

6 June 2008

Mr John Tamblyn  
Chairman  
Australian Energy Market Commission  
Level 5, 201 Elizabeth Street  
Sydney NSW 2000

By email: [submissions@aemc.gov.au](mailto:submissions@aemc.gov.au)

Dear John,

### **National Transmission Planning Arrangements – Legal Drafting Review**

I refer to Grid Australia's submission to the National Transmission Planner Review dated 30 May 2008. Grid Australia appreciates being given additional time to review the draft amendments to the National Electricity Law (**NEL**) and National Electricity Rules (**NER**) provided with the Commission's Draft Report. This letter and its **attachment** provide the outcomes of this review. Please note this review has focussed upon the drafting proposed by the AEMC and has not included a full review in the context of the entirety of the NER.

### **Regulatory Investment Test for Transmission (RIT-T)**

As noted in our prior submission, Grid Australia has significant concerns with the proposed RIT-T. Generally Grid Australia considers that the proposed RIT-T risks unnecessarily increasing the administrative burden on TNSPs, without delivering commensurate benefits. In particular Grid Australia considers it substantially increases the risk of delays to investments at a time when, as the Commission acknowledges, there is a 'tightening energy supply-demand balance and increasing focus upon the impacts to climate change and the policy response to climate change.'

As stated in our prior submission, Grid Australia's proposed solution to this is a revised two tier process. It should however be noted that Grid Australia is not advocating retention of separate processes for 'large' and 'small' transmission investments, but instead are seeking inclusion of a streamlined consultation process within the RIT-T for projects valued between \$5 million and \$35 million where interested parties either:

- Do not make any submissions on the initial description of the investment (provided via a Annual Planning Report or project specification consultation report); or

- Make submissions that do not identify additional credible options delivering material market benefits, or do not raise material questions in relation to the TNSP's preferred option.

In support of our prior submission, Grid Australia **attaches** for your consideration proposed drafting for the new clause 5.6.5B NER. This shows mark-ups on Appendix D to the Commission's Draft Report and addressing the matters raised in this letter and our prior submission.

### **NEL Amendments**

Grid Australia agrees with the Commission's view that the powers and functions of the National Transmission Planner and the National Transmission Planner Advisory Committee (**NTPAC**) should be in the NEL. Grid Australia however still has some concerns with the wording proposed for these amendments.

### ***NTP Objective***

In our prior submission, Grid Australia noted that the proposed NTP objective is too narrowly focussed on the national transmission grid, rather than on the development of the power system as a whole. Grid Australia acknowledges that the proposed NTP objective does reference achieving the 'national electricity objective' and therefore indirectly incorporates the concepts of 'the reliability safety and security of the national electricity system'. However Grid Australia remains of the view that to conform to COAG's directive the NTP objective should expressly reference the 'power system' and also the need to optimise investment between transmission and generation.

Grid Australia therefore has revised its suggested rewording of the NTP objective as follows:

'The NTP objective is to contribute to the achievement of the national electricity objective in a manner that ~~an~~ promotes the efficient and long term ~~and coordinated~~ development of a nationally coordinated transmission network and optimises investment between transmission and generation across the power system.'

### ***NTP Functions and Powers***

Grid Australia notes that the Australian Energy Market Operator (**AEMO**), in exercising its NTP role, will have the power to make submissions to TNSPs as part of the consultation process required under the NER in connection with possible investment and also to make submissions to the AER in respect to its making of any transmission determination. (Division [1](1)(e)&(f)). Potentially this will infringe upon TNSPs investment discretion, which Grid Australia notes would be contrary to the MCE/COAG framework. However this power is limited by section (2) to where:

'those submissions relate to possible investment projects relating to the national transmission grid that would be likely to improve the capability of the grid to transport significant amounts of electricity.'

This limitation is however likely to be difficult to apply, due to the uncertainty of what is meant by an investment being likely to 'improve the capability of the grid to transport significant amounts of electricity'. Grid Australia therefore proposes that this section be amended as follows:

'those submissions relate to possible investment projects relating to the national transmission grid that would be likely to materially improve the capability of a national transmission flow path ~~the grid to transport significant amounts of electricity.~~'

### ***Information Gathering Powers***

The AEMO may, 'if it considers it reasonably necessary for the performance or exercise of the NTP functions and powers', make a:

- general planning information order; or
- serve a planning information notice on a transmission system operator.

Grid Australia remains of the view that this information seeking power should also extend to generators. In addition Grid Australia notes that as the NTP functions and powers include such things as making submissions to the AER with respect to a transmission determination and, at the direction of the MCE, conducting a review into any matter relating to the development of the national transmission grid, these provisions provide the AEMO with potentially broad powers to require production of information by TNSPs. In addition, the information may be historical, current and forecast or derived from other information in the possession of the TNSP and may set up a recurrent obligation (Division [3](3) &(4)).

