

CHAPTER 11



11. Savings and Transitional Rules

11.1 Rules consequent on making of the National Electricity Amendment (Negative Inter-Regional Settlements Residue) Rule 2006

11.1.1 Recovery of accrued negative settlements residue

- (a) Clause 3.6.5(a)(4), as in force immediately before 1 July 2006 which is the date the National Electricity Amendment (Negative Inter-Regional Settlements Residue) Rule 2006 commences operation, continues to apply to any negative *settlements residue* amounts arising before 1 July 2005 and not recovered as at 1 July 2005 until all such negative amounts have been recovered.
- (b) Where negative *settlements residue* amounts arise on or after 1 July 2005 and are not recovered before 1 July 2006 which is the date the National Electricity Amendment (Negative Inter-Regional Settlements Residue) Rule 2006 commences operation, then:
 - (i) the whole or any part of the amount may be recovered from the proceeds of the first *auction* after 1 July 2006 which is the date the National Electricity Amendment (Negative Inter-Regional Settlements Residue) Rule 2006 commences operation; and
 - (ii) if the whole or a part of the amount is not recoverable under clause 11.1.1(b)(i), the unrecovered amount may be recovered from the proceeds of successive *auctions* until the negative amount is recovered.
- (c) Clause 3.6.5(a)(4A), as in force immediately before 30 June 2009, continues to apply to any *negative settlements residue* amounts arising on or after 1 July 2006 but before 30 June 2009, and not recovered as at 30 June 2009, until all such negative amounts have been recovered.

11.1.2 Recovery of interest costs associated with accrued negative settlements residue

- (a) Where interest costs interest costs incurred by *NEMMCO* in relation to any unrecovered negative *settlements residue* amounts referred to in clause 3.6.5(a)(4A) arise on or after 1 July 2005 and are not recovered before 1 July 2006 which is the date the National Electricity Amendment (Negative Inter-Regional Settlements Residue) Rule 2006 commences operation, then:
 - (i) the whole or any part of the interest costs may be recovered from the proceeds of the first *auction* after 1 July 2006 which is the date the National Electricity Amendment (Negative Inter-Regional Settlements Residue) Rule 2006 commences operation; and

- (ii) if the whole or a part of the interest costs are not recoverable under clause 11.1.2(b)(i), the unrecovered interest costs may be recovered from the proceeds of successive *auctions* until the interest costs are recovered.
- (b) Clause 3.6.5(a)(4B), as in force immediately before 30 June 2009, continues to apply to any interest costs arising on or after 1 July 2006 but before 30 June 2009, and not recovered as at 30 June 2009, until all such interest costs have been recovered.

11.2 Rules consequent on making of the National Electricity Amendment (System Restart Ancillary Services and pricing under market suspension) Rule 2006 No.6

11.2.1 Transitional provision for acquisition of non-market ancillary services

- (a) For the purposes of clause 11.2.1:

Amending Rule means the National Electricity Amendment (System Restart Ancillary Services and pricing under market suspension) Rule 2006.

Existing NMAS contract means an *ancillary services agreement* between NEMMCO and another person to acquire *non-market ancillary services* from that person, entered into prior to the NMAS commencement date.

NMAS commencement date means the date of commencement of the National Electricity Amendment (System Restart Ancillary Services and pricing under market suspension) Rule 2006;

- (b) On the NMAS commencement date
 - (1) Any action taken by NEMMCO or a *Rules body* prior to the NMAS commencement date in anticipation of the commencement of the Amending Rule is deemed to have been taken for the purpose of the Amending Rule and continues to have effect for that purpose.
 - (2) NEMMCO may continue to acquire *non-market ancillary services* under an existing NMAS contract and may extend the period of an existing NMAS contract for such period as NEMMCO and that person reasonably determine.
 - (3) At any time when no *system restart standard* under clause 8.8.3(a)(1a) is in force, NEMMCO must develop and *publish* an interim *system restart standard* that is:
 - (i) consistent with the requirements in clause 8.8.3(a); and
 - (ii) approved by the *Reliability Panel*;and the interim *system restart standard* applies until such time as the *Reliability Panel* determines a *system restart standard*.

11.3 Rules consequent on making of the National Electricity Amendment (Advocacy Panel) Rule 2006

11.3.1 Continuation of things done under old clause 8.10

- (a) For the purposes of clause 11.3.1:

amending Rule means the National Electricity Amendment (Advocacy Panel) Rule 2006;

commencement date means the date of commencement of the amending Rule;

new clause 8.10 means clause 8.10 after the commencement of the amending Rule;

old clause 8.10 means clause 8.10 before the commencement of the amending Rule.

