Economic Regulation of Transmission Services
Submission to Draft Determination

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Executive Summary

EnergyAustralia welcomes the opportunity to respond to the Australian Energy Market Commission's (Commission) draft determination and second draft Rule. As we are a provider of both distribution and transmission services, EnergyAustralia is in the unenviable position of being subject to two concurrent regulatory regimes.

EnergyAustralia will pursue changes to the National Electricity Rules (Rules) which will achieve a single regulatory regime for both its transmission and distribution as part of the final determination. We have provided a more detailed description of the problem, and the proposed solution, under a supplementary submission.

In broad terms the Commission's proposed framework and process represents an improvement on the existing transmission arrangements. The Rules are a consequence of careful consideration and consultation, which is in contrast to the Ministerial Council on Energy's (MCE) approach to the development of rules for distribution revenue regulation. It is therefore very much in EnergyAustralia's interest to improve on the frameworks for transmission proposed by the Commission so that they can be easily be transferred to distribution as simply and as quickly as possible.

EnergyAustralia's major concerns relate to those aspects of the Rules that confer discretion to the Australian Energy Regulator (AER). In many cases the Commission has correctly provided sufficient discretion for the AER to make a decision subject to the requirements of the Rules. In other cases however the discretion conferred relates to the establishment of guidelines that are ultimately imposed or mandated on the regulated business. We believe in many instances this is both inappropriate and unnecessary.

Alternatives to the imposition of mandated guidelines are discussed, as is the refinement of the decision framework for capital expenditure (capex) and operating expenditure (opex) forecasts. There are small, but important changes necessary for cost allocation, the regulatory timetable, pass through applications, adjustments to the revenue cap and transitional arrangements.

Overall EnergyAustralia is disappointed with the combination of changes to the capex incentive mechanisms which has both removed the ex-post review of prudency and reintroduced the depreciation incentive mechanism for capex. The combination of both of these incentive tools means that , unless the need for a project is adequately forecast (or provided for by the AER) at the time of the regulatory review, then no matter how efficiently the project is developed or delivered the transmission network service provider (TNSP) will not be allowed to recover that investment. EnergyAustralia submits that this is not an intuitive outcome of a framework that is supposed to support the delivery of efficient investment in infrastructure, and has provided alternatives for consideration by the Commission.

We emphasise our concerns that were raised in the Rule proposal regarding thresholds for contingent projects and re-opener mechanisms, the operation of incentive mechanisms for opex and performance standards, commercial negotiation incentives and ring-fencing guidelines.

Finally, our submission highlights certain areas where transmission rules are unlikely to transfer effectively to a distribution framework. This includes the adoption of a fixed form of regulation and price control, the negotiated service regime, contingent projects and some aspects of the incentive and adjustment mechanisms.

Introduction

EnergyAustralia welcomes the opportunity to respond to the Commission's draft determination and second draft Rule.

EnergyAustralia owns a significant number of assets that form part of the transmission system (a larger value than Transend and around 75% of Electranet's). However, these assets pale in comparison to the distribution assets we own.

The outcomes of this Rule change are important to EnergyAustralia as a provider of both distribution and transmission services. We are in an unenviable position of being subject to two regulatory regimes that result in concurrent regulatory reviews. Therefore, efficient regulatory process is important to us, as is consistency between the regimes applied to distribution and transmission businesses.

EnergyAustralia is looking for avenues to pursue a single regulatory regime for both its transmission and distribution businesses and will investigate opportunities to have this realised as part of the final determination. This will be provided as part of a supplementary submission to the Commission.

The outcomes of the process for Rules for the regulation of electricity networks are of critical and immediate importance. The Rule making process for regulation of electricity networks is currently taking place in two separate streams:

- The Commission's draft Chapter 6 Rule for the economic regulation of transmission; and
- The MCE's preparation of rules for the regulation of distribution.

Whilst there are some aspects of the Commission's transmission rules that are cause for concern, and on which EnergyAustralia provides comment in this submission, in broad terms the Commission's proposed framework and process represents a substantial improvement on the existing transmission arrangements. In particular, it represents a significant move towards the "propose-respond" model that EnergyAustralia and the Energy Networks Association (ENA), and its members, have been advocating for some time.

In contrast, the MCE's high level proposal for the development of the distribution framework was articulated in its Statement of Scope. The MCE appears to favour a continuation of the unsatisfactory "consider-determine" model framework that applied to EnergyAustralia's transmission business in the 2004 review. Furthermore, it is not clear what opportunity there will be for distribution network service providers (DNSP) to provide input to the current MCE process.

It is therefore very much in EnergyAustralia's interest to:

- Improve on the workable regulatory frameworks for transmission proposed by the Commission such that they can be easily be transferred to distribution as simply and as quickly as possible; and
- Facilitate a move towards a single regulatory determination with minimal disruption to consumers.

EnergyAustralia's response is provided with the above considerations in mind.

1 Scope and Form of Regulation

EnergyAustralia is broadly supportive of the changes made to the draft Rule, which clarify the classification of some transmission services. There remains some residual concern over the extent to which there is an appropriate classification between distribution and transmission services. We would also prefer minor changes to the Rules that separate the form of regulation (building block analysis) from the form of price control (in this case revenue cap) and associated definitions surrounding regulatory process.

1.1 Classification and Definition of Transmission Services

In summary:

- **We agree with the Commission's general approach**
- **The definitions are appropriate if given a broad interpretation on the service provided and not on the technical aspects of each asset**
- **There is a risk that the changed definition of transmission service may cover services unrelated to electricity**
- **The delineation between distribution and transmission has not been addressed by the Commission**

EnergyAustralia applauds the Commission in its endeavours to provide more meaningful boundaries between the different services offered to users of the transmission system. We agree with the approach to defining prescribed transmission services but note that the definition will need to be applied in a manner consistent with the provision of services by a TNSP. So long as the Commission is satisfied that the definition can be applied in a manner which reflects the way in which TNSPs actually provide services (rather than a strict interpretation of the assets that are operated to meet the requirements of schedule 5.1 and 5.1a), we believe the definition is adequate for revenue regulation purposes.

For example, the TNSP will operate its system with the intention of providing services which meet the requirements of schedule 5.1 and 5.1a , the fact that on occasions the services may not meet or may have the capacity to exceed those requirements should not preclude those services from at all times being classified as prescribed transmission services. The consequences, if any, of not meeting those standards should be resolved as a service standard compliance issue.

Similarly for negotiated transmission services. The TNSP will operate its system with the intention of providing services at the standard negotiated with the relevant customer, the fact that on an occasion the services do not meet that standard should not preclude those services from at all times be classified as negotiated transmission services. The consequences, if any, of not meeting those standards should be resolved between the TNSP and the customer.

There is an important technical drafting aspect to the definitions that EnergyAustralia would like to raise for consideration. The draft Rule proposes a new definition of "transmission services" as

> "the services provided by means of, or in connection with, a transmission system"

This is definition is proposed in substitution for the current definition, which is

> ""the services provides by a transmission system which are associated with the conveyance of electricity through the transmission system. Transmission services include entry services, transmission use of system service and exit service which are provided by part of a transmission system."

By removing the element of being "associated with the conveyance of electricity through the transmission system", the proposed new definition appears to broaden the scope of the definition to include any service

provided by the transmission system including those not associated with the electricity conveyance (such as telecommunications for example). Whilst the proposed definition does not directly impact on the core definitions of share transmission service, prescribed transmission services and negotiated transmission services it will impact on the operation on cost allocation requirements because the cost allocation principles are expressed to apply to the allocation of costs between different categories of transmission services. It will also impact on the information required to be provided by S6A1.1. (1) and 6A1.2 and the many other references to transmission service through out the Rules.

As a matter of principle, the definition of transmission service under the Rules should be restricted to those services provided by a regulated transmission system operator under the National Electricity Law (NEL), which relate to the conveyance of electricity. It is curious that the "conveyance of electricity" element has been reflected in the definition of "shared transmission service" and therefore also in the definition of "prescribed transmission service", but not in the definition of "transmission service". If these definitions are left unchanged, services provided by a transmission services which are unrelated to the conveyance of electricity would be subject to the cost allocation requirements, whilst being within the definition of "non-regulated services" and "excluded transmission services".

EnergyAustralia supports the Commission's approach to providing further guidance in "grey areas" of transmission services by explicitly including connections between DNSPs and TNSPs as prescribed services and explicitly excluding those parts of a connection service capable of competitive supply from the negotiated services regime.

We are however, disappointed that the Commission did not address EnergyAustralia's request to revisit another grey area of regulatory design – the distinction between transmission services and distribution services for the purpose of economic regulation.

