



Australian Energy Market Commission

**Rule Determination**

**National Electricity Amendment (Regulatory  
Test Thresholds and Information Disclosure  
on Network Replacements) Rule 2008**

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Rule Proponent  
Grid Australia

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23 October 2008

Signed:  .....

**John Tamblyn**  
**Chairman**  
For and on behalf of  
Australian Energy Market Commission

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## **Citation**

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## **About the AEMC**

The Council of Australian Governments, through its Ministerial Council on Energy, established the Australian Energy Market Commission (AEMC) in July 2005 to be the Rule maker for national energy markets. The AEMC is currently responsible for Rules and policy advice covering the National Electricity Market. It is a statutory authority. Our key responsibilities are to consider Rule change proposals, conduct energy market reviews and provide policy advice to the Ministerial Council as requested, or on AEMC initiative.

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## Abbreviations

ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
APR	Annual Planning Report
Commission	see AEMC
CPI	Consumer Price Index
DRP	Draft Statement of Principles for the Regulation of Transmission Revenue (May 1999)
Draft SRP	Draft Statement of Principles for the Regulation of Electricity Transmission Revenues (August 2004)
ERAA	Electricity Retailers Association of Australia
ETNOF	Electricity Network Owners Forum (now referred to as Grid Australia)
kV	Kilovolt
MCE	Ministerial Council on Energy
MNSP	Market Network Service Provider
NEL	National Electricity Law
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
NEO	National Electricity Objective
PPI	Producer Price Index
RIT-T	Regulatory Investment Test for Transmission
Rules	National Electricity Rules
TNSP	Transmission Network Service Provider

## Summary

### The Commission's Decision

The Commission has determined to make this final Rule determination and accompanying Rule with some key modifications and enhancements under section 102 and 103 of the NEL. The Commission is satisfied that the Rule is likely to promote the National Electricity Objective (NEO)<sup>a</sup>, and that it satisfies the Rule making test.

### The Commission's reasoning for its decisions

The Commission considers that in assessing the Rule change proposal that it needs to find the appropriate balance between the level of regulatory scrutiny applied to augmentation projects to promote efficient market outcomes and providing the appropriate regulatory burden on TNSPs in respect of those projects. In this regard the Commission seeks to provide for the best regulatory practice result.

In its draft Rule determination, the Commission generally accepted Grid Australia's proposed Rule change with a number of drafting amendments and modifications on some specific matters of the proposed Rule that have operational implications. The Commission has retained these in this final Rule determination.

The Commission has therefore decided to:

- Increase the new small transmission network asset threshold from \$1 million to \$ 5 million;
- Increase the new large transmission network asset threshold from \$10 million to \$20 million;
- Provide for information disclosure on network replacements over \$5 million;
- Provide a mechanism to maintain the threshold values over time; and
- Made this Rule determination applicable to the new small and large transmission network asset thresholds only (and not the new small and large distribution network asset thresholds).

The key modifications to the proposed Rule made by the Commission are:

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<sup>a</sup> When this Rule change proposal was submitted the National Electricity Objective was known as the National Electricity Market objective (NEM objective). The NEM objective became the National Electricity Objective on 1 January 2008. There are no substantive differences besides the change in name from the NEM objective to the National Electricity Objective.

- Raising the new large transmission network asset threshold from \$10 million to \$20 million (and not \$ 35 million as proposed in the Rule change proposal);
- Providing for a three yearly review of threshold values to be conducted by the AER (and not automatic annual indexation as proposed in the Rule change proposal);
- Removing the ability of the AER to change the amount of the asset thresholds and to provide for non monetary criteria that is contained in the definitions of new small transmission network asset and new large transmission network asset;
- Additional information to be provided in regards to replacement transmission assets including: the purpose of the proposed new replacement transmission asset; a list of alternative projects to the proposed new replacement transmission asset; and the TNSPs estimated total capitalised expenditure on the proposed new replacement transmission asset;
- Provision for VENCORP to publish the replacement transmission asset information in the Victorian APR and for SP AusNet to provide the relevant information by 28 February each year;
- Clarifying the meaning of the term “replacement network asset”; and
- Including savings and transitional provisions relating to which projects will still be under the existing thresholds when this Rule takes effect.

This Rule determination sets out the reasons of the Commission in accordance with the requirements of the NEL and sets out the Commission’s assessment in relation to the above proposed changes. The Rule, which has been made in accordance with this assessment is attached.

### **Differences between the final Rule and the draft Rule**

The Commission has made the following minor amendments to the draft Rule in the final Rule primarily as a result of issues raised in submissions:

- The definition of replacement transmission network asset has been amended to clarify the treatment of part replacement and part augmentation projects; and
- The AER’s ability to replace the monetary values for the threshold with non-monetary specifications has been removed.

### **Summary of the Rule change proposal**

On 21 November 2007 the Commission received a Rule change proposal from the members of the Electricity Transmission Network Owners Forum (now referred to as Grid Australia). The Rule change proposal was in relation to augmentation asset

thresholds under the regulatory test, and information disclosure requirements for network replacements. While the regulatory test currently applies to transmission and distribution augmentations, this Rule change proposal only applies to transmission augmentation thresholds and replacements. The main elements of the Rule change proposal were:

- To increase the current regulatory test thresholds applying to new small transmission network assets from \$1 million to \$5 million and new large transmission network assets from \$10 million to \$35 million;
- Index the regulatory test's monetary thresholds to movements in the Producer Price Index (PPI); and
- Require Transmission Network Service Providers (TNSPs) to disclose certain information on all proposed replacement network assets in excess of \$5 million in their Annual Planning Reports (APRs).

Grid Australia stated that the Rule proposal will:

- Reduce the allocation of funds towards unnecessary regulatory test assessment, consultation, and information disclosure thus providing for a more efficient planning process; and
- Increase the responsiveness of TNSPs in relation to consumers needs for network augmentation projects.

## **First Round Consultation**

The Commission published the Rule change proposal in accordance with section 95 of the National Electricity Law (NEL) and consultation closed on 20 December 2007. Seven first round submissions were received including a supplementary submission from Grid Australia. The submissions from Hydro Tasmania, the NGF and Energex displayed various degrees of support for the Rule change proposal. The submissions from VENCORP, the Energy Retailers Association of Australia (ERAA) and TRUenergy were not supportive of the Rule change proposal. Grid Australia made a supplementary submission that clarified and provided further information to support its Rule change proposal.