- (b) On the commencement date:

- (1) persons appointed under the old clause 8.10 and clauses 24 and 25 of Schedule 2 to the *National Electricity Law* as Acting Chairperson and members of the *Advocacy Panel*, are taken to be the persons appointed to comprise the interim *Advocacy Panel* under the new clause 8.10 until 1 October 2006;
- (2) any action taken by the interim *Advocacy Panel* referred to in clause 11.3.1(b)(1) for the purpose of preparing the provisional funding requirements for end-user advocacy for the 2006-2007 *financial year*, is deemed to have been taken for the purposes of the new clause 8.10 and continues to have effect for this purpose;
- (3) an application for funding for end-user advocacy that was determined by the *Advocacy Panel* in accordance with the old clause 8.10 as at the commencement date, continues in effect and is taken to be a determination made by the *Advocacy Panel* under the new clause 8.10;
- (4) an application for funding for end-user advocacy made to, but not determined by, the *Advocacy Panel* under the old clause 8.10 as at the commencement date, is taken to be an application under the new clause 8.10, and the *Advocacy Panel* must take any action after the commencement date for the purpose of determining that application in accordance with the new clause 8.10;
- (5) guidelines for making funding applications and funding criteria in force under the old clause 8.10.3, continue to have effect, and are taken to have been issued, for the purposes of the new clause 8.10.6 until 1 March 2007;
- (6) guidelines for the appointment of members of the *Advocacy Panel* in force under the old clause 8.10.2(e), continue to have effect and are

taken to have been issued, for the purposes of the new clause 8.10.3 until 1 March 2007; and

- (7) any action taken by *NEMMCO* for the purpose of recovering amounts from *Participant fees* for the 2006-2007 *financial year* in contemplation of the commencement of the amending Rule, is deemed to have been taken for the purposes of the amending Rule.

11.4 Rules consequent on making of the National Electricity Amendment (Dispute Resolution for Regulatory Test) Rule 2006

11.4.1 Continuation of things done under old clause 5.6.6

- (a) For the purposes of clause 11.4.1:

amending Rule means the National Electricity Amendment (Dispute Resolution for Regulatory Test) Rule 2006

commencement date means the date of commencement of the amending Rule

new clause 5.6.6 means clause 5.6.6 after the commencement of the amending Rule

old clause 5.6.6 means clause 5.6.6 before the commencement of the amending Rule.

- (b) On the commencement date:

- (1) any dispute commenced under the old clause 5.6.6 and not completed before the commencement date, must continue to be conducted and completed as if it were a dispute commenced in accordance with the old clause 5.6.6.

- (2) Subject to clause 11.4.1(b)(1), any action taken under the old clause 5.6.6 is deemed to have been taken for the purposes of the corresponding requirement in the new clause 5.6.6 and continues to have effect for those purposes.

11.5 Rules consequential on the making of the National Electricity Amendment (Metrology) Rule 2006

11.5.1 Definitions

For the purposes of this rule 11.5:

Amending Rule means the National Electricity Amendment (Metrology) Rule 2006.

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

old Chapter 7 means Chapter 7 of the *Rules* as in force immediately before the commencement date.

new Chapter 7 means Chapter 7 of the *Rules* as in force immediately after the commencement date.

11.5.2 Metrology procedures continues to apply until 31 December 2006

A metrology procedure as in force under the old Chapter 7 continues in force in accordance with the old Chapter 7 until 31 December 2006.

11.5.3 Responsible person

A *Local Network Service Provider* who is the responsible person for a *metering installation* under Chapter 9 of the *Rules* immediately before the commencement date continues to be the *responsible person* for that *metering installation* for the purposes of clause 7.2.3.

11.5.4 NEMMCO's responsibility to develop a metrology procedure

- (a) Subject to this clause 11.5.4, *NEMMCO* must *publish* an initial metrology procedure by 1 January 2007 in accordance with the new Chapter 7 and this procedure must commence operation on 1 January 2007.
- (b) The requirement in clause 7.14.1(b) that requires a minimum period of 3 months between the date the *metrology procedure* is published and the date the *metrology procedure* commences does not apply to the initial metrology procedure developed and published under this clause 11.5.4.
- (c) Any action taken by *NEMMCO* for the purpose of developing and publishing an initial metrology procedure prior to the commencement date is taken to satisfy the equivalent actions required for a *metrology procedure* under the new Chapter 7.
- (d) *NEMMCO* may dispense with, or not comply with, any relevant action under rule 7.14, if the action duplicates or is consistent with action that has already been taken under paragraph (c).
- (e) An initial metrology procedure developed and published under this clause 11.5.4 is taken to be the *metrology procedure* for the purposes of Chapter 7 of the *Rules*.
- (f) The initial metrology procedure is not required to incorporate the matters referred to in clause 7.14.1(c)(4) until 30 June 2008 and *NEMMCO* may develop a separate procedure for those matters during that period to 30 June 2008.

