



Revised draft rules

AEMC Directions Paper

**Economic regulation of
Network Service Providers**

May 2012

Overview

The Australian Energy Regulator (AER) welcomes the opportunity to respond to the Australian Energy Markets Commission (AEMC) directions paper on the economic regulation of network service providers (NSPs).

As identified in our submission dated May 2012 to the Directions Paper, the AER in some areas built upon our original proposal and in other areas proposed alternatives or revisions to the draft rules it initially submitted to the AEMC as set out in the paper Economic regulation of transmission and distribution network service providers: AER's proposed changes to the National Electricity Rules Part C – Draft Rules, September 2011 (initial draft rules).

This paper sets out draft rules to illustrate where we have built upon our original proposal or proposed alternatives (revised draft rules). The revised draft rules must be read together with the initial draft rules. Rules that have not been revised between the initial draft rules and these revised draft rules have not been included in this paper.

The red and blue mark ups respectively identify the initial draft rules and the revised draft rules.

1 Capex incentives

Table 1.1 Revised draft rules: capex incentives

No.	Initial draft rule(s)	Revised draft rule(s)	Remarks
Chapter 6			
1.1	6.5.8(b)	Amended: 6.5.8(b)	Removal of reference to capital expenditure in the efficiency benefit sharing scheme.
1.2	6.6.5(b)	Amended: 6.6.5(b)(6) 6.6.5(b)(7)	Revision to: <ul style="list-style-type: none">- allow the AER to develop and implement capex incentive scheme (refer to section 2.1 of the AER's submission to the Directions Paper), which can be achieved through the AER's proposed other incentive schemes provision;- amend the AER's proposed other incentive schemes provision to include additional factors to consider if scheme extends to capital expenditure namely: effect of existing incentives and whether scheme should be effected via the control mechanisms, building blocks or some other mechanism.
1.3	S6.2.1(e)(1)	Amended: S6.2.1(e)(1)	Removal of proposed 60:40 overspend sharing mechanism and inclusion of a reference to any other incentive scheme that the AER may publish under its proposed cl.6.6.5
Chapter 6A			
1.4	6A.5.4(a)(5) 6A.5.4(b)(5)	Amended: 6A.5.4(a)(5) 6A.5.4(b)(5)	STPIS and other incentives schemes added as potential building blocks.
1.5	6A.7.5(b)	Amended: 6A.7.5(b)(6) 6A.7.5(b)(7)	See reasons for [1.2] above.
1.6	S6A.2.1(f)(1)	Amended: S6A.2.1(f)(1)	See reasons for [1.3] above.

1.1 Chapter 6

...

6.5.8 Efficiency benefit sharing scheme

(a) The *AER* must, in accordance with the *distribution consultation procedures*, develop and *publish* a scheme or schemes (*efficiency benefit sharing scheme*) that provide for a fair sharing between *Distribution Network Service Providers* and *Distribution Network Users* of:

- (1) the efficiency gains derived from the operating expenditure of *Distribution Network Service Providers* for a *regulatory control period* being less than; and
- (2) the efficiency losses derived from the operating expenditure of *Distribution Network Service Providers* for a *regulatory control period* being more than,

the forecast operating expenditure ~~accepted or substituted~~determined by the *AER* for that *regulatory control period*.

(b) ~~An efficiency benefit sharing scheme may (but is not required to) be developed to cover efficiency gains and losses related to capital expenditure or distribution losses.~~ [1.1]

~~(e)(b)~~ In developing and implementing an *efficiency benefit sharing scheme*, the *AER* must have regard to:

- (1) the need to ensure that benefits to consumers likely to result from the scheme are sufficient to warrant any reward or penalty under the scheme for *Distribution Network Service Providers*; and
- (2) the need to provide *Distribution Network Service Providers* with a continuous incentive, so far as is consistent with economic efficiency, to reduce operating expenditure ~~and, if the scheme extends to capital expenditure, capital expenditure~~; and
- (3) the desirability of both rewarding *Distribution Network Service Providers* for efficiency gains and penalising *Distribution Network Service Providers* for efficiency losses; and
- (4) any incentives that *Distribution Network Service Providers* may have to capitalise expenditure; and
- (5) the possible effects of the scheme on incentives for the implementation of non-network alternatives.

~~(d)(c)~~ The *AER* may, from time to time and in accordance with the *distribution consultation procedures*, amend or replace an *efficiency benefit sharing scheme*. [1.1]

...

6.6.5 Other incentive schemes

- (a) The AER may, in accordance with the *distribution consultation procedures*, develop and publish an incentive scheme or schemes other than the *service target performance incentive scheme*, *demand management incentive scheme* and the *efficiency benefit sharing scheme* to apply to *Distribution Network Service Providers* where the AER considers that there are benefits to end users or customers arising from applying the incentive scheme or schemes to *Distribution Network Service Providers*.
- (b) In developing and implementing an incentive scheme or schemes under this clause, the AER must have regard to:
- (1) the possible effects of the scheme or schemes on the incentives for *Distribution Network Service Providers* to implement non-network alternatives; and
 - (2) the need to ensure that the incentives are sufficient to offset any financial incentives the *Distribution Network Service Provider* may have to reduce costs at the expense of service levels; and
 - (3) the need to ensure that benefits to consumers likely to result from the incentive scheme or schemes are sufficient to warrant any reward or penalty under the incentive scheme or schemes for *Distribution Network Service Providers*; and
 - (4) the willingness of the customer or end user to pay for improved performance in the delivery of services; and
 - (5) any other incentives available to the *Distribution Network Service Provider* under the *Rules* or under a relevant distribution determination; and [1.2]
 - (6) if the scheme extends to capital expenditure:
 - (i) the incentives for *Distribution Network Service Providers* to incur capital expenditure that is less than or exceeds the total forecast capital expenditure as determined under a relevant distribution determination; and [1.2]
 - (ii) the need to ensure that there are sufficient incentives to offset any financial benefit the *Distribution Network Service Provider* may obtain by incurring capital expenditure that is less than or exceeds the total forecast capital expenditure as determined under a relevant distribution determination; and [1.2]
 - (7) whether the scheme or schemes should be effected through a *Distribution Network Service Provider's* control mechanism, building blocks, the roll-forward of the regulatory asset base under clause S6.2.1 or some other mechanism. [1.2]
- (c) At the same time as it publishes an incentive scheme or schemes under this clause, the AER must also publish, if applicable, any parameters for the scheme. For the

avoidance of doubt, the parameters may differ as between *Distribution Network Service Providers* and over time.

- (d) The *AER* must set out in the incentive scheme or schemes that is developed and *published* under this clause any requirements with which the values attributed to the parameters referred to in paragraph (c) must comply.
- (e) The *AER* may, from time to time and in accordance with the *distribution consultation procedures*, amend or replace any other incentive scheme or schemes that is developed and *published* under this clause, except that no such amendment or replacement may change the application of the incentive scheme or schemes to a *Distribution Network Service Provider* in respect of a *regulatory control period* that has commenced before, or that will commence within 15 months of, the amendment or replacement coming into operation.
- (f) Subject to paragraph (g) the *AER* may, from time to time and in accordance with the *distribution consultation procedures*, amend or replace the values to be attributed to any parameters applicable to the incentive scheme or schemes.
- (g) An amendment or replacement referred to in paragraph (f) must not change the values to be attributed to any parameters applicable to the incentive scheme or schemes where:
 - (1) those values must be included in information accompanying a *regulatory proposal*; and
 - (2) the *regulatory proposal* is required to be submitted under clause 6.8.2(a) at a time that is within 2 months of the *publication* of the amended or replaced parameters applicable to the incentive scheme or schemes.

...

S6.2.1 Establishment of opening regulatory asset base for a regulatory control period

(a) Application of this clause

This clause S6.2.1

- (1) applies to the establishment of the value of the regulatory asset base for a *distribution system* as at the beginning of a *regulatory control period* on the roll forward of the regulatory asset base to that *regulatory control period* from the previous *regulatory control period*; and
- (2) also applies to the establishment of the value of the regulatory asset base for a *distribution system* as at the beginning of a *regulatory control period* where the *distribution system* was not immediately before that time the subject of a *building block determination*.

(b) Roll forward model to comply with this clause

The values to be used for completing the *roll forward model* must be established in accordance with this clause and clauses S6.2.2 and S6.2.3.

(c) **Distribution systems of specific providers**

- (1) In the case of a *distribution system* owned, controlled or operated by one of the following *Distribution Network Service Providers* as at the commencement of this schedule, the value of the regulatory asset base for that *distribution system* as at the beginning of that first *regulatory year* must be determined by rolling forward the regulatory asset base for that *distribution system*, as set out in the table below, in accordance with this schedule:

Jurisdiction	Distribution Network Service Provider	Regulatory Asset Base (\$m)
Australian Capital Territory	ActewAGL	510.54 (as at 1 July 2004 in July 2004 dollars)
New South Wales	Country Energy	2,440 (as at 1 July 2004 in July 2004 dollars)
	EnergyAustralia	4,116 (as at 1 July 2004 in July 2004 dollars)
	Integral Energy	2,283 (as at 1 July 2004 in July 2004 dollars)
Queensland	ENERGEX	4,308.1 (as at 1 July 2005 in July 2005 dollars)
	Ergon Energy	4,198.2 (as at 1 July 2005 in July 2005 dollars) but, if the Queensland Competition Authority nominates a different amount in writing to the AER, the regulatory asset base is the amount so nominated.
South Australia	ETSA Utilities	2,466 (as at 1 July 2005 in December 2004 dollars)
Tasmania	Aurora Energy	981.108 (as at 1 January 2008 in July 2006 dollars)
Victoria	AGL Electricity	578.4 (as at 1 January 2006 in July 2004 dollars)
	Citipower	990.9 (as at 1 January 2006 in July 2004 dollars)
	Powercor	1,626.5 (as at 1 January 2006 in July 2004 dollars)

Jurisdiction	Distribution Network Service Provider	Regulatory Asset Base (\$m)
	SP AusNet	1,307.2 (as at 1 January 2006 in July 2004 dollars)
	United Energy	1,220.3 (as at 1 January 2006 in July 2004 dollars)

- (2) The values in the table above are to be adjusted for the difference between:
- (i) any estimated capital expenditure that is included in those values for any part of a previous *regulatory control period*; and
 - (ii) the actual capital expenditure for that part of the previous *regulatory control period*.

This adjustment must also remove any benefit or penalty associated with any difference between the estimated and actual capital expenditure.

- (3) When rolling forward a regulatory asset base under subparagraph (1), the *AER* must take into account the derivation of the values in the above table from past regulatory decisions and the consequent fact that they relate only to the regulatory asset base identified in those decisions.

(d) **Other distribution systems**

- (1) This paragraph (d) applies to a *distribution system* not referred to in paragraphs (c) when *standard control services* that are provided by means of, or in connection with, that system are to be regulated under a *building block determination*.
- (2) The value of the regulatory asset base for that *distribution system* as at the beginning of the first *regulatory year* of the first *regulatory control period* for the relevant *Distribution Network Service Provider* is the prudent and efficient value of the assets that are used by the provider to provide those *standard control services* (but only to the extent that they are used to provide such services), as determined by the *AER*. In determining this value, the *AER* must have regard to the matters referred to in clause S6.2.2.
- (3) The value of the regulatory asset base for that *distribution system* as at the beginning of the first *regulatory year* of any subsequent *regulatory control period* must be determined by rolling forward the value of the regulatory asset base for that *distribution system* as at the beginning of the first *regulatory year* of the first *regulatory control period* in accordance with this schedule.

(e) **Method of adjustment of value of regulatory asset base**

Except as otherwise provided in paragraph (c) or (d), the value of the regulatory asset base for a *distribution system* as at the beginning of the first *regulatory year*

of a *regulatory control period* must be calculated by adjusting the value (the **previous value**) of the regulatory asset base for that *distribution system* as at the beginning of the first *regulatory year* of the immediately preceding *regulatory control period* (the **previous control period**) as follows:

- (1) The previous value of the regulatory asset base must be ~~increased by the amount of all capital expenditure incurred during the previous control period.~~ [1.3]
 - (i) the lesser of: [1.3]
 - (a) the total amount of capital expenditure incurred during the previous control period and, for any part of the previous control period for which actual capital expenditure is not available, the amount of the estimated capital expenditure determined by the AER for that part of the previous control period for which actual capital expenditure is not available (the **total capital expenditure**); and [1.3]
 - (b) the total of the forecast capital expenditure determined in the distribution determination for the previous control period adjusted for any amount of capital expenditure forming part of an approved pass through amount or a negative pass through amount determined by the AER for the previous control period or, if an approved pass through amount or a negative pass through amount does not include all of the increase or decrease in capital expenditure that the AER considered should be passed through in relation to the relevant pass through event, that increase or decrease in capital expenditure (the **total forecast capital expenditure**); and [1.3]
 - (ii) 60% of the total capital expenditure that exceeds the total forecast capital expenditure. [1.3]

Any amounts of related party margins and capitalised overheads included in the total capital expenditure must not exceed the amounts determined in accordance with how related party margins and capitalised overheads were included in the total of the forecast capital expenditure determined in the distribution determination for the previous control period. [1.3]

Note:

The total of the forecast capital expenditure determined in a distribution determination may be subject to clauses 6.6.4(f) and 6.6A.2(e)(3). [1.3]

- (i) increased by the amount of capital expenditure incurred during the previous control period and, for any part of the previous control period for which actual capital expenditure is not available, the amount of the estimated capital expenditure determined by the AER for that part of the previous control period for which actual capital expenditure is not available, subject to any applicable incentive scheme or schemes developed and published by the AER under clause 6.6.5; and [1.3]

(ii) reduced by any amounts of *related party margins* and *capitalised overheads* included in the total capital expenditure that exceeds the amounts determined in accordance with how *related party margins* and *capitalised overheads* were included in the total of the forecast capital expenditure determined in the distribution determination for the previous control period.

[1.3]

(2) The previous value of the regulatory asset base must be increased by the amount of the estimated capital expenditure approved by the *AER* for any part of the previous control period for which actual capital expenditure is not available.

(3)(2) The previous value of the regulatory asset base must be adjusted for the difference between:

- (i) the estimated capital expenditure for any part of a previous *regulatory control period* where that estimated capital expenditure has been included in that value; and
- (ii) the actual capital expenditure for that part of the previous *regulatory control period*.

This adjustment must also remove any benefit or penalty associated with any difference between the estimated and actual capital expenditure.

(4)(3) The previous value of the regulatory asset base must only be increased by actual or estimated capital expenditure to the extent that all such capital expenditure is *The capital expenditure referred to in subparagraphs (1), (2) and (3) must only be capital expenditure as properly allocated to the provision of standard control services in accordance with the Cost Allocation Method for the relevant Distribution Network Service Provider.*

(5)(4) The previous value of the regulatory asset base must be reduced by the amount of depreciation of the regulatory asset base during the previous *regulatory control period*, calculated in accordance with the distribution determination *and taking into account the amount of capital expenditure (if any) included in any approved pass through amount or negative pass through amount* for that period.

Note:

The amount of depreciation of the regulatory asset base during the previous regulatory control period calculated in accordance with the distribution determination for that period may be subject to clauses 6.6.4(f) and 6.6A.2(e)(3).

(6)(5) The previous value of the regulatory asset base must be reduced by the disposal value of any asset where that asset has been disposed of during the previous *regulatory control period*.

(7)(6) The previous value of the regulatory asset base must be reduced by the value of an asset where the asset was previously used to provide *standard control services* (or their equivalent under the previous regulatory system) but, as a result of a change to the classification of a particular service under

Part B, is not to be used for that purpose for the relevant *regulatory control period*.

~~(8)(7)~~ The previous value of the regulatory asset base may be increased by the value of an asset to which this subparagraph applies to the extent that:

- (i) the *AER* considers the asset to be reasonably required to achieve one or more of the *capital expenditure objectives*; and
- (ii) the value of the asset has not been otherwise recovered.

This subparagraph applies to an asset that:

- (i) was not used to provide *standard control services* (or their equivalent under the previous regulatory system) in the previous *regulatory control period* but, as a result of a change to the classification of a particular service under Part B, is to be used for that purpose for the relevant *regulatory control period*; or
 - (ii) was never previously used to provide *standard control services* (or their equivalent under the previous regulatory system) but is to be used for that purpose for the relevant *regulatory control period*.
- (f) An increase or reduction in the value of the regulatory asset base under subparagraph (7) or (8) of paragraph (e) is to be based on the portion of the value of the asset properly allocated, or formerly properly allocated, to *standard control services* in accordance with the principles and policies set out in the *Cost Allocation Method* for the relevant *Distribution Network Service Provider*. The value of the relevant asset is taken to be its value as shown in independently audited and published accounts.

1.2 Chapter 6A

...

6A.5.4 Building blocks approach

(a) Building blocks generally

The *annual building block revenue requirement* for a *Transmission Network Service Provider* for each *regulatory year* of a *regulatory control period* must be determined using a building blocks approach, under which the building blocks are:

- (1) indexation of the regulatory asset base - see paragraph (b)(1);
- (2) a return on capital for that year - see paragraph (b)(2);
- (3) the depreciation for that year - see paragraph (b)(3);
- (4) the estimated cost of corporate income tax of the provider for that year - see paragraph (b)(4);
- (5) certain revenue increments or decrements for that year arising from the *efficiency benefit sharing scheme, the service target performance incentive scheme or other incentive scheme or schemes* - see paragraph (b)(5);
- (6) the forecast operating expenditure ~~accepted or substituted~~determined by the AER for that year – see paragraph (b)(6); and
- (7) compensation for other risks - see paragraph (b)(7).