## **Second Round Consultation**

The Commission published its draft Rule determination in accordance with section 99 of the of the National Electricity Law (NEL) and second round consultation closed on 15 September 2008. Two second round submissions were received from EnergyAustralia and Grid Australia. The submission from EnergyAustralia stated (amongst other things) that the increased regulatory test thresholds for distribution networks should be increased in accordance with those made in the draft Rule determination for transmission. The submission from Grid Australia stated that an expedited process for projects costing under \$35 million should be provided for in the current regulatory test.

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# 1 Grid Australia's Rule proposal

## 1.1 Summary of the Rule change proposal

On 21 November 2007 the Commission received a Rule change proposal from the members of ETNOF who are now known as Grid Australia<sup>1</sup>.

### 1.1.1 Increasing asset thresholds

Grid Australia proposed that the current thresholds applying to new transmission network augmentations under the Rules be amended as follows:

- The new small transmission network asset threshold be increased from \$1 million to \$5 million; and
- The new large transmission network asset threshold be increased from \$10 million to \$35 million.

The effects of the Rule change proposal are that projects that no longer fall into the small asset threshold will not be required to be assessed under the regulatory test. Also the regulatory test information will no longer be required to be disclosed to the market. There are still however information disclosure requirements specified in clause 5.6.2A for all augmentation assets. For projects that drop out of the new large asset threshold and into the new small asset threshold the effect is that there will be no separate individual public consultation in respect to those projects and no mechanism for dispute resolution. However the extent of information provided is the same as that in the APRs and application notices.

Currently the regulatory test applies to transmission and distribution augmentations and currently the new small and large distribution network asset thresholds are identical. This Rule change proposal however proposes to only raise the new small and large transmission network assets and make no change to the distribution asset thresholds.

### 1.1.2 Indexation of asset thresholds

Grid Australia proposed that the Regulatory Test thresholds be indexed over time by an appropriate escalator so that the monetary thresholds are maintained over time. Grid Australia proposed the PPI released by the Australian Bureau of Statistics be the escalator, as it considered this to better reflect the general movement in the prices facing the construction sector than the Consumer Price index (CPI).

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<sup>1</sup> The members of Grid Australia are: Electranet Pty Ltd, Powerlink Queensland, SP AusNet, Transend Networks Pty Ltd and Transgrid.

### 1.1.3 Information disclosure on network replacements

Grid Australia proposed that TNSPs be required to disclose certain information on replacement projects in excess of \$5 million in their respective APR's. Grid Australia proposed that the information to be disclosed in the APR's be:

- A brief description of the project; and
- The planned commissioning date.

Currently there are information disclosure requirements for all network augmentations only. There are no information disclosure requirements applicable to network replacements.

Grid Australia also proposed that the replacement asset threshold be indexed.

### 1.1.4 Problems to be addressed by Rule change

Grid Australia stated:

- that the current monetary thresholds in the Regulatory Test were established in 2001 as part of the Network and Distributed Resources Code changes. At that time, some TNSPs expressed concern that the thresholds for small and large transmission network assets were set too low, and that those TNSPs considered that more appropriate thresholds would be of the order of \$7-25 million for new small network assets and above \$25 million for new large network assets. The rule-maker at the time however decided to take a conservative stance in setting the threshold values to the present figures as the arrangements were still new; and
- that since 2001, there have been substantial increases in the input cost of materials used in transmission assets (eg steel, aluminium, copper) and labour costs.

Grid Australia therefore considered that the asset thresholds need to be increased to more realistic levels. This would provide for more efficient allocation of resources as less resources would be required to produce assessment and consultation documentation. Furthermore the time taken to approve simple transmission augmentations would be improved providing a benefit to consumers.

## 1.2 Context and background

The Australian Competition and Consumer Commission made a determination on 13 February 2002 to incorporate the threshold levels in its Networks and Distributed Resources Determination<sup>2</sup>. The levels were set at \$1 million for the new small transmission network asset threshold and \$10 million for the new large transmission

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<sup>2</sup> ACCC, Applications for Authorisation - Amendments to the National Electricity Code Network and Distributed Resources, 13 February 2002.

network asset threshold<sup>3</sup>. Grid Australia's main proposal is for these threshold levels to be changed to \$5 million dollars (for the small asset threshold) and \$35 million for the large asset threshold).

The Commission commented on the issue of the large asset threshold in its consideration of the Transmission Network Replacement and Reconfiguration Rule change proposal. In its draft Rule determination the Commission considered a threshold of \$ 35 million (being the midway point of a range between \$20 million and \$50 million)<sup>4</sup>. These comments however were made in the context of broadening the application of the regulatory test to large network replacements. In its final determination the Commission decided that, on the basis of submissions received, it was not clear that such a proposal would promote the NEO<sup>5</sup>.

Grid Australia noted the Commission's comments in its Rule change proposal and considered those deliberations of the Commission to be a realistic reflection of today's construction costs for significant augmentations.

### **1.3 Links with other Projects**

#### **1.3.1 National Transmission Planner Review**

As part of the National Transmission Planner Review, the Commission was requested by the Ministerial Council on Energy (MCE) to make recommendations for a new project assessment and consultation process for transmission to replace the current regulatory test with respect to transmission projects. The Commission's recommendations were provided to the MCE on 30 June 2008 and were published on 22 July 2008.<sup>6</sup>

For the new transmission assessment process (called the Regulatory Investment Test for Transmission (RIT-T), the Commission recommended having one single threshold of \$5m. Proposed transmission projects which have an economic and technically feasible option costing more than \$5m, will be required to undertake a RIT-T assessment. The proposed RIT-T also contains an objective framework which enables the extent of assessment and consultation to be tailored to the specific impact and materiality of the proposed project.

The proposed RIT-T has been developed to implement the objectives set out by Council of Australian Governments (COAG) in its response to the Energy Reform Implementation Group. Therefore given the amalgamation of the reliability and market benefits limbs, and the increased focus on assessing national benefits, the proposed RIT-T will be a significantly different test to the current regulatory test.

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<sup>3</sup> ACCC, Applications for Authorisation – Amendments to the National Electricity Code Network and Distributed Resources, 13 February 2002.

<sup>4</sup> AEMC, Draft National Electricity Amendment (Transmission Network Replacement and Reconfiguration) Rule 2006, 26 October 2006, p18.

