16 April 2012

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

Via website: www.aemc.gov.au

Dear John

Consolidated Rule Request – National Electricity Amendment (Economic Regulation of Network Service Providers) Rule 2011 – Directions Paper

Grid Australia welcomes the opportunity to provide this submission to the Australian Energy Market Commission (AEMC) in response to the Directions Paper on the Consolidated Rule Request – National Electricity Amendment (Economic Regulation of Network Service Providers) Rule 2011 (Proposed Rule Changes) comprising proposed Rule changes submitted by the Australian Energy Regulator (AER) and the Energy Users Rule Change Committee (EURCC).

Grid Australia's members are also members of the Energy Networks Association (ENA). The ENA has lodged a detailed submission in response to the AEMC's Directions Paper and Grid Australia generally endorses the positions taken in that submission. The purpose of this submission is to focus on the key aspects of the Proposed Rule Changes and also on those aspects that are different or unique to transmission.

The ENA submission includes a number of reports from consultants including a panel of economic and legal specialists with particular expertise in economic regulation. Grid Australia also endorses the analysis undertaken in these expert reports to the extent it relates to transmission matters.

Many of the questions asked by the AEMC seek to address whether recent network price rises can be attributed to a failing in the Rules or whether there are other factors at play. Grid Australia commends the AEMC for maintaining its evidence based approach to the assessment of the Proposed Rule Changes. As indicated in the ENA submission, the evidence indicates that there have been a diverse range of cost drivers in the sector that are not related to the framework for economic regulation. Given that the need for a stable, transparent and certain environment for investment in network infrastructure has not diminished, Grid Australia cautions that changes should only be made to the Rules for those aspects where there is a compelling case to do so.

Grid Australia's position on the key aspects of the Proposed Rule Changes is summarised as follows:

- The current Rules deliver a robust and evidence based framework for the assessment of capital and operating expenditure and should be maintained. Grid Australia supports the AEMC's initial position that there is no evidence that the AER has been constrained in its decision making.

- Declining capital expenditure efficiency incentives through the regulatory period are best achieved by extending the AER's discretion to implement an efficiency benefits sharing scheme (EBSS) for capital expenditure to transmission, with guidance provided to the AER in the Rules in relation to the exercise of this discretion. It is important, that any such scheme should have regard to specific differences between transmission and distribution.

- The application of actual depreciation is a second best solution to efficient capital expenditure incentives. The AER should instead be required to apply forecast depreciation only. This would serve to address the disproportionately large incentive against expenditure on short-lived assets.

- On the matter of the treatment of shared assets, the current cost allocation principles already accommodate cost sharing for non-prescribed transmission services provided by TNSPs. Any issues associated with shared asset treatment may, therefore, be best addressed through amendments to the cost allocation principles.

- Grid Australia strongly supports the AEMC's findings that the transmission framework to estimate the rate of return has a number of significant deficiencies. Most notably the transmission framework does not provide flexibility to adapt to changing conditions, or a process of merit review to correct for errors. The best approach to resolving these deficiencies is to adopt the Chapter 6 framework for transmission along with a number of enhancements.

- While Grid Australia does not agree that the current benchmark approach systemically overstates the cost of debt, there is nevertheless merit in giving further consideration to the application of a historical trailing average approach in a separate process to the current Rule change assessment.

- An extended regulatory process for revenue determinations would allow for an Issues Paper at the commencement of the process and a framework for submissions and cross-submissions. The addition of these elements would allow for the appropriate sharing of information while maintaining timely decision making.

- Grid Australia maintains its concerns with a number of the proposed drafting changes in relation to the correction of material errors in a revenue determination.

Grid Australia notes that the issues being addressed in the Proposed Rule Changes are particularly complex and wide ranging. On top of this, the AEMC has asked questions in its Directions Paper that have broadened the scope of issues and options even further than the Proposed Rule Changes. While there are some matters that require immediate resolution, such as the current limitations on the AER amending weighted average cost of capital (WACC) parameters for transmission, others are of particular complexity that to proceed on the current timetable would risk insufficient analysis being undertaken prior to decisions being reached.

A particular area where a separate and more thorough process may be required includes the approach to the cost of debt. On this basis, Grid Australia endorses the view in the ENA submission that the AEMC undertake a separate review of those matters that involve particular complexity.

