



Draft National Electricity Amendment (Regulatory Investment Test for Transmission) Rule 2009

under the National Electricity Law as applied by:

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

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

John Tamblyn
Chairman
Australian Energy Market Commission

Draft National Electricity Amendment (Regulatory Investment Test for Transmission) Rule 2009

1. Title of Rule

This Rule is the *Draft National Electricity Amendment (Regulatory Investment Test for Transmission) Rule 2009*.

2. Commencement

This Rule commences operation on [].

3. Amendment of the National Electricity Rules

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

4. Amendment of the National Electricity Rules

The National Electricity Rules are amended as set out in Schedule 2.

Schedule 1 Amendment of National Electricity Rules

(Clause 3)

[1] Clause 5.6.2 Network Development

Omit clauses 5.6.2(e) and (f) and substitute:

- (e) Each *Network Service Provider* must:
 - (1) extrapolate the forecasts provided to it by *Registered Participants* for the purpose of planning;
 - (2) if the analysis required by subparagraph (1) indicates that any relevant technical limits of the *transmission or distribution systems* will be exceeded, either in normal conditions or following the contingencies specified in schedule 5.1, notify any affected *Registered Participants* and *AEMO* of these limitations; and
 - (3) notify any affected *Registered Participants* and *AEMO* of the expected time required to allow the planning and investment in:
 - (i) *dual function assets* or *transmission* investment designed to ensure that a *distribution network* meets the level required by the minimum *power system security* and *reliability standards*; and
 - (ii) corrective *network augmentations* or non *network* alternatives, or modifications to *connection facilities* designed to address the limitations notified under subparagraph (2),(each of which is referred to in this clause as a “**corrective action**”).
- (e1) In relation to the corrective action referred to in paragraph (e)(3)(i), the processes detailed in paragraphs (f), (g) and (h)-(m) must be conducted jointly by the relevant *Distribution Network Service Provider* and *Transmission Network Service Provider*.
- (e2) In relation to the corrective action referred to in paragraph (e)(3)(ii), the processes detailed in paragraphs (f) and (g1) – (m) must be conducted by the relevant *Distribution Network Service Provider*.

- (f) Within the time for corrective action notified in paragraph (e)(3) the relevant *Distribution Network Service Provider* or *Network Service Providers* must consult with affected *Registered Participants*, *AEMO* and *interested parties* on the possible options, including but not limited to demand side options, *generation* options and *market network service* options to address the projected limitations of the relevant *distribution system* except that a *Distribution Network Service Provider* does not need to consult on a *network* option which would be a *new small distribution network asset*.

[2] Clause 5.6.2 Network Development

After clause 5.6.2(g), insert:

- (g1) In relation to investments referred to in paragraph (e)(3)(i), the relevant *Transmission Network Service Provider* and *Distribution Network Service Provider* must carry out an economic cost effectiveness analysis of possible options to identify options that satisfy the *regulatory test*, while meeting the technical requirements of schedule 5.1 and that analysis and allocation must form part of any consultation required by paragraph (f).

[3] Clause 5.6.2 Network Development

Omit clause 5.6.2(h) and substitute:

- (h) Following conclusion of the process outlined in paragraphs (f) and (g) or (g1), the relevant *Distribution Network Service Provider* or *Network Service Providers* must prepare a report that is to be made available to affected *Registered Participants*, *AEMO* and *interested parties* which:
- (1) includes an assessment of all identified options referred to in paragraph (g) or (g1);
 - (2) includes details of the preferred proposal including:
 - (i) its economic cost effectiveness analysis in accordance with paragraph (g) or (g1); and
 - (ii) the consultations conducted for the purposes of paragraph (g) or (g1);
 - (3) summarises the submissions from the consultations; and
 - (4) recommends the action to be taken.

[4] Clause 5.6.2 Network Development

Omit clause 5.6.2(j) and substitute:

- (j) If any *Registered Participant* disputes a recommendation under paragraph (i), the relevant *Distribution Network Service Provider* or *Network Service Providers* and the affected *Registered Participants* must negotiate in good faith to reach agreement on the action to be taken.

[5] Clause 5.6.2 Network Development

In clause 5.6.2(k), after “*Distribution Network Service Provider*” insert “or *Transmission Network Service Provider*”.

[6] Clause 5.6.2 Network Development

Omit clause 5.6.2(k1) and substitute:

- (k1) The relevant *Distribution Network Service Provider* or *Transmission Network Service Provider* must, as appropriate, include the cost of the relevant *network* options referred to in paragraph (k) in either:
 - (1) the calculation of *distribution* service prices determined in accordance with Chapter 6; or
 - (2) the calculation of *transmission use of system charges*.

[7] Clause 5.6.2A Annual Planning Reports

Omit clause 5.6.2A(b)(5) and substitute “[Deleted]”.

[8] Clause 5.6.2A Annual Planning Reports

In clause 5.6.2A(b)(6)(v), omit “.” and substitute:

; and

- (7) any information required to be included in an *Annual Planning Report* under clause 5.6.5C(c) in relation to a *transmission* investment which is determined to be required to address an urgent and unforeseen *network* issue.

[9] Clause 5.6.4 Last Resort Planning Power

In clauses 5.6.4(c), (h)(2), (j) and (l), omit “*regulatory test*” wherever occurring and substitute “*regulatory investment test for transmission*”.

[10] Clause 5.6.5A Regulatory Test

Omit the heading “Regulatory Test” and substitute “Regulatory test for distribution network investments and distribution related transmission investments”.

[11] Clause 5.6.5A Regulatory Test

In clauses 5.6.5A(b), omit “*new network investments*” and substitute “*new distribution network investments or transmission investments* designed to ensure that a *distribution network* meets the level required by the minimum *power system security and reliability standards*”.

[12] Clause 5.6.5A Regulatory Test

In clauses 5.6.5A(b) and (c), omit “*new network investment*” wherever occurring and substitute “*new distribution network investment or transmission investment* designed to ensure that a *distribution network* meets the level required by the minimum *power system security and reliability standards*”.