<sup>5</sup> AEMC, Transmission Network Replacement and Reconfiguration Rule determination, 1 March 2007.

<sup>6</sup> AEMC, National Transmission Planning Arrangements, Final Report to MCE, 30 June 2008

The Commission's determination on the appropriate threshold for the RIT-T has been developed in this context.

The Commission views the consideration of the appropriate thresholds for this Rule determination to be separate and distinct given the differences in the assessment methodology and consultation process between the current test and proposed RIT-T.

The MCE is currently considering the proposed RIT-T. The Commission has recommended that the proposed RIT-T be implemented through the fast tracked Rule change process and that the AER is allowed 12 months from the commencement of the new rules, to develop the new RIT-T. The determination for this proposed Rule will apply until the introduction of the RIT-T.

### **1.3.2 Review of Demand Side Participation in the NEM**

The Commission has initiated a review to investigate if the Rules are limiting the efficient involvement of the demand-side in the NEM. On 16 May 2008 the Commission published an issues paper seeking stakeholder comment on a range of identified issues<sup>7</sup>. One of the identified issues was whether the Regulatory Test thresholds may be limiting the ability for alternatives to smaller network augmentations to be considered. Submissions to the issues paper closed on 20 June 2008. A draft report is due to be published in December 2008.

## **1.4 Consultation on the Rule proposal**

On 20 December 2007 the Commission commenced first round consultation under section 95 of the NEL on the proposal. Consultation closed on 15 February 2008. The Commission received seven submissions to the proposal including a supplementary submission from Grid Australia. Submissions were received from the following parties:

- Grid Australia;
- VENCORP;
- Energy Retailers Association of Australia (ERAA);
- TRUenergy;
- Hydro Tasmania;
- National Generators Forum (NGF); and
- Energex.

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<sup>7</sup> AEMC, Review of Demand-Side Participation in the National Electricity Market Stage 2: Issues Paper, 16 May 2008.

The submissions from Hydro Tasmania, the NGF and Energex displayed various degrees of support for the Rule change proposal. The submissions from VENCORP, the ERAA and TRUenergy were not supportive of the Rule change proposal. Grid Australia made a supplementary submission that clarified and provided further information to support its Rule change proposal.

## **1.5 Consultation on the draft Rule determination**

On 31 July 2008 the Commission commenced consultation on the draft Rule determination. Consultation closed on 15 September 2008. The Commission received two submissions from Energy Australia and Grid Australia. The submission from EnergyAustralia stated (amongst other things) that the increased regulatory test thresholds for distribution networks should be increased in accordance with those made in the draft Rule determination for transmission. The submission from Grid Australia stated that an expedited process for projects costing under \$35 million should be provided for in the current regulatory test.

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## 2 Commission's Assessment of the Rule Change Proposal

This section of the final Rule determination provides the assessment framework by which the Commission has assessed the Rule change proposal and the Commission's assessment of the Rule change proposal against the NEO<sup>8</sup>. The reasons for the Commission's decisions are contained in section 3 of this final Rule determination.

### 2.1 Methodology for developing the Rule determination

The Commission has determined in accordance with sections 102 and 103 of the NEL to make with amendments and modifications, a Rule. A list of the key modifications and amendments to the proposed Rule from the Rule is included in section 2.8 below. The Rule to be made which is substantially similar to the draft Rule, is attached to this determination.

This Rule determination sets out the Commission's reasons for making the Rule. The Commission has taken into account:

1. The Commission's powers under the NEL to make the Rule;
2. The proponent's Rule change proposal and proposed Rule;
3. Submissions received;
4. Relevant MCE statements of policy principles; and
5. The Commission's analysis as to the way(s) in which the Rule will or is likely to contribute to the achievement of the NEO<sup>9</sup> so that it satisfies the statutory Rule making test.

### 2.2 The Commission's power to make a Rule

The Commission is satisfied that the Rule falls within the subject matters for which the Commission may make Rules, as set out in section 34 of the NEL and in Schedule 1 to the NEL.

The Rule relates specifically to section 34(1) of the NEL, which states that:

"...the AEMC, in accordance with this Law and the Regulations, may make Rules, to be known, collectively, as the "National Electricity Rules", for or with respect to-

(a) regulating -

...

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<sup>8</sup> Formerly known as the National Electricity Market objective.

<sup>9</sup> Ibid

- (iii) the activities of persons (including Registered Participants) participating in the national electricity market or involved in the operation of the national electricity system;”

The Rule also falls under the following subject matter items under Schedule 1 to the NEL, namely:

item 12. the augmentation or expansion in the capacity of transmission systems and distribution systems; and

item 23. incentives for regulated transmission system operators to make efficient operating and investment decisions.

### **2.3 Assessment of the Rule: the Rule making test, the national electricity objective and MCE statements of policy principles**

The Rule making test requires the Commission to be satisfied that a Rule that it proposes to make will contribute to the NEO<sup>10</sup>.

The test requires the Commission to consider the implications of the proposed new Rule, for efficient investment in, and efficient operation and use of, electricity services, in respect of:

- (a) price, quality, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the NEM;

which impact on the long term interests of end users of electricity.

The NEL requires the Commission to have regard to any MCE statements of policy principles in applying the Rule making test. The Commission notes that currently there are no MCE statements of policy principles that currently relate to regulatory test thresholds or information disclosure on network replacements.

### **2.4 Grid Australia’s assessment of how its Rule change proposal satisfies the National Electricity Objective**

Grid Australia stated that raising the asset thresholds under the Regulatory Test contributes to the NEO<sup>11</sup> by promoting efficient investment in electricity transmission networks.

Grid Australia stated:

- That market participants and other stakeholders have shown negligible response to consultations on small network assets identified in the APR, with TNSPs having received only a single submission over the last six years. It

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<sup>10</sup> Formerly known as the National Electricity Market objective.

<sup>11</sup> Ibid

considered that the cost of continuing to provide such information for investments within the current new small network asset range outweighed the benefit to the market and is therefore inefficient;

- That TNSPs incur relatively significant resource and administrative costs in complying with the Regulatory Test and the formal consultation processes described in the Rules for new large network assets. The inefficient allocation of a TNSP's resources to produce relevant documents and undertake requisite consultations with stakeholders detracts from achievement of the NEO<sup>12</sup> by adding undue cost to transmission investments. These costs are ultimately passed on to electricity consumers.