Grid Australia looks forward to continuing to work with the AEMC and stakeholders through the further stages of the Rule change process. If you require any further information in relation to this submission, please do not hesitate to contact Phil Gall on (02) 9284 3434 or contact me on (08) 8404 7983.

Yours sincerely

Rainer Korte

Rainer Korte
Chairman
Grid Australia Regulatory Managers Group

grid australia
BACKBONE OF THE NEM

Consolidated Rule Request – National Electricity Amendment (Economic Regulation of Network Service Providers) Rule 2011

Response to AEMC Directions Paper

16 April 2012

Powerlink
TransGrid
ElectraNet electricity transmission
TRANSEND
SP AusNet A member of Singapore Power Group

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1. Introduction and Overview

Grid Australia welcomes the opportunity to provide this submission to the Australian Energy Market Commission (AEMC) in response to the Directions Paper on the Consolidated Rule Request – National Electricity Amendment (Economic Regulation of Network Service Providers) Rule 2011 (Proposed Rule Changes) comprising proposed Rule changes submitted by the Australian Energy Regulator (AER) and the Energy Users Rule Change Committee (EURCC).

As the AEMC is aware, Grid Australia represents the owners of all major electricity transmission networks in the National Electricity Market (NEM). Collectively, this group own and operate over 47,000 km of high voltage transmission lines with a combined value of $12 billion and delivering an annual investment program of approximately $2.2 billion. As a result, its members have a direct and substantial interest in the matters addressed in the Proposed Rule Changes.

Grid Australia's members are also members of the Energy Networks Association (ENA). The ENA has lodged a detailed submission in response to the AEMC's Directions Paper and Grid Australia generally endorses the positions taken in that submission. The purpose of this submission is to focus on the key aspects of the Proposed Rule Changes and also on those aspects that are different or unique to transmission.

The ENA submission includes a number of reports from consultants including a panel of economic and legal specialists with particular expertise in economic regulation. Grid Australia also endorses the analysis undertaken in these expert reports to the extent it relates to transmission matters.

1.1 Summary of responses to Directions Paper

Many of the questions asked by the AEMC seek to address whether recent network price rises can be attributed to a failing in the Rules or whether there are other factors at play. Grid Australia commends the AEMC for maintaining its evidence based approach to the assessment of the Proposed Rule Changes. As indicated in the ENA submission, the evidence indicates that the Rules are working well and achieving their stated objectives. Further, the evidence indicates that there have been a diverse range of cost drivers in the sector that are not related to the framework for economic regulation. Given that the need for a stable, transparent and certain environment for investment in network infrastructure has not diminished, Grid Australia cautions that changes should only be made to the Rules for those aspects where there is a compelling case to do so.

It is also relevant to note that, for transmission, one round of regulatory periods is yet to be completed under the current chapter 6A Rules. It is inevitable that a period of learning is required when a new framework is introduced. Furthermore, the regime is designed to reveal costs and drive efficiency over time. Grid Australia considers that it is too soon to assess whether this aspect of the regime is fully operating as intended. Nevertheless, the processes that businesses have undergone with the AER, as well as this current Rule change process, have revealed a number of lessons that can be applied in subsequent determinations. Grid Australia considers that there are benefits in consolidating the lessons learnt before reaching a premature conclusion that the current framework has failed.

The following is a summary of Grid Australia's position on the key aspects of the Proposed Rule Changes:

- The current Rules deliver a robust and evidence based framework for the assessment of capital and operating expenditure and should be maintained. Grid Australia supports the AEMC's initial position that there is no evidence that the AER has been constrained in its decision making.

- There are benefits in addressing the issue of declining capital expenditure efficiency incentives through the regulatory period. This is best achieved by extending the AER's discretion to implement an efficiency benefits sharing scheme (EBSS) for capital expenditure to transmission, with guidance provided to the AER in the Rules in relation to the exercise of this discretion. It is important, however, that should the AER decide to implement a capital expenditure EBSS for transmission that it has regard to specific differences between transmission and distribution when designing and implementing the scheme. The ENA submission identifies criteria that the AER should have regard to in this respect so that differences between transmission and distribution, and other important objectives are given proper consideration.

- The application of actual depreciation is a second best solution to efficient capital expenditure incentives. The AER should instead be required to apply forecast depreciation only. This would serve to address the disproportionately large incentive against expenditure on short-lived assets.

- On the matter of the treatment of shared assets, the current cost allocation principles already accommodate cost sharing for non-prescribed transmission services provided by TNSPs.. Any issues associated with shared asset treatment may, therefore, be best addressed through amendments to the cost allocation principles.