[13] Clause 5.6.5A Regulatory Test

Omit clause 5.6.5A(c)(4) and substitute “[**Deleted**]”.

[14] Clause 5.6.5A Regulatory Test

In clauses 5.6.5A(d) and (g) omit "*transmission consultation procedure*" wherever occurring and substitute "*distribution consultation procedures*".

[15] New Clause 5.6.5B Regulatory investment test for transmission

After clause 5.6.5A, insert:

5.6.5B Regulatory investment test for transmission

Principles

- (a) The *AER* must develop and *publish* the *regulatory investment test for transmission* in accordance with the *transmission consultation procedure* and this clause 5.6.5B.

- (b) The purpose of the *regulatory investment test for transmission* is to identify the *credible option* that:
 - (i) maximises the present value of net economic benefits; or

 - (ii) if the relevant *credible option* is a *reliability augmentation*, minimises the net economic costs

to all those who produce, consume and transport electricity in the market (the "*preferred option*"). For the avoidance of doubt, the *regulatory investment test for transmission* may identify a *preferred option* that may, in the relevant circumstances, have a negative value where the *network investment* is a *reliability augmentation*.

- (c) The *regulatory investment test for transmission* must:
 - (1) be based on a cost-benefit analysis that is to include an assessment of reasonable scenarios of future supply and demand if each *credible option* were implemented compared to the situation where no option is implemented;

 - (2) not require a level of analysis that is disproportionate to the scale and likely impact of each of the *credible options* being considered;

 - (3) be capable of being applied in a predictable, transparent and consistent manner;

- (4) in assessing the present value of net economic benefits to all those who produce, consume and transport electricity in the *market*, require the *Transmission Network Service Provider* to consider the following classes of market benefits that could be delivered by the *credible option*:
- (i) changes in fuel consumption arising through different patterns of *generation dispatch*;
 - (ii) changes in voluntary *load* curtailment;
 - (iii) changes in involuntary *load shedding*, with the market benefit to be considered using a reasonable forecast of the value of electricity to consumers;
 - (iv) changes in the parties (other than *Transmission Network Service Provider's*) costs due to:
 - (A) differences in the timing of new *plant*;
 - (B) differences in capital costs;
 - (C) differences in the operational and maintenance costs; and
 - (D) differences in the timing of *transmission* investment;
 - (v) changes in *transmission* losses;
 - (vi) changes in *ancillary services* costs;
 - (vii) competition benefits;
 - (viii) any additional option value (where this value has not already been included in the other classes of market benefits) gained or foregone from implementing that *credible option* with respect to the likely future investment needs of the *market*; and
 - (ix) other classes of market benefits that are:

- (A) determined to be relevant by the *Transmission Network Service Provider* and agreed to by the *AER*; or
 - (B) specified as a class of market benefit in the *regulatory investment test for transmission*;
 - (5) include a quantification of all classes of market benefits which are determined to be material in the *Transmission Network Service Provider's* reasonable opinion;
 - (6) require a *Transmission Network Service Provider* to consider all classes of market benefits as material unless it can show otherwise:
 - (i) in the *project assessment draft report*; or
 - (ii) in respect of a proposed *preferred option* which is subject to the exemption contained in clause 5.6.6(x), in the *project assessment consultation report*
- that:
- (iii) a particular class of market benefit will not affect the outcome of the assessment of each *credible option*; or
 - (iv) the cost of undertaking the analysis to quantify the market benefit is disproportionate to the scale, size and potential benefits of each *credible option* being considered in the report;
- (7) with respect to the classes of market benefits set out in subparagraphs (4)(ii) and (iii), ensure that, if the *credible option* is a *reliability augmentation*, the quantification assessment required by paragraph (5) will only apply insofar as the market benefit delivered by the *credible option* is above the minimum standard required by a *reliability augmentation*;
- (8) require the *Transmission Network Service Provider* to quantify the following classes of costs:
 - (i) costs incurred in constructing or providing the *credible option*;

- (ii) operating and maintenance costs in respect of the *credible option*;
 - (iii) the cost of complying with laws, regulations and applicable administrative requirements in relation to the construction and operation of the *credible option*; and
 - (iv) any other class of costs determined to be appropriate for inclusion in the *regulatory investment test for transmission* by the AER;
- (9) provide that any cost or market benefit which cannot be measured as a cost or market benefit to *Generators, Distribution Network Service Providers, Transmission Network Service Providers* or consumers of electricity may not be included in any analysis under the *regulatory investment test for transmission*;
- (10) specify:
- (i) the method or methods permitted for estimating the magnitude of the different classes of market benefits;
 - (ii) the method or methods permitted for estimating the magnitude of the different classes of costs;
 - (iii) the method or methods permitted for estimating market benefits which may occur outside the *region* in which the *Transmission Network Service Provider's network* is located; and
 - (iv) the appropriate method and value for specific inputs, where relevant, for determining the discount rate or rates to be applied; and
- (11) specify that sensitivity analysis is required of any modelling relating to the cost-benefit analysis.

Regulatory investment test for transmission guidelines

- (d) At the same time as the *AER* develops and *publishes* a proposed *regulatory investment test for transmission* under the *transmission consultation procedure*, the *AER* must also develop and *publish* guidelines for the operation and application of the *regulatory investment test for transmission* (the “*regulatory investment test for transmission application guidelines*”) in accordance with the *transmission consultation procedure* and this clause 5.6.5B.
- (e) The *regulatory investment test for transmission application guidelines* must:
 - (1) give effect to and be consistent with this clause 5.6.5B and clauses 5.6.5C, 5.6.5D, 5.6.6, 5.6.6A and 5.6.6AA; and
 - (2) provide guidance on:
 - (i) the operation and application of the *regulatory investment test for transmission*;
 - (ii) the process to be followed in applying the *regulatory investment test for transmission*; and
 - (iii) how disputes raised in relation to the *regulatory investment test for transmission* and its application will be addressed and resolved.
- (f) The *regulatory investment test for transmission application guidelines* must provide guidance and worked examples as to:
 - (1) what constitutes a *credible option*;
 - (2) acceptable methodologies for valuing costs of a *credible option*;
 - (3) what constitutes an externality under the *regulatory investment test for transmission*;
 - (4) the classes of market benefits to be considered for the purposes of paragraph (c)(4);
 - (5) the suitable modelling periods and approaches to scenario development;