Grid Australia stated that raising the large network asset threshold to \$35 million:

- will allow TNSPs and potential non-network solution proponents in particular, to focus their efforts on regulatory test assessments that are likely to generate genuine non-network options;
- the consequential reduction in regulatory burden upon TNSPs as a result of not being required to apply the extended regulatory test consultation process to future new large network assets below \$35 million will improve the efficiency of the consultation and approval process. Grid Australia stated that it will also promote timely decision-making on network investments to enhance the reliability, safety and security of electricity supply. Grid Australia stated that such an outcome is considered to be in the long term interests of consumers.

Grid Australia stated that raising the asset thresholds provides both an efficient and practical approach to meeting the NEO<sup>13</sup> as TNSP resources could be better utilised if diverted away from the production of information and analysis which provides little or no value to the market, toward those which do.

## **2.5 The Commissions Assessment of the National Electricity Objective**

This section shows the Commission's analysis of the proposed Rule against the NEO.

In assessing this Rule change proposal against the NEO<sup>14</sup> the Commission considers that the key question is balancing the amount of regulatory scrutiny applied to augmentation projects to promote efficient market outcomes and providing the appropriate regulatory burden on TNSPs in relation to those projects.

In assessing the costs and benefits of the proposal the Commission needs to consider whether the requirement for the tools of regulatory scrutiny (including information disclosure, public consultation, a test for economic efficiency of projects and dispute resolution) need to be balanced by the regulatory burden, (including costs to TNSPs,

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<sup>12</sup> Formerly the National Electricity Market objective

<sup>13</sup> Ibid

<sup>14</sup> Ibid

necessity of the information and the efficient allocation of resources). Promoting timely investment and preventing unnecessary delays are also factors that the Commission considers are important in assessing this proposal.

The Commission must seek to achieve the best regulatory practice in considering these factors for the different threshold levels of augmentation projects.

Grid Australia's Rule change proposal has four main elements:

- Increasing the new small transmission network asset threshold;
- Increasing the new large transmission network asset threshold;
- Providing for information disclosure on network replacements; and
- Providing for threshold values to be maintained over time.

The Commission has decided to adopt the four elements proposed by grid Australia subject to key enhancements and modifications listed in section 2.8 (below) of this final Rule determination. The Commission considers that the final Rule promotes the NEO as increasing the asset threshold values and providing for an input costs review, promotes efficient investment in electricity services by reducing unnecessary regulatory costs. The level of regulatory scrutiny for projects is now aligned more proportionately to the costs of the projects and the effects the projects have on the power system. This is expected to benefit the end users of electricity.

The Commission also considers that providing additional information on network replacements promotes the NEO as it increases the transparency of regulated businesses therefore further providing for efficient investment in electricity services which is to the benefit electricity consumers in the long term.

## **2.6 Commission's Determination**

The Commission has assessed the main elements of this Rule change proposal against the NEO<sup>15</sup>, and in accordance with its assessment framework as described above. The Commission has also had regard to the information that has been presented to it and that it has obtained through its own analysis and research. The Commission's decision in respect to this Rule change proposal therefore is to:

- Increase the new small transmission network asset threshold from \$1 million to \$ 5 million;
- Increase the new large transmission network asset threshold from \$10 million to \$20 million;
- Provide for information disclosure on network replacements over \$5 million; and

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<sup>15</sup> Formerly the National Electricity market objective.

- Provide for a review process so that the threshold values are maintained over time in real terms.

## 2.7 Commission’s enhancements to the proposed Rule

The Commission has largely adopted Grid Australia’s proposed Rule but has made some modifications arising out of its own analysis and in examining issues raised in submissions. The modifications have been made as the Commission considers that they better promote the NEO<sup>16</sup>. The Commission’s reasoning for the modifications are outlined in Appendix A to this determination. The modifications to the proposed Rule contained in the draft Rule are:

- Raising the new large transmission network asset threshold from \$10 million to \$20 million (and not an increase to \$35 million as proposed in the Rule change proposal);
- Providing for a three yearly review of threshold values to be conducted by the AER (instead of annually updated based on PPI);
- Removing the ability of the AER to change the amount of the asset thresholds and to provide for non monetary criteria that is contained in the definitions of new small transmission network asset and new large transmission network asset;
- Additional information to be provided in regards to replacement transmission assets including: the purpose of the proposed new replacement transmission asset; a list of alternative projects to the proposed new replacement transmission asset; and the TNSP’s estimated total capitalised expenditure on the proposed new replacement transmission asset;
- Provision for VENCorp to publish the replacement transmission asset information in the Victorian APR and for SP AusNet to provide the relevant information by 28 February each year;
- Clarifying the meaning of the term “replacement network asset”; and
- Including savings and transitional provisions relating to which projects will still be under the existing thresholds when this Rule takes effect.

## 2.8 Differences between the final Rule and the draft Rule

The Commission has made the following minor amendments to the draft Rule in this final Rule primarily as a result of issues raised in submissions:

- The definition of replacement transmission network asset has been amended to clarify the treatment of joint replacement and augmentation projects; and

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<sup>16</sup> Formerly the National Electricity Market objective.

- The AER's ability to add or replace the monetary values for the thresholds with non monetary specifications has been removed.

### 3 The Commissions Reasoning

This section shows the Commission's reasoning for arriving at its decisions.

#### 3.1 Commission's consideration of thresholds generally

In its draft Rule determination the Commission examined the following information in relation to assessing the transmission asset thresholds:

- Input cost information (see Appendix B);
- Information on the cost of undertaking the regulatory test compared to the capital costs of projects<sup>17</sup> ;
- Examination of APRs and application notices to ascertain the number of projects that fall within relevant cost bands and to assist in understanding the level of information; and
- Historical information including the relevant ACCC decision that incorporated the thresholds in the National Electricity Code (now the Rules)<sup>18</sup>.

The Commission noted that input costs have increased since the inception of the thresholds. Input cost increases from the various indices examined by the Commission from 2002 were: 36% for the general construction PPI; 64% for the power transformer PPI; 102% for the distribution transformer PPI; 20% for the electricity supply PPI and 16% for the CPI. The Commission concluded that projects that were originally not intended to be captured by the threshold were now being captured as the threshold values remained constant over time. Consequently the regulatory burden on TNSPs was increased and resulted in an increase in costs, time taken to approve investments and the requirement for the extra allocation of resources to address the regulatory burden. The Commission considered that this resulted in inefficiencies in the regulatory process.

