Service Provider's distribution standard control service revenue*.

## **Part O Annual Benchmarking Report**

### **6.27 Annual Benchmarking Report**

- (a) The *AER* must prepare and *publish a network service provider performance report* (an *annual benchmarking report*) the purpose of which is to describe, in reasonably plain language, the relative efficiency of each *Distribution Network Service Provider* in providing *direct control services* over a 12 month period.
- (b) Clause 8.7.4 (excluding clause 8.7.4(a)) applies in respect of the preparation of an *annual benchmarking report*.
- (c) Subject to paragraphs (d) and (e), the *AER* must *publish an annual benchmarking report* at least every 12 months.
- (d) The first *annual benchmarking report* must be *published* by 30 September 2014.
- (e) The second *annual benchmarking report* must be *published* by 30 November 2015.

## Part P Distribution Reliability Measures Guidelines

### 6.28 Distribution Reliability Measures Guidelines

- (a) The *AER* must in accordance with the *distribution consultation procedures* make and *publish* guidelines (the *Distribution Reliability Measures Guidelines*) that describe a set of common definitions of reliability measures that can be used to assess and compare the reliability performance of *Distribution Network Service Providers*.
- (b) There must be *Distribution Reliability Measures Guidelines* in force at all times after the date on which the *AER* first *publishes* *Distribution Reliability Measures Guidelines* under the *Rules*.
- (c) The *AER* must review the *Distribution Reliability Measures Guidelines* at least every 5 years.

### 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 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;
  - (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*;
- (5A) in the case of a *building block proposal* for a distribution determination for a *Distribution Network Service Provider* in this jurisdiction that will apply during the *1st regulatory control period*:
  - (i) capital expenditure for each of the past years of the *2009-14 NT regulatory control period* and *2014-19 NT regulatory control period*, and the expected capital expenditure for each of the last two years of

- the *2014-19 NT regulatory control period*, categorised in the same way as for the capital expenditure forecast and separately identifying for each such year:
- (A) margins paid or expected to be paid by the *Distribution Network Service Provider* in circumstances where those margins are referable to arrangements that do not reflect arm's length terms; and
  - (B) expenditure that should have been treated as operating expenditure in accordance with the policy submitted under paragraph (8) for that year; and
- (ii) an explanation of any significant variations in the forecast capital expenditure from capital expenditure in the *2009-14 NT regulatory control period* and *2014-19 NT regulatory control period*;
- (5B) in the case of a *building block proposal* for a distribution determination for a *Distribution Network Service Provider* in this jurisdiction that will apply during the *2nd regulatory control period*:
- (i) capital expenditure for each of the past years of the *2014-19 NT regulatory control period* and each of the past regulatory years of the *1st regulatory control period*, and the expected capital expenditure for each of the last two *regulatory years* of the *1st regulatory control period*, categorised in the same way as for the capital expenditure forecast and separately identifying for each such year:
    - (A) margins paid or expected to be paid by the *Distribution Network Service Provider* in circumstances where those margins are referable to arrangements that do not reflect arm's length terms; and
    - (B) expenditure that should have been treated as operating expenditure in accordance with the policy submitted under paragraph (8) for that year; and
  - (ii) an explanation of any significant variations in the forecast capital expenditure from capital expenditure in the *2014-19 NT regulatory control period* and *1st regulatory control period*; and
- (6) in the case of a *building block proposal* for a distribution determination for a *Distribution Network Service Provider* in this jurisdiction that will apply after the *2nd regulatory control period* – 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 and separately identifying for each such *regulatory year*:
- (i) margins paid or expected to be paid by the *Distribution Network Service Provider* in circumstances where those margins are referable to arrangements that do not reflect arm's length terms; and

- (ii) expenditure that should have been treated as operating expenditure in accordance with the policy submitted under paragraph (8) for that *regulatory year*;
- (7) in the case of a *building block proposal* for a distribution determination for a *Distribution Network Service Provider* in this jurisdiction that will apply after the *2nd regulatory control period* – an explanation of any significant variations in the forecast capital expenditure from historical capital expenditure; and
- (8) the policy that the *Distribution Network Service Provider* applies in capitalising operating expenditure.