- Grid Australia strongly supports the AEMC's findings that the transmission framework to estimate the rate of return has a number of significant deficiencies. Most notably the transmission framework does not provide flexibility to adapt to changing conditions, or a process of merit review to correct for errors. The best approach to resolving these deficiencies is to adopt the Chapter 6 framework for transmission along with a number of enhancements.

Given the clear shortcomings with the Chapter 6A arrangements it would be appropriate to address these sooner rather than later to avoid inefficient distortions in future transmission decisions.

- While Grid Australia does not agree that the current benchmark approach systemically overstates the cost of debt, there is nevertheless merit in giving further consideration to the application of a historical trailing average approach. Given the range of methodological, measurement and implementation issues that would need to be resolved first, this matter would be better considered in a separate process to the current Rule change assessment.

- An extended regulatory process for revenue determinations would allow for an Issues Paper at the commencement of the process and a framework for submissions and cross-submissions. The addition of these elements would allow for the appropriate sharing of information while maintaining timely decision making. Extending the timeframe for regulatory decision making would have a number of implications that the AEMC would need to have regard to, in particular the implications for NSPs that are due to submit their revenue proposals in the near future.

- Grid Australia maintains its concerns with a number of the proposed drafting changes in relation to the correction of material errors in a revenue determination. The proposed changes serve to reduce the threshold for a determination to be changed without a demonstration that there is a problem that needs to be addressed.

1.2 Timeline for considering the Proposed Rule Changes

Grid Australia notes that the issues being addressed in the Proposed Rule Changes are particularly complex and wide ranging. On top of this, the AEMC has asked questions in its Directions Paper that have broadened the scope of issues and options even further than the Proposed Rule Changes. While there are some matters that require immediate resolution, such as the current limitations on the AER amending weighted average cost of capital (WACC) parameters for transmission, others are of particular complexity that to proceed on the current timetable would risk insufficient analysis being undertaken prior to decisions being reached.

A particular area where a separate and more thorough process may be required includes the approach to the cost of debt. On this basis, Grid Australia endorses the view in the ENA submission that the AEMC undertake a separate review of those matters that involve particular complexity.

2. Capital and Operating Expenditure Forecasts

Setting an appropriate forecast for expenditure over the regulatory period gives businesses the essential capacity and incentive to provide the services sought by customers over the long term, while delivering an efficient price for customers. Even though transmission makes up only a small part of end-use customer bills, its interactions with the wholesale market mean that transmission investment can make a material difference to efficient energy dispatch over time. It is therefore imperative that transmission businesses are provided with regulated revenue that allows TNSPs to undertake necessary projects in a timely fashion. Doing so will ultimately reduce the overall cost of delivered electricity for consumers.

This section addresses the AER's specific proposals relating to capital and operating expenditure forecasts, specifically:

- The setting of estimates of required expenditure, and
- The expenditure objectives, factors and criteria.

2.1 Setting estimates of required expenditure

Grid Australia supports a robust and evidence based framework for assessing capital and operating expenditure requirements. The key elements of a robust and evidence based framework include:

- Incentives for NSPs to put forward a fully supported and well evidenced proposal of their expenditure requirements to comply with all regulatory, service and other applicable regulatory obligations,
- Requirements for the AER to give an NSP's proposal primacy and to accept the proposal if it meets the relevant objectives and criteria in the Rules,
- Capacity for the AER to substitute a forecast with its own where it is not satisfied the NSP's forecast meets the relevant objectives and criteria in the Rules, and
- A requirement for the AER to support any decision to reject and substitute a forecast with evidence.

While the AER appears less convinced of the merits of it being required to make an evidenced based assessment and adjustment of a revenue proposal, there nevertheless appears to be agreement that each of these other key elements are important aspects for a well functioning framework for assessing capital and operating expenditure requirements.

Grid Australia considers that the existing construction of the Rules already achieves all of these objectives. For transmission, the only restriction on the AER in the Rules is that it provides reasons as to why it is either satisfied or not satisfied that a proposal reasonably reflects the expenditure criteria in the Rules, and that this decision is based on evidence.

It is highly appropriate that the AER explain its reasons and provide the analysis upon which it has relied, in forming a different view of expenditure requirements. This is particularly important where the AER has adopted a different approach to develop its forecast than that put forward by the TNSP. Therefore, this is an important aspect of the framework that must be maintained.