Grid Australia considers that the proposed limitations on this broad power are insufficient in the context of a purely administrative information gathering power. As drafted, Grid Australia considers that this broadly unfettered power would only be acceptable where the power is being exercised in the context of investigation of a breach of law.

In particular Grid Australia considers that the AEMO merely being required to 'have regard to the reasonable costs that are likely to be incurred in complying with the order or notice' (Division 3(2)) is inadequate and therefore suggest that the AEMO at a minimum should be prevented from making a planning information instrument if:

- the TNSP is not reasonably able to produce the information; or
- it would impose disproportionate costs or be unduly onerous to the TNSP.

Further, while the AEMO may only use the information supplied for the purpose of 'performing and exercising' the NTP functions and powers, it is not expressly prohibited from disclosing this information (which may include confidential information) to third parties. Grid Australia submits that these provisions should be drafted so that they expressly prohibit disclosure, unless otherwise expressly allowed under the NEL, such as is proposed in relation to the provision of information by the AEMO to the National Transmission Planner Advisory Committee. Alternatively if any such disclosure is not prohibited, Grid Australia suggests that the relevant TNSP should be consulted prior to any release of such information.

### **NER Amendments**

#### ***Disputes in Relation to Certain Matters***

Grid Australia notes that the proposed amendments regarding disputes arising from a project assessment conclusion report no longer require that the AER provide reasons for any determination it makes. This is currently the case for such disputes under rule. 5.6.6(j).

In the context of amendments to this section that specifically enable the AER to direct a TNSP to amend matters set out in a *project assessment conclusion report* (rule 5.6.6(u)(2)) Grid Australia is strongly of the view that it must be incumbent upon the AER to publish its detailed reasons.

Grid Australia also notes that the proposed amendment to rule 6A.6.6 'Forecast Operating Expenditure' and rule 6A.6.7 'Forecast capital expenditure' will make 'any relevant project assessment conclusions report required under rule 5.6.6' a matter to which the AER may have regard when deciding whether or not it will accept an TNSP's forecast of operating and/or capital expenditure for the purposes of a transmission determination.

This amendment therefore reintroduces an element of enforceability to the RIT-T process and indirectly takes away TNSP investment discretion. This underlines the necessity for the AER to be required to give reasons for any such dispute determination, whenever it directs a TNSP to amend its project assessment conclusion report.

Grid Australia would welcome the opportunity to discuss any aspect of this submission with the Commission or staff.

Yours sincerely,



Rainer Korte  
**Chairman**  
**Regulatory Managers Group**

## **NTP Draft Report – Appendix D**

### **Draft National Electricity Amendment (Regulatory Investment Test for Transmission Investment) Rule 2008**

#### **1. Title of Rule**

This Rule is the *Draft National Electricity Amendment (Regulatory Investment Test for Transmission Investments) Rule 2008*.

#### **2. Commencement**

This Rule commences operation on [insert date].

#### **3. Amendment of the National Electricity Rules**

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

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**Schedule 1                      Amendment of National Electricity Rules**

**[1]     Chapter 10 Omit Definitions**

Omit the following definitions:

**new large network asset**

**new large transmission network asset**

**new network investment**

**new small network asset**

**new small transmission network asset**

**new transmission network investment**

**[2]     Chapter 10 – Substitute Definitions**

In Chapter 10, omit the following definitions or sections thereof and substitute:

**considered project**

(a)(3)

- (i)    the *augmentation* project has passed the *regulatory investment test*;
- (ii)   in respect of a *transmission investment* which has not been subject to a *regulatory investment test*, an intention to proceed with the project has been published in the *Network Service Provider's Annual Planning Report*; or

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

- (b)    use of a *transmission investment* for the conveyance of electricity that can be reasonably allocated to a *Generator* on a locational basis.

**interested party**

- (b)    Notwithstanding the definition in 1. above, in clause 5.6.6, a person including an end user or its *representative* who, in the *AER's* opinion, has, the potential to suffer a material and adverse market impact from the *transmission investment* that is the *preferred option* identified in the project assessment conclusions report required under clause 5.6.6(o).

**potential transmission project**

*Transmission investment* identified by the AEMC which, in the opinion of the AEMC, is likely, if constructed, to relieve forecast *constraints* in respect of *national transmission flow paths* between *regional reference nodes*.

**project assessment conclusion report**

The report prepared under clause 5.6.6(o)

**project assessment draft report**

The report prepared under clause 5.6.6(i).

**project specification consultation report**

The report prepared under clause 5.6.6(c).