First round submissions to the Rule change proposal commented that regulatory scrutiny on regulated businesses increased their transparency in terms of their expenditure and their participation in the network planning process<sup>19</sup>. The Commission considered however that this should be balanced against the cost of that

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<sup>17</sup> This information was requested by the Commission and provided to the Commission on a confidential basis and has therefore been treated in accordance with the Commission's "Guidelines for making Written Submissions on Rule Change proposals". The guidelines state that the Commission considers that where submissions (or parts of submissions) are treated as confidential, they cannot be tested and subjected to the full scrutiny that the public consultation process allows. The Commission takes this lack of public scrutiny into account in the appropriate weight to be attributed to confidential information contained in a submission.

<sup>18</sup> ACCC, Applications for Authorisation - Amendments to the National Electricity Code Network and Distributed Resources, 13 February 2002.

<sup>19</sup> VENCorp submission, pp 1-2, ERAA submission pp1-2, TRUenergy Submission pp1-2.

regulatory scrutiny to achieve regulatory best practice. The Commission also noted that some first round submissions also commented that the thresholds should be increased<sup>20</sup>.

The Commission considered that arrangements should reflect good regulatory practice. This meant that it was important that the process did not result in unjustified cost and use of resources. The regulatory process imposes a cost and that cost should be proportionate to the size and effect of the project. The Commission considered that the inflation in input costs had caused an unintended shift in the relationship between the regulatory process and the impact of the project which was established by the ACCC in 2002<sup>21</sup>.

The Commission therefore considered that based on the evidence presented in its analysis that it would promote the NEO<sup>22</sup> to increase the regulatory test threshold values with respect to transmission network augmentations. The Commission considered that there is no exact science to determining the appropriate thresholds. Instead it is a matter of judgement and ensuring that the appropriate balance is achieved between regulatory scrutiny and transparency for the different levels of projects.

The Commission upholds the decision of its draft Rule determination in this final Rule determination, to increase the regulatory test thresholds.

### **3.1.1 Increasing New Small Transmission Network Asset Threshold**

The Commission determined that the asset thresholds were to be increased. This section shows the Commission's reasoning for the amount that the new small transmission network asset threshold should be increased to.

In considering the quantum of the threshold in its draft Rule determination, the Commission considered the best regulatory practice threshold amount. The Commission also had regard to the effects of increasing the small asset threshold. These are:

- Projects between \$1 million and \$5 million would now not be required to undertake the regulatory test assessment; and
- The information from undertaking the regulatory test would not be disclosed to the market because such projects are now not required to undertake the regulatory test assessment. Information on these projects is still required to be published under clause 5.6.2A of the Rules (See Appendix C).

The Commission also ascertained that:

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<sup>20</sup> HydroTasmania submission, p1, NGF submission, p1, Energex submission pp1.

<sup>21</sup> ACCC, Applications for Authorisation - Amendments to the National Electricity Code Network and Distributed Resources, 13 February 2002.

<sup>22</sup> Formerly the National Electricity Market objective.

- The information not supplied to the market by raising the threshold was only the regulatory test assessment information, and that clause 5.6.2A of the Rules required information to be disclosed regardless of the asset threshold (see appendix C);
- That in place of the regulatory test assessment, the Chapter 6A framework provides scrutiny on the economic efficiency of projects when TNSPs seek to obtain approval from the AER for their five year revenue determinations. This effectively provides regulatory scrutiny on TNSPs to minimise the cost of projects and therefore provides safeguards for projects of between \$1 million to under \$5 million;
- Information on the costs of undertaking the regulatory test against the capital cost of projects<sup>23</sup> showed that the proportion of costs of undertaking the regulatory test was high in comparison to other project cost bands for the project cost band of \$1 million - \$5 million; and
- Input costs have increased. Appendix B shows that the input cost increases for the various indices from 2002 to the present are: 36% for the general construction PPI; 64% for the power transformer PPI; 102% for the distribution transformer PPI; 20% for the electricity supply PPI and 16% for the CPI.

In light of this analysis the Commission determined in its draft Rule determination that the new small transmission network asset threshold should be increased to \$5 million. In setting this value the Commission accepted Grid Australia's Rule change proposal. The Commission considered that this amount provides the appropriate balance between the level of regulatory scrutiny applied to augmentation assets and providing the appropriate regulatory burden on TNSPs in relation to projects. The Commission further noted that increasing the threshold value to \$5 million would mean that simple minor projects are not unnecessarily delayed.

The Commission upholds the decision made in its draft Rule determination to increase the new small transmission asset threshold to \$5 million in this final Rule determination.

### **3.1.2 Increasing New Large Transmission Network Asset thresholds**

In its draft Rule determination the Commission considered that the question of how much to increase the large asset threshold is a separate question to the small asset threshold due to the different effects of increasing the large and small thresholds. The effects of increasing the large asset threshold are:

- That information disclosure will be through the APRs and not through application notices and requests for information which include public consultation; and

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<sup>23</sup> Information provided on a confidential basis.

- There is no dispute resolution mechanism.

In determining an increased threshold value for the large asset threshold the Commission was required to balance on the one hand the fact that input costs have increased which meant that assets that were not intended to be captured by this threshold are now captured, thus increasing the regulatory burden on and the administrative costs of TNSPs. On the other hand however the Commission considered that the regulatory scrutiny in terms of public consultation and the availability of dispute resolution is important for projects of a particular scale.

The Commission therefore decided not to accept Grid Australia's proposal of raising the new large transmission network asset threshold to \$35 million but instead to raise the threshold to \$20 million.

The Commission considered that this figure reflects the increase in input costs and also provides the appropriate balance between the regulatory burden on TNSPs and ensuring the appropriate level of regulatory scrutiny to promote efficient market outcomes, and the timely delivery of transmission services to consumers. In providing for this increase the Commission noted that participants will still be able to provide comments to the TNSP on the proposed projects through responding to the information contained in the APRs. The increased threshold amount will also provide for transmission investment to proceed in a timely manner and not be unnecessarily delayed.

In the second round of consultation Grid Australia reiterated its original proposal that the new large transmission asset threshold be increased to \$35 million<sup>24</sup>. It noted that a higher threshold would be more consistent with the Commission's proposed design for the RIT-T. Grid Australia also noted that the RIT-T includes a fast track process for investments costing less than \$35 million which do not have any material market benefits<sup>25</sup>.

