



**Australian Energy Market Commission**

---

## **CONSULTATION PAPER – PROPOSED SAVINGS AND TRANSITIONAL RULE**

**National Electricity Amendment (Contestability  
of energy services) Rule 2017**

### **Rule Proponents**

COAG Energy Council  
Australian Energy Council

19 September 2017

**RULE  
CHANGE**

## **Inquiries**

Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

E: [aemc@aemc.gov.au](mailto:aemc@aemc.gov.au)

T: (02) 8296 7800

F: (02) 8296 7899

Reference: ERC0206

## **Citation**

AEMC, Contestability of energy services, Consultation paper - Proposed savings and transitional rule, 19 September 2017, Sydney

## **About the AEMC**

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

This work is copyright. The Copyright Act 1968 permits fair dealing for study, research, news reporting, criticism and review. Selected passages, tables or diagrams may be reproduced for such purposes provided acknowledgement of the source is included.

# Contents

<b>1</b>	<b>Introduction .....</b>	<b>1</b>
1.1	Rule change requests and draft determination.....	1
1.2	Purpose of this consultation paper .....	1
1.3	Process for making a submission.....	2
1.4	Rule change request timeline .....	2
1.5	Structure of this consultation paper .....	2
<b>2</b>	<b>Transitional arrangements for changes to service classification processes .....</b>	<b>3</b>
2.1	Introduction of the Distribution Service Classification Guideline .....	3
2.2	Consideration of service classifications/regulatory approaches taken in previous regulatory periods.....	4
2.3	Reclassifying services during a regulatory determination process.....	5
<b>3</b>	<b>Transitional arrangements for asset restriction.....</b>	<b>7</b>
3.1	Asset Exemption Guideline .....	7
3.2	Asset restriction.....	8
	<b>Abbreviations.....</b>	<b>13</b>
<b>A</b>	<b>Proposed savings and transitional amendments to the National Electricity Rules .....</b>	<b>14</b>



# 1 Introduction

## 1.1 Rule change requests and draft determination

On 29 August 2017, the Australian Energy Market Commission (Commission) published a draft determination and a draft rule, which is a more preferable rule in response to the Contestability of energy services rule change request. The draft rule (if made) would introduce restrictions on distribution network service providers (DNSPs) ability to earn regulated returns on assets located “behind the meter”,<sup>1</sup> improve the responsiveness of the distribution service classification framework to technology changes in the market, and improve clarity and transparency of the operation of the distribution service classification framework.

The draft rule is made in response to rule change requests submitted by the Council of Australian Government (COAG) Energy Council and the Australian Energy Council (AEC) and is based on aspects of the proposal from both the COAG Energy Council and the AEC. The rule change requests focused on the regulation of services provided by assets capable of providing value streams in both contestable and regulated segments of the electricity market. Both rule change requests sought to facilitate competition in the emerging energy services market.

The draft determination and draft rule are available on the Commission’s website.<sup>2</sup>

## 1.2 Purpose of this consultation paper

The draft determination set out the Commission’s reasons for making the draft rule as well as its proposed approach for transitional arrangements to implement the draft rule. However, the draft rule did not contain savings and transitional provisions.

The purpose of this consultation paper is to set out, and seek stakeholder feedback on, the proposed savings and transitional provisions to implement the draft rule. The Commission’s proposed savings and transitional rule is set out in Appendix A of this consultation paper.

This consultation paper and the proposed savings and transitional rule should be read in conjunction with the draft determination and draft rule.

---

<sup>1</sup> Consistent with the draft determination, the term “behind the meter” refers to the location behind a retail customer’s connection point.

<sup>2</sup> <http://www.aemc.gov.au/Rule-Changes/Contestability-of-energy-services>.

### 1.3 Process for making a submission

The Commission invites stakeholders to provide written comments on this consultation paper and the draft transitional rule by **31 October 2017** - the same closing date for written submissions to the draft determination and draft rule. Stakeholders are encouraged to combine their comments on the draft determination and draft rule, and the draft transitional rule, in one written submission.