**[3] Chapter 10 New definitions**

Insert the following new definitions in alphabetical order:

**credible option**

The *transmission investment* option or group of options that addresses the *identified need*, is commercially feasible and can be implemented in sufficient time to meet the *identified need* and is identified as a *credible option* in accordance with clause 5.6.5B(i).

~~The absence of a proponent will not exclude a potential *transmission investment* option from being considered a *credible option*.~~

**identified need**

Is the reason why the *Transmission Network Service Provider* proposes to undertake the investment to the *transmission network*.

**preferred option**

The *credible option* that maximises the present value of net economic benefits to all those who produce, consume and transport electricity in the *market*.

**regulatory investment test**

The test for *transmission investment* developed and *published* by the AER in accordance with rule 5.6.5B, as in force from time to time, and includes amendments made in accordance with rule 5.6.5B.

**replacement network asset**

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An asset of a *Transmission Network Service Provider* that is planned to replace an existing *transmission* circuit, transformer, circuit breaker or reactive plant.

### **transmission investment**

Investment which is undertaken by a *Transmission Network Service Provider* to address an *identified need*.

### **[4] 5.6.2A Annual Planning Reports**

In clause 5.6.2A, omit subparagraph (5) and substitute:

(5) for all proposed *replacement network assets*, the following information:

- (i) the date when the *replacement network asset* becomes operational;
- (ii) the purpose of the *replacement network asset*;
- (iii) the total cost of the *replacement network asset*

*[Drafting note: clause 5.6.3 will be omitted under the National Transmission Planner review which will be implemented before or concurrently with this Rule change. As a result, references in this clause to new large transmission asset or new small transmission asset will be omitted.]*

### **[5] 5.6.4 Last Resort Planning Power**

In clause 5.6.4(c), omit the words “*regulatory test*” wherever they occur and insert “*regulatory investment test*”.

### **[6] 5.6.4**

In clause 5.6.4(h)(2), omit the words “*regulatory test*” wherever they occur and insert “*regulatory investment test*”.

### **[7] 5.6.4**

In clause 5.6.4(j), omit the words “*regulatory test*” wherever they occur and insert “*regulatory investment test*”.

### **[8] 5.6.4**



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In clause 5.6.4(1), omit the words “*regulatory test*” wherever they occur and insert “*regulatory investment test*”.

### **[9] 5.6.5A Regulatory Test**

Omit the heading “Regulatory Test” and insert “Regulatory test for distribution network investments”.

### **[10] 5.6.5A**

In clause 5.6.5A(b), omit the words “*new network investments*” wherever occurring and substitute “*new distribution network investment*”.

### **[11] 5.6.5A**

In clause 5.6.5A(c), omit the words “*new network investment*” wherever occurring and substitute “*new distribution network investment*”.

### **[12] 5.6.5A**

Omit subparagraph 5.6.5A(c)(4).

### **[13] 5.6.5A**

In clause 5.6.5A(c), renumber subparagraphs (c)(5), (c)(6), (c)(7) and (c)(8) to (c)(4), (c)(5), (c)(6) and (c)(7) respectively.

*[Drafting note: clause 5.6.5A(d) and (g) refer to the transmission consultation procedure. We have left this reference in as it appears that this consultation procedure (aside from its name) does not exclusively refer to transmission.]*

### **[14] New rule 5.6.5B Regulatory investment test for Transmission**

After clause 5.6.5A, insert:

#### **5.6.5B Regulatory investment test for transmission investment**

##### **Principles**

- (a) The AER must develop and *publish* the *regulatory investment test* in accordance with this clause 5.6.5B.
- (b) The purpose of the *regulatory investment test* is to identify the *preferred option*.

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- (c) The maximum present value of net economic benefit required in paragraph (b) may, in some circumstances, be a negative value where the *preferred option* is a *reliability augmentation*.
- (d) The *regulatory investment test* must:
  - (1) be based on a cost-benefit analysis that is to include an assessment of reasonable scenarios of future supply and demand were each *credible option* to take place compared to the situation of no *transmission investment* options taking place;
  - (2) not require a level of analysis that is disproportionate to the scale and likely impact of all the *credible options* being considered;
  - (3) be able to be applied in a predictable, transparent and consistent manner;
  - (4) require the *Transmission Network Service Provider* to consider the following classes of market benefits in assessing the present value of net economic benefits to all those who produce, consume and transport electricity in the *market* of each *transmission investment* option:
    - (i) changes in fuel consumption arising through different generation dispatch.
    - (ii) changes in voluntary *load* curtailment;
    - (iii) changes in involuntary *load shedding*, with the market benefit to be considered using a reasonable forecast of the value of electricity to consumers;
    - (iv) changes in costs due to:
      - (A) differences in the timing of new *plant*;
      - (B) differences in capital costs;
      - (C) differences in the operational and maintenance costs;  
and
      - (D) differences in the timing of *transmission investment*;
    - (v) changes in *transmission* losses;
    - (vi) changes in *ancillary services* costs;