11.5.5 Jurisdictional metrology material in the metrology procedure

- (a) For the purposes of this clause 11.5.5, **expiry date** means 1 January 2009.
- (b) Until the expiry date, the *Ministers of the MCE* is taken to be each *Minister of the participating jurisdictions*, acting on behalf of that jurisdiction and undertaking the role of the *Ministers of the MCE* in relation to *jurisdictional metrology material* under clause 7.14.2.

- (c) For the avoidance of doubt, a *Minister of a participating jurisdiction* may delegate the role of submitting *jurisdictional metrology material* to *NEMMCO* under paragraph (b) by instrument in writing.
- (d) A certified copy of any delegation given under paragraph (c) must be provided to *NEMMCO* at the time any *jurisdictional metrology material* is submitted to *NEMMCO* under clause 7.14.2.

[**Note:** Ministers of participating jurisdiction have powers of delegation under their own jurisdictional legislation governing the procedure for conferring such delegations.]

11.6 Rules consequent on making of the National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006

11.6.1 Definitions

Subject to this rule 11.6, in this rule 11.6:

Amending Rule 2006 means the National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006.

commencement date means the date on which the *Amending Rule 2006* commences operation.

current regulatory control period means the regulatory control period applicable to an existing revenue determination.

distribution matters includes matters relating to the economic regulation of *distribution services*, including, but not limited to, existing determinations, decisions, instruments, agreements or any other relevant action.

ElectraNet means ElectraNet Pty Ltd ACN 094 482 416 trading as ElectraNet.

existing revenue determination means any determination made, or deemed to be made, by the *ACCC* or the *AER* on or prior to the commencement date for the purpose of regulating the revenues of a *Transmission Network Service Provider*.

first regulatory control period means a *regulatory control period* immediately after a current regulatory control period.

first revenue cap determination means the first *revenue cap determination* after an existing revenue cap determination.

new Chapter 6A means Chapter 6A of the *Rules* as in force immediately after the commencement of the *Amending Rule 2006*.

old Chapter 6 means Chapter 6 of the *Rules* as in force immediately before the commencement of the *Amending Rule 2006*.

old clause 6.5.9 means clause 6.5.9 of the *Rules* as in force immediately before the commencement of the *Amending Rule 2006*.

old Part C means Part C (Transmission Pricing) of Chapter 6 of the *Rules* as in force immediately before the commencement of the *Amending Rule 2006*.

old Part F means Part F (Interconnections) of Chapter 6 of the *Rules* as in force immediately before the commencement of the *Amending Rule 2006*.

relevant action includes (without limitation) any of the following actions in relation to *distribution* matters:

- (a) the performance or exercise of any function, power, obligation or right;
- (b) the making or publishing of any guideline, standard, procedure, report, negotiating framework or other document;
- (c) the giving, publishing, service or receipt of any communication, notice or other document;
- (d) the provision or receipt of any submission or information;
- (e) the making or receiving any inquiry, request or application;
- (f) the undertaking or completion of any transaction;
- (g) the payment of any monetary amount or fee.

renumbered Chapter 6 means Chapter 6 of the *Rules* as in force immediately after the commencement of the *Amending Rule 2006*.

SP AusNet means SP Australia Networks (Transmission) Pty Ltd ACN 49 092 329461.

Statement of Regulatory Principles means the Statement of Principles published by the *AER* as part of the Compendium of Electricity Transmission Regulatory Guidelines dated August 2005.

VENCorp means the Victorian Energy Networks Corporation established under the Gas Industry Act 1994 (Vic) and continued under the Gas Industry Act 2001 (Vic).

11.6.2 New Chapter 6A does not affect existing revenue determinations

- (a) Subject to this rule 11.6, the old Chapter 6 continues to apply to and in respect of, existing revenue determinations as if the new Chapter 6A had not been made.
- (b) The Amending Rule 2006 has no effect on the continuing operation of clause 9.8.4G.
- (c) The Amending Rule 2006 has no effect on the continuing operation of clause 9.16.5 in so far as it:
 - (1) applies to deem a revenue cap for the *financial year* commencing on 1 July 2004;

- (2) specifies the basis on which prices for certain transmission services during the *financial year* commencing on 1 July 2004 are to be determined;
- (3) specifies the manner in which clause 6.4.3C of the old Chapter 6 is to apply for the *financial year* commencing on 1 July 2005; and
- (4) deems a revenue cap for the period commencing on 1 July 2004 until the end of 30 June 2009 to be for a period of five years.