Submissions should quote project number ERC0206 and may be lodged online at [www.aemc.gov.au](http://www.aemc.gov.au) or by mail to:

Australian Energy Market Commission  
PO Box A2449  
SYDNEY SOUTH NSW 1235

### 1.4 Rule change request timeline

Table 1.1 below sets out the timeline for this rule change request.

**Table 1.1 Rule change timeline**

Milestone	Date
Publication of draft determination and draft rule	29 August 2017
Publication of consultation paper on proposed savings and transitional rule	19 September 2017
Public forum	27 September 2017
Submissions close on draft determination (including draft rule) and consultation paper on savings and transitional rule	31 October 2017
Publication of final determination	12 December 2017

### 1.5 Structure of this consultation paper

The remainder of this consultation paper is structured as follow:

- Chapter 2 sets out the proposed transitional arrangements for the changes to the distribution service classification framework under the draft rule
- Chapter 3 sets out the proposed transitional arrangements for the introduction of restrictions on capital expenditure on “behind the meter” assets under the draft rule
- Appendix A contains the draft transitional rule

## **2 Transitional arrangements for changes to service classification processes**

The draft rule makes a number of changes to the distribution service classification processes. The following sections provide a brief overview of the provisions of the draft rule with respect to changes to the distribution service classification framework and the related transitional arrangements proposed by the Commission.

### **2.1 Introduction of the Distribution Service Classification Guideline**

#### **2.1.1 Overview of the draft rule**

Under the draft rule, the Australian Energy Regulator (AER) must develop and publish guidelines regarding the distribution service classification process. In particular, the draft rule:

- requires the AER to develop and publish guidelines (the Distribution Service Classification Guidelines) that set out the AER's proposed approach to (among other things) determining whether to classify a distribution service as a direct control service and how it distinguishes between distribution services and the operating and capital inputs that are used to provide such services<sup>3</sup>
- requires the AER to provide reasons for any departure it makes from the Distribution Service Classification Guidelines when classifying a distribution service.<sup>4</sup>

#### **2.1.2 Rule commencement**

The Commission proposes that these aspects of the draft rule commence operation on 19 December 2017. However, it is also proposed that the transitional arrangements set out in Section 2.1.3 and 2.1.4 below operate to delay the application of these provisions in certain respects.

#### **2.1.3 Transitional arrangements for the publication of the Distribution Service Classification Guidelines**

Under the draft transitional rule, the AER is required to develop and publish the first Distribution Service Classification Guideline by 30 September 2017.<sup>5</sup>

---

<sup>3</sup> See clause 6.2.3A under the draft rule.

<sup>4</sup> See clause 6.2.8(c) under the draft rule.

<sup>5</sup> See clause 11.[XX].2 of the draft transitional rule.

#### **2.1.4 Transitional arrangements for DNSPs in New South Wales, Australian Capital Territory, Tasmania and Northern Territory**

Under the draft transitional rule, the AER is not required to provide reasons for any departure it makes from the Distribution Service Classification Guidelines when classifying services for the 2019-24 distribution determinations for DNSPs in New South Wales, Australian Capital Territory, Tasmania and Northern Territory.<sup>6</sup> The Commission considers that this is appropriate because the distribution determination process for DNSPs in these jurisdictions has already commenced, with the AER having already published the final Framework and Approach (F&A) Paper in July 2017. Further, as the final guideline is due to be published at around the same time (September 2018) as the AER's draft determination for these DNSPs, the Commission considers that there is insufficient time for the AER to consider and apply its final guideline to the distribution determinations of the DNSPs in these jurisdiction.

#### **2.1.5 No transitional arrangements for DNSPs in Queensland, South Australia and Victoria**

##### **Queensland and South Australia**

While the final guideline is due to be published after the AER's publishes the final F&A paper for the Queensland and South Australian DNSPs' 2020-2025 distribution determination,<sup>7</sup> the Commission considers that there is sufficient time for the AER to take into account the service classification approach in its final guideline before the publication of its draft determination. Therefore, the Commission considers that no transitional arrangement is required for Queensland and South Australian DNSPs.

