

Indicative changes to the National Electricity Rules proposed in *Draft National Electricity Amendment (Establishing revenue determinations for Intending TNSPs) Rule 2022*

Note:

This document shows indicative changes to the relevant parts of the National Electricity Rules (NER) proposed to be made by the *Draft National Electricity Amendment (Establishing revenue determinations for Intending TNSPs) Rule 2022*. This modified version of parts of the NER is provided to assist in responding to the draft rule and should not be used for any other purpose. The Australian Energy Market Commission does not guarantee the accuracy, reliability or completeness of this version of the NER.

CHAPTER 6A

6A. Economic Regulation of Transmission Services

6A.8 Contingent Projects

6A.8.2 **Amendment Incorporation of contingent project in revenue determination for contingent project**

- (a) A *Transmission Network Service Provider* may, during a *regulatory control period*, apply to the *AER* to amend a *revenue determination* that applies to that *Transmission Network Service Provider* where:
- (1) for a *contingent project* in a *revenue determination*, a *trigger event* for a *contingent project* in relation to that *revenue determination* has occurred; or
 - (2) for an *actionable ISP project*, the *trigger event* under clause 5.16A.5 has occurred.
- (a1) An application referred to in paragraph (a) must be made as soon as practicable after the occurrence of the *trigger event*.
- (a2) An Intending TNSP may, prior to the first regulatory control period of the first revenue determination that will apply to that Intending TNSP, apply to the AER to include in that revenue determination the amounts determined in accordance with this clause 6A.8.2 if, for an actionable ISP project, the trigger event under clause 5.16A.5 has occurred.
- (a3) An application may be made under paragraph (a2) at the same time as a request under clause 6A.10.2(a).
- (b) An application made under paragraph (a) or (a2) must contain the following information (as applicable):
- (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-relevant~~ *regulatory year* which the *Transmission 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 6A.8.1(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*);
 - (7) an estimate of the incremental revenue which the *Transmission Network Service Provider* considers is likely to be required to be earned in each ~~remaining-relevant~~ *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 6A.5.2;
 - (ii) in accordance with the requirements of the *roll forward model* referred to in clause 6A.6.1(b);
 - (iii) using the *allowed rate of return* for that *Transmission Network Service Provider* for the *regulatory control period* as determined in accordance with clause 6A.6.2;
 - (iv) in accordance with the requirements for depreciation referred to in clause 6A.6.3;
 - (v) on the basis of the capital expenditure and incremental operating expenditure referred to in subparagraph (b)(3); and
- (8) if paragraph (n) applies, a forecast of the total capital expenditure and the total incremental operating expenditure for the *contingent project* for the subsequent *regulatory control period*.
- (c) As soon as practicable after its receipt of an application made in accordance with paragraphs (a), (a1), (a2) 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 (h1). In doing so the *AER* may also take into account such other information as it considers appropriate, including any analysis (such as benchmarking) that is undertaken by it for that purpose.
- (e) If the *AER* is satisfied that the *trigger event* has occurred, and that the forecast of the total capital expenditure for the *contingent project* meets the threshold as referred to in clause 6A.8.1(b)(2)(iii), it must:
- (1) determine (as applicable):
 - (i) the amount of capital and incremental operating expenditure, for each *remaining-relevant 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*;
 - (iv) the incremental revenue which is likely to be required by the *Transmission Network Service Provider* in each *remaining relevant regulatory year* as a result of the *contingent project* being undertaken as described in clause 6A.8.2(e)(1)(i) and (ii), such estimate being calculated in accordance with subparagraph (2); and
-