- (6) the acceptable methodologies for valuing the market benefits of a *credible option* referred to in paragraph (c), including the option value, competition benefits and market benefits that accrue across jurisdictions;
 - (7) the appropriate sensitivity analysis;
 - (8) the appropriate approaches to assessing uncertainty and risks; and
 - (9) when a person is sufficiently committed to a *reliability augmentation* to be characterised as a proponent for the purposes of clause 5.6.5D(b)(7).
- (g) The *AER* must develop and *publish* the first *regulatory investment test for transmission* and *regulatory investment test for transmission application guidelines* by [insert date which is 12 months from commencement of this Rule], and there must be a *regulatory investment test for transmission* and *regulatory investment test for transmission application guidelines* in force at all times after that date.
- (h) The *AER* may, from time to time, amend or replace the *regulatory investment test for transmission* and *regulatory investment test for transmission application guidelines* in accordance with the *transmission consultation procedures*, provided the *AER* publishes any amendments to, or replacements of, the *regulatory investment test for transmission* or *regulatory investment test for transmission application guidelines* at the same time.

5.6.5C Transmission assets subject to the regulatory investment test

- (a) A *Transmission Network Service Provider* must apply the *regulatory investment test for transmission* to any *transmission investment option* proposed by the *Transmission Network Service Provider* (“**proposed transmission investment**”) to:
- (1) meet the minimum *network* performance requirements set out in schedule 5.1 or in relevant legislation, regulations or any statutory instrument of a *participating jurisdiction*; and/or

- (2) the provision of market benefits in particular locations
(the “*identified need*”), except in circumstances where:
- (3) the proposed *transmission* investment is required to address an urgent and unforeseen *network* issue that would otherwise put at risk the *reliability* of the *transmission network* as described in paragraph (b);
- (4) the estimated capital cost of the most expensive *transmission* investment option to address the relevant *identified need* which is technically and economically feasible is less than \$5 million (as varied in accordance with a *cost threshold determination*);
- (5) the proposed *transmission* investment relates to maintenance or replacement and is not intended to *augment* the *transmission network* (including *replacement transmission network assets*);
- (6) the proposed *transmission investment* is an investment undertaken by a *Transmission Network Service Provider* which:
- (i) re-routes one or more paths of the *network* for the long term; and
- (ii) is the substantial primary purpose other than the need to *augment* the *network*
- (the “*reconfiguration investment*”) which the relevant *Transmission Network Service Provider* reasonably estimates to have a estimated capital cost of less than \$5 million (as varied in accordance with a *cost threshold determination*) or which has, or is reasonably considered to have, no material impact on *network users*;

- (7) the maintenance, or replacement expenditure also results in an *augmentation* to the *network*, and the estimated capital cost for the *augmentation* component of the *transmission investment* is less than \$5 million (as varied in accordance with a *cost threshold determination*), as allocated by the *Transmission Network Service Provider* in accordance with recognised *cost allocation methodologies* and any applicable *AER* guidelines under rule 6A.19;
 - (8) the proposed *transmission investment* will be a *dual function asset*;
 - (9) the proposed *transmission investment* is designed to ensure that a *distribution network* meets the level required by the minimum *power system security and reliability standards*;
 - (10) the proposed *transmission investment* will be a *connection asset*; or
 - (11) the cost of the proposed *transmission investment* is to be recovered through charges in relation to *negotiated transmission services*.
- (b) For the purposes of paragraph (a)(3), a proposed *transmission investment* will be required to address an urgent and unforeseen *network issue* that would otherwise put at risk the *reliability* of the *transmission network* if:
- (1) it is necessary that the proposed *transmission investment* be operational within 6 months of the *Transmission Network Service Provider* identifying the *identified need*;
 - (2) the event or circumstances causing the *identified need* was not reasonably foreseeable by, and was beyond the reasonable control of, the *Transmission Network Service Provider*;
 - (3) a failure to address the *identified need* is likely to materially adversely affect the *reliability* and *secure operating state* of the *transmission network*; and
 - (4) it is not a *contingent project*.
- (c) If a proposed *transmission investment* is determined to be required to address an urgent and unforeseen *network issue* as described in

paragraph (b), the *Transmission Network Service Provider* must provide the following information in its *Annual Planning Report*:

- (1) the date when the proposed *transmission* investment becomes operational;
 - (2) the purpose of the proposed *transmission* investment; and
 - (3) the total cost of the proposed *transmission* investment.
- (d) With the exception of *funded augmentations*, for each *transmission* investment to which the *regulatory investment test for transmission* does not apply in accordance with paragraph (a)(3)-(11), the *Transmission Network Service Provider* must ensure, acting reasonably, that the *transmission* investment is planned and developed at least cost over the life of the investment.
- (e) A *Transmission Network Service Provider* must not treat different parts of an integrated solution to an *identified need* as distinct and separate options for the purposes of determining whether the *regulatory investment test for transmission* applies to each of those parts.

5.6.5D Identification of a credible option

- (a) A *credible option* is an option (or group of options) that:
- (1) addresses the *identified need*;
 - (2) is (or are) commercially and technically feasible; and
 - (3) can be implemented in sufficient time to meet the *identified need*,
- and is (or are) identified as a *credible option* in accordance with clause 5.6.5D(b).
- (b) In applying the *regulatory investment test for transmission*, a *Transmission Network Service Provider* must consider, in relation to all *identified needs* other than those described in clauses 5.6.5C(a)(3)-(11), all *transmission* investment options that could reasonably be classified as *credible options*, taking into account, without bias:
- (1) energy source;

- (2) technology;
 - (3) ownership;
 - (4) the extent to which the *credible option* enables *intra-regional* or *inter-regional* trading of electricity;
 - (5) whether it is a *network* or *non-network* option;
 - (6) whether the *credible option* is intended to be regulated;
 - (7) whether the *credible option* has a proponent; or
 - (8) any other factor which the *Transmission Network Service Provider* reasonably considers should be taken into account.
- (c) The absence of a proponent does not exclude a potential *transmission* investment option from being considered a *credible option*.