##### **Victoria**

The Commission considers that the AER should be required to apply the approach set out in its final guideline to the Victorian DNSPs' 2021-26 distribution determination as the final guideline will be published before the AER publishes the final F&A paper for the Victorian DNSPs.

### **2.2 Consideration of service classifications/regulatory approaches taken in previous regulatory periods**

#### **2.2.1 Overview of the draft rule and commencement date**

##### **Overview of the draft rule**

The draft rule removes the existing requirements under clauses 6.2.1(d) and 6.2.2(d) of the National Electricity Rules (NER) that the AER must, when classifying a distribution

---

<sup>6</sup> See clause 11.XX.3(a) under the draft transitional rule.

<sup>7</sup> The final F&A for the 2020-25 distribution determination is due to be published in July 2018. See the AER's 7 year regulatory determination calendar 2015-2022 on the AER's website: <https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements>.

service, not depart from a previous classification or the previously applicable regulatory approach (as the case may be) when classifying a distribution service, unless that different classification is “clearly more appropriate”.

### **Commencement date**

The Commission proposes that this aspect of the draft rule commences operation on 19 December 2017. However, it is also proposed that the transitional arrangements set out in Section 2.2.2 below operate to delay the application of these provisions in certain respects.

#### **2.2.2 Transitional arrangements for DNSPs in New South Wales, Australian Capital Territory, Tasmania and Northern Territory**

Under the draft transitional rule, this aspect of the draft rule does not apply to the AER’s making of the 2019-24 distribution determinations for New South Wales, Australian Capital Territory, Tasmania and Northern Territory DNSPs.<sup>8</sup> As the AER has already made its classification decision in the final F&A Paper under the NER, the Commission considers that it is not practical to introduce a different requirement on the AER for a determination process that is already underway.

#### **2.2.3 No transitional arrangements for DNSPs in other jurisdictions**

This aspect of the draft rule will apply to all other DNSPs from the rule commencement date as the AER will not have commenced the process for the DNSPs’ upcoming regulatory reset.

### **2.3 Reclassifying services during a regulatory determination process**

#### **2.3.1 Overview of the draft rule and commencement date**

##### **Overview**

The draft rule amends the existing threshold that must be satisfied before the AER can change a service classification or control mechanism between a F&A paper and the distribution determination – the existing threshold of “unforeseen circumstances” has been changed to “a material change in circumstances”.<sup>9</sup>

##### **Commencement date**

The Commission proposes that this aspect of the draft rule commences operation on 19 December 2017.

---

<sup>8</sup> See clause 11.XX.3(b) under the draft transitional rule.

<sup>9</sup> See clause 6.12.3(b) and (c1) under the draft rule.

### **2.3.2 No transitional arrangements required**

As this aspect of the draft rule relates to the AER's ability to change service classification during a distribution determination process, and the currently open distribution determination process<sup>10</sup> is only at the final F&A stage, the Commission considers that no transitional arrangements need to apply.

---

<sup>10</sup> The 2019-24 distribution determination for New South Wales, Australian Capital Territory, Tasmania and Northern Territory DNSPs.

### **3 Transitional arrangements for asset restriction**

The draft rule makes a number of changes to the NER in order to introduce a restriction on DNSPs earning a return of and on capital expenditure on assets located “behind the meter”. The following sections provide a brief overview of the provisions of the draft rule with respect to these changes and explain the Commission’s proposed transitional arrangements for these new restrictions.

#### **3.1 Asset Exemption Guideline**

##### **3.1.1 Overview of the draft rule**

The draft rule requires the AER to:

- develop and publish guidelines (the Asset Exemption Guidelines), which set out the AER’s approach to granting exemptions from the new restrictions on capital expenditure for “behind the meter” assets<sup>11</sup>
- provide reasons for any departure it makes from the Asset Exemption Guidelines when determining whether to grant an exemption.<sup>12</sup>

The draft rule also provides that when making an asset exemption application, a DNSP must have regard to the guidelines and include in its application such information as required under the draft rule and the AER’s guidelines.<sup>13</sup>

##### **3.1.2 Rule commencement**

The Commission proposes that this aspect the draft rule commences operation on 19 December 2017. However, it is also proposed that the transitional arrangements set out in section 3.1.3 operate to delay the application of these provisions in certain respects.

