



Australian Energy Market Commission

RULE CHANGE

RULE DETERMINATION

National Electricity Amendment (DNSP
recovery of transmission-related charges) Rule
2011

Rule Proponent

United Energy Distribution

Commissioners

Pierce
Spalding

24 March 2011

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About the AEMC

The Council of Australian Governments, through its Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005. The AEMC has two principal functions. To make and amend the national electricity and gas rules - and to conduct independent reviews of the energy markets for the MCE.

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Summary

This Rule determination on United Energy Distribution's Rule change request (submitted on behalf of all Victorian Distribution Network Service Providers (DNSPs)) addresses how DNSPs can recover their costs incurred with respect to charges for transmission services, inter-DNSP payments, and avoided transmission use of system (TUOS) payments to embedded generators. The Rule as Made, which is a more preferable Rule, specifies the types of costs permitted to be recovered through the annual pricing proposal process under clause 6.18.7 of the National Electricity Rules (NER).

The Proponent sought a "broad" definition for transmission service charges to be recovered under the annual pricing proposal process. This would have included negotiated transmission service charges, non-regulated transmission service charges, and network support agreement payments. However, the Commission has decided that only specific charges that are outside the control of the DNSPs and/or subject to other regulatory processes, and which cannot be reasonably forecast by the DNSP at the time the Australian Energy Regulator (AER) makes the DNSPs' distribution determination should be recovered under the annual pricing proposal process. These charges include:

- prescribed exit services;
- prescribed common transmission services;
- prescribed TUOS services;
- avoided customer TUOS payments;
- payments between DNSPs for use of the distribution system which are charges for prescribed exit services, prescribed common transmission services and prescribed TUOS services; and
- charges for standard control services from other DNSPs that the DNSP incurs as a Distribution Customer.

This will ensure that only efficient costs are passed through the annual pricing proposal process, provide clarity to DNSPs, protect consumers, and ensure that the National Electricity Objective (NEO) is likely to be achieved in the long term interests of consumers.

For the other charges such as negotiated transmission service charges, non-regulated transmission service charges, and network support agreements, the Commission considered that it is more appropriate that the DNSPs seek to recover these costs under the distribution determination process or, in certain circumstances, as a cost pass through event. However, the Commission recognised that there are some justified exemptions to this principle and that transitional arrangements are needed in certain circumstances. This is to ensure that DNSPs continue to have the opportunity to

recover efficient costs in accordance with the terms of the existing distribution determinations. These transitional provisions will allow:

- Victorian DNSPs to recover negotiated transmission service charges levied by the Australian Energy Market Operator (AEMO) for augmenting the relevant declared shared network to facilitate a network to network connection service, which will only apply for the current regulatory control period (1 January 2011 to 31 December 2015);
- SP AusNet to recover costs associated with SPI Electricity's network support agreement with Bairnsdale Power Station. This is to account for the ESC's previous approval of this network support agreement arrangement;
- Ergon Energy to recover for entry and exit charges that it incurs from Powerlink for four non-regulated connection points between Ergon Energy's distribution network and Powerlink's transmission network, which will only apply for the current regulatory control period (1 July 2010 to 30 June 2015);
- Ergon Energy to recover for charges incurred for using the non-regulated 220kV network which supplies the Cloncurry Township, which will only apply for the current regulatory control period (1 July 2010 to 30 June 2015); and
- ENERGEX to recover for entry and exit charges that it incurs from Powerlink for its non-regulated connection point between ENERGEX's distribution network and Powerlink's transmission network, which will only apply for the current regulatory control period (1 July 2010 to 30 June 2015).

The Rule as Made will provide more clarity on the appropriate process for DNSPs to recover costs they incur in supplying standard control services. If the Rule was not made, DNSPs may not be able to recover other efficient costs (in addition to prescribed TUOS services) which are outside of their control through the annual pricing proposal process. This would result in uncertainty to DNSPs and increased revenue risk as it can be difficult to accurately forecast these costs prior to the commencement of the regulatory control period. This may also result in inefficient investment for the provision of standard control services for the benefit of consumers.

To protect the interests of consumers and to meet the revenue and pricing principles, the Rule ensures that there is sufficient regulatory oversight on how the charges may be recovered by DNSPs. The Rule as Made will have a limited impact on consumers as it clarifies the process with which DNSPs are allowed to pass through costs to consumers, and not have an impact on the consumer's total bill. There may be minor administrative impacts on DNSPs and the AER as this Rule as Made only specifies existing processes for DNSPs to pass charges through to consumers.

The arrangements will commence for each DNSP in respect of its next regulatory year. Specific transitional provisions have been made for Victorian DNSPs, as they were unable to recover their permitted costs for this year because the Rule as Made will commence operation after their annual pricing proposals have been approved.

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1 United Energy Distribution's Rule change request

1.1 The Rule change request

On 24 June 2010, the Australian Energy Market Commission (AEMC or Commission) received a Rule change request from United Energy Distribution (Proponent) on behalf of Victorian distribution network service providers (DNSPs) to make a Rule regarding how DNSPs recover the charges for transmission services, inter-DNSP payments, and avoided customer transmission use of system (TUOS) payments to embedded generators (Rule change request).¹

Under clause 6.18.7 of the National Electricity Rules (NER), DNSPs may recover 'charges for transmission use of system services' by including these charges in their annual pricing proposals. The Proponent requested that these pricing provisions be amended such that the reference to 'transmission use of system services' is replaced with 'transmission services' and to also include the recovery of charges for inter-DNSP payments and avoided customer TUOS payments. The Proponent considered that the proposed Rule reflects the existing practice in Victoria and other jurisdictions. The Proponent also considered that the proposed Rule would remove uncertainty about how these charges are recovered.

1.2 Rationale for Rule change request

In its Rule change request, the Proponent stated that:

- transmission service charges, inter-DNSP payments and avoided customer TUOS payments are no different to charges for TUOS services which are currently allowed to be recovered under clause 6.18.7 of the NER. They are charges for services that are required for the provision of standard control services and should therefore be dealt with in a comparable fashion to charges for TUOS services in pricing proposals submitted by DNSPs;
- the proposed Rule gives effect to the intention of existing regulation and practice in Victoria for DNSPs to recover the aggregate of all charges for transmission services, inter-DNSP payments and avoided customer TUOS payments in the form of transmission tariffs from all distribution customers;
- the proposed Rule codifies existing regulatory practice such as for the Queensland and New South Wales DNSPs who are able to recover transmission service charges, inter-DNSP payments and avoided customer TUOS payments;
- it is general practice for DNSPs to include charges for transmission services as part of TUOS service charges in their respective pricing proposals (as opposed to

¹ 'Transmission service charges' could be taken to mean charges for all transmission services, irrespective of whether these are prescribed, negotiated or non-regulated.

forecast costs associated with transmission service charges as a part of operating expenditure because it is not accepted regulatory practice); and

- the Rule change request addresses a gap in the NER and clarifies a drafting oversight.

In addition to transmission service charges, inter-DNSP payments and avoided customer TUOS payments, the Proponent proposed in its first round submission for network support agreement payments to be recovered under clause 6.18.7.²

1.3 Solution proposed by the Rule change request

The Proponent proposed to resolve the issues discussed above by making a Rule that:³

- addresses a lack of specificity under clauses 6.18.2 and 6.18.7 of the NER (and other consequential changes) where the annual pricing provisions refer only to the pass through of 'transmission use of system' charges;
- amends clauses 6.18.2 and 6.18.7 (and other consequential changes) by including transmission service charges, inter-DNSP payments and avoided customer TUOS payments; and
- allows DNSPs to incorporate these charges in their annual pricing proposals.

1.4 Relevant background

Current processes for DNSPs to recover efficient costs

DNSPs are currently subject to a five-year regulatory control period.⁴ The Australian Energy Regulator (AER) makes distribution determinations by applying the building blocks approach. This allows the AER to determine the annual revenue requirement that DNSPs are entitled to for providing standard control services. As part of this process, the AER considers a DNSP's forecast expenditure which has to reasonably reflect efficient and prudent costs based on realistic estimates of forecast demand and cost inputs.⁵

Under the NER, DNSPs are required to prepare annual pricing proposals, which set out the pricing structure they will use each year to recover the allowed revenues set out in their distribution determination.⁶ Charges incurred by DNSPs for 'transmission use of system services' and payments DNSPs make under feed-in schemes and climate change funds are not included in the annual revenue requirement as they are

2 United Energy Distribution, Submission to first round consultation, 8 October 2010, pp. 8-9.

3 United Energy Distribution, Rule change request, 24 June 2010.

4 Clause 6.3.2(b) of the NER.

5 Clauses 6.4.3(a)(7) and 6.5.6(c) of the NER.

6 Clause 6.18.2 of the NER.

recovered through the annual pricing proposal process.⁷ As part of the annual pricing proposal process, DNSPs include estimates of these defined costs for the forthcoming regulatory year.⁸ DNSPs must submit their pricing proposals to the AER each year and the AER must approve them if they comply with the distribution determination and all forecasts associated with the pricing proposals are reasonable.⁹

In practice, there is little time available for the AER to completely assess the DNSP's annual pricing proposal. This means that there would not be any rigorous economic assessment of the defined costs being proposed to pass through to consumers. This is in contrast to the distribution determination process where the AER has over 18 months to assess the costs, including examining the types and efficiency of costs incurred by DNSPs to ensure these costs meet regulatory requirements.

The cost pass through event mechanism is another avenue by which DNSPs can apply to seek recovery of their costs.¹⁰ Under this approach, the AER can determine whether to allow for certain defined events to be passed through as costs to consumers during a regulatory control period. These types of events are defined by the AER in the distribution determination process. If the DNSP makes an application for a cost pass through event, the AER has 60 days to confirm the event and the amount to be passed through to consumers. The AER does undertake some economic assessment on the efficiency of costs for such applications. Examples of cost pass through events include a change in tax event, a terrorism event and an insurance event.

In summary, the three possible avenues for DNSPs to recover revenue allowed costs are through the distribution determination process, the annual pricing proposal process and cost pass through event mechanism. These processes differ in nature and degree of regulatory scrutiny. Ideally, all costs should be recovered through the distribution determination process as it provides the most sufficient level of regulatory oversight to protect consumers, is consistent with the principles of incentive regulation and ensures the efficiency of such costs.

However, some costs are clearly outside of the DNSPs' control or cannot be forecast at the start of the regulatory control period. Such costs are passed through to customers through the two other avenues in order to better manage risks for DNSPs and customers.

Nature of charges

Chapter 6 of the NER only refers to the pass through of 'transmission use of system' charges under the annual pricing proposal process.¹¹ However, there are other transmission-related charges that DNSPs incur. The Proponent proposed that charges for transmission services, inter-DNSP payments and avoided customer TUOS

7 Clauses 6.18.2, 6.18.7 and 6.18.7A of the NER.

8 Clauses 6.18.7(c) and 6.18.7A(a)-(c) of the NER.

9 Clauses 6.18.2 and 6.18.8 of the NER.

10 Clause 6.6.1 of the NER.

11 Clause 6.18.7 of the NER.

payments to embedded generators should also be included in the annual pricing provisions.

The Proponent considered that all transmission service charges (irrespective of whether the transmission services are prescribed, negotiated or non-regulated) should be included as these are incurred by DNSPs as inputs to the provision of standard control services. In addition, the Proponent proposed that network support agreement payments should also be recovered through the annual pricing proposal process.¹²

The Proponent referred to this type of cost arising from clause 5.6.2(m) of the NER, where a Network Service Provider (NSP) implements a generation option as an alternative to network augmentation, the cost of the network support would be included in distribution service prices. It considered that as these are network support agreement payments cannot be forecast accurately as part of the distribution determination process, they should be recovered through tariffs as part of the annual pricing proposal process.¹³ The Proponent suggested that this would include the network support agreement costs paid by SPI Electricity for the Bairnsdale Power Station.¹⁴

To provide an example of the magnitude of the charges affected by the Rule change request, some of the charges for the previous regulatory control period (1 January 2006 to 31 December 2010) in Victoria were:¹⁵

- Citipower: annual averages of \$8.8m for transmission service charges and \$3.7m for inter-DNSP payments;
- Jemena: annual averages of \$7.4m for transmission service charges, -\$3.2m for inter-DNSP payments, and \$0.2m for avoided customer TUOS payments;
- Powercor: annual averages of \$17m for transmission service charges, \$1.2m for inter-DNSP payments, and \$0.6m for avoided customer TUOS payments;
- SP AusNet: annual averages of \$11.4m for transmission service charges, -\$1.7m for inter-DNSP payments, and \$0.4m for avoided customer TUOS payments; and
- United Energy Distribution: annual averages of \$11.5m for transmission service charges and -\$0.9m for inter-DNSP payments.

In the draft Rule determination, the Commission noted that in Victoria, DNSPs are responsible for planning and directing the augmentation of transmission connection assets, and the Australian Energy Market Operator (AEMO) is responsible for planning

12 United Energy Distribution, Submission to first round consultation, 8 October 2010, pp. 4, 8-9.

13 Ibid.

14 United Energy Distribution, Initial submission, 3 September 2010, p. 10. This issue is considered further in section 5.3.