- (v) if paragraph (n) applies, the total capital expenditure and the total incremental operating expenditure which the *AER* considers is reasonably required for the purpose of undertaking the *contingent project* in the subsequent *regulatory control period*;
 - (2) calculate the estimate referred to in subparagraph (1)(iv):
 - (i) on the basis of the capital expenditure referred to in subparagraph (1)(i);
 - (ii) to include the incremental operating expenditure referred to in subparagraph (1)(i); and
 - (iii) otherwise in accordance with paragraph (b); and
 - (3) amend or incorporate amounts into the relevant *revenue determination* in accordance with paragraph (h) and if applicable paragraph (n) or (o).
 - (f) In making the determinations referred to in subparagraph (e)(1), the *AER* must accept the relevant amounts and dates, contained in the *Transmission Network Service Provider's* application, as referred to in subparagraphs (b)(2) to (8), 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 6A.8.1(b)(2)(iii);
 - (2) the amounts of forecast capital expenditure and incremental operating expenditure reasonably reflect the *capital expenditure criteria* and the *operating expenditure criteria*, taking into account the *capital expenditure factors* and the *operating expenditure factors* respectively, in the context of the *contingent project*;
 - (3) the estimates of incremental revenue are reasonable; and
 - (4) the dates are reasonable.
 - (g) In making the determinations referred to in subparagraph (e)(1) and paragraph (f), the *AER* must have regard to:
 - (1) the information included in or accompanying the application;
 - (2) submissions received in the course of consulting on the application;
 - (3) such analysis as is undertaken by or for the *AER*;
 - (4) the expenditure that would be incurred in respect of a *contingent project* by an efficient and prudent operator in the circumstances of the *Transmission Network Service Provider*;
 - (5) the actual and expected capital expenditure of the *Transmission 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 *Transmission 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 *Transmission Network Service Provider* under clauses 6A.6.5, 6A.6.5A, 6A.7.4, 6A.7.5 or 6A.7.6.
- (h) Amendments to or incorporation of amounts into a *revenue determination* referred to in paragraph (e)(3) must only vary the determination to the extent necessary:
- (1) to adjust the forecast capital expenditure for the relevant *regulatory control period* to accommodate the amount of capital expenditure determined under subparagraphs (e)(1)(i) or (e)(1)(v) (in which case the amount of that adjustment will be taken to be accepted by the *AER* under clause 6A.6.7(c));
 - (2) to adjust the forecast operating expenditure for the relevant *regulatory control period* to accommodate the amount of incremental operating expenditure determined under subparagraphs (e)(1)(i) or (e)(1)(v) (in which case the amount of that adjustment will be taken to be accepted by the *AER* under clause 6A.6.6(c)); and
 - (3) to reflect the effect of any resultant increase in forecast capital and operating expenditure on:
 - (i) the *maximum allowed revenue* for each relevant *regulatory year* in ~~the remainder of~~ the relevant *regulatory control period*; and
 - (ii) the X factor for each relevant *regulatory year* in ~~the remainder of~~ the relevant *regulatory control period*.
- (h1) A *Transmission Network Service Provider* must provide the *AER* with such additional information as the *AER* requires for the purpose of making a decision on an application made by that *Transmission Network Service Provider* under paragraph (a) or (a2) (as relevant) within the time specified by the *AER* in a notice provided to the *Transmission Network Service Provider* by the *AER* for that purpose.

Extension of time limit

- (i) If the *AER* is satisfied that amending or incorporating amounts into a *revenue determination* under subparagraph (e)(3) and paragraph (h) or if paragraph (n) or (o) applies, determining the total capital expenditure and the total incremental operating expenditure under subparagraph (e)(1)(v), involves issues of such complexity or difficulty that the time limit fixed in paragraph (d) should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the *Transmission Network Service Provider* of that extension no later than 10 *business days* before the expiry of that time limit.
- (j) If the *AER* extends the time limit under paragraph (i), it must make available on its website a notice of that extension as soon as is reasonably practicable.
- (k) Subject to paragraph (k3), if the *AER* gives a written notice to the *Transmission Network Service Provider* stating that it requires information

from an *Authority* in order to make a decision on an application made by the *Transmission Network Service Provider* under paragraph (a) or (a2) then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Transmission Network Service Provider* and when the *AER* receives that information from that *Authority* is to be disregarded.