##### **3.1.3 Transitional arrangements for the publication of the Asset Exemption Guidelines**

Under the draft transitional rule, the AER is required to develop and publish the first Asset Exemption Guidelines by 30 September 2017.<sup>14</sup> By requiring the first Asset Exemption Guideline to be published by 30 September 2017 the AER will have sufficient time to follow the distribution consultation procedures in developing the guideline. Furthermore, by requiring the AER to publish by the same date as the first

---

<sup>11</sup> See clause 6.4B.1(c) under the draft rule.

<sup>12</sup> See clause 6.2.8(c) under the draft rule.

<sup>13</sup> See clauses 6.4B.2(b) and 6.4B.2(c) under the draft rule.

<sup>14</sup> See clause 11.[XX].2(a) under the draft transitional rule.

Distribution Classification Guideline this will facilitate joint consultation if the AER so chooses.

### **3.1.4 Transitional arrangements for DNSPs in New South Wales, Australian Capital Territory, Tasmania and Northern Territory**

With DNSPs in these jurisdictions submitting their regulatory proposals for the 2019-24 regulatory control period before the first Asset Exemption Guidelines are published,<sup>15</sup> it is not possible for either the DNSPs or the AER to take into account the Asset Exemption Guidelines during the determination process for the 2019-24 distribution determination. Under the draft transitional rule, these DNSPs are not required to have regard to the Asset Exemption Guidelines when making an exemption application in respect of their regulatory proposal for the 2019-24 regulatory control period.<sup>16</sup> In addition, under the transitional rule the AER is not required to have regard to the guidelines when making an exemption decision for these DNSPs for the 2019-24 regulatory control period.<sup>17</sup>

### **3.1.5 No transitional arrangements for other jurisdictions**

The Commission does not consider transitional implementation measures relating to the Asset Exemption Guidelines are required for DNSPs in Queensland, South Australia or Victoria. The AER will complete its exemption guidelines by September 2018. This will give Queensland and South Australian DNSPs four months to take it into account the guidelines when submitting their regulatory proposals and ten months for the Victorian DNSPs to take it into account.

## **3.2 Asset restriction**

### **3.2.1 Overview of the draft rule**

With respect to the introduction of a restriction on DNSPs earning a regulated return on assets located “behind the meter”, the draft rule:

- prohibits a DNSP from including in its regulatory proposal and regulatory asset base, capital expenditure for assets that are located behind a retail customer’s connection point (a “restricted asset”), except in certain limited circumstances (e.g. where the expenditure is for the refurbishment of such an asset or where the AER has provided an exemption from the prohibition)<sup>18</sup>

---

<sup>15</sup> DNSPs are required to submit their regulatory proposals by 31 January 2018. See the AER’s 7 year regulatory determination calendar 2015-2022 on the AER’s website: <https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements>

<sup>16</sup> See clause 11.[XX].4(i) under the transitional rule.

<sup>17</sup> See clause 11.[XX].4(i) under the transitional rule.

<sup>18</sup> See new definition of “restricted asset” in Chapter 10 under the draft rule; See rule 6.4B under the draft rule.