15 United Energy Distribution, Initial submission, 3 September 2010, pp. 9-10. Note: where the charges have a negative value, this refers to the DNSP being paid, as opposed to being charged, by another DNSP.

and directing augmentations to the shared network. In cases where the transmission connection investments require investments in the shared network, Victorian stakeholders have raised issues in the past regarding whether these investments should be classified as negotiated or prescribed transmission services.¹⁶ The Commission understood that AEMO and the Victorian DNSPs were working together to develop a memorandum of understanding to clarify these joint planning requirements and how these services should be classified.

Previous Victorian distribution determinations

The Essential Services Commission of Victoria (ESC) was previously responsible for the economic regulation of distribution revenue in Victoria. These ESC determinations allowed DNSPs to factor in all charges for transmission services, inter-DNSP payments and avoided customer TUOS payments to embedded generators into their tariff structures. In its Electricity Distribution Price Review for the regulatory control period 1 January 2006 to 31 December 2010, the ESC specified that the aggregate cost that DNSPs are allowed to recover through their transmission tariffs (the Maximum Transmission Revenue) includes transmission-related and other charges.¹⁷

Current Victorian distribution determination

In June 2010, the AER published its draft decision on the distribution determination for Victoria for the regulatory control period 2011 to 2015.¹⁸ In its draft decision, the AER did not consider that transmission connection charges, inter-DNSP payments and avoided customer TUOS payments should be recovered under clause 6.18.7 of the annual pricing proposal process, as this clause specifically refers to 'recovery of charges for transmission use of system services'.¹⁹ The AER considered that these charges did not fall within the definition of TUOS services under the NER as they are not related to the use of the transmission network.²⁰ The AER noted Victorian DNSPs intended to submit a Rule change request to the Commission to address this issue. The AER also indicated that it would consider the matter in its final decision, subject to the outcome of the Rule change process.

In October 2010, the AER made its final decision on the Victorian distribution determination.²¹ In its final decision, the AER decided to adopt the position in its draft decision that only TUOS costs can be recovered through this particular provision.²² Its

¹⁶ For example, see Appendix G of the AEMC's final report on the Review of National Framework for Electricity Distribution Network Planning and Expansion.

¹⁷ For instance, see: section 12.3.2 of ESC, Electricity Distribution Price Review 2006-10, Final Decision Volume 1, Statement of Purpose and Reasons, October 2005, pp. 476-477; clause 3.3.2 of ESC, Electricity Distribution Price Review 2006-10, Final Decision Volume 2, Price Determination, October 2005, p. 36; and ESC, Open letter to stakeholders and interested parties, Guidance on calculation of avoided TUOS payments, 19 October 2005.

¹⁸ AER, Victoria distribution determination 2011-15, Draft decision, June 2010.

¹⁹ Ibid, pp. 64-66.

²⁰ Ibid.

²¹ AER, Victoria distribution determination 2011-15, Final decision, October 2010.

²² Ibid, p. 49.

reason for adopting its draft position in its final decision was that the AEMC was considering this matter in this Rule change process, and it would not be appropriate for the AER to make a decision while the Rule change process was underway.²³ However, the AER noted that it supported a Rule change on this matter.²⁴

As part of its final decision for Victorian DNSPs for the forthcoming regulatory control period (1 January 2011 to 31 December 2015), the AER nominated a pass through event for the recovery of costs associated with transmission connection charges, avoided customer TUOS payments and inter-DNSP payments, which would occur annually on 31 May. The AER also considered that “allowing recovery of these costs will, or is likely to achieve the NEO by providing regulatory certainty to the Victorian DNSPs which is in the long term interests of consumers” and “also provide regulatory certainty, pending the finalisation of the AEMC’s rule change process”.²⁵ However the AER acknowledged that “these costs will not be eligible for pass through, should they be recovered under new arrangements arising from the AEMC rule change”.²⁶

Current distribution determinations in other jurisdictions

Currently in accordance with the distribution determinations for DNSPs in the Australian Capital Territory, New South Wales, Queensland and South Australia, DNSPs are able to recover transmission charges to be paid to Transmission Network Service Providers (TNSPs), avoided TUOS payments and inter-DNSP payments through the annual pricing proposal process.²⁷

1.5 Commencement of Rule making process

On 2 September 2010, the Commission published a notice under section 95 of the National Electricity Law (NEL) advising of its intention to commence the Rule change process and the first round of consultation in respect of the Rule change request. A consultation paper prepared by AEMC staff identifying specific issues and questions for consultation was also published with the Rule change request. Submissions closed on 1 October 2010.

The Commission received ten submissions on the Rule change request in the first round of consultation. They are available on the AEMC website.²⁸ A summary of the issues raised in submissions and the Commission’s response to each issue is contained in Appendix A.1.

23 Ibid.

24 Ibid; AER, Submission to first round consultation, 1 October 2010, p. 1.

25 AER, Victoria distribution determination 2011-15, Final decision, October 2010, p. 788.

26 Ibid.

27 AER, Australian Capital Territory distribution determination 2009-10 to 2013-14, Final decision, April 2009, pp. 182-183; AER, New South Wales distribution determination 2009-10 to 2013-14, Final decision, April 2009, pp. 462-463; AER, Queensland distribution determination 2010-11 to 2014-15, Final decision, May 2010, pp. 395-396; AER, South Australia distribution determination 2010-11 to 2014-15, Final decision, May 2010, pp. 322-323.

28 www.aemc.gov.au

1.6 Publication of draft Rule determination and Draft Rule

On 2 December 2010, the Commission published a notice under section 99 of the NEL and a draft Rule determination in relation to the Rule change request (draft Rule determination). The draft Rule determination included a draft Rule (draft Rule).

Submissions on the draft Rule determination closed on 21 January 2011. The Commission received five submissions on the draft Rule determination. They are available on the AEMC website.²⁹ A summary of the issues raised in submissions, and the Commission's response to each issue, is contained in Appendix A.2.

1.7 Extended period for publication of final Rule determination and Rule as Made

On 3 March 2011, the Commission gave notice under section 107 of the NEL to extend the period of time for the making of the final Rule determination to 24 March 2011. The Commission considered that there were issues of sufficient complexity and difficulty that warranted an extension in the time period and further engagement with stakeholders is required. In particular, these issues included:

- new drafting for the proposed true-up provisions under clause 6.18.7 of the NER; and
- a new request from a distribution business for the inclusion of a charge associated to a non-regulated connection point.

²⁹ www.aemc.gov.au

2 Final Rule determination

2.1 Commission's determination

In accordance with section 102 of the NEL, the Commission has made this final Rule determination in relation to the Rule proposed by the Proponent. In accordance with section 103 of the NEL, the Commission has determined not to make the Rule proposed by the Proponent and to make a more preferable Rule.³⁰

The Commission's reasons for making this final Rule determination are set out in section 3.1.

The *National Electricity Amendment (DNSP recovery of transmission-related charges) Rule 2011 No 1* (Rule as Made) is published with this final Rule determination. The Rule as Made commences on 24 March 2011. The Rule as Made is a more preferable Rule. Its key features are described in section 3.2.

2.2 Commission's considerations

In assessing the Rule change request the following was material and relevant:

- the Commission's powers under the NEL to make the Rule;
- the Rule change request;
- submissions received during first and second rounds of consultation;
- the Commission's analysis as to the ways in which the Rule as Made will, or is likely to, contribute to the achievement of the National Electricity Objective (NEO);
- the revenue and pricing principles under section 7A of the NEL; and
- the AER's draft and final decisions on the distribution determination for Victorian DNSPs for the regulatory control period 1 January 2011 to 31 December 2015.

2.3 Commission's power to make the Rule

The Commission is satisfied that the Rule as Made falls within the subject matter about which the Commission may make Rules. The Rule as Made falls within the matters set out in section 34(1)(a)(iii) of the NEL, as it relates to the regulation of the activities of

³⁰ Under section 91A of the NEL, the AEMC may make a Rule that is different (including materially different) from a market initiated proposed Rule (a more preferable Rule) if the AEMC is satisfied that having regard to the issue or issues that were raised by the market initiated proposed Rule (to which the more preferable Rule relates), the more preferable Rule will or is likely to better contribute to the achievement of the National Electricity Objective.

persons (including Registered Participants) participating in the National Electricity Market (NEM) or involved in the operation of the national electricity system. Further, the Rule as Made falls within the matters set out in Schedule 1 to the NEL as it relates to:

- “25 The regulation of revenues earned or that may be earned by owners, controllers or operators of distribution systems from the provision by them of services that are the subject of a distribution determination.
- 26 The regulation of prices (including the tariffs and classes of tariffs) charged or that may be charged by owners, controllers or operators of distribution systems for the provision by them of services that are the subject of a distribution determination.
- 26A Principles to be applied, and procedures to be followed, by the AER in exercising or performing an AER economic regulatory function or power relating to the making of a distribution determination.
- ...
- 26D The economic framework, mechanisms or methodologies to be applied or determined by the AER for the purposes of items 25 and 26 including (without limitation) the economic framework, mechanisms or methodologies to be applied or determined by the AER for the derivation of the revenue (whether maximum allowable revenue or otherwise) or prices to be applied by the AER in making a distribution determination.”

These items are relevant to the Rule as Made because the Rule as Made relates to how DNSPs recover costs under the distribution determination and annual pricing proposal processes.

2.4 Rule making test

Under section 88(1) of the NEL, the Commission may only make a Rule if it is satisfied that the Rule will, or is likely to, contribute to the achievement of the NEO.

The NEO is set out in section 7 of the NEL as follows:

“The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- (a) price, quality, safety, reliability and security of supply of electricity;
and
- (b) the reliability, safety and security of the national electricity system.”

For this Rule change request, the Commission considers that the relevant aspect of the NEO is the efficient investment in, and efficient operation of, electricity services.³¹

³¹ Under section 88(2) of the NEL, for the purposes of section 88(1) the AEMC may give such weight to any aspect of the NEO as it considers appropriate in all the circumstances, having regard to any relevant MCE statement of policy principles.

The Commission is satisfied that the Rule as Made will, or is likely to, contribute to the achievement of the NEO because of:

- regulatory certainty and administrative efficiency: the Rule as Made will clarify how DNSPs can recover costs related to transmission service charges, inter-DNSP payments and avoided customer TUOS payments. This would reduce ambiguity in the NER, improve AER administrative processes and provide regulatory certainty and transparency; and
- opportunity to recover efficient costs: if the Rule as Made was not made, DNSPs would be uncertain as to how to recover costs which fall outside the existing category of transmission use of system charges, and may be unable to recover these costs. This could lead to inefficient investment in the distribution network and provision of electricity services to consumers.

For these reasons, the Commission considers that the Rule as Made will, or is likely to, promote efficient investment in, and efficient operation of, the distribution network, and hence would be in the long term interests of consumers with respect to the price of supplying electricity.

Under section 91(8) of the NEL, the Commission may only make a Rule that has effect with respect to an adoptive jurisdiction if it is satisfied that the Rule as Made is compatible with the proper performance of AEMO's declared network functions. The Rule as Made is compatible with AEMO's declared network functions because it has no impact on the NER relating to AEMO's declared network functions or TNSPs in general.

2.5 More preferable Rule

Under section 91A of the NEL, the AEMC may make a Rule that is different (including materially different) from a market initiated proposed Rule (a more preferable Rule) if the AEMC is satisfied that, having regard to the issue or issues that were raised by the market initiated proposed Rule (to which the more preferable Rule relates), the more preferable Rule will, or is likely to, better contribute to the achievement of the NEO.

Having regard to the issues raised by the Rule proposed in the Rule change request, the Commission is satisfied that the Rule as Made will, or is likely to, better contribute to the NEO for the following reasons:

- the Rule as Made specifically sets out the charges that may be passed through the annual pricing proposal process. These charges include transmission service charges that are subject to the transmission determination process, and inter-DNSP payments that are subject to the distribution determination process of the other DNSPs. This will allow for greater clarity and transparency, and promote administrative efficiency;
- the Rule as Made provides specific transitional provisions for Victorian DNSPs. These provisions take into account that the AER's distribution determination for

the Victorian DNSPs which occurred as this Rule change process was underway. This will also promote regulatory certainty and recovery of efficient costs; and

- the Rule as Made provides specific transitional provisions for Ergon Energy and ENERGEX. These are for Ergon Energy and ENERGEX's non-regulated charges for only the current regulatory control period, which were permitted to be passed through the annual pricing proposal process in accordance with their current distribution determinations. This will promote recovery of efficient costs.

In summary, below are the types of charges that were considered in this Rule determination and how DNSPs can recover these charges as a result of the Commission's decision.

Types of costs considered in this Rule determination	Process to seek recovery for these costs
Prescribed exit services charges	Pricing proposal process
Prescribed common transmission services charges	
Prescribed TUOS charges	
Bairnsdale network support agreement payments	
Avoided customer TUOS payments	
Payments between DNSPs for use of the distribution system which are charges for prescribed exit services, prescribed common transmission services and prescribed TUOS services	
Charges for standard control services from other DNSPs it incurs as a Distribution Customer	
Negotiated transmission service charges (note 1)	Distribution determination/cost pass through event
Non-regulated transmission service charges (note 2)	
Network support agreement payments (note 3)	
Other charges	

Notes:

1. This does not apply to Victorian DNSPs' negotiated transmission service charges levied by AEMO for augmenting the relevant declared shared network to facilitate a network to network connection service in Victoria which are provided for in transitional arrangements for only the current regulatory control period (1 January 2011 to 31 December 2015).