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- (vii) competition benefits; [and](#)
  - ~~(viii) any optional value from implementing that *transmission investment* option with respect to the likely future investment needs of the *networks* where this value has not already been included in the other classes of market benefits; and~~
  - ~~(ix)~~ [viii](#)) other benefits that are determined to be relevant by the *Transmission Network Service Provider*;
- (5) include a quantification of all classes of market benefits which are determined to be material in the *Transmission Network Service Provider's* reasonable opinion;
  - (6) require a *Transmission Network Service Provider* to consider all classes of market benefit as material unless it can show otherwise in the draft assessment project report required under clause 5.6.6(i) by demonstrating:
    - (i) that a particular class of market benefit will not affect the outcome of the assessment of each *transmission investment* option; or
    - (ii) that the cost of undertaking the analysis to quantify the market benefit is disproportionate to the scale, size and potential benefits of each *transmission investment* option being considered in the report;
  - (7) with respect to the classes of market benefits set out in subparagraphs (4)(ii) and (iii), ensure that, if the *credible option* is a *reliability augmentation*, the quantification assessment required by paragraph (5) will only apply insofar as the market benefit delivered by the *transmission investment* option is above the minimum standard required by a *reliability augmentation*;
  - (8) require the *Transmission Network Service Provider* to consider the following classes of costs:
    - (i) costs incurred in constructing or providing the *credible option*;
    - (ii) operating and maintenance costs over the operating life of the *credible option*; and
    - (iii) the cost of complying with laws, regulations and applicable administrative requirements in relation to the *credible option*;

(9) provide that any cost or market benefit which cannot be measured as a cost or market benefit to producers, *Distribution Network Service Providers* or consumers of electricity may not be included in any analysis under the *regulatory investment test*; and

~~(10) set out the factors that will be treated as externalities under the *regulatory investment test*; and~~

(10+) specify:

- (i) the method or methods permitted for estimating the magnitude of the different classes of market benefits;
- (ii) the method or methods permitted for estimating the magnitude of the different classes of costs;
- (iii) the method or methods permitted for estimating market benefits which may occur outside the *region* in which the *Transmission Network Service Provider's network* is located; and
- (iv) the appropriate method and value for specific inputs, where relevant, for determining the discount rate or rates to be applied.

**Transmission assets subject to the regulatory investment test**

(e) A *Transmission Network Service Provider* must apply the *regulatory investment test* to a proposed *transmission investment*, except in circumstances where:

- (1) the proposed *transmission investment* is required to address an urgent and unforeseen *network* issue as set out in paragraph (f);
- (2) the estimated capital cost of the most expensive *transmission investment* to address the relevant *identified need* which is technically and economically feasible is less than \$[5] million;
- (3) the proposed *transmission investment* relates to maintenance, replacement or reconfiguration and is not intended to *augment* the *transmission network*;
- (4) the maintenance, replacement or reconfiguration expenditure also results in an *augmentation* to the *network*, and the estimated capital cost for the *augmentation* component of the *transmission*

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*investment* is less than \$5 million, as allocated by the *Transmission Network Service Provider* in accordance with recognised cost allocation methodologies and any applicable *AER* guidelines under rule 6A.19;

- (5) the asset the subject of the *transmission investment* will be a *connection asset*; or
  - (6) the cost of the *transmission investment* is to be recovered through charges in relation to *negotiated transmission services*.
- (f) For the purposes of subparagraph (e)(1) above, a *transmission investment* will be required to address an urgent and unforeseen *network* issue that would otherwise put at risk the *reliability* of the *transmission network* if:
- (1) it is necessary that the *transmission investment* be operational within 3 to 6 months of the *Transmission Network Service Provider* identifying the *identified need*;
  - (2) the event causing the *identified need* was not reasonably foreseeable by, and was beyond the reasonable control of, the *Transmission Network Service Provider*;
  - (3) a failure to address the *identified need* is likely to materially adversely affect the *reliability* and *secure operating state* of the *transmission network*; and
  - (4) it is not a *contingent project*.
- (g) If a *transmission investment* is determined to be required to address an urgent and unforeseen *network* issue urgent and unforeseen under paragraph (f), the *Transmission Network Service Provider* must provide the following information in its *Annual Planning Report*:
- (1) the date when the *transmission investment* becomes operational;
  - (2) the purpose of the *transmission investment*; and
  - (3) the total cost of the *transmission investment*.