**Note:**

The modifications to this clause expire on 1 July 2029.

### **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 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*;
- (6A) in the case of a *building block proposal* for a distribution determination for a *Distribution Network Service Provider* in this jurisdiction that will apply during the *1st regulatory control period*:

- (i) operating expenditure for each of the past years of the *2009-14 NT regulatory control period* and *2014-19 NT regulatory control period*, and the expected operating expenditure for each of the last two years of the *2014-19 NT regulatory control period*, categorised in the same way as for the operating expenditure forecast; and
  - (ii) an explanation of any significant variations in the forecast operating expenditure from operating expenditure in the *2009-14 NT regulatory control period* and *2014-19 NT regulatory control period*;
- (6B) in the case of a *building block proposal* for a distribution determination for a *Distribution Network Service Provider* in this jurisdiction that will apply during the *2nd regulatory control period*:
- (i) operating expenditure for each of the past years of the *2014-19 NT regulatory control period* and each of the past *regulatory years* of the *1st regulatory control period*, and the expected operating expenditure for each of the last two *regulatory years* of the *1st regulatory control period*, categorised in the same way as for the operating expenditure forecast; and
  - (ii) an explanation of any significant variations in the forecast operating expenditure from operating expenditure in the *2014-19 NT regulatory control period* and the *1st regulatory control period*;
- (7) in the case of a *building block proposal* for a distribution determination for a *Distribution Network Service Provider* in this jurisdiction that will apply after the *2nd regulatory control period* – 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) in the case of a *building block proposal* for a distribution determination for a *Distribution Network Service Provider* in this jurisdiction that will apply after the *2nd regulatory control period* – an explanation of any significant variations in the forecast operating expenditure from historical operating expenditure.

**Note:**

The modifications to this clause expire on 1 July 2029.

### **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) **[Deleted]**
- (3) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes any *efficiency benefit sharing scheme* that has been specified in a *framework and approach paper*

that applies in respect of the forthcoming distribution determination should apply to it;

- (3A) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes any *capital expenditure sharing scheme* that has been specified in a *framework and approach paper* that applies in respect of the forthcoming distribution determination should apply to it;
- (4) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes any *service target performance incentive scheme* that has been specified in a *framework and approach paper* that applies in respect of the forthcoming distribution determination should apply to it;
- (5) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes any *demand management incentive scheme* or *demand management innovation allowance mechanism* that has been specified in a *framework and approach paper* that applies in respect of the forthcoming distribution determination should apply to it;
- (5A) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes any *small-scale incentive scheme* that has been specified in a *framework and approach paper* that applies in respect of the forthcoming distribution determination should apply to it;
- (6) the *Distribution Network Service Provider's* calculation of revenues or prices for the purposes of the control mechanism proposed by the *Distribution Network Service Provider* together with:
  - (i) details of all amounts, values and inputs (including X factors) relevant to the calculation;
  - (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 *NEL* and the *Rules*;
- (7) the *Distribution Network Service 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, together with:
  - (i) details of all amounts, values and other inputs used by the *Distribution Network Service Provider* for that purpose;
  - (ii) a demonstration that any such amounts, values and other inputs comply with the relevant requirements of Part C of 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) **[Deleted]**.