Rule 6A.1.5 notes that the AER and the relevant jurisdictional provider may agree to subject parts of the transmission network to the regulatory arrangements for distribution pricing. This is limited to those parts of the transmission network operating at nominal voltages between 66 and 220 kV that do not operate in parallel to, or do not support the higher voltage transmission network.

EnergyAustralia owns a number of assets which operate in parallel to, or support the higher voltage transmission network. Therefore, even though these assets principally provide for the safe and secure operation of the distribution network, they are unable to be considered for distribution regulation because of the above clause. This scenario is not unique to EnergyAustralia, nor is it likely to remain stable. Other DNSPs have resolved this issue either by derogation (Energex and Ergon) or by receiving an exemption from the AER from subjecting such assets to a separate regulatory regime.

This issue needs to be addressed to promote efficient regulation and the integrity of the Rules. EnergyAustralia has provided a more detailed description of the problem, and the proposed solution, under separate supplementary submission.

1.2 Form of Regulation, Delineation of Services and Treatment of Contestable Services

In summary:

- **The Rules should separate the form of regulation (building blocks) from the form of price control (revenue cap)**;
- **Mandating one form of price control for distribution is inappropriate**;
- **Negotiated services now cover only a small part of the total asset base and may not warrant a separate regulatory regime.**

EnergyAustralia notes the Commission's reasoning behind the adoption of a building block revenue cap form of regulation for transmission. Transmission networks enjoy similar characteristics across the national

electricity market (NEM) and therefore a single form of regulation and price control is not inappropriate. This is not the same in the case of distribution networks, where a choice of regulatory regime may be appropriate to reflect different characteristics and environments.

In the interests of more consistent regulation, EnergyAustralia recommends that the drafting of the Rule separate the form of price control (ie. revenue cap) from other aspects of the regulatory regime. For example, the reference to "revenue cap determination" in the Rules is not easily adaptable to distribution as alternative forms of regulation are likely to be considered. We would prefer "revenue determination" or "prescribed services revenue determination".

To bring about this change we have provided suggested amendments to Clauses 6A2.2, 6A.4.1, 6A.4.2, 6A.5.1 in Section 8 of our submission.

EnergyAustralia supports the Commission's approach to providing the most appropriate form of regulation to the different services provided. We are particularly supportive of the changes made since the original Rule proposal that have moved connections between DNSP and TNSP and contestable services out of the negotiated services regime.

As a result however, the negotiated services arrangements will relate to the "last pole" connection to the shared network or services to the shared network at the request of a user. In return, TNSPs will be required to meet quite onerous regulatory obligations at each reset. EnergyAustralia questions the regulatory impost required for what may form a small part of the TNSP's asset base and potentially a small aspect of the total connection.

The negotiated services regime is also likely to be one of the few elements of the draft Rule that will not transfer easily to a regulatory framework for distribution services. One of the major differences between transmission and distribution regulation is the breadth of prescribed, miscellaneous and monopoly services. An average transmission business would undertake a few connections annually and are likely to be connection to major load customers, generation or DNSP. A distribution business like EnergyAustralia would establish 2,000 new connections per month. These connections will range from household connections to embedded generation to major load customers or property developers and all customer connections are contributed and subject to contestability.

1.3 Cost Allocation

In summary:

- **The Commission did not address the issue of assets moving between the classes of distribution and transmission assets**
- **We recommend that the TNSP submit a cost allocation methodology that is assessed for compliance with the Rules. The AER's guidelines become a safe harbour for compliance.**

EnergyAustralia accepts the Commission's rationale regarding the allocation of costs as circumstances change over time, particularly where a negotiated service becomes part of the "shared network".

Again, the Commission did not address the issue of cost allocation and classification of services that may move between distribution and transmission over time.

This is pertinent to EnergyAustralia as this circumstance has occurred during the most recent regulatory reviews of its distribution and transmission networks, and that experience has highlighted that under the existing arrangements such movements will continue to arise on a regular basis. These movements were problematic for EnergyAustralia and both of its regulators during the 2004 transmission and distribution reviews as it was critical that all asset movements between the two regimes was transparent and that both regulatory asset bases were adjusted in a consistent manner.

In section 6.6 of this submission EnergyAustralia puts forward an alternative approach to the development by the AER of mandatory guidelines and models. Consistent with this approach EnergyAustralia submits that the Cost Allocation Methodology prepared by TNSPs under clause 6A.19.4 should be required to comply with the Cost Allocation Principles and any substantive requirements set out in the Rules. The AER should still be required to prepare Cost Allocation Guidelines but they should not be mandatory, any mandatory requirements should be contained in the Rules. In this way the TNSP may choose to prepare a Cost Allocation Methodology in accordance with the guidelines and Rules and if it does the AER must approve the methodology. If the TNSP chooses to prepare a methodology which does not comply with the guidelines, it must be approved by the AER if it is consistent with the Cost Allocation Principles and any other substantive requirements set out in the Rules.

To bring about this change we have provided suggested amendments to Clause 6A.19 in Section 8 of our submission.

2 Decision Framework for Revenue Determinations

In summary:

- **We support the Commission's approach to the decision framework which contrasts (but unfortunately conflicts) with public statements made by the MCE on distribution regulation.**
- **Guidelines should not be made mandatory but provided as a safe harbour for TNSPs who must submit in compliance with the Rules.**

There has been much debate around the most appropriate framework for the economic regulation of utility infrastructure. Common terms that are used to differentiate between regulatory regimes are the propose-respond framework and the consider-determine framework. However, the terms themselves are used interchangeably against different regimes that are not alike. This leads to confusion about those elements which constitute a "true" propose-respond model.

EnergyAustralia believes that where Rules are silent or too general, the AER will necessarily fill any policy void created. This can create regulatory uncertainty for the regulated business and confer inappropriate or excessive policy demands on the AER. The Commission has attempted to resolve this by developing a prescriptive framework which limits the discretion of the regulated business in terms of the flexibility of methodology to be applied. While this can create a complicated and legalistic regulatory framework, this approach is a more positive move than previous "consider-determine" models which have been applied to electricity distribution businesses in the past.

Nevertheless, a codified approach can create significant challenges in two broad areas:

- Where Rules must confer some element of decision making on the regulator; or
- Where Rules are unable to address complicated elements of the regulatory design (such as the intricate detail in some financial models).

EnergyAustralia believes the Commission has addressed the first challenge with an appropriate and acceptable balance of discretion and statutory guidance. For example, the Commission has given the TNSP flexibility in the determination of X factors. But this flexibility is constrained by other provisions in the Rules regarding the calculation of the maximum allowed revenue (MAR) during the regulatory period. EnergyAustralia also generally agrees with the approach adopted with capex and opex forecasts, subject to some minor changes outlined further below.

There are elements of the Rules that suffer from the Commission's response to the second challenge. Where the Rules are unable to address more computational or complex aspects of the regulatory regime, the Commission has conferred most elements requiring flexibility or judgement to the AER through the

establishment of guidelines. This can be seen in the Commission's approach to the post tax revenue model (PTRM), roll forward model and cost allocation methodology.

EnergyAustralia is uncomfortable with this approach. It subjects important aspects of the regulatory regime to a quasi-rule making regime, mandated by the AER and as such goes against the general governance arrangements established in the NEL. We believe a far more practical approach would be to confer discretion on the regulated business (bounded by guidance) and approval role for the AER if it is compliant.

This would not eliminate the need for guidelines. The AER would be able to provide guidelines on how it will exercise the provisions of the Rules. In most circumstances this can provide a safe harbour provision for the TNSP – it knows that it will comply with the Rules if it submits in line with the AER's guidelines. This approach would provide far more flexibility to each regulatory process and negate concerns over the AER's powers in the development of guidelines.

EnergyAustralia provides more detail throughout its submission on how this can be achieved for cost allocation, the development of post-tax revenue and roll forward models, information requests and revenue submissions

3 Expenditure Forecasts and the Cost of Capital

3.1 Reasonable Estimate Test

In summary:

- **The reasonable estimate test can be strengthened by relieving the AER of the need to become a network operator (*determining* a reasonable estimate) and instead determining whether a forecast was reasonably derived.**

The reasonable estimate test proposed by the Commission requires that the AER must accept a TNSP's forecast if "…it is *determined by the AER to be a reasonable estimate* of the TNSP's required capital expenditure". This approach forces the AER to move away from its primary role of economic regulator and become a network planner. It also creates a difficult framework for a proper review of the AER's determination because it does not focus on how the TNSP has derived the estimate, but rather the AER's view of that estimate. The framework should not allow the AER to substitute its view for that of the TNSPs.

A preferred option would require that the AER must approve the forecast if it considers that the TNSP's derivation of its forecast was reasonable, taking into account the factors provided. This alleviates the AER of the obligation to undertake a network planner role (ie. the need to determine the "reasonable estimate"). Instead it allows the AER to focus on the decision-making processes of the TNSP and whether the outcome was a reasonable assessment.