2. This does not apply to Ergon Energy and ENERGEX's non-regulated charges which are provided for in transitional arrangements for only the current regulatory control period (1 July 2010 to 30 June 2015).
3. This does not apply to the Bairnsdale network support agreement payments which are provided for in transitional arrangements for the current and subsequent regulatory control periods.

Differences between the proposed Rule, the draft Rule and the Rule as Made are set out in sections 3.3 and 3.4.

2.6 Other requirements under the NEL

In applying the Rule making test in section 88 of the NEL, the Commission has taken into account the revenue and pricing principles as required under section 88B of the NEL as the Rule change request relates to subject matters under items 25, 26, 26A and 26D of Schedule 1 to the NEL. Based on the Commission's assessment, the Commission considers that the Rule as Made will contribute to providing DNSPs with a reasonable opportunity to recover at least the efficient costs that it incurs in providing direct control network services, which will be consistent with sections 7A(2)(a). Hence, the Commission considers that the Rule as Made will be consistent with the revenue and pricing principles.

3 Commission's reasons

The Commission has analysed the Rule change request and assessed the issues arising out of this Rule change request. For the reasons set out below, the Commission has determined that a Rule as Made should be made. An analysis of the proposed Rule by the Proponent is also set out below.

3.1 Assessment

The Victorian DNSPs proposed that they be able to recover all transmission service charges (irrespective of classification), inter-DNSP payments and avoided customer TUOS payments under the annual pricing proposal process. They considered that this would reflect existing practice and be consistent with the other jurisdictions. They were opposed to forecasting costs associated with transmission service charges as a part of operating expenditure because they did not consider this to be accepted regulatory practice.

In accordance with the revenue and pricing principles under the NEL, DNSPs should be provided with a reasonable opportunity to recover efficient charges that they incur in providing standard control services. Currently, under the annual pricing proposal process, a specific provision is made for DNSPs to recover charges for 'transmission use of system'.³² However, DNSPs incur other transmission-related charges in providing standard control services and in making avoided customer TUOS payments. The Rule as Made clarifies the provisions under the annual pricing proposal process to ensure that the recovery of a DNSP's appropriate costs can be carried out efficiently and in a way to ensure that there is sufficient regulatory oversight of the cost recovery to protect the interest of consumers.

The key issue raised by this Rule change request is not whether categories of costs are legitimate costs of providing standard control services. Instead, the actual issue is what would be the appropriate process for passing such charges through to customers; as explained in Chapter 1, there are three possible avenues. This involves an assessment of the nature and scope of such costs, and the appropriate level of regulatory oversight, and having regard to the administrative processes and costs involved.

The Commission has to also consider the counterfactual of not making the Rule and the factual of making the Rule. If the Rule was not made, DNSPs would be limited to recovery of prescribed TUOS service charges under the annual pricing proposal process. This means that DNSPs may not be able to recover other efficient costs which are outside of their control through the annual pricing proposal process. This would result in uncertainty to DNSPs as to whether they would be able to recover these other charges through the distribution determination process. This could result in inefficient investment for the provision of standard control services for the benefit of consumers.

³² Clause 6.18.7 of the NER.

The Commission has decided that the types of charges that can be recovered through the annual pricing proposal process should meet the following principles:

- the charges are clearly defined;
- the charges are outside the control of the DNSPs;
- the charges are subject to other regulatory processes which determine whether such costs are efficient; and
- the charges cannot be reasonably forecast by the DNSP at the time the AER makes the DNSPs' distribution determination.

This will also allow for certainty and transparency for DNSPs for recovery of costs under the annual pricing proposal process. For other charges which may still be legitimate costs, the distribution determination process would allow for a rigorous economic assessment of these costs to ensure efficient costs, which would not be available under the annual pricing proposal process.

The Commission considers that, taken together, clearly specifying which costs should be passed through under the annual pricing proposal process and any other legitimate costs under the distribution determination process (or, in certain circumstances, as a cost pass through event) will provide certainty to DNSPs, balanced with minimising administrative costs, and lead to efficient investment in, and efficient operation of, electricity services with respect to the price of supplying electricity. Further, ensuring that inefficient costs are not passed through the annual pricing proposal process will provide sufficient regulatory oversight and protect consumers. This will likely contribute to the NEO in the long term interests of consumers.

Given that the Rule as Made will apply to annual pricing proposals for the next regulatory year, there is a need for some transitional arrangements to clarify how the Rule as Made will interact with the current distribution determination. As the Victorian distribution determination for the 2011-2015 regulatory control period was underway during this Rule change process, the Rule as Made also clarifies transitional provisions that would apply for the Victorian DNSPs to ensure that Victorian DNSPs would be able to receive efficient costs. In relation to Ergon Energy and ENERGEX, transitional provisions have been provided for non-regulated charges to be passed through the annual pricing proposal process for only the current regulatory control period, which were permitted in their current distribution determinations.

3.2 Rule as Made

The Rule as Made clarifies how transmission service charges, inter-DNSP payments and avoided customer TUOS payments can be recovered. The Rule as Made provides for:

- the charges that can be recovered under the annual pricing proposal process:

- charges for prescribed transmission services, being:³³
 - a) prescribed exit services;
 - b) prescribed common transmission services; and
 - c) prescribed TUOS services;
- avoided customer TUOS payments;
- payments between DNSPs that are charges for prescribed exit services, prescribed common transmission services and prescribed TUOS services; and
- charges for standard control services from other DNSPs it incurs as a Distribution Customer;
- high level principles for the calculation of “true-up” adjustments under the distribution determination related to charges recovered under the annual pricing proposal process and in respect to jurisdictional schemes;
- a requirement for DNSPs and TNSPs to identify the components of charges in the bills of DNSPs that these DNSPs will eventually seek to recover under the annual pricing proposal process;
- transitional provisions to allow:
 - Victorian DNSPs to recover negotiated transmission service charges levied by AEMO for augmenting the relevant declared shared network to facilitate a network to network connection service, which are provided for in transitional arrangements for only the current regulatory control period (1 January 2011 to 31 December 2015);
 - Victorian DNSPs to apply to the AER for recovery in their next annual pricing proposal for charges associated with prescribed exit services, prescribed common transmission services, negotiated transmission services levied by AEMO for augmenting the relevant declared shared network to facilitate a network to network connection service, avoided customer TUOS payments, and payments between DNSPs incurred in 2011;
 - SP AusNet to recover costs associated with SPI Electricity’s network support agreement with Bairnsdale Power Station. This is to account for the ESC’s previous approval of this network support agreement arrangement;
 - Ergon Energy to recover for entry and exit charges that it incurs from Powerlink for four non-regulated connection points between Ergon Energy’s distribution network and Powerlink’s transmission network,

³³ The Rule as Made defines these particular prescribed transmission services as “designated pricing proposal services”.

which will only apply for the current regulatory control period (1 July 2010 to 30 June 2015);

- Ergon Energy to recover for charges incurred for using the non-regulated 220kV network which supplies the Cloncurry Township, which will only apply for the current regulatory control period (1 July 2010 to 30 June 2015); and
- ENERGEX to recover for entry and exit charges that it incurs from Powerlink for its non-regulated connection point between ENERGEX's distribution network and Powerlink's transmission network, which will only apply for the current regulatory control period (1 July 2010 to 30 June 2015); and
- the existing provision for side constraints on tariffs for standard control services under clause 6.18.6 of the NER to be maintained.

3.3 Differences between draft Rule and proposed Rule

The Rule proposed by the Proponent sought to recover charges for transmission services, inter-DNSP payments, and avoided customer TUOS payments through the annual pricing proposal process under clause 6.18.7 of the NER. The draft Rule differed from the proposed Rule in two ways. The draft Rule defined specific charges under the annual pricing proposal process, and did not include all transmission service charges as proposed by the Proponent.

The draft Rule also included transitional provisions for Victorian DNSPs as their distribution determination for the forthcoming regulatory control period (1 January 2011 to 31 December 2015) was made, and 2011 pricing proposals were approved, prior to this Rule change process being completed.

Consequential changes were also proposed in the draft Rule for the true-up provision under clause 6.18.7 to provide for better clarity and transparency in how overs and unders adjustments are calculated.

3.4 Differences between Rule as Made and draft Rule

Similar to the draft Rule, the Rule as Made still includes a transitional provision for Victorian DNSPs. However, the transitional provision no longer requires the recovery of these charges to be spread over the remainder of the regulatory control period (i.e. 1 January 2012 to 31 December 2015). Instead, there is the flexibility to determine at the next annual pricing proposal process how Victorian DNSPs' under-recovered permitted charges in 2011 should be recovered.

In Victoria, there is the possibility that AEMO may classify the augmentation of the relevant declared shared network to facilitate a network to network connection service as a negotiated transmission service. Given that this Rule as Made will commence after the Victorian distribution determination and therefore Victorian DNSPs did not have

the opportunity to seek recovery for such costs, the Rule as Made allows Victorian DNSPs to recover these types of charges under the annual pricing proposal process as a transitional provision. This transitional provision will apply for only the current regulatory control period (1 January 2011 to 31 December 2015).

In addition to the transitional provision for Victorian DNSPs, the Rule as Made includes transitional provisions with respect to Ergon Energy and ENERGEX's non-regulated charges. In particular, the transitional provisions allow for Ergon Energy to recover for entry and exit charges that it incurs from Powerlink for its four non-regulated connection points, and for charges for using the 220kV network supply to the Cloncurry Township. It also allows for ENERGEX to recover for entry and exit charges that it incurs from Powerlink for its non-regulated connection point. For these particular non-regulated charges, the transitional provisions will only apply for the current regulatory control period (1 July 2010 to 30 June 2015). This maintains the current arrangements for Ergon Energy and ENERGEX in accordance with their current distribution determinations.

The draft Rule had specified payments between DNSPs for use of the distribution system for prescribed transmission services as a type of cost recoverable under the annual pricing proposal process. However, given that the draft Rule had also specified that the types of charges for prescribed transmission services are prescribed exit services, prescribed common transmission services and prescribed TUOS services (as opposed to prescribed transmission services in general), the Rule as Made specifies that payments between DNSPs for use of the distribution system more specifically relate to charges for prescribed exit services, prescribed common transmission services and prescribed TUOS services (as well as for standard control services).

Given the significant differences in the true-up adjustment methodology between DNSPs and the desire from stakeholders to maintain the existing arrangements for true-up adjustments, the true-up provision proposed in the draft Rule has been revised in the Rule as Made. The Rule as Made contains high level principles which will allow the AER and DNSPs the flexibility and clarity to determine how to make true-up adjustments. Given the similarity in application between the true-up provisions under clauses 6.18.7 and 6.18.7A, the Rule as Made also amends the true-up provision under clause 6.18.7A in respect to jurisdictional schemes.³⁴

As a consequence of the Rule as Made specifying the types of charges that can be recovered under the annual pricing proposal process, the Rule as Made requires DNSPs and TNSPs to identify the components of charges in the bills of DNSPs that these DNSPs will eventually seek to recover under the annual pricing proposal process.

³⁴ Jurisdictional schemes refer to feed-in tariff schemes and climate change funds. These are defined under clause 6.18.7A(d) of the NER.

3.5 Civil penalties

The Rule as Made does not amend any Rules that are currently classified as civil penalty provisions under the National Electricity (South Australia) Regulations. The Commission did not recommend to the MCE that any of the amendments in the Rule as Made be classified as civil penalty provisions as the Rule as Made relates to the DNSPs' cost recovery processes under Chapter 6 of the NER. The nature of the provisions under Chapter 6 of the NER provides incentives to ensure that DNSPs adhere to the requirements so that their costs may be efficiently recovered.

4 Commission's assessment approach

In assessing this Rule change request, the Commission has considered the following factors:

- recovery of efficient costs – ensuring that DNSPs are able to recover efficient costs they incur in providing standard control services;
- regulatory certainty and transparency – ensuring that there is regulatory certainty and transparency to reduce any ambiguity and costs in regulating the recovery of costs; and
- regulatory rigour and administrative efficiency – ensuring that regulatory rigour is balanced with efficiency in administering regulatory obligations.

In its assessment of the Rule change request, the Commission has considered whether transitional provisions would be required to allow Victorian DNSPs to recover the costs that they would otherwise not have been able to recover for the 2011 regulatory year. The Commission also considered the effect of this Rule change request and its interaction with the existing distribution determination.

The Commission has focussed on these factors because they relate to the objectives and principles of the regulatory framework under Chapter 6 of the NER. These objectives and principles include:

- ensuring DNSPs are able to recover efficient costs they incur for providing standard control services;
- requiring customers to only pay for efficient costs of providing standard control services;
- providing transparent and timely regulatory processes; and
- increasing regulatory certainty and reducing the administrative burden on DNSPs and the AER.