~~(h) With the exception of funded augmentations, for each *transmission investment* to which the regulatory investment test does not apply in accordance with paragraph (e), the *Transmission Network Service Provider* must ensure, acting reasonably, that the *transmission investment* is planned and developed at least cost.~~

### **Identification of a credible option**

- (i) A *Transmission Network Service Provider* must consider all genuine

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and practicable possible *transmission investment* options that could reasonably be classified as *credible options*, taking into account, without bias:

- (1) energy source;
- (2) technology;
- (3) ownership;
- (4) the extent to which the *credible option* enables *intra-regional* or *inter-regional* trading of electricity;
- (5) whether it is a *network* or *non-network* option
- (6) whether the *credible option* is intended to be regulated;
- (7) whether the credible option has a viable proponent; or
- (8) any other factor which the *Transmission Network Service Provider* reasonably considers should be taken into account.

### **Regulatory investment test guidelines**

- (j) At the same time as the *AER publishes* a proposed *regulatory investment test* under the *transmission consultation procedure*, the *AER* must also *publish* guidelines for the operation and application of the *regulatory investment test* (the ***regulatory investment test application guidelines***) in accordance with the requirements of this rule 5.6.5B.
- (k) The *regulatory investment test application guidelines* must give effect to and be consistent with:
  - (1) this rule 5.6.5B and provide guidance on the operation and application of the *regulatory investment test*; and
  - (2) rule 5.6.6 and provide guidance on how disputes raised in relation to the *regulatory investment test* and its application will be addressed and resolved.
- (l) The *regulatory investment test application guidelines* must provide guidance, and worked examples, as to:
  - (1) what constitutes a *credible option*;
  - (2) the acceptable methodologies for valuing costs of a *credible option*;
  - (3) [what constitutes an externality under the \*regulatory investment test\*](#)

- (43) the suitable modelling periods and scenario development;
  - (54) the acceptable methodologies for valuing the market benefits of a *credible option*, including valuing *inter-regional* market benefits;
  - (65) the appropriate sensitivity analysis; and
  - (76) the appropriate discount rates to apply to the assessment of the *credible option*, reflecting that different *credible options* may have different risk profiles.
- (m) The *AER* must develop and *publish* the *regulatory investment test* and *regulatory investment test* application guidelines by [31 December 2008] and there must be a *regulatory investment test* and *regulatory investment test* application guidelines in force at all times after that date.
- (n) The *AER* may, from time to time, and in accordance with the *transmission consultation procedure*, amend or replace the *regulatory investment test* and *regulatory investment test* application guidelines developed and *published* under this clause, provided that such amendments must be *published* at the same time.

**[15] 5.6.6 – Applications to establish new large transmission network assets**

Omit rule 5.6.6 and substitute:

**5.6.6 Regulatory investment test procedure**

- (a) In addition to the procedures to make a *connection* to a *network* in rule 5.3, the *Transmission Network Service Provider* must comply with the access arrangements and procedures set out in this rule 5.6.6.
- (b) A *Transmission Network Service Provider* who proposes to make a *transmission investment*, other than a *transmission investment* of the type described in clause 5.6.5B(e)(1)-(6), must consult all *Registered Participants*, *NEMMCO* and *interested parties* regarding the *transmission investment* in accordance with this rule 5.6.6.

**Project specification consultation report**

- (c) A *Transmission Network Service Provider* must prepare a report (the **project specification consultation report**), which must include:
  - (1) a description of the *identified need*;
  - (2) the assumptions used in identifying the *identified need* (including, in the case of a *reliability augmentation*, why the *Transmission Network Service Provider* considers a *reliability augmentation* necessary);

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- (3) if applicable, reference to any discussion on the description of the *identified need* or the possible *credible options* in the most recent *National Transmission Network Development Plan*;
  - (4) a ~~detailed~~ description of all possible *credible options* that address the *identified need*, which may include, without limitation, alternative *transmission options*, *interconnectors*, *generation*, demand side management, *market network services* or other *network options*;
  - (5) for each possible *credible option*, to the extent practicable, information about:
    - (i) the technical characteristics of the *credible option*;
    - (ii) whether the possible *credible option* is reasonably likely to have a material *inter-regional* impact;
    - (iii) the classes of market benefits that the *Transmission Network Service Provider* considers could be material in accordance with 5.6.5B(d)(6);
    - ~~(iv) an initial assessment of the relevance of the material classes of market benefits for each *credible option*;~~
    - (iv\*) the estimated construction timetable and commissioning date; and
    - (v\*) the estimated costs.
  - (d) The *Transmission Network Service Provider* must make available to all *Registered Participants*, *NEMMCO* and other *interested parties*, as soon as practicable, the *project specification consultation report* and any preliminary or supplementary information that is likely to assist *interested parties* to engage constructively in the report consultation process.
  - (e) The *Transmission Network Service Provider* must:
    - (1) provide a summary of the *project specification consultation report* to *NEMMCO*; and
    - (2) upon request by an *interested party*, provide a copy of the *project specification consultation report* to that person within 3 *business days* of the request.
  - (f) Within 3 *business days* of receipt of the summary, *NEMMCO* must *publish* the summary of the *project specification consultation report* on its website.