- in general terms, defines a restricted asset as a piece of equipment that is electrically connected to a retail customer’s connection point at a location that is on the same side of the connection point as the customer’s meter (i.e. the opposite side from which electricity is being supplied from the distribution network to the connection point), but excludes network devices<sup>19</sup> or assets at a connection point where the retail customer is the DNSP<sup>20</sup>
- requires the AER to have regard to the likely impacts on the development of competition in markets for energy related services when determining whether to grant an exemption<sup>21</sup>
- requires, if the DNSP wishes to seek an exemption, the DNSP to submit an exemption application along with its regulatory proposal or, in the case of an exemption in respect of a cost pass through or reopening of a distribution determination for capital expenditure, at the same time as making the application for the cost pass through or reopening<sup>22</sup>
- provides that the DNSP must include in any exemption application, details of (among other things) a description of the asset or class of asset to which the proposed exemption would apply (including location and anticipated cost), details of the standard control services that would be provided by the asset and an assessment by the DNSP of the likely impacts of the exemption on competition in markets for energy related services.<sup>23</sup>

### 3.2.2 Rule commencement

The Commission proposes that this aspect of the draft rule commences operation on 19 December 2017. However, it is also proposed that the transitional arrangements set out in section 3.2.3 and 3.2.4 operate to delay the application of these provisions in certain respects.

### 3.2.3 Transitional arrangements for the current regulatory control period

As set out in the draft determination, the Commission is not seeking to implement the asset restriction in respect of capital expenditure incurred in the current regulatory control period for any DNSPs. The draft transitional rule therefore specifies that these elements of the draft rule do not apply to capital expenditure undertaken by DNSPs in their current regulatory control periods.<sup>24</sup> Similarly, the restriction does not apply to capital expenditure relating to:

---

<sup>19</sup> See amended definition of “network device” in Chapter 10 under the draft rule.

<sup>20</sup> See new definition of “restricted asset” in Chapter 10 under the draft rule.

<sup>21</sup> See clause 6.4B.1(b) under the draft rule.

<sup>22</sup> See clause 6.6.1(c1) and 6.6.5(b1) under the draft rule.

<sup>23</sup> See clause 6.4B.1(b) under the draft rule.

<sup>24</sup> See clause 11.[XX].5(a) of the draft transitional rule.

- unspent capital expenditure for a contingent project under clause 6.5.7(g) where the completion date for that contingent project is a date that occurs during the subsequent regulatory control period;<sup>25</sup> or
- an approved pass through amount in the current regulatory period to be recovered during the subsequent regulatory control period.<sup>26</sup>

### **3.2.4 Transitional arrangements for the subsequent regulatory control period**

#### **Queensland, Victoria and South Australia**

Other than the specific case of contingent projects and cost pass-throughs noted above, the Commission does not consider transitional implementation measures for the asset restriction are required for DNSPs in Queensland, South Australia or Victoria in the subsequent regulatory control period. The AER will complete its exemption guidelines by September 2018. This will give Queensland and South Australian DNSPs four months to take into account the guidelines when submitting their regulatory proposals and ten months for the Victorian DNSPs to take it into account.

#### **New South Wales, Australian Capital Territory, Tasmania and Northern Territory**

The standard process for application of the asset restriction is not practically able to be applied to the New South Wales, Australian Capital Territory, Northern Territory and Tasmanian DNSPs for the 2019-24 regulatory control period. The respective DNSP's regulatory proposals are required to be submitted by 31 January 2018, which is less than two months after the final rule is scheduled to be published. This means that it is unlikely DNSPs will be able to comply with the final rule for the purposes of making their regulatory proposals.

In the draft determination the Commission therefore set out an alternative implementation schedule to allow the asset restriction to come into effect for the 2019-24 regulatory control period in these jurisdictions. That schedule is replicated in Table 3.1 below.

---

<sup>25</sup> See clauses 11.[XX].4 and 11.[XX].5(b) of the draft transitional rule.

<sup>26</sup> See clauses 11.[XX].4 and 11.[XX].5(c) of the draft transitional rule.