5 Recovery of charges under the annual pricing proposal

This chapter considers what charges should be included in the annual pricing proposals, in addition to prescribed TUOS services, and how such charges should be defined.

5.1 Proponent's view

In its Rule change request, the Proponent proposed that annual pricing proposals should include "all transmission-related charges, as well as charges for inter-DNSP payments and avoided customer TUOS payments, to the extent that they are inputs to the provision of standard control services" under clause 6.18.7 of the NER.³⁵ In its first round submission, the Proponent further clarified that "all transmission service charges should be recoverable" and includes charges for prescribed transmission services, negotiated transmission services, non-regulated transmission services and network support agreement payments.³⁶ However, the types of specific charges for transmission services and inter-DNSP payments were not specifically defined by the Proponent. For inter-DNSP payments, the Proponent suggested that if a definition were required then the Independent Pricing and Regulatory Tribunal's definition could be used: "a payment between distributors for use of the distribution system".³⁷

5.2 Stakeholders views

5.2.1 First round of consultation

Generally, submissions supported the recovery of transmission service charges, avoided customer TUOS payments to embedded generators, and inter-DNSP payments. Submissions considered this to be consistent with the current arrangements in New South Wales, Queensland, Victoria and South Australia. Most of the DNSPs considered that these charges are outside of their control and would therefore be more appropriately addressed in the annual pricing proposal process.³⁸

With respect to transmission service charges, some submissions clarified that any transmission service charges should be recoverable, regardless of its service classification (i.e. prescribed, negotiated or non-regulated) if standard control services are being provided.³⁹

³⁵ United Energy Distribution, Rule change request, 24 June 2010, p.2 of cover letter and p. 5 of request.

³⁶ United Energy Distribution, Submission to first round consultation, 8 October 2010, pp. 3, 8-9.

³⁷ Ibid, p. 8.

³⁸ Ergon Energy, Submission to first round consultation, 1 October 2010, p. 3; EnergyAustralia, Submission to first round consultation, 1 October 2010, pp. 1,3-6; Integral Energy, Submission to first round consultation, 1 October 2010, p. 4; Ibid, pp. 10-12.

³⁹ ENERGEX, Submission to first round consultation, 1 October 2010, p. 1; Ergon Energy, Submission to first round consultation, 1 October 2010, p. 2.

Some submissions suggested that defining inter-DNSP payments would be difficult, given the different approaches taken to payments between DNSPs for use of the distribution network in New South Wales and Victoria.⁴⁰ In addition to the different approaches for making inter-DNSP payments, submissions suggested that there was a wide nature of distribution services that may potentially be provided by one DNSP to another DNSP.⁴¹

With respect to how these charges would be recovered, the AER and EnergyAustralia considered that forecast of costs under the building block determination approach creates a high risk of under or over recovery from consumers.⁴² Most of the DNSPs considered that these charges were also outside of the DNSPs' control.⁴³ DNSPs submitted that the annual pricing proposal approach ensures that DNSPs would recover only their actual charges and provides an assurance to end-users that they would only pay for the actual expenses incurred by DNSPs in respect of the relevant cost components.

5.2.2 Second round of consultation

In the second round of consultation, some submissions from DNSPs proposed that all transmission service charges (irrespective of whether they are classified as prescribed, negotiated or non-regulated),⁴⁴ as well as other transmission-related charges such as for network support agreement payments and scale efficient network extensions (SENEs) services, should be recoverable under the annual pricing proposal process. These submissions argued that these charges would be incurred as inputs to providing standard control services and DNSPs do not have direct control over these services.

Negotiated transmission service charges

Victorian DNSPs proposed that if the Commission did not agree that all transmission service charges should be recoverable under the annual pricing proposal process, the amending Rule should include charges for negotiated transmission services in the annual pricing proposal process. The following reasons were provided:⁴⁵

- regulatory oversight of prices for negotiated transmission services under Part D and Part K of Chapter 6A, including the transmission determination process;

⁴⁰ EnergyAustralia, Submission to first round consultation, 1 October 2010, pp. 4-5; Ergon Energy, Submission to first round consultation, 1 October 2010, pp. 2-3; United Energy Distribution, Submission to first round consultation, 8 October 2010, pp. 6-8.

⁴¹ Ibid.

⁴² AER, Submission to first round consultation, 1 October 2010, p. 2; Ergon Energy, Submission to first round consultation, 1 October 2010, p. 3; EnergyAustralia, Submission to first round consultation, 1 October 2010, pp. 1,3-6.

⁴³ Ergon Energy, Submission to first round consultation, 1 October 2010, p. 3; EnergyAustralia, Submission to first round consultation, 1 October 2010, pp. 1,3-6.

⁴⁴ ETSA Utilities, Submission to second round consultation, 21 January 2011, p. 1; United Energy Distribution, Submission to second round consultation, 21 January 2011, pp. 7, 12, 14-15, 20.

- these charges are largely outside of the control of DNSPs, given the roles of the negotiating framework and negotiated transmission service criteria (NTSC);
- the policy intent of Chapter 6A is to encourage classification of negotiated transmission services over prescribed transmission services where appropriate;
- recovery of negotiated transmission services is consistent with the NEO and revenue and pricing principles;
- if negotiated transmission service charges are not recoverable, there would be a distortion or incentive in favour of prescribed transmission services, which may not be as effective or cost-efficient as available negotiated transmission services; and
- AEMO has previously stated that negotiated transmission services can be inputs to standard control services. For shared network augmentations resulting from a new or modified connection, AEMO would more likely classify these as negotiated transmission services. The NER should not be overly restrictive in this respect due to AEMO's different interpretation for the classification of this service.

Non-regulated transmission service charges

Ergon Energy considered that the definition of designated pricing proposal charges under the draft Rule was too narrow as it did not capture non-regulated transmission service charges and other transmission-related charges that DNSPs incur in providing standard control services. Ergon Energy currently recovers these as TUOS charges passed through to customers according to its current distribution determination.⁴⁶ These charges include non-regulated charges in relation to four non-regulated connection points between Ergon Energy's distribution network and Powerlink's transmission network, and charges for Ergon Energy to use the non-regulated 220kV network which supplies the Cloncurry Township. It suggested that the definition of designated pricing proposal charges or Chapter 11 should be amended to include these charges and the definition should be expanded to include all charges that a DNSP may incur for use of another network, regardless of whether the network is a distribution or transmission system, in providing standard control services.

Network support agreement payments

Victorian DNSPs confirmed that there are no similar network support agreements to the Bairnsdale network support agreement currently in existence.⁴⁷ They considered that although network support agreements are not common for DNSPs, it would more likely arise in Victoria because they have a transmission connection planning role. They suggested that these costs cannot be forecast as operating expenditure for the purposes

⁴⁵ United Energy Distribution, Submission to second round consultation, 21 January 2011, pp. 7-12, 14-15, 20.

⁴⁶ Ergon Energy, Submission to second round consultation, 21 January 2011, pp. 1-2.

⁴⁷ United Energy Distribution, Submission to second round consultation, 21 January 2011, pp. 5-6, 17.

of the distribution determination process and that such costs should be more efficiently passed on to end users through the annual pricing proposal process.

SENEs services

EnergyAustralia suggested another charge which should be recoverable under the annual pricing proposal process is for SENEs services.⁴⁸ This would be incurred by DNSPs when a coordinating TNSP would need to levy charges on DNSPs to recover the residual amount that is not paid for by generators.

An “other charges” category

Some submissions proposed that an “other charges” category be specified in a distribution determination and then be dealt with as part of the annual pricing proposal process.⁴⁹ They argued for this category because:

- this would give the AER the flexibility to decide whether any other applicable charges and payments can be recovered by a DNSP as part of the annual pricing proposal process;
- this would allow for new types of charges and payments that may likely arise in the future, and make better allowance for different types of arrangements between DNSPs and between DNSPs and TNSPs in different jurisdictions; and
- this would strike an appropriate balance between the potential for legitimate categories of costs to be excluded from the annual pricing proposal process and any perceived risk that inappropriate charges would be included in the annual pricing proposal process.

EnergyAustralia suggested that there would be sufficient regulatory oversight if the AER was required to make its decision as part of a regulatory determination, subject to the following guiding principles:⁵⁰

- recovery of charges or payments must be for legitimate costs that a DNSP incurs in providing distribution standard control services; and
- charges or payments to be recovered under the annual pricing proposal process should be those largely outside the control of the DNSP and/or subject to other regulatory processes.

Prescribed transmission service charges

Victorian DNSPs suggested that if the Commission was still of the view that transmission service charges should be restricted then the definition should be limited to prescribed transmission services (as currently defined in the NER) instead of

⁴⁸ EnergyAustralia, Submission to second round consultation, 21 January 2011, p. 6;

⁴⁹ Ibid; ETSA Utilities, Submission to second round consultation, 21 January 2011, p. 1; United Energy Distribution, Submission to second round consultation, 21 January 2011, pp. 4-6.

⁵⁰ EnergyAustralia, Submission to second round consultation, 21 January 2011, p. 6.

“designated pricing proposal services” (as proposed in the draft Rule).⁵¹ They considered that this would ensure that any new categories or sub-categories of prescribed transmission services can be recovered by DNSPs when providing standard control services and would reduce the administrative burden or regulatory uncertainty.

EnergyAustralia also noted that under the draft Rule the recovery of charges under the annual pricing proposal process for prescribed transmission services was limited to prescribed exit services, prescribed common transmission services and prescribed TUOS services.⁵² It sought clarification on whether payments between DNSPs for use of the distribution system were also limited to prescribed exit services, prescribed common transmission services and prescribed TUOS services (as opposed to prescribed transmission services in general).

5.3 Commission’s analysis

The issues raised by the Proponent and submissions in terms of what charges should be recovered under the annual pricing proposal process include:

- how transmission service charges could be defined;
- how inter-DNSP payments should be appropriately treated;
- whether negotiated and non-regulated transmission services charges could be included; and
- whether an “other charges” category could be created for flexibility.

5.3.1 Charges recoverable through the annual pricing proposal process

Draft Rule determination

The Commission considered that the Proponent’s proposed inclusion of “transmission service charges” under clause 6.18.7 was too open-ended and would create a risk to consumers with respect to pass through of inefficient costs or inappropriate costs. Any charges recovered through the annual pricing proposal process should be:

- clearly defined;
- outside the control of the DNSPs;
- subject to other regulatory processes which determine whether such costs are efficient; and
- not be able to be reasonably forecast by the DNSP at the time the AER makes the DNSPs’ distribution determination.

⁵¹ United Energy Distribution, Submission to second round consultation, 21 January 2011, p. 8.

Charges for prescribed exit services, prescribed common transmission services and prescribed TUOS services are subject to the transmission determination process. DNSPs should therefore be able to include the recovery for these charges through their annual pricing proposal process as these charges would have been subject to regulatory rigour under the AER's existing processes.

Similarly, payments between DNSPs that are for prescribed transmission service charges or charges determined through a DNSP's distribution determination and annual pricing proposal process would not be required to be subject to further regulatory oversight. For this reason, these types of payments between DNSPs should be recovered under the annual pricing proposal process.

Avoided customer TUOS payments are specific charges that are determined in accordance with rule 5.5(h) of the NER. Given that the requirements are set out under rule 5.5(h), the recovery of these charges should also be included in the annual pricing proposal process.

The Commission noted that these charges are more specific than the general categories of charges proposed by the Proponent. However, the Commission considered that the benefits for clearly specifying the charges would be clarity and transparency which would promote regulatory certainty and administrative efficiency. Providing sufficient regulatory oversight and clarity in what charges are recoverable protects consumers by ensuring only the appropriate, efficient costs are recovered by DNSPs.

In summary, the types of charges which can be recovered under the annual pricing proposal process would be for:

- prescribed exit services;
- prescribed common transmission services;
- prescribed TUOS services;
- avoided customer TUOS payments;
- payments between DNSPs for use of the distribution system which are charges for prescribed transmission services; and
- charges for standard control services from other DNSPs it incurs as a Distribution Customer.

Final Rule determination

The Commission maintains its views as in the draft Rule determination with respect to transmission service charges. The term is too broad and does not provide sufficient protection to consumers against inefficient costs being passed through the annual pricing proposal process.

52 EnergyAustralia, Submission to second round consultation, 21 January 2011, p. 7.

For the same reason, the Commission also considers that “prescribed transmission service charges” is too broad a term. Hence, the Commission has determined that the relevant prescribed transmission service charges to be recovered under the annual pricing proposal process be specified as prescribed exit services, prescribed common transmission services and prescribed TUOS services.

The Commission considers the charges proposed to be recovered under the annual pricing proposal process in the draft Rule be maintained for the reasons previously provided in the draft Rule determination.