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- (g) The *Transmission Network Service Provider* must seek submissions from *Registered Participants*, *NEMMCO* and *interested parties* on the *credible options* presented, and the issues addressed, in the *project specification consultation report*.
- (h) The submission period referred to in paragraph (g) must be not less than [12] weeks from the date that *NEMMCO publishes* the summary of the *project specification consultation report* on its website.

### **Project assessment draft report**

- (i) If the *Transmission Network Service Provider* elects to proceed with the *transmission investment*, within 12 months ~~of the end of the consultation period referred to in paragraph (h)~~, (or such greater time as may be reasonably agreed by AER), the *Transmission Network Service Provider* must prepare and make available to all *Registered Participants*, *NEMMCO* and *interested parties* a report (the **project assessment draft report**), having regard to the submissions received, if any, under paragraph (g). The *project assessment draft report* must include:
  - (1) a description of each *credible option* assessed;
  - (2) a summary of, and commentary on, the submissions to the *project specification consultation report*;
  - (3) a quantification of the costs, including a breakdown of operating and capital expenditure, and material classes of market benefit for each *credible option*;
  - (4) a detailed description of the methodologies used in quantifying each class of market benefit and cost;
  - (5) reasons why the *Transmission Network Service Provider* has determined that a class or classes of market benefit are not material;
  - (6) the identification and value (quantified in national terms) of any **class of market benefit** estimated to arise outside the *Transmission Network Service Provider's region*;
  - (7) the results of a net present value analysis of each *credible option* and accompanying explanatory statements regarding the results;
  - (8) the identification of the proposed *preferred option*;

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- (9) for the proposed *preferred option* identified under subparagraph (8) above, the *Transmission Network Service Provider* must provide:
- (i) details on the technical characteristics
  - (ii) the estimated construction timetable and commissioning date;
  - (iii) the indicative costs;
  - (iv) if the proposed *preferred option* is likely to have a *material inter-regional network impact*, and if the *Transmission Network Service Provider* has received an *augmentation technical report*, that report; and
  - (v) a statement and the accompanying detailed analysis that the *preferred option* satisfies the *regulatory investment test*.
- (j) The *Transmission Network Service Provider* must:
- (1) provide a summary of the *project assessment draft report* to *NEMMCO*; and
  - (2) upon request by an *interested party*, provide a copy of the *project assessment draft report* to that person within 3 *business days* of the request.
- (k) Within 3 *business days* of receipt of the summary, *NEMMCO* must *publish* the summary of the *project assessment draft report* on its website.
- (l) The *Transmission Network Service Provider* must seek submissions from *Registered Participants*, *NEMMCO* and *interested parties* on the preferred option presented, and the issues addressed, in the *project assessment draft report*.
- (m) The submission period referred to in paragraph (l), must be not less than 4 weeks from the date that *NEMMCO* publishes the summary of the report on its website.
- (n) Within [4] weeks of the end of the submission period set out in paragraph (m), at the request of an *interested party*, the *Transmission Network Service Provider* must use its best endeavours to meet with the *interested party* if:

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- (1) after having considered all submissions, the Transmission Network Service Provider, acting reasonably, considers that the meeting is necessary or desirable; or
- (2) a meeting is requested by two or more *interested parties*.

### **Project assessment conclusion report**

- (o) ~~Within 4 weeks of the end of the consultation period for the project assessment draft report referred to in paragraph (l),~~ As soon as practicable following a decision regarding a transmission investment the Transmission Network Service Provider must prepare and make available to all *Registered Participants*, NEMMCO and *interested parties* a report (the **project assessment conclusion report**), having regard to the submissions received, if any, under paragraph (m). The *project assessment conclusion report* must set out:
  - (1) the matters detailed in the *project assessment draft report* as required in paragraph (i); and
  - (2) a summary of, and the *Transmission Network Service Provider's* response to, submissions received, if any, from *interested parties* sought under paragraph (l).
- (p) The *Transmission Network Service Provider* must:
  - (1) provide a summary of the *project assessment conclusion report* to NEMMCO; and
  - (2) upon request by an interested party, provide a copy of the *project assessment conclusion report* to that person within 3 *business days* of the request.
- (q) Within 3 *business days* of receipt of the summary, NEMMCO must *publish* the summary of the *project assessment conclusion report* on its website.