- (k1) Subject to paragraph (k3), if the *AER* gives a written notice to the *Transmission Network Service Provider* stating that, in order to make a decision on an application made by the *Transmission Network Service Provider* under paragraph (a) or (a2), it requires information from a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Transmission Network Service Provider* and when that information is made publicly available is to be disregarded.
- (k2) Where the *AER* gives a notice to the *Transmission Network Service Provider* under paragraph (k) or (k1), it must:
 - (1) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (k) or (k1), as the case may be, has commenced;
 - (2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (k) or (k1), as the case may be, has ended; and
 - (3) if the information specified in that notice is required from an *Authority*, promptly request that information from the relevant *Authority*.
- (k3) Paragraphs (k) and (k1) do not apply if the *AER* gives the notice specified in those paragraphs to the *Transmission Network Service Provider* later than 10 *business days* before the expiry of the time limit fixed in paragraph (d).

Amendment of incorporation into revenue determination

- (l) Except where paragraph (m) or (n) applies, if the *AER* amends a *revenue determination* under paragraph (h), that amendment must take effect from the commencement of the next *regulatory year*.
- (m) Except where paragraph (n) applies, if a *Transmission Network Service Provider* submits an application under paragraph (a) within 90 *business days* of the end of a *regulatory year*, an amendment to the *revenue determination* must take effect from the second *regulatory year* that commences after the application is submitted.
- (n) If a *Transmission Network Service Provider* submits an application under paragraph (a) in the final *regulatory year* of a *regulatory control period* or during the last 90 *business days* of the penultimate *regulatory year* of the *regulatory control period* and the *AER* makes a determination under subparagraph (e)(1)(v), then the *AER* must within 6 months following the making of the *revenue determination* for the subsequent *regulatory control period*, amend that *revenue determination*:
 - (1) with effect from the second *regulatory year* of that subsequent *regulatory control period* in accordance with paragraphs (h) and (n);

- (2) to include the incremental revenue which is likely to be required by the *Transmission Network Service Provider* in each *regulatory year* (other than the first *regulatory year*) as a result of the *contingent project*, such estimate being calculated on the basis of:
- (i) the amounts determined under paragraph (e)(1)(v);
 - (ii) paragraph (b)(7) applying in respect of the subsequent *regulatory control period*; and
 - (iii) providing the *Transmission Network Service Provider* with the time cost of money based on the *allowed rate of return* for the provider for the relevant *regulatory control period* arising from the delay in the amendment of the current and/or subsequent *revenue determination*.
- (o) If an *Intending TNSP* submits an application under paragraph (a2), then the *AER* must include in the *revenue determination* for the first *regulatory control period* the amounts determined under subparagraph (e)(1).

Part D [Deleted]

Part E Procedure - Revenue determinations and pricing methodologies

6A.10 Revenue Proposal and proposed pricing methodology

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

- (a) Subject to paragraph (a1), the *AER* must make and publish a document (a *framework and approach paper*) that applies in respect of a *revenue determination* for a matter listed in paragraph (b) in accordance with this clause if:
- (1) there is no *framework and approach paper* that applies in respect of that *revenue determination* for that matter; or
 - (2) there is a *framework and approach paper* that would apply in respect of that *revenue 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.
- (a1) The *AER* may make and publish a *framework and approach paper* that applies in respect of a *revenue determination* for an *Intending TNSP* if the *AER* considers that it is necessary or desirable to do so.
- (a2) A *framework and approach paper* that applies in respect of a *revenue determination* under paragraph (a1) may set out the *AER*'s proposed approach (together with its reasons for the proposed approach), in the forthcoming *revenue determination*, to any of the matters set out in paragraph (b) as the *AER* considers appropriate.
- (b) Subject to paragraph (a2), A *framework and approach paper* that applies in respect of a *revenue determination* must set out the *AER*'s proposed approach (together with its reasons for the proposed approach), in the forthcoming *revenue determination*, to the following matters:

