



## **Draft National Electricity Amendment (Accommodating financeability in the regulatory framework) 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 (Accommodating financeability in the regulatory framework) Rule 2024**

### **1 Title of Rule**

This Rule is the *Draft National Electricity Amendment (Accommodating financeability in the regulatory framework) 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] Clause 5.16A.5    Actionable ISP project trigger event**

In clause 5.16A.5, omit "if the *actionable ISP project* is a staged project) under clause 6A.8.2, all of the following criteria must be satisfied ("**trigger event**"):" and substitute ") under clause 6A.8.2, the following criteria must be satisfied ("**trigger event**") for each category:".

### **[2] Clause 5.16A.5    Actionable ISP project trigger event**

In clause 5.16A.5, after "for each category" insert:

**Category 1 - *contingent project* application for an *actionable ISP project***

### **[3] Clause 5.16A.5    Actionable ISP project trigger event**

In clause 5.16A.5(a), omit "if the *actionable ISP project* is a staged project".

### **[4] Clause 5.16A.5    Actionable ISP project trigger event**

In clause 5.16A.5(d), omit "." and substitute "; or".

### **[5] Clause 5.16A.5    Actionable ISP project trigger event**

After clause 5.16A.5(d), insert:

**Category 2 - *early works contingent project* application**

- (e) the *contingent project* application is an *early works contingent project application*.

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

In clause 6A.6.3(b)(1), omit "paragraph (c)," and substitute "paragraph (c) and clause 6A.6.3A,".

### **[7] Clause 6A.6.3A    Financeability adjustment**

After clause 6A.6.3, insert a new clause 6A.6.3A:

#### **6A.6.3A    Financeability adjustment**

##### **Definitions**

- (a) In this clause:

**financeability guidelines** means the guidelines made by the *AER* under paragraph (r).

**financeability request** has the meaning given to it in paragraph (b).

**financeability test** means the test described in paragraph (l).

**financeability threshold** means the benchmark credit rating used to estimate the return on debt component in the *applicable rate of return instrument*.

**Financeability request by TNSP**

- (b) Subject to paragraphs (c) and (d), if an asset (or group of assets) forms part of an *actionable ISP project*, a *Transmission Network Service Provider* may submit a request to the *AER* to approve that the asset (or group of assets) is depreciated on a basis other than in accordance with clause 6A.6.3(b)(1) (**financeability request**).
- (c) A financeability request must include:
  - (1) the *Transmission Network Service Provider's* proposed adjustments to the depreciation of the asset (or group of assets);
  - (2) if applicable, the information in paragraph (f); and
  - (3) any information required under the financeability guidelines.
- (d) A *Transmission Network Service Provider* must:
  - (1) only submit a financeability request at the same time as submitting a *contingent project* application under clause 6A.8.2(a) in relation to an *actionable ISP project*; and
  - (2) not submit a financeability request in relation to an *early works contingent project application*.
- (e) A *Transmission Network Service Provider* must only submit a financeability request if, where it has entered into a *concessional finance agreement* after 14 December 2023 relating to:
  - (1) any *actionable ISP project* other than the *actionable ISP project* to which the request relates:
    - (i) all of the benefits under each relevant *concessional finance agreement* is being passed through to consumers under clause 6A.3.3; or
    - (ii) where the benefits under one or more of those *concessional finance agreements* are not all being passed through to consumers, each relevant *concessional finance agreement* specifies how the benefits of the *concessional finance* that are retained by the *Transmission Network Service Provider* are to be taken into account by the *AER* in carrying out the financeability test; and

- (2) the *actionable ISP project* to which the financeability request relates:
    - (i) all of the benefits under each relevant *concessional finance agreement* is being passed through to consumers under clause 6A.3.3; or
    - (ii) where the benefits under each relevant *concessional finance agreement* are not all being passed through to consumers, the *concessional finance agreement* specifies how the benefits of the *concessional finance* that are retained by the *Transmission Network Service Provider* are to be taken into account by the *AER* in carrying out the financeability test and with the written approval of the *government funding body*.
- (f) If the *Transmission Network Service Provider* submits a financeability request in the circumstances specified in paragraph (e)(1)(ii) or (e)(2)(ii), then at the same time as it submits the request, it must also provide to the *AER* (to the extent not already provided under clause 6A.3.3):
  - (1) a copy of every *concessional finance agreement* relating to any *actionable ISP project* it, or a related entity of it, has entered into since 14 December 2023;
  - (2) if applicable, the written approval of the *government funding body* to which the financeability request relates;
  - (3) 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 related entity that is party to the agreement and an explanation of the benefit of the *concessional finance* to the *Transmission Network Service Provider*;
  - (4) a description of the capital expenditure in relation to which the *concessional finance* is being provided; and
  - (5) a description of the benefits of the *concessional finance* to the *Transmission Network Service Provider* and an explanation of how the benefits are to be taken into account by the *AER* in carrying out the financeability test, in accordance with the *concessional finance agreement*.
- (g) The *AER* may consult with the relevant *government funding body* in respect of the financeability request and in doing so, may:
  - (1) request information from the *government funding body*; or

- (2) disclose any information received from the *Transmission Network Service Provider* in the financeability request for that purpose.
- (h) If the *AER* receives confidential information from a *government funding body*, the *AER* must treat that information as confidential information.
- (i) The *Transmission Network Service Provider* must provide the *AER* with such additional information that the *AER* reasonably requests for the purposes of applying the financeability test or addressing a financeability issue under paragraph (o).