5.6.5E Review of Costs Thresholds

- (a) Every 3 years the *AER* must undertake a review (the “*cost threshold review*”) of the changes in the input costs used to calculate the estimated capital costs in relation to *replacement transmission network assets* and referred to in clauses 5.6.2A(b)(6), 5.6.5C(a)(4), (6) and (7) and 5.6.6(x)(1) for the purposes of determining whether the amounts of:
- (1) in relation to *replacement transmission network assets*
 - (2) less than \$5 million referred to in clause 5.6.5C(a)(4);
 - (3) less than \$5 million referred to in clause 5.6.5C(a)(6);
 - (4) less than \$5 million referred to in clause 5.6.5C(a)(7);
 - (5) less than \$35 million referred to in clause 5.6.6(x)(1),
- (each a “*cost threshold*”) need to be changed to maintain the value of the *cost thresholds* over time by adjusting those *cost thresholds* to reflect any increase or decrease in the input costs since:

- (6) [insert commencement date of Rule] in respect of the first *cost threshold review*; and
 - (7) the date of the previous review in respect of every subsequent *cost threshold review*.
- (b) Each *cost threshold review* is to be commenced by the AER on 31 July of the relevant year, with the first such review to be initiated in 2012.
- (c) Within 6 weeks following the commencement of a *cost threshold review*, the AER must *publish* a draft determination outlining:
- (1) whether the AER has formed the view that any of the *cost thresholds* need to be amended to reflect increases or decreases in the input costs to ensure that the value of the *cost thresholds* is maintained over time;
 - (2) its reasons for determining whether the *cost thresholds* need to be varied to reflect increases or decreases in the input costs;
 - (3) if there is to be a variation in a *cost threshold*, the amount of the new *cost threshold* and the date the new *cost threshold* will take effect; and
 - (4) its reasons for determining the amount of the new *cost threshold*.
- (d) At the same time as it *publishes* the draft determination under paragraph (c), the AER must *publish* a notice seeking submissions on the draft determination and which specifies the period within which written submissions can be made (the “*cost threshold consultation period*”) which must be within 5 weeks from the date of the notice.
- (e) The AER must consider any written submissions received during the *cost threshold consultation period* in making its final determination in respect of the matters outlined in paragraph (c).

- (f) This final determination must be made and *published* by the *AER* within 5 weeks following the end of the *cost threshold consultation period* (the “*cost threshold determination*”).

[16] Clause 5.6.6 Applications to establish new large transmission network assets

Omit clause 5.6.6 in its entirety (including the heading) and substitute:

5.6.6 Regulatory investment test for transmission procedures

- (a) In addition to the procedures to make a *connection* to a *network* in clause 5.3, the *Transmission Network Service Provider* must comply with the access arrangements and procedures set out in this clause 5.6.6 and in clause 5.6.6A.
- (b) A *Transmission Network Service Provider* who proposes to make a *transmission* investment, other than a *transmission* investment of the type described in clauses 5.6.5C(a)(3)-(11), must consult all *Registered Participants*, *AEMO* and *interested parties* regarding the *transmission* investment in accordance with this clause 5.6.6.

Project specification consultation report

- (c) A *Transmission Network Service Provider* must prepare a report (the “*project specification consultation report*”), which must include:
 - (1) a description of the *identified need*;
 - (2) the assumptions used in identifying the *identified need* (including, in the case of a *reliability augmentation*, why the *Transmission Network Service Provider* considers a *reliability augmentation* is necessary);
 - (3) the technical characteristics of the *identified need* that a non-*network* option would be required to deliver, such as:
 - (i) the size of *load* reduction or additional supply;
 - (ii) location; and
 - (iii) operating profile;
 - (4) if applicable, reference to any discussion on the description of the *identified need* or the possible *credible options* in respect of

that *identified need* in the most recent *National Transmission Network Development Plan*;

- (5) a description of all possible *credible options* that address the *identified need*, which may include, without limitation, alternative *transmission options*, *interconnectors*, *generation*, *demand side management*, *market network services* or other *network options*;
- (6) for each possible *credible option*, information about:
 - (i) the technical characteristics of the *credible option*;
 - (ii) whether the possible *credible option* is reasonably likely to have a material *inter-regional impact*;
 - (iii) the classes of market benefits that the *Transmission Network Service Provider* considers could be material in accordance with clause 5.6.5B(c)(6), together with details (if any) of why the *Transmission Network Service Provider* considers that these classes of market benefits could be material;
 - (iv) the estimated construction timetable and commissioning date; and
 - (v) to the extent practicable, the total indicative capital and operational costs.
- (d) The *Transmission Network Service Provider* must make available to all *Registered Participants*, AEMO and other *interested parties* the *project specification consultation report* and any preliminary or supplementary information that is likely to assist *interested parties* to engage constructively in the consultation process outlined in this clause 5.6.6 within 5 *business days* of making the *project specification consultation report*.
- (e) The *Transmission Network Service Provider* must:
 - (1) provide a summary of the *project specification consultation report* to AEMO within 5 *business days* of making the *project specification consultation report*; and
 - (2) upon request by an *interested party*, provide a copy of the *project specification consultation report* to that person within 3 *business days* of the request.