The Commission notes that in the draft Rule it had specified payments between DNSPs for use of the distribution system for prescribed transmission services as a type of cost recoverable under the annual pricing proposal process. However, the Commission had specified the relevant prescribed transmission services to be recovered under the annual pricing proposal process as prescribed exit services, prescribed common transmission services and prescribed TUOS services (as opposed to prescribed transmission services in general). As a result, the Commission has decided that inter-DNSP payments should be consistent with this., Payments between DNSPs for use of the distribution network that may be recovered through the annual pricing proposal process have been adjusted so that they are limited to charges for prescribed exit services, prescribed common transmission services and prescribed TUOS services (as well as for standard control services).⁵³

5.3.2 Negotiated transmission service charges

Draft Rule determination

In the Rule change request, the Proponent raised the issue of recovery of negotiated transmission service charges.⁵⁴ However, as discussed above, to ensure that the charges included under the annual pricing proposal process are those that are subject to sufficient regulatory oversight, only specific charges relating to prescribed transmission services were defined.

Final Rule determination

The Commission does not agree that there is sufficient regulatory oversight for negotiated transmission service charges (in general) under the annual pricing proposal process that would protect customers against inefficient costs being passed through to customers.

The negotiating framework and negotiated transmission service criteria (NTSC) assume that the negotiation for these charges is between TNSPs and large customers, where there is some bargaining power and the customer has a commercial interest in minimising the negotiated charge. Permitting DNSPs to pass negotiated transmission

⁵³ The Rule as Made defines these particular prescribed transmission services as “designated pricing proposal services”.

⁵⁴ United Energy Distribution, Submission to first round consultation, 8 October 2010, p. 5.

service charges (in general) through the annual pricing proposal process (where the AER does not have the ability to assess the efficiency of such charges) would remove any incentive on the DNSP to minimise those charges.

Therefore, the Commission has maintained its view from the draft Rule determination that these charges (in general) should not be recovered under the annual pricing proposal process. The Commission notes that the DNSPs may instead apply to the AER to seek recovery of negotiated transmission service charges (in general) under the distribution determination process or, in certain circumstances, as a cost pass through event.

However, the Commission considers that certain charges for negotiated transmission services in Victoria should be treated as a temporary exception to the general principle. These charges are for negotiated transmission service charges which are levied by AEMO for augmenting the relevant declared shared network to facilitate a network to network connection service. This is discussed further in section 6.3.

5.3.3 Non-regulated transmission service charges

Similar to negotiated transmission service charges (in general), the Commission does not agree that there is sufficient regulatory oversight for non-regulated charges under the annual pricing proposal process that would protect customers from inefficient costs being passed through to customers. However, the Commission has provided for transitional arrangements for Ergon Energy and ENERGEX's non-regulated charges. This is discussed further in section 6.3.

5.3.4 Network support agreement payments

Draft Rule determination

With respect to the network support agreement costs paid by SPI Electricity for the Bairnsdale Power Station, the Commission allowed for a specific transitional provision for this. This was to account for the ESC's previous approval of this network support agreement arrangement.

The Commission was not aware of any other similar network support agreements that should be included in the transitional provisions, but welcomed submissions on this issue.

Final Rule determination

The Commission considers that given the broad nature of network support agreements, and only the Bairnsdale network support agreement being in existence which was previously approved by the ESC, only the Bairnsdale network support agreement payments should be included under the annual pricing proposal process. If there are any new network support agreements in the future, then this should be submitted to the AER for its consideration under the distribution determination process or, in certain circumstances, as a cost pass through event.

5.3.5 An “other charges” category

Draft Rule determination

The Commission considered the option of including a general provision under the annual pricing proposal process to allow DNSPs to recover other charges that are not captured by those specifically defined. These other charges would be charges outside of the DNSP’s control but incurred in the provision of standard control services. The AER’s distribution determination process would determine the categories of allowable ‘other charges’ that the DNSP may include. That is, under this option, if a DNSP incurred a cost in the provision of standard control services that was not within its control (and therefore it could not be accurately forecast at the time the distribution determination was made), then the AER would determine this as an ‘other cost’. The DNSP would then be able to include this other cost under its annual pricing proposal.

However, without being able to specifically define what these other charges might be, this option may be difficult to implement and potentially create ambiguities. This may increase the regulatory burden on the AER and DNSPs and lack sufficient transparency. On balance, the Commission decided not to pursue this option.

The Commission noted that under the distribution determination process DNSPs can apply for the inclusion of any other costs they incur in providing standard control services. Under certain circumstances, DNSPs could also seek a cost pass through event.⁵⁵

Final Rule determination

The Commission is not convinced from submissions that an “other charges” category would be appropriate under the annual pricing proposal process, even with the addition of guiding principles, as it would still increase regulatory burden and lack sufficient transparency. Therefore, the Commission maintains its position as in the draft Rule determination.

The Commission considers that, under the distribution determination process (or, in certain circumstances, as a cost pass through event), DNSPs may apply for the inclusion of any other costs they incur in providing standard control services.

5.3.6 SENEs services

Final Rule determination

The Commission notes that the draft Rule for SENEs no longer requires customers to underwrite the cost of spare network capacity for the purpose of connecting future generation. According to the draft Rule for SENEs, TNSPs would therefore not be passing through network costs associated with SENEs to DNSPs. While the draft Rule for SENEs does require DNSPs to cooperate with TNSPs for the purpose of conducting

⁵⁵ Clause 6.6.1 of the NER.

a SENE design and costing study, the TNSP would have to meet the reasonable costs of the DNSP in complying with any request for information (clause 5.5A.4(b) of the draft Rule for SENEs). In addition to this, given that the SENEs Rule change process is still underway, the Commission does not consider it appropriate to include any charges related to SENEs for the purposes of this Rule determination.

5.4 Conclusion

The Commission has decided to maintain its previous position as in the draft Rule determination on defining the specific types of charges that can be recovered through the annual pricing proposal process. However, for consistency, the Commission has amended the list of charges with respect to payments between DNSPs for use of the distribution system to clarify that these charges more specifically relate to charges for prescribed exit services, prescribed common transmission services and prescribed TUOS services (as well as for standard control services). Therefore, the charges that can be recovered through the annual pricing proposal process include:

- prescribed exit services;
- prescribed common transmission services;
- prescribed TUOS services;
- avoided customer TUOS payments;
- payments between DNSPs for use of the distribution system which are charges for prescribed exit services, prescribed common transmission services, and prescribed TUOS services; and
- charges for standard control services from other DNSPs it incurs as a Distribution Customer.

The Commission has also decided to allow for a special provision for recovery under the annual pricing proposal process of costs associated to the Bairnsdale network support agreement.

Specifying these charges will likely contribute to the NEO in the long term interests of consumers as only efficient costs can be recovered via the annual pricing proposal process.

The Commission considers that DNSPs may apply to the AER to seek recovery of other charges such as negotiated transmission service and non-regulated transmission service charges, and network support agreement payments (with the exception of Bairnsdale) under the distribution determination process or, in certain circumstances, as a cost pass through event.

6 Transitional provisions

This chapter considers what transitional provisions should be included as a result of this Rule as Made commencing operation. This relates to assessing the interaction between the Rule as Made and the terms of the current distribution determinations. For Victorian DNSPs, the timing of the Rule as Made has prevented them from recovering their permitted costs in 2011.

6.1 Proponent's view

The Proponent did not include transitional provisions in its Rule change request as it had requested for an expedited Rule change process.

6.2 Stakeholder views

6.2.1 First round of consultation

Subsequent to its Rule change request, the Proponent proposed in its submission to the first round of consultation that as the Rule change process will not be completed before the Victorian DNSPs' distribution determinations have been made and annual pricing proposals have been approved, "there [should] be a limited re-opening of the relevant distribution determinations only to the extent necessary to make those determinations consistent with the rule provisions that are amended as a consequence of any rule change".⁵⁶ In particular, the Proponent proposed that the transitional provisions apply to Victorian DNSPs where:⁵⁷

- the AER and relevant Victorian DNSPs would agree on any amendments to the distribution determination and any approved pricing proposals to comply with the Rule made; and
- the validity of previous distribution determinations and pricing proposals would not be affected by the Rule made.

Ergon Energy submitted that previous AER decisions relating to DNSPs, in particular for the DNSPs' current regulatory control periods, should be unaffected by this Rule change.⁵⁸

EnergyAustralia was also of the view that previous AER decisions on pricing proposals with respect to transmission-related payments should remain valid. However, it suggested that the transitional provisions should apply in the AER's next decision on a

⁵⁶ Ibid, p. 13.

⁵⁷ Ibid.

⁵⁸ Ergon Energy, Submission to first round consultation, 1 October 2010, p. 4.

pricing proposal and should take effect immediately to confirm the validity of the AER's approach to this issue.⁵⁹

For Victoria, the AER recommended that costs recoverable as a consequence of this Rule change should be recovered over the remaining years of the regulatory control period (1 January 2012 to 31 December 2015).⁶⁰ It considered that this would minimise the potential price shock for Victorian consumers in 2012.⁶¹

6.2.2 Second round of consultation

Commencement of the Rule as Made

Country Energy and EnergyAustralia supported that the Rule as Made commence by the next regulatory year.⁶² However, Ergon Energy was opposed to this, and requested that the Rule as Made should only commence at the start of the next regulatory control period and allow for recovery of all its transmission-related charges.⁶³ Otherwise, Ergon Energy considered it would be prevented from passing through some transmission-related charges which it is currently able to pass through according to its current distribution determination.

Victorian DNSPs' recovery of 2011 under-recovered permitted charges

The Victorian DNSPs considered that the draft Rule would lead to a heightened price shock as the time over which recovery of permitted charges would occur would be for a shorter period.⁶⁴ They proposed amendments which would allow Victorian DNSPs to submit revised 2011 pricing proposals within four weeks of any final Rule determination being made. The AER would then be required to publish and assess these pricing proposals.

They also suggested that price shocks and administrative burden could be further minimised by Victorian DNSPs by aligning the effective date of the new prices (subsequent to any reopening of the Victorian distribution determinations) with Victorian retailers' variation of their licensee standing offers in July 2011. Compared to the draft Rule, they suggested that the price shock could then be spread over four and a half years as opposed to four years.

⁵⁹ EnergyAustralia, Submission to first round consultation, 1 October 2010, pp. 6-7.

⁶⁰ AER, Submission to first round consultation, 1 October 2010, p. 2.

⁶¹ Ibid.

⁶² Country Energy, Submission to second round consultation, 30 December 2010, p. 1; EnergyAustralia, Submission to second round consultation, 21 January 2011, pp. 2-3.

⁶³ Ergon Energy, Submission to second round consultation, 21 January 2011, p. 2.

⁶⁴ United Energy Distribution, Submission to second round consultation, 21 January 2011, pp. 15-16; ETSA Utilities, Submission to second round consultation, 21 January 2011, p. 2.

6.3 Commission's analysis

6.3.1 Negotiated transmission service charges

Final Rule determination

As discussed in section 5.3, the Commission has not allowed for negotiated transmission service charges (in general) to be recovered under the annual pricing proposal process.

However, the Commission considers that certain charges for negotiated transmission services in Victoria should be treated as a temporary exception to the general principle. In Victoria, AEMO has responsibility for planning and directing augmentation of the shared transmission network which supports connection services. In cases where transmission connection investments require investments in the shared network, there is a possibility that AEMO may classify these as negotiated transmission services. Given that Victorian DNSPs did not have the opportunity to seek recovery for such costs through the distribution determination process because of the timing of the Rule as Made and also recognising that AEMO is subject to a different regulatory process compared to other TNSPs, the Commission has decided that the Rule as Made should allow only Victorian DNSPs to recover these types of charges under the annual pricing proposal process as a transitional provision. This transitional provision will only apply for the current regulatory control period (1 January 2011 to 31 December 2015). The Commission notes the development of a memorandum of understanding between AEMO and the Victorian DNSPs will clarify these joint planning requirements and how these services should be classified. The Commission considers that this should be resolved by the next regulatory control period. If this is not resolved by the next regulatory control period, DNSPs could seek to recover these charges through the distribution determination process or, in certain circumstances, as a cost pass through event.

6.3.2 Non-regulated transmission service charges

Draft Rule determination

The Commission noted the differences in application of inter-DNSP payments between jurisdictions. The Commission considered that the types of charges it has defined should capture these different types of charges, but welcomed submissions on this issue.

Final Rule determination

The Commission in general considers that any non-regulated charge agreed under an existing distribution determination should be allowed to be recovered under the annual pricing proposal process for the remainder of the current regulatory control period. This would be fair and promote efficient recovery of costs. Otherwise, DNSPs

would be unable to recover such costs because they would not have been accounted for in the DNSP's annual revenue requirement for the current regulatory control period.

On this basis, the Commission has allowed for transitional provisions to allow for the following specific charges to be recovered under the annual pricing proposal process for only the current regulatory control period (1 July 2010 to 30 June 2015):

- Ergon Energy's non-regulated transmission service charges in relation to four non-regulated connection points between Ergon Energy's distribution network and Powerlink's transmission network;
- charges for Ergon Energy to use the non-regulated 220kV network which supplies the Cloncurry Township; and
- ENERGEX's non-regulated transmission service charge in relation to a connection point between its distribution network and Powerlink's transmission network at Archerfield.

For the next regulatory control period (1 July 2015 to 30 June 2020), Ergon Energy and ENERGEX would need to apply to the AER for the above charges to be recovered under the distribution determination process or, in certain circumstances, as a cost pass through event.