### **Regulatory investment test for transmission investments that do not provide material market benefits**

- (r) This section applies to the exclusion of clauses 5.6.6(c)-(q) if a Transmission Network Service Provider proposes to make a transmission investment that:
  - (1) has an estimated capital cost of between \$5 million and \$35 million, and

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- (2) the *Transmission Network Service Provider* believes, in its reasonable opinion, will not have a material market benefit.
- (s) If clause (r) applies a *Transmission Network Service Provider* must:
- (1) prepare a *project specification consultation report* in accordance with clauses 5.6.6(c)(1)-(5) and also identify the *Transmission Network Service Provider's* proposed *preferred option*, or
  - (2) provide the equivalent information in its *Annual Planning Report*.
- (t) If clause (r) applies a *Transmission Network Service Provider* must:
- (1) provide a summary of the *project specification consultation report* and of any proposed *transmission investments* described in its *Annual Planning Report* to NEMMCO; and
  - (2) upon request by an *interested party*, provide a copy of the *project specification consultation report* or *Annual Planning Report* to that person within 3 *business days* of the request.
- (u) Within 3 *business days* of receipt of a summary of a proposed *transmission investment* NEMMCO must *publish* the summary on its website.
- (v) The *Transmission Network Service Provider* must seek submissions from *Registered Participants*, NEMMCO and *interested parties* on the *credible options* presented, and the issues addressed, in the *project specification consultation report* or *Annual Planning Report*.
- (w) The *submission* period referred to in paragraph (v) must be not less than [12] weeks from the date that NEMMCO *publishes* the summary of the *project specification consultation report* on its website or publication of the *Annual Planning Report*.

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(x) In the event that:

- (1) no submissions are received then the *Transmission Network Service Provider* may implement its preferred *credible option* without further consultation;
- (2) any submissions are received from *Registered Participants*, *NEMMCO* or other *interested parties* that raise material issues with the *Transmission Network Service Provider's* proposed *preferred option* the *Transmission Network Service Provider* must issue a *project assessment conclusion report* in accordance with clauses 5.6.6(o)-(q);
- (3) any submissions are received from *Registered Participants*, *NEMMCO* or other *interested parties* identifying additional *credible options* that deliver material market benefits the *Transmission Network Service Provider* must comply with the procedures set out in clauses 5.6.6(i)-(q).

### **Disputes in relation to certain matters**

(fy) *Registered Participants*, the *AEMC*, *Connection Applicants*, *Intending Participants*, *NEMMCO* and *interested parties* may, by notice to the *AER*, dispute conclusions made by the *Transmission Network Service Provider* in the *project assessment conclusion report* in relation to:

- (1) the application of the *regulatory investment test*;
- (2) the basis on which the *Transmission Network Service Provider* has classified the *transmission investment* as being a *reliability augmentation*; or
- (3) the *Transmission Network Service Provider's* assessment regarding whether the *transmission investment* will have a *material inter-network impact*, in accordance with any criteria for a *material inter-network impact* that are in force at the time of the preparation of the *project assessment conclusion report*.

(zs) A dispute under this clause may not be raised in relation to any matters set out in the *project assessment conclusion report* which:

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- (1) are treated as externalities by the *regulatory investment test*; or
  - (2) relate to an individual's personal detriment or property rights.
- (~~aa~~<sup>t</sup>) The party disputing a conclusion made in the *project assessment conclusion report* (a **disputing party**) must, within 30 days of the date of publication of the *project assessment conclusion report*:
- (1) give notice of the dispute in writing setting out the grounds for the dispute (the **dispute notice**) to the *AER*; and
  - (2) at the same time, give a copy of the *dispute notice* to the *Transmission Network Service Provider*.
- (~~ab~~<sup>u</sup>) Within [40] days of receipt of the *dispute notice*, the *AER* may:
- (1) reject any dispute if it considers that the grounds for the dispute are invalid, misconceived or lacking in substance; or
  - (2) make and *publish* a determination:
    - (i) to direct the *Transmission Network Service Provider* to amend the matters set out in the *project assessment conclusion report*; or
    - (ii) that, based on the grounds of the dispute, the *Transmission Network Service Provider* will not be required to amend the *project assessment conclusion report*.
- (~~ac~~<sup>v</sup>) In making a determination under subparagraph (u)(2) above, the *AER*:
- (1) must only take into account information and analysis that the *Transmission Network Service Provider* could reasonably be expected to have considered or undertaken at the time that it performed the *regulatory investment test*;
  - (2) must publish its reasons for making a determination
  - ~~(3)~~ may request further information regarding the dispute from the disputing party or the *Transmission Network Service Provider*; and
  - ~~(4)~~ may disregard any matter raised by the disputing party or the *Transmission Network Service Provider* that is misconceived or lacking in substance.
- (~~ad~~<sup>w</sup>) The *AER* may only make a determination under subparagraph (u)(2) if it

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determines that:

- (1) the *Transmission Network Service Provider* has not correctly applied the *regulatory investment test* in accordance with the *Rules*;
- (2) the *Transmission Network Service Provider* has erroneously classified the proposed *transmission investment* as being a *reliability augmentation*;
- (3) the *Transmission Network Service* has not correctly assessed whether the *transmission investment* will have a *material inter-network impact*, or
- (4) there was a manifest error in the calculations performed by the *Transmission Network Service Provider* in applying the *regulatory investment test*.

