



Draft National Electricity Amendment (Sharing concessional finance benefits with consumers) Rule 2024

The Australian Energy Market Commission makes the following Rule under the National Electricity Law to the extent applied by:

- (a) the *National Electricity (South Australia) Act 1996* of South Australia;
- (b) the *Electricity (National Scheme) Act 1997* of the Australian Capital Territory;
- (c) the *Electricity - National Scheme (Queensland) Act 1997* of Queensland;
- (d) the *National Electricity (New South Wales) Act 1997* of New South Wales;
- (e) the *Electricity - National Scheme (Tasmania) Act 1999* of Tasmania;
- (f) the *National Electricity (Victoria) Act 2005* of Victoria;
- (g) the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015* of the Northern Territory; and
- (h) the *Australian Energy Market Act 2004* of the Commonwealth.

Anna Collyer
Chairperson
Australian Energy Market Commission

Draft National Electricity Amendment (Sharing concessional finance benefits with consumers) Rule 2024

1 Title of Rule

This Rule is the *Draft National Electricity Amendment (Sharing concessional finance benefits with consumers) Rule 2024*.

2 Commencement

This Rule commences operation on [29 March 2024].

3 Amendment to the National Electricity Rules

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

4 Savings and Transitional Amendment to the National Electricity Rules

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

Schedule 1 Amendment to the National Electricity Rules

(Clause 3)

[1] 5.16.2 Regulatory investment test for transmission application guidelines

In clause 5.16.2(c)(9), omit "and".

[2] 5.16.2 Regulatory investment test for transmission application guidelines

In clause 5.16.2(c)(10)(ii), omit "." and substitute ", and".

[3] 5.16.2 Regulatory investment test for transmission application guidelines

After clause 5.16.2(c)(10)(ii), insert:

- (11) what constitutes an external funding contribution, and how any external funding contribution should be treated, for the purposes of the *regulatory investment test for transmission*.

[4] 5.16A.2 Cost Benefit Analysis Guidelines

In clause 5.16A.2(c)(3), omit "and".

[5] 5.16A.2 Cost Benefit Analysis Guidelines

In clause 5.16A.2(c)(4)(ii), omit "." and substitute ", and".

[6] 5.16A.2 Cost Benefit Analysis Guidelines

After clause 5.16A.2(c)(4)(ii), insert:

- (5) what constitutes an external funding contribution, and how any external funding contribution should be treated, for the purposes of the *regulatory investment test for transmission* for *actionable ISP projects*.

[7] 5.17.2 Regulatory investment test for distribution application guidelines

In clause 5.17.2(c)(9), omit "and".

[8] 5.17.2 Regulatory investment test for distribution application guidelines

In clause 5.17.2(c)(10)(ii), omit "." and substitute ", and".

[9] 5.17.2 Regulatory investment test for distribution application guidelines

After clause 5.17.2(c)(10)(ii), insert:

- (11) what constitutes an external funding contribution, and how any external funding contribution should be treated, for the purposes of the *regulatory investment test for distribution*.

[10] New clause 6.2.9 Concessional finance adjustments

After clause 6.2.8, insert a new clause:

6.2.9 Concessional finance adjustments

- (a) A *Distribution Network Service Provider* who has entered into a *concessional finance agreement* that requires any of the benefits of the *concessional finance* to be shared with consumers of electricity, must provide the *AER* with a copy of that agreement within 40 *business days* of entering into that agreement.
 - (b) A *concessional finance agreement* provided under paragraph (a) must include:
 - (1) the name of the *government funding body* providing the *concessional finance* and the contact details for that body;
 - (2) a description of the capital expenditure in relation to which the *concessional finance* is being provided;
 - (3) a statement about whether the benefits of the *concessional finance* will be passed through to consumers of electricity as:
 - (i) an adjustment to the regulatory asset base of the *Distribution Network Service Provider*;
 - (ii) an amount to be passed through to *Distribution Network Users*; or
 - (iii) a combination of the mechanisms referred to in subparagraphs (i) and (ii),
- (Distribution CF Adjustment)**
- (4) where paragraph (3)(i) applies, a description of the asset to which the *concessional finance* applies, as well as the value, timing and details of the adjustment to be made to the regulatory asset base and the relevant asset lives of the associated assets;
 - (5) where paragraph (3)(ii) applies, the amount to be passed through to *Distribution Network Users* in each year of each *regulatory control period* that the amount is to be passed through;