[1.4]

(b) Details about the building blocks

For the purposes of paragraph (a):

- (1) for indexation of the regulatory asset base:
 - (i) the regulatory asset base is calculated in accordance with clause 6A.6.1 and schedule 6A.2; and
 - (ii) the building block comprises a negative adjustment equal to the amount referred to in clause S6A.2.4(c)(4) for that year;
- (2) the return on capital is calculated in accordance with clause 6A.6.2;
- (3) the depreciation is calculated in accordance with clause 6A.6.3;
- (4) the estimated cost of corporate income tax is determined in accordance with clause 6A.6.4;

- (5) the revenue increments or decrements are those that arise as a result of the operation of the applicable *efficiency benefit sharing scheme*, as referred to in clause 6A.6.5, the applicable service target performance incentive scheme, as referred to in clause 6A.7.4 or any applicable incentive scheme or schemes developed and published by the AER under clause 6A.7.5; [1.4]
- (6) the forecast operating expenditure is ~~accepted or substituted~~determined by the AER in accordance with clause 6A.6.6(c),~~or~~ clause 6A.6.6(c1) ~~or clause 6A.13.2(b)(3) and (5)~~ (as the case may be); and
- (7) the compensation for other risks is such amounts as the AER determines are necessary for that year to compensate a *Transmission Network Service Provider* for risks that are not otherwise compensated for in the return on capital, including the risk referred to in clause S6A.2.3(b) of schedule 6A.2.
- ...

6A.7.5 Other incentive schemes

- (a) The AER may, in accordance with the *transmission consultation procedures*, develop and publish an incentive scheme or schemes other than the *service target performance incentive scheme* and the *efficiency benefit sharing scheme* to apply to *Transmission Network Service Providers* where the AER considers that there are benefits to end users or customers arising from applying the incentive scheme or schemes to *Transmission Network Service Providers*.
- (b) In developing and implementing an incentive scheme or schemes under this clause, the AER must have regard to:
- (1) the possible effects of the scheme or schemes on the incentives for *Transmission Network Service Providers* to implement non-network alternatives; and
 - (2) the need to ensure that the incentives are sufficient to offset any financial incentives the *Transmission Network Service Provider* may have to reduce costs at the expense of service levels; and
 - (3) the need to ensure that benefits to consumers likely to result from the incentive scheme or schemes are sufficient to warrant any reward or penalty under the incentive scheme or schemes for *Transmission Network Service Providers*; and
 - (4) the willingness of the customer or end user to pay for improved performance in the delivery of services; and
 - (5) any other incentives available to the *Transmission Network Service Provider* under the *Rules* or under a relevant *revenue determination*; and
 - (6) if the scheme extends to capital expenditure: [1.5]
- (i) the incentives for *Transmission Network Service Providers* to incur capital expenditure that is less than or exceeds the total forecast capital

expenditure as determined under a relevant transmission determination; and

[1.5]

(ii) the need to ensure that there are sufficient incentives to offset any financial benefit the Transmission Network Service Provider may obtain by incurring capital expenditure that is less than or exceeds the total forecast capital expenditure as determined under a relevant transmission determination.

[1.5]

(7) whether the scheme or schemes should be effected through a Transmission Network Service Provider's control mechanism, building blocks, the roll-forward of the regulatory asset base under clause S6A2.1 or some other mechanism.

[1.5]

(c) At the same time as it publishes an incentive scheme or schemes under this clause, the AER must also publish, if applicable, any parameters for the scheme. For the avoidance of doubt, the parameters may differ as between Transmission Network Service Providers and over time.

(d) The AER must set out in the incentive scheme or schemes that is developed and published under this clause any requirements with which the values attributed to the parameters referred to in paragraph (c) must comply.

(e) The AER may, from time to time and in accordance with the transmission consultation procedures, amend or replace any incentive scheme or schemes that is developed and published under this clause, except that no such amendment or replacement may change the application of the incentive scheme or schemes to a Transmission Network Service Provider in respect of a regulatory control period that has commenced before, or that will commence within 15 months of, the amendment or replacement coming into operation.

(f) Subject to paragraph (g) the AER may, from time to time and in accordance with the transmission consultation procedures, amend or replace the values to be attributed to any parameters applicable to the incentive scheme or schemes.

(g) An amendment or replacement referred to in paragraph (f) must not change the values to be attributed to any parameters applicable to the incentive scheme or schemes where:

(1) those values must be included in information accompanying a Revenue Proposal; and

(2) the Revenue Proposal is required to be submitted under clause 6A.10.1(a) at a time that is within 2 months of the publication of the amended or replaced parameters applicable to the incentive scheme or schemes.

S6A.2.1 Establishment of opening regulatory asset base for a regulatory control period

(a) Application of this clause

This clause S6A.2.1:

- (1) applies to the establishment of the value of the regulatory asset base for a *transmission system* as at the beginning of a *regulatory control period* on the roll forward of the regulatory asset base to that *regulatory control period* from the previous *regulatory control period*; and
- (2) also applies to the establishment of the value of the regulatory asset base for a *transmission system* as at the beginning of a *regulatory control period* where the *transmission system* was not immediately before that time the subject of a *revenue determination*.

(b) Roll forward model to comply with this clause

The *roll forward model* referred to in clause 6A.6.1 of the *Rules* must provide for those values to be established in accordance with the requirements of clauses S6A.2.1, S6A.2.2 and S6A.2.3.

(c) Transmission systems of specific providers

- (1) In the case of a *transmission system* owned, controlled or operated by one of the following *Transmission Network Service Providers* as at 16 February 2006, the value of the regulatory asset base for that *transmission system* as at the beginning of that first *regulatory year* must be determined by rolling forward the regulatory asset base for that *transmission system*, as set out in the table below, in accordance with this schedule:

Transmission Network Service Provider	Regulatory Asset Base (\$m)
EnergyAustralia	635.6 (as at 1 July 2004)
TransGrid	3,012.76 (as at 1 July 2004)
Powerlink	As per transitional revenue determination in accordance with clause 11.6.12
ElectraNet	823.75 (as at 1 January 2003)
Transend	603.6 (as at 31 December 2003)
SP AusNet	1,835.60 (as at 1 January 2003)
Murraylink Transmission Company	102.96 (as at 1 October 2003)
Directlink	116.68 (as at 1 July 2005)

- (2) The values in the table above are to be adjusted for the difference between:
- (i) any estimated capital expenditure that is included in those values for any part of a previous *regulatory control period*; and
 - (ii) the actual capital expenditure for that part of the previous *regulatory control period*.

This adjustment must also remove any benefit or penalty associated with any difference between the estimated and actual capital expenditure.

(d) **Other transmission systems**

- (1) This paragraph (d) applies to a *transmission system* not referred to in paragraphs (c) or (e), when *prescribed transmission services* that are provided by means of, or in connection with, that system are to be regulated under a *revenue determination*.
- (2) The value of the regulatory asset base for that *transmission system* as at the beginning of the first *regulatory year* of the first *regulatory control period* for the relevant *Transmission Network Service Provider* is the prudent and efficient value of the assets that are used by the provider to provide those *prescribed transmission services* (but only to the extent that they are used to provide such services), as determined by the *AER*. In determining this value, the *AER* must have regard to the matters referred to in clause S6A.2.2.
- (3) The value of the regulatory asset base for that *transmission system* as at the beginning of the first *regulatory year* of any subsequent *regulatory control period* must be determined by rolling forward the value of the regulatory asset base for that *transmission system* as at the beginning of the first *regulatory year* of the first *regulatory control period* in accordance with this schedule.

(e) **Former Market Network Services**

- (1) This paragraph (e) applies to a *transmission system* where any services provided by means of, or in connection with, that *transmission system* are determined to be *prescribed transmission services* under clause 2.5.2(c).
- (2) The value of the regulatory asset base for that *transmission system*, as at the beginning of the first *regulatory year* of the first *regulatory control period* for which those services are to be regulated under a *revenue determination*, is the amount that is determined by the *AER* as the lesser of:
 - (i) the prudent and efficient value of the assets that are used by the relevant *Transmission Network Service Provider* to provide those prescribed services (but only to the extent they are used to provide such services), such value being determined by the *AER* having regard to the matters referred to in clause S6A.2.2; and
 - (ii) the sum of:

- (A) the net present value of the revenue that it is expected would be earned by the provider from the provision of those services, over the remaining life of the assets that are used by the provider to provide those services, if those services had not been determined to be *prescribed transmission services*; and
- (B) to the extent that such market benefit is not included in the expected revenue referred to in clause S6A.2.1(e)(2)(ii)(A), the net present value of the market benefit to *Registered Participants* of the services being determined to be *prescribed transmission services* compared to being continued to be treated as services that are not *prescribed transmission services*,

reduced by the net present value of the total operating expenditure over the remaining life of the *transmission system* which the *AER* considers to be reasonably required in order to achieve the *operating expenditure objectives*.

For the purposes of clause S6A.2.1(e)(2)(ii)(B), the net present value of the market benefit is the present value of the market benefit less the present value of costs, as those terms are defined for the purposes of the *regulatory test* or *regulatory investment test for transmission* (as the case may be).

- (3) The value of the regulatory asset base for that *transmission system* as at the beginning of the first *regulatory year* of any subsequent *regulatory control period* must be determined by rolling forward the value of the regulatory asset base for that *transmission system* as at the beginning of the first *regulatory year* of the first *regulatory control period* in accordance with this schedule.

(f) Method of adjustment of value of regulatory asset base

Except as otherwise provided in paragraph (c), (d) or (e), the value of the regulatory asset base for a *transmission system* as at the beginning of the first *regulatory year* of a *regulatory control period* must be calculated by adjusting the value (the **previous value**) of the regulatory asset base for that *transmission system* as at the beginning of the first *regulatory year* of the immediately preceding *regulatory control period* (the **previous control period**) as follows:

- (1) The previous value of the regulatory asset base must be ~~increased by the amount of all capital expenditure incurred during the previous control period, including any capital expenditure determined for that period under clause 6A.8.2(e)(1)(i) in relation to contingent projects where the revenue determination has been amended by the AER in accordance with clause 6A.8.2(h) (regardless of whether such capital expenditure is above or below the forecast capital expenditure for the period that is adopted for the purposes of the transmission determination (if any) for that period).~~ [1.6]

(i) the lesser of:

[1.6]

(a) the total amount of capital expenditure incurred during the previous control period and, for any part of the previous control period for which actual capital expenditure is not available, the amount of the estimated capital expenditure determined by the AER for that part of the previous control period for which actual capital expenditure is not available (the **total capital expenditure**); and

[1.6]

(b) the total of the forecast capital expenditure determined in the *revenue determination* for the previous control period adjusted for any amount of capital expenditure forming part of an *approved pass through amount* or a *negative pass through amount* determined by the AER for the previous control period or, if an *approved pass through amount* or a *negative pass through amount* does not include all of the increase or decrease in capital expenditure that the AER considered should be passed through in relation to the relevant *pass through event*, that increase or decrease in capital expenditure (the **total forecast capital expenditure**); and

[1.6]

(ii) 60% of the total capital expenditure that exceeds the total forecast capital expenditure.

[1.6]

Any amounts of *related party margins* and *capitalised overheads* included in the total capital expenditure must not exceed the amounts determined in accordance with how *related party margins* and *capitalised overheads* were included in the total of the forecast capital expenditure determined in the *revenue determination* for the previous control period.

[1.6]

Note:

[1.6]

The total of the forecast capital expenditure determined in a *revenue determination* may be subject to clauses 6A.7.1(f) and 6A.8.2(e)(3).

[1.6]

(i) increased by the amount of capital expenditure incurred during the previous control period and, for any part of the previous control period for which actual capital expenditure is not available, the amount of the estimated capital expenditure determined by the AER for that part of the previous control period for which actual capital expenditure is not available, subject to any applicable incentive scheme or schemes developed and published by the AER under clause 6A.7.5; and

[1.6]

(ii) reduced by any amounts of *related party margins* and *capitalised overheads* included in the total capital expenditure that exceeds the amounts determined in accordance with how *related party margins* and *capitalised overheads* were included in the total of the forecast capital expenditure determined in the *transmission determination* for the previous control period.

[1.6]

(2) The previous value of the regulatory asset base must be increased by the amount of the estimated capital expenditure approved by the AER for any part of the previous control period for which actual capital expenditure is

~~not available, including any capital expenditure in relation to contingent projects where the total revenue cap has been amended by the AER in accordance with clause 6A.8.2(h).~~

(3)(2) The previous value of the regulatory asset base must be adjusted for the difference between:

- (i) the estimated capital expenditure for any part of a previous *regulatory control period* where that estimated capital expenditure has been included in that value; and
- (ii) the actual capital expenditure for that part of the previous *regulatory control period*.

This adjustment must also remove any benefit or penalty associated with any difference between the estimated and actual capital expenditure.

(4)(3) ~~The previous value of the regulatory asset base must only be increased by actual or estimated capital expenditure to the extent that all such capital expenditure is~~ The capital expenditure referred to in subparagraphs (1), (2) and (3) must only be capital expenditure as properly allocated to the provision of *prescribed transmission services* in accordance with the *Cost Allocation Methodology* for the relevant *Transmission Network Service Provider*.

(5)(4) The previous value of the regulatory asset base must be reduced by the amount of ~~actual~~ depreciation of the regulatory asset base during the previous control period, calculated in accordance with the rates and methodologies allowed in the *transmission determination* (if any) ~~and taking into account the amount of capital expenditure (if any) included in any approved pass through amount or negative pass through amount~~ for that period.

Note:

~~The amount of depreciation of the regulatory asset base during the previous control period calculated in accordance with the rates and methodologies allowed in the transmission determination (if any) for that period may be subject to clauses 6A.7.1(f) and 6A.8.2(e)(3).~~

(6)(5) The previous value of the regulatory asset base must be reduced by the disposal value of any asset where that asset has been disposed of during the previous control period.

(7)(6) The previous value of the regulatory asset base must be reduced by the value of any asset where the *AER* determines that the value of that asset should be removed in accordance with clause S6A.2.3.

(8)(7) Without prejudice to the application of any other provision of this paragraph (f), the previous value of the regulatory asset base may be increased by the inclusion of:

- (i) past capital expenditure that has not been included in that value because that capital expenditure was incurred in connection with the

provision of services that are not *prescribed transmission services*, and in these circumstances, such capital expenditure must only be included to the extent the asset in respect of which that capital expenditure was incurred is subsequently used for the provision of *prescribed transmission services*; and

- (ii) past capital expenditure that has not been included in that value, but only to the extent that such past capital expenditure:
 - (A) relates to an asset that is used for the provision of *prescribed transmission services*;
 - (B) is considered by the *AER* to be reasonably required in order to achieve one or more of the *capital expenditure objectives*;
 - (C) is properly allocated to *prescribed transmission services* in accordance with the principles and policies set out in the *Cost Allocation Methodology* for the relevant *Transmission Network Service Provider*; and
 - (D) has not otherwise been recovered.

...

2 Rate of return

Table 2.1 Revised draft rules: rate of return

No.	Initial draft rule(s)	Revised draft rule(s)	Remarks
Chapter 6			
2.1	6.5.2(b) 6.5.4(d)(4)	Amended: 6.5.2(b) 6.5.4(d)(4)	<p>The AER's submission (see section 3.6.3) stated that it should have the ability (but not the requirement) to use a different risk-free rate between the cost of equity and debt. Accordingly, the AER considers that the rules should not specify the formula for which the return on debt must be calculated. This is shown by the proposed amendments to clause 6.5.2(b).</p> <p>The AER, however, made specific references within its submission to setting the DRP. For the sake of clarity, these references should be read as references to the return on debt more generally. This is consistent with the AER's position that the benchmark and the best approach to setting the cost of debt should be determined through the WACC review.</p>
2.2	6.5.4(b)	Amended: 6.5.4(b)	<p>The 30 September 2013 date of the WACC review (and every two years thereafter on 30 September) is chosen to provide adequate time between finalisation of the WACC review and application in an AER draft decision. For regulatory periods commencing 1 July, the draft decision is typically released in the previous November or December. See AER submission, p.49.</p>
2.3	6.5.4(e)(1)	Amended: 6.5.4(e)(1)	<p>Removal of reference to "prevailing conditions in the market for funds" is to enable the consideration of approaching to adopt "embedded debt" costs. See AER submission, p.61.</p>
2.4	6.5.4(e)(2)	Amended: 6.5.4(e)(2)	See reasons in [2.3] above.
2.5	6.5.4(f) S6.1.3(8) S6.1.3(9)	Amended: 6.5.4(f) S6.1.3(8) S6.1.3(9)	<p>Amendment to allow for the statement on the cost of capital prevailing at the time of a draft decision to apply for the purposes of that regulatory determination.</p>
2.6	6.12.3(c)	Amended: 6.12.3(c)	<p>Amendment to allow flexibility to amend the control mechanism between the framework and approach paper and the draft decision in the event the prevailing statement on the cost of capital requires such an amendment.</p> <p>The AER's submission (specifically, section 3.6.3) stated that under the current chapter 6 rules the AER has the ability to amend the price control formula. As such, the AER considered that a change to the chapter 6 rules was not required in order for the AER to adopt a cost of debt approach where the cost of debt allowance is updated on an annual basis (for example, as per the EURCC and Ofgem approaches). The AER has since recognised that its initial conclusion may not always hold.</p> <p>Under the current rules, the AER can only amend the price control formula before the framework and approach paper has been finalised. However, the AER has proposed amendments to clause 6.5.4(f) such that the statement on the cost of capital</p>

that applies at the time the AER makes a draft distribution determination applies for the purposes of a building block proposal submitted to the AER by a DNSP. The AER's initial conclusion, therefore, would not hold when:

- (1) the WACC review determined that the cost of debt allowance should be updated annually, AND
- (2) the WACC review was released after the framework and approach paper has been finalised.

