National Electricity Amendment (Contestability of energy services) Rule 2017 No. 16

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 Electricity - National Scheme (Tasmania) Act 1999 of Tasmania;
(e) the National Electricity (New South Wales) Act 1997 of New South Wales;
(f) the National Electricity (Victoria) Act 2005 of Victoria;
(g) the National Electricity (Northern Territory)(National Uniform Legislation) Act 2015; and
(h) the Australian Energy Market Act 2004 of the Commonwealth.

The Australian Energy Market Commission makes the following Rule under the National Electricity Law.

John Pierce
Chairman
Australian Energy Market Commission
National Electricity Amendment (Contestability of energy services) Rule 2017 No. 16

1 Title of Rule
This Rule is the National Electricity Amendment (Contestability of energy services) Rule 2017 No.16.

2 Commencement
This Rule commences operation on 19 December 2017.

3 Amendment of the National Electricity Rules
The National Electricity Rules are amended as set out in Schedule 1.

4 Amendment of the National Electricity Rules
The National Electricity Rules are amended as set out in Schedule 2.

5 Savings and Transitional Amendments to the National Electricity Rules
The National Electricity Rules are amended as set out in Schedule 3.
Schedule 1 Amendment to the National Electricity Rules

(Clause 3)

[1] Clause 6.2.1 Classification of distribution services
Omit clause 6.2.1(d) and substitute "[Deleted]".

[2] Clause 6.2.2 Classification of direct control services as standard control services or alternative control services
Omit clause 6.2.2(d) and substitute "[Deleted]".

[3] New Clause 6.2.3A Distribution Service Classification Guidelines
After clause 6.2.3, insert:

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.

In clause 6.2.8(a)(1), before "and the Cost Allocation Guidelines", insert ", the Distribution Service Classification Guidelines, the Asset Exemption Guidelines".

[5] Clause 6.2.8 Guidelines
Omit clause 6.2.8(c), and substitute:

(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.

After rule 6.4A, insert:

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.
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.

[7] Clause 6.5.7 Forecast capital expenditure
In clause 6.5.7(b)(4), omit "." and substitute "; and".

[8] Clause 6.5.7 Forecast capital expenditure
After clause 6.5.7(b)(4), insert:

(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.
[9] Clause 6.5.7 Forecast capital expenditure

Omit clause 6.5.7(c), and substitute:

(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.

[10] Clause 6.5.7 Forecast capital expenditure
In clause 6.5.7(g), at the beginning of the clause, omit "A" and substitute "Subject to paragraphs (ga) and (j), a".

**[11] Clause 6.5.7   Forecast capital expenditure**

After clause 6.5.7(g), insert:

(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.

**[12] Clause 6.6.1   Cost pass through**

After clause 6.6.1(c), insert:

(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*.

**[13] Clause 6.6.1   Cost pass through**

Omit clause 6.6.1(d), and substitute:

(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).

[14] Clause 6.6.1 Cost pass through
In clause 6.6.1(e)(1), omit "and".

[15] Clause 6.6.1 Cost pass through
In clause 6.6.1(e)(2), at the end of the clause, omit ",." and substitute "; and".

[16] Clause 6.6.1 Cost pass through
After clause 6.6.1(e)(2), insert:

(3) the asset exemption requested under paragraph (c1) is granted.

[17] Clause 6.6.5 Reopening of distribution determination for capital expenditure
After clause 6.6.5(b), insert:

(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.

[18] Clause 6.6.5 Reopening of distribution determination for capital expenditure
In clause 6.6.5(c), after "paragraphs (a) and (b)" insert "and an exemption application (if any) made in accordance with paragraph (b1),".

[19] Clause 6.6.5 Reopening of distribution determination for capital expenditure
In clause 6.6.5(c)(1), omit “application” and insert “applications”.

[20] Clause 6.6.5 Reopening of distribution determination for capital expenditure
Omit clause 6.6.5(c)(2), and substitute:

(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).

[21] Clause 6.6.5 Reopening of distribution determination for capital expenditure
After clause 6.6.5(c), insert:

(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).

[22] Clause 6.6.5 Reopening of distribution determination for capital expenditure
After clause 6.6.5(f), insert:

(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).

[23] Clause 6.6A.1 Acceptance of a contingent project in a distribution determination

In clause 6.6A.1(a), at the beginning of the clause, omit "A", and substitute "Subject to paragraph (a1), a".

