



Draft National Electricity Amendment (Reform of the Regulatory Test Principles) Rule 2006

under the National Electricity Law as applied by:

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

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

John Tamblyn
Chairman
Australian Energy Market Commission

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1. Title of Rule

This Rule is the *National Electricity Amendment (Reform of the Regulatory Test Principles) Rule 2006*.

2. Commencement

This Rule commences operation on the day the notice of the making of the Rule is published in the South Australian Government Gazette.

3. Amendment of the National Electricity Rules

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

4. Notes

Notes do not form part of this Rule.

Schedule 1 Amendment of National Electricity Rules

(Clause 3)

[1] Clause 5.6.5A

Omit the clause and substitute:

5.6.5A Regulatory Test

- (a) The *AER* must make the *regulatory test* in accordance with the principles set out in this clause 5.6.5A.
- (b) The *regulatory test* or any amended *regulatory test* under this clause 5.6.5A must have as its purpose the identification of *new network investment* or non-*network* alternatives that:
 - (1) maximise the net economic benefit to all those who produce, consume and transport electricity in the *market*; or
 - (2) in the event the option is necessitated to meet the service standards linked to the technical requirements of schedule 5.1 or in *applicable regulatory instruments*, minimise the present value of the costs of meeting those requirements.
- (c) Where the *regulatory test* is for the purposes of *new network investment* that is not of the kind described in paragraph (b)(2), the *regulatory test* must:
 - (1) be based on a cost-benefit analysis of the future were the *new network investment* to take place, compared to the likely alternative outcome or outcomes, were the *new network investment* not to take place;
 - (2) ensure that the determination of the likely alternative outcome is informed by a consideration of all genuine and practicable alternative options to the proposed *new network investment* without bias, regarding:
 - (i) energy source;
 - (ii) technology;
 - (iii) ownership;
 - (iv) the extent to which the *new network investment* or the non-*network* alternative enables *intra-regional* or *inter-regional* trading of electricity;
 - (v) whether it is a *network* or non-*network* alternative;
 - (vi) whether the *new network investment* or non-*network* alternative is intended to be regulated; or
 - (vii) any other factor;

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- (3) require that where there is more than one likely alternative outcome to the *new network investment*, and no one alternative outcome is significantly more likely to occur than the other alternative outcome(s), then the cost-benefit analysis referred to in subparagraph (1) should be undertaken in relation to each such likely alternative outcome;
 - (4) not require the level of analysis to be disproportionate to the scale and size of the *new network investment*; and
 - (5) be capable of predictable, transparent and consistent application.
- (d) The *AER* must ensure that, in relation to the consideration of alternative options to the *new network investment* in paragraph (c), the *regulatory test* or any guidelines for the application of the *regulatory test* require the *Network Service Provider* to:
- (1) *publish* details of its proposed *new network investment*; and
 - (2) publicly request information as to the identity and detail of alternative options to the proposed *new network investment*.
- (e) In relation to the identification of alternative options under paragraph (d), alternative options may include (without limitation) *generation*, demand side management, other *network* options, or the substitution of demand for electricity by the provision of alternative forms of energy.
- (f) The *AER* may amend the *regulatory test* from time to time in accordance with the *transmission consultation procedures*.
- [Drafting Note:** The definition of transmission consultation procedures is taken from draft rule 6A.20 of the draft National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006]
- (g) The *AER* must *publish* guidelines for the application of the *regulatory test* and the guidelines:
- (1) must be *published* at the same time that the *AER publishes* the *regulatory test* or subsequently amends the *regulatory test*; and
 - (2) may be amended from time to time by the *AER*.
- (h) The *AER* must ensure that in relation to the cost-benefit analysis referred to in paragraph (c)(1), the *regulatory test* or any guidelines for the application of the *regulatory test* address, as a minimum, the following factors:
- (1) the classes of possible benefits that may be included as benefits, and classes of possible benefits that may not be included as benefits;
 - (2) the method or methods permitted for estimating the magnitude of the different classes of benefits;

- (3) the classes of possible costs that may be counted as costs, and classes of possible costs that may not be included as costs;
- (4) the method or methods permitted for estimating the magnitude of the different classes of costs; and
- (5) the appropriate method and value for specific inputs, where relevant, for determining the discount rate to be applied.

[2] Chapter 11 Saving and Transitional Rules

After clause 11.4 insert:

11.5 Rules consequent on making of the National Electricity Amendment (Reform of Regulatory Test Principles) Rule 2006

11.5.1 Definitions

- (a) For the purposes of this rule 11.5:

Amending Rule means the National Electricity Amendment (Reform of Regulatory Test Principles) Rule 2006.

commencement date means the date on which the Amending Rule commences operation.

current application means any action taken or process commenced under the *Rules*, which relies on or is referenced to, the *regulatory test*, and is not completed as at the commencement date.

new clause 5.6.5A means clause 5.6.5A of the *Rules* as in force immediately after the commencement of the Amending Rule.

old clause 5.6.5A means clause 5.6.5A of the *Rules* as in force immediately before the commencement of the Amending Rule.

transitional application means any action taken or process commenced under the *Rules*, which relies on or is referenced to, the *regulatory test* and is not completed on 31 December 2007, or the date on which amendments (if any) to the *regulatory test* commence, whichever is the earlier.

11.5.2 Amending Rule does not affect old clause 5.6.5A

- (a) On the commencement date, the *regulatory test* promulgated by the *AER* in accordance with the old clause 5.6.5A and in effect immediately before the commencement date, continues in effect and is taken to be consistent with the new clause 5.6.5A until 31 December 2007.

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- (b) Old clause 5.6.5A, and the *regulatory test* promulgated under that old clause 5.6.5A, continues to apply to and in respect of, any current application and any transitional application.
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