- (6) where paragraph (3)(iii) applies, the information in subparagraphs (4) and (5);
 - (7) if the *concessional finance agreement* was entered into by a related entity of the *Distribution Network Service Provider*, the name, ACN and contact details of the entity that is party to the agreement.
- (c) Except to the extent paragraph (d) applies, if the *AER* receives a *concessional finance agreement* pursuant to paragraph (a), it must make the Distribution CF Adjustment, within 40 *business days* of receiving the *concessional finance agreement*, and the Distribution CF Adjustment must be implemented in accordance with the *concessional finance agreement*.
 - (d) If the *AER* receives a *concessional finance agreement* pursuant to paragraph (a) during the last two *regulatory years* of a *regulatory control period* and it is not practicable to implement the Distribution CF Adjustment in the current *regulatory control period*, then:
 - (1) the time period under which the *AER* must take action under paragraph (c) does not apply; and
 - (2) instead, the *AER* must make the Distribution CF Adjustment, within 40 *business days* of the *AER* making the distribution determination in respect of the forthcoming *regulatory control period*, or do so as part of the distribution determination itself.
 - (e) If the relevant Distribution CF Adjustment made under paragraphs (c) or (d) will apply in one or more *regulatory years* of a subsequent *regulatory control period*, then:
 - (1) if the *concessional finance agreement* provides the Distribution CF Adjustment applies in the same way in the next *regulatory control period*, the Distribution CF Adjustment is binding on the *AER* and the *Distribution Network Service Provider* for that subsequent *regulatory control period*; and
 - (2) if the *concessional finance agreement* provides that the Distribution CF Adjustment does not apply in the same way in the next *regulatory control period*, then the *Distribution Network Service Provider* must notify the *AER* for each relevant *regulatory control period*.

Note

Where a *concessional finance agreement* applies over multiple *regulatory control periods*, the *Distribution Network Service Provider* is required to notify the *AER* in its next *regulatory proposal*. See clause 6.8.2(c3).

- (f) A *Distribution Network Service Provider* must provide the *AER* with such information as the *AER* requires for the purpose of making a Distribution CF Adjustment under paragraphs (c) or (d) within the

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

- (g) Before making a Distribution CF Adjustment under paragraphs (c) or (d), the *AER* may:
 - (1) request information from the *government funding body*; and
 - (2) consult with the *government funding body* in respect of the *concessional finance agreement* and disclose to the *government funding body* any information received from the *Distribution Network Service Provider* under paragraphs (b) and (f) for that purpose.
- (h) If the *AER* is satisfied that making a Distribution CF Adjustment under paragraphs (c) or (d) involves issues of such complexity or difficulty that the time limit for making the Distribution CF Adjustment 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* gives a written notice to the *Distribution Network Service Provider* stating that it requires information from a *government funding body* to make a Distribution CF Adjustment under paragraphs (c) or (d), 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 *government funding body* is to be disregarded.
- (j) If the *AER* receives confidential information from a *government funding body* pursuant to paragraph (g), the *AER* must treat that information as confidential information.

[11] New clause 6.6.1B Concessional finance adjustments

After clause 6.6.1A, insert a new clause:

6.6.1B Concessional finance adjustments

The distribution determination will be amended in a manner determined by the *AER* to reflect the adjustment made by the *AER* pursuant to clauses 6.2.9(c) and (d), as relevant.

[12] 6.8.2 Submission of regulatory proposal, tariff structure statement and exemption application

After clause 6.8.2(c2), insert:

- (c3) Where clause 6.2.9(e) applies, the *regulatory proposal* must be accompanied by a copy of the relevant *concessional finance agreement*.

[13] 6A.3.2 Adjustment of maximum allowed revenue

In clause 6A.3.2, after "in accordance with", insert " clause 6A.3.3 or".