The Commission maintains its views expressed in its draft Rule determination that the RIT-T is a separate test to the current regulatory test. The threshold amounts and operation of the RIT-T were a result of analysis undertaken to replace the current regulatory test and in the context of the National Transmission Planner arrangements.

The framework for the expedited process for the RIT-T is not comparable to the thresholds for the current regulatory test. The expedited process under the RIT-T only exempts the TNSPs from having to issue a draft project assessment report for consultation. The TNSPs are still required to issue a project specification consultation and final project assessment report. However to increase the threshold to \$35 million would now mean that all projects less than \$35 million would not be subject to any separate consultation. The expedited process is therefore not transferable to the current regulatory test.

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<sup>24</sup> Grid Australia submission (second round), p1

<sup>25</sup> Grid Australia submission (second round), p2

The Commission has therefore decided to uphold its decision to increase the new large asset threshold to \$20 million. The Commission considers that this figure better promotes the NEO than the proposed figure of \$35 million in relation to the current regulatory test as it maintains the appropriate balance between transparency of operations by regulated TNSP's and the degree of regulatory burden placed on these providers.

### **3.2 Information Disclosure on Network Replacements**

In its draft Rule determination the Commission agreed with submissions<sup>26</sup> and the Rule proposal that additional information disclosure by TNSPs on network replacements over \$5 million increases the transparency of the planning process and the operation of regulated businesses. In this way information disclosure promotes the NEO<sup>27</sup>.

The Commission accepted Grid Australia's Rule change proposal but made key modifications and enhancements to it in its draft Rule determination. These included:

- Providing for additional information in regards to network replacements over \$5 million that are in accordance with the information currently required for all augmentations (whether they fit into an augmentation threshold or not);
- Clarifying the definition of network replacements in accordance with the policy intent of the proposal; and
- Providing that VENCORP publish the APRs for the Victorian jurisdiction and that SP AusNet provide the relevant information to VENCORP by 28 February each year<sup>28</sup>. In amending the Victorian derogation the Commission has had regard to the matters set out in section 89 of the NEL and considers that this consequential amendment to the Victorian derogation is required.

The Commission considered that these modifications provide useful information to the market without imposing too onerous a burden on the TNSPs and therefore better promote the NEO than the proposed Rule. The Commission has retained these enhancements in this final Rule determination.

In the second round of consultation EnergyAustralia stated that the proposed information disclosure requirement to publish transmission replacement information in the TNSP's APRs will not capture EnergyAustralia's transmission investments<sup>29</sup>.

The Commission considers that investments made by distribution businesses are out of scope of this Rule change proposal. This Rule change proposal applies to TNSP's and transmission assets. The Commission's reasons as to why this Rule does not apply to distribution is discussed in section 3.4 below.

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<sup>26</sup> ERAA submission p4, Energex submission pp 1-2, NGF submission p1.

<sup>27</sup> Formerly the National Electricity Market objective.

<sup>28</sup> This was submitted by VENCORP in its submission (pp2-3)

<sup>29</sup> EnergyAustralia submission (second round) p4

EnergyAustralia also stated that the definition of replacement transmission network assets was unclear on how a transmission investment should be treated if it were part replacement and part augmentation<sup>30</sup>.

The Commission agrees that the definition should be clarified. The Commission considers that if the expenditure on replacing any existing element also results in an augmentation to the network, then the information disclosure requirement should apply where estimated total cost of the project is in excess of \$5 million.

This amendment has been adopted in the final Rule.

### **3.3 Threshold values to be maintained over time**

In its draft Rule determination the Commission accepted Grid Australia's proposal that the threshold values be maintained over time in real terms for:

- New small transmission network assets;
- New large transmission network assets; and
- Network replacement information (as proposed in this Rule change proposal);

The Commission considered that this promotes the NEO<sup>31</sup> as it provides that the required projects are captured by the relevant thresholds over time to maintain the appropriate balance between regulatory scrutiny and transparency and the regulatory burden on TNSPs.

The Commission however made extensive modifications and enhancements to this part of the Rule change proposal. While the Commission accepted the principle of Grid Australia's proposal it noted comments made in submissions questioning the validity of the PPI as proposed by Grid Australia<sup>32</sup>.

The Commission considered that a review of the threshold values is a more preferable method of maintaining the threshold values over time in real terms than automatic indexation.

The Commission considered that a review would allow for a number of indices to be used and for market consultation to guide the determination of an appropriate value. A review would provide for a more thorough analysis into the input costs of the threshold values. This would also include a consultation period where it is expected that the relevant factors from the various aspects of industry could be obtained.

The review has been limited to being a review of a change to the input costs only and not a review of the material value of the asset thresholds.

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<sup>30</sup> EnergyAustralia submission (second round), p5

<sup>31</sup> Formerly the National Electricity Market objective.

<sup>32</sup> ERAA submission, p3, Hydro Tasmania submission, p1-2.

Having analysed the effects of indexation from 2002 to the present the Commission considered that the review should take place every three years as the analysis found that input costs did not vary considerably on an annual basis.

The Commission considered that the timeframes to conduct the review should allow adequate time for industry consultation, and for a thorough examination of the input costs, but should not unduly delay the introduction of changes that would seek to maintain the value of the thresholds where there is a change in input costs. The Commission has therefore provided for a 16 week process, with 6 weeks allocated to the publication of a draft decision, 5 weeks allocated to consultation and 5 weeks allocated to the publication of a final decision.

The Commission considered that the AER be responsible for conducting the review as this function is in accordance with the AER's current roles of monitoring, enforcing and promulgating the Regulatory Test.

The Commission considered that this mechanism allows for the proper consultative consideration of appropriate threshold values over time, and therefore better promotes the NEO over automatic indexation.

The Commission upholds these decisions relating to reviewing the threshold values made in its draft Rule determination in this final Rule determination. The AER will be required to commence the first review by 31 July 2011.

In its draft Rule determination the Commission removed the provision currently contained in the definitions of new small transmission network asset and new large transmission network asset that allows the AER to change the value of the asset thresholds without consultation. This provision is effectively replaced by the input cost review mechanism.

In its second round submission EnergyAustralia noted that the provision for the AER to set non-monetary thresholds or criteria to distinguish between new small and new large network investments without consultation was not removed in the draft Rule determination<sup>33</sup>.