11.6.3 Old Part C and Schedules 6.2, 6.3, 6.4, 6.7 and 6.8 of old Chapter 6

Subject to this rule 11.6, old Part C (including Schedules 6.2, 6.3, 6.4, 6.7 and 6.8) continues to apply for the duration of a current regulatory control period.

11.6.4 Old Part F of Chapter 6

Subject to this rule 11.6, old Part F of Chapter 6 continues to apply for the duration of a current regulatory control period.

11.6.5 Application of new Chapter 6A to Transmission Network Service Providers

Subject to this rule 11.6, a *Transmission Network Service Provider* is not required to submit a *Revenue Proposal* or a proposed *negotiating framework* to the AER under the new Chapter 6A until a date that is 13 months before the expiry of a current regulatory control period.

11.6.6 Application of Chapter 6 to old distribution matters

- (a) The restructuring and renumbering of provisions of the old Chapter 6 by the *Amending Rule 2006* does not affect:
 - (1) *distribution* matters occurring or in existence before the commencement date; or
 - (2) anything done or omitted to be done in respect of *distribution* matters before the commencement date.
- (b) Without limiting paragraph (a), anything done or omitted to be done under a provision of the old Chapter 6 in respect of *distribution* matters before the commencement date is deemed to have been done or omitted to be done under the corresponding provision of that Chapter as restructured and renumbered by the *Amending Rule 2006*, as if that Rule had been in operation when the thing was done or omitted to be done.

11.6.7 References to the old Chapter 6

Unless the context otherwise requires, on and from the commencement date every reference to the old Chapter 6 in a document (however described) is deemed to be a reference to the renumbered Chapter 6 or the new Chapter 6A (as the case may be).

11.6.8 References to provisions of the old Chapter 6

Unless the context otherwise requires, on and from the commencement date every reference to a provision of the old Chapter 6 in a document (however described) is deemed to be a reference to the corresponding provision of the renumbered Chapter 6 or the corresponding provision (if any) of the new Chapter 6A (as the case may be).

11.6.9 Roll forward of regulatory asset base for first regulatory control period

In making a *revenue determination* for the first *regulatory control period*, the value of the regulatory asset base at the beginning of the first *regulatory year* of that period calculated in accordance with clause S6A.2.1(f), may be adjusted having regard to an existing revenue determination and any other arrangements agreed between the AER and the *Transmission Network Service Provider*.

11.6.10 Other adjustment carry-over mechanisms from current to first regulatory control period

The *maximum allowed revenue* that a *Transmission Network Service Provider* may earn in any *regulatory year* of the first *regulatory control period* may be adjusted for any carry-over mechanisms provided for in the relevant existing revenue determination and in any other arrangements agreed between the AER and the *Transmission Network Service Provider* for the purposes of, and in accordance with, the existing revenue determination.

11.6.11 Transition to new Chapter 6A: existing prescribed transmission services

- (a) References to *prescribed transmission services* in the new Chapter 6A include a service provided by an asset used in connection with, or committed to be constructed for use in connection with, a *transmission system* as at 9 February 2006:
 - (1) to the extent that the value of the asset is included in the regulatory asset base for that *transmission system* under an existing revenue determination in force at that time; or
 - (2) if the price for that service has not been negotiated under a negotiating framework established pursuant to old clause 6.5.9,and, but for this clause, that service would not otherwise be a *prescribed transmission service*.
- (b) Where a service is a *prescribed transmission service* by virtue of the operation of this clause, that service is taken not to be a *negotiated transmission service*.
- (c) For the purposes of this clause 11.6.11, an asset is, and is only, to be taken to be committed to be constructed if it satisfies the criteria which a project

needs to satisfy to be a “committed project” for the purposes of the *regulatory test*.

11.6.12 Powerlink transitional provisions

Definitions

- (a) In this clause 11.6.12:

contingent project means a project identified in the transitional revenue determination as a contingent project.

Powerlink means the Queensland Electricity Transmission Corporation Limited (ACN 078 849 233), trading as Powerlink Queensland .

transitional regulatory control period means the regulatory control period commencing on 1 July 2007 and ending on 30 June 2012.

transitional revenue determination means a final revenue determination by the *AER* for the Powerlink transmission network, in respect of the transitional regulatory control period.

trigger means the unique investment driver identified in the transitional revenue determination as a trigger for a contingent project.

Scope and application

- (b) This clause 11.6.12:

- (1) applies only in respect of the Powerlink *transmission network* and applies only until 30 June 2012; and
- (2) prevails, to the extent of any inconsistency, over any other clause in the *Rules*.