As acknowledged by the AEMC, there is no evidence that the AER has been constrained in its decision making. In particular, the AER has been able to undertake all the analysis it wishes to and has been able to substitute forecasts with its own preferred forecast when it has not been satisfied that a TNSP's revenue proposal meets the Rules criteria. This point appears to have been conceded by AER staff at the AEMC's Workshops on the AER/EURCC Rule changes on 2 April 2012, where the AER staff indicated that their primary concern with capital and operating expenditure allowances is the requirement to undertake a two stage process (i.e. first to review a TNSP's Revenue Proposal to determine if it satisfies the Rules and second, to develop its own substitute forecasts). Further, Grid Australia notes that the AER also articulated this concern in the context that it had insufficient time to undertake stage two, which suggests this is largely a procedural matter.

Given the current Rules framework allows for a robust and evidence based approach for the assessment of capital and operating expenditure forecasts, Grid Australia cautions against making any changes to this framework, even if it is to serve only as a clarification, unless the AEMC is particularly confident of the outcomes of those changes.

2.2 Expenditure objectives, factors and criteria

Grid Australia does not support the AER's proposals to relocate three of the expenditure factors or to delete the criterion to have regard to the "circumstances of the relevant TNSP".

Grid Australia is concerned that the AER's proposal to relocate the "procedural" factors to another part of the Rules would fundamentally change the role these factors have in the assessment of a NSP's expenditure requirements. This is because relocating these "procedural" factors would serve to reduce the weight these factors have in the decision making process for setting capital and operating expenditure requirements. This would be inconsistent with the intent of these arrangements as set out above. Furthermore, this implication was not dealt with in the explanations of the Rule change by the AER.

As indicated in its 1st Round Submission, Grid Australia also considers that it is important that the criteria related to the "circumstances of the relevant TNSP" be maintained. It is acknowledged that this criterion may need to be clarified to ensure it does not prevent good benchmarking techniques from being applied.

However, Grid Australia is concerned that the AER's proposed removal of the "circumstances of the relevant TNSP" from the list of factors altogether may have more far reaching implications than benchmarking. For example, the AER might seek to impose a "one size fits all" approach to the way businesses account for costs for reasons of administrative simplicity for the AER but with no regard for each TNSP's circumstances.

Therefore, Grid Australia again recommends that the Rules be clarified so that the AER is required to only have regard to the position of TNSPs at the time that expenditure forecasts are made, and to relevant exogenous factors that influence the forward-looking operation of a TNSP's business.

3. Incentive arrangements

Grid Australia supports a combination of sustainable commercial incentives and well focused regulatory obligations to promote outcomes that are consistent with the National Electricity Objective (NEO). Grid Australia also endorses the AEMC's view that the current incentive framework does not provide an incentive for NSPs to spend more than their forecast amounts.

This perspective should not ignore, however, that there are nevertheless legitimate reasons for an NSP to spend more than its approved forecast. For example, when demand growth exceeds the assumed level of demand which underpinned the AER allowance. As a consequence, providing NSPs with an incentive to only spend up to the approved forecast would likely lead to poor outcomes for customers.

The remainder of this section addresses:

- The incentives to minimise capital expenditure
- The scope for discretion to implement other incentive schemes
- The application of actual or forecast depreciation, and
- The treatment of shared assets.

3.1 Capital expenditure incentives

Grid Australia agrees with the AEMC regarding the limitations of the AER's approach to capital expenditure incentives. The AEMC is also correct to state that the power of the incentive for efficient capital expenditure declines over the regulatory period. Therefore, this is a matter that should be addressed.

Grid Australia considers, however, that the AEMC has incorrectly specified the problem as one of a lack of supervision for expenditure higher than forecast amounts. The best solution to delivering actual expenditure outcomes that are consistent with the NEO is to ensure that an NSP's profit motives are aligned with this objective. Therefore, financial incentives should be the preferred mechanism to achieving efficient expenditure during a regulatory period. Properly designed financial incentives have the benefit of ensuring that businesses have an incentive to minimise all expenditure, not just amounts above forecast allowances.

The incentives for efficient capital expenditure, and a better balance across all incentives (for example, capital expenditure, operating expenditure and service performance), is best achieved by providing the AER with the discretion to apply an efficiency benefits sharing scheme (EBSS), with appropriate criteria to guide its design and implementation, to capital expenditure for transmission as it currently has for distribution.