The Commission agrees with EnergyAustralia that it is undesirable for the AER to be able to set non-monetary criteria on the thresholds without consultation. The Commission also agrees with EnergyAustralia that the provision should be removed. The Commission considers that should the AER wish to introduce non-monetary criteria to the transmission network thresholds that the Rule change process provides a sound regulatory framework and consultation process to facilitate its consideration.

### **3.4 Application of threshold values to distribution**

In its draft Rule determination the Commission assessed the Rule change proposal in respect of transmission only. While some of the issues of this Rule change proposal

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<sup>33</sup> EnergyAustralia submission (second round), p6

are applicable to distribution as well as transmission the Commission considered the assessment and applicability of these issues in relation to distribution to be a matter requiring separate analysis and consultation. The Commission therefore considered the applicability of the elements of this Rule change proposal to distribution to be out of scope of this Rule change proposal.

In its second round submission EnergyAustralia stated that the regulatory test thresholds for transmission made in the Commission's draft Rule determination should also apply to distribution<sup>34</sup>. This would involve the Commission making a more preferred Rule under section 91A and 102A of the Rules.

EnergyAustralia argued that the issues considered under the draft Rule determination apply equally to distribution investments. It stated that:

- The increases in input costs for DNSPs are the same as for TNSPs;
- The cost of undertaking regulatory test assessments are the same for distribution as for transmission; and
- The new ex ante revenue determination framework places a higher burden on DNSPs to justify capital expenditure<sup>35</sup>.

Although the Commission recognises that these matters could be applicable to distribution, it considers that the question of the appropriate regulatory test thresholds for distribution as separate, especially with the scope for demand side projects being greater in distribution than transmission. The Commission retains its view that this question requires detailed separate analysis and a full consultation process and therefore it would be inappropriate to amend this Rule to raise the distribution thresholds as well.

EnergyAustralia also submitted that by maintaining the current thresholds for distribution investments at \$1 million and \$10 million there is a gap between the consultation and assessment process for distribution or transmission investments. EnergyAustralia stated that there may be gaps in the consultation process if the transmission option cost between \$10 million and \$20 million<sup>36</sup>.

The Commission considers that clauses 5.6.2(f) and 5.6.2(g) set out the procedures that a DNSP must follow. These provisions relate to all options and therefore apply irrespective whether the DNSP is exploring a distribution or a transmission investment. For example, clause 5.6.2 (f) requires the consult on the range of options to address any project limitation on its network as long as the project is likely to cost more than \$10 million. Therefore this would include any transmission option. The Commission therefore considers that there is no difference in the required consultation process between a distribution option costing between \$10 million and

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<sup>34</sup> EnergyAustralia submission (second round), pp1-4

<sup>35</sup> EnergyAustralia submission (second round), pp1-3

<sup>36</sup> EnergyAustralia submission (second round), pp3-4

\$20 million and a transmission investment by the DNSP option costing between \$10 million and \$20 million.

However the Commission notes that under certain situations, a DNSP and TNSP may jointly planned an network option. Having different thresholds and procedures depending on whether the TNSP or the DNSP pursue the network option could create a inconsistency for transmission projects which cost between \$10m and \$20m. In such circumstances, it would be appropriate for the relevant network service provider to comply with the applicable provisions in the Rules.

The Commission therefore does not consider it to better promote the NEO to make a more preferable Rule on this issue. The Commission therefore upholds the decision of its draft Rule determination in this final Rule determination, that this Rule is to apply only to transmission projects and TNSPs.

### **3.5 Savings and transitional provisions**

The provisions of the final Rule will take effect immediately. Savings and transitional provisions, however, were provided for in the draft Rule determination as some projects may be at the consultation process or are in the process of undergoing a regulatory test assessment. The current regulatory test threshold values will continue to apply to:

- A new small transmission network asset for which a TNSP has set out the matters required under clause 5.6.2A(b)(4) and (5) of the Rules in an APR published prior to the commencement of the new threshold values;
- A new small transmission network asset not identified in an APR for which a TNSP has published a report required under clause 5.6.6A(c) of the Rules prior to the commencement of the new threshold values; and
- A new large transmission network asset for which a TNSP has taken an action or commenced a process under the Rules, which relies on or is referenced to the regulatory test (such as publishing an application notice under clause 5.6.6(c), and is not completed prior to the commencement of the new thresholds.

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## A Current Regulatory Test Processes for Thresholds

<u>Type of Asset →</u>  Process  ↓	<u>Augmentations that are lower than the New Small Transmission Network Asset Threshold</u>	<u>New Small Transmission Network Asset Threshold (Currently \$1 million and above, proposal is to shift this to \$5 million and above)</u>	<u>New Large Transmission Network Asset Threshold (Currently \$10 million and above, proposal is to shift this to \$35 million and above)</u>
<b>Pre-assessment Consultation</b>	Not required	Not required	For non-reliability augmentations, TNSPs are required to issue Request for Information. This must be sufficiently detailed to enable other participants to raise suitable alternatives. This should include (amongst other things) costs, rationale, timetable and technical details.  No pre-assessment consultation for reliability augmentations.
<b>Assessment under the Regulatory Test</b>	Not assessed	Assessed under the Regulatory Test (methodology of assessment differs for reliability and non-reliability augmentations)	Assessed under the Regulatory Test (methodology of assessment differs for reliability and non-reliability augmentations)
<b>Information Disclosure</b>	For all augmentation projects the APR must set out: a) reason for project b) proposed solution, c) total cost, d) other reasonable network and non-network options	For all new small transmission assets, APR must contain: a) ranking of reasonable options [including non-network solutions]; b) analysis why project satisfies the Regulatory Test; c) if a small reliability augmentation then why it satisfied the reliability criteria, d) the year the asset becomes operational.  APR must also set out: e) reason for project; f) proposed solution; g) total cost; h) other reasonable network and non-network options	For all augmentation projects the APR must set out: a) reason for project b) proposed solution, c) total cost, d) other reasonable network and non-network options