- (f) Within 3 *business days* of receipt of the summary, *AEMO* must *publish* the summary of the *project specification consultation report* on its website.
- (g) The *Transmission Network Service Provider* must seek submissions from *Registered Participants*, *AEMO* and *interested parties* on the *credible options* presented, and the issues addressed, in the *project specification consultation report*.
- (h) The consultation period referred to in paragraph (g) must be not less than 12 weeks from the date that *AEMO publishes* the summary of the *project specification consultation report* on its website.
- (i) A *Transmission Network Service Provider* may discharge its obligation under paragraph (d) to make the *project specification consultation report* available by including the *project specification consultation report* as part of its *Annual Planning Report*.

Project assessment draft report

- (j) If the *Transmission Network Service Provider* elects to proceed with the *transmission* investment, within 12 months of the end of the consultation period referred to in paragraph (h), or such longer time as is agreed by the *AER*, the *Transmission Network Service Provider* must prepare and make available to all *Registered Participants*, *AEMO* and *interested parties* a report (the “*project assessment draft report*”), having regard to the submissions received, if any, under paragraph (g) within 5 *business days* of the *project assessment draft report*.
- (k) The *project assessment draft report* must include:
 - (1) a description of each *credible option* assessed;
 - (2) a summary of, and commentary on, the submissions to the *project specification consultation report*;
 - (3) a quantification of the costs, including a breakdown of operating and capital expenditure, and material classes of market benefit for each *credible option*;
 - (4) a detailed description of the methodologies used in quantifying each class of market benefit and cost;
 - (5) reasons why the *Transmission Network Service Provider* has determined that a class or classes of market benefit are not material;

- (6) the identification of any class of market benefit estimated to arise outside the *Transmission Network Service Provider's region*, and quantification of the value of such market benefits (in aggregate across all *participating jurisdictions*)
- (7) the results of a net present value analysis of each *credible option* and accompanying explanatory statements regarding the results;
- (8) the identification of the proposed *preferred option*;
- (9) for the proposed *preferred option* identified under subparagraph (8), the *Transmission Network Service Provider* must provide:
 - (i) details of the technical characteristics;
 - (ii) the estimated construction timetable and commissioning date;
 - (iii) the indicative costs;
 - (iv) if the proposed *preferred option* is likely to have a *material inter-regional network impact*, and if the *Transmission Network Service Provider* has received an *augmentation technical report*, that report; and
 - (v) a statement and the accompanying detailed analysis that the *preferred option* satisfies the *regulatory investment test for transmission*.
- (l) If a *Transmission Network Service Provider* elects to proceed with an *transmission investment* which is a *reliability augmentation*, it can only do so where the proposed *preferred option* has a proponent. The identity of that proponent must be included in the *project assessment draft report*.
- (m) A *Transmission Network Service Provider* may discharge its obligation under paragraph (j) to make the *project assessment draft report* available by including the *project assessment draft report* as part of its *Annual Planning Report*.
- (n) The *Transmission Network Service Provider* must:
 - (1) provide a summary of the *project assessment draft report* to *AEMO*; and

- (2) upon request by an *interested party*, provide a copy of the *project assessment draft report* to that person within 3 *business days* of the request.
- (o) Within 3 *business days* of receipt of the summary, *AEMO* must *publish* the summary of the *project assessment draft report* on its website.
- (p) The *Transmission Network Service Provider* must seek submissions from *Registered Participants*, *AEMO* and *interested parties* on the *preferred option* presented, and the issues addressed, in the *project assessment draft report*.
- (q) The consultation period referred to in paragraph (p) must be not less than 30 *business days* from the date that *AEMO publishes* the summary of the report on its website.
- (r) Within 4 weeks of the end of the consultation period required under paragraph (q), at the request of an *interested party*, the *Transmission Network Service Provider* must use its best endeavours to meet with the *interested party* if:
 - (1) after having considered all submissions, the *Transmission Network Service Provider*, acting reasonably, considers that the meeting is necessary or desirable; or
 - (2) a meeting is requested by two or more *interested parties*.

Project assessment conclusions report

- (s) As soon as practicable after the end of the consultation period for the *project assessment draft report* referred to in paragraph (q), the *Transmission Network Service Provider* must prepare and make available to all *Registered Participants*, *AEMO* and *interested parties* a report (the “*project assessment conclusions report*”), having regard to the submissions received, if any, under paragraph (p) and the matters discussed at any meetings held, if any, under paragraph (r).
- (t) The *project assessment conclusions report* must set out:
 - (1) the matters detailed in the *project assessment draft report* as required under paragraph (k); and
 - (2) a summary of, and the *Transmission Network Service Provider's* response to, submissions received, if any, from *interested parties* sought under paragraph (p).

- (u) The *Transmission Network Service Provider* must:
 - (1) provide a summary of the *project assessment conclusions report* to *AEMO* within 5 *business days* of making the *project assessment conclusions report*; and
 - (2) upon request by an interested party, provide a copy of the *project assessment conclusions report* to that person within 3 *business days* of the request.
- (v) Within 3 *business days* of receipt of the summary, *AEMO* must *publish* the summary of the *project assessment conclusions report* on its website.
- (w) A *Transmission Network Service Provider* may discharge its obligation under paragraph (s) to make the *project assessment conclusions report* available by including the *project assessment conclusions report* as part of its *Annual Planning Report*.

Exemption from project assessment draft report for transmission investments that do not provide material market benefits.

- (x) A *Transmission Network Service Provider* is exempt from paragraphs (j) to (r) if:
 - (1) the estimated capital cost of the proposed *preferred option* is less than \$35 million (as varied in accordance with a *cost threshold determination*);
 - (2) the *Transmission Network Service Provider* has identified in its *project specification consultation report*:
 - (i) its proposed *preferred option*;
 - (ii) its reasons for the proposed *preferred option*;
and
 - (iii) that its *transmission* investment has the benefit of this exemption;
 - (3) the *Transmission Network Service Provider* considers, in accordance with clause 5.6.5B(c)(6), that the proposed *preferred option* and any *other credible option* in respect of the *identified need* will not have a material market benefit for any of the classes of market benefit specified in clause

5.6.5B(c)(4), and has stated this in its *project specification consultation report*; and

- (4) the *Transmission Network Service Provider* forms the view that no submissions were received on the *project specification consultation report* which identified additional *credible options* that could deliver a material market benefit.
- (y) The *Transmission Network Service Provider* must address in the *project assessment conclusions report* any issues that were raised in relation to a proposed *preferred option* to which paragraph (x) applies during the consultation on the *project specification consultation report*.