It is recognised that applying an EBSS to capital expenditure requires practical issues such as the potential for inefficient deferral between regulatory periods to be addressed.[1] However, this is a matter that has been managed successfully in other jurisdictions such as the United Kingdom (UK) by Ofgem and South Australia by ESCOSA. Resolving this issue is nevertheless complex, and is therefore best addressed in consultation with the AER outside of the present Rule change process.

Grid Australia also reiterates that it would not be appropriate to design and implement a single scheme across distribution and transmission and that the differences between the two types of businesses need to be taken into account. These differences include the lumpiness of typical transmission investment projects, different coverage of the service incentive schemes and service obligations, the more significant role of national planning and investments associated with market benefits, including interconnection, and the greater interaction with generators and wholesale market outcomes for transmission.

3.2 Option to develop other incentive schemes

Grid Australia agrees with the AEMC that if the AER had a broad power to introduce new incentive schemes there is a risk that new schemes could be introduced that lead to unexpected and perhaps inappropriate outcomes. Therefore, the AER should still be required to subject the broad application of any new incentive schemes to the Rule making process.

1 Chapter 5 of the Joint Expert Report on Capital and Operating Expenditure Arrangements includes additional discretion of approaches taken in other jurisdictions.

While it is important that before a new incentive scheme is implemented more broadly that it be subject to the Rule making process, this should not preclude the AER undertaking trials of new and innovative incentive schemes. Therefore, there is likely to be merit in the Rules permitting the AER to develop small scale pilot or test schemes as appropriate.

Where the AER proposes to undertake a pilot or test scheme, it is necessary that limits be placed on the scheme. This would be to ensure that the costs and risks faced by NSPs are minimised while still allowing for meaningful results to be obtained. Factors to be taken into consideration may include:

- Limiting the revenue at risk to only small amounts or using paper trials
- Requiring that NSPs and other stakeholders are involved in the design of the scheme
- Requiring that an NSP agree to participate in the scheme before it is trialled, and
- Limiting the operation of the scheme to only parts of an NSPs operations, e.g. to certain regions.

3.3 Actual and Forecast depreciation

A well designed capital expenditure incentive scheme should be the first preference to providing capital expenditure incentives. Grid Australia considers that this is best achieved by applying an EBSS to capital expenditure and requiring that the AER apply forecast depreciation to the roll-forward of the RAB.

As acknowledged by the AEMC, applying actual depreciation as an incentive mechanism delivers a disproportionally large incentive against additional expenditure on short lived assets. This is because the penalty from spending more on assets with a short economic life is considerably large compared to longer lived assets.

Smart network technologies are expected to increasingly be used for the delivery of network services over the coming years. Given many of the innovative technologies associated with smart networks would be expected to have relatively short economic lives compared to traditional network assets, the application of actual depreciation may create disincentives for NSPs to implement these technologies. Efficient transmission services already rely heavily on investment in short lived assets such as protection, control and communications systems. Requiring forecast depreciation to be applied overcomes this issue and avoids this potential bias.

3.4 Treatment of shared assets

The AEMC has indicated that consumers should receive some benefits when assets used to supply regulated services are shared with other services. Further to this, it indicated that providing unregulated services with regulated assets can be viewed as a form of innovation and positive incentives, in the form of a sharing of benefits derived, is appropriate.

Grid Australia notes that no equivalent Rule change was proposed by the AER for transmission. However, the AEMC has also expressed the view that the principles for shared assets apply equally to transmission assets and distribution assets. On that basis, it considers that any changes that apply in respect of distribution should also apply to transmission.

Grid Australia considers that the AER's current cost allocation principles that apply to transmission, and the approved cost allocation methodologies applicable to each TNSP, already accommodate non-prescribed transmission services that are provided by TNSPs. To the extent the AEMC considers that the current approach to cost allocation cannot accommodate other non-prescribed services it may wish to consider whether changes to this framework would be preferable, noting that the same incentives to identify non-prescribed services, such as a retention of some of the benefit derived from providing additional services, would need to be maintained.

4. Cost of Capital

This section addresses the Rule change proposals from the AER in relation to the process in the Rules for setting the WACC for TNSPs, and its specific proposals in relation to the determination of the cost of debt. This section also addresses the Rule change proposals from the Energy Users Rule Change Committee (EURCC).