For other non-regulated transmission service charges, similar to negotiated transmission service charges (in general), the Commission notes that the DNSPs may apply to the AER to seek recovery of these charges under the distribution determination process or, in certain circumstances, as a cost pass through event.

6.3.3 Commencement of the Rule change

Draft Rule determination

The Commission considered that the amending Rules should apply to all DNSPs from the first regulatory year after the commencement of the Rule, if made. This would provide consistency of approach across the NEM and provide for certainty to DNSPs that their previously approved annual pricing proposals will not be affected.

Final Rule determination

The Commission notes Ergon Energy's concern. However, given that the Rule as Made now allows Ergon Energy to recover its non-regulated charges for the remainder of the current regulatory control period, the Commission considers that the commencement of the Rule as Made in the next regulatory year should not have a negative impact on Ergon Energy.

6.3.4 Victorian DNSPs' recovery of 2011 under-recovered permitted charges

Draft Rule determination

The Commission agreed with submissions that Victorian DNSPs should be allowed to recover their permitted costs that they were otherwise unable to recover through their annual pricing proposals for the 2011 regulatory year. The Commission also agreed with the AER that in allowing Victorian DNSPs to recover their costs for the 2011 regulatory year in their 2012 pricing proposals, consideration must be given to limiting the potential price shocks to Victorian consumers. Therefore, the transitional provisions should allow the AER to smooth the 2011 costs over the remainder of the regulatory control period (2012-2015).

Final Rule determination

The Commission considers that permitting a change to DNSP's 2011 distribution prices within the 2011 regulatory year would be an extreme market intervention as it would:

- set a precedent for future challenges to the AER's approval process of annual pricing proposals, resulting in regulatory uncertainty and administrative burden;
- set a precedent for future opportunities for additional mid-year pricing adjustments;
- create cash flow issues for retailers; and
- generate additional administrative costs.

The Commission also notes that to date, it is not the practice to allow prices to be amended mid-year. For example, in cases of a natural emergency event, terrorism, or a favourable ruling to the regulated service provider from the Australian Competition Tribunal, regulated service providers have to wait until the following regulatory year to amend their tariffs.

Therefore, the Commission has decided to maintain its decision in the draft Rule determination and only allow Victorian DNSPs to seek recovery of its 2011 under-recovered permitted costs in their next annual pricing proposal. However, the Commission has decided to allow the flexibility to determine at the next annual pricing proposal process how Victorian DNSPs' under-recovered permitted charges in 2011 should be recovered, as opposed to requiring these costs to be automatically spread over the remainder of the regulatory control period.

6.4 Conclusion

Transitional arrangements have been provided for Victorian DNSPs to recover negotiated transmission service charges which are levied by AEMO for augmenting the relevant declared shared network to facilitate a network to network connection service, and Ergon Energy and ENERGEN to recover their specific non-regulated charges.

These charges can be recovered for only the current regulatory control period. The Commission considers this will provide regulatory certainty for Victorian DNSPs, Ergon Energy and ENERGEX.

The Commission has also decided to maintain its previous position where the Rule as Made will commence operation for the next regulatory year onwards. The Commission considers that this will provide regulatory certainty to DNSPs.

The Rule as Made also continues to allow Victorian DNSPs to apply to the AER to recover any relevant costs incurred in 2011 in their next pricing proposal. Allowing Victorian DNSPs to recover any permitted costs incurred in 2011, which they would otherwise not have been able to recover, will likely ensure efficient recovery of costs and promote efficient investment in the provision of standard control services. Without requiring these under-recovered 2011 permitted costs to be spread over the remainder of the Victorian regulatory control period, there will be flexibility to determine how these costs should be recovered. The Commission considers this will allow for administrative efficiency and regulatory oversight.

7 Consequential amendments

This chapter considers what consequential amendments should be made to the existing NER as a result of the Rule as Made.

7.1 Proponent's view

With respect to duplication of costs, the Proponent proposed that payments otherwise captured under clause 6.18.7A (jurisdictional schemes) be excluded from clause 6.18.7 as payments under feed-in tariff schemes could be also recovered by embedded generators.⁶⁵

7.2 Stakeholder views

7.2.1 First round of consultation

No submissions were received during the first round of consultation on any consequential changes to the NER.

7.2.2 Second round of consultation

DNSPs considered that the proposed amendment in the draft Rule to the true-up provisions allows for further prescription but contains errors which require further amendment and consultation.⁶⁶ In particular, they suggested that the true-up adjustments include a time value of money adjustment to recognise inflation and opportunity cost of capital related to the overs/unders amount, and for Victorian DNSPs to include a term used as part of the correction factor in the Victorian distribution determination.

Alternatively, DNSPs proposed that the current arrangements could be retained whereby the AER decides as part of its distribution determination the adjustments to be made to subsequent pricing proposals to account for over or under recovery.⁶⁷

The Victorian DNSPs also noted that the true-up provision for jurisdictional schemes under clause 6.18.7A was similar to the proposed clause 6.18.7(c) in the draft Rule. They suggested that this clause could be also amended.⁶⁸

⁶⁵ United Energy Distribution, Rule change request, 24 June 2010, pp. 5-6 of request.

⁶⁶ Ergon Energy, Submission to second round consultation, 21 January 2011, p. 2; EnergyAustralia, Submission to second round consultation, 21 January 2011, pp. 2-5; United Energy Distribution, Submission to second round consultation, 21 January 2011, p. 17.

⁶⁷ ETSA Utilities, Submission to second round consultation, 21 January 2011, p. 1; United Energy Distribution, Submission to second round consultation, 21 January 2011, pp. 17-18.

⁶⁸ United Energy Distribution, Submission to second round consultation, 21 January 2011, p. 19.

EnergyAustralia were concerned that the current billing provisions under clauses 6.20.2 and 6A.27.1 did not ensure transparency from a coordinating TNSP and DNSP about how the charging parameters in a price list or bill relate to prescribed exit services, prescribed common transmission services, and prescribed TUOS services. It proposed that these provisions should be amended to require TNSPs and DNSPs to identify the components of the charges that the DNSP incurs.⁶⁹ This would be relevant when DNSPs refer to these itemised costs in their annual pricing proposals.

7.3 Commission’s analysis

7.3.1 True-up provision

Draft Rule determination

The Commission considered that a consequential change would be required to the “true-up” provision in clause 6.18.7(c) to ensure that the actual charges incurred by DNSPs are recovered. The current true-up provision refers to the reconciliation of cost recovery from the previous regulatory year. However, as the ‘previous regulatory year’ would not have ended at the time a DNSP is preparing its annual pricing proposal, the true-up provision should be clarified. That is, at the time a DNSP prepares its annual pricing proposal for the forthcoming regulatory year (say, “year t”), its actual data for charges incurred and its cost recovery for year t-1 would not yet be available for the full year. Therefore, it would not be able to fully reconcile the difference between the actual charges incurred and recovered for year t-1.

In other words, when DNSPs are required to submit their annual pricing proposals to the AER, DNSPs can only provide actual amounts available at the date that it submits its pricing proposal to the AER. The amounts for the remaining period of year t-1 would only be estimated amounts. This means that the actual amounts paid and passed on to customers for year t-1 would not be known until after submitting the pricing proposal for the forthcoming regulatory year. As a result, the final true-up can only occur in year t+1. Therefore, to ensure reconciliation can be carried out effectively, the true-up provision has been amended to account for the new charges that would be recovered under clause 6.18.7.

Final Rule determination

From submissions and further engagement with DNSPs, the Commission noted that there are significant differences in the current true-up adjustment methodology between DNSPs. This means that the prescribed level of detail in the draft Rule for the true-up provision will be difficult for DNSPs to implement and lead to consequential differences with current practices which may make DNSPs either worse off or better off.

⁶⁹ EnergyAustralia, Submission to second round consultation, 21 January 2011, pp. 6-7.

On balance, the Commission considers that there is a need for a consistent approach and that a high level principles-based approach can achieve this. This approach will allow the AER and DNSPs the flexibility and clarity to determine how to make true-up adjustments. In particular, the calculation of the over and under recovery amount will be based on the following principles:

- calculation of the over and under recovery amount will be consistent with the method determined by the AER in the distribution determination for the DNSP;
- a Distribution Network Service Provider will be able to recover from customers no more and no less than the designated pricing proposal charges it incurs; and
- adjustments will be made to the calculation of the over and under recovery amount for an appropriate cost of capital that is consistent with the rate of return used in the relevant distribution determination for the relevant regulatory year.

Further, given the similarity in application between the true-up provisions under clauses 6.18.7 and 6.18.7A (for jurisdictional schemes i.e. payments for feed-in tariffs and climate change funds), the Commission decided that it would be practical to also amend the true-up provision under clause 6.18.7A.

7.3.2 Duplication of recovery of costs

Draft Rule determination

With the amendment to clause 6.18.7 for the cost recovery of specific charges, a consequential change should be made to prevent potential double counting of any costs to be recovered.

Final Rule determination

The Commission notes that no second round submissions were received on its draft Rule determination for the consequential change to the NER to include prevention of potential double counting of any costs to be recovered. This consequential change has been retained in the Rule as Made, with minor amendments.

7.3.3 Minimum information requirements in bills from DNSPs and TNSPs to DNSPs

Final Rule determination

For clarity and transparency, the Commission has decided to include a consequential amendment to clauses 6.20.2 and 6A.27.1 of the NER. In addition to the current minimum information requirements in network service bills, TNSPs and DNSPs will be required to separately identify the amounts for prescribed exit services, prescribed common transmission services and prescribed TUOS services in the bill for the other DNSPs. This will allow DNSPs to determine the charges that can be recovered and will enable DNSPs to refer to this information in their annual pricing proposals.

7.3.4 Inconsistency between current distribution determinations and the annual pricing proposal process

Final Rule determination

As a consequence of clarifying the charges that can be recovered under the annual pricing proposal process, a situation may arise where there could be an inadvertent inconsistency between allowing for these clarified charges to be recovered under the annual pricing proposal process according to the Rule as Made and the same charges not being permitted to be recovered under the annual pricing proposal process according to the current distribution determination. To avoid any doubt, the Commission considers that where there is such an inconsistency, the Rule as Made shall take precedence and the AER may not reject the pricing proposal on the basis of the distribution determination.

7.4 Conclusion

The Commission concludes that the consequential amendments to the true-up provisions under clauses 6.18.7 and 6.18.7A will allow for flexibility and clarity when making the overs/unders adjustment calculations.

The Commission has also concluded that costs which will be recovered under the annual pricing proposal process will not be duplicated, given these have been clearly specified. This will ensure regulatory certainty and efficient recovery of costs.

DNSPs and TNSPs will also be required to identify in their bills to DNSPs the components of charges relevant to the charges passed through the annual pricing proposal process. This will also provide for clarity and transparency as part of the annual pricing proposal process.

The Commission has decided that charges permitted to be recovered under the annual pricing proposal process in accordance with the Rule as Made will take precedence over anything contrary in the current distribution determination. Should such a scenario arise, the Commission considers that this will provide certainty to DNSPs and the AER.

Abbreviations

AEMC or Commission	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
DNSP	Distribution Network Service Provider
ESC	Essential Services Commission of Victoria
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER	National Electricity Rules
NSP	Network Service Provider
NTSC	Negotiated transmission service criteria
SENEs	Scale efficient network extensions
TNSPs	Transmission Network Service Providers
TUOS	Transmission use of system

A Summary of issues raised in submissions

A.1 First round of consultation

Stakeholder	Issue	AEMC Response
General		
All submissions	Supports the intent of the Rule change request, which is to amend the NER, to clarify that DNSPs should be able to recover any legitimate costs for transmission-related services.	Noted.
All submissions	Transmission-related, inter-DNSP and avoided TUOS costs have been recovered through a mechanism similar to clause 6.18.7 of the NER under previous distribution determinations by the ESC and other jurisdictional regulators.	Noted.
Transitional provisions		
AER (p. 2)	For Victoria, recommends the non-TUOS costs to be recovered over the remaining years of the regulatory control period (2012-2015), allowing for the time value of money and to minimise the potential for a price shock for consumers in 2012. These costs would not have been recovered in 2011.	DNSPs should be able to recover their legitimate costs for the 2011 period and would spread this across the remainder of the regulatory control period i.e. 2012 to 2015.
Victorian Department of Primary Industries (DPI) (p. 1)	Strongly encourages that a resolution be reached as soon as possible to provide certainty on the treatment of costs for the 2011-2015	Noted - savings and transitional provisions can be applied to mitigate uncertainty.