Transitional revenue determination

- (c) Except as provided in this clause 11.6.12, and despite any changes to the old Chapter 6:

- (1) the old Chapter 6 continues to apply in respect of the *AER* setting the revenue cap for the transitional regulatory control period for the Powerlink *transmission network*; and
- (2) in setting the revenue cap for the transitional regulatory control period, the *AER* must substantially adhere to the Statement of Regulatory Principles including the ex ante approach to setting the revenue cap set out in the statement.

- (d) The *AER* must calculate the *weighted average cost of capital* for the transitional regulatory control period, in accordance with the values, methodologies or benchmarks in the new Chapter 6A, in respect of the following items:

- (1) the nominal risk free rate including the maturity period and source of the benchmark;

- (2) the debt risk premium including the maturity period and source of the benchmark;
 - (3) the equity beta;
 - (4) the market risk premium; and
 - (5) the ratio of the market value of debt as a proportion of the market value of equity and debt.
- (e) In calculating the *WACC* for the transitional regulatory control period, the *AER* must use an average gamma of 0.5.

Contingent projects

- (f) Where the trigger event identified in respect of a contingent project occurs prior to 30 June 2012, the *AER* must, in accordance with the transitional revenue determination:
 - (1) determine:
 - (i) the amount of capital and incremental operating expenditure for that contingent project for each remaining regulatory year of the transitional regulatory control period, which the *AER* considers is reasonably required for the purpose of undertaking the contingent project;
 - (ii) the likely commencement and completion dates for the contingent project;
 - (iii) the incremental revenue which is likely to be earned by Powerlink in each remaining regulatory year of the transitional regulatory control period as a result of the contingent project being undertaken; and
 - (iv) the *maximum allowed revenue* for each regulatory year in the remainder of the transitional regulatory control period by adding the incremental revenue for that regulatory year; and
 - (2) calculate the estimate referred to in subparagraph (1)(iii):
 - (i) on the basis of the rate of return for Powerlink for the transitional regulatory control period in accordance with the transitional revenue determination; and
 - (ii) consistently with the manner in which depreciation is calculated under the transitional revenue determination; and
 - (3) amend the transitional revenue determination to apply for the remainder of the transitional regulatory control period in accordance with paragraph (g).
- (g) The *AER* may only vary the transitional revenue determination to the extent necessary:

- (1) to adjust the forecast capital expenditure for the transitional regulatory control period to accommodate the amount of additional capital expenditure determined under paragraph (f)(1)(i);
 - (2) to adjust the forecast operating expenditure for the current regulatory control period to accommodate the amount of additional operating expenditure determined under paragraph (f)(1)(i); and
 - (3) to reflect the effect of any resultant increase in forecast capital expenditure and incremental operating expenditure on the maximum allowed revenue for each regulatory year in the remainder of the transitional regulatory control period.
- (h) An application for approval of a contingent project may only be made if the intended date for commencing the contingent project is during the transitional regulatory control period.
- (i) For the first *regulatory control period* after the transitional regulatory control period, the forecast of capital expenditure for that first *regulatory control period* must be determined by applying the provisions of clause 6A.6.7 of the new Chapter 6A, in respect of the capital expenditure for a contingent project, with such modifications as are necessary to properly apply clause 6A.6.7.

Cost pass-through

- (j) For the duration of the transitional regulatory control period:
- (1) subject to subparagraph (2), clause 6A.7.2 of the new Chapter 6A applies to a *network support event* under the transitional revenue determination;
 - (2) the process to apply to the calculation, presentation and approval of pass through resulting from a network support event is as set out in the transitional revenue determination; and
 - (3) in respect of any *positive change event* or *negative change event*, the new Chapter 6A applies, with any modifications that are necessary to apply the relevant provisions to the transitional revenue determination.

Roll forward of regulatory asset base

- (k) For the avoidance of doubt, in making a *revenue determination* for the first *regulatory control period* after the transitional regulatory control period, the value of the regulatory asset base at the beginning of the first *regulatory year* of that period calculated in accordance with clause S6A.2.1(f), may be adjusted having regard to the transitional revenue determination and any other arrangements agreed between the AER and Powerlink.

Application of efficiency benefit sharing scheme

- (l) The *efficiency benefit sharing scheme* in force under clause 6A.6.5 applies to Powerlink during the transitional regulatory control period.

Power to re-open transitional revenue determination

- (m) Clause 6A.7.1 applies to the transitional revenue determination, and a reference in the clause to:
 - (1) “revenue determination” is taken to be a reference to the transitional revenue determination;
 - (2) “regulatory control period” is taken to be a reference to the transitional regulatory control period;
 - (3) “contingent project” has the meaning referred to in paragraph (a); and
 - (4) “X Factor” has the same meaning as in the transitional revenue determination.