[24] Clause 6.6A.1 Acceptance of a contingent project in a distribution determination

After clause 6.6A.1(a), insert:

(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.

[25] Clause 6.6A.1 Acceptance of a contingent project in a distribution determination

In clause 6.6A.1(b), at the beginning of the clause, omit "The" and substitute "Subject to paragraph (b1), the".

[26] Clause 6.6A.1 Acceptance of a contingent project in a distribution determination

After clause 6.6A.1(b), insert:

(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.

[27] Clause 6.6A.2 Amendment of distribution determination for contingent project
In clause 6.6A.2(b), at the beginning of the clause, omit "An" and substitute "Subject to paragraph (b1), an".

[28] Clause 6.6A.2 Amendment of distribution determination for contingent project

After clause 6.6A.2(b), insert:

(b1) The forecast total capital expenditure referred to in subparagraph (b)(3) 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.

[29] Clause 6.6A.2 Amendment of distribution determination for contingent project

In clause 6.6A.2(e), at the beginning of the clause, omit "If", and substitute "Subject to paragraph (e1), if".

[30] Clause 6.6A.2 Amendment of distribution determination for contingent project

After clause 6.6A.2(e), insert:

(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.

[31] Clause 6.6A.2 Amendment of distribution determination for contingent project

In clause 6.6A.2(f)(1), at the end of the clause, omit ";" and substitute "and complies with paragraph (b1);".


In clause 6.8.1(b)(2)(vii), omit "and".

[33] Clause 6.8.1 AER's framework and approach paper

In clause 6.8.1(b)(2)(viii), omit "and".
[34] Clause 6.8.1  AER's framework and approach paper
In clause 6.8.1(b)(2)(ix), omit "." and substitute "; and".

After clause 6.8.1(b)(2), insert:

(3)  any content required under clause 6.2.8(c)(3).

[36] Clause 6.8.2  Submission of regulatory proposal and tariff structure statement
Omit heading for clause 6.8.2, and substitute:

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

[37] Clause 6.8.2  Submission of regulatory proposal, tariff structure statement and exemption application
After clause 6.8.2(a), insert:

(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).

[38] Clause 6.8.2  Submission of regulatory proposal, tariff structure statement and exemption application
Omit clause 6.8.2(b), and substitute:

(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.

[39] Clause 6.9.1  Preliminary examination
Omit clause 6.9.1(a), and substitute:

(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 the Law 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.

[40] Clause 6.9.1 Preliminary examination
In clause 6.9.1(b), after "tariff structure statement", insert ", exemption application".

[41] Clause 6.9.2 Resubmission of proposal
In clause 6.9.2(a), after "proposed tariff structure statement", insert ", exemption application".

[42] Clause 6.9.2 Resubmission of proposal
In clause 6.9.2(b), after "proposed tariff structure statement", insert ", exemption application".

[43] Clause 6.9.3 Consultation
In clause 6.9.3(a)(2), omit "and".

[44] Clause 6.9.3 Consultation
Omit from clause 6.9.3(a)(3) to the end of clause 6.9.3(a) and substitute:

(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 the Law and the Rules.

[45] Clause 6.9.3 Consultation
In clause 6.9.3(b)(1), omit "(a)(3);" and substitute "(a)(4);".

[46] Clause 6.9.3 Consultation
In clause 6.9.3(b1), omit "(a)(3)," and substitute "(a)(4),".

[47] Clause 6.9.3 Consultation
In clause 6.9.3(c), omit "(a)(4)" and substitute "(a)(5)".

[48] Clause 6.9.3 Consultation
In clause 6.9.3(c), omit "(a)(5) and (b)," and substitute "(a)(6) and (b),".

[49] Clause 6.10.1 Making of draft distribution determination
Omit clause 6.10.1(b)(1), and substitute:

(1) the information included in or accompanying the regulatory proposal, the proposed tariff structure statement and the exemption application;

[50] Clause 6.10.1 Making of draft distribution determination
In clause 6.10.1(b)(2), omit "6.9.3(a)(4); and" and substitute "6.9.3(a)(5); and".