Chapter 6A

2.7	6A.6.2(b) 6A.6.2(f)(4)	Amended: 6A.6.2(b) 6A.6.2(f)	See reasons for [2.1] above.
2.8	6A.6.2(d)	Amended: 6A.6.2(d)	See reasons for [2.2] above.
2.9	6A.6.2(g)(1)	Amended: 6A.6.2(g)(1)	See reasons for [2.3] above.
2.10	6A.6.2(g)(2)	Amended: 6A.6.2(g)(2)	See reasons for [2.4] above.
2.11	6A.6.2(h) S6A.1.3(6)	Amended: 6A.6.2(h) S6A.1.3(6)	See reasons for [2.5] above.

Chapter 11

2.12	11.43.4 11.43.5	Removed: 11.43.4 11.43.5	These transitional are no longer necessary because of [2.5] and [2.11].
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Note: As discussed in its submission of May 2012, the AER has proposed that the option be available to have an annual adjustment for the cost of debt. The AER considers there is currently sufficient flexibility for it to do so under the relevant provisions of Chapters 6 and 6A, if the other proposed rule changes regarding the rate of return are implemented. The AER considers the power to set the annual revenues in a distribution determination or a transmission determination would appear to allow for this. For this reason, the AER has not proposed any draft rules that specifically deal with the issue.

The same issue arises in respect of the AER's proposed rules regarding shared assets.

2.1 Chapter 6

...

6.5.2 Return on capital

Calculation of return on capital

- (a) The return on capital for each *regulatory year* must be calculated by applying a rate of return for the relevant *Distribution Network Service Provider* for that *regulatory control period* (calculated in accordance with this clause 6.5.2) to the value of the regulatory asset base for the relevant *distribution system* as at the beginning of that *regulatory year* (as established in accordance with clause 6.5.1 and schedule 6.2).

Weighted average cost of capital

- (b) The rate of return for a *Distribution Network Service Provider* for a *regulatory control period* is the cost of capital as measured by the return required by investors in a commercial enterprise with a similar nature and degree of non-diversifiable risk as that faced by the *distribution* business of the provider and must be calculated ~~as a nominal post tax weighted average cost of capital (WACC) in accordance with the following formula:~~

- (1) as a nominal vanilla weighted average cost of capital (WACC) in accordance with the following formula:

$$WACC = k_e \frac{E}{V} + k_d \frac{D}{V}$$

where:

k_e is the return on equity (determined using the Capital Asset Pricing Model) and is calculated as:

$$r_f + \beta_e \times MRP$$

where:

r_f is the nominal risk free rate for the *regulatory control period* ~~determined in accordance with paragraph (e);~~

β_e is the equity beta; and

MRP is the market risk premium;

k_d is the return on debt ~~and is calculated as:~~

$$r_f + DRP$$

where:

~~DRP is the debt risk premium for the regulatory control period determined in accordance with paragraph (e);~~

[2.1]

E/V is the value of equity as a proportion of the value of equity and debt, which is $1 - D/V$; and

D/V is the value of debt as a proportion of the value of equity and debt; and

(2) in accordance with the *statement on the cost of capital*.

Meaning of nominal risk free rate

- (c) ~~The nominal risk free rate for a regulatory control period is (unless some different provision is made by a relevant statement of regulatory intent) the rate determined for that regulatory control period by the AER on a moving average basis from the annualised yield on Commonwealth Government bonds with a maturity of 10 years using:~~
- (1) ~~the indicative mid rates published by the Reserve Bank of Australia; and~~
- (2) ~~a period of time which is either:~~
- (i) ~~a period (the agreed period) proposed by the relevant Distribution Network Service Provider, and agreed by the AER (such agreement is not to be unreasonably withheld); or~~
- (ii) ~~a period specified by the AER, and notified to the provider within a reasonable time prior to the commencement of that period, if the period proposed by the provider is not agreed by the AER under subparagraph (i),~~
- ~~and, for the purposes of subparagraph (i):~~
- (iii) ~~the start date and end date for the agreed period may be kept confidential, but only until the expiration of the agreed period; and~~
- (iv) ~~the AER must notify the Distribution Network Service Provider whether or not it agrees with the proposed period within 30 business days of the date of submission of the building block proposal.~~
- (d) ~~If there are no Commonwealth Government bonds with a maturity of 10 years on any day in the period referred to in paragraph (c)(2), the AER must (unless some different provision is made by a relevant statement of regulatory intent) determine the nominal risk free rate for the regulatory control period by interpolating on a straight line basis from the two Commonwealth Government bonds closest to the 10 year term and which also straddle the 10 year expiry date.~~

Meaning of debt risk premium

- (e) ~~The debt risk premium for a regulatory control period is the premium determined for that regulatory control period by the AER as the margin between the~~

~~annualised nominal risk free rate and the observed annualised Australian benchmark corporate bond rate for corporate bonds which have a maturity equal to that used to derive the nominal risk free rate and a credit rating from a recognised credit rating agency.~~

...

6.5.4 Review of rate of return

- (a) The *AER* must, ~~in accordance with the distribution consultation procedures and this clause~~, carry out reviews of the matters referred to in paragraph (d) ~~in accordance with this clause and the distribution consultation procedures, subject to:~~
- (1) ~~the reference in rule 6.16(e) to 80 business days being read as a reference to 100 business days; and~~
 - (2) ~~the AER may not extend the time within which it is required to publish its final decision under rule 6.16(g).~~
- (b) ~~The first~~^A review is to be concluded by ~~1 May 2009~~^{1 March 2014}~~30 September 2013~~ and further reviews are to follow at intervals not exceeding, in any case, ~~fivetwo~~ years with the first interval starting from ~~31 March 2009~~^{1 March 2014}~~30 September 2013~~ [2.2]
- (c) The *AER* must, in consequence of a review, issue a statement (a ~~statement of regulatory intent~~^{statement on the cost of capital}) adopting values, ~~and~~ methods ~~and credit rating levels~~ for *Distribution Network Service Providers* or for specified classes of *Distribution Network Service Providers*.
- (d) The following matters (and the method of their calculation) may form the subject of a review:
- (1) the nominal risk free rate referred to in clause ~~6.5.2(e)~~^{6.5.2(b)(1)};
 - (2) the equity beta referred to in clause ~~6.5.2(b)~~^{6.5.2(b)(1)};
 - (3) the market risk premium referred to in clause ~~6.5.2(b)~~^{6.5.2(b)(1)};
 - (4) ~~the maturity period and bond rates referred to in clause 6.5.2(d)~~^{the debt risk premium}~~the cost of debt referred to in clause 6.5.2(b)(1)~~; [2.1]
 - (5) the ratio of the value of debt to the value of equity and debt referred to in clause ~~6.5.2(b)~~^{6.5.2(b)(1)}; and
 - (6) ~~credit rating levels referred to in clause 6.5.2(e);~~
 - (7) ~~(6) the assumed utilisation of imputation credits referred to in clause 6.5.3.~~
- (e) In undertaking a review, the *AER* must have regard to:

- (1) the need for the rate of return calculated for the purposes of clause 6.5.2(b) to be a forward looking rate of return that is commensurate with ~~prevailing conditions in the market for funds and~~ the risk involved in providing standard control services; and [2.3]
- (2) the need for the return on debt to reflect the ~~current~~ cost of borrowings for comparable debt; and [2.4]
- (3) the need for ~~the credit rating levels or~~ the values attributable to, or the methods of calculating, the ~~parameters~~matters referred to in paragraph (d) that vary according to the efficiency of the *Distribution Network Service Provider* to be based on a benchmark efficient *Distribution Network Service Provider*; and
- (4) ~~where the credit rating levels or the values attributable to, or the method of calculating, parameters referred to in paragraph (d) cannot be determined with certainty:~~
- (i) ~~the need to achieve an outcome that is consistent with the *national electricity objective*; and~~
 - (ii) ~~the need for persuasive evidence before adopting a credit rating level or a value for, or a method of calculating, that parameter that differs from the credit rating level, value or the method of calculation that has previously been adopted for it.~~
- (5) the previously adopted values for, or methods of calculating, the matters referred to in paragraph (d).
- (f) ~~A statement of regulatory intent~~statement on the cost of capital adopting a revised value, ~~or method, or credit rating level~~ in relation to the matters referred to in paragraph (d) applies only for the purposes of a *building block proposal* submitted to the AER after publication of the ~~statement of regulatory intent~~statement on the cost of capital.
- The statement on the cost of capital that applies at the time the AER makes a draft distribution determination shall apply for the purposes of that distribution determination. [2.5]
- (g) A distribution determination to which a ~~statement of regulatory intent~~statement on the cost of capital is applicable must be consistent with the statement ~~unless there is persuasive evidence justifying a departure, in the particular case, from a value, method or credit rating level set in the statement.~~
- (h) ~~In deciding whether a departure from a value, method or credit rating level set in a statement of regulatory intent is justified in a distribution determination, the AER must consider:~~
- (1) ~~the criteria on which the value, method or credit rating level was set in the statement of regulatory intent (the underlying criteria); and~~

- (2) whether, in the light of the underlying criteria, a material change in circumstances since the date of the statement, or any other relevant factor, now makes a value, method or credit rating level set in the statement inappropriate.
- (i) If the AER, in making a distribution determination, in fact departs from a value, method or credit rating level set in a *statement of regulatory intent*, it must:
- (1) state the substitute value, method or credit rating level in the determination; and
- (2) demonstrate, in its reasons for the departure, that the departure is justified on the basis of the underlying criteria.
- ...

6.12.3 Extent of AER's discretion in making distribution determinations

- (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 a *regulatory proposal*.
- (b) The classification of services must be as set out in the relevant *framework and approach paper* unless the AER considers that, in the light of the *Distribution Network Service Provider's regulatory proposal* and the submissions received, there are good reasons for departing circumstances that were unforeseen at the time the AER published the relevant framework and approach paper which justify a departure from the classification proposed specified in that paper.
- (c) The control mechanisms must be as set out in the relevant *framework and approach paper* unless the AER considers that, in the light of the statement on the cost of capital that applies at the time the AER makes the draft distribution determination, the Distribution Network Service Provider's regulatory proposal and the submissions received, there are circumstances that were unforeseen at the time the AER published the relevant framework and approach paper which justify a departure from the control mechanisms specified in that paper. [2.6]
- (d) The AER must approve the total revenue requirement for a Distribution Network Service Provider for a regulatory control period, and the annual revenue requirement for each regulatory year of the regulatory control period, as set out in the provider's current building block proposal, if the AER is satisfied that those amounts have been properly calculated using the post-tax revenue model on the basis of amounts calculated, determined or forecast in accordance with the requirements of Part C of this Chapter 6.
- (e)(d) The AER must approve a proposed *regulatory control period* if the proposed period consists of 5 *regulatory years*.
- (f) If the AER refuses to approve an amount or value referred to in clause 6.12.1, the substitute amount or value on which the distribution determination is based must be:

- ~~(1) determined on the basis of the current *regulatory proposal*; and~~
- ~~(2) amended from that basis only to the extent necessary to enable it to be approved in accordance with the *Rules*.~~

~~(g)(e)~~ The *AER* must approve a proposed *negotiating framework* if the *AER* is satisfied that it adequately complies with the requirements of Part D.

~~(h)(f)~~ If the *AER* refuses to approve the proposed *negotiating framework*, the approved amended *negotiating framework* must be:

- (1) determined on the basis of the current proposed *negotiating framework*; and
- (2) amended from that basis only to the extent necessary to enable it to be approved in accordance with the *Rules*.

...

S6.1.3 Additional information and matters

A *building block proposal* must contain at least the following additional information and matters:

- (1) an identification and explanation of any significant interactions between the forecast capital expenditure and forecast operating expenditure programs;
- (2) a proposed pass through clause with a proposal as to the events that should be defined as *pass through events*;
- (3) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes the *efficiency benefit sharing scheme* should apply for the relevant *regulatory control period*;
- (4) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes the *service target performance incentive scheme* should apply for the relevant *regulatory control period*;
- (5) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes the *demand management incentive scheme* (if applicable) should apply for the relevant *regulatory control period*;

~~(5A) a description, including relevant explanatory material, of how the *Distribution Network Service provider* proposes any other incentive scheme or schemes developed and published under clause 6.6.5 (if applicable) should apply for the relevant regulatory control period;~~

- (6) the provider's calculation of revenues or prices for the purposes of the control mechanism proposed by the provider together with:
 - (i) details of all amounts, values and inputs (including X factors) relevant to the calculation; and

- (ii) an explanation of the calculation and the amounts, values and inputs involved in the calculation; and
 - (iii) a demonstration that the calculation and the amounts, values and inputs on which it is based comply with relevant requirements of the Law and the *Rules*;
- (7) the provider's calculation of the regulatory asset base for the relevant *distribution system* for each *regulatory year* of the relevant *regulatory control period* using the *roll forward model* referred to in clause 6.5.1 of the *Rules*, together with:
- (i) details of all amounts, values and other inputs used by the provider for that purpose; and
 - (ii) a demonstration that any such amounts, values and other inputs comply with the relevant requirements of Part C of Chapter 6 of the *Rules*; and
 - (iii) an explanation of the calculation of the regulatory asset base for each *regulatory year* of the relevant *regulatory control period* and of the amounts, values and inputs referred to in subparagraph (i);
- (8) ~~the commencement and length of the period nominated by the Distribution Network Service Provider for the purposes of clause 6.5.2(e)(2) of the Rules any information or matters in relation to the rate of return calculated for the purposes of clause 6.5.2(b) as required by the applicable statement on the cost of capital that applies at the time the building block proposal is submitted to the AER;~~ [2.5]
- (9) the provider's calculation of the proposed rate of return, ~~including any proposed departure from the values, methods or credit rating levels set out in an applicable statement of regulatory intent in accordance with clause 6.5.2 and the applicable statement on the cost of capital that applies at the time the building block proposal is submitted to the AER;~~ [2.5]
- (10) the *post-tax revenue model* completed to show its application to the *Distribution Network Service Provider* and the completed *roll-forward model*;
- (11) the provider's estimate of the cost of corporate income tax for each *regulatory year* of the *regulatory control period*;
- (12) the depreciation schedules nominated by the *Distribution Network Service Provider* for the purposes of clause 6.5.5 of the *Rules*, which categorise the relevant assets for these purposes by reference to well accepted categories such as:
- (i) asset class (eg *distribution lines* and *substations*); or
 - (ii) category driver (eg *regulatory obligation or requirement*, replacement, *reliability*, net market benefit, and business support),
- together with:
- (iii) details of all amounts, values and other inputs used by the provider to compile those depreciation schedules; and

- (iv) a demonstration that those depreciation schedules conform with the requirements set out in clause 6.5.5(b) of the *Rules*; and
 - (v) an explanation of the calculation of the amounts, values and inputs referred to in subparagraph (iii);
- (13) the commencement and length of the *regulatory control period* proposed by the *Distribution Network Service Provider*;
- (14) if the *Distribution Network Service Provider* is seeking a determination by the *AER* that a *proposed contingent project* is a *contingent project* for the purposes of the relevant distribution determination:
- (i) a description of the *proposed contingent project*, including reasons why the provider considers the project should be accepted as a *contingent project* for the *regulatory control period*;
 - (ii) a forecast of the capital expenditure which the provider considers is reasonably required for the purpose of undertaking the *proposed contingent project*;
 - (iii) the methodology used for developing that forecast and the key assumptions that underlie it;
 - (iv) information that demonstrates that the undertaking of the *proposed contingent project* is reasonably required in order to achieve one or more of the *capital expenditure objectives*;
 - (v) information that demonstrates that the *proposed contingent capital expenditure* for the *proposed contingent project* complies with the requirements set out in clause 6.6A.1(b); and
 - (vi) the *trigger events* which are proposed in relation to the *proposed contingent project* and an explanation of how each of those conditions or events addresses the matters referred to in clause 6.6A.1(d).

2.2 Chapter 6A

...

6A.6.2 Return on capital

Calculation of return on capital

- (a) The return on capital for each *regulatory year* must be calculated by applying a rate of return for the relevant *Transmission Network Service Provider* for that *regulatory control period* (calculated in accordance with this clause 6A.6.2) to the value of the regulatory asset base for the relevant *transmission system* as at the beginning of that *regulatory year* (as established in accordance with clause 6A.6.1 and schedule 6A.2).