11.6.13 ElectraNet easements transitional provisions

- (a) In this clause 11.6.13:
 - current regulatory control period** means the regulatory control period for ElectraNet commencing on 1 January 2003 and ending on 30 June 2008.
 - Determination** means the South Australian Transmission Network Revenue Cap Decision of the ACCC dated 11 December 2002.
 - easement** means easements referred to in the Determination.
- (b) Without limiting the operation of the new Chapter 6A, in establishing the opening regulatory asset base for ElectraNet for the regulatory control period subsequent to ElectraNet’s current regulatory control period, the *AER* may also consider adjustments to the regulatory asset base for ElectraNet that relate to easements, as agreed by letter dated 3 August 2004, between the ACCC and ElectraNet.

11.6.14 TransGrid contingent projects

- (a) In this clause 11.6.14:
 - contingent project** means a project identified in the Determination as a contingent project.
 - current regulatory control period** means the period 1 July 2004 to 30 June 2009.
 - Determination** means the “Final Decision, NSW and ACT Transmission Network Revenue Cap TransGrid 2004-05 to 2008-09” dated 27 April 2005 determined by the ACCC pursuant to clause 6.2.4(b) of the National Electricity Code.
 - TransGrid** means the energy services corporation constituted under section 6A of the Energy Services Corporations Act 1995 (NSW) and specified in Part 1A of Schedule 1 to that Act.
- (b) For the purposes of the application of clause 11.6.2(a) to the Determination, a reference to the old Chapter 6 is a reference to the old Chapter 6 as modified by rule 8A.1.

- (c) For the first *regulatory control period* after the current regulatory control period, the forecast of capital expenditure for TransGrid for that first *regulatory control period* must be determined by applying the provisions of clause 6A.6.7 in respect of the capital expenditure for a contingent project, with such modifications as are necessary to properly apply clause 6A.6.7.

11.6.15 Transmission determination includes existing revenue determinations

The definition of a *transmission determination* may, where the context so requires, include a determination (or substituted determination) made, or deemed to be made, by the *AER* or the *ACCC* prior to the commencement date.

11.6.16 References to regulatory control period

A reference to a *regulatory control period* may, where the context so requires, include a period during which a revenue cap applied by virtue of a determination (or substituted determination) made, or deemed to be made, by the *AER* or the *ACCC* prior to the commencement date.

11.6.17 Consultation procedure for first proposed guidelines

- (a) In this clause 11.6.17:
guideline means:
 - (1) the *post-tax revenue model* referred to in rule 6A.5.2;
 - (2) the *roll forward model* referred to in rule 6A.6.1;
 - (3) an *efficiency benefit sharing scheme* referred to in rule 6A.6.5;
 - (4) a *service target performance incentive scheme* referred to in rule 6A.7.4;
 - (5) *submission guidelines* referred to in rule 6A.10.2; and
 - (6) *Cost Allocation Guidelines* referred to in rule 6A.19.3.
- (b) The *AER* must develop and *publish* the first proposed guidelines on or before 31 January 2007, and may carry out consultation in the preparation of those proposed guidelines as the *AER* considers appropriate.
- (c) Each proposed guideline must be *published* in accordance with the requirements of rule 6A.20(b), including an explanatory statement and an invitation for written submissions.
- (d) The invitation for written submissions for the proposed guidelines must allow no less than 60 *business days* for the making of submissions.
- (e) The *AER* may *publish* papers and hold conferences or information sessions in relation to the proposed guidelines as provided by rule 6A.20(d).
- (f) Rule 6A.20(e)-(f) applies to the publication of the final decision of the *AER* in relation to the first guidelines, which must be published under rule 6A.20 on or before 30 September 2007.

11.6.18 Reliance on proposed guidelines for SP AusNet, VENCORP and ElectraNet

- (a) In this clause 11.6.18:
- guideline** has the same meaning as in clause 11.6.17.
- proposed guideline** means a proposed guideline published under clause 11.6.17.
- relevant provider** means SP AusNet, VENCORP or ElectraNet.
- 2008 determination** means a transmission determination to be made in 2008 for a relevant provider.
- (b) For the purposes of making a 2008 determination for the regulatory control period to be covered by a 2008 determination, anything that must be done in accordance with a guideline must instead be done in accordance with the corresponding proposed guideline.
- (c) Unless sooner revoked, a proposed guideline ceases to have effect in relation to a relevant provider at the end of the regulatory control period covered by a 2008 determination applying to the provider. For the avoidance of doubt, a proposed guideline does not apply to or in respect of the making of a subsequent transmission determination.
- (d) For the purposes of making a 2008 determination for the regulatory control period to be covered by a 2008 determination, a relevant provider is taken to have complied with a requirement to comply with a *Cost Allocation Methodology* under the new Chapter 6A if the AER is satisfied that the relevant provider has complied with the relevant proposed guideline for cost allocation referred to in clause 11.6.17(a)(6), but only until the AER has approved a *Cost Allocation Methodology* for that provider under clause 6A.19.4.