- (9) the *Distribution Network Service Provider's* calculation of the *allowed rate of return* for each *regulatory year* of the relevant *regulatory control period*;
- (9A) the *Distribution Network Service Provider's* calculation of the *allowed imputation credits* for each *regulatory year* of the *regulatory control period*;
- (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 *Distribution Network Service 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 , 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 *Distribution Network Service Provider* to compile those depreciation schedules;
  - (iv) a demonstration that those depreciation schedules conform with the requirements set out in clause 6.5.5(b) ; and
  - (v) an explanation of the calculation of the amounts, values and inputs referred to in subparagraph (iii);
- (13) the commencement and length of the *regulatory control period* proposed by the *Distribution Network Service Provider*; and
- (14) if the *Distribution Network Service Provider* is seeking a determination by the *AER* that a *proposed contingent project* is a *contingent project* for the purposes of the relevant distribution determination:
  - (i) a description of the *proposed contingent project*, including reasons why the *Distribution Network Service Provider* considers the project should be accepted as a *contingent project* for the *regulatory control period*;
  - (ii) a forecast of the capital expenditure which the *Distribution Network Service Provider* considers is reasonably required for the purpose of undertaking the *proposed contingent project*;
  - (iii) the methodology used for developing that forecast and the key assumptions that underlie it;
  - (iv) information that demonstrates that the undertaking of the *proposed contingent project* is reasonably required in order to achieve one or more of the *capital expenditure objectives*;
  - (v) information that demonstrates that the *proposed contingent capital expenditure* for the *proposed contingent project* complies with the requirements set out in clause 6.6A.1(b)(2); and

- (vi) the *trigger events* which are proposed in relation to the *proposed contingent project* and an explanation of how each of those conditions or events addresses the matters referred to in clause 6.6A.1(c).

## 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*.

However, this clause S6.2.1 does not apply to the establishment of the value of the regulatory asset base for a *distribution system* in this jurisdiction as at the beginning of the *1st regulatory control period*.

**Note:**

See clause S6.2.3A for the establishment of the value of the regulatory asset base for a *distribution system* in this jurisdiction as at the beginning of the *1st regulatory control period*. Also see rule 6.0(b)(2) for the treatment of *distribution systems* in this jurisdiction for the purposes of this schedule.

(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 S6.2.3 and S6.2.3A.

(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 Capital Territory | ActewAGL                                     | 510.54 (as at 1 July 2004 in July 2004 dollars) |
| New South Wales              | Country Energy                               | 2,440 (as at 1 July 2004 in July 2004)          |



| <b>Jurisdiction</b> | <b><i>Distribution Network Service Provider</i></b> | <b>Regulatory Asset Base (\$m)</b>  |
|---------------------|---|---|
|                     |   | dollars)  |
|                     | EnergyAustralia                                     | 4,116 (as at 1 July 2004 in July 2004 dollars)  |
|                     | Integral Energy                                     | 2,283 (as at 1 July 2004 in July 2004 dollars)  |
| Queensland          | ENERGEX   | 4,308.1 (as at 1 July 2005 in July 2005 dollars)  |
|                     | Ergon Energy  | 4,198.2 (as at 1 July 2005 in July 2005 dollars) but, if the Queensland Competition Authority nominates a different amount in writing to the <i>AER</i> , the regulatory asset base is the amount so nominated. |
| South Australia     | ETSA Utilities                                      | 2,466 (as at 1 July 2005 in December 2004 dollars)  |
| Tasmania            | Aurora Energy                                       | 981.108 (as at 1 January 2008 in July 2006 dollars)   |
| Victoria            | AGL Electricity                                     | 578.4 (as at 1 January 2006 in July 2004 dollars)   |
|                     | Citipower   | 990.9 (as at 1 January 2006 in July 2004 dollars)   |
|                     | Powercor  | 1,626.5 (as at 1 January 2006 in July 2004 dollars)   |
|                     | SP AusNet   | 1,307.2 (as at 1 January 2006 in July 2004 dollars)   |
|                     | United Energy                                       | 1,220.3 (as at 1 January 2006 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) **Other distribution systems**

- (1) This paragraph (d) applies to a *distribution system* not referred to in paragraphs (c) when *standard control services* that are provided by means of, or in connection with, that system are to be regulated under a *building block determination*.
- (2) The value of the regulatory asset base for that *distribution system* as at the beginning of the first *regulatory year* of the first *regulatory control period* for the relevant *Distribution Network Service Provider* is the prudent and efficient value of the assets that are used by the provider to provide those *standard control services* (but only to the extent that they are used to provide such services), as determined by the *AER*. In determining this value, the *AER* must have regard to the matters referred to in clause S6.2.2.
- (3) The value of the regulatory asset base for that *distribution system* as at the beginning of the first *regulatory year* of any subsequent *regulatory control period* must be determined by rolling forward the value of the regulatory asset base for that *distribution system* as at the beginning of the first *regulatory year* of the first *regulatory control period* in accordance with this schedule.