**Table 3.1: Implementation schedule**

Milestone	Date	Explanation
Contestability of energy services final rule	12 December 2017	
DNSPs regulatory proposals	By 31 January 2018	The DNSPs will not be required to make exemption applications alongside the regulatory proposal.
DNISP exemption applications	By 31 March 2018	The transitional provisions require DNSPs to submit exemption applications to the AER by 31 March 2018 if they are seeking exemptions within the regulatory control period.  If a DNISP has proposed capital expenditure on restricted assets in its regulatory proposal that it is not seeking an exemption for, it will be required to set out information regarding this capital expenditure in the exemption application. It will also be required to provide the AER with information regarding expenditure allowances it may require.
AER draft determination	By 30 September 2018	
Revised revenue proposal	By 31 December 2018	
AER final determination	By 30 April 2019	

The draft transitional rule implements this schedule by requiring that if a DNISP has included restricted capital expenditure (other than for the contingent project and cost pass through cases noted above) in its regulatory proposal it must submit to the AER:

- an exemption application by 31 March 2018, which requests an asset exemption under clause 6.4B.1(a)(1) or 6.4B.1 (a)(2) in respect of the relevant asset or class of asset on which that expenditure for a restricted asset is to be incurred; and

- to the extent that an exemption application has not been submitted in respect of any part of such restricted capital expenditure, submit a statement of amendment to the AER by 31 March 2018 removing, and (if necessary) making substitutions for, the restricted capital expenditure. This allows the DNSP to make amendments to their regulatory proposals to remove the restricted capital expenditure and substitute it with alternative capital or operating expenditure allowances. A statement of amendment submitted by a DNSP under clause 11.[XX].4(d)(2) of the draft transitional rule is taken to form part of the building block proposal under clause 6.8.2(b).<sup>27</sup>

The draft transitional rule also requires that if a DNSP submits a statement of amendment, the AER (subject to confidential information provisions) must publish a statement of amendment as soon as practicable after receiving it.<sup>28</sup>

The Commission notes that some DNSPs may be in a position to submit exemption applications or avoid including restricted capital expenditure at the time of making their regulatory proposals. There is nothing in the draft rule and draft transitional rule that prevents them from doing so and if they choose to do so this would mean both the DNSP and the AER does not need to undertake the additional steps set out above.

---

<sup>27</sup> See clause 11.[XX].4 of the draft transitional rule.

<sup>28</sup> See clause 11.XX.4(g) of the draft transitional rule.

## **Abbreviations**

AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
DNSP	Distribution network service provider
NEL	National Electricity Law
NER	National Electricity Rules

## A Proposed savings and transitional amendments to the National Electricity Rules

### [1] Chapter 11 New Part ZZZ[X]

In Chapter 11, after Part ZZZ[X], insert:

#### Part ZZZ[X] Contestability of energy services

##### 11.[XX] Rules consequential on the making of the National Electricity Amendment (Contestability of energy services) Rule 2017

##### 11.[XX].1 Definitions

For the purposes of this rule 11.[XX]:

**affected DNSP** means each of the following *Distribution Network Service Providers*:

- (a) ActewAGL Distribution, the joint venture between Icon Distribution Investments Limited ACN 073 025 224 and Jemena Networks (ACT) Pty Ltd ACN 008 552 663, which is registered by AEMO as a *Network Service Provider* in accordance with section 12(1) of the *National Electricity Law* and clause 2.5.1 of the *Rules* to own, control and operate the *distribution system* in the Australian Capital Territory, or any successor to its business;
- (b) Ausgrid Operator Partnership (ABN 78 508 211 731), which comprises of:
  - (1) Blue Op Partner Pty Ltd (ACN 615 217 500) as trustee for the Blue Op Partner Trust;
  - (2) ERIC Alpha Operator Corporation 1 Pty Ltd (ACN 612 975 096) as trustee for ERIC Alpha Operator Trust 1;
  - (3) ERIC Alpha Operator Corporation 2 Pty Ltd (ACN 612 975 121) as trustee for ERIC Alpha Operator Trust 2;
  - (4) ERIC Alpha Operator Corporation 3 Pty Ltd (ACN 612 975 185) as trustee for ERIC Alpha Operator Trust 3; and
  - (5) ERIC Alpha Operator Corporation 4 Pty Ltd (ACN 612 975 210) as trustee for ERIC Alpha Operator Trust 4;
- (c) Endeavour Energy Network Operator Partnership (ABN 11 247 365 823), which comprises of:

- (1) Edwards O Pty Limited (ACN 618 643 486) as trustee for the Edwards O Trust;
  - (2) ERIC Epsilon Operator Corporation 1 Pty Ltd (ACN 617 221 735) as trustee for ERIC Epsilon Operator Trust 1;
  - (3) ERIC Epsilon Operator Corporation 2 Pty Ltd (ACN 617 221 744) as trustee for ERIC Epsilon Operator Trust 2;
  - (4) ERIC Epsilon Operator Corporation 3 Pty Ltd (ACN 617 221 753) as trustee for ERIC Epsilon Operator Trust 3; and
  - (5) ERIC Epsilon Operator Corporation 4 Pty Ltd (ACN 617 221 771) as trustee for ERIC Epsilon Operator Trust 4;
- (d) Essential Energy, the energy services corporation of that name (formerly known as Country Energy), which is constituted under section 7 of the *Energy Services Corporations Act 1995* (NSW) and specified in Part 2 of Schedule 1 of that Act, or any successor to its business;
  - (e) Power and Water Corporation ABN 15 947 352 360, providing *distribution services* in the Northern Territory, or any successor to its business; and
  - (f) Tasmanian Networks Pty Ltd ACN 167 357 299, in its capacity as a *Distribution Network Service Provider*.

**Amending rule** means the National Electricity Amendment (Contestability of energy services) Rule 2017.

**commencement date** means the date of commencement of the Amending rule.

**current regulatory control period** in respect of a *Distribution Network Service Provider*, means the *regulatory control period* for that *Distribution Network Service Provider* that commenced before the commencement date and, as at the commencement date, has not ended.

**Old clauses 6.2.1(d) and 6.2.2(d)** means clause 6.2.1(d) and clause 6.2.2(d), each as in force immediately before the commencement date.

**statement of amendment** in respect of an affected DNSP, means a written statement setting out any amendments to the affected DNSP's *building block proposal* that are necessary to remove, and make substitutions for, any *expenditure for a restricted asset* included in the affected DNSP's:

- (a) forecast of required capital expenditure; and

(b) *proposed contingent capital expenditure* (if any),

for which the affected DNSP has not submitted an *exemption application* under clause 11.[XX].4(d)(1).

**subsequent distribution determination** means a distribution determination for the subsequent regulatory control period.

**subsequent regulatory control period** in respect of a *Distribution Network Service Provider*, means the *regulatory control period* for that *Distribution Network Service Provider* that immediately follows the current regulatory control period.

## 11.[XX].2 **New guidelines**

(a) By 30 September 2018, the AER must develop and *publish* the first:

(1) *Distribution Service Classification Guidelines*; and

(2) *Asset Exemption Guidelines*,

to take into account the Amending rule.

(b) The AER must comply with the *distribution consultation procedures* when meeting its obligations under paragraph (a).

## 11.[XX].3 **Transitional arrangements for application of Distribution Service Classification Guidelines and service classification provisions**

(a) Clause 6.2.8(c)(1) does not apply to, or in respect of, the *Distribution Service Classification Guidelines* for the purposes of the making of a subsequent distribution determination for an affected DNSP.

(b) Old clauses 6.2.1(d) and 6.2.2(d) continue to apply to, and in respect of, the making of a subsequent distribution determination for an affected DNSP.

## 11.[XX].4 **Transitional arrangements for application of Asset Exemption Guidelines, exemption applications and asset exemption decisions**

(a) Clause 6.2.8(c)(1) does not apply to, or in respect of, the *Asset Exemption Guidelines* for the purposes of the making of a subsequent distribution determination for an affected DNSP.