11.6.19 EnergyAustralia transitional provisions

- (a) In this clause 11.6.19:
- contingent project** means a project approved by the ACCC and identified in the Determination as a contingent project.
- current regulatory control period** means the period 1 July 2004 to 30 June 2009.
- Determination** means the “Final Decision, NSW and ACT Transmission Network Revenue Cap EnergyAustralia 2004-05 to 2008-09”.
- EnergyAustralia** means the energy services corporation constituted under section 7 of the Energy Services Corporations Act 1995 (NSW) and specified in Part 2 of Schedule 1 to that Act.
- maximum allowed revenue** means the maximum allowed revenue in the Determination.

trigger event means an event identified as a trigger in Attachment A of the Determination in respect of a contingent project.

Application of Chapter 6A to Determination

- (b) Subject to paragraph (c), clauses 6A.7.1, 6A.7.2 and 6A.7.3 apply to the Determination.
- (c) In applying clause 6A.7.1 to the Determination, a reference in the clause to:
 - (1) “revenue determination” is taken to be a reference to the Determination;
 - (2) “regulatory control period” is taken to be a reference to the current regulatory control period;
 - (3) “contingent project” has the meaning referred to in paragraph (a); and
 - (4) “X Factor” has the same meaning as in the Determination.

Treatment of contingent projects

- (d) Where the trigger event identified in respect of a contingent project occurs prior to 1 July 2009, the *AER* must, in accordance with the Determination:
 - (1) determine:
 - (i) the total capital expenditure which the *AER* considers is reasonably required for the purpose of undertaking the *contingent project*;
 - (ii) the forecast capital and incremental operating expenditure for that contingent project for each remaining regulatory year of the current regulatory control period, which the *AER* considers is reasonably required for the purpose of undertaking the contingent project in accordance with Appendix A of the Determination;
 - (iii) the likely commencement and completion dates for the contingent project;
 - (iv) the incremental revenue which is likely to be earned by EnergyAustralia in each remaining regulatory year of the current regulatory control period as a result of the contingent project being undertaken; and
 - (v) the maximum allowed revenue for each regulatory year in the remainder of the current regulatory control period by adding the incremental revenue for that regulatory year;
 - (2) calculate the estimate referred to in subparagraph (1)(iv) in accordance with the Determination, including:
 - (i) on the basis of the rate of return for EnergyAustralia for the current regulatory control period; and

- (ii) consistently with the manner in which depreciation is calculated under the Determination; and
- (3) vary the Determination to apply for the remainder of the current regulatory control period in accordance with paragraph (e).
- (e) The *AER* may only vary the Determination to the extent necessary:
 - (1) to adjust the forecast capital expenditure for the current regulatory control period to accommodate the amount of additional capital expenditure determined under paragraph (d)(1)(ii); and
 - (2) to adjust the forecast operating expenditure for the current regulatory control period to accommodate the amount of additional operating expenditure determined under paragraph (d)(1)(ii); and
 - (3) to reflect the effect of any resultant increase in forecast capital expenditure and incremental operating expenditure on the maximum allowed revenue for each regulatory year in the remainder of the current regulatory control period.
- (f) The intended date for commencing the contingent project must be during the current regulatory control period.
- (g) For the first *regulatory control period* after the current regulatory control period, the forecast of capital expenditure for EnergyAustralia for that first *regulatory control period* must be determined by applying the provisions of clause 6A.6.7 in respect of the capital expenditure for a contingent project, with such modifications as are necessary to properly apply clause 6A.6.7.

11.6.20 Basslink transitional provisions

Definitions

- (a) In this clause 11.6.20:

Basslink has the meaning provided in the *Electricity Supply Industry Act 1995* of Tasmania, and means the interconnection between the electricity grids of the States of Tasmania and Victoria by means of:

- (1) a high voltage, direct current, submarine cable across Bass Strait;
- (2) converter stations in those States;
- (3) direct current connecting lines to those converter stations;
- (4) alternating current transmission connections to the transmission networks of those States; and
- (5) related infrastructure.

previous regulatory approach means the methodologies, objectives and principles for determination of a regulatory asset base applied in the previous regulatory determinations.

previous regulatory determinations means the decision (including the reasons for decision) made under clause 2.5.2(c) of the National Electricity Code or clause 2.5.2(c) of the *Rules* (as the case may be):

- (1) by the *ACCC*, entitled the “Murraylink Transmission Company Application for Conversion and Maximum Allowable Revenue” dated 1 October 2003; and
- (2) by the *AER*, entitled “Directlink Joint Ventures’ Application for Conversion and Revenue Cap” dated 3 March 2006.