Weighted average cost of capital

- (b) The rate of return for a *Transmission Network Service Provider* for a *regulatory control period* is the cost of capital as measured by the return required by investors in a commercial enterprise with a similar nature and degree of non-diversifiable risk as that faced by the *transmission* business of the provider and, ~~subject to any revised values, methodologies and levels arising from a review under paragraphs (f)–(j)~~, must be calculated ~~as a nominal post tax weighted average cost of capital (WACC) in accordance with the following formula:~~

- (1) as a nominal vanilla weighted average cost of capital (WACC) in accordance with the following formula:

$$WACC = k_e \frac{E}{V} + k_d \frac{D}{V}$$

where:

k_e is the return on equity (determined using the Capital Asset Pricing Model) and is calculated as:

$$r_f + \beta_e \times MRP$$

where:

r_f is the nominal risk free rate for the *regulatory control period* ~~determined in accordance with paragraph (e)~~;

β_e is the equity beta, ~~which is deemed to be 1.0~~; and

MRP is the market risk premium, ~~which is deemed to be 6.0%~~;

k_d is the return on debt ~~and is calculated as:~~

$$r_f + DRP$$

where:

~~DRP is the debt risk premium for the *regulatory control period* determined in accordance with paragraph (e);~~

[2.7]

E/V is the market value of equity as a proportion of the market value of equity and debt, which is $1 - D/V$; and

D/V is the market value of debt as a proportion of the market value of equity and debt, ~~which is deemed to be 0.6;~~ and

(2) in accordance with the *statement on the cost of capital*.

Meaning of nominal risk free rate

- (c) ~~The nominal risk free rate for a *regulatory control period* is the rate determined for that *regulatory control period* by the AER on a moving average basis from the annualised yield on Commonwealth Government bonds with a maturity of 10 years using:~~
- (1) ~~the indicative mid rates published by the Reserve Bank of Australia; and~~
- (2) ~~a period of time which is either:~~
- (i) ~~a period ('the agreed period') proposed by the relevant *Transmission Network Service Provider*, and agreed by the AER (such agreement is not to be unreasonably withheld); or~~
- (ii) ~~a period specified by the AER, and notified to the provider prior to the commencement of that period, if the period proposed by the provider is not agreed by the AER under subparagraph (i),~~
- and, for the purposes of subparagraph (i):
- (iii) ~~the start date and end date for the agreed period may be kept confidential, but only until the expiration of the agreed period; and~~
- (iv) ~~the AER must notify the *Transmission Network Service Provider* whether or not it agrees with the proposed period within 30 business days of the date of submission of the *Revenue Proposal* under clause 6A.10.1(a).~~
- (d) ~~If there are no Commonwealth Government bonds with a maturity of 10 years on any day in the period referred to in paragraph (c)(2), the AER must determine the nominal risk free rate for the *regulatory control period* by interpolating on a straight line basis from the two Commonwealth Government bonds closest to the 10 year term and which also straddle the 10 year expiry date.~~

Meaning of debt risk premium

- (e) ~~The debt risk premium for a *regulatory control period* is the premium determined for that *regulatory control period* by the AER as the margin between the annualised nominal risk free rate and the observed annualised Australian benchmark corporate bond rate for corporate bonds which have a BBB+ credit~~

~~rating from Standard and Poors and a maturity equal to that used to derive the nominal risk free rate.~~

Review of rate of return parameters

~~(f)(c) The AER must, carry out reviews of the matters referred to in paragraph (f) in accordance with this clause and in accordance with the transmission consultation procedures and paragraphs (g)–(j), carry out reviews of the matters referred to in paragraph (i) subject to the reference in rule 6A.20(e) to 80 business days being read as a reference to 100 business days.~~

~~(g)(d) The AER must conclude the first review by 1 May 2009 and conclude subsequent reviews at intervals of five years with the first interval starting from 31 March 2009.~~

A review is to be concluded by 1 March 2014/30 September 2013 and further reviews are to follow at intervals not exceeding, in any case, five/two years with the first interval starting from 1 March 2014/30 September 2013.

[2.8]

~~(h)(e) The AER may, as a consequence of a review, adopt revised values, methodologies or credit rating levels, and, if it does so, it must use those revised values, methodologies and levels, but only for the purposes of a *Revenue Proposal* that is submitted to the AER under clause 6A.10.1(a) after the completion of the first review or after completion of the five yearly reviews (as the case may be).~~

The AER must, in consequence of a review, issue a statement (a *statement on the cost of capital*) adopting values and methods for *Transmission Network Service Providers* or for specified classes of *Transmission Network Service Providers*.

~~(i)(f) The AER may only review:~~

~~(1) the values of and methodologies used to calculate:~~

~~(i) the nominal risk free rate;~~

~~(ii) the equity beta;~~

~~(iii) the market risk premium;~~

~~(iv) the maturity period and bond rates referred to in paragraph (d); and~~

~~(v) the ratio of the market value of debt to the market value of equity and debt,~~

~~as set out in this clause 6A.6.2 or as subsequently revised under paragraph (h); and~~

~~(2) the credit rating level as referred to in paragraph (e) or as subsequently revised under paragraph (h).~~

The following matters (and the method of their calculation) may form the subject of a review:

(1) the nominal risk free rate referred to in subparagraph (b)(1);

(2) the equity beta referred to in subparagraph (b)(1);

(3) the market risk premium referred to in subparagraph (b)(1);

(4) the debt risk premium~~the cost of debt~~ referred to in subparagraph (b)(1); [2.7]

(5) the ratio of the value of debt to the value of equity referred to in subparagraph (b)(1); and

(6) the assumed utilisation of imputation credits referred to in clause 6A.6.4.

(f) In undertaking a review under this clause 6A.6.2 and under clause 6A.6.4(b), the AER must have regard to:

(1) the need for the rate of return calculated for the purposes of paragraph (b) to be a forward looking rate of return that is commensurate with prevailing conditions in the market for funds and the risk involved in providing prescribed transmission services; [2.9]

(2) the need for the return on debt to reflect the current cost of borrowings for comparable debt; [2.10]

(3) the need for the credit rating levels or values attributable to, or the methodologies used to calculate methods of calculating, the parameters~~matters~~ referred to in paragraphs (i)(1)(ii), (iv), (v) and (i)(2) (f) that vary according to the efficiency of the Transmission Network Service Provider to be based on a benchmark efficient Transmission Network Service Provider; and

(4) where the credit rating levels or the values that are attributable to, or the methodologies used to calculate, the parameters referred to in paragraph (i) cannot be determined with certainty:

(i) the need to achieve an outcome that is consistent with the national electricity objective; and

(ii) the need for persuasive evidence before adopting a credit rating level or a value for, or a methodology used to calculate, that parameter that differs from the credit rating level, value or methodology that has previously been adopted for it.

(5) the previously adopted values for or methods of calculating the matters referred to in paragraph (f).

(h) A statement on the cost of capital applies only for the purposes of a Revenue Proposal submitted to the AER after publication of the statement on the cost of capital.

- (h) The statement on the cost of capital that applies at the time the AER makes a draft distribution determination shall apply for the purposes of that distribution determination.

[2.11]

- (i) A revenue determination to which a statement on the cost of capital applies must be consistent with the statement.

...

S6A.1.3 Additional information and matters

A *Revenue Proposal* must contain at least the following additional information and matters:

- (1) an identification and explanation of any significant interactions between the forecast capital expenditure and forecast operating expenditure programs;
- (2) the values that the *Transmission Network Service Provider* proposes are to be attributed to the *performance incentive scheme parameters* for the purposes of the application to the provider of the applicable service target performance incentive scheme that applies in respect of the relevant *regulatory control period*, and an explanation of how the values proposed to be attributed to those parameters comply with any requirements relating to them set out in that scheme;
- (3) the values that the provider proposes are to be attributed to the *efficiency benefit sharing scheme parameters* for the purposes of the application to the provider of the applicable efficiency benefit sharing scheme that applies in respect of the relevant *regulatory control period*, and an explanation of how the values proposed to be attributed to those parameters comply with any relevant requirements set out in that scheme;

(3A) the values that the provider proposes are to be attributed to the parameters for the purposes of the application to the provider of any applicable other incentive scheme or schemes developed and published under clause 6A.7.5 that applies in respect of the relevant regulatory control period, and an explanation of how the values proposed to be attributed to those parameters comply with any relevant requirements set out in that other incentive scheme or schemes;
- (4) the provider's calculation of:
 - (i) the estimated *total revenue cap* for it for the relevant *regulatory control period*; and
 - (ii) the *maximum allowed revenue* for it for each *regulatory year* of the relevant *regulatory control period*,

using the *post-tax revenue model* referred to in rule 6A.5 of the *Rules*, together with:

- (iii) details of all amounts, values and other inputs used by the provider for that purpose;

- (iv) a demonstration that any such amounts, values and other inputs comply with the relevant requirements of Part C of Chapter 6A of the *Rules*; and
 - (v) an explanation of the calculation of the amounts referred to in subparagraphs (i) and (ii) and of the amounts, values and inputs referred to in subparagraph (iii);
- (5) the provider's calculation of the regulatory asset base for the relevant *transmission system* for each *regulatory year* of the relevant *regulatory control period* using the *roll forward model* referred to in clause 6A.6.1 of the *Rules*, together with:
- (i) details of all amounts, values and other inputs used by the provider for that purpose;
 - (ii) a demonstration that any such amounts, values and other inputs comply with the relevant requirements of Part C of Chapter 6A of the *Rules*; and
 - (iii) an explanation of the calculation of the regulatory asset base for each *regulatory year* of the relevant *regulatory control period* and of the amounts, values and inputs referred to in subparagraph (i);
- (6) ~~the commencement and length of the period nominated by the *Transmission Network Service Provider* for the purposes of clause 6A.6.2(e)(2) of the *Rules* the provider's calculation of the proposed rate of return in accordance with clause 6A.6.2 and any information or matters in relation to the rate of return as required by the applicable statement on the cost of capital that applies at the time the Revenue Proposal is submitted to the AER;~~ [2.11]
- (7) the depreciation schedules nominated by the *Transmission Network Service Provider* for the purposes of clause 6A.6.3 of the *Rules*, which categorise the relevant assets for these purposes by reference to well accepted categories such as:
- (i) asset class (eg *transmission lines* and *substations*); or
 - (ii) category driver (eg *regulatory obligations or requirements*, replacement, *reliability*, net market benefit, and business support),
- and also by location, together with:
- (iii) details of all amounts, values and other inputs used by the provider to compile those depreciation schedules;
 - (iv) a demonstration that those depreciation schedules conform with the requirements set out in clause 6A.6.3(b) of the *Rules*; and
 - (v) an explanation of the calculation of the amounts, values and inputs referred to in subparagraph (iii);
- (8) the X factors nominated by the provider for each *regulatory year* of the relevant *regulatory control period* for the purposes of clause 6A.6.8(a) of the *Rules*, together with a demonstration that those X factors comply with the requirements set out in clause 6A.6.8(b) of the *Rules*;

- (9) the commencement and length of the *regulatory control period* proposed by the *Transmission Network Service Provider*; and
- (10) if the *Transmission Network Service Provider* is seeking a determination by the *AER* that a *proposed contingent project* is a *contingent project* for the purposes of the relevant *revenue determination*:
 - (i) a description of the *proposed contingent project*, including reasons why the provider considers the project should be accepted as a *contingent project* for the *regulatory control period*;
 - (ii) a forecast of the capital expenditure which the provider considers is reasonably required for the purpose of undertaking the *proposed contingent project*;
 - (iii) the methodology used for developing that forecast and the key assumptions that underlie it;
 - (iv) information that demonstrates that the undertaking of the *proposed contingent project* is reasonably required in order to achieve one or more of the *capital expenditure objectives*;
 - (v) information that demonstrates that the *proposed contingent capital expenditure* for the *proposed contingent project* complies with the requirements set out in clauses 6A.8.1(b)(2)~~6A.8.1(b)–(d)~~ of the *Rules*; and
 - (vi) the *trigger events* which are proposed in relation to the *proposed contingent project* and an explanation of how each of those conditions or events addresses the matters referred to in clause 6A.8.1(e)~~6A.8.1(f)~~ of the *Rules*.

2.3 Chapter 11

11.43.4 Statement on the Cost of Capital to be applied in the NSW and the ACT distribution determinations for the regulatory control period commencing on 1 July 2015

[2.12]

In relation to a relevant distribution determination in New South Wales or the Australian Capital Territory:

[2.12]

(a) Clause 6.5.4(f) does not apply for the purposes of a *building block proposal*.

[2.12]

(b) A *building block proposal* must specify the commencement and length of the period nominated by the *Distribution Network Service Provider*:

[2.12]

(i) for the purposes of calculating the nominal risk free rate referred to in clause 6.5.2(b)(1) for the *regulatory control period* on a moving average basis from the annualised yield on Commonwealth Government bonds with a maturity of 10 years using the indicative mid rates published by the Reserve Bank of Australia; and

[2.12]

(ii) of which the start date and end date for the period may be kept confidential, but only until the expiration of the period.

[2.12]

(c) For the purposes of making the constituent decision referred to in clause 6.12.1(5), the *AER* must apply the prevailing statement on the cost of capital issued under clause 6.5.4(c).

[2.12]

11.43.5 Statement on the Cost of Capital to be applied in the NSW, the ACT and Tasmanian transmission determinations for the regulatory control period commencing on 1 July 2015

[2.12]

In relation to a relevant transmission determination in New South Wales, the Australian Capital Territory or Tasmania:

[2.12]

(a) Clause 6A.6.2(h) does not apply for the purposes of a *Revenue Proposal*.

[2.12]

(b) A *Revenue Proposal* must specify the commencement and length of the period nominated by the *Distribution Network Service Provider*:

[2.12]

(i) for the purposes of calculating the nominal risk free rate referred to in clause 6A.6.2(b)(1) for the *regulatory control period* on a moving average basis from the annualised yield on Commonwealth Government bonds with a maturity of 10 years using the indicative mid rates published by the Reserve Bank of Australia; and

[2.12]

(ii) of which the start date and end date for the period may be kept confidential, but only until the expiration of the period.

[2.12]

(b) For the purposes of determining the *annual building block revenue requirement* referred to in clause 6A.5.4, the *AER* must apply the prevailing statement on the cost of capital issued under clause 6A.6.2(e).

[2.12]

3 Regulatory process

Table 3.1 Revised draft rules: regulatory process

No.	Initial draft rule(s)	Revised draft rule(s)	Remarks
Chapter 6			
3.1	6.6.1(l)(1) 6.6.1(l)(2) 6.6.4(h)(1) 6.6.4(h)(2) 6.6A.2(h)(1) 6.6A.2(h)(2)	Remove: 6.6.1(l)(2) 6.6.4(h)(2) 6.6A.2(h)(2) Insert: 6.14.1A(a) and (c)	Limit extension of time limit provision for cost pass throughs, contingent projects and capex reopeners to those cases where the relevant determination involves unusual complexity. Replace part of AER's proposed extension of time for pass throughs, contingent projects and capex reopeners with a stop the clock provision in those cases where the AER is awaiting information.
3.2	Removed: 6.8.1(b)(2) 6.8.1(b)(3) 6.8.1(b)(4)	Reinsert: 6.8.1(b)(2) 6.8.1(b)(3) 6.8.1(b)(4)	Make consultation on components of the framework and approach paper optional
	Amended: 6.8.1	Further Amended: 6.8.1(f)	
		Insert: 6.8.1(fa) 6.8.1(fb) 6.25(b)	
		Tidying up numbering: 6.8.1(b)(5)-(7)	
3.3	-	6.8.1(c) 6.8.1(h) 6.8.2(ca)	Allow AER to consult and lock in expenditure forecast models as part of framework and approach paper.
3.4	-	6.8.2(b)(1) 6.8.2(b)(2) 6.8.2(ba)	Allow AER to push back start of the regulatory process by up to three months – to allow more time to implement proposal above, deal with confidentiality claims and if appropriate, publish an issues paper.
3.5	Inserted 6.9.3(a)(2) 6.9.3(a)(3) 6.9.3(d) 6.10.2(a)(6) 6.14.1	Further amended: 6.10.1 6.10.2(a)(5) 6.10.2(c) 6.10.2(d) 6.11.1	Restrictions on NSP submissions. Remove proposed restrictions on NSP submissions on draft decision (but retain proposed restrictions on NSP submissions on own initial or revised proposals). Revise proposals for dealing with late submissions to ensure consistency with the NEL. Restrict NSPs from providing material in a submission on the draft decision that should form part of a revised proposal.
	Amended: 6.9.3(c) 6.10.1 6.10.2(a)(5) 6.10.2(c) 6.10.2(d) 6.11.1		
3.6	6.13	Insert: 6.13(e)	Correcting material errors – limitation of six months from determination to use provisions.