(ae\*) The AER may, with the written consent of both the disputing party and the *Transmission Network Service Provider*, extend the period of time in which the AER must make a determination under paragraph (u)(2), if the AER considers there are issues of sufficient complexity or difficulty involved.

### **Determination that new large transmission asset satisfies regulatory investment test**

(af\*) Where a *transmission investment* is not a *reliability augmentation* and the conclusion in the *project assessment conclusion report* is not in dispute, the *Transmission Network Service Provider* may request, in writing to the AER, that the AER make a determination as to whether the *transmission investment* satisfies the *regulatory investment test*.

(agz) The AER:

- (1) must, within 120 *business days* of receipt of the request from the applicant, subject to clause 5.6.6(aa), make and *publish* a determination, including reasons;
- (2) must use the findings and recommendations in the *project assessment conclusion report*;
- (3) may request further information from the *Transmission Network Service Provider*; and
- (4) may have regard to any other matter the AER considers relevant.

(aha) The relevant period of time in which the AER must make a determination under either paragraph (u)(2) or (z) is automatically

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extended by the period of time taken by the *Transmission Network Service Provider* or a disputing party to provide any additional information requested by the *AER* under this clause 5.6.6, provided:

- (1) the *AER* makes the request for the additional information at least 7 *business days* prior to the expiry of the relevant period; and
- (2) the *Transmission Network Service Provider* or the disputing party provides the additional information within 14 *business days* of receipt of the request.

### Costs determinations

(a**ib**) Where the *AER* engages a consultant to assist in making a determination under this clause 5.6.6, the *AER* may make a costs determination.

(a**je**) Where a costs determination is made, the *AER* may:

- (1) render the *Transmission Network Service Provider* an invoice for the costs; or
- (2) determine that the costs should:
  - (i) be shared by all the parties to the dispute, whether in the same proportion or differing proportions; or
  - (ii) be borne by a party or parties to the dispute other than the *Transmission Network Service Provider* whether in the same proportion or differing proportions; and
  - (iii) the *AER* may render invoices accordingly.

(a**kd**) If an invoice is rendered, the *AER* must specify a time period for the payment of the invoice that is no later than 30 *business days* from the date the *AER* makes a determination under paragraph (ab).

### [16] 5.6.6A Construction of new small transmission network assets

Omit rule 5.6.6A.

### [17] 6A.6.6 Forecast operating expenditure

In subparagraph 6A.6.6(e), delete the word “and” from subparagraph (9) and the “.” from subparagraph (10) and insert a new subparagraph after subparagraph (10):

; and

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



**[18] 6A.6.7 Forecast capital expenditure**

In subparagraph 6A.6.7(e), delete the word “and” from subparagraph (9) and the “.” from subparagraph (10) and insert after subparagraph (10):

; and

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

**[19] 6A.6.7**

In clause 6A.6.7(b)(4), omit the words “*regulatory test*” wherever they occur and insert “*regulatory investment test*”.

**[20] Schedule 6A.2 Regulatory Asset Base**

In Schedule 6A.2.1(e)(2)(ii), omit the words “*regulatory test*” wherever they occur and insert “*regulatory investment test*”.

**[21] Schedule 6A.2**

In Schedule 6A.2.2(3), omit the words “*regulatory test*” wherever they occur and insert “*regulatory investment test*”.

**[22] Schedule 6A.2**

In Schedule 6A.2.3(a)(3)(ii) omit the words “*regulatory test*” wherever they occur and insert “*regulatory investment test*”.

**[23] 9.3.2 Network Service Provider**

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

**[24] 9.3.2**

In clause 9.3.2(a)(4), omit the row relating to clause 5.6.6A.

**[25] 9.28.3 System Planning**

Omit clause 9.28.3(ac), and substitute:

- (ac) A *Transmission Network Service Provider*, who proposes to establish a *transmission investment* that is subject to the *regulatory investment test* under rule 5.6.5B, must provide the *ESIPC* with a draft of the *project specification consultation report* required under rule 5.6.6 10 *business days* prior to providing a summary of the report to *NEMMCO*.

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*[Drafting note: we have not addressed the required savings and transitionals at this stage. It is likely that the regulatory test will continue to apply to current transmission network investments and all new transmission investment will be subject to the regulatory investment test for transmission.]*