Stakeholder	Issue	AEMC Response
	regulatory control period for Victorian DNSPs.	
DPI (p. 1)	Concerned that if the issue is not resolved according to the proposed Rule, an alternative approach may be adopted where DNSPs transfer the risk associated with these charges to Victorian electricity consumers who may have to pay more than they would otherwise.	Noted - savings and transitional provisions can be applied to mitigate uncertainty.
EnergyAustralia (pp. 6-7)	Previous AER decisions on pricing proposals with respect to transmission-related payments should remain valid. These transitional Rules would apply in the AER's next decision on a pricing proposal. The proposed Rule should take effect immediately to confirm the validity of the AER's approach to this issue.	Previously approved annual pricing proposals would remain valid until the next regulatory year for non-Victorian DNSPs. For Victorian DNSPs, transitional provisions have been provided as their distribution determination was in progress during the Rule change process.
Ergon Energy (p. 4)	The proposed Rule should take effect in the next regulatory control period, given that the Queensland distribution determinations have already commenced and the AER has allowed for the recovery of transmission-related payments.	The proposed Rule would take effect in the next regulatory year.
Victorian DNSPs (pp. 13-14)	Proposes that there be a limited re-opening of the relevant distribution determinations only to the extent necessary to make those determinations consistent with the Rule provisions that are amended as a consequence of any Rule change. The AER and the relevant Victorian DNSPs would agree on any amendments to the distribution determination and any approved pricing proposals required to give effect to the amending Rule made as if the	Transitional provisions have been provided to allow Victorian DNSPs to recover any relevant 2011 costs over the remainder of the regulatory control period (2012-2015) that they would otherwise not have been able to recover.

Stakeholder	Issue	AEMC Response
	Rule change applied from 30 November 2009. The distribution determination and approved pricing proposals would be reopened only to the extent necessary to give effect to the amending Rule made agreed between the AER and the relevant Victorian DNSP.	
Annual proposal pricing process versus distribution determination		
AER (p. 2), Ergon Energy (p. 3), EnergyAustralia (pp. 1,3-6), Integral Energy (p. 4), Victorian DNSPs (pp. 10-12)	Recovery of transmission-related payments through the annual pricing approval process is appropriate. AER, EnergyAustralia and Victorian DNSPs considers that forecast of costs under the building block determination approach creates a high risk of under or over recovery from consumers. Most of the DNSPs consider that these charges are also outside of the DNSPs' control. The annual pricing approach ensures that DNSPs will recover only their actual charges and provides an assurance to end-users that they will only pay for the actual expenses incurred by DNSPs in respect of the relevant cost components.	The draft Rule clarifies the existing annual pricing proposal process, including clearly specifying the types of charges which can be recovered.
Country Energy (p. 1)	The current New South Wales arrangements should be replicated for all regulatory determinations and would enable appropriate recovery of all transmission-related costs for DNSPs.	As above.
Ergon Energy (pp. 3-4), Victorian DNSPs (p. 9)	The level of transparency in the calculation of charges for transmission and distribution related payments are appropriate. These charges are subject to sufficient regulatory oversight through	Noted.

Stakeholder	Issue	AEMC Response
	regulatory processes managed by the AER.	
Integral Energy (p. 4), AEMO (p. 1)	The Proponent only seeks clarification on the way it passes through these costs in a pricing proposal approved by the AER, rather than whether they should be included in an AER distribution determination. Does not believe that the broader matters raised in the Consultation Paper are pertinent to objectives of the proposed change.	To ensure the costs recovered are efficient costs and in the long term interests of consumers, consideration of the different options to ensure the appropriate level of regulatory oversight for these costs needs to be taken into account, whether this would be achieved through the annual pricing proposal process, distribution determination or another process.
Types of recoverable transmission-related and other charges		
All submissions	The transmission charges to be paid to TNSPs for use of the transmission system, avoided TUOS to be paid to embedded generators, and payments made to other DNSPs for use of their network (inter-DNSP payments) costs should be recoverable.	See section 5.3.
AEMO (p. 1)	Rule change will clarify that costs identified in the joint RIT-T assessments may be recovered by DNSPs where they cover prescribed services.	See above.
ENERGEX (p. 1), Ergon Energy (p. 2), Victorian DNSPs (pp. 3,5-6)	Any transmission service charges regardless of service classification (prescribed, negotiated or non-regulated) incurred in the provision of standard/direct control services should be recoverable.	See above.
EnergyAustralia (pp. 1,4-5)	Current practice in New South Wales is to enable the DNSP to recover the gross payments made to another distributor. Propose changes to the drafting of the proposed Rule, where the	Noted - this issue is resolved by specifying charges for distribution services provided by another DNSP but only to the extent those charges comprise of charges incurred by that DNSP for prescribed transmission services or charges for standard control services, which

Stakeholder	Issue	AEMC Response
	provision should only refer to payments made by a DNSP and remove the reference to 'net' of services provided to other distributors. Otherwise, DNSPs would not be unable to recover their annual revenue requirement.	should be recoverable under the annual pricing proposal process. See section 5.3.
EnergyAustralia (p. 4)	Without an ability to recover inter-DNSP payments, a DNSP may have perverse incentives to build additional network to service the customers directly from its own distribution network.	Noted.
EnergyAustralia (p. 5)	Rules require DNSPs to make avoided customer TUOS payments to embedded generators. Under Clause 5.5 of the NER, a DNSP must pass through to a Connection Applicant the amount for the locational component of prescribed TUOS services that would have been payable by the DNSP to a TNSP had the Connection Applicant not been connected to its distribution network.	Avoided customer TUOS payments should be recoverable through the annual pricing proposal process.
Ergon Energy (pp. 2-3), Victorian DNSPs (pp. 6-8)	Any definition of 'inter-DNSP payments' should cover all aggregate charges paid by one DNSP to another DNSP which is associated with the connection and use of its network. Given the relatively wide nature of distribution services that may potentially be provided by one DNSP to another DNSP, it is preferable not to define inter-DNSP; but if necessary, it could be "a payment between distributors for use of the distribution system".	See above.

Stakeholder	Issue	AEMC Response
Victorian DNSPs (p. 4)	The current definition for “transmission services” under the NER should apply and charges associated with transmission services should be represented in the tariffs submitted as part of the annual pricing proposal process.	See above.
Victorian DNSPs (pp. 5-6)	Non-regulated transmission services are transmission services that are neither prescribed nor negotiated transmission services. Non-regulated transmission services are not regulated under Chapter 6A. Services that are capable of being provided on a genuinely competitive basis are non-regulated transmission services. DNSPs would negotiate a charge for such services directly with the unregulated transmission service provider.	See above.
Victorian DNSPs (p. 6)	There may be a difference of opinion as to whether any augmentation required to the transmission network to facilitate the connection is to be properly characterised as a prescribed transmission service or a negotiated transmission service. However, AEMO has previously stated that negotiated services can be inputs to standard control services. Therefore, it should be recoverable.	See above.
Victorian DNSPs (p. 8)	Given the different approaches taken to payments between DNSPs for use of the distribution network in New South Wales and Victoria, the proposed Rule should be amended to require the pricing proposal to provide for tariffs designed to pass on to customers the	See above.

Stakeholder	Issue	AEMC Response
	charges to be incurred by the DNSP for distribution services provided by other DNSPs. The netting or otherwise of such charges is an administrative process that can be dealt with in the pricing proposal, which is subject to approval by the AER.	
Victorian DNSPs (pp. 4,8-9)	Under clause 5.6.2(m), where an NSP implements a generation option as an alternative to network augmentation, the cost of the network support is to be included in distribution service prices. These are charges for network support agreements which cannot be forecast accurately as part of the distribution determination process. These charges should be recovered through tariffs as part of the annual pricing proposal process.	See above
Victorian DNSPs - initial submission (p. 10)	A significant component of 'other charges' is avoided transmission costs. Two DNSPs currently report charges in this category, Jemena and SP AusNet. SP AusNet makes payments for avoided transmission costs to the owners of the Bairnsdale Power Station, in the context of a network support agreement which was negotiated and finalised in 2001. Avoided transmission charges reflect the opportunity cost of building a transmission link between Morwell and Bairnsdale and are also representative of the capital and operating costs that would have been incurred in the construction and commissioning of a terminal station in Bairnsdale. This network support agreement was approved by the ESC and is expected to remain	A specific transitional provision has been included to allow for SPI Electricity to recover these costs associated to the Bairnsdale Power Station which was previously approved by the ESC.

Stakeholder	Issue	AEMC Response
	in place until 2020.	
Administrative efficiency		
EnergyAustralia (pp. 1,6), Victorian DNSPs (pp. 12-13)	There should be no administrative costs on the AER and DNSPs with the proposed Rule as it only codifies existing practice. However if the Rule change is not made, there would be a significant increase in administrative costs for all DNSPs as they would have to seek recovery of charges by other means that may create a significant administrative burden.	Noted.
Magnitude of costs		
EnergyAustralia (pp. 2, 3, 5)	For EnergyAustralia, prescribed exit fees accounted for approximately \$60m of the charges were passed through to TNSPs in 2009-10. It currently pays in the order of \$9m annually as inter-DNSP payments to Integral. In 2009-10, EnergyAustralia paid approximately \$2.2m for avoided TUOS charges.	Noted.
Victorian DNSPs - initial submission (p. 9)	Transmission-related service charges for Victorian DNSPs ranged from \$6.9m to \$18.3m, with an average of \$11.3m between 2006 to 2010. Inter-DNSP payments ranged from -\$4.2m to \$4.7m, with an average of \$0.2m. Avoided customer TUOS payments ranged from \$0 to \$1.1m, with an average of \$0.2m. Avoided transmission payments ranged from \$0 to \$9.3m, with an average of \$1.9m.	Noted.

Stakeholder	Issue	AEMC Response
Level of prescription		
Victorian DNSPs (p. 9)	Given the regulatory practice in relation to the pass through of transmission-related costs may have developed differently in the various NEM jurisdictions, and potentially different approaches, this Rule change should not be overly prescriptive.	Noted - prescription may be necessary where uncertainty may arise that would not promote the NEO.

A.2 Second round of consultation

Stakeholder	Issue	AEMC Response
General		
Country Energy (p. 1)	Supports the draft Rule. Consistent with the way NSW DNSPs currently prepare their annual pricing proposals and the NER will be consistent across the NEM.	Noted.
EnergyAustralia (p. 1)	Strongly supports the draft Rule, with suggested changes to improve outcomes consistent with the AEMC's draft determination.	Noted.
Ergon Energy (p. 1)	Does not support the draft Rule.	Noted.
ETSA Utilities (p. 1)	Supports the Victorian DNSPs' submission.	Noted.
Victorian DNSPs (p. 1)	Agrees that all of the charges specified by the AEMC should be provided for in the annual pricing	See below.

Stakeholder	Issue	AEMC Response
	proposal process, but concerned that the draft Rule does not sufficiently address recovery of all transmission services that may be inputs into the provision of standard control services by DNSPs.	
Other charges		
EnergyAustralia (p. 6), ETSA Utilities (p. 1), Victorian DNSPs (pp. 4-6)	“Other charges” may be specified in a distribution determination and then be dealt with as part of the annual pricing proposal process. This would give the AER the flexibility to decide whether any other applicable charges and payments can be recovered by a DNSP as part of the annual pricing proposal process. This will allow for new types of charges and payments that may likely arise in the future, and make better allowance for different types of arrangements between DNSPs and between DNSPs and TNSPs in different jurisdictions. Unique circumstances in Victoria where certain services have the potential to be classified as negotiated transmission services and the Victorian DNSPs would incur transmission charges for such services.	The proposed inclusion of “other charges” is too broad. The appropriate charges need to be clarified and defined.
EnergyAustralia (p. 6)	Another example of other charges is for SENEs services where a coordinating TNSP would need to levy charges on DNSPs to recover the residual amount that is not paid for by generators.	The draft Rule for SENEs no longer requires customers to underwrite the cost of spare network capacity for the purpose of connecting future generation. According to the draft Rule for SENEs, TNSPs would therefore not be passing through network costs associated with SENEs to DNSPs. While the draft Rule for SENEs does require DNSPs to cooperate with TNSPs for the purpose of conducting a SENE design and costing study, the TNSP would have to meet the reasonable costs of the DNSP in complying with any request for information (clause 5.5A.4(b) of the draft Rule for SENEs). In addition to this, given that the SENEs Rule change process is still underway, it would not be appropriate to include

Stakeholder	Issue	AEMC Response
		any charges related to SENE for the purposes of this Rule determination.
EnergyAustralia (p. 6)	There would be sufficient regulatory oversight if the AER was required to make its decision as part of a regulatory determination, subject to the following guiding principles: recovery of charges or payments must be for legitimate costs that a DNSP incurs in providing distribution standard control services; and charges or payments to be recovered under the annual pricing proposal process should be those largely outside the control of the DNSP and/or subject to other regulatory processes.	See above.
Victorian DNSPs (p. 4)	Suggests that other charges would not be numerous, in most circumstances no additional categories would be nominated and would be limited to unique circumstances. Therefore, there would be no additional administrative burden on the AER.	See above.
Victorian DNSPs (p. 6)	Legitimate charges potentially excluded under the draft Rule includes: negotiated transmission services and non-regulated transmission services that are inputs for standard control services by DNSPs, distribution services charges from another DNSP for negotiated or non-regulated transmission services, and network support agreements.	Other than the charges specified under the annual pricing proposal process, other charges incurred by DNSPs may well be legitimate business costs that DNSPs should be allowed to recover. However, some of these costs could be within the DNSPs' control and should be subject to sufficient rigour, which the annual pricing proposal process would not provide, and hence could be assessed under the distribution determination process or, in certain circumstances, as a cost pass through event.
Victorian DNSPs (pp. 5-6, 17)	Confirms that there are no similar network support agreements currently in existence. Although network support agreements are not common for DNSPs, it is more likely in Victoria because they	Given the broad nature of such agreements, and only the Bairnsdale network support agreement being in existence which was previously approved by the ESC, only the Bairnsdale network support agreement payments should be included under the annual pricing proposal process.