This also has a stronger flavour of a propose-respond framework, while still leaving the ability to make a determination in the hands of the AER. On a review it will be clear that the role of the AER is to assess the way in which the estimate was derived, not to establish its own separate view of a reasonable estimate and compare the two figures.

For the avoidance of doubt, an estimate should only be determined to be unreasonable if, after all of the relevant factors are considered, both the processes undertaken by the TNSP at arriving at a forecast were unreasonable and the difference between the TNSP's and the AER's views on the total forecast capex and opex are materially different. Clearly if the difference is not material then the forecasts proposed by the TNSP must, by definition, be reasonably derived, despite any divergence of views regarding the assessment of the relevant factors.

To bring about this change we have provided suggested amendments to Clauses 6A.6.7 and 6A.14.1 in Section 8 of our submission.

3.2 Criteria for Assessing Reasonableness

In summary:

- **The existing Rule can be strengthened by requiring the AER to provide additional detail and the specific head or heads of consideration which led to a conclusion that a forecast was unreasonable**
- **We suggest some drafting changes around the categories of expenditure relating to the regulatory test**

EnergyAustralia believes that establishing a clear set of criteria that the AER is required to take into account when determining reasonableness may assist the regulatory process, if implemented correctly.

One of the more frustrating elements of the any regulatory process is an "on balance" finding from the regulator that fails to address any specific factor that led to the regulator's decision. If the regulator is made accountable for the factors it takes into consideration when assessing the reasonableness of forecasts, the TNSP has a greater understanding of where it needs to focus when resubmitting a proposal. This approach also has the potential to provide a head of power and the basis for a decision which can be subject to review.

The Rules do not currently provide for this. Clause 6A.14.2 requires that the AER provide a basis and rationale of the decision. EnergyAustralia is concerned that the AER could easily comply with this Clause by attaching independent advice of a reasonable estimate taking into account the matters referred to in 6A.6.7(b)(3) and, based on this advice, it considered the TNSP's forecast unreasonable.

For the reasonable estimate criteria to be fully effective, the Rules should state that, if the AER does not believe that the TNSP forecast is reasonable, then it must state those factors referred to in 6A.6.7(b)(3) that it considered in making that assessment, and the extent to which an assessment of each factor led the AER to the conclusion that the estimate was unreasonable. Where a factor, or assumption, was considered unreasonable, the AER should be obliged to state what a more reasonable assumption should be as well as what the reasonable forecast should be.

There is also a minor drafting issue in relation to clause 6A.6.7(b)(2)(iii). This clause identifies one of the categories of expenditure which must be approved if the requirements of the clause are met. One of the categories is where "the forecast capital expenditure has satisfied the regulatory test". This slightly misconceives the function of the regulatory test. The regulatory test does not justify capex. Rather it applies to justify one option among a number of possible options.

Consequently it would be more accurate for this clause to refer to something along the following lines:

"…the forecast capital expenditure is for an option which has been justified by the application of the regulatory test".

To bring about these changes we have provided suggested amendments to Clauses 6A.6.7 and 6A.14 in Section 8 of our submission.

3.3 Codification of WACC and Review Criteria

In summary:

- **We retain a preference for the 5 year review of parameters to be undertaken by a party with a dispassionate interest in regulatory proceedings**
- **In the absence of this change we request that reviews be limited to recent observations and evidence and do not go over old ground.**

EnergyAustralia supports the Commission's direction of promoting investment certainty through the codification of weighted average cost of capital (WACC) elements in Rules for a period of five years. However, we remain concerned that any investment certainty created by the Commission will be undone by the AER at the end of the first 5 year period.

While Clause 6A.6.2(j) provides additional guidance to the AER in conducting its 5 year review, the volume of data and opinion available means that a range of outcomes is possible when arriving at a final position on WACC parameters. EnergyAustralia would prefer a party with a dispassionate interest in regulatory proceedings to be responsible for any review going forward.

If the AER is to remain the responsible party to conduct future reviews, the Rule should require that any change to a parameter must be supported by persuasive evidence based on observation or information that has developed since the last review. This would mitigate the opportunity for the AER to go over old ground to seek parameters that go against the TNSP's favour.

To bring about these changes we have provided suggested amendments to Clauses 6A.6.2 in Section 8 of our submission.

4 Incentive Framework

4.1 Key Incentive Package Changes

EnergyAustralia is disappointed overall with the changes to the incentive package mix. The ex-post prudency assessment of capex has been removed and the Commission has restored depreciation into the capex incentive provisions. This has the effect of potentially impairing (in value terms) worthwhile, necessary and prudent investments where an ex-post review is absent. Expressed in another way, unless the need for a project is adequately forecast (or provided for by the AER) at the time of the regulatory review, then no matter how efficiently the project is developed or delivered the TNSP will not be allowed to recover that investment in NPV terms. This is not an intuitive outcome of a framework that is supposed to support the delivery of efficient investment in infrastructure.

EnergyAustralia considers the reintroduction of contingent projects a backward step. The higher powered incentive offered to projects considered contingent will move the regime closer towards a cost to serve model. This is explained further below.

4.2 Capital Expenditure Incentives

In summary:

- **The incentive mix as it stands will impair efficient and prudent investment.**
- **If the depreciation incentive is maintained, the TNSP should have the ability to request a review of capex overspends where it considers these overspends were prudent and efficient.**

Schedule 6A.2.1(f)(5) has the effect of rolling in capex based on its actual depreciation rather than the economic return on capital allowed at the beginning of the regulatory period. This is a positive outcome if the TNSP can spend less during the regulatory period than what it was allowed. However if actual expenditure is greater than forecast, it has the effect of impairing that investment, irrespective of whether it was efficient or not.

Suppose the AER accepts TNSP forecasts for a project worth $100 million to be spent in year 1 and an economic life of 10 years. The economic value of the project at the end of the regulatory period is forecast to be $50 million. However due to difficulties in obtaining environmental approvals, redesign of the project increased its cost to $150 million. The additional expenditure was considered prudent and efficient. Nevertheless, under the incentive mechanism, the TNSP will only receive a return on and of the $100 million forecast for the regulatory period.

The added depreciation incentive mechanism means that, even though the expenditure is efficient, the value of the asset will be adjusted and incorporated into the RAB at the next review based on its actual depreciation, without receiving the revenue to reflect the full depreciation during the period. In this case, while the TNSP invests $150 million, the investment depreciates to $75 million by the end of the regulatory period. The regulatory regime has reduced the value of this investment by $25 million (or more if you include the loss of investment return).

If the objective of these Rules is to promote efficient investment, it seems that the approach adopted by the Commission falls short. EnergyAustralia believes efficient investment is better promoted with an incentive mechanism that does not optimise the value of the investment should it exceed forecast. If a depreciation incentive is retained, the regime should allow for an ex-post review and retain the value of the investment if it is deemed efficient.

Furthermore, the approach contained in the draft determination provides incentives for strategic arguments and positions to be taken regarding the forecast costs by the regulated businesses to manage the commercial risks inherent in this framework. Having such an incentive enshrined in the Rules will generate counter incentives for the AER to be critical of the forecasts provided by the regulated network resulting in an overly adversarial regime rather than one based on clear administrative rules and procedures.

The outcomes of this regime is that either the regulated business will be commercially disadvantaged through the operation of the explicit incentive in the Rules and implicit incentive for the AER, or that customers will be required to pay for forecast capex that may not eventuate to provide commercial protection to the regulated network.

To bring about this change we have provided suggested amendments to Schedule 6A.2 in Section 8 of our submission.

4.3 Contingent Projects

In summary:

- **A contingent project mechanisms is administratively intensive and unworkable for distribution. We retain our preference for a generic re-opener over a contingent project mechanism**
- **The higher powered incentive mechanism for contingent projects promotes a cost to serve regulation and sends distortionary signals. It should therefore be removed.**
- **Many projects would fall through the gaps of the current provisions which needs to be addressed.**

EnergyAustralia retains its preference for a more generic re-opener mechanism to a contingent projects regime. Contingent project mechanisms require quite a large and intense level of preparation work. Much of this work may relate to projects that are unlikely to happen. However, the contingent projects mechanism obliges the regulated business to identify and detail any foreseeable project over the next 5 years.

EnergyAustralia experienced first hand the contingent project mechanism at its last transmission determination. A re-opener mechanism is a more appropriate response for projects either unforeseeable or unforeseen. Given the complex drafting of Clause 6A.8 and 6A.6.7(d) through (g), EnergyAustralia

suggests that the re-opener mechanism is also a much simpler approach to deal with uncertain projects. This is even more evident in distribution where the number and variety of capex projects is exponentially greater than that of transmission.