3.7	-	Insert: 6.14.1A(b) 6.14.1A(c)	Extension of time provision for dealing with delays due to the need for the resubmission of a proposal
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Chapter 6A

3.8	6A.7.1(h)(1)and(2) 6A.7.3(l)(1)and(2) 6A.8.2(h)(1)and(2)	Remove: 6A.7.1(h)(2) 6A.7.3(l)(2) 6A.8.2(h)(2)	Limit extension of time limit provision for cost pass throughs, contingent projects and capex reopeners to those cases where the relevant determination involves unusual complexity. Replace part of AER's proposed extension of time for pass throughs, contingent projects and capex reopeners with a stop the clock provision in those cases where the AER is awaiting information.
3.9	-	Insert: 6A.10.A1 6A.10.1(ab)and(ca) Chapter 10 definition: “approved expenditure models paper”.	Create pre-submission process to allow AER to consult and lock in expenditure forecast models.
3.10	-	Insert: 6A.10.1(a)(1) 6A.10.1(a)(2) 6A.10.1(ab)	Allow AER to push back start of the regulatory process by up to three months – to allow more time to implement proposal above, deal with confidentiality claims and if appropriate, publish an issues paper.
3.11	Amended: 6A.12.1(a) and (c) 6A.12.2(c) and (d) 6A.12.3(a), (e), (f) 6A.13.1	Further amended: 6A.12.1(a) 6A.12.2(a)(4) 6A.12.2(c) 6A.13.1 6A.16.1	Restrictions on NSP submissions. Remove proposed restrictions on NSP submissions on draft decision (but retain proposed restrictions on NSP submissions on own initial or revised proposals). Revise proposals for dealing with late submissions to ensure consistency with the NEL. Restrict NSPs from providing material in a submission on the draft decision that should form part of a revised proposal. Additional provisions inserted to implement the AER's original proposal to restrict NSP submissions on revised proposals in Chapter 6A (equivalent restrictions were already included in the Chapter 6 initial draft rules).
3.12	6A.15	Insert: 6A.15(g)	Correcting material errors – limitation of six months from determination to use provisions.
3.13		Insert: 6A.16.1A(b),(c) and (d)	Extension of time provision for dealing with delays due to the need for the resubmission of a proposal

3.1 Chapter 6

...

6.6.1 Cost pass through

- (a) If a *positive change event* occurs, a *Distribution Network Service Provider* may seek the approval of the *AER* to pass through to *Distribution Network Users* a *positive pass through amount*.
- (b) If a *negative change event* occurs, the *AER* may require the *Distribution Network Service Provider* to pass through to *Distribution Network Users* a *negative pass through amount* as determined by the *AER* under paragraph (g).

Positive pass through

- (c) To seek the approval of the *AER* to pass through a *positive pass through amount*, a *Distribution Network Service Provider* must submit to the *AER*, within 90 *business days* of the relevant *positive change event* occurring, a written statement which specifies:
 - (1) the details of the *positive change event*; and
 - (2) the date on which the *positive change event* occurred; and
 - (3) the *eligible pass through amount* in respect of that *positive change event*; and
 - (4) the *positive pass through amount* the provider proposes in relation to the *positive change event*; and
 - (5) the amount of the *positive pass through amount* that the provider proposes should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*; and
 - (6) evidence:
 - (i) of the actual and likely increase in costs referred to in subparagraph (3); and
 - (ii) that such costs occur solely as a consequence of the *positive change event*; and
 - (7) such other information as may be required under any relevant *regulatory information instrument*.
- (d) If the *AER* determines that a *positive change event* has occurred in respect of a statement under paragraph (c), the *AER* must determine:
 - (1) the *approved pass through amount*; and

- (2) the amount of that *approved pass through amount* that should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*,

taking into account the matters referred to in paragraph (j).

- (e) If the *AER* does not make the determinations referred to in paragraph (d) within ~~6040~~ *business days* from the date it receives the *Distribution Network Service Provider's statement* and accompanying evidence under paragraph (c), then, on the expiry of that period, the *AER* is taken to have determined that:

- (1) the *positive pass through amount* as proposed in the provider's statement under paragraph (c) is the *approved pass through amount* in respect of that *positive change event*; and
- (2) the amount of that *positive pass through amount* that the provider proposes in its statement under paragraph (c) should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*, is the amount that should be so passed through in each such *regulatory year*.

Negative pass through

- (f) A *Distribution Network Service Provider* must submit to the *AER*, within 90 *business days* of becoming aware of the occurrence of a *negative change event* for the provider, a written statement which specifies:
- (1) the details of the *negative change event* concerned; and
 - (2) the date the *negative change event* occurred; and
 - (3) the costs in the provision of *standard control services* that the provider has saved and is likely to save until the end of the *regulatory control period* as a result of the *negative change event*; and
 - (4) the aggregate amount of those saved costs that the provider proposes should be passed through to *Distribution Network Users*; and
 - (5) the amount of the costs referred to in subparagraph (4) the provider proposes should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*; and
 - (6) such other information as may be required under any relevant *regulatory information instrument*.
- (g) If a *negative change event* occurs (whether or not the occurrence of that *negative change event* is notified by the provider to the *AER* under paragraph (f)) and the *AER* determines to impose a requirement on the provider in relation to that *negative change event* as described in paragraph (b), the *AER* must determine:
- (1) the *required pass through amount*; and

- (2) taking into account the matters referred to in paragraph (j):
- (i) how much of that *required pass through amount* should be passed through to *Distribution Network Users* (the "*negative pass through amount*"); and
 - (ii) the amount of that *negative pass through amount* that should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*.
- (h) A *Distribution Network Service Provider* must provide the *AER* with such information as the *AER* requires for the purpose of making a determination under paragraph (g) within the time specified by the *AER* in a notice provided to the provider by the *AER* for that purpose.

Consultation

- (i) Before making a determination under paragraph (d) or (g), the *AER* may consult with the relevant *Distribution Network Service Provider* and such other persons as the *AER* considers appropriate, on any matters arising out of the relevant *pass through event* the *AER* considers appropriate.

Relevant factors

- (j) In making a determination under paragraph (d) or (g) in respect of a *Distribution Network Service Provider*, the *AER* must take into account:
- (1) the matters and proposals set out in any statement given to the *AER* by the provider under paragraph (c) or (f); and
 - (2) in the case of a *positive change event*, the increase in costs in the provision of *standard control services* that the provider has incurred and is likely to incur until the end of the *regulatory control period* as a result of the *positive change event*; and
 - (3) in the case of a *positive change event*, the efficiency of the provider's decisions and actions in relation to the risk of the *positive change event*, including whether the provider has failed to take any action that could reasonably be taken to reduce the magnitude of the *eligible pass through amount* in respect of that *positive change event* and whether the provider has taken or omitted to take any action where such action or omission has increased the magnitude of the amount in respect of that *positive change event*; and
 - (4) the time cost of money based on the *weighted average cost of capital* for the provider for the relevant *regulatory control period*; and
 - (5) the need to ensure that the provider only recovers any actual or likely increment in costs under this paragraph (j) to the extent that such increment is solely as a consequence of a *pass through event*; and

- (6) in the case of a *tax change event*, any change in the way another *tax* is calculated, or the removal or imposition of another *tax*, which, in the *AER's* opinion, is complementary to the *tax change event* concerned; and
- (7) whether the costs of the *pass through event* have already been factored into the calculation of the provider's *annual revenue requirement*; and
- (8) any other factors the *AER* considers relevant.

Extension of time limits

- (k) The *AER* must, by written notice to a *Distribution Network Service Provider*, extend a time limit fixed in clause 6.6.1(c) or clause 6.6.1(f) if the *AER* is satisfied that the difficulty of assessing or quantifying the effect of the relevant *pass through event* justifies the extension.
 - (1) The *AER* may extend the time limit fixed in clause 6.6.1(e) by up to a further 60 business days if: [3.1]
 - (1) making the determination involves questions of unusual complexity or difficulty; or [3.1]
 - (2) the *AER* requires information further to that specified in the *Distribution Network Service Provider's* written statement submitted under clause 6.6.1(e). [3.1]
- ...

6.6.4 Reopening of distribution determination for capital expenditure

- (a) Subject to paragraph (b), a *Distribution Network Service Provider* may, during a *regulatory control period*, apply to the *AER* to revoke and substitute a distribution determination that applies to it where:
 - (1) an event that is beyond the reasonable control of the provider has occurred during that *regulatory control period* and the occurrence of that event during that period (or of an event of a similar kind) could not reasonably have been foreseen at the time of the making of the distribution determination ('the event');
 - (2) no forecast capital expenditure was determined by the *AER* for that period under clause 6.12.1(3) in relation to the event that has occurred;
 - (3) the provider proposes to undertake capital expenditure to rectify the adverse consequences of the event;
 - (4) the total of the capital expenditure required during the *regulatory control period* to rectify the adverse consequences of the event:
 - (i) exceeds 5% of the value of the regulatory asset base for the relevant *Distribution Network Service Provider* for the first year of the relevant *regulatory control period*;

- (ii) is such that, if undertaken, it is reasonably likely (in the absence of any other reduction in capital expenditure) to result in the total actual capital expenditure for that *regulatory control period* exceeding the total of the forecast capital expenditure for that *regulatory control period* as determined by the *AER* in accordance with clause 6.12.1(3); and
- (5) the provider can demonstrate that it is not able to reduce capital expenditure in other areas to avoid the consequence referred to in subparagraph (4)(ii) without materially adversely affecting the *reliability* and security of the relevant *distribution system*;
- (6) a failure to rectify the adverse consequences of the event would be likely to materially adversely affect the *reliability* and security of the relevant *distribution system*; and
- (7) the event is not a *pass through event*, or a *trigger event* associated with a *contingent project*.
- (b) An application referred to in paragraph (a) must not be made within 90 *business days* prior to the end of a *regulatory year*.
- (c) Following its receipt of an application made in accordance with paragraphs (a) and (b), the *AER* must:
- (1) consult with the *Distribution Network Service Provider* and such other persons as it considers appropriate in relation to the application; and
 - (2) make its decision on the application within 40 *business days* of that application being made.
- (d) The *AER* must, and must only, revoke a distribution determination following an application made in accordance with paragraphs (a) and (b) if the *AER* is satisfied of each of the matters referred to in paragraph (a).
- (e) If the *AER* revokes a distribution determination under paragraph (d), the *AER* must make a new distribution determination in substitution for the revoked determination to apply for the remainder of the *regulatory control period* for which the revoked determination was to apply.
- (f) The substituted distribution determination must only vary from the revoked distribution determination to the extent necessary:
- (1) to adjust the forecast capital expenditure for that *regulatory control period* to accommodate the amount of such additional capital expenditure that the *AER* considers would meet the costs the prudent *Distribution Network Service Provider* would require to achieve one or more of the *capital expenditure objectives*, having regard to, as it considers appropriate, the *capital expenditure factors* (in which case the amount of that adjustment will be taken to be determined by the *AER* under clause 6.5.7(c); and

- (2) to reflect the effect of any resultant increase in forecast capital expenditure on:
- (i) the forecast operating expenditure for the remainder of the *regulatory control period*;
 - (ii) the *annual revenue requirement* for each *regulatory year* in the remainder of the *regulatory control period*; and
 - (iii) the X factor for each of the remaining *regulatory years* of the *regulatory control period*.
- (g) If the *AER* revokes and substitutes a distribution determination under paragraph (e), that revocation and substitution must take effect from the commencement of the next *regulatory year*.

Extension of time limits

- (h) The *AER* may extend the time limit fixed in subparagraph (c)(2) by up to a further 60 business days further 60 business days if:
- (1) making the determination involves questions of unusual complexity or difficulty; or
- (2) the *AER* requires information further to that specified in the *Distribution Network Service Provider's* application submitted under paragraph (a). [3.1]
- ...

6.6A.2 Amendment of distribution determination for contingent project

- (a) Subject to paragraph (b), a *Distribution Network Service Provider* may, during a *regulatory control period*, apply to the *AER* to amend a distribution determination that applies to that provider where a *trigger event* for a *contingent project* in relation to that distribution determination has occurred.
- (b) An application referred to in paragraph (a):
- (1) must not be made within 90 business days prior to the end of a *regulatory year*;
 - (2) subject to subparagraph (1), must be made as soon as practicable after the occurrence of the *trigger event*;
 - (3) must contain the following information:
 - (i) an explanation that substantiates the occurrence of the *trigger event*;
 - (ii) a forecast of the total capital expenditure for the *contingent project*;
 - (iii) a forecast of the capital and incremental operating expenditure, for each remaining *regulatory year* which the *Distribution Network*

Service Provider considers is reasonably required for the purpose of undertaking the *contingent project*;

- (iv) how the forecast of the total capital expenditure for the *contingent project* meets the threshold as referred to in clause 6.6A.1(b)(1);
 - (v) the intended date for commencing the *contingent project* (which must be during the *regulatory control period*);
 - (vi) the anticipated date for completing the *contingent project* (which may be after the end of the *regulatory control period*); and
 - (vii) an estimate of the incremental revenue which the *Distribution Network Service Provider* considers is likely to be required to be earned in each remaining *regulatory year* of the *regulatory control period* as a result of the *contingent project* being undertaken as described in subparagraph (iii); and
- (4) the estimate referred to in subparagraph (3)(vii) must be calculated:
- (i) on the basis of the capital expenditure referred to in subparagraph (3)(iii);
 - (ii) on the basis of the rate of return for that *Distribution Network Service Provider* for the *regulatory control period* as determined pursuant to clause 6.5.2;
 - (iii) consistently with the manner in which depreciation is calculated under clause 6.5.5;
 - (iv) to include the incremental operating expenditure referred to in subparagraph (3)(iii); and
 - (v) in accordance with the requirements for roll forward in the *roll-forward model* and revenue calculation in the *post-tax revenue model*.
- (c) As soon as practicable after its receipt of an application made in accordance with paragraphs (a) and (b), the *AER* must *publish* the application, together with an invitation for written submissions on the application.
- (d) The *AER* must consider any written submissions made under paragraph (c) and must make its decision on the application within 40 *business days* of its receipt of that application. In doing so the *AER* may also take into account such other information as it considers appropriate, including any analysis (such as benchmarking) that is undertaken by it for that purpose and the *capital expenditure factors*.
- (e) If the *AER* is satisfied that the *trigger event* has occurred, and that the forecast of the total capital expenditure for the *contingent project* meets the threshold as referred to in clause 6.6A.1(b)(1)(i), it must:
- (1) determine:

- (i) the scope of the *contingent project* that the *AER* considers a prudent *Distribution Network Service Provider* would be required to undertake to achieve one or more of the *capital expenditure objectives*;
 - (ii) the amount of capital and incremental operating expenditure, for the purpose of undertaking the *contingent project* for each remaining *regulatory year* which the *AER* considers would, respectively, meet the efficient costs that a prudent *Distribution Network Service Provider* would require to achieve one or more of the *capital expenditure objectives* and one or more of the *operating expenditure objectives*;
 - (iii) the total capital expenditure for the purpose of undertaking the *contingent project*, which the *AER* considers would meet the efficient costs that a prudent *Distribution Network Service Provider* would require to achieve one or more of the *capital expenditure objectives*;
 - (iv) the likely commencement and completion dates for the *contingent project*; and
 - (v) the incremental revenue which is likely to be required by the *Distribution Network Service Provider* in each remaining *regulatory year* as a result of the *contingent project* being undertaken as described in subparagraphs (i) and (ii), such estimate being calculated in accordance with subparagraph (2);
- (2) calculate the estimate referred to in subparagraph (3)(v):
- (i) on the basis of the capital expenditure referred to in subparagraph (3)(i);
 - (ii) to include the incremental operating expenditure referred to in subparagraph (3)(i); and
 - (iii) otherwise in accordance with subparagraph (b)(4); and
- (3) amend the distribution determination in accordance with paragraph (f).
- (f) Amendments to a distribution determination referred to in subparagraph (e)(3) must only vary the determination to the extent necessary:
- (1) to adjust the forecast capital expenditure for that *regulatory control period* to accommodate the amount of capital expenditure determined under subparagraph (3)(i) (in which case the amount of that adjustment will be taken to be determined by the *AER* under clause 6.5.7(c));
 - (2) to adjust the forecast operating expenditure for that *regulatory control period* to accommodate the amount of incremental operating expenditure determined under subparagraph (3)(i) (in which case the amount of that adjustment will be taken to be determined by the *AER* under clause 6.5.6(c));

- (3) to reflect the effect of any resultant increase in forecast capital and operating expenditure on:
- (i) the annual revenue requirement for each regulatory year in the remainder of the regulatory control period; and
 - (ii) the X factor for each of the remaining regulatory years of the regulatory control period.
- (g) Amendments to a distribution determination take effect from the commencement of the next regulatory year of the regulatory control period.

Extension of time limits

- (h) The AER may extend the time limit fixed in paragraph (d) by up to a further 60 business days :
- (1) making the determination involves questions of unusual complexity or difficulty; or
- (2) the AER requires information further to that specified in the Distribution Network Service Provider's application submitted under paragraph (a).
- ...

6.8.1 AER's framework and approach paper

- (a) The AER must prepare and publish a document (a *framework and approach paper*) in anticipation of every distribution determination.
- (b) The *framework and approach paper* should set out the AER's likely approach (together with its reasons for the likely approach), in the forthcoming distribution determination, to:
- (1) the classification of *distribution services* in accordance with Part B; and
 - (2) the application to the *Distribution Network Service Provider* of a service target performance incentive scheme or schemes; and
 - (2) the application to the *Distribution Network Service Provider* of a service target performance incentive scheme or schemes; and
 - (3) the application to the *Distribution Network Service Provider* of an efficiency benefit sharing scheme or schemes; and
 - (3) the application to the *Distribution Network Service Provider* of an efficiency benefit sharing scheme or schemes; and
 - (4) the application to the *Distribution Network Service Provider* (if applicable) of a demand management incentive scheme or schemes; and
 - (4) the application to the *Distribution Network Service Provider* (if applicable) of a demand management incentive scheme or schemes; and

(2)(5)whether there is to be an adjustment for the use or forecast use of assets forming part of the regulatory asset base for the provision of services other than the provision of *standard control services* in the control mechanism or by an adjustment to the building blocks as referred to in clause 6.4.3(a)(8) or a combination of these adjustments; and

[3.2]

(3)(6)the form (or forms) of the control mechanisms to be applied by the distribution determination and the AER's reasons for deciding on control mechanisms of the relevant form (or forms); and

[3.2]

(4)(7) any other matters on which the AER thinks fit to give an indication of its likely approach.