The AEMC has identified five attributes of a good rate of return framework. Grid Australia endorses these attributes and proposes that 'certainty' also be added to this list. The cost incurred in installing regulated network assets is typically recovered over periods of 40 years or more. It follows that investors are not just concerned about the returns that the regulator may offer in the next five year period, but are also concerned with the outcomes in the seven or more regulatory periods thereafter. Given this, it is important that regulatory risk and uncertainty be minimised to the extent possible.

The comments below address separately the two groups of proposed Rule changes, namely:

- The framework for setting and amending the rate of return, and
- The approach to the calculation of the cost of debt.

4.1 Process for setting the WACC

Grid Australia strongly supports the AEMC's initial assessment that the framework to estimate the rate of return for electricity transmission has a number of significant deficiencies, namely:

- It does not provide sufficient flexibility to adapt to changing circumstances, and
- It does not include a process of merits review to correct for errors by the regulator.

Grid Australia considers that the best approach to resolving these deficiencies in the transmission framework is to adopt the distribution framework in Chapter 6 with a number of enhancements. The framework in Chapter 6 allows for changes to reflect market conditions and new evidence, while also providing stability and certainty for stakeholders.

As noted by the AEMC, it is incongruous that there is no scope to address known errors in the parameters for transmission businesses, namely the value of gamma and the relationship between the risk free rate and the market risk premium. Therefore, it is imperative that this issue be remedied before any additional economic harm is caused.[2]

Given the preference for applying the distribution rate of return framework to transmission, Grid Australia supports a framework that has the following key elements:

- a single framework across electricity distribution and transmission for estimating the WACC for a benchmark efficient firm
- a process whereby WACC parameters or methods are formally reviewed every five years and only changed where there is persuasive evidence for change
- a mechanism, such as through a persuasive evidence test, that allows for changes to WACC parameters to be made to accommodate new data or evidence, or changed market circumstances at each revenue determination, and
- a process that allows the AER's decisions on WACC parameters and methods to be subject to merits review.

Grid Australia also supports the enhancements to the Chapter 6 framework identified in the ENA submission. The proposed enhancements are to clarify that:

[2] We note that the AEMC is also presently considering a consolidated Rule change request of proposals submitted by SP AusNet and ElectraNet on the assumed utilisation of imputation credits.

- the interactions between individual WACC parameters can be taken into account such that the Statement of Cost of Capital is tested against an overall WACC principle on a consistent basis, and
- the AER should have regard to all available evidence to ensure that the chosen WACC meets the WACC principles.

4.2 Guidance on the cost of debt

Grid Australia supports the continuation of a benchmark approach to estimating the cost of debt. This issue is covered in considerable detail in the ENA submission and the associated expert reports. Given the evidence in that submission and associated reports, Grid Australia supports the conclusion that the current benchmark does not systemically overstate the cost of debt.

While Grid Australia does not agree that the current benchmark approach systemically overstates the cost of debt, there is, nevertheless, likely to be merit in undertaking further analysis of a historical trailing average approach to debt costs, or elements of debt costs

Should the AEMC decide to progress with further investigation of a historical trailing average approach, it is important that it is aware that there are a number of detailed and complex matters that require investigation before such a change is made. As a consequence of the range of methodological, measurement and implementation issues that would need to be resolved first, this matter is best considered in a separate process to the current Rule change assessment.

5. Regulatory Decision Making Process

Grid Australia supports a regulatory decision making framework for the revenue determination process that allows for the appropriate sharing of information, and a procedural framework that encourages timely decision making. This section of the submission addresses the AER's proposals that relate to the regulatory decision making process for TNSPs, namely:

- The ability for network businesses to make submissions during a determination process
- The approach to correcting material errors
- The timeframe for the assessment of cost pass through events, contingent projects and capital expenditure reopeners, and
- The treatment of confidential information.

5.1 Submissions during a determination process

The AEMC has put forward five options, which are not mutually exclusive, to address the acknowledged issue of ensuring a robust exchange of information and ideas in the decision making process while also ensuring those decisions are made in a timely manner. Grid Australia agrees with the AEMC that there is scope for some improvement in the current regulatory process to achieve a better balance of these objectives.

Grid Australia supports the introduction of an Issues Paper at the commencement of the process and also the ENA proposal of a process of submissions and cross-submissions. While the transmission Submission Guidelines that apply equally to all TNSPs mean the scope for variation in revenue proposals is more limited, an Issues Paper may nevertheless allow important issues to be identified early so that proposals could be better targeted and customers and other stakeholders could more effectively engage on key issues at an early stage. A process of cross-submissions would allow NSPs to make responsive submissions to stakeholder submissions on Revised Revenue Proposals. It is understood that implementing these proposals would require time be added to the timetable for the regulatory process. Grid Australia expects that three to four months would need to be added to the regulatory process in order to accommodate this proposal.