[14] New clause 6A.3.3 Concessional finance adjustments

After clause 6A.3.2, insert a new clause:

6A.3.3 Concessional finance adjustments

- (a) A *Transmission Network Service Provider* who has entered into a *concessional finance agreement* that requires any of the benefits of the *concessional finance* to be shared with consumers of electricity, must provide the *AER* with a copy of that agreement within 40 *business days* of entering into that agreement.
- (b) A *concessional finance agreement* provided under paragraph (a) must include:
- (1) the name of the *government funding body* providing the *concessional finance* and the contact details for that body;
 - (2) a description of the capital expenditure in relation to which the *concessional finance* is being provided;
 - (3) a statement about whether the benefits of the relevant *concessional finance* will be passed through to consumers of electricity as:
 - (i) an adjustment to the regulatory asset base of the *Transmission Network Service Provider*;
 - (ii) an amount to be passed through to *Transmission Network Users*; or
 - (iii) a combination of the mechanisms referred to in subparagraphs (i) and (ii),
- (Transmission CF Adjustment)**
- (4) where paragraph (3)(i) applies, a description of the assets to which the *concessional finance* applies, as well as the value, timing and details of the adjustment to be made to the regulatory asset base and the relevant asset lives of the associated assets;
 - (5) where paragraph (3)(ii) applies, the amount to be passed through to *Transmission Network Users* in each year of each *regulatory control period* that the amount is to be passed through;

- (6) where paragraph (3)(iii) applies, the information in subparagraphs (4) and (5); and
 - (7) if the *concessional finance agreement* was entered into by a related entity of the *Transmission Network Service Provider*, the name, ACN and contact details of the entity that is party to the agreement.
- (c) Except to the extent that paragraph (d) applies, if the *AER* receives a *concessional finance agreement* pursuant to paragraph (a), it must make a Transmission CF Adjustment within 40 *business days* of receiving the *concessional finance agreement*, and the Transmission CF Adjustment must be implemented in accordance with the *concessional finance agreement*.
- (d) If the *AER* receives a *concessional finance agreement* pursuant to paragraph (a) during the last two *regulatory years* of a *regulatory control period* and it is not practicable to implement the Transmission CF Adjustment in the current *regulatory control period*, then:
 - (1) the time periods under which the *AER* must take action under paragraph (c) does not apply; and
 - (2) instead, the *AER* must make the Transmission CF Adjustment within 40 *business days* of the *AER* making the *transmission determination* in respect of the forthcoming *regulatory control period*, or do so as part of the *transmission determination* itself.
- (e) If the relevant Transmission CF Adjustment under paragraphs (c) or (d) will apply in one or more *regulatory years* of a subsequent *regulatory control period*, then:
 - (1) if the *concessional finance agreement* provides that the Transmission CF Adjustment applies in the same way in the next *regulatory control period*, the Transmission CF Adjustment is binding on the *AER* and the *Transmission Network Service Provider* for that subsequent *regulatory control period*; and
 - (2) if the *concessional finance agreement* provides that the Transmission CF Adjustment does not apply in the same way in the next *regulatory control period*, then the *Transmission Network Service Provider* must notify the *AER* for each relevant *regulatory control period*.

Note

Where a *concessional finance agreement* applies over multiple *regulatory control periods*, the *Transmission Network Service Provider* is required to notify the *AER* in its next *Revenue Proposal*. See clause 6A.10.1(i).

- (f) A *Transmission Network Service Provider* must provide the *AER* with such information as the *AER* requires for the purpose of making a Transmission CF Adjustment under paragraphs (c) or (d) within the

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

- (g) Before making a Transmission CF Adjustment under paragraphs (c) or (d), the *AER* may:
 - (1) request information from the *government funding body*; and
 - (2) consult with the *government funding body* in respect of the *concessional finance agreement* and may disclose to the *government funding body* any information received from the *Transmission Network Service Provider* under paragraphs (b) and (f) for that purpose.
- (h) If the *AER* is satisfied that making a Transmission CF Adjustment under paragraphs (c) or (d) involves issues of such complexity or difficulty that the time limit for making the Transmission CF Adjustment should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the *Transmission Network Service Provider* of that extension not later than 10 *business days* before the expiry of that time limit.
- (i) If the *AER* gives a written notice to the *Transmission Network Service Provider* stating that it requires information from a *government funding body* in order to make a Transmission CF Adjustment under paragraphs (c) or (d), 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 *government funding body* is to be disregarded.
- (j) If the *AER* receives confidential information from a *government funding body* pursuant to paragraph (g), the *AER* must treat that information as confidential information.

[15] 6A.10.1 Submission of proposal, pricing methodology and information

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

- (i) Where clause 6A.3.3(e) applies, the *Revenue Proposal* must be accompanied by a copy of the relevant *concessional finance agreement*.