[3.2]

(c) The *framework and approach paper* must state the form (or forms) of the control mechanisms to be applied by the distribution determination and the AER's reasons for deciding on control mechanisms of the relevant form (or forms).

(c) The *framework and approach paper* may also set out the models or methods that must be used by the *Distribution Network Service Provider* to develop and justify the forecast capital expenditure and the forecast operating expenditure to be included in its *regulatory proposal* and any revision to a *regulatory proposal*.

[3.3]

(ca) The *framework and approach paper* must include the AER's determination under clause 6.25(b) as to whether or not Part J of Chapter 6A is to be applied to determine the pricing of *transmission standard control services* provided by any *dual function assets* owned, controlled or operated by the *Distribution Network Service Provider*.

(d) A *framework and approach paper* is to be prepared in consultation with the relevant *Distribution Network Service Provider* and with other interested stakeholders.

(e) The AER should complete its *framework and approach paper* for a particular *distribution network* sufficiently in advance of the making of the relevant distribution determination to enable it to be of use to the *Distribution Network Service Provider* in preparing its *regulatory proposal*.

(f) If a distribution determination is currently in force, the AER must commence preparation of, and consultation on, *the* *framework and approach paper* for the distribution determination that is to supersede it at least 24 months before the end of the current *regulatory control period* and must complete preparation at least 19 months before the end of that *regulatory control period*.

[3.2]

(fa) Notwithstanding the requirement to consult under paragraphs (d) and (f), consultation is not required on the following components of a *framework and approach paper* if there are no proposed material changes to those components from the previously applicable *framework and approach paper*:

[3.2]

(1) classification of services under paragraph (b)(1);

[3.2]

(2) incentive schemes under paragraphs (b)(2), (b)(3) or (b)(4);

[3.2]

- (3) adjustments under paragraph (b)(5) [3.2]
 - (4) control mechanisms under paragraph (b)(6); and [3.2]
 - (5) determinations under clause 6.25(b). [3.2]
- (fb) The AER may give notice to a Distribution Network Service Provider fixing a date by which the Distribution Network Service Provider must notify the AER if it believes that material changes are necessary to one of the components referred to in paragraph (fa). [3.2]
- (g) On completing its *framework and approach paper*, the AER must:
 - (1) give a copy to the *Distribution Network Service Provider*; and
 - (2) *publish* it.
 - (h) Subject to paragraph (c) and clause 6.12.3, a *framework and approach paper* is not binding on the AER or a *Distribution Network Service Provider*. [3.3]

6.8.2 Submission of regulatory proposal

- (a) A *Distribution Network Service Provider* must, whenever required to do so under paragraph (b), submit a *regulatory proposal* to the AER for *distribution services* provided by means of, or in connection with, the provider's *distribution system*.
- (b) A *regulatory proposal* must be submitted:
 - (1) at least 13 months before the expiry of a distribution determination that applies to the service provider, unless paragraph (2) applies; or [3.4]
 - (2) up to 16 months before the expiry of a distribution determination that applies to the service provider, if required by the AER; or [3.4]
 - (2)(3)if no distribution determination applies to the service provider, within 3 months after being required to do so by the AER.
- (ba) A date determined by the AER under paragraph (b)(2) must be at least 6 months after the publication of the applicable framework and approach paper. [3.4]
- (c) A *regulatory proposal* must include (but need not be limited to) the following elements:
 - (1) a classification proposal:
 - (i) showing how the *distribution services* to be provided by the *Distribution Network Service Provider* should, in the provider's opinion, be classified under this Chapter; and
 - (ii) if the proposed classification differs from the classification suggested in the relevant *framework and approach paper* – including the reasons for the difference; and

- (2) for *direct control services* classified under the proposal as *standard control services* – a *building block proposal*; and
 - (3) for *direct control services* classified under the proposal as *alternative control services* – a demonstration of the application of the control mechanism, as set out in the *framework and approach paper*, and the necessary supporting information; and
 - (4) for *direct control services* – indicative prices for each year of the *regulatory control period*; and
 - (5) for services classified under the proposal as *negotiated distribution services* – the proposed *negotiating framework*; and
 - (6) an *indication**identification* of the parts of the proposal (if any) the *Distribution Network Service Provider* claims to be confidential ~~and wants suppressed from publication on that ground.~~
- (ca) Except as otherwise agreed with by the AER, a *Distribution Network Service Provider* must use any models or methods specified by the AER in the applicable *framework and approach paper* to develop and justify the forecast capital expenditure and forecast operating expenditure included in its in its *regulatory proposal* or any revised *regulatory proposal* and demonstrate how those models or methods have been used.

[3.3]

- (d) The *regulatory proposal* must comply with the requirements of, and must contain or be accompanied by the information required by any relevant *regulatory information instrument*.
 - (e) If more than one *distribution system* is owned, controlled or operated by a *Distribution Network Service Provider*, then, unless the *AER* otherwise determines, a separate *regulatory proposal* is to be submitted for each *distribution system*.
 - (f) If, at the commencement of this Chapter, different parts of the same *distribution system* were separately regulated, then, unless the *AER* otherwise determines, a separate *regulatory proposal* is to be submitted for each part as if it were a separate *distribution system*.
- ...

6.9.3 Consultation

- (a) Subject to the provisions of the Law and the *Rules* about the disclosure of *confidential information*, the *AER* must *publish* a *regulatory proposal* submitted or resubmitted to it by the provider under this Part, together with:
 - (1) the *AER's* proposed *Negotiated Distribution Service Criteria* for the provider; and
 - (2) ~~an invitation for written submissions on the regulatory proposal and the proposed Negotiated Distribution Service Criteria,~~

[3.5]

a notice inviting written submissions:

- (i) on the regulatory proposal, from any person other than the Distribution Network Service Provider that submitted the regulatory proposal; and
- (ii) on the proposed Negotiated Distribution Service Criteria, from any person; and
- (3) the date by which written submissions must be made, which must not be earlier than 30 business days after the notice inviting written submissions is published.

[3.5]

after the AER decides that the *regulatory proposal* complies (or that there is sufficient compliance) with the requirements of the Law and the *Rules*.

- (b) The AER may *publish* an issues paper examining issues related to the *regulatory proposal* and the proposed *Negotiated Distribution Service Criteria*, at the same time as, or subsequent to, *publication* of the invitation notice referred to in paragraph (a)(2).
- (c) Any person may make a written submission to the AER on the regulatory proposal or the proposed Negotiated Distribution Service Criteria within the time specified in the invitation referred to in paragraph (a)(2), which must be not earlier than 30 business days after the invitation for submissions is published under that paragraph.

Subject to subparagraph (a)(2), a Distribution Network Service Provider may only make a written submission in response to a notice published under subparagraph (a)(2) in respect of a regulatory proposal that was submitted by another Distribution Network Service Provider.

[3.5]

- (d) Where:

- (1) the AER is making distribution determinations in relation to two or more Distribution Network Service Providers at the same time; and
- (2) a Distribution Network Service Provider makes a written submission referred to in paragraph (c),

that written submission may only address material differences between:

- (3) the regulatory proposal that was submitted by it; and
- (4) a regulatory proposal that was submitted by another Distribution Network Service Provider.

[3.5]

6.10.1 Making of draft distribution determination

[3.5]

Subject to the Law and rule 6.14(a), the AER must:

- (a) consider any written submissions made ~~under~~in accordance with the requirements in rule 6.9; [3.5]
- (b) consider any *regulatory proposal* submitted ~~under~~ in accordance with the requirements in rule 6.8 or 6.9; [3.5]
- (c) have regard to analysis undertaken by or for the *AER*; and
- (d) ~~must~~ make a draft distribution determination in relation to the *Distribution Network Service Provider*.

6.10.2 Publication of draft determination and consultation

- (a) The *AER* must *publish*:
- (1) the draft distribution determination; and
 - (2) notice of the making of the draft distribution determination; and
 - (3) the *AER's* reasons for suggesting that the distribution determination should be made as proposed including the draft constituent decisions i.e. the decisions made in accordance with rule 6.12 on which the draft distribution determination is predicated; and
 - (4) notice of a predetermination conference; and
 - (5) ~~an invitation for a notice inviting~~ written submissions on its draft distribution determination, ~~from any person other than the *Distribution Network Service Provider* that submitted the *regulatory proposal* on which the draft distribution determination was based; and~~ [3.5]
 - (6) ~~the date by which written submissions must be made, which must not be earlier than 30 business days after the draft distribution determination is published.~~ [3.5]
- (b) The *AER* must hold a predetermination conference at the time, date and place specified in the notice under paragraph (a)(4) for the purpose of explaining the draft distribution determination and receiving oral submissions from interested parties. Any person may attend such a predetermination conference but the procedure to be adopted at the conference will be at the discretion of the senior *AER* representative in attendance.
- (c) ~~Any person may make a written submission to the *AER* on the draft distribution determination within the time specified in the invitation referred to in paragraph (a)(5), which must be not earlier than 30 business days after the making of the draft determination.~~

~~A *Distribution Network Service Provider* may only make a written submission in response to a notice *published* under subparagraph (a)(5) in respect of a draft distribution determination that has been made in respect of another *Distribution Network Service Provider*.~~

Subject to paragraph (d), any person may make a written submission to the AER on the draft distribution determination within the time specified in the invitation referred to in paragraph (a)(5).

[3.5]

(d) Where:

(1) the AER is making distribution determinations in relation to two or more Distribution Network Service Providers at the same time; and

(2) a Distribution Network Service Provider makes a written submission referred to in paragraph (e),

that written submission may only address material differences between:

(3) the draft distribution determination that has been made in relation to it; and

(4) the draft distribution determination that has been made in relation to another Distribution Network Service Provider.

A Distribution Network Service Provider must not make submissions on the draft distribution determination to the extent it is permitted to address those issues in revisions to its regulatory proposal under clause 6.10.3.

[3.5]

...

6.11.1 Making of distribution determination

[3.5]

Subject to the Law and rule 6.14(a), the AER must:

(a) consider any submissions made on the draft distribution determination, or on in accordance with the requirements in rule 6.10;

[3.5]

(b) consider any revised regulatory proposal submitted to it under clause 6.10.3 in accordance with the requirements in rule 6.10;

[3.5]

(c) consider any submissions on any revised regulatory proposal;

(d) have regard to analysis undertaken by or for the AER; and

(e) must make a distribution determination in relation to the Distribution Network Service Provider.

...

6.13 Revocation and substitution or amendment of distribution determination for wrong information or error

(a) The AER may (but is not required to) revoke a distribution determination during a regulatory control period if it appears to the AER that the determination is affected by a material error or deficiency of one or more of the following kinds:

- (1) a clerical mistake or an accidental slip or omission;
- (2) a miscalculation or misdescription;
- (3) a defect in form;
- (4) a deficiency resulting from the provision of false or materially misleading information to the AER.
- (a) Except as provided for in clause 6.6.4(d), the AER may only (but is not required to) revoke or amend a distribution determination during a *regulatory control period* where it appears to the AER that:
- (1) the *annual revenue requirement* was set on the basis of information provided by or on behalf of the relevant *Distribution Network Service Provider* to the AER that was false or misleading in a material particular; or
- (2) there was a material error or deficiency in the distribution determination.
- (b) If the AER revokes a distribution determination under paragraph (a)(1) or (a)(2), the AER must make a new distribution determination in substitution for the revoked *distribution* determination to apply for the remainder of the *regulatory control period* for which the revoked *distribution* determination was to apply.
- (c) If the AER revokes *and substitutes or amends* a distribution determination under paragraph (a)(1) or (a)(2), the substituted *or amended distribution* determination must only vary from the revoked *or existing distribution* determination to the extent necessary to correct the relevant error or deficiency.
- (d) The AER may only revoke and substitute *or amend* a distribution determination under this rule 6.13, if it has first consulted with the relevant *Distribution Network Service Provider* and such other persons as it considers appropriate.
- (e) The AER may only revoke or substitute or amend a distribution determination under this rule within six months of making the distribution determination.

[3.6]

6.14.1 **Out-of-scope submissions and late submissions**

[3.5]

- (a) Subject to the Law, wWhere the AER publishes a notice inviting submissions under this Part E, the AER must~~may~~ but need not consider any submission, or any material supplied with a submission, that does not comply with clause 6.9.3, 6.10.2 or 6.10.3, or is otherwise not relevant to the purpose of the invitation or a requirement of this Part E.
- (b) Where a *Distribution Network Service Provider* resubmits a *regulatory proposal* under clause 6.9.2 or submits a revised *regulatory proposal* under clause 6.10.3, the AER must not consider:
- (1) a resubmitted or revised *regulatory proposal* that was submitted late; or

[3.5]

[3.5]

[3.5]

- (2) if the revised *regulatory proposal* includes material that is not permitted under clause 6.10.3 that material. [3.5]

The AER may but need not consider a *regulatory proposal* resubmitted under clause 6.9.2 or a revised *regulatory proposal* submitted under clause 6.10.3, including parts thereof, that: [3.5]

- (1) is submitted late for the purposes of clause 6.10.2(a)(6); [3.5]
- (2) includes material that is not permitted under rule 6.10; or [3.5]
- (3) does not otherwise comply with a requirement of this Part E. [3.5]

- (e) This clause does not prevent the AER from accepting typographical corrections, corrections of miscalculations and corrections of other errors that do not affect the substance of a *regulatory proposal*. [3.5]

6.14.1A Calculation of time

- (a) For the purpose of calculating the time limit for the AER to make a decision under clauses 6.6.1, 6.6.4 or 6.6A.2, any of the following periods is to be disregarded, if the AER decides that this is necessary because of the complexity of the issues involved:
 - (1) the number of days including and between when the AER publishes a notice inviting submissions and the date by when those submissions must be made; or [3.1]
 - (2) the number of days including and between when the AER requests further information and the date when that information is received for the purposes of making its decision; or [3.1]
 - (3) the number of days including and between when the AER is awaiting the outcome of administrative processes which may impact on the making of its decision. [3.1]
- (b) For the purposes of clause 6.11.2, the AER may delay the commencement of the forthcoming *regulatory control period* by up to the number of days which a *Distribution Network Service Provider* took to resubmit a *regulatory proposal* (or the accompanying information) under rule 6.9. [3.7]
- (c) The AER must:
 - (1) give notice of a decision under this rule to the *Distribution Network Service Provider*; and [3.1] [3.7]
 - (2) publish a notice of the decision on its website. [3.1] [3.7]

...

6.25 AER determination of applicable pricing regime for Dual Function Assets

- (a) A *Distribution Network Service Provider* which owns, controls or operates *dual function assets* must advise the *AER* at least 24 months prior to the end of the current *regulatory control period* of the value of that *Distribution Network Service Provider's dual function assets* which provide *standard control services* that would be *prescribed transmission services* were it not for the operation of clause 6.24.2 (referred to as *transmission standard control services*). The value to be advised is the value ascribed to the relevant *dual function assets* in the relevant *Distribution Network Service Provider's* regulatory asset base as at the start of the *regulatory year* which commences 24 months prior to the end of the current *regulatory control period*.
- (b) The *AER* must review the information provided under paragraph (a) and determine, following consultation, if required under clause 6.8.1(fa), with the relevant *Distribution Network Service Provider* and with other interested parties in the course of preparing the *framework and approach paper* for that *Distribution Network Service Provider*, whether the value of that *Distribution Network Service Provider's dual function assets* which provide *transmission standard control services* comprise such a material proportion of that *Distribution Network Service Provider's* regulatory asset base that pricing in respect of those services should be regulated under Part J of Chapter 6A through the application of rule 6.26.

[3.2]

3.2 Chapter 6A

...