[17] Clause 5.6.6A Construction of new small transmission network assets

Omit clause 5.6.6A in its entirety (including the heading) and substitute:

5.6.6A Disputes in relation to application of regulation investment test

- (a) *Registered Participants, the AEMC, Connection Applicants, Intending Participants, AEMO and interested parties* may, by notice to the *AER*, dispute conclusions made by the *Transmission Network Service Provider* in the *project assessment conclusions report* in relation to:
 - (1) the application of the *regulatory investment test for transmission*;
 - (2) the basis on which the *Transmission Network Service Provider* has classified the *preferred option* as being a *reliability augmentation*;
or
 - (3) the *Transmission Network Service Provider's* assessment regarding whether the *preferred option* will have a *material inter-network impact*, in accordance with any criteria for a *material inter-network impact* that are in force at the time of the preparation of the *project assessment conclusions report*.
- (b) A dispute under this clause may not be raised in relation to any matters set out in the *project assessment conclusions report* which:
 - (1) are treated as externalities by the *regulatory investment test for transmission*; or
 - (2) relate to an individual's personal detriment or property rights.

- (c) The party disputing a conclusion made in the *project assessment conclusions report* (a “*disputing party*”) must within 30 days of the date of *publication* of the *project assessment conclusions report*:
 - (1) give notice of the dispute in writing setting out the grounds for the dispute (the “*dispute notice*”) to the *AER*; and
 - (2) at the same time, give a copy of the *dispute notice* to the relevant *Transmission Network Service Provider*.
- (d) Subject to paragraph (e)(3), within 40 days of receipt of the *dispute notice* (or within an additional period of up to 60 days where the *AER* notifies *interested parties* that the additional time is required to make a determination because of the complexity or difficulty of the issues involved), the *AER* must either:
 - (1) reject any dispute by written notice to the person who initiated the dispute if the *AER* considers that the grounds for the dispute are invalid, misconceived or lacking in substance; and
 - (2) notify the *Transmission Network Service Provider* that the dispute has been rejected; or
 - (3) subject to paragraph (f), make and *publish* a determination:
 - (i) directing the *Transmission Network Service Provider* to amend the matters set out in the *project assessment conclusions report*; or
 - (ii) stating that, based on the grounds of the dispute, the *Transmission Network Service Provider* will not be required to amend the *project assessment conclusions report*.
- (e) In making a determination under paragraph (d)(3), the *AER*:
 - (1) must only take into account information and analysis that the *Transmission Network Service Provider* could reasonably be expected to have considered or undertaken at the time that it performed the *regulatory investment test for transmission*;
 - (2) must *publish* its reasons for making a determination;
 - (3) may request further information regarding the dispute from the *disputing party* or the *Transmission Network Service Provider* (in which case the period of time for rejecting a

- dispute or issuing a determination under paragraph (d) is extended by the time it takes the relevant party to provide the requested further information to the *AER*); and
- (4) may disregard any matter raised by the *disputing party* or the *Transmission Network Service Provider* that is misconceived or lacking in substance.
- (f) The *AER* may only make a determination under subparagraph (d)(3)(i) if it determines that:
- (1) the *Transmission Network Service Provider* has not correctly applied the *regulatory investment test for transmission* in accordance with the *Rules*;
- (2) the *Transmission Network Service Provider* has erroneously classified the *preferred option* as being a *reliability augmentation*;
- (3) the *Transmission Network Service Provider* has not correctly assessed whether the *preferred option* will have a *material inter-network impact*; or
- (4) there was a manifest error in the calculations performed by the *Transmission Network Service Provider* in applying the *regulatory investment test for transmission*.
- (g) A *disputing party* or the *Transmission Network Service Provider* (as the case may be) must as soon as reasonably practicable provide any information requested under paragraph (e)(3) to the *AER*.
- (h) The relevant period of time in which the *AER* must make a determination under paragraph (d)(3) is automatically extended by the period of time taken by the *Transmission Network Service Provider* or a *disputing party* to provide any additional information requested by the *AER* under this clause 5.6.6A, provided:
- (1) the *AER* makes the request for the additional information at least 7 *business days* prior to the expiry of the relevant period; and
- (2) the *Transmission Network Service Provider* or the *disputing party* provides the additional information within 14 *business days* of receipt of the request.

5.6.6AA Determination that new large transmission asset satisfies regulatory investment test for transmission

- (a) Where a *preferred option* is not a *reliability augmentation* and the conclusion in the *project assessment conclusions report* is not in dispute, the *Transmission Network Service Provider* may request, in writing to the *AER*, that the *AER* make a determination as to whether the *preferred option* satisfies the *regulatory investment test for transmission*.
- (b) The *AER*:
 - (1) must, within 120 *business days* of receipt of the request from the applicant, subject to paragraph (c), make and *publish* a determination, including reasons for its determination;
 - (2) must use the findings and recommendations in the *project assessment conclusions report* in making its determination under subparagraph (1);
 - (3) may request further information from the *Transmission Network Service Provider*; and
 - (4) may have regard to any other matter the *AER* considers relevant.
- (c) The relevant period of time in which the *AER* must make a determination under paragraph (b) is automatically extended by the period of time taken by the *Transmission Network Service Provider* or a *disputing party* to provide any additional information requested by the *AER* under this clause 5.6.6AA, provided:
 - (1) the *AER* makes the request for the additional information at least 7 *business days* prior to the expiry of the relevant period; and
 - (2) the *Transmission Network Service Provider* or the *disputing party* provides the additional information within 14 *business days* of receipt of the request.