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

Except as otherwise provided in paragraph (c) or (d) and subject to paragraph (g), 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) Subject to subparagraph (e)(9), the previous value of the regulatory asset base must be:
  - (i) increased by the amount of all capital expenditure incurred during the previous control period, including any capital expenditure determined for that period under clause 6.6A.2(e)(1)(i) in relation to *contingent projects* where the distribution determination has been amended by the *AER* in accordance with clause 6.6A.2(h) (regardless of whether such capital expenditure is above or below the forecast capital expenditure for the period that is adopted for the purposes of the distribution determination (if any) for that period); and

- (ii) reduced by the amount of any capital expenditure that has been recovered by way of a pass through under clause 6.6.1 where the amount of that capital expenditure would otherwise have been included in the value of the regulatory asset base.
- (2) The previous value of the regulatory asset base must be increased by the amount of the estimated capital expenditure approved by the *AER* for any part of the previous control period for which actual capital expenditure is not available, including any capital expenditure in relation to *contingent projects* where the *total revenue requirement* has been amended by the *AER* in accordance with clause 6.6A.2(h).
  - (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.

- (3A) However, in calculating the value of the regulatory asset base for a *distribution system* in this jurisdiction as at the beginning of the first *regulatory year* of the *2nd regulatory control period*, the previous value of the regulatory asset base must be adjusted for the difference between:
  - (i) the estimated capital expenditure for any part of the *2014-19 NT regulatory control period* or *1st 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 *2014-19 NT regulatory control period* or *1st regulatory control period*.

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

**Note:**

This subparagraph expires on 1 July 2029.

- (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 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) Subject to subparagraph (e)(9), 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 value of the asset has not been otherwise recovered.

This subparagraph applies to an asset that:

- (iii) 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
  - (iv) 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*.
- (9) The previous value of the regulatory asset base must not be increased by the value of *expenditure for a restricted asset* incurred during the relevant *regulatory control period*, unless the capital expenditure for that asset or that class of asset for that *regulatory control period* was the subject of an *asset exemption* granted by the *AER* under clause 6.4B.1(a).
- (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 portion of the value of the asset properly allocated, or formerly 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*. The value of the relevant asset is taken to be its value as shown in independently audited and published accounts.
  - (g) The previous value of the regulatory asset base must be reduced by any amount determined by the *AER* in accordance with clause S6.2.2A(f), (i) or (j).

### **S6.2.2 Prudency and efficiency of capital expenditure**

In determining the prudency or efficiency of capital expenditure under clause S6.2.1(d)(2), the *AER* must have regard to the following:

- (1) the need to provide a reasonable opportunity for the relevant *Distribution Network Service Provider* to recover the efficient costs of complying with all applicable *regulatory obligations or requirements* associated with the provision of *standard control services*;
- (2) the need to provide effective incentives to the *Distribution Network Service Provider* to promote economic efficiency in the provision of *standard control services*;
- (3) whether the relevant project in respect of which capital expenditure was made was evaluated against, and satisfied, the *regulatory investment test for transmission* or the *regulatory investment test for distribution* (as the case may be);
- (4) whether the *Distribution Network Service Provider* undertook the capital expenditure in a manner consistent with good business practice and so as to practicably achieve the lowest sustainable cost of delivering the *standard control services* to be provided as a consequence of that capital expenditure;
- (5) the desirability of minimising investment uncertainty for the *Distribution Network Service Provider*;
- (6) the need to provide incentives to the *Distribution Network Service Provider* to avoid undertaking inefficient capital expenditure;
- (7) the value of the relevant asset as shown in independently audited and published accounts.

In determining the prudence or efficiency of capital expenditure the *AER* must only take into account information and analysis that the *Distribution Network Service Provider* could reasonably be expected to have considered or undertaken at the time that it undertook the relevant capital expenditure.