<b>Post Assessment Consultation (Application Notice and Final Report)</b>	Not required	Not Required	<p>Must provide application notice to market which contains a) details of proposed assets; b) reasons for assets [identified constraint]; c) all other reasonable alternatives; d) construction timetables; e) ranking of possible options based on the Regulatory Test; f) detailed analysis as to why the TNSP considers it satisfies the Regulatory Test.</p> <p>For reliability augmentations: g) why the TNSP considers it to be a reliability augmentation; f) detailed calculations as to how the TNSP has determined costs and market benefits.</p> <p>TNSP must review all submissions received within 30 days and use its best endeavours to hold a meeting within a further 21 business days if meeting is requested or the TNSP deems necessary.</p> <p>The final report must address the same matters as included in the Application Notice, summarise submissions, and the TNSPs response to submissions.</p>
<b>Dispute Resolution</b>	Not Applicable	Not Applicable	<p>There is provision for dispute resolution. The grounds of what can be disputed differs between reliability and non-reliability augmentations.</p> <p>The AER assesses the dispute notice and the grounds for dispute.</p>
<b>Possible AER determination on whether proposed asset satisfies the Regulatory Test</b>	Not Applicable	Not Applicable	<p>For non-reliability augmentations only the TNSP may ask the AER to make a determination as to whether the asset passes the Regulatory Test if the findings are not in dispute.</p>

## **B Indexation Percentage Increases from Inception of Threshold Values to Present**

<b><u>Index</u></b>	<b><u>Percentage increase</u></b>
General Construction Producer Price Index (PPI)	36%
Power Transformer PPI	64%
Distribution Transformer PPI	102%
Electricity Supply PPI	20%
Consumer Price Index	16%

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## **C Information Provided in Annual Planning Reports (APRs) — Clause 5.6.2A(b)(4) and 5.6.2A(b)(5)**

For all proposed augmentations regardless of value and whether or not they are assessed under the regulatory test the following needs to be included in the APRs. This information will still need to be provided whether or not the asset thresholds shift for all augmentations. The information is as follows:

- Project/asset name and the month and year which it is proposed that the asset will become operational;
- The reason for the actual or potential constraint, if any, or inability, if any to meet the relevant network performance requirements;
- The total cost of the proposed solution;
- Whether the proposed solution will have a material inter-network impact;
- Other reasonable network and non-network options considered to address the actual or potential constraint or inability to meet the relevant network performance standards.

For proposed new small transmission network assets (i.e the augmentations that are assessed under the Regulatory Test) the following information is required to be provided. This is the information that will be lost for projects that no longer need to be assessed due to increasing the asset thresholds. The information is as follows:

- An explanation of the ranking of reasonable alternatives to the project including non-network alternatives;
- An augmentation technical report prepared by the Inter-Regional Planning Committee, if the asset is reasonably likely to have a material inter-network impact and the TNSP has not received the consent to proceed with the proposed solution from all TNSPs whose transmission networks are materially affected by the new small transmission network asset; and
- Analysis of why the TNSP considers the new small transmission network asset satisfies the regulatory test. In addition if the TNSP considers that the new small transmission network asset is a reliability augmentation then it must provide analysis as to why it considers it to be a reliability augmentation.

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## D Submission Summary

### First Round Submissions

VENcorp	<ul style="list-style-type: none"> <li>• Questioned whether changes to the asset thresholds as proposed would result in a reduction of necessary and useful information to the market</li> <li>• VENCorp retain responsibility for publishing information relating to replacement assets rather than SP Ausnet as suggested in the Rule change proposal</li> <li>• That SP Ausnet provide information to VENCorp by 28 February of each year</li> </ul>
ERAA	<ul style="list-style-type: none"> <li>• Did not support increasing the threshold values as it considered that it is appropriate for the regulatory regime to have a bias towards transparency at the cost of a little administrative expense</li> <li>• Supported the proposal to index the thresholds but questioned whether changing the rules for this matter would add sufficient benefits to justify the costs</li> <li>• Supports the proposal to provide disclosure requirements on network replacements</li> </ul>
TRUenergy	<ul style="list-style-type: none"> <li>• Does not consider that raising the asset thresholds would meet the National Electricity Objective</li> <li>• Considers that the requirement for TNSPs to apply the regulatory test to investments under the current asset thresholds assists the AER determinations into whether a TNSP's capital expenditure proposal at regulatory reviews is efficient</li> <li>• Considers that the increase in augmentation asset thresholds applied under the regulatory test result in a lower level of transparency and information available to market participants on the impact of transmission investments</li> <li>• Considers that the lower levels of transparency and information available to the market as a result of any increase to the augmentation asset thresholds are contrary to the recommendations of a recently released NERA report on the role of demand side participation in the NEM</li> </ul>
Hydro Tasmania	<ul style="list-style-type: none"> <li>• Consider that the threshold amounts should vary in some way with the total regulated asset base for each jurisdiction</li> <li>• Considers that the PPI escalation as proposed would impact disproportionately on those whose incomes are CPI related</li> <li>• No indexing would be required if the thresholds for each TNSP were based on a fixed percentage of the RAB for that year</li> </ul>
NGF	<ul style="list-style-type: none"> <li>• Supports the intent of establishing realistic thresholds for network investment assessments under the regulatory test</li> <li>• Considers that the large asset threshold should be increased to a figure of \$25 million rather than \$35 million as proposed</li> <li>• Supports the publication of information on all regulated network projects above \$5 million</li> </ul>
Energex	<ul style="list-style-type: none"> <li>• Supports the rule change proposal to increase the small and large</li> </ul>

	<p>transmission network assets</p> <ul style="list-style-type: none"> <li>• Supports the proposal that TNSPs be required to disclose information on all network projects (including replacements)</li> </ul>
Grid Australia	<ul style="list-style-type: none"> <li>• Provided further information to support its rule change proposal in relation to the relevance of the investment thresholds for public consultation (including consultation processes, and the economics of network capital investment and non-network solutions)</li> <li>• Provided further information on the availability and viability on non-network solutions (including the existence of demand management, and performance standards for non-network solutions)</li> <li>• Provided further information on actual costs movements and indexation</li> </ul>

### Second Round Submissions

EnergyAustralia	<ul style="list-style-type: none"> <li>• The increased threshold values for new small and large transmission network assets should also apply to new small and large distribution network assets</li> <li>• Questioned whether information disclosure requirements for all network projects should also apply to transmission assets owned by distribution businesses</li> <li>• Considered that the provision for the AER to set non-monetary criteria to the thresholds be removed</li> </ul>
Grid Australia	<ul style="list-style-type: none"> <li>• Re-iterated that the new large transmission network asset threshold be increased to \$35 million</li> <li>• Considered that there should be a fast track process for projects under \$35 million that do not provide any material market benefits</li> </ul>