Costs determinations

- (d) Where the *AER* engages a consultant to assist in making a determination under this clause 5.6.6AA, the *AER* may make a costs determination.
- (e) Where a costs determination is made, the *AER* may:

- (1) render the *Transmission Network Service Provider* an invoice for the costs; or
- (2) determine that the costs should:
 - (i) be shared by all the parties to the dispute, whether in the same proportion or differing proportions; or
 - (ii) be borne by a party or parties to the dispute other than the *Transmission Network Service Provider* whether in the same proportion or differing proportions; and
 - (iii) the *AER* may render invoices accordingly.
- (f) If an invoice is rendered, the *AER* must specify a time period for the payment of the invoice that is no later than 30 *business days* from the date the *AER* makes a determination under paragraph (d).

[18] Clause 5.6.6C Review of total capitalised expenditure thresholds

Omit clause 5.6.6C and substitute “[Deleted]”.

[19] Clause 6A.6.6 Forecast operating expenditure

In clause 6A.6.6(e)(9), omit “and” where lastly occurring.

[20] Clause 6A.6.6 Forecast operating expenditure

In clause 6A.6.6(e)(10), omit “.” and substitute:

; and

- (11) any relevant *project assessment conclusions report* required under clause 5.6.6.

[21] Clause 6A.6.7 Forecast capital expenditure

In clause 6A.6.7(e)(9), omit “and” where lastly occurring.

[22] Clause 6A.6.7 Forecast capital expenditure

In clause 6A.6.7(e)(10), omit “.” and substitute:

; and

- (11) any relevant *project assessment conclusions report* required under clause 5.6.6.

[23] Clause 6A.6.7 Forecast capital expenditure

In clause 6A.6.7(b)(4), after “*regulatory test*”, insert “or *regulatory investment test for transmission* (as the case may be)”.

[24] Schedule 6A.2 Regulatory Asset Base

In Schedule 6A.2.1(e)(2)(ii), Schedule 6A.2.2(3) and Schedule 6A.2.3(a)(3)(ii), after “*regulatory test*” wherever occurring, insert “or *regulatory investment test for transmission* (as the case may be)”.

[25] Clause 8.2.1 Application of dispute resolution provisions

Omit clause 8.2.1(h)(13) and substitute:

- (13) a dispute of a kind referred to in clause 5.6.6A;

[26] Clause 9.3.2 Network Service Provider

In the first table under clause 9.3.2(a)(4), omit “*new large transmission asset*” wherever occurring and substitute “*transmission investments that are subject to the regulatory investment test for transmission*”.

[27] Clause 9.3.2 Network Service Provider

In the first table under clause 9.3.2(a)(4), under the column heading “Clause”, omit the row with the reference to “5.6.6A”.

[28] Clause 9.28.3 System Planning

Omit clause 9.28.3(ac), and substitute:

- (ac) A *Transmission Network Service Provider*, who proposes to establish a *proposed transmission investment* that is subject to the *regulatory investment test for transmission* under clause 5.6.5B, must provide the *ESIPC* with a draft of the *project specification consultation report*

required under clause 5.6.6, 10 *business days* prior to providing a summary of the report to *AEMO*.

[29] Chapter 10 Deleted Definitions

In Chapter 10, omit the following definitions:

new large network asset

A new large distribution network asset or a new large transmission network asset.

new large transmission network asset

An asset of a Transmission Network Service Provider which is an augmentation and in relation to which the Transmission Network Service Provider has estimated it will be required to invest a total capitalised expenditure in excess of \$20 million (as varied in accordance with a total capitalised expenditure threshold determination).

new network investment

New distribution network investment or new transmission network investment.

new small network asset

A new small distribution network asset or a new small transmission network asset.

new small transmission network asset

An asset of a Transmission Network Service Provider which is an augmentation and:

- (a) *in relation to which the Transmission Network Service Provider has estimated it will be required to invest a total capitalised expenditure in excess of \$5 million (as varied in accordance with a total capitalised expenditure threshold determination); and*
- (b) *is not a new large transmission network asset.*

new transmission network investment

Investment in a new large transmission network asset or a new small transmission network asset.

total capitalised expenditure threshold

Means each of the following amounts:

- (a) the total capitalised expenditure in excess of \$20 million referred to in the definition of "new large transmission network asset";
- (b) the total capitalised expenditure in excess of \$5 million referred to in the definition of "new small transmission network asset"; and
- (c) the total capitalised expenditure in excess of \$5 million referred to in the definition of "replacement transmission network asset".

total capitalised expenditure threshold consultation period

Has the meaning given in clause 5.6.6C(d).

total capitalised expenditure threshold determination

Means a determination made by the *AER* in accordance with clause 5.6.6C(e).

total capitalised expenditure threshold review

Has the meaning given in clause 5.6.6C(a).

[30] Chapter 10 Substituted Definitions

In Chapter 10, substitute the following definitions:

considered project

- (a) In respect of a *transmission network augmentation*, a project that meets the following criteria:
 - (1) the *Network Service Provider* has acquired the necessary land and easements;
 - (2) the *Network Service Provider* has obtained all necessary planning and development approvals;
 - (3) as applicable:
 - (i) the *augmentation* project has passed the *regulatory investment test for transmission*;
 - (ii) in respect of a *transmission* investment which has not been subject to a *regulatory investment test for transmission*, an intention to proceed with the project has been published in

the *Network Service Provider's Annual Planning Report*;
or

- (4) construction has either commenced or the *Network Service Provider* has set a firm date for it to commence.
- (b) In respect of a *distribution network augmentation*, a project that meets the following criteria:
 - (1) the *Network Service Provider* has acquired the necessary land and easements;
 - (2) the *Network Service Provider* has obtained all necessary planning and development approvals; and
 - (3) construction has either commenced or the *Network Service Provider* has set a firm date for it to commence.