The higher powered incentive mechanism for contingent projects provided in 6A.6.7(d) through (g), has the potential for more projects to be claimed as contingent. EnergyAustralia believes this moves the regime closer to a cost to serve approach to regulation.

Consider two projects involving the building of a new substation which will take 5 years to complete. Both are due to commence in year three of the regulatory period, however neither are certain. The first project is driven primarily by load growth in the area. However the second project has a different driver, it is dependant on a major load being established in a separate area. The first project is likely to be included in the forecast capex program while the second project is large enough to be included as a contingent project.

Assuming the second project is triggered at the same time, both will receive revenues for the remainder of the regulatory period based on forecasts (however the contingent project benefits from the fact that its forecast is closer to the time the project is commenced). Both projects will have actual expenditure rolled into the RAB at the end of the regulatory control period. However, the first project will be subject to a new set of forecasts for the next regulatory period while the incentive mechanism for the second project is enduring till the end of the next regulatory period.

EnergyAustralia cannot make sense of why different incentives are required for the same project with different drivers. That is, why a project that is certain at the beginning of the regulatory period should be treated differently to a project that is uncertain. This creates distortionary regulatory signals to TNSPs and the AER.

The higher powered incentive mechanism is also much more complex to administer as can be seen by the two pages describing how the mechanism is to work (Clause 6A.6.7(d)).

EnergyAustralia is concerned that there is the potential for two significant gaps between the contingent projects regime and the re-opener provisions. The first gap would be for projects that could not meet the requirements of clause 6A.8.1(b) at the time of the revenue determination, which subsequently eventuated but did not meet the criteria for a re-opening of the revenue determination. Clause 6A.8.1(b) requires a fair level of specificity and detail to be provided before the AER is required to determine that a proposed contingent project should become a contingent project. If the NSP doesn't have sufficient material to satisfy the AER that a project should be treated as contingent, then the AER will not be able to include it as a continent project for that regulatory control period. If the project was subsequently required to proceed but did not meet the criteria and threshold for a re-opener then there would be no scope to recover that expenditure during the regulatory control period.

The second potential gap is where a project arises during the regulatory control period, totally unforeseen and therefore not included in the ex-ante forecast or recognised as a contingent project. If that project was not sufficient to meet the criteria or threshold for re-opening the revenue determination, then again there would be no scope to recover that expenditure during the regulatory control period.

The Rules need to address these gaps and clarify the treatment of capex that could not considered to be contingent projects either because the requirements of 6A.8.1(b)(1),(3) and (4) could not be satisfied; or because the amount is less than the materiality threshold for a reopening of the revenue determination. The changes to the re-opener provisions discussed below seek to address this.

To bring about this change we have provided suggested amendments to Schedule 6A.8 and 6A.6.7 in Section 8 of our submission.

4.4 Reopener Provisions

In summary:

- **We believe more certainty and scope should be given around the application of 6A.7.1(a).**
- **We object to the use of a proportion of the asset base as a base line measurement of materiality in 6A.7.1 (as well as 6A.7.3 and 6A.8).**
- **We are concerned that the requirements of sub-paragraph 6A.7.1(a)4(ii) which requires the TNSP to assess whether actual capital expenditure is likely to exceed forecasts has the potential to result in intrusive analysis of a TNSP's remaining capital program by the AER.**

One of the key differences separating the operation of transmission and distribution networks is the size and scale of capital works. Transmission networks usually have capital programs made up of distinct, large projects which are easily identifiable. Distribution networks have capex programs with a multitude of projects which will vary in size and are less identifiable (an 11kV replacement program across the network for instance).

Because EnergyAustralia is subject to both transmission and distribution regulation, we are interested in achieving commonality in process where possible. We believe that a re-opener provision that is broad enough to cover unforeseen and uncertain expenditure (as proposed in the previous draft Rule) will work for both transmission and distribution regulation. Contingent Project mechanisms will not work effectively for distribution.

Should the Commission be unwilling to subvert back to its original mechanism, EnergyAustralia strongly submits that more certainty and scope should be given around the application of 6A.7.1(a). It is vital in either regime that the TNSP have the opportunity to reopen the determination in instances where capex will be above forecast due to demand growth that exceeded the expectations of the TNSP and the AER or where a significant project which could not satisfy the AER as a contingent project at the time of the revenue determination must proceed

For example, suppose a TNSP proposed forecast capex based on assumed demand growth of 3% and the AER did not accept the forecast because it believed 3% was not a reasonable estimate of demand growth. The TNSP lodges a revised proposal based on growth of 2%. The TNSP should have the right to reopen the determination if its estimate of 3% demand growth turns out to be correct.

EnergyAustralia supports the Commission's approach that the intent of the re-opener provision is to allow for demand growth that was reasonably unforeseeable at the time of the determination (and would therefore include the above scenario). This intent is expressed at the end of 6A.7.1(a). The risk is that the AER gives a very narrow interpretation of what the Commission describes in its draft Rule determination as "extreme circumstances" or what the Rules describe in 6A.7.1(a) as "an event beyond the reasonable control of the provider…and… could not reasonably have been foreseen by the provider at the time of the making of the revenue cap determination". For the avoidance of doubt, EnergyAustralia would prefer some clarification in the Rules of what would trigger a re-opener and specific examples of the kinds of circumstances that would warrant a determination to be reopened under the re-opener clause.

EnergyAustralia objects to the use of a proportion of the asset base as a base line measurement of materiality in 6A.7.1 (as well as 6A.7.3 and 6A.8). Given the incentive framework the Commission has provided, TNSPs should not be penalised for a large asset base. EnergyAustralia would prefer a threshold that looked at the lower of a percentage of RAB or the cost of a reasonably large-scale project (such as $10m which is the threshold between the value attributed to new small and new large transmission assets under Chapter 5).

EnergyAustralia is concerned that the requirements of sub-paragraph 6A.7.1(a)4(ii) which requires the TNSP to assess whether actual capex is likely to exceed forecasts has the potential to result in intrusive analysis of a TNSP's remaining capital program by the AER. The market would also benefit from some

clarification in the Rules and further explanation of the Commission's intent as to how this clause would work in a real life situation, so as to avoid any misinterpretation.

EnergyAustralia supports Clause 6A.7.1(f) of the clause which limits the reopening of the determination to the effect of the resultant increase in forecast capex and opex.

To bring about these changes we have provided suggested amendments to Schedule 6A.7 in Section 8 of our submission.

4.5 Operating Expenditure Incentives

EnergyAustralia reiterates its position in response to the Rule proposal that, in its experience, the relative level of opex, and the related scope for operating cost savings, does not warrant the high complexity of an incentive mechanism.

Furthermore any incentive mechanism implemented should not restrict the business's ability to maintain its network (whilst delivering customer outcomes) by reducing funding in future periods, if costs have increased. To ensure that TNSPs are able to maintain service to customers, EnergyAustralia recommends that a key feature of a fair and effective incentive mechanism is a "no negative carryover" mechanism as was originally adopted by the Essential Services Commission of Victoria (ESCV) in its consideration of this matter.

4.6 Performance Standard Incentives

In summary:

- **We believe that there a difficulties when a service standard incentive mechanism is imposed over a jurisdictional standards regime.**
- **EnergyAustralia has little impact on the performance standards the AER is trying to develop incentives for.**

EnergyAustralia reiterates it position in response to the Rule proposal which cautions in imposing a service standards incentive mechanism where there is a comprehensive service standards regime already in place in a jurisdiction.

There are a few implications that should be also considered before such a scheme is made mandatory for the AER to apply to EnergyAustralia:

1. EnergyAustralia's transmission network has limited impact on the constraint equations used to dispatch the wholesale market and by implication it has a limited effect on wholesale market outcomes. It would be inappropriate to give EnergyAustralia an incentive to influence these outcomes, over which it has no ability to influence let alone control.

2. The AER has used the constraint equations in the national electricity market dispatch engine (NEMDE) to develop its indicators of the market impact of transmission constraints. It seems likely that this substantial piece of work will feed into the development of the Service Standards Performance Incentive mechanism. In this case it would be impossible to apply such an incentive to EnergyAustralia. Therefore, the AER would have to develop a scheme that complied with the new Rules for all TNSPs. Then it would have to, presumably, develop another incentive scheme for EnergyAustralia's transmission assets.

3. EnergyAustralia would have to report and comply with two sets of performance incentive schemes without any benefit: first., for the distribution network; and secondly for the transmission network.

As a result EnergyAustralia suggests the Commission give strong consideration for EnergyAustralia's transmission assets to have the distribution performance incentive scheme applied. This would still give

EnergyAustralia incentives to operate its entire network at "industry best practice" levels and reduce the compliance costs for both EnergyAustralia and the regulator(s). This is consistent with; and supports, EnergyAustralia's supplementary submission, that EnergyAustralia should be predominantly regulated as a distribution network.