6A.7.1 Reopening of revenue determination for capital expenditure

- (a) Subject to paragraph (b), a *Transmission Network Service Provider* may, during a *regulatory control period*, apply to the *AER* to revoke and substitute a *revenue determination* that applies to it where:
- (1) an event that is beyond the reasonable control of the provider has occurred during that *regulatory control period* and the occurrence of that event during that period (or of an event of a similar kind) could not reasonably have been foreseen ~~by the provider~~ at the time of the making of the *revenue determination* ('the event');
 - (2) no forecast capital expenditure was ~~accepted or substituted determined~~ by the *AER* for that period under clause 6A.6.7(c) ~~or clause 6A.13.2(b)(4) and (5) (as the case may be)~~ in relation to the event that has occurred;
 - (3) the provider proposes to undertake capital expenditure to rectify the adverse consequences of the event;
 - (4) the total of the capital expenditure required during the *regulatory control period* to rectify the adverse consequences of the event:
 - (i) exceeds 5% of the value of the regulatory asset base for the relevant *Transmission Network Service Provider* for the first year of the relevant *regulatory control period*;
 - (ii) is such that, if undertaken, it is reasonably likely (in the absence of any other reduction in capital expenditure) to result in the total actual capital expenditure for that *regulatory control period* exceeding the total of the forecast capital expenditure for that *regulatory control period* as ~~accepted or substituted determined~~ by the *AER* in accordance with clause 6A.6.7(c) ~~or clauses 6A.13.2(b)(4) and (5) (as the case may be)~~; and
 - (5) the provider can demonstrate that it is not able to reduce capital expenditure in other areas to avoid the consequence referred to in clause 6A.7.1(a)(4)(ii) without materially adversely affecting the *reliability* and security of the relevant *transmission system*;
 - (6) a failure to rectify the adverse consequences of the event would be likely to materially adversely affect the *reliability* and security of the relevant *transmission system*; and
 - (7) the event is not a *pass through event* or a *trigger event associated with a contingent project*.

In this paragraph (a), a reference to an event includes a series of events or a state of affairs, which may include a greater than anticipated increase in demand.

- (b) An application referred to in paragraph (a) must not be made within 90 *business days* prior to the end of a *regulatory year*.
- (c) Following its receipt of an application made in accordance with paragraphs (a) and (b), the *AER* must:
 - (1) consult with the *Transmission Network Service Provider* and such other persons as it considers appropriate in relation to the application; and
 - (2) make its decision on the application within ~~6040~~ *business days* of that application being made.
- (d) The *AER* must, and must only, revoke a *revenue determination* following an application made in accordance with paragraphs (a) and (b) if the *AER* is satisfied of each of the matters referred to in paragraph (a).
- (e) If the *AER* revokes a *revenue determination* under paragraph (d), the *AER* must make a new *revenue determination* in substitution for the revoked determination to apply for the remainder of the *regulatory control period* for which the revoked determination was to apply.
 - (f) The substituted *revenue determination* must only vary from the revoked *revenue determination* to the extent necessary:
 - (1) to adjust the forecast capital expenditure for that *regulatory control period* to accommodate the amount of such additional capital expenditure ~~asthat~~ the *AER determines is appropriate*~~considers would meet the costs a prudent *Transmission Network Service Provider* would require to achieve one or more of the capital expenditure objectives, having regard to, as it considers appropriate, the capital expenditure factors~~ (in which case the amount of that adjustment will be taken to be ~~accepted~~determined by the *AER* under clause 6A.6.7(c)); and
 - (2) to reflect the effect of any resultant increase in forecast capital expenditure on:
 - (i) the forecast operating expenditure for the remainder of the *regulatory control period*;
 - (ii) the *maximum allowed revenue* for each *regulatory year* in the remainder of the *regulatory control period*; and
 - (iii) the X factor for each of the remaining *regulatory years* of the *regulatory control period*.
 - (g) If the *AER* revokes and substitutes a *revenue determination* under paragraph (e), that revocation and substitution must take effect from the commencement of the next *regulatory year*.

Extension of time limits

- (h) The AER may extend the time limit fixed in subparagraph (c)(2) by up to a further 60 business days if: [3.8]
- (1) making the decision involves questions of unusual complexity or difficulty; [3.8]
- (2) the AER requires information further to that specified in the Transmission Network Service Provider's application submitted under paragraph (a). [3.8]

6A.7.3 Cost pass through

- (a) If a *positive change event* occurs, a *Transmission Network Service Provider* may seek the approval of the *AER* to pass through to *Transmission Network Users* a *positive pass through amount*.
- (b) If a *negative change event* occurs, the *AER* may require the *Transmission Network Service Provider* to pass through to *Transmission Network Users* a *negative pass through amount* as determined by the *AER* under paragraph (g).

Positive pass through

- (c) To seek the approval of the *AER* to pass through a *positive pass through amount*, a *Transmission Network Service Provider* must submit to the *AER*, within 90 *business days* of the relevant *positive change event* occurring, a written statement which specifies:
- (1) the details of the *positive change event*;
- (2) the date on which the *positive change event* occurred;
- (3) the *eligible pass through amount* in respect of that *positive change event*;
- (4) the *positive pass through amount* the provider proposes in relation to the *positive change event*;
- (5) the amount of the *positive pass through amount* that the provider proposes should be passed through to *Transmission Network Users* in each *regulatory year* during the *regulatory control period*;
- (6) evidence:
- (i) of the actual and likely increase in costs referred to in subparagraph (3); and
- (ii) that such costs occur solely as a consequence of the *positive change event*; and
- (7) such other information as may be required pursuant to *information guidelines* in force under clause 6A.17.2.

- (d) If the *AER* determines that a *positive change event* has occurred in respect of a statement under paragraph (c), the *AER* must determine:
- (1) the *approved pass through amount*; and
 - (2) the amount of that *approved pass through amount* that should be passed through to *Transmission Network Users* in each *regulatory year* during the *regulatory control period*,

taking into account the matters referred to in paragraph (j).

- (e) If the *AER* does not make the determinations referred to in paragraph (d) within ~~6040~~ business days from the date it receives the *Transmission Network Service Provider's* statement and accompanying evidence under paragraph (c), then, on the expiry of that period, the *AER* is taken to have determined that:
- (1) the *positive pass through amount* as proposed in the provider's statement under paragraph (c) is the *approved pass through amount* in respect of that *positive change event*; and
 - (2) the amount of that *positive pass through amount* that the provider proposes in its statement under paragraph (c) should be passed through to *Transmission Network Users* in each *regulatory year* during the *regulatory control period*, is the amount that should be so passed through in each such *regulatory year*.

Negative pass through

- (f) A *Transmission Network Service Provider* must submit to the *AER*, within 60 business days of becoming aware of the occurrence of a *negative change event* for the provider, a written statement which specifies:
- (1) the details of the *negative change event* concerned;
 - (2) the date the *negative change event* occurred;
 - (3) the costs in the provision of *prescribed transmission services* that the provider has saved and is likely to save until the end of the *regulatory control period* as a result of the *negative change event*;
 - (4) the aggregate amount of those saved costs that the provider proposes should be passed through to *Transmission Network Users*;
 - (5) the amount of the costs referred to in subparagraph (4) the provider proposes should be passed through to *Transmission Network Users* in each *regulatory year* during the *regulatory control period*; and
 - (6) such other information as may be required pursuant to *information guidelines* in force under clause 6A.17.2.
- (g) If a *negative change event* occurs (whether or not the occurrence of that *negative change event* is notified by the provider to the *AER* under paragraph (f)) and the

AER determines to impose a requirement on the provider in relation to that *negative change event* as described in paragraph (b), the *AER* must determine:

- (1) the *required pass through amount*; and
 - (2) taking into account the matters referred to in paragraph (j):
 - (i) how much of that *required pass through amount* should be passed through to *Transmission Network Users* (the *negative pass through amount*); and
 - (ii) the amount of that *negative pass through amount* that should be passed through to *Transmission Network Users* in each *regulatory year* during the *regulatory control period*.
- (h) A *Transmission Network Service Provider* must provide the *AER* with such information as the *AER* requires for the purpose of making a determination under paragraph (g) within the time specified by the *AER* in a notice provided to the provider by the *AER* for that purpose.

Consultation

- (i) Before making a determination under paragraph (d) or (g), the *AER* may consult with the relevant *Transmission Network Service Provider* and such other persons as the *AER* considers appropriate, on any matters arising out of the relevant *pass through event* as the *AER* considers appropriate.

Relevant factors

- (j) In making a determination under paragraph (d) or (g) in respect of a *Transmission Network Service Provider*, the *AER* must take into account:
- (1) the matters and proposals set out in any statement given to the *AER* by the provider under paragraphs (c) or (f) (as the case may be);
 - (2) in the case of a *positive change event*, the increase in costs in the provision of *prescribed transmission services* that the provider has incurred and is likely to incur until the end of the *regulatory control period* as a result of the *positive change event*;
 - (3) in the case of a *positive change event*, the efficiency of the provider's decisions and actions in relation to the risk of the *positive change event*, including whether the provider has failed to take any action that could reasonably be taken to reduce the magnitude of the *eligible pass through amount* in respect of that *positive change event* and whether the provider has taken or omitted to take any action where such action or omission has increased the magnitude of the amount in respect of that *positive change event*;
 - (4) the time cost of money based on the *weighted average cost of capital* for the provider for the relevant *regulatory control period*;

- (5) the need to ensure that the provider only recovers any actual or likely increment in costs under this paragraph (j) to the extent that such increment is solely as a consequence of a *pass through event*;
- (6) in the case of a *tax change event*, any change in the way another *tax* is calculated, or the removal or imposition of another *tax*, which, in the *AER's* opinion, is complementary to the *tax change event* concerned; and
- (7) any other factors the *AER* considers relevant.

Extension of time limits

- (k) The *AER* must, by written notice to a *Transmission Network Service Provider*, extend a time limit fixed in paragraphs (c) or (f) if the *AER* is satisfied that the difficulty of assessing or quantifying the effect of the relevant *pass through event* justifies the extension.
 - (l) The *AER* may extend the time limit fixed in paragraph (e) by up to a further 60 business days if:
 - (1) making the determination involves questions of unusual complexity or difficulty; or [3.8]
 - (2) the *AER* requires information further to that specified in the *Transmission Network Service Provider's* written statement submitted under paragraph (e). [3.8]
- ...

6A.8.2 Amendment of revenue determination for contingent project

- (a) Subject to paragraph (b), a *Transmission Network Service Provider* may, during a *regulatory control period*, apply to the *AER* to amend a *revenue determination* that applies to that provider where a *trigger event* for a *contingent project* in relation to that *revenue determination* has occurred.
- (b) An application referred to in paragraph (a):
 - (1) must not be made within 90 *business days* prior to the end of a *regulatory year*;
 - (2) subject to subparagraph (1), must be made as soon as practicable after the occurrence of the *trigger event*;
 - (3) must contain the following information:
 - (i) an explanation that substantiates the occurrence of the *trigger event*;
 - (ii) a forecast of the total capital expenditure for the *contingent project*;
 - (iii) a forecast of the capital and incremental operating expenditure, for each remaining *regulatory year* which the *Transmission Network*

Service Provider considers is reasonably required for the purpose of undertaking the *contingent project*;

- (iv) how the forecast of the total capital expenditure for the *contingent project* meets the threshold as referred to in clause ~~6A.8.1(b)(2)(iii)6A.8.1(b)(1)~~;
 - (v) the intended date for commencing the *contingent project* (which must be during the *regulatory control period*);
 - (vi) the anticipated date for completing the *contingent project* (which may be after the end of the *regulatory control period*); and
 - (vii) an estimate of the incremental revenue which the *Transmission Network Service Provider* considers is likely to be required to be earned in each remaining *regulatory year* of the *regulatory control period* as a result of the *contingent project* being undertaken as described in clause 6A.8.2(b)(3)(iii); and
- (4) the estimate referred to in clause 6A.8.2(b)(3)(vii) must be calculated:
- (i) on the basis of the capital expenditure referred to in clause 6A.8.2(b)(3)(iii);
 - (ii) on the basis of the rate of return for that *Transmission Network Service Provider* for the *regulatory control period* as determined pursuant to clause 6A.6.2;
 - (iii) consistently with the manner in which depreciation is calculated under clause 6A.6.3;
 - (iv) to include the incremental operating expenditure referred to in clause 6A.8.2(b)(3)(iii); and
 - (v) in accordance with the requirements for roll forward in the *roll-forward model* and revenue calculation in the *post-tax revenue model*.
- (c) As soon as practicable after its receipt of an application made in accordance with paragraphs (a) and (b), the *AER* must *publish* the application, together with an invitation for written submissions on the application.
- (d) The *AER* must consider any written submissions made under paragraph (c) and must make its decision on the application within ~~3040~~ business days of its receipt of that application. In doing so the *AER* may also take into account such other information as it considers appropriate, including any analysis (such as benchmarking) that is undertaken by it for that purpose and the capital expenditure factors.
- (e) If the *AER* is satisfied that the *trigger event* has occurred, and that the forecast of the total capital expenditure for the *contingent project* meets the threshold as referred to in clause ~~6A.8.1(b)(2)(iii)6A.8.1(b)(1)~~, it must:

(1) determine:

- (i) ~~the amount of capital and incremental operating expenditure, for each remaining regulatory year which the AER considers is reasonably required for the purpose of undertaking the contingent project;~~
- (ii) ~~the total capital expenditure which the AER considers is reasonably required for the purpose of undertaking the contingent project;~~
- (i) the scope of the *contingent project* that the AER considers a prudent *Transmission Network Service Provider* would be required to undertake to achieve one or more of the *capital expenditure objectives*;
- (ii) the amount of capital and incremental operating expenditure, for the purpose of undertaking the *contingent project*, for each remaining regulatory year which the AER considers would, respectively, meet the efficient costs that a prudent *Transmission Network Service Provider* would require to achieve one or more of the *capital expenditure objectives* and one or more of the *operating expenditure objectives*;
- (iii) the total capital expenditure for the purpose of undertaking the *contingent project* which the AER considers would meet the efficient costs that a prudent *Transmission Network Service Provider* would require to achieve one or more of the *capital expenditure objectives*;
- (iv) ~~the likely commencement and completion dates for the *contingent project*; and~~
- (v) ~~the incremental revenue which is likely to be required by the *Transmission Network Service Provider* in each remaining regulatory year as a result of the *contingent project* being undertaken as described in clause 6A.8.2(e)(1)(i) and (ii) subparagraphs (ii) and (iii), such estimate being calculated in accordance with subparagraph (2);~~

(2) calculate the estimate referred to in ~~clause 6A.8.2(e)(1)(iv) subparagraph (1)(v)~~:

- (i) on the basis of the capital expenditure referred to in ~~clause 6A.8.2(e)(1)(i) subparagraph (1)(ii)~~;
- (ii) to include the incremental operating expenditure referred to in ~~clause 6A.8.2(e)(1)(i) subparagraph (1)(ii)~~; and
- (iii) otherwise in accordance with subparagraph (b)(4); and

(3) amend the *revenue determination* in accordance with paragraph (f).

(f) ~~In making the determinations referred to in subparagraph (e)(1), the AER must accept the relevant amounts and dates, contained in the *Transmission Network*~~

~~Service Provider's application, as referred to in clauses 6A.8.2(b)(3)(ii) – (vii), if the AER is satisfied that:~~

- (1) ~~the forecast of the total capital expenditure for the *contingent project* meets the threshold as referred to in clause 6A.8.1(b)(2)(iii);~~
 - (2) ~~the amounts of forecast capital expenditure and incremental operating expenditure reasonably reflect the *capital expenditure criteria* and the *operating expenditure criteria*, taking into account the *capital expenditure factors* and the *operating expenditure factors* respectively, in the context of the *contingent project*;~~
 - (3) ~~the estimates of incremental revenue are reasonable; and~~
 - (4) ~~the dates are reasonable.~~
- (g) ~~In making the determinations referred to in paragraphs (e)(1) and (f), the AER must take into account:~~
- (1) ~~the information included in or accompanying the application;~~
 - (2) ~~submissions received in the course of consulting on the application;~~
 - (3) ~~such analysis as is undertaken by or for the AER;~~
 - (4) ~~the expenditure that would be incurred in respect of a *contingent project* by an efficient and prudent operator in the circumstances of the *Transmission Network Service Provider*;~~
 - (5) ~~the actual and expected capital expenditure of the *Transmission Network Service Provider* for *contingent projects* during any preceding regulatory control periods;~~
 - (6) ~~the extent to which the forecast capital expenditure for the *contingent project* is referable to arrangements with a person other than the *Transmission Network Service Provider* that, in the opinion of the AER, do not reflect arm's length terms;~~
 - (7) ~~the relative prices of operating and capital inputs in relation to the *contingent project*;~~
 - (8) ~~efficient substitution possibilities between operating and capital expenditure in relation to the *contingent project*; and~~
 - (9) ~~whether the total labour costs included in the capital and operating expenditure forecasts for the *regulatory control period* are consistent with the incentives provided by the *service target performance incentive scheme* that is to apply to the provider in respect of the *regulatory control period*.~~
- ~~(h)(f) Amendments to a *revenue determination* referred to in paragraph (e)(3) must only vary the determination to the extent necessary:~~

- (1) to adjust the forecast capital expenditure for that *regulatory control period* to accommodate the amount of capital expenditure determined under ~~clause 6A.8.2(e)(1)(i) subparagraph (e)(1)(ii)~~ (in which case the amount of that adjustment will be taken to be ~~accepted determined~~ by the *AER* under clause 6A.6.7(c));
- (2) to adjust the forecast operating expenditure for that *regulatory control period* to accommodate the amount of incremental operating expenditure determined under ~~clause 6A.8.2(e)(1)(i) subparagraph (e)(1)(ii)~~ (in which case the amount of that adjustment will be taken to be ~~accepted determined~~ by the *AER* under clause 6A.6.6(c));
- (3) to reflect the effect of any resultant increase in forecast capital and operating expenditure on:
 - (i) the *maximum allowed revenue* for each *regulatory year* in the remainder of the *regulatory control period*; and
 - (ii) the X factor for each of the remaining *regulatory years* of the *regulatory control period*.