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

- (a) Prior to making a decision on the regulatory asset base for a *distribution system* as required by clause 6.12.1(6), the *AER* may determine under this clause S6.2.2A that the amount of capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) should be reduced.
  - (a1) for the purposes of this clause S6.2.2A, "**review period**" means:
    - (1) the previous control period (excluding the last two *regulatory years* of that previous control period); and
    - (2) the last two *regulatory years* of the *regulatory control period* preceding the previous control period.
  - (a2) However, for a decision on the regulatory asset base for a *distribution system* in this jurisdiction as at the commencement of the *2nd regulatory control period*, "**review period**" means only the previous control period (excluding the last two *regulatory years* of that previous control period).

**Note:**

This paragraph expires on 1 July 2029.

- (b) The *AER* may only make a determination under paragraph (a) if any of the following requirements is satisfied:
  - (1) the requirement set out in paragraph (c) (the *overspending requirement*);
  - (2) the requirement set out in paragraph (d) (the *margin requirement*); or
  - (3) the requirement set out in paragraph (e) (the *capitalisation requirement*).
- (c) The *overspending requirement* is satisfied where the sum of all capital expenditure incurred during the review period exceeds the sum of:
  - (1) the forecast capital expenditure accepted or substituted by the *AER* for the review period as such forecast capital expenditure has been adjusted in accordance with clauses 6.6.5(f) and 6.6A.2(h); and
  - (2) any capital expenditure that is recovered by way of such part of an *approved pass through amount* as is permitted to be passed through to *Distribution Network Users* during the review period less any capital expenditure that is included in a *negative pass through amount* that is required to be passed through to *Distribution Network Users* during the review period.
- (d) The *margin requirement* is satisfied where the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) includes capital expenditure that represents a margin paid by the *Distribution Network Service Provider* in circumstances where the margin is referable to arrangements that, in the opinion of the *AER*, do not reflect arm's length terms.
- (e) The *capitalisation requirement* is satisfied where the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) includes expenditure that, under the *Distribution Network Service Provider's* applicable capitalisation policy submitted to the *AER* as part of a *regulatory proposal*, should have been treated as operating expenditure.
- (f) Where the *overspending requirement* is satisfied, and subject to paragraphs (g) and (h), the *AER* may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) should be reduced by such amount as the *AER* is satisfied corresponds to capital expenditure incurred during the review period that does not reasonably reflect the *capital expenditure criteria*.
- (g) The amount determined by the *AER* under paragraph (f):
  - (1) must not be greater than the amount calculated in accordance with paragraph (c);
  - (2) must be determined in a manner that is consistent with the *capital expenditure incentive objective*; and
  - (3) must be determined taking into account the *Capital Expenditure Incentive Guidelines*.

- (h) In making a determination under paragraph (f), the *AER* must:
- (1) have regard to the *capital expenditure factors*; and
  - (2) only take into account information and analysis that the *Distribution Network Service Provider* could reasonably be expected to have considered or undertaken at the time that it undertook the relevant capital expenditure.
- (i) Where the *margin requirement* is satisfied, and subject to paragraph (k), the *AER* may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) should be reduced by such of the margin referred to in paragraph (d) as the *AER* is reasonably satisfied would not have been paid if the arrangements to which the margin is referable had been on arm's length terms.
- (j) Where the *capitalisation requirement* is satisfied, and subject to paragraph (k), the *AER* may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6.2.1(e) should be reduced by any or all of the amount of expenditure referred to in paragraph (e) which should have been treated as operating expenditure .
- (k) A determination made under paragraph (i) or (j) must be consistent with the *capital expenditure incentive objective* and, in making such a determination, the *AER* must take into account the *Capital Expenditure Incentive Guidelines*.
- (l) Nothing in this clause S6.2.2A is to be taken to preclude the *AER* from:
- (1) requiring a *Distribution Network Service Provider* to provide such information; or
  - (2) undertaking such analysis,
- as the *AER* considers appropriate to enable it to make a statement, with supporting reasons, as referred to in clause 6.12.2(b).