4.7 Pass Through

In summary:

- **The TNSP has every incentive to get its application in early. The time needed to prepare an application should be extended to allow for large pass through events.**

Having just been through a process of regulatory pass through for additional distribution expenditure to meet revised licence conditions, EnergyAustralia believes that Clause 6A.7.3 underestimates the time required to analyse the effect of a potential pass through event and prepare a submission to the regulator for approval.

The TNSP has every incentive to prepare a pass through application as soon as practicable after an event has occurred. However, for very complex events (such as the establishment of new licence conditions) the TNSP needs a proportionate amount of time to establish the incremental expenditure needed to respond to the event. There is no benefit to the market in expediting a pass through application where the cost and revenue impacts are significant.

To bring about these changes we have provided suggested amendments to Schedule 6A.7 in Section 8 of our submission.

4.8 Commercial Negotiation Incentives

In summary:

- **We have some concerns with the intention of the clause and the application to negotiated services.**

EnergyAustralia, in its response to the Rule proposal questioned the policy decision that a TNSP should be actively offering discounts to large transmission customers (the revenue shortfall from which would be recovered from other customers).

In its assessment of all submissions, the Commission stated the proposed Rule was aimed at providing a meaningful incentive for TNSPs to negotiate with relevant users instead of relying on all other customers to underwrite commercial risks that the Commission considers are amenable to management through normal commercial arrangements.

However, in order to ensure these types of assets are not stranded, the TNSP is obliged to (seek to) negotiate a prudent discount with each user to which a dedicated asset is assigned. The cost of this obligation is to be underwritten by all other customers.

EnergyAustralia has concerns as to whether there is any reasonable scope for the operation of Clause S6A.2.3(a)(3)(ii) which refers to assets committed or constructed after 16 February 2006. We would assume that assets such as these which are dedicated to one user would be incidental to connection, subject to a negotiated service and therefore excluded from the prescribed services asset base.

EnergyAustralia is also concerned that S6A.2.1(f)(8) does not appropriately cover the re-inclusion of capex that was part of prescribed services and removed from the asset base because of Clause S6A.2.3.

5 Components of the Building Blocks

5.1 Post Tax Revenue Model

In summary:

- **We recommend that the TNSP submit a post tax revenue model that is assessed for compliance with the Rules. The AER's guidelines become a safe harbour for compliance.**

EnergyAustralia is concerned that the Rules, as currently drafted, introduce scope for the AER to take on a quasi-policy and rule making function by way of requiring certain inputs to the PTRM, or by the treatment afforded to particular items in the PTRM. The mandatory nature of the model and the absence of a TNSP's right to appeal or request a review of the model, confers rule making functions on the AER which are inconsistent with its role as economic regulator and enforcer. These concerns arise more generally in relation to the mandatory nature of all of the proposed models and guidelines and are further detailed below in relation to the roll forward model, the submission guidelines and more generally in section 6.7 below.

A simple alternative would be to draft Rules in a way that retains the preparation of models and guidelines by the AER but leaves the onus and responsibility for preparing and submitting the PTRM with the TNSP. The AER's model would effectively operate as the default model but there would be scope for the TNSP to propose an alternative that meets the requirements for the contents of the model set out in the Rules. If the TNSP submits its proposal using the AER's model, the model is immediately accepted. If the TNSP instead chooses a different model that reflects its own circumstances, the AER must accept it but only if it reflects the requirements in the Rules (Clause 6A.5.3). Consistent with this any mandatory requirements should be set out in the Rules.

If the AER does not believe the model complies with the Rules or is unable to determine whether it complies with the Rules (because it is too complex etc), it may wait for a resubmission by the TNSP (under the draft determination) or prepare the revenue requirements with its own model (under the final determination).

This would remove the mandatory nature of the guidelines and allow a more principles based approach to the determination process.

If the Commission is not willing to amend its current approach which mandates TNSPs to use a model or comply with a guideline prepared by the AER, EnergyAustralia requests that the PTRM, along with other guidelines, be subject to a review and appeal mechanism that can be initiated by a TNSP and is not limited by materiality tests given that these instruments would become core policy documents. This is also discussed further in section 6.7 below.

To bring about these changes we have provided suggested amendments to Schedule 6A.5 in Section 8 of our submission.

5.2 Roll Forward Approach to initial RAB Values

In summary:

- **We recommend that the TNSP submit a roll forward revenue model that is assessed for compliance with the Rules. The AER's guidelines become a safe harbour for compliance.**

EnergyAustralia submits that the roll forward model should be treated in the same way as the recommended approach for the PTRM. The AER should still be under an obligation to prepare a roll

forward model that complies with the requirements of Rule 6A.6.1 and schedule 6A.2. However, the obligation upon the TSNP should be to calculate the value of the regulated asset base to be rolled forward either by adopting the AER's roll forward model or by adopting its own model which must comply with the requirements of the Rules.

The draft Rule provides very comprehensive requirements in relation to the operation of the roll forward model such that there appears to be very little of substance that could be added through the adoption of a mandatory model prepared by the AER. To the extent that there are any additional mandatory requirements these should be included in the rules and not left for determination by the AER.

We have also expressed our concerns regarding the reintroduction of the depreciation incentive mechanism in a separate section above.

Nevertheless, EnergyAustralia is pleased with the Commission's general approach to the roll-forward. In particular we note the Commission's approach to Electranet's which leaves open the possibility of amending the "locked-in" RAB value in extenuating circumstances.

To bring about these changes we have provided suggested amendments to Schedule 6A.6 in Section 8 of our submission.

5.3 Prudency Review and Depreciation

For reasons stated above, EnergyAustralia does not support the Commission's approach to the capex incentive mechanism as it relates to depreciation, particularly where there is no ability to review expenditure above forecasts ex post.

EnergyAustralia believes more consideration to this approach should be given in the adoption of Rules for distribution.

6 Process for Revenue Cap Determinations

6.1 Propose Respond Process

EnergyAustralia supports the process adopted by the Commission which, in most areas, provides for the regulator to assess whether elements of a revenue proposal are compliant with the relevant rules, and amend areas only where an inconsistency is established.

A requirement to provide reasons and specify the changes required to bring a proposal into compliance with the rules is an effective discipline to ensuring price review processes focus on key matters in contention, and utilises to the extent possible the direct commercial experience of network businesses in relation to matters outside of the regulators expertise

6.2 Information Requirements

In summary:

- **We recommend that the TNSP submit a revenue submission that is assessed for compliance with the Rules. The AER's guidelines become a safe harbour for compliance.**

EnergyAustralia reiterates its concerns with the scope of power afforded to the AER in the development of mandatory guidelines for submitting a Rule proposal. We are concerned that the submission guideline provided for under 6.A10.2 has the potential to evolve into a prescriptive document which may undermine

the operation and benefits of the principles based approach to regulation by predefining elements of a revenue proposal.

Clause 6A.10 and Schedule 6A.1 contain exhaustive principles and requirements for the submission of a revenue proposal. Clause 6A.10.1 requires that the TNSP's revenue proposal must comply with the requirements of all guidelines made by the AER. The Commission's Rule proposal report (at page 40) implies that the revenue proposal guidelines to be prepared by the AER will be confined to information requirements, but this is not borne out by the wording of the draft Rule. The effect of these requirements is that a revenue proposal that does not meet each and every requirement of the Rules, guidelines and models, the TNSP has breached the Rules.

EnergyAustralia remains concerned that the combination of an already exhaustive list of requirements and unlimited discretion on what the AER can include in submission guidelines will eventuate in Revenue Proposal requirements that are over-intrusive and unnecessary form and content.

EnergyAustralia recommends an approach similar to that proposed for the PTRM and roll forward model. This approach requires the TNSP to submit a proposal in accordance with the Rules. The AER should still be required to prepare submission guidelines, but compliance with the guidelines would not be mandatory. Any mandatory requirements should be specified in the rules and of course then reflected in the AER's guidelines. If the proposal fits the guidelines that the AER prepare, it is immediately accepted as complying with the requirements of the rules for the preparation of a revenue proposal. Otherwise, the AER must assess the proposal against the requirements of the Rules to determine if it meets those requirements.

This gives the TNSP the option to submit a compliant proposal without the need to resort to mandatory guidelines and obligations which are imposed by the AER. It also gives the AER the ability to provide guidelines on what it believes is a compliant proposal.

In the absence of substantive change, as a minimum this clause should be amended to include consideration of the costs of providing the information in the form requested, and require only such information as would be reasonably required to understand how the elements of the proposal were derived and form an opinion as to compliance with the Rules.

To bring about these changes we have provided suggested amendments to Clauses 6A.4, 6A.10, 6A.11 and Schedule 6A.1 in Section 8 of our submission.