~~(i)(g)~~ Amendments to a *revenue determination* take effect from the commencement of the next *regulatory year* of the *regulatory control period*.

(h) The *AER* may extend the time limit fixed in paragraph (d) by up to a further 60 business days if:

[3.8]

(1) making the decision involves questions of unusual complexity or difficulty;

[3.8]

(2) the *AER* requires information further to that specified in the *Transmission Network Service Provider's application submitted under paragraph (e)*.

[3.8]

6A.10.A1 Approved expenditure models paper

[3.9]

- (a) The *AER* may prepare and publish a document (an *approved expenditure models paper*) in anticipation of a *transmission determination*.

[3.9]

(b) The *approved expenditure models paper* may set out the models or methods to be used by the *Transmission Network Service Provider* to develop and justify expenditure forecasts in its *Revenue Proposal* or *pricing methodology* or its revised *Revenue Proposal* or revised *pricing methodology*.

[3.9]

(c) The *approved expenditure models paper* may set out any other matters on which the *AER* thinks fit to give an indication of its likely approach in the forthcoming *transmission determination*.

[3.9]

(d) An *approved expenditure models paper* is to be prepared in consultation with the relevant *Transmission Network Service Provider* and with other interested stakeholders.

[3.9]

- (e) The AER should complete an *approved expenditure models paper* for a particular *transmission network* sufficiently in advance of the making of the relevant determination to enable it to be used by the *Transmission Network Service Provider* in preparing its *Revenue Proposal* and *pricing methodology*. [3.9]
- (f) If a *transmission determination* is currently in force, the AER must, if it intends to publish an *approved expenditure models paper*, commence preparation of, and consultation on it, at least 24 months before the end of the current *regulatory control period* and must complete preparation at least 19 months before the end of that *regulatory control period*. [3.9]
- (g) Notwithstanding the requirements under paragraphs (d) and (f), preparation and consultation for a new *approved expenditure models paper* is not required if there are no proposed material changes to the previously applicable *approved expenditure models paper*. [3.9]
- (h) The AER may give notice to a *Transmission Network Service Provider* fixing a date by which the *Transmission Network Service Provider* must notify the AER if it believes that material changes are necessary for the purposes of paragraph (g). [3.9]
- (i) On completing its *approved expenditure models paper*, the AER must:
- (1) give a copy to the *Transmission Network Service Provider*; and
 - (2) publish it.

6A.10.1 Submission of proposal, framework, pricing methodology and information

- (a) A *Transmission Network Service Provider* must submit to the AER a *Revenue Proposal* and a proposed *pricing methodology* relating to the *prescribed transmission services* that are provided by means of, or in connection with, a *transmission system* that is owned, controlled or operated by that provider:
- (1) if any of those *prescribed transmission services* are subject to a *transmission determination*, 13 months before the expiry of the period in respect of which that *transmission determination* applies, unless paragraph (2) applies; or [3.10]
 - (2) up to 16 months before the expiry of a *transmission determination* that applies to the *Transmission Network Service Provider*, if required by the AER; or [3.10]
 - (2)(3) if any of those *prescribed transmission services* are not subject to a *transmission determination*, 3 months after being required to do so by the AER.
- (ab) A date determined by the AER under paragraph (a)(2) must be at least 6 months after the publication of the applicable *approved expenditure models paper*, or if no paper is published, on giving at least 6 months notice. [3.9] [3.10]
- (b) At the same time as it submits a *Revenue Proposal* under paragraph (a), the provider must also submit to the AER a proposed *negotiating framework*.

- (c) The *Revenue Proposal* and the proposed *negotiating framework* must comply with the requirements of, and must contain or be accompanied by such information as is required by, the *submission guidelines* made for that purpose under this rule 6A.10.
- (ca) Except as otherwise agreed with by the *AER*, a *Transmission Network Service Provider* must use any models or methods specified by the *AER* in the applicable *approved expenditure models paper* to develop and justify the forecast capital expenditure and forecast operating expenditure included in its in its *Revenue Proposal* or any revised *Revenue Proposal* and demonstrate how those models or methods have been used. [3.9]
- (d) The proposed *negotiating framework* must also comply with the requirements of clause 6A.9.5.
- (e) A proposed *pricing methodology* must:
- (1) give effect to and be consistent with the *Pricing Principles for Prescribed Transmission Services*; and
 - (2) comply with the requirements of, and contain or be accompanied by such information as is required by, the *pricing methodology guidelines* made for that purpose under rule 6A.25.
- (f) The *Revenue Proposal* must also include a statement of whether it is consistent with the most recent *NTNDP* and, if it is inconsistent, identify and give reasons for the inconsistency.
- (g) The *Revenue Proposal* must identify the parts of the proposal and any accompanying information (if any) the *Transmission Network Service Providers* claims to be confidential in accordance with the requirements of the *submission guidelines*.
- ...

6A.12.1 Making of draft decision

- (a) Subject to the Law and rule 6A.16(a), the *AER* must:
- (1) consider any written submissions made under in accordance with the requirements in rule 6A.11; [3.11]
 - (2) consider the information included in or accompanying the *Revenue Proposal* submitted in accordance with the requirements in rule 6A.10.1; [3.11]
 - (3) have regard to such analysis as is undertaken by or for the *AER*; and
 - (4) must-make a draft decision in relation to the *Transmission Network Service Provider*. [3.11]
- (b) The *AER's* draft decision must be made in accordance with, and must comply with, the relevant requirements of rule 6A.14.

- (c) If the *AER's draft decision differs to the Revenue Proposal in respect of refuses to approve* any of the amounts, ~~or values or projects~~ referred to in clause 6A.13.8(1)~~–(4)~~, the *AER's draft decision must include details of the changes required or matters to be addressed before the AER will determine, identify or approve (as the case may be) those amounts, or values or projects.*
- (d) If the *AER* refuses to approve the proposed *negotiating framework*, the *AER's draft decision must include details of the changes required or matters to be addressed before the AER will approve the framework.*
- (e) If the *AER* refuses to approve any aspect of a proposed *pricing methodology*, the *AER's draft decision must include details of the changes required or matters to be addressed before the AER will approve the proposed methodology.*

6A.12.2 Publication of draft decision and consultation

- (a) The *AER* must, as soon as practicable but not later than 6 months after the relevant date referred to in clause 6A.10.1(a), *publish*:
 - (1) its draft decision and reasons under clause 6A.12.1 and rule 6A.14;
 - (2) notice of the making of the draft decision;
 - (3) notice of a predetermination conference; and
 - (4) ~~an invitation for a notice inviting~~ written submissions on its draft decision, ~~from any person other than the Transmission Network Service Provider that submitted the Revenue Proposal on which the draft decision is based; and~~ [3.11]
 - (5) ~~the date by which submissions must be made, which must not be earlier than 45 business days after the date the predetermination conference is to be held.~~ [3.11]
- (b) The *AER* must hold a predetermination conference at the time, date and place specified in the notice under paragraph (a)(3) for the purpose of explaining its draft decision and receiving oral submissions from interested parties. Any person may attend such a predetermination conference but the procedure to be adopted at the conference will be at the discretion of the senior *AER* representative in attendance.
- (c) ~~Any person may make a written submission to the AER on the draft decision within the time specified in the invitation referred to in paragraph (a)(4), which must be not earlier than 45 business days after the holding of a predetermination conference.~~ [3.11]

~~A Transmission Network Service Provider may only make a written submission in response to a notice published under subparagraph (a)(4) in respect of a draft decision that has been made in relation to another Transmission Network Service Provider.~~ [3.11]

~~A Transmission Network Service Provider must not make submissions on the draft decision to the extent it is permitted to address those issues in revisions to its~~

Revenue Proposal, proposed negotiating framework, or proposed pricing methodology under rule 6A.12.3.

[3.11]

(d) Where:

(1) the AER is making transmission determinations in relation to two or more Transmission Network Service Providers at the same time; and

[3.11]

(2) a Transmission Network Service Provider makes a written submission referred to in paragraph (e);

[3.11]

that written submission may only address material differences between:

[3.11]

(3) the draft decision that has been made in relation to it, or any revised proposal, framework or pricing methodology that it submits under clause 6A.12.3; and

[3.11]

(4) a draft decision that has been made in relation to another Transmission Network Service Provider, or any revised proposal, framework or pricing methodology that provider submits under clause 6A.12.3.

[3.11]

6A.12.3 Submission of revised proposal, framework or pricing methodology

- (a) ~~In addition to making such other written submissions as it considers appropriate,~~ ~~The~~ A Transmission Network Service Provider may, not more than 30 business days after the publication of the draft decision, submit to the AER:
- (1) a revised *Revenue Proposal*;
 - (2) a revised proposed *negotiating framework*; or
 - (3) a revised proposed *pricing methodology*.
- (b) A *Transmission Network Service Provider* may only make the revisions referred to in paragraph (a) so as to incorporate the substance of any changes required by, or to address matters raised in, the draft decision.
- (c) A revised *Revenue Proposal* or revised proposed *negotiating framework* must comply with the requirements of, and must contain or be accompanied by such information as is required by, the *submission guidelines*.
- (d) The revised proposed *negotiating framework* must also comply with the requirements of clause 6A.9.5.
- (e) A revised proposed *pricing methodology* must:
- (1) give effect to and be consistent with the *Pricing Principles for Prescribed Transmission Services*; and
 - (2) comply with the requirements of, and must contain or be accompanied by such information as is required by, the *pricing methodology guidelines*.

- (e) The revised *Revenue Proposal* must identify the parts of the proposal and any accompanying information (if any) the *Transmission Network Service Providers* claims to be confidential in accordance with the requirements of the *submission guidelines*.
- (f) ~~Subject to paragraph (e) and except~~ to the extent that the *submission guidelines* or the *pricing methodology guidelines* (as the case may be) provide that it will not be publicly disclosed (and, in that case, the *Transmission Network Service Provider* has not otherwise consented), the *AER* must publish:
- (1) any revised *Revenue Proposal*;
 - (2) any revised proposed *negotiating framework*; or
 - (3) any revised proposed *pricing methodology*,
- (as the case may be), that is submitted by the *Transmission Network Service Provider* under paragraph (a), together with the accompanying information, as soon as practicable after receipt by the *AER*.
- (g) The *AER* may, but need not, publish a notice inviting, from any person other than the *Transmission Network Service Provider* that submitted the revised *Revenue Proposal*, written submissions on the revised *Revenue Proposal*. [3.11]
- (h) Paragraphs (i), (j) and (k) apply if the *AER* publishes a written notice under paragraph (g). [3.11]
- (i) Any person, other than the *Transmission Network Service Provider* that submitted the revised *Revenue Proposal*, may make a written submission to the *AER* on the revised *Revenue Proposal* within the time specified in the notice, which must be not earlier than 30 business days after the publication of the notice. [3.11]
- (j) A *Transmission Network Service Provider* may only make a written submission in response to a notice published under paragraph (g) in respect of a revised *Revenue Proposal* that was submitted by another *Transmission Network Service Provider*. [3.11]
- (k) Where:
(1) the *AER* is making determinations in relation to two or more *Transmission Network Service Providers* at the same time; and [3.11]
(2) a *Transmission Network Service Provider* makes a written submission referred to in paragraph (j). [3.11]
- that written submission may only address material differences between: [3.11]
- (3) the revised *Revenue Proposal*, *negotiating framework* and *pricing methodology* that was submitted by it; and [3.11]
- (4) those submitted by another *Transmission Network Service Provider*. [3.11]

6A.13.1 Making of final decision

[3.11]

- (a) Subject to the Law and rule 6A.16(a), the AER must:
- (1) consider any submissions made on the draft decision, or on any revised *Revenue Proposal*, revised proposed *negotiating framework* or revised proposed *pricing methodology* submitted to it underin accordance with the requirements in clauses 6A.12.2 and 6A.12.3; [3.11]
 - (2) consider the information included in or accompanying any revised *Revenue Proposal*, revised proposed *negotiating framework* or revised proposed *pricing methodology* submitted to it under and any information included in or accompanying one of the documents submitted in accordance with the requirements in clause 6A.12.3; [3.11]
 - (3) have regard to such analysis as is undertaken by or for the AER; and must
 - (4) make a final decision in relation to the *Transmission Network Service Provider.*
- (b) The AER's final decision must be made in accordance with, and must comply with, the relevant requirements of rule 6A.14.

...

6A.15 Revocation and substitution or amendment of revenue determination or amendment of pricing methodology for wrong information or error

- (a) Except as provided in clause 6A.7.1(d), the AER may only (but is not required to) revoke or amend a *revenue determination* or amend an existing *pricing methodology* during a *regulatory control period* where it appears to the AER that:
- (1) the *total revenue cap* was set or the *pricing methodology* was approved on the basis of information provided by or on behalf of the relevant *Transmission Network Service Provider* to the AER that was false or misleading in a material particular; or
 - (2) there was a material error or deficiency in the total revenue caprevenue determination or in the *pricing methodology*.
- (b) If the AER revokes a *revenue determination* under paragraph (a)(1) or (a)(2), the AER must make a new *revenue determination* in substitution for the revoked *revenue determination* to apply for the remainder of the *regulatory control period* for which the revoked *revenue determination* was to apply.
- (c) If the AER revokes and substitutes or amends a *revenue determination* under paragraph (a)(1) or (a)(2), the substituted or amended *revenue determination* must only vary from the revoked or existing *revenue determination* to the extent necessary to correct the relevant error.

- (d) If the *AER* amends a *pricing methodology* under paragraph (a)(1), the amended methodology applies to the setting of prices for the next *financial year* and for the remainder of the relevant *regulatory control period*.
- (e) If the *AER* amends a *pricing methodology* under paragraph (a)(2), the amended methodology must only vary from the existing *pricing methodology* to the extent necessary to correct the relevant error or deficiency.
- (f) The *AER* may only revoke and substitute or amend a *revenue determination* or amend a *pricing methodology* under this rule 6A.15, if it has first consulted with the relevant *Transmission Network Service Provider* and such other persons as it considers appropriate.
- (g) The *AER* may only revoke or substitute or amend a *transmission determination* under this rule within six months of making the *transmission determination*.

[3.12]

...

6A.16.1 Out-of-scope submissions and late proposals

[3.11]

- (a) Subject to the Law, where the *AER* publishes a notice inviting submissions under this Part E, the *AER* must but need not consider any submission, or any material supplied with a submission that, in the *AER*'s opinion, does not comply with clause 6A.11.3 or 6A.12.2, or is otherwise not relevant to the purpose of the invitation or a requirement of this Part E.
- (b) Where a *Transmission Network Service Provider* resubmits a *Revenue Proposal*, proposed *negotiating framework*, proposed *pricing methodology* or information under clause 6A.11.2 or submits a revised *Revenue Proposal*, proposed *negotiating framework*, proposed *pricing methodology* or information under clause 6A.12.3, the *AER* must not consider:
- (1) a resubmitted or revised *Revenue Proposal*, proposed *negotiating framework*, proposed *pricing methodology* or information that was submitted late; or
 - (2) if the revised *Revenue Proposal*, proposed *negotiating framework*, proposed *pricing methodology* or information includes material that is not permitted under clause 6A.12.3 that material.

[3.11]

[3.11]

[3.11]

[3.11]

The *AER* may but need not consider a *Revenue Proposal* resubmitted under clause 6A.11.2 or a revised *Revenue Proposal* submitted under clause 6A.12.3, including parts thereof, that:

(1) is submitted late for the purposes of clause 6A.12.2(5);

(2) includes material that is not permitted under clause 6A.12.3; or

(3) does not otherwise comply with a requirement of this Part E.

[3.11]

[3.11]

[3.11]

[3.11]

- (c) This clause does not prevent the AER from accepting typographical corrections, corrections of miscalculations and corrections of other errors that do not affect the substance of a written submission or document.

[3.11]

6A.16.1A Calculation of time

- (a) For the purpose of calculating the time limit for the AER to make a decision under clauses 6A.7.1, 6A.7.3 or 6A.8.2, any of the following periods is to be disregarded, if the AER decides that this is necessary because of the complexity of the issues involved:

[3.8]

- (1) the number of days including and between when the AER publishes a notice inviting submissions and the date by when those submissions must be made; or

[3.8]

- (2) the number of days including and between when the AER requests further information and the date when that information is received for the purposes of making its decision; or

[3.8]

- (3) the number of days including and between when the AER is awaiting the outcome of administrative processes which may impact on the making of its decision.

[3.8]

- (b) For the purposes of clause 6A.12.2, the AER may delay the date by when it must make the draft *transmission determination* by up to the number of days which a *Transmission Network Service Provider* took to resubmit a *Revenue Proposal* (or the accompanying information) under clause 6A.11.2.

[3.13]

- (c) For the purposes of clause 6A.13.3, the AER may delay the commencement of the forthcoming *regulatory control period* by up to the number of days which a *Transmission Network Service Provider* took to resubmit a *Revenue Proposal* (or the accompanying information) under clause 6A.11.2.

[3.13]

- (d) The AER must:

[3.8] [3.13]

- (1) give notice of a decision under this rule to the *Transmission Network Service Provider*; and

[3.8] [3.13]

- (2) publish a notice of the decision on its website.

[3.8] [3.13]

10. Glossary

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approved expenditure models paper

[3.9]

A document prepared and issued as an approved expenditure models paper under clause 6A.10.A1.

[3.9]