Generator transmission use of system, Generator transmission use of system service

A service provided to a *Generator* for:

- (a) use of the *transmission network* which has been negotiated in accordance with clause 5.4A(f)(3)(i); or
- (b) use of a *transmission* investment for the conveyance of electricity that can be reasonably allocated to a *Generator* on a locational basis.

interested party

- (a) In Chapter 5, a person including an end user or its *representative* who, in *NEMMCO's* opinion, has or identifies itself to *NEMMCO* as having an interest in relation to the *network* planning and development activities covered under clause 5.6 or in the determination of *plant standards* covered under clause 5.3.3(b2).
- (b) Notwithstanding the definition in (a) above, in clauses 5.6.6 and 5.6.6A a person including an end user or its *representative* who, in the *AER's* opinion, has or identifies itself to the *AER* as having, the potential to suffer a material and adverse market impact from the *transmission* investment that is the *preferred option* identified in the *project assessment conclusions report*.

- (c) In Chapter 6 or Chapter 6A, a person (not being a *Registered Participant* or *NEMMCO*) that has, in the *AER's* opinion, or identifies itself to the *AER* as having, an interest in the *Transmission Ring-Fencing Guidelines* or the *Distribution Ring-Fencing Guidelines*.
- (d) In Chapter 2, a person including an end user or its *representative* who, in *NEMMCO's* opinion, has or identifies itself to *NEMMCO* as having an interest in relation to the structure of *Participant Fees*.

replacement transmission network asset

New assets of a *Transmission Network Service Provider* which the relevant *Transmission Network Service Provider* reasonably estimates to have an estimated capital cost in excess of \$5 million (as varied in accordance with a *cost threshold determination*) and which will replace any existing element of its *transmission network*. For the avoidance of doubt, if the cost of replacing any existing element also results in an *augmentation* to the *network*, then such an asset must be included in this definition where the *Transmission Network Service Provider* has estimated that the asset will have a estimated capital cost in excess of \$5 million.

[31] Chapter 10 New Definitions

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

cost threshold

Has the meaning given in clause 5.6.5E(a).

cost threshold consultation period

Has the meaning given in clause 5.6.5E(d).

cost threshold determination

Has the meaning given in clause 5.6.5E(f).

cost threshold review

Has the meaning given in clause 5.6.5E(a).

credible option

Has the meaning given in clause 5.6.5D(a).

identified need

Has the meaning given in clause 5.6.5C(a).

dispute notice

Has the meaning given in clause 5.6.6A(c)(1).

disputing party

Has the meaning given in clause 5.6.6A(c).

preferred option

Has the meaning given in clause 5.6.5B(b).

project assessment conclusions report

The report prepared under clause 5.6.6(s)

project assessment draft report

The report prepared under clause 5.6.6(j).

project specification consultation report

The report prepared under clause 5.6.6(c).

reconfiguration investment

Has the meaning given in clause 5.6.5C(a)(6).

regulatory investment test for transmission

The test developed and published by the AER in accordance with clause 5.6.5B, as in force from time to time, and includes amendments made in accordance with clause 5.6.5B.

regulatory investment test for transmission application guidelines

The guidelines developed and published by the AER in accordance with clause 5.6.5B as in force from time to time, and includes amendments made in accordance with clause 5.6.5B.

Schedule 2 Amendment of National Electricity Rules

(Clause 4)

[1] Chapter 11 Savings and transitional arrangements

After rule 11.xx, insert:

Part [] Regulatory Investment Test for Transmission

11.xx Rules consequent on making of the National Electricity Amendment (Regulatory Investment Test for Transmission) Rule 2009

11.#.1 Definitions

For the purposes of this rule 11.#:

Amending Rule means the National Electricity Amendment (Regulatory Investment Test for Transmission) Rule 2009.

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

current application means any action taken or process initiated under the *Rules* which relies on or is referenced to the *regulatory test* and is not completed as at [insert date which is 13 months after commencement date].

initiated means:

- (a) in respect of a *new large transmission network asset* (as defined under the *Rules* immediately prior to the commencement date), that an application notice has been made available in respect of that asset in accordance with the old clause 5.6.6(c);
- (b) in respect of a *new small transmission network asset* (as defined under the *Rules* immediately prior to the commencement date), that consultation has already commenced in respect of that asset in accordance with the old clause 5.6.6A(a).

new clauses 5.6.5B-E means clauses 5.6.5B-E of the *Rules* after the commencement date.

old clause 5.6.2A(b)(5) means clause 5.6.2A(b)(5) of the *Rules* (and all definitions in, and relevant provisions of, the *Rules* amended by the Amending Rule) as in force immediately before the commencement date.

old clause 5.6.5A means clause 5.6.5A of the *Rules* (and all definitions in, and relevant provisions of, the *Rules* amended by the Amending Rule) as in force immediately before the commencement date.

old clause 5.6.6 means clause 5.6.6 of the *Rules* (and all definitions in, and relevant provisions of, the *Rules* amended by the Amending Rule) as in force immediately before the commencement date.

old clause 5.6.6A means clause 5.6.6A of the *Rules* (and all definitions in, and relevant provisions of, the *Rules* amended by the Amending Rule) as in force immediately before the commencement date.

11.#.2 Amending Rules does not affect existing regulatory test

- (a) For the period from commencement date to *[insert date which is 13 months after commencement date]*:
 - (1) new clauses 5.6.5B-E have no effect in respect of *transmission* investment; and
 - (2) old clause 5.6.2A(b)(5), old clause 5.6.5A, old clause 5.6.6, old clause 5.6.6A and the *regulatory test* and *regulatory test application guidelines* promulgated from time to time under clause 5.6.5A, continue to apply in respect of *transmission* investment.
- (b) From *[insert date which is 13 months after commencement date]*:
 - (1) new clauses 5.6.5B-E will have effect in respect of *transmission* investment;
 - (2) old clause 5.6.5A, old clause 5.6.6, old clause 5.6.6A, and the *regulatory test* and *regulatory test application guidelines* promulgated from time to time under clause 5.6.5A, continue to apply in respect of any current application; and
 - (3) for the purposes of an *Annual Planning Report* published before *[insert date which is 13 months after commencement date]*, old clause 5.6.2A(b)(5) applies to any current application in relation to

a new small transmission network asset (as defined under the *Rules* immediately prior to the commencement date).