- (1) the application to the *Transmission Network Service Provider* of any *service target performance incentive scheme*;
 - (2) the application to the *Transmission Network Service Provider* of any *efficiency benefit sharing scheme*;
 - (3) the application to the *Transmission Network Service Provider* of any *capital expenditure sharing scheme*;
 - (4) the application to the *Transmission Network Service Provider* of any *small-scale incentive scheme*;
 - (5) the application to the *Transmission Network Service Provider* of the *Expenditure Forecast Assessment Guidelines*;
 - (6) whether depreciation for establishing the regulatory asset base for the relevant *transmission 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 S6A.2.2B; and
 - (7) the application to the *Transmission Network Service Provider* of any *demand management innovation allowance mechanism*.
- (c) If there is a *framework and approach paper* that would apply in respect of the *revenue determination* for a matter listed in paragraph (b) then:
- (1) no later than 32 months before the end of the *regulatory control period* that precedes that for which the *revenue determination* is to be made, the *Transmission 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 *Transmission 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 *revenue determination* is to be made, the *AER* must *publish* a notice inviting submissions on whether it is necessary or desirable to amend or replace that *framework and approach paper* in so far as it relates to a matter (other than any matter specified in a request from the *Transmission 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 *revenue 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 *Transmission Network Service Provider* under subparagraph (1) (if any);
 - (ii) if subparagraph (i) applies, is accompanied by a copy of the request from the *Transmission 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 *Transmission Network Service Provider* and such other persons as the *AER* considers appropriate, make, amend or replace the *framework and approach paper*, as the case may be, and:
 - (1) give a copy of it to the relevant *Transmission Network Service Provider*; and
 - (2) *publish* it,as soon as is reasonably practicable.
- (f) A *framework and approach paper* is not binding on the *AER* or a *Transmission Network Service Provider*.
- (g) The *AER* may make and *publish a framework and approach paper* that applies in respect of a *revenue determination* for a matter that is not listed in paragraph (b) and, if it does so, this clause 6A.10.1A applies as if that matter were listed in paragraph (b).

6A.10.2 ~~[Deleted]~~ **Request to commence revenue determination process**

- (a) An Intending TNSP may request the AER to commence the process of making a revenue determination by submitting a Revenue Proposal to the AER relating to the prescribed transmission services that are to be provided by means of, or in connection with, a proposed transmission system that is to be owned, controlled or operated by that Intending TNSP.
- (b) A Revenue Proposal submitted under paragraph (a) must comply with the requirements set out in clause 6A.10.1 and Schedule 6A.1.
- (c) The AER must, as soon as practicable, determine whether or not to commence the process of making a revenue determination requested by an Intending TNSP under paragraph (a) and in doing so, may have regard to any matters it considers appropriate, such as:
 - (1) whether the Intending TNSP intends to deliver an actionable ISP project or a project that is not an actionable ISP project but has been subject to the regulatory investment test for transmission; and
 - (2) the likelihood of the Intending TNSP delivering that project.
- (d) The AER must notify the Intending TNSP of its decision under paragraph (c).
- (e) If the AER decides to commence the process of making a revenue determination for an Intending TNSP under paragraph (c) then Parts C, E and F of this Chapter 6A (and all relevant definitions and provisions referred to in those Parts) apply in relation to that Intending TNSP as if a reference to a

Transmission Network Service Provider is a reference to that Intending TNSP in respect of the first revenue determination.