6.3 Timetable

EnergyAustralia supports the 13 month "global cap" on the regulatory process and less individual prescription on timelines for individual parts of the process.

There was a significant delay experienced by TransGrid and EnergyAustralia in relation to its current determination, such that a specific derogation was required to ensure the validity of pricing pending the finalisation of the final determination. In light of this, the Rules should address this possibility and provide for the consequences should the AER not meet its timelines. For example, if the AER were to fail to provide its determination in time to permit prices to be set for the first year of the regulatory period, the TNSP's submission would be automatically adopted for pricing.

In addition, the 30 day limit on submitting a revised Revenue Proposal is quite short, particularly if the draft determination requires substantial rework to the Revenue Proposal. EnergyAustralia recommends revisiting that time frame or allowing some provision for extension.

6.4 Information Gathering Powers of AER, Information Publication and Information Disclosure

In summary:

- **We recommend that the TNSP submit annual statements that are assessed for compliance with the Rules. The AER's guidelines become a safe harbour for compliance.**

Clause 6A.17.1 provides that the certified annual statements must be submitted to the AER in accordance with the "information guidelines" and must be certified in accordance with the guidelines. These guidelines are made by the AER in accordance with the transmission consultation procedures and must be made in first version by 1 July 2007.

EnergyAustralia has a long history of complying with reporting requirements and templates for regulators. In many cases the templates and requirements change more than the information does. The use of the certified annual statements is also good example of "regulatory creep" where regulators in the past have sought to take a very expansive approach as to the use which it can make of information in the statement.

EnergyAustralia therefore seeks an outcome that ensures some stability in its reporting requirement but also ensure that the information requested is limited to what the regulator requires in terms of monitoring and compliance with the determination.

As with the other guidelines, these guidelines are mandatory in that the annual statement must be submitted to the AER in a manner and form set out in the information guidelines. This is not consistent with the definition information guidelines adopted by the draft Rule. That definition provides that they are guidelines made by the AER "for the purpose of guiding a Transmission Network Service Provider" in the submission of certified annual statements and other related information.

EnergyAustralia throughout its submission has maintained that, as a general rule, guidelines should not be mandatory but should be a guide to complying with the requirements of the Rules. Our preference would be to have information guidelines who's function is consistent with this general rule and the above definition of information guidelines. The substantive obligation in the Rules should be to prepare and submit annual statements which provide a true and fair statement of the financial and operating performance of the TNSP.

It is not appropriate for the certification process to be left at the discretion of the AER, This is a substantive requirement which must be set out in the Rules.

Any mandatory aspects to information disclosure should therefore be specified in the rules as mandatory and can be incorporated into a mandatory section of the guidelines authorised by the rules.

EnergyAustralia supports the Commission's changes to information gathering and publication which limits the AER's powers to matters reflecting its function and also clarifies the information that the AER is allowed to release publicly.

To bring about these changes we have provided suggested amendments to Clause 6A.17 in Section 8 of our submission.

6.5 Revocation of a Revenue Cap Determination

In summary:

- **We prefer a general clause that looks at misleading or false information rather than one which limits revocation to false or misleading information provided by the TNSP**

Clause 6A.15 provides for revocation or substitution of the total revenue cap by the AER under two circumstances:

1. Where it appears to the AER that the total revenue cap was set "on the basis of false or misleading information provided by the TNSP"; or
2. There was a material error in the setting of the total revenue cap.

This provision is different form the current 6.10.5(e) which only refers to false or misleading information more generally.

There are a number of implications from this change. Firstly, the materiality element is removed from the first circumstance which would indicate the determination would be revoked even if the false or misleading information had no impact on the final determination.

Secondly, the AER can only revoke a determination on the basis of false or misleading information provided by the TNSP. In reality, the AER can take into account information from a variety of submissions, including its own consultants and submissions to the regulatory process.

EnergyAustralia believes the intent of the clause is to limit revocation to either errors caused by false or misleading information or material errors of fact or calculation. If this is the intent, we would prefer a general clause that allowed for the determination to be revoked if the determination was set on the basis of false or misleading information generally (not specified to information provided by the TNSP).

6.6 Process for Guidelines and models developed by the AER

In summary:

- **Conferring the AER to make guidelines and models which are mandatory on the TNSP is both inappropriate and unnecessary.**
- **The approach the Commission has taken to the establishment of guidelines goes far beyond its aim of developing a principles based approach to regulation which allows flexibility for the AER and TNSP to develop process and methodology.**
- **There is not sufficient justification to warrant additional guidelines – guidance is already provided in the Rules.**
- **We have explained above how guidelines can be better used for efficient regulatory process.**
- **the Rules should not confer the power to enable a regulator to require legal separation of a TNSP business through guidelines. The legal separation of a business is by its nature such an intrusion into the affairs of a business that such an intrusion would need to be authorised by very clear and express legislative provisions.**

The draft rule confers a rule making role upon the AER by empowering it to make guidelines and models which will be mandatory.

EnergyAustralia believes that this in inappropriate for a number of reasons. As a matter of principle this undermines the fundamental delineation contained in the NEL and Rules between the role of the Commission as rule maker and the role of the AER as an economic regulator and enforcer of the Rules. This submission will concentrate on the policy objections to conferring quasi rule making functions upon the

AER. It is a matter for the AEMC to satisfy itself that it has the power through its rule making function to confer such a power upon the AER.

The consequence of the Rules requiring TNSPs to comply with guidelines and models made by the AER is that if they are not complied with there is a breach of the Rules by the TNSP. This has significant implications for the compliance programmes and reporting of TNSPs and is in any case a totally inappropriate outcome in relation to the obligations under consideration. EnergyAustralia agrees with the assessment of the Commission that the guidelines assist in areas where it would be inappropriate to fix regulatory practice and where there is a need for an understanding of process and methodology between the regulator and the TNSP.

However, the approach the Commission has taken to meet this objective goes far beyond this aim and results in the AER developing guidelines that overlap the AEMC's Rule making function, rather than allowing them to develop process and methodology in conjunction with the TNSP through a principles based approach which is already established in the Rules.

EnergyAustralia believes the draft Rule confers a rule making role upon the AER by empowering it to make guidelines and models which will be mandatory. If a matter is serious enough to warrant a binding obligation it should form part of the rules and be made by the AEMC as the rule maker. Guidelines by their nature are not binding but are rather a guide to meeting binding obligations or as to how an administrative body would interpret the obligations.

EnergyAustralia believes that in most circumstances there is not sufficient justification to warrant a binding obligation outside the Rules. Most guidelines relate to the provision of information which is unnecessary to establish in minutiae in the Rule. We recommend that information be based on obligations in the Rules which establish sufficient principles to enable both the TNSP and the AER to proceed. This mirrors the Commission's approach to the most recent Rule Proposal on transmission pricing which promotes:

"a shift to a principles-based regulatory framework where the implementation elements of the regime are left to the guided discretion of TNSPs and the AER. This confirms the continuation of current pricing practices while providing scope for [] innovations to be proposed in accordance with principles in the Rules."

In sections 4.3, 5.1, 5.2 and 6.2 of this submission EnergyAustralia has put forward an approach which retains guidelines and models prepared by the AER, but makes them non-mandatory so that all mandatory requirements are set out in the Rules. In this ways TNSPs can choose between adhering to the guidelines in which case they would be confident that the proposal or model would be accepted as compliant or proposing a different approach which if consistent with the Rules would be accepted. EnergyAustralia urges the Commission to carefully consider this approach as a preferable mechanism for delivering the same substantive outcomes but in a way which is consistent with the overall role and functions of the Commission and the AER.

However, if the Commission determines that mandatory guidelines should be retained as part of the revenue determination framework, then EnergyAustralia submits that the guidelines and models should be structured so that there is a mandatory section which contains mandatory requirements specified in the rules and a non-mandatory section which can contain such mattes as the AER considers appropriate. The obligation upon the TSNP would be to comply with the mandatory section of the guidelines only, which could only contain obligations or requirements which are specifically authorised by the Rules.

Mandatory or not, there needs to be clear parameters for the guidelines. One of the guidelines that should be given further consideration is the power to make ring-fencing guidelines. Clause 6A.21 largely carries over the existing provisions which in turn were carried over from the Code without review. These provisions were not part of the rule proposal published in February and have not been properly reviewed.

EnergyAustralia has consistently submitted that the Code and now the Rules could not confer the power to enable a regulator to require legal separation of a TNSP business through guidelines. Such a power is not appropriate for guidelines and if it was to be exercised at all, it should be expressly authorised by the enabling legislation which it was not previously and is not under the current NEL. The legal separation of a

business is by its nature such an intrusion into the affairs of a business that such an intrusion would need to be authorised by very clear and express legislative provisions. There is nothing in either section 34 of the NEL or Schedule 1 to that law which expressly authorises a rule to be made to require the legal separation of a business. Whilst item 36 of Schedule 1 refers to any other matter dealt with by the National Electricity Code, that could not operate in relation to a matter not properly the subject of the Code as that aspect of the ringfencing guidelines clearly were.

