



## **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.

#### **[4] Clause 6.2.8 Guidelines**

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.

#### **[6] New Rule 6.4B Asset exemptions**

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*.

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

#### **[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);".

**[32] Clause 6.8.1 AER's framework and approach paper**

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".

**[35] Clause 6.8.1 AER's framework and approach paper**

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 15 947 352 360, 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*,
- to take 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 DNPs, 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:

- (1) 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]

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