6A.11.1 Preliminary examination and determination of non-compliance with relevant requirements

- (a) If the *AER* determines that:
- (1) a *Revenue Proposal* submitted by a *Transmission Network Service Provider*;
 - (2) **[Deleted]**
 - (3) a proposed *pricing methodology* submitted by the *Transmission Network Service Provider*; or
 - (4) information contained in or accompanying such a *Revenue Proposal* or *proposed pricing methodology*,
- under ~~clause rule 6A.10.1~~ does not comply with the requirements of:
- (5) any relevant regulatory information instrument; or
 - (6) **[Deleted]**
 - (7) **[Deleted]**
 - (8) *NEL* or the *Rules*,
- the *AER* must notify the provider of that determination as soon as practicable after receiving that *Revenue Proposal*, proposed *pricing methodology* or information (as the case may be).
- (b) A determination referred to in paragraph (a) must be accompanied by written reasons that set out:
- (1) the respects in which the *Revenue Proposal*, proposed *pricing methodology* or information does not comply with the relevant requirements of any relevant *regulatory information instrument* or clause 6A.10.1(e) (as the case may be) and the requirements that have not been complied with; and
 - (2) in the case of information which does not comply with those requirements, the reason that the submission of information in accordance with those requirements would assist the *AER* in assessing the *Revenue Proposal* or proposed *pricing methodology*.

6A.11.3 Consultation

- (a) Subject to the provisions of *NEL*, the *Rules* and any *pricing methodology guidelines* about the disclosure of confidential information, the *AER* must *publish*:
- (1) the *Revenue Proposal*;
 - (2) **[Deleted]**
 - (3) the proposed *pricing methodology*; and

- (4) the information,
submitted or resubmitted to it (as the case may be) by the *Transmission Network Service Provider* under rule 6A.10 or this rule 6A.11, together with an invitation for written submissions on the documents and information referred to in subparagraphs (1)-(4), as soon as practicable after the *AER* determines that the *Revenue Proposal*, proposed *pricing methodology* and information comply with the requirements of any *relevant regulatory information instrument* or clause 6A.10.1(e) (as applicable).
- (b) The *AER* must *publish*:
- (1) an issues paper not more than 40 *business days* after the submission, under clause 6A.10.1, of the documents, but not any resubmitted documents, referred to in paragraph (a);
(1A) an issues paper not more than 40 *business days* after making a decision to commence the process of making a revenue determination under clause 6A.10.2(c);
 - (2) an invitation for written submission on the issues paper; and
 - (3) an invitation to attend a public forum on the issues paper.
- (b1) The issues paper referred to in paragraph (b) must identify preliminary issues, whether or not arising out of the documents referred to in paragraph (a), that the *AER* considers are likely to be relevant to its assessment of those documents (however, nothing in this clause is to be taken as precluding the *AER* from considering other issues in making a *transmission determination* for the *Transmission Network Service Provider*).
- (b2) The *AER* must hold a public forum on the issues paper not more than 10 *business days* after the *publication* of the issues paper.
- (c) Any person may make a written submission to the *AER* on the *Revenue Proposal*, the proposed *pricing methodology* or the issues paper within the times specified in the invitations referred to in paragraph (a) and paragraph (b), which in each case must be not earlier than 30 *business days* after the *publication* of the issues paper.
-

CHAPTER 10

contingent project

In relation to a distribution determination, a *proposed contingent project* that is determined by the *AER*, in accordance with clause 6.6A.1(b), to be a *contingent project* for the purposes of that distribution determination.

In relation to a *revenue determination*, has the meaning given in clause 6A.8.~~1AA1~~.

Intending TNSP

A Registered Participant who intends to provide prescribed transmission services.

Revenue Proposal

For a *Transmission Network Service Provider*, a proposal submitted or resubmitted by the *Transmission Network Service Provider* to the *AER* pursuant to clause 6A.10.1(a), clause 6A.11.2 or clause 6A.12.3(a) (as the context requires).

For an Intending TNSP, a proposal submitted by the Intending TNSP pursuant to clause 6A.10.2(a).

Transmission Network Service Provider

A person who engages in the activity of owning, controlling or operating a *transmission system*.

Note:

In accordance with clause 6A.10.2(d), references to a Transmission Network Service Provider in Parts C, E and F of Chapter 6A are deemed to be references to an Intending TNSP for the purposes of the revenue determination process commenced under clause 6A.10.2(c).