EnergyAustralia therefore submits that the Rules should not make any provision in relation to the legal separation of a TNSP's business nor should they allow for the ring fencing guidelines to require the legal separation of the parts of a TNSPs business.

Indeed divestiture powers in general competition law have been consciously and strictly limited by legislators to unwinding mergers that were not sanctioned by the ACCC. Existing businesses have been clearly exempted from the potential for forced divestiture. To confer divestiture powers to the AER through a subsidiary instrument is clearly inappropriate in this context. The significant legal precedent that such powers would create could have far reaching and unintended consequences that make such powers a matter for legislators to consider, not an administrative authority.

As regards the other matters specified as being subject of the ring-fencing guidelines, the draft rule provides neither objectives for the guidelines nor any criteria against which they can be assessed. Instead, it provides unguided and unlimited discretion. Consistent with EnergyAustralia's suggested approach in relation to the other guidelines and models, any substantive requirements in relation to the ring fencing of businesses should be contained in the Rules, only non-mandatory obligations to guide the TNSP in complying with the substantive obligations should be retained in the guidelines.

If the Commission retains the mandatory nature of guidelines then there must also be some provision for the review of the guidelines given that they have the potential to impact upon a business to the same extent as a regulatory determination. There is currently no provision for a TNSP to initiate a review of an existing guideline or appeal a guideline's outcome, short of a Rule change abolishing the obligation to comply with guideline or a challenge to the legality of the guideline. This should be addressed in the Rules and EnergyAustralia submits that the AEMC should assume this role. This is because it is consistent with its Rule making function and because it has in effect delegated its rule making function to the AER, it is therefore appropriate for the AEMC to be the arbiter of whether the obligations imposed by the guidelines are appropriate.

7 Savings and Transitional Provisions

7.1 Pass through Rules, re-opener provisions and contingent projects

EnergyAustralia submits that the pass through arrangements set out in clauses 6A.7.2-6A.7.3 and the re-opener provisions set out in clause 6A.7.1 should apply to EnergyAustralia's existing determination.

The absence of appropriate re-opener provisions has been recognised as a serious flaw in the current Chapter 6 which is now proposed to be addressed through the draft Rule. In its Rule Proposal report, the Commission's policy position was that the general re-opener provisions for significant unforeseen capex should apply to existing determinations, (p 99 of Report). EnergyAustralia supported this approach in its submission on the Rule proposal and in a subsequent letter to the Commission responding to a request from the Commission regarding the appropriate transitional arrangements for EnergyAustralia's existing determination. In that letter EnergyAustralia also sought the immediate application of the pass through rules under the Rules to its existing determination. The draft Rule now proposes that existing determinations will operate unaffected by the new Chapter 6A including the general re-opener provisions. The reasons for this change in approach is not apparent from the Commission's draft Rule determination.

There is nothing in EnergyAustralia's current determination which is inconsistent with the application of the pass though and re-opener provisions. Whilst EnergyAustralia's current determination provides for contingent projects and pass through rules, there is no scope for an adjustment to be made to its revenue stream if it is required to carry out significant unforeseen capital expenditure outside a contingent project or pass through event. If such a provision is not made there will be a period of two and half years where EnergyAustralia would be significantly disadvantaged if circumstances arose which satisfied the re-opener provisions and EnergyAustralia was not in a position to make an application to re-open the existing determination. Clause 6A.7.1 (excepting clause 6A.7.1((f)(1) which would need to be modified to remove the reference to the adjustment being taken to have been accepted by the AER in accordance with clause 6A.6.7(b)) could be expressed to apply to EnergyAustralia's current determination so that references in the clause to :

- "revenue cap determination" means: the "Final Decision, NSW and ACT Transmission Network Revenue Cap EnergyAustralia 2004-05 to 2008-09.
- "regulatory control period" has the same meaning as in the revenue cap determination;
- "contingent project" means a project identified in the revenue cap determination as a contingent project;
- "maximum allowed revenue:" has the same meaning as in the revenue cap determination;
- the X Factor has the same meaning as in the revenue cap determination.

In relation to the pass-through arrangements, whilst the pass through rules set out in Appendix E to EnergyAustralia's existing determination are substantially the same as those proposed under the draft Rule, EnergyAustralia believes that it is most appropriate for its determination to operate under the Rule which will apply over the longer term. This will also deliver certainty in relation to the process for adjustments and pass through.

EnergyAustralia further submits that a transitional provision should be made to allow for expenditure on contingent projects under the current determination to be recovered during the current regulatory control period.

Whilst the ACCC's Statement of Regulatory Principles (SRP) contemplates a contingent projects regime which allows for adjustments to be made during the relevant regulatory control period, these provisions cannot operate without a change to the provisions of Chapter 6 to allow for an adjustment to the revenue stream during the regulatory control period. The ACCC took the review at the time that it was not possible to structure the determination to allow for an adjustment during the regulatory control period in the absence of changes to the Rules. The ACCC acknowledged this in EnergyAustralia's current determination, see section 3.1.1 of the determination in its explanation of the contingent projects regime (at p43):

"In order to adjust the revenue stream within a regulatory period as a result of a contingent project a code change would be necessary. In the absence of a code change the revenue adjustment will be made on a NPV neutral basis at the end of the relevant regulatory period"

EnergyAustralia is therefore in the invidious position of having an existing determination which recognises contingent projects as contemplated by the SRP but which cannot utilise the contingent projects in the manner contemplated by the SRP because neither the determination or the underlying rules provide for adjustment to the maximum allowed revenue during the regulatory control period. EnergyAustralia notes that a participant derogation has been made on the application of TransGrid to enable contingent projects under its current determination which have been triggered to be assessed and included in its revenue stream during the current regulatory control period. EnergyAustralia seeks a similar provision through the transitional provisions. The provisions could be in substantially the same form as that contained in the

National Electricity Amendment (TransGrid Participant Derogation- Treatment of Contingent Projects (Interim Arrangements) Rule 2006 No 13, with the following reference changes:

- References to TransGrid in 8A.1.1 should be to EnergyAustralia.
- Determination: means the "Final Decision, NSW and ACT Transmission Network Revenue Cap EnergyAustralia 2004-05 to 2008-09.
- EnergyAustralia means the energy services corporation constituted under section 7 of the Energy Services Corporations Act 1995 and specified in Part 2 of Schedule 1 to that Act.
- Trigger event means an event identified as a trigger in Attachment A of the Determination in respect of a contingent project.

The transitional provision will also need to reflect that one of the contingent projects (A1) was recognised in the determination as triggered and some allowance has been made for that project but that further assessment may be required.

7.2 Treatment of EnergyAustralia's triggered contingent projects in the next regulatory period

As set out above, EnergyAustralia position is that any unspent approved capex for a contingent project should be rolled into the forecast capex at the beginning of the next regulatory control period. If the position is not accepted, then it should be treated on the same basis as TransGrid's as set out in clause 11.5.14.

8 Amended Rules

The following section provides suggested changes to the draft Rule in accordance with the recommendations we have made in our submission. The changes made to the Rules are highlighted in yellow. Further explanation of these changes can be discussed if needed.

6A. Economic Regulation of Transmission Services

…

Part B - Transmission Determinations Generally

6A.2 Transmission determinations

…

6A.2.2 Components of transmission determinations

A *transmission determination* for a *Transmission Network Service Provider* consists of:

(1) a *revenue* ~~*cap*~~ *determination* for the provider in respect of the provision by the provider of *prescribed transmission services*;

…

Part C - Regulation of Revenue - Prescribed Transmission Services

6A.3 Allowed revenue from prescribed transmission services

6A.3.1 Allowed revenue for regulatory year

The revenue that a *Transmission Network Service Provider* may earn in any *regulatory year* of a *regulatory control period* from the provision of *prescribed transmission services* ~~is the *maximum allowed revenue* and any adjustments referred to in clause 6A.3.2, and~~ is to be determined in accordance with:

(1) the *revenue* ~~*cap*~~ *determination* forming part of the applicable *transmission determination*; and

(2) the provisions of this Part C.

6A.3.2 Adjustment of maximum allowed revenue

The *maximum allowed revenue* that a *Transmission Network Service Provider* may earn in any *regulatory year* of a *regulatory control period* from the provision of *prescribed transmission services* is subject to adjustment:

(1) in accordance with the operation of any applicable *service target performance incentive scheme*; and

(2) in accordance with rules 6A.7, 6A.8 or 6A.15.

...