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

**Note:**

Clause S6.2.2B(b) and (c) has no effect in this jurisdiction until 1 July 2019 (see regulation 5A of the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations*).

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

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

### **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 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) and (3A) (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.

**S6.2.3A Establishment of opening regulatory asset base for distribution system in this jurisdiction for 1st 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* in this jurisdiction as at the beginning of the *1st regulatory control period*.

(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.

(c) **Previous value of regulatory asset base for distribution system in this jurisdiction**

For paragraph (d), the previous value of the regulatory asset base for all *distribution systems* in this jurisdiction that are owned, controlled or operated by the *Distribution Network Service Provider* mentioned in the table below is as set out in the table:

| Jurisdiction       | Distribution Network Service Provider          | Regulatory Asset Base (\$m)                     |
|--------------------|--|---|
| Northern Territory | Power and Water Corporation ABN 15 947 352 360 | 860.65 (as at 1 July 2014 in July 2014 dollars) |

(d) **Method of adjustment of value of regulatory asset base**

The value of the regulatory asset base for the *distribution systems* mentioned in paragraph (c) as at the beginning of the first *regulatory year* of the *1st regulatory control period* must be calculated by adjusting the previous value (the **previous value**) of the regulatory asset base for the *distribution systems* as specified in paragraph (c) as follows:

(1) The previous value of the regulatory asset base must be:

(i) increased by the amount of all capital expenditure incurred during the *2014-19 NT regulatory control period* (the **previous control period**), including any capital expenditure determined for that period under clause 3.2.4(d)(i)(A) of Part B of the *2014 NT Network Price Determination* where the Determination has been amended under clause 3.2.4(d)(iii) of the Determination

(regardless of whether such capital expenditure is above or below the forecast capital expenditure for the period that is adopted for the purposes of the Determination (if any) for that period); and

- (ii) reduced by the amount of any capital expenditure that has been recovered by way of a pass through under clause 3.1 of Part B of the *2014 NT Network Price Determination* where the amount of that capital expenditure would otherwise have been included in the value of the regulatory asset base.
- (2) The previous value of the regulatory asset base must be increased by the amount of the estimated capital expenditure approved by the *Utilities Commission* or *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 the *2009-14 NT regulatory control period* or *2014-19 NT 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 *2009-14 NT regulatory control period* or *2014-19 NT 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 estimated or actual capital expenditure to the extent that all such capital expenditure is properly allocated to the provision of *NT equivalent services* in accordance with the Cost Allocation Methodology (as amended, varied or substituted from time to time) that is the subject of the *Utilities Commission's* final decision referred to in Chapter 5 of Part A of the *2014 NT Network Price Determination*.
- (5) The previous value of the regulatory asset base must be reduced by the amount of depreciation of the regulatory asset base during the previous control period, calculated in accordance with the *2014 NT Network Price Determination*.
- (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 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 *NT equivalent services* but, as a result of the classification of the asset under Part B, the asset is not to be used to provide *standard control services* for the *1st 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 value of the asset has not been otherwise recovered.

This subparagraph applies to an asset that:

- (i) was not used to provide *NT equivalent services* in the previous control period but, as a result of a change to the classification of a particular service under Part B, is to be used to provide *standard control services* for the *1st regulatory control period*; or
  - (ii) was never previously used to provide *NT equivalent services* but is to be used to provide *standard control services for the 1st regulatory control period*.
- (e) An increase or reduction in the value of the regulatory asset base under paragraph (d)(7) or (8) is to be based on the portion of the value of the asset properly allocated, or formerly properly allocated, to *NT equivalent services* in accordance with the principles and policies set out in the Cost Allocation Methodology (as amended, varied or substituted from time to time) that is the subject of the *Utilities Commission's* final decision referred to in Chapter 5 of Part A of the *2014 NT Network Price Determination*. The value of the relevant asset is taken to be its value as shown in independently audited and published accounts.