Application

- (b) Where, after the commencement date, a service provided by means of, or in connection with, the Basslink *transmission system* ceases to be classified as a *market network service*:
 - (1) paragraph (c) applies to that service to the exclusion of clause 2.5.2(c); and
 - (2) paragraphs (d),(e),(f) and (g) apply to that service to the exclusion of clause S6A.2.1(e)(1) and (2).
- (c) If, after the commencement date, a *network service* provided by means of, or in connection with, the Basslink *transmission system* ceases to be classified as a *market network service*, it may at the discretion of the *AER* be determined to be a *prescribed transmission service*, in which case the relevant *total revenue cap* may be adjusted in accordance with Chapter 6A and this clause 11.6.20 to include to an appropriate extent the relevant *network elements* which provide those *network services*.
- (d) Where services are determined to be *prescribed transmission services* as referred to in paragraph (c), the value of the regulatory asset base, as at the beginning of the first *regulatory year* of the first *regulatory control period* for which those *prescribed transmission services* are to be regulated under a *revenue determination*, is the amount that is determined by the *AER* in accordance with paragraphs (e), (f) and (g).
- (e) Subject to paragraph (f), the *AER* must determine the value of the regulatory asset base for the Basslink *transmission system* for the purposes of paragraph (d) by applying the previous regulatory approach to the circumstances of that *transmission system*.
- (f) In the event of an inconsistency between the previous regulatory approach adopted in each of the previous regulatory determinations, the approach adopted in a decision of the *AER* regarding the Directlink *transmission system* prevails over the approach adopted in the decision of the *ACCC* regarding the Murraylink *transmission system* to the extent of the inconsistency.
- (g) Without limiting paragraph (e), the *AER* must, when exercising any discretion in relation to the application of paragraph (e) above:

- (1) have regard to the prudent and efficient value of the assets that are used by the relevant *Transmission Network Service Provider* to provide those *prescribed transmission services* (but only to the extent that those assets are used to provide such services); and
- (2) for this purpose, determine that value having regard to the matters referred to in clause S6A.2.2.

11.6.21 SPI Powernet savings and transitional provision

Definitions

- (a) In this clause 11.6.21, **Regulated owner** and **SPI PowerNet** both have the meaning provided in clause 9.3.1(2) of the *Rules*.

Transition to new Chapter 6A: existing prescribed transmission services

- (b) Notwithstanding clause 11.5.11, references to *prescribed transmission services* in the new Chapter 6A include a service provided by an asset used in connection with, or committed to be constructed for use in connection with, a *transmission system* as at 9 February 2006, where that asset is the subject of an agreement between SPI PowerNet and any of:
 - (1) VENCorp;
 - (2) a Distributor;
 - (3) a Regulated owner;
 - (4) a *Generator*; or
 - (5) a *Market Network Service Provider*,and:
 - (6) the agreement provides or contemplates that following an interim period the relevant asset will become subject to regulation under a revenue determination applicable to SPI PowerNet; and
 - (7) in the case of an agreement with a *Generator* or a *Market Network Service Provider*, the service the subject of the agreement is for *connection assets* provided on a non-contestable basis.

Method of adjustment of value of regulatory asset base

- (c) For the avoidance of doubt, in adjusting the previous value of the regulatory asset base for SPI PowerNet's *transmission system* as required by clause S6A.2.1(f), the previous value of the regulatory asset base must be increased by the amount of capital expenditure specified in, or that forms the basis of, agreements pursuant to which SPI PowerNet constructed assets during the previous regulatory control period used to provide *prescribed transmission services*, adjusted for outturn inflation and depreciation in accordance with the terms of those agreements.

11.6.22 Interim arrangements pricing-related information

- (a) Clause 6.2.5(a1) as in force immediately before the commencement date continues to apply during the current regulatory control period.
- (b) The *information guidelines* may, in addition to the matter referred to in clause 6A.17.2(e), require the inclusion in the certified annual statements of:
 - (1) information on the amount of each instance, during the relevant reporting period, of any reduction in the prices payable by a *Transmission Customer* for *prescribed transmission services* provided by the *Transmission Network Service Provider*;
 - (2) information on each instance, during the relevant reporting period, of a reduction in the prices payable by a *Transmission Customer* for *prescribed transmission use of system services* or *prescribed common transmission services* (or both) that were recovered from other *Transmission Customers* for *prescribed transmission use of system services* or *prescribed common transmission services*; and
 - (3) information to substantiate any claim by the *Transmission Network Service Provider* that the information provided to the AER with respect to reductions in the prices payable by a *Transmission Customer* for the relevant *prescribed transmission services* under subparagraphs (2) or (3) is confidential information.