Grid Australia also supports the use of an additional two weeks to the existing process between the publication of the AER's Draft Determination and submission of a TNSP's Revised Revenue Proposal.

There are a number of implications, however, that the AEMC would need to take into consideration before implementing this proposal and commencing the regulatory process sooner including:

- Commencing the regulatory process sooner would mean that a greater proportion of the financial data presented in the initial revenue proposal (and any revised proposal) would be estimates, as opposed to actuals.

- SP AusNet, Transend and TransGrid are due to submit their revenue proposals in February and May 2013. Should the AEMC change the Rules so that TNSPs are required to submit their revenue proposal up to four months earlier than the present arrangement, this would have a considerable impact on the ability for these businesses to undertake a process that is compliant with the Rules. The present timetable may already be highly challenging for these businesses if material changes are made to the Rules. Given that these businesses have already progressed the preparation of their submissions in accordance with the current Rules and AER guidelines, it is not appropriate to bring forward their submission date.

5.2 Correcting for material errors

Grid Australia agrees with the AER's proposed amendment to clause 6A.15(c) to align this with the corresponding provision in Chapter 6 of the Rules so that the determination may be amended only to the extent necessary. However, Grid Australia maintains its material concerns with the other drafting changes made in relation to the correction of errors in a revenue determination.

As indicated in our First Round Submission, Grid Australia does not consider that the requirement to revoke and substitute a determination has placed a barrier on the AER such that it requires the option to 'amend' a determination. The AER's proposed drafting change on material errors would have the effect of lowering the threshold for a determination to be amended. As a consequence, it would mean that the part of the determination affected by the error would not be subject to the same type of process and safeguards as the original determination; for example access to merits review of the determination.

Grid Australia also does not support the proposed drafting change that extends the scope of matters subject to a revocation and substitution of a revenue determination to a 'deficiency'. This approach provides the AER with discretion considerably in excess of the previous arrangements and significantly increases risk for network businesses. While the term 'deficiency' exists within the Chapter 6 Rules in the context of revoking and substituting a determination, the application of this term is presently constrained by a list of the types of deficiencies that may be corrected. Such a list does not exist for transmission. This means there would be no such constraint on the AER's application of the term 'deficiency' in the Rules if this was adopted for Chapter 6A.

Given the AER has not demonstrated evidence of a problem in these areas Grid Australia recommends the AEMC retain the current provisions in Chapter 6A on these matters.

5.3 Timeframe for the assessment of cost pass through events, contingent projects and capex reopeners

Grid Australia continues to advocate that, in the place of 'hard-wired' extensions, a stop-the-clock mechanism apply. Such a mechanism could apply if the AER needs to seek more information, consult with stakeholders, or await the outcome of a related process. Grid Australia considers that this solution is more targeted at the concern raised by the AER. In addition, providing the circumstances in which a stop-the-clock mechanism would apply would assist in ensuring that extensions are only granted when they are justified. Grid Australia also agrees with the AEMC that a stop-the-clock mechanism is not necessary for contingent projects.

Grid Australia endorses the detailed response from the ENA on this matter.

5.4 Treatment of confidential information

The treatment of confidential information involves balancing the legitimate commercial implications of revealing confidential information with the need to ensure a transparent and robust decision making process. On that basis, Grid Australia supports the AEMC's initial view that only legitimate parts of initial or revised Regulatory Proposals should be claimed as confidential.

Grid Australia is concerned, however, with the AER's proposal for it to have the discretion to apply any weight it considers appropriate to confidential information contained within an initial or revised regulatory proposal. The information in a Revenue Proposal is critical to support the case for a revenue allowance that is sufficient for an NSP to meet its regulatory obligations and achieve service standard requirements. Allowing the AER to disregard this information would not support robust decision making.

To the extent that there is an issue with the treatment of confidential information, a greater reliance by the AER on its existing powers in the NEL and of common law would be preferable. Grid Australia also supports the ENA approach of a confidential information protocol. This approach would address perceived concerns around confidentiality claims and the process for dealing with this, including whether the AER has sufficient time to process confidentiality claims.