**Financeability test by AER**

- (j) If the *AER* receives a financeability request, it must apply the financeability test in accordance with paragraphs (k) to (m).
- (k) The purpose of the financeability test is to determine whether or not there is a financeability issue as described in paragraph (m) for a *Transmission Network Service Provider*.
- (l) To determine whether or not there is a financeability issue for a *Transmission Network Service Provider*, the *AER* must:
  - (1) first, determine a financeability position without the *actionable ISP project* using the *post-tax revenue model* to determine the *Transmission Network Service Provider's maximum allowed revenue*, using the benchmark gearing ratio set out in the *applicable rate of return instrument (step one)*; and
  - (2) second, determine a financeability position using the same process used under sub-paragraph (1), but including the relevant *actionable ISP project (step two)*,(together, the **financeability test**).
- (m) A financeability issue exists for the purposes of paragraph (k) if the financeability test demonstrates that the financeability position for the *Transmission Network Service Provider* is:
  - (1) equivalent to or higher than the financeability threshold at step one, and deteriorates below the financeability threshold following the application of step two; or
  - (2) lower than the financeability threshold at step one, and deteriorates below that financeability position following the application of step two.

**Addressing a financeability issue**

- (n) If the financeability test demonstrates that there is a financeability issue, the *AER* must make a determination to address the financeability issue by:

- (1) if paragraph (m)(1) applies, preventing the *Transmission Network Service Provider's* financeability position determined in step one from deteriorating below the financeability threshold following the application of step two;
  - (2) if paragraph (m)(2) applies, preventing the *Transmission Network Service Provider's* financeability position determined in step one from deteriorating below that financeability position following the application of step two,

to the extent possible.
- (o) If the *AER* makes a determination under paragraph (n) to address a financeability issue, it may address the financeability issue by doing any one or more of the following:
  - (1) depreciating the asset (or group of assets) forming part of the *actionable ISP project* using a profile that it considers appropriate, including by approving the financeability request; or
  - (2) taking other steps through another mechanism available to the *AER* under the *Rules*.
- (p) If the *AER* makes a determination under paragraph (n) to address a financeability issue, it must amend the relevant *revenue determination* in accordance with the action taken pursuant to paragraph (o).
- (q) If the *AER* determines under paragraph (o) that the depreciation adjustment will apply in a subsequent *regulatory control period*, then the depreciation adjustment is binding on the *AER* and the *Transmission Network Service Provider* for that subsequent *regulatory control period*.

#### **Financeability guidelines**

- (r) The *AER* must, in accordance with the *transmission consultation procedures*, develop and *publish* guidelines (the **financeability guidelines**).
- (s) The financeability guidelines must set out:
  - (1) how the *AER* determines the financeability position for the *Transmission Network Service Provider* for the purposes of paragraph (l), which must be based on a selection of financial metrics and a specified weighting to apply to each of those metrics;
  - (2) an explanation of the basis for the selection of each financial metric and the weighting to apply to each financial metric referred to in sub-paragraph (1); and

- (3) how the financeability position for a *Transmission Network Service Provider* relates to the financeability threshold for the purposes of paragraph (m).
- (t) The financeability guidelines may set out any other matters the *AER* considers appropriate.

## **[8] Chapter 10            Glossary**

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

### ***early works contingent project application***

An application by a *Transmission Network Service Provider* to amend its *revenue determination* in respect of the costs of activities undertaken in respect of an *actionable ISP project* prior to construction of the *preferred option*.

## **[9] Chapter 10            Glossary**

In the definition of "***concessional finance agreement***", omit "or 6A.3.3" and substitute ", 6A.3.3 or 6A.6.3A".



## Schedule 2 Savings and Transitional Amendment to the National Electricity Rules

(Clause 4)

### [1] Chapter 11 Savings and Transitional Amendments to the National Electricity Rules

In Chapter 11, Part ZZZZZI, insert a new rule:

#### 11.[XXX] Rules consequential on the making of the National Electricity Amendment (Accommodating financeability in the regulatory framework) Rule 2024

##### 11.[XXX].1 Definitions

In this rule 11.[XXX]:

**Amending Rule** means the *National Electricity Amendment (Accommodating financeability in the regulatory framework) Rule 2024 No. [X]*.

**commencement date** means [29 March 2024], being the commencement date of the Amending Rule.

**effective date** means [31 December 2024].

**financeability guidelines** has the meaning given in new clause 6A.6.3A(a).

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

**new clause 6A.6.3A** means clause 6A.6.3A of new Chapter 6A.

**new clause 6A.6.3A(a)** means clause 6A.6.3A(a) of new Chapter 6A.

**new clause 6A.6.3A(b)** means clause 6A.6.3A(b) of new Chapter 6A.

**new clause 6A.6.3A(r)** means clause 6A.6.3A(r) of new Chapter 6A.

**transitional period** means the period beginning on the commencement date and ending on the effective date.

##### 11.[XXX].2 Financeability guidelines

By [31 December 2024], the *AER* must develop and *publish* the financeability guidelines under new clause 6A.6.3A(r).

##### 11.[XXX].3 Financeability test before publication of financeability guidelines

- (a) A *Transmission Network Service Provider* may submit a request under new clause 6A.6.3A(b) at any time during the transitional period.

- (b) If a *Transmission Network Service Provider* submits a request under new clause 6A.6.3A(b) during the transitional period:
  - (1) the financeability guidelines do not apply to the *AER's* decision to approve or reject the request; and
  - (2) the *AER's* decision to approve or reject the request is binding on the *AER* and the *Transmission Network Service Provider*.
- (c) The *AER* must use its reasonable endeavours to give effect to the requirements of paragraphs (l), (m), (n) and (o) in new clause 6A.6.3A if it receives a request under clause 11.[XXX].3(a).