[16] Clause S6A.4.2 Exclusions, qualifications and modifications

After clause S6A.4.2(c)(9), insert:

Clause 6A.3.3 (Concessional finance adjustments to MAR and RAB):

- (10) A *declared transmission system operator* who receives *concessional finance* for assets that form part of an *augmentation* that is not *contestable* as determined by *AEMO* in accordance with Part H of Chapter 8 of the *Rules*, must provide to *AEMO* the *concessional finance agreement* provided to the *AER* under clause 6A.3.3 at the same time that agreement is provided to the *AER*, as well as any other information reasonably requested by *AEMO* in relation to the *concessional finance agreement*.

[17] Chapter 10 Glossary

In chapter 10, insert the following definitions in alphabetical order:

concessional finance

An arrangement between a *government funding body* and a *Network Service Provider* under which the *government funding body* directly or indirectly provides financial support to the *Network Service Provider* pursuant to a *concessional finance agreement*.

concessional finance agreement

An agreement between a *Network Service Provider*, or a related entity of the *Network Service Provider*, and a *government funding body* which the *government funding body* specifies to be such an agreement for the purposes of clauses 6.2.9(b) or 6A.3.3(b).

government funding body

Means a government or government agency (including, without limitation, an entity owned, or where there is a controlling interest, by a Commonwealth, State or Territory government).

Schedule 2 Savings and Transitional Amendment to the National Electricity Rules

(Clause 4)

[1] New rule 11.XXX Rules consequential on the making of the National Electricity Amendment (Sharing concessional finance benefits with consumers) Rule 2024

In chapter 11, after rule 11.XXX, insert:

11.XXX Rules consequential on the making of the National Electricity Amendment (Sharing concessional finance benefits with consumers) Rule 2024

11.XXX.1 Definitions

(a) For the purposes of this rule 11.XXX:

Amending Rule means the *National Electricity Amendment (Sharing concessional finance benefits with consumers) Rule 2024*.

commencement date means [29 March 2024], being the date on which the Amending Rule commences.

new clause 6.2.9(b) means clause 6.2.9 of new Chapter 6.

new clause 6A.3.3(b) means clause 6A.3.3 of new Chapter 6A.

new clause S6A.4.2(10) means clause S6A.4.2(10) of new Chapter 6A.

new Chapter 6 means Chapter 6 of the *Rules* as in force on and from the commencement date.

new Chapter 6A means Chapter 6A of the *Rules* as in force on and from the commencement date.

new Chapter 10 means Chapter 10 of the *Rules* as in force on and from the commencement date.

(b) Italicised terms used in this rule 11.XXX have the same meaning as in new Chapter 10.

11.XXX.2 Application of Amending Rule to concessional finance received prior to commencement date

(a) If, between 14 December 2023 and the commencement date, a *Network Service Provider* has entered into an agreement with a *government funding body*, which following the commencement date, would be a *concessional finance agreement* that requires any of the benefits of the *concessional finance* to be shared with consumers of electricity, then the *Network Service Provider* must provide the *AER*

with the information specified in new clause 6.2.9(b) or 6A.3.3(b) (as applicable) within 40 *business days* of the commencement date.

- (b) If paragraph (a) applies to a *Network Service Provider* that is a *declared transmission system operator*, then the *declared transmission system operator* must also comply with new clause S6A.4.2(10).

11.XXX.3 AER RIT instruments and guidelines

- (a) By no later than 31 December 2024, the *AER* must update and publish the following instruments and guidelines to take into account the Amending Rule, and in doing so must comply with the *standard rules consultation procedures*:
 - (1) the *Cost Benefit Analysis Guidelines*;
 - (2) the *regulatory investment test for transmission*;
 - (3) the *regulatory investment test for transmission application guidelines*;
 - (4) the *regulatory investment test for distribution*; and
 - (5) the *regulatory investment test for distribution application guidelines*.
- (b) The *AER* may undertake consultation on the instruments and guidelines listed in subparagraph (a) using the *standard rules consultation procedures* as either:
 - (1) a single process; or
 - (2) multiple processes, applied to each instrument or guideline separately.
- (c) If, prior to the rule commencement date and for the purposes of updating any of the instruments or guidelines described in subparagraph (a) in anticipation of the Amending Rule, the *AER* undertook a consultation or step equivalent to those required under the *standard rules consultation procedures*, then the *AER* is taken to have satisfied the relevant consultation or step required under the *standard rules consultation procedures*.