[51] Clause 6.11.1 Making of distribution determination
Omit clause 6.11.1(b)(1), and substitute:

(1) the information included in or accompanying the regulatory proposal, the proposed tariff structure statement and the exemption application (if any);

[52] Clause 6.12.1 Constituent decisions
After clause 6.12.1(2), insert:
(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;

[53] Clause 6.12.1 Constituent decisions
In clause 6.12.1(3)(ii), omit "acting in accordance with clause 6.5.7(d), ", and substitute "acting in accordance with clause 6.5.7(c)(2) or 6.5.7(d),".

[54] Clause 6.12.1 Constituent decisions
After clause 6.12.1(3), insert:

(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.

[55] Clause 6.12.1 Constituent decisions
In clause 6.12.1(4A)(iii), omit "and".

[56] Clause 6.12.1 Constituent decisions
In clause 6.12.1(4A)(iv), after "6.6A.1(b);", insert "and".

[57] Clause 6.12.1 Constituent decisions
After clause 6.12.1(4A)(iv), insert:

(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;

[58] Clause 6.12.3 Extent of AER's discretion in making distribution determinations
Omit clauses 6.12.3(a) and (b), and substitute:

(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.

[59] Clause 6.12.3 Extent of AER's discretion in making distribution determinations
Omit clause 6.12.3(c), and substitute:

(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.

[60] Clause 6.12.3 Extent of AER's discretion in making distribution determinations
Omit clause 6.12.3(c1), and substitute:

(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.

[61] Clause S6.2.1 Establishment of opening regulatory asset base for a regulatory control period

In clause S6.2.1(e)(1), at the beginning of the clause, omit "The" and substitute "Subject to subparagraph (e)(9), the".

[62] Clause S6.2.1 Establishment of opening regulatory asset base for a regulatory control period

In clause S6.2.1(e)(8), at the beginning of the clause, omit "The" and substitute "Subject to subparagraph (e)(9), the".

[63] Clause S6.2.1 Establishment of opening regulatory asset base for a regulatory control period

After clause S6.2.1(e)(8), insert:

(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).

[64] Clause S6.2.3 Roll forward of regulatory asset base within the same regulatory control period

In clause S6.2.3(c)(1), omit “6.12.1(3)” and substitute “6.12.1(3) and (3A)”.
Schedule 2 Amendment to the National Electricity Rules

(Clause 5)

[1] Chapter 10 New Definitions

In Chapter 10, insert the following new definitions in alphabetical order:

asset exemption

Has the meaning given in clause 6.4B.1(a).

Asset Exemption Guidelines

Guidelines developed, maintained and published by the AER under clause 6.4B.1(c).

exemption application

Has the meaning given in clause 6.4B.2(a).

Distribution Service Classification Guidelines

Guidelines developed, maintained and published by the AER under clause 6.2.3A.

expenditure for a restricted asset

Capital expenditure for a restricted asset, excluding capital expenditure for the refurbishment of that asset.

restricted asset

An item of equipment that is electrically connected to a retail customer’s connection point at a location that is on the same side of that connection point as the metering point, but excludes:

(a) such an item of equipment where that retail customer is a Distribution Network Service Provider and that Distribution Network Service Provider is the Local Network Service Provider for that connection point; or

(b) a network device.

[2] Chapter 10 Substituted Definitions

In Chapter 10, substitute the following definition:

network device

Apparatus or equipment that:

(a) enables a Local Network Service Provider to monitor, operate or control the network for the purposes of providing network services,
which may include switching devices, measurement equipment and control equipment;

(b) is located at or adjacent to a metering installation at the connection point of a retail customer; and

(c) does not have the capability to generate electricity.
Schedule 3  Savings and Transitional Amendments to the National Electricity Rules

(Clause 5)

[1] Chapter 11  New Part ZZZF

In Chapter 11, after Part ZZZE, insert:

**Part ZZZF  Contestability of energy services**

11.104  Rules consequential on the making of the National Electricity Amendment (Contestability of energy services) Rule 2017

11.104.1 Definitions

For the purposes of this rule 11.104:

affected DNSP means each of the following Distribution Network Service Providers:

(a) ActewAGL Distribution, the joint venture between Icon Distribution Investments Limited ACN 073 025 224 and Jemena Networks (ACT) Pty Ltd ACN 008 552 663, which is registered by AEMO as a Network Service Provider in accordance with section 12(1) of the National Electricity Law and clause 2.5.1 of the Rules to own, control and operate the distribution system in the Australian Capital Territory, or any successor to its business;