Stakeholder	Issue	AEMC Response
	<p>have a transmission connection planning role. These costs cannot be forecast as operating expenditure for the purposes of the distribution determination process. Such costs should be more efficiently passed on to end users through the annual pricing proposal process as other charges. If not included as other charges, then network support agreements should be another category of charges under the annual pricing proposal process provisions. This should provide sufficient regulatory oversight and flexibility to the AER.</p>	<p>If there are any new network support agreements in the future, then this should be submitted to the AER in the distribution determination process or, in certain circumstances, as a cost pass through event.</p>
Transmission service charges		
ETSA Utilities (p. 1)	<p>Charges associated to transmission services generally should be dealt through the annual pricing proposal process. At a minimum, this should include prescribed and negotiated transmission services as opposed to designated pricing proposal services.</p>	<p>The proposed inclusion of “transmission service charges” is too broad. The appropriate charges need to be clarified and defined.</p>
Ergon Energy (pp. 1-2)	<p>Definition of designated pricing proposal charges is too narrow and does not capture non-regulated transmission service charges and other transmission-related charges that DNSPs incur in providing standard control services and currently recovered as TUOS charges passed through to customers. These costs are already recoverable through the current distribution determination process. These include non-regulated transmission service charges in relation to four non-regulated connection points between Ergon Energy’s distribution network and Powerlink’s transmission network, and charges for Ergon Energy to use the</p>	<p>For Ergon Energy and ENERGEX’s non-regulated transmission-related charges, this was allowed for in their current distribution determinations. In the interim, these charges could be recovered under the annual pricing proposal process for only the current regulatory control period.</p>

Stakeholder	Issue	AEMC Response
	non-regulated 220kV network which supplies the Cloncurry Township.	
Victorian DNSPs (pp. 7, 12, 14-15, 20)	In the absence of an “other charges” category under the annual pricing proposal process, all transmission charges (prescribed, negotiated and non-regulated) should be recoverable. DNSPs do not have direct control over transmission services they may incur for inputs to providing standard control services and should therefore be recovered through the annual pricing proposal process. In the absence of all transmission service charges being recoverable under the annual pricing proposal process, the amending Rule should at least include charges for prescribed and negotiated transmission services in the annual pricing proposal process.	<p>For negotiated transmission service charges (in general), there is not sufficient regulatory oversight under the annual pricing proposal process in protecting small customers. The negotiating framework and NTSC assumes that the negotiation for these charges is between TNSPs and large customers, where there is some bargaining power and the customer has a commercial interest in minimising the negotiated charge. Permitting DNSPs to pass through negotiated transmission service charges (in general) through the annual pricing proposal process (where the AER does not have ability to assess the efficiency of such charges) could remove any incentive on the DNSP to minimise those charges.</p> <p>DNSPs may apply to the AER to seek recovery of negotiated transmission service charges (in general) under the distribution determination process or, in certain circumstances, as a cost pass through event.</p> <p>For Victorian DNSPs, given that AEMO is subject to a different regulatory process compared to other TNSPs and Victorian DNSPs did not have the opportunity to seek recovery for such costs through the distribution determination process because of the timing of the Rule as Made, negotiated transmission service charges which are levied by AEMO for augmenting the relevant declared shared network to facilitate a network to network connection service can be recovered under the annual pricing proposal process for only the current regulatory control period.</p>
Victorian DNSPs (p. 8)	If transmission services charges are restricted to prescribed transmission services, the current NER defined term “prescribed transmission services” should be used instead of “designated pricing proposal services” to ensure that any new categories or sub-categories of prescribed	The proposed inclusion of “prescribed transmission service charges” is too broad. The appropriate charges need to be clarified and defined.

Stakeholder	Issue	AEMC Response
	transmission services can be recovered by DNSPs when providing standard control services. This would reduce the administrative burden or regulatory uncertainty.	
Victorian DNSPs (pp. 8-11)	Negotiated transmission services issue has not been sufficiently addressed and why the current regulatory regime and regulatory oversight is not sufficient. These charges are inputs to providing standard control services and should be recoverable, regardless of their service classification. Current regulatory oversight is adequately provided for by Part D and Part K of Chapter 6A. The transmission determination process under Chapter 6A also provides significant regulatory oversight for charges for negotiated transmission services. These charges are largely outside of the control of DNSPs, given the roles of the negotiating framework and NTSC, and subject to the transmission determination process. If these charges are not recoverable, there would be a distortion or incentive in favour of prescribed transmission services, which may not be as effective or cost-efficient as available negotiated transmission services, and be inconsistent with the intention of Chapter 6A to encourage classification of negotiated transmission services over prescribed transmission services where appropriate.	See above.
Victorian DNSPs (pp. 11-12)	AEMO has previously stated that negotiated transmission services can be inputs to standard control services. For shared network augmentations resulting from a new or modified	See above.

Stakeholder	Issue	AEMC Response
	connection, AEMO would more likely classify these as negotiated transmission services. The NER should not be overly restrictive in this respect due to AEMO's different interpretation for the classification of this service.	
Victorian DNSPs (pp. 12-13)	For the same reasons as negotiated transmission service charges, non-regulated transmission service charges should be recoverable. AEMC has not sufficiently addressed this. Additionally, risks of inappropriate or inefficient costs being recovered are limited for non-regulated transmission services because they are provided on a competitive basis, which provides the regulatory oversight for such charges.	See above.
Inter-DNSP charges		
EnergyAustralia (p. 7)	Query whether the definition of prescribed transmission services within the definition of inter-DNSP payments was intended as prescribed transmission services contains more categories than that defined for designated pricing proposal services.	For consistency, the Commission has amended the list of charges in relation to payments between DNSPs for use of the distribution system more specifically relate to charges for prescribed exit services, prescribed common transmission services and prescribed TUOS services (as well as for standard control services).
Victorian DNSPs (pp. 12-13)	Agrees with how the draft Rule addressed inter-DNSP payments.	Noted.
Commencement of the Rule as Made/Transitional provisions		
Country Energy (p. 1)	Imperative that the Rule change commences before the end of April 2011 because Country Energy is scheduled to submit its annual pricing	Noted.

Stakeholder	Issue	AEMC Response
	proposal for 2011-12.	
EnergyAustralia (pp. 2-3)	Express provision in Transitional Chapter 6 should be included to clarify the amending Rules applies from the commencement date of the Rules. This level of certainty is clear for Victorian DNSPs. This should be done similarly for Transitional Chapter 6 so that the amending Rule will apply to the first pricing proposal submitted by a NSW or ACT DNSP and should also be applied to subsequent pricing proposals of the current regulatory period.	Noted.
EnergyAustralia (p. 2)	The application of the distribution determination to future pricing proposals should be excluded to the extent that the determination currently applies to the pass through of designated pricing proposal charges. Making consequential amendments to Transitional Chapter 6 so that the amendment referred to in the previous point can flow through to the other provisions i.e. transitional clause 6.18.8 will need to be amended so that the AER cannot reject the pricing proposal because it does not comply with the distribution determination.	Noted.
Victorian DNSPs (pp. 15-16), ETSA Utilities (p. 2)	The draft Rule would lead to a heightened price shock as the time over which recovery of charges would occur would be over a shorter period. AEMC does not explain why Victorian DNSPs' proposal is not appropriate. Amendments would require transitional provisions to allow Victorian DNSPs to submit revised 2011 pricing proposals within four weeks of any final Rule determination being made. The AER would then be required to publish and assess these pricing proposals. As the relevant	<p>Permitting a change to DNSPs' 2011 distribution prices within the 2011 regulatory year would be an extreme market intervention. In addition, it is not the practice to allow prices to be amended mid-year e.g. in cases of a natural emergency event, terrorism, or a favourable ruling to the regulated service provider from the Australian Competition Tribunal, regulated service providers have to wait until the following regulatory year to amend their tariffs.</p> <p>However, the AER will be given the flexibility to determine at the next annual pricing proposal process to determine how Victorian DNSPs'</p>

Stakeholder	Issue	AEMC Response
	<p>amount to be recovered will vary between Victorian DNSPs, Victorian DNSPs should be able to elect to recover the relevant amounts over the remaining four years of the Victorian regulatory control period as opposed to resubmitting their pricing proposals for the AER's approval. Price shocks and administrative burden could be further minimised by Victorian DNSPs by aligning the effective date of the new prices following any reopening of the Victorian distribution determinations with Victorian retailers' variation of their licensee standing offers in July 2011 (assuming Victorian DNSPs can incorporate any changes resulting from the amending Rule by April/May 2011). The price shock would then be spread over four and a half years as opposed to four years.</p>	<p>under-recovered permitted charges in 2011 should be recovered, as opposed to requiring these costs to be automatically spread over the remainder of the regulatory control period.</p>
True-up provisions		
Ergon Energy (p. 2)	<p>The true-up provisions should be amended so that DNSPs can appropriately adjust its prices for any over and under recovery in 2009-10. This would allow for consistency with the historical treatment of overs/unders adjustments by regulators in Queensland. The draft Rule only allows for 2011-12 prices to be adjusted for 2010-11.</p>	<p>The true-up provision has been amended to include high level principles which takes into account the differences in making true-up adjustments between DNSPs.</p>
EnergyAustralia (pp. 2-5)	<p>The draft Rule does not include a time value of money adjustment to recognise inflation and opportunity cost of capital related to the over-under amount, and uses different terminology compared to the AER's distribution determination. This can be addressed by providing that the amending Rules applies to the exclusion of the distribution</p>	<p>See above.</p>

Stakeholder	Issue	AEMC Response
	<p>determination to the extent it addresses the same matters, with consequential amendments e.g. clause 6.18.8. A new clause 6.18.7(c) may also be required to address under-over recovery amount being appropriately adjusted for inflation and time value of money. Further, new clause 11.[XX].4 of the draft Rule should be replicated in Transitional Chapter 6 to ensure that calculation for under-over recovery amounts in the first pricing proposal after the commencement of the amending Rule does not refer to previous pricing proposals made under the amending Rule.</p>	
Victorian DNSPs (p. 17)	<p>The draft Rule does not provide for adjustments to account for time value of money, a term equivalent to $K(t-1)$ which is used as part of the correction factor in the Victorian distribution determination, and the revenue amount proposed in clause 6.18.7(c)(3) should be properly deducted rather than added to the expense amount in clause 6.18.7(b). If the AEMC decides to continue to have this explicitly defined in the amending Rule, then it needs to take these into account and consult further with DNSPs on the appropriate drafting.</p>	See above.
ETSA Utilities (p. 1); Victorian DNSPs (pp. 17-18)	<p>The current arrangements whereby the AER decides as part of its distribution determination the adjustments to be made to subsequent pricing proposals to account for over or under recovery should be retained, as the draft Rule contains errors which would require further revision and consultation.</p>	See above.

Stakeholder	Issue	AEMC Response
Victorian DNSPs (p. 17)	If the AER continues to include in its distribution determinations a decision on the adjustments to be made to subsequent pricing proposals to account for over or under recovery of those charges, amendments should also be made to the NER: clauses 6.18.7(b), c(1)-(2) to allow for t-2 adjustments to be made; and amendment to clause 6.18.7(c) to provide for adjustments to be made to the under or over recovery amounts to account for time value of money, being a CPI adjustment and a cost of capital adjustment.	See above.
Victorian DNSPs (p. 19)	The proposed true-up provision amendment adopts the current wording in clause 6.18.7A(c). If it is appropriate to do so, as a consequential change, clause 6.18.7A could be amended to provide explicitly for adjustments for CPI and the time value of money, as well as considering whether the amount in clause 6.18.7A(c)(3) should properly be deducted from the amount in 6.18.7A(c)(2).	The true-up provision under clause 6.18.7A has been amended for consistency with the true-up provision under clause 6.18.7.
Other issues		
EnergyAustralia (p. 4)	Does not support a consequential amendment to Transitional Chapter 6 because the amended provision: is not necessary for the Rule to operate for the remaining pricing proposals of the current regulatory period; has no meaningful application as the AER cannot remake its determination to be consistent with the amended provision; and creates unnecessary ambiguity.	Noted.
EnergyAustralia (pp. 6-7)	Concerned that the current billing provisions under	For clarity and transparency, the Rule as Made includes a requirement for

Stakeholder	Issue	AEMC Response
	<p>clauses 6A.27 and 6.20.2 does not ensure transparency from a coordinating TNSP or DNSP about how the charging parameters in a price list or bill relate to prescribed exit services, prescribed common transmission services, and prescribed TUOS services. Clauses 6A.27 and 6.20.2 should be clarified so that a TNSP or DNSP must identify how each charging parameter in a price list and bill relate to a category of designated pricing proposal services. This will enable a DNSP to determine the transmission charges that can be legitimately recovered and the avoided TUOS payments that should be made to embedded generators.</p>	<p>the TNSP and DNSPs to identify the charges related to the components of designated pricing proposal services as a consequential change.</p>