(b) In the case of *Distribution Network Services Providers* other than affected DNPs, clauses 6.5.7(b)(5) and 6.5.7(c)(2) do not apply to, or in respect of, *expenditure for a restricted asset* that is included in a *building block proposal* for the subsequent

regulatory control period, to the extent that:

- (1) the expenditure constitutes unspent capital expenditure for a *contingent project* under clause 6.5.7(g) and the completion date for that *contingent project* is a date that occurs during the subsequent regulatory control period; or
  - (2) the expenditure relates to an *approved pass through amount* to be recovered during the subsequent regulatory control period.
- (c) In the case of affected DNSPs, clauses 6.5.7(b)(5) and 6.6A.1(a1) do not apply to, or in respect of, *expenditure for a restricted asset* that is included in a *building block proposal* for the subsequent regulatory control period.
- (d) Subject to paragraph (e), if the forecast of required capital expenditure and *proposed contingent capital expenditure* (if any) included in an affected DNSP's *building block proposal* and *regulatory proposal*, respectively, for the *subsequent regulatory control period* includes *expenditure for a restricted asset*, the affected DNSP must:
- (1) submit an *exemption application* to the AER by 31 March 2018, which requests an *asset exemption* under clause 6.4B.1(a)(1) or 6.4B.1(a)(2) in respect of the relevant asset or class of asset on which that *expenditure for a restricted asset* is to be incurred; or
  - (2) to the extent that an *exemption application* is not submitted under subparagraph (d)(1) in respect of the relevant *expenditure for a restricted asset*, submit a statement of amendment to the AER by 31 March 2018 for that *expenditure for a restricted asset*.
- (e) Paragraph (d) does not apply in respect of an affected DNSP to the extent the *expenditure for a restricted asset*:
- (1) constitutes unspent capital expenditure for a *contingent project* under clause 6.5.7(g) and the completion date for that *contingent project* is a date that occurs during the subsequent regulatory control period; or
  - (2) relates to an *approved pass through amount* to be recovered during the subsequent regulatory control period.
- (f) A statement of amendment submitted by an affected DNSP under subparagraph (d)(2) is taken to form part of the *regulatory proposal* submitted by that affected DNSP under clause 6.8.2(b) for the subsequent regulatory control period.

- (g) Subject to the provisions of the *Law* and the *Rules* about disclosure of *confidential information*, the *AER* must *publish* a statement of amendment as soon as practicable after receiving it.
- (h) In the case of affected DNSPs:
  - (1) Clause 6.5.7(c)(2) does not apply to, or in respect of, *expenditure for a restricted asset* that is included in a *building block proposal* for the subsequent regulatory control period, to the extent that:
    - (i) the expenditure constitutes unspent capital expenditure for a *contingent project* under clause 6.5.7(g) and the completion date for that *contingent project* is a date that occurs during the subsequent regulatory control period; or
    - (ii) the expenditure relates to an *approved pass through amount* to be recovered during the subsequent regulatory control period.
  - (2) An *asset exemption* requested under subparagraph (d)(1) is taken to be an *asset exemption* requested under clause 6.5.7(b)(5) for the purposes of clause 6.5.7(c)(2)(iii)(A).
- (i) Clauses 6.4B.1(b)(2), 6.4B.2(b), 6.4B.2(c)(5) and 6.8.2(a1) do not apply to, or in respect of, an *exemption application* submitted by an affected DNSP in respect of a *regulatory proposal* for the subsequent regulatory control period.
- (j) Clause 6.12.1(3A) does not apply to, or in respect of, *expenditure for a restricted asset* that is included in a *building block proposal* for the subsequent regulatory control period, to the extent that expenditure constitutes unspent capital expenditure for a *contingent project* under clause 6.5.7(g) and the completion date for that *contingent project* is a date that occurs during the subsequent regulatory control period.

**11.[XX].5 Transitional arrangements for adjustment in value of regulatory asset base**

Clause S6.2.1(e)(9) does not apply to, or in respect of, *expenditure for a restricted asset* to the extent that expenditure:

- (a) is incurred during the current regulatory control period;
- (b) constitutes unspent capital expenditure for a *contingent project* under clause 6.5.7(g) and the completion date for that *contingent project* is a date that occurs during the subsequent regulatory control period; or

- (c) relates to an *approved pass through amount* to be recovered during the subsequent regulatory control period.
-