(b) Ausgrid Operator Partnership (ABN 78 508 211 731), which comprises of:

(1) Blue Op Partner Pty Ltd (ACN 615 217 500) as trustee for the Blue Op Partner Trust;

(2) ERIC Alpha Operator Corporation 1 Pty Ltd (ACN 612 975 096) as trustee for ERIC Alpha Operator Trust 1;

(3) ERIC Alpha Operator Corporation 2 Pty Ltd (ACN 612 975 121) as trustee for ERIC Alpha Operator Trust 2;

(4) ERIC Alpha Operator Corporation 3 Pty Ltd (ACN 612 975 185) as trustee for ERIC Alpha Operator Trust 3; and

(5) ERIC Alpha Operator Corporation 4 Pty Ltd (ACN 612 975 210) as trustee for ERIC Alpha Operator Trust 4;

(c) Endeavour Energy Network Operator Partnership (ABN 11 247 365 823), which comprises of:
(1) Edwards O Pty Limited (ACN 618 643 486) as trustee for the Edwards O Trust;

(2) ERIC Epsilon Operator Corporation 1 Pty Ltd (ACN 617 221 735) as trustee for ERIC Epsilon Operator Trust 1;

(3) ERIC Epsilon Operator Corporation 2 Pty Ltd (ACN 617 221 744) as trustee for ERIC Epsilon Operator Trust 2;

(4) ERIC Epsilon Operator Corporation 3 Pty Ltd (ACN 617 221 753) as trustee for ERIC Epsilon Operator Trust 3; and

(5) ERIC Epsilon Operator Corporation 4 Pty Ltd (ACN 617 221 771) as trustee for ERIC Epsilon Operator Trust 4;

(d) Essential Energy, the energy services corporation of that name (formerly known as Country Energy), which is constituted under section 7 of the Energy Services Corporations Act 1995 (NSW) and specified in Part 2 of Schedule 1 of that Act, or any successor to its business;

(e) Power and Water Corporation ABN 15 947 3 52 360, providing distribution services in the Northern Territory, or any successor to its business; and

(f) Tasmanian Networks Pty Ltd ACN 167 357 299, in its capacity as a Distribution Network Service Provider.

Amending rule means the National Electricity Amendment (Contestability of energy services) Rule 2017.

commencement date means the date of commencement of the Amending rule.

current regulatory control period in respect of a Distribution Network Service Provider, means the regulatory control period for that Distribution Network Service Provider that commenced before the commencement date and, as at the commencement date, has not ended.

Old clauses 6.2.1(d) and 6.2.2(d) means 6.2.1(d) and clause 6.2.2(d), each as in force immediately before the commencement date.

statement of amendment in respect of an affected DNSP, means a written statement setting out any amendments to the affected DNSP’s building block proposal that are necessary to remove, and make substitutions for, any expenditure for a restricted asset included in the affected DNSP’s:

(a) forecast of required capital expenditure; and

(b) proposed contingent capital expenditure (if any),
for which the affected DNSP has not submitted an *exemption application* under clause 11.104.4(d)(1).

**subsequent distribution determination** means a distribution determination for the subsequent regulatory control period.

**subsequent regulatory control period** in respect of a *Distribution Network Service Provider*, means the *regulatory control period* for that *Distribution Network Service Provider* that immediately follows the current *regulatory control period*.

### 11.104.2 New guidelines

(a) By 30 September 2018, the *AER* must develop and *publish* the first:

1. *Distribution Service Classification Guidelines*; and
2. *Asset Exemption Guidelines*,

until into account the Amending rule.

(b) The *AER* must comply with the *distribution consultation procedures* when meeting its obligations under paragraph (a).

### 11.104.3 Transitional arrangements for application of Distribution Service Classification Guidelines and service classification provisions

(a) Clause 6.2.8(c)(1) does not apply to, or in respect of, the *Distribution Service Classification Guidelines* for the purposes of the making of a subsequent distribution determination for an affected DNSP.

(b) Old clauses 6.2.1(d) and 6.2.2(d) continue to apply to, and in respect of, the making of a subsequent distribution determination for an affected DNSP.

### 11.104.4 Transitional arrangements for application of Asset Exemption Guidelines, exemption applications and asset exemption decisions

(a) Clause 6.2.8(c)(1) does not apply to, or in respect of, the *Asset Exemption Guidelines* for the purposes of the making of a subsequent distribution determination for an affected DNSP.

(b) In the case of *Distribution Network Services Providers* other than affected DNP's, clauses 6.5.7(b)(5) and 6.5.7(c)(2) do not apply to, or in respect of, *expenditure for a restricted asset* that is included in a *building block proposal* for the subsequent regulatory control period, to the extent that:
the expenditure constitutes unspent capital expenditure for a contingent project under clause 6.5.7(g) and the completion date for that contingent project is a date that occurs during the subsequent regulatory control period; or

(2) the expenditure relates to an approved pass through amount to be recovered during the subsequent regulatory control period.

(c) In the case of affected DNSPs, clauses 6.5.7(b)(5) and 6.6A.1(a1) do not apply to, or in respect of, expenditure for a restricted asset that is included in a building block proposal for the subsequent regulatory control period.

(d) Subject to paragraph (e), if the forecast of required capital expenditure and proposed contingent capital expenditure (if any) included in an affected DNSP’s building block proposal and regulatory proposal, respectively, for the subsequent regulatory control period includes expenditure for a restricted asset, the affected DNSP must:

(1) submit an exemption application to the AER by 31 March 2018, which requests an asset exemption under clause 6.4B.1(a)(1), 6.4B.1(a)(2) or 6.4B.1(a)(3) in respect of the relevant asset or class of asset on which that expenditure for a restricted asset is to be incurred; or

(2) to the extent that an exemption application is not submitted under subparagraph (d)(1) in respect of the relevant expenditure for a restricted asset, submit a statement of amendment to the AER by 31 March 2018 for that expenditure for a restricted asset.

(e) Paragraph (d) does not apply in respect of an affected DNSP to the extent the expenditure for a restricted asset:

(1) constitutes unspent capital expenditure for a contingent project under clause 6.5.7(g) and the completion date for that contingent project is a date that occurs during the subsequent regulatory control period; or

(2) relates to an approved pass through amount to be recovered during the subsequent regulatory control period.

(f) A statement of amendment submitted by an affected DNSP under subparagraph (d)(2) is taken to form part of the regulatory proposal submitted by that affected DNSP under clause 6.8.2(b) for the subsequent regulatory control period.

(g) Subject to the provisions of the Law and the Rules about disclosure of confidential information, the AER must publish a statement of amendment as soon as practicable after receiving it.
(h) In the case of affected DNSPs:

(1) Clause 6.5.7(c)(2) does not apply to, or in respect of, expenditure for a restricted asset that is included in a building block proposal for the subsequent regulatory control period, to the extent that:

(i) the expenditure constitutes unspent capital expenditure for a contingent project under clause 6.5.7(g) and the completion date for that contingent project is a date that occurs during the subsequent regulatory control period; or

(ii) the expenditure relates to an approved pass through amount to be recovered during the subsequent regulatory control period.

(2) An asset exemption requested under subparagraph (d)(1) is taken to be an asset exemption requested under clause 6.5.7(b)(5) for the purposes of clause 6.5.7(c)(2)(iii)(A).

(i) Clauses 6.4B.1(b)(2), 6.4B.2(b), 6.4B.2(c)(5) and 6.8.2(a1) do not apply to, or in respect of, an exemption application submitted by an affected DNSP in respect of a regulatory proposal for the subsequent regulatory control period.

(j) Clause 6.12.1(3A) does not apply to, or in respect of, expenditure for a restricted asset that is included in a building block proposal for the subsequent regulatory control period, to the extent that expenditure constitutes unspent capital expenditure for a contingent project under clause 6.5.7(g) and the completion date for that contingent project is a date that occurs during the subsequent regulatory control period.

11.104.5 Transitional arrangements for adjustment in value of regulatory asset base

Clause S6.2.1(e)(9) does not apply to, or in respect of, expenditure for a restricted asset to the extent that expenditure:

(a) is incurred during the current regulatory control period;

(b) constitutes unspent capital expenditure for a contingent project under clause 6.5.7(g) and the completion date for that contingent project is a date that occurs during the subsequent regulatory control period; or

(c) relates to an approved pass through amount to be recovered during the subsequent regulatory control period.

[END OF RULE AS MADE]