6A.4 Revenue cap determinations

6A.4.1 Introduction

(a) The procedure for making a *revenue* ~~*cap*~~ *determination* for a *Transmission Network Service Provider* is contained in Part E, and involves the submission to the *AER* of a *Revenue Proposal* by the provider.

(b) Such a *Revenue Proposal* must comply with the requirements of this

Chapter 6A, and in particular must:

(1) be prepared using the *post-tax revenue model* referred to in rule 6A.5 and the *roll forward model referred to in rule 6A.6*;

and

(2) comply with the requirements of Clause 6A.10 and Schedule 6A.1 ~~the *submission guidelines* referred to in clause 6A.17.2.~~

6A.4.2 Contents of revenue ~~cap~~ determination

(a) A *revenue* ~~*cap*~~ *determination* for a *Transmission Network Service Provider*

is to specify, for a *regulatory control period*, the following matters:

(1) the amount of the estimated *total revenue* ~~*cap*~~ for the *regulatory control period* or the method of calculating that amount;

(2) the *annual building block revenue requirement* for each *regulatory year* of the *regulatory control period;*

(3) the amount of the maximum allowed revenue for each regulatory year of the regulatory control period or the method of calculating that amount;

...

6A.5 Post-tax revenue model

6A.5.1 Introduction

(a) The process of preparing a *revenue* ~~*cap*~~ *determination* for a *Transmission Network Service Provider* involves the submission of a *Revenue Proposal* to the *AER* by the provider under clause 6A.10.1. The provider is required to prepare the *Revenue Proposal* using a *post-tax revenue model* in relation to that proposal, in accordance with the requirements of this Chapter 6A.

(b) The principal purpose of the *post-tax revenue model* is to calculate the *maximum allowed revenue* under the *revenue* ~~*cap*~~ *determination*.

(c) The *post-tax revenue model*, together with the *Revenue Proposal,* form the basis on which the *AER* assesses a *Revenue Proposal* and makes a *revenue* ~~*cap*~~ *determination*.

6A.5.2 Preparation, publication and amendment of post-tax revenue model

…

(d) A *Transmission Network Service Provider* may prepare a *post-tax revenue model* in accordance with this Clause 6A.5.

6A.5.3 Contents of post-tax revenue model

…

(b) The *post-tax revenue model* must specify:

(1) a methodology that ~~the *AER* determines~~ is likely to result in the best estimates of expected inflation;

…

6A.6 Matters relevant to the making of revenue cap determinations

6A.6.1 Regulatory asset base

…

Preparation, publication and amendment of model for rolling forward regulatory asset base

…

(d) The *AER* must develop and *publish* the first *roll forward model* by 31 December 2006, and there must be such a model ~~in force~~ available at all times after that date.

(e) A Transmission Network Service Provider may develop a roll forward model in accordance with this Clause.

…

6A.6.2 Return on capital

Review of rate of return parameters

…

[DN: EnergyAustralia would prefer the review of parameters to be undertaken by a party separate to the process for making a determination. In the absence of any change in this regard, the following changes are recommended]

…

(h) The *AER* may, as a consequence of a review, adopt revised values, methodologies or credit rating levels, and, if it does so, ~~it~~ the *Transmission Network Service* must use those revised values, methodologies and levels,

~~but only~~ for the purposes of a *Revenue Proposal* that is submitted to the *AER* after the completion of the first review or after completion of the five yearly reviews (as the case may be).

…

(j) In undertaking a review under this clause 6A.6.2 and under clause 6A.6.4(b), the *AER* must have regard to:

…

(4) where the values that are attributable to parameters referred to in paragraph (i) cannot be determined with certainty:

(i) the need to achieve an outcome that is consistent with the *market objective*; ~~and~~

(ii) the need for persuasive evidence before adopting a value for that parameter that differs from the value that has previously been adopted for it; and

(iii) The extent to which evidence has been previously considered in the assessment of a value, methodology or level.

…

6A.6.6 Forecast operating expenditure

…

(b) The *AER* must accept the forecast operating expenditure for each *regulatory year* as provided under paragraph (a) if:

…

(2) the total of the forecast operating expenditure for the *regulatory control period* as provided under paragraph (a) ~~is determined by the *AER* to be a reasonable estimate~~ was reasonably derived ~~estimate the *Transmission Network Service Provider's* required operating expenditure for the *regulatory control period*~~, taking into account:

…

6A.6.7 Forecast capital expenditure

…

(b) The *AER* must accept the forecast capital expenditure for each *regulatory year* as provided under paragraph (a) if:

…

(2) subject to subparagraph (3):

(iii) the forecast capital expenditure has is for an option which has been justified by the application of the regulatory test. ~~satisfied the *regulatory test*;~~

(3) the total of the forecast capital expenditure for the *regulatory control period* as provided under paragraph (a) ~~(being both capital expenditure referred to in subparagraph (2) and all other capital expenditure referred to in paragraph (a)) is determined by the *AER* to be a reasonable estimate~~ was reasonably derived ~~of the *Transmission Network Service*~~

~~*Provider's* required capital expenditure for the *regulatory control period*~~, taking into account:

…

(c) Clause 6A.7.1 enables a *Transmission Network Service Provider* to apply for the revocation and substitution of a *revenue cap determination* where the circumstances set out in clause 6A.7.1(a) occur.

~~**Forecast capital expenditure and contingent projects**~~

~~(d) Paragraphs (d), (e), (f) and (g) apply where:~~

~~(1) in a *regulatory control period* (the first *regulatory control period*) the *AER* determines under clause 6A.8.2(e)(1)(iii) that the likely completion date for a *contingent project* is a date which occurs in the immediately following *regulatory control period* (the second *regulatory control period*); and~~

~~(2) there is an unspent amount of capital expenditure for that *contingent project* under paragraph (e).~~

~~(e) A *Transmission Network Service Provider's Revenue Proposal* for the second *regulatory control period,* must include in the forecast of capital expenditure referred to in paragraph (a) an amount of any unspent capital expenditure for each *contingent project* as described in paragraph (d)(1), that equals the difference (if any) between:~~

~~(1) the total capital expenditure for that *contingent project*, as determined by the *AER* in the first *regulatory control period* under clause 6A.8.2(e)(1)(ii); and~~

~~(2) the total of the capital expenditure actually incurred (or estimated capital expenditure for any part of the first *regulatory control period* for which actual capital expenditure is not available) in the first *regulatory control period* for that *contingent project.*~~

~~(f) The *AER* must include in any forecast capital expenditure for the second *regulatory control period* which is accepted in accordance with paragraph (b), or determined in accordance with clause 6A.13.2(b)(3) or clause 6A.14.1(2) (as the case may be), the amount of any unspent capital expenditure calculated in accordance with paragraph (e).~~

~~(g) Without limiting the requirement in paragraph (f), in determining under paragraph (b)(3) whether the total forecast capital expenditure provided for the second *regulatory control period* under paragraph (a) is a reasonable estimate of the *Transmission Network Service Provider's* required capital expenditure for that period, the *AER* must not:~~

~~(1) assess the reasonableness of the amount of unspent capital expenditure for a *contingent project* referred to in paragraph (e) or the remaining period to~~

~~which the *contingent project* applies;~~

~~(2) assess the reasonableness of the timing of the unspent capital expenditure within the remaining period for a *contingent project* referred to in paragraph (e) except as part of the assessment of the total forecast capital expenditure referred in paragraph (a);~~

~~(3) take into account any amount which represents for a *contingent project* referred to in paragraph (e), the difference between:~~

~~(i) the amount representing the sum of the forecast capital expenditure for that *contingent project* for each year of the immediately preceding *regulatory control period* referred to in clause 6A.8.2(e)(1)(i); and~~

~~(ii) the total capital expenditure actually incurred (or estimated capital expenditure for any part of the preceding *regulatory control period* for which actual capital expenditure is not available) in the immediately preceding *regulatory control period* for that *contingent project*.~~

~~(h) A *Revenue Proposal* in respect of the second *regulatory control period* must not include in the forecast of capital expenditure referred to in paragraph (a) any capital expenditure for a *contingent project* for the first *regulatory control period*:~~

~~(1) to the extent that capital expenditure was included in the amount of capital expenditure for that *contingent project* as determined in the first *regulatory control period* under clause 6A.8.2(e)(1)(i); and~~

~~(2) the capital expenditure actually incurred (or estimated capital expenditure for any part of the first *regulatory control period* for which actual capital expenditure is not available) in the first *regulatory control period* for that *contingent project* exceeded the capital expenditure referred to in subparagraph (1).~~

6A.7 Matters relevant to the adjustment of revenue cap after making of revenue cap determination

6A.7.1 Reopening of revenue cap for capital expenditure

(a) Subject to paragraph (b), a *Transmission Network Service Provider* may, during a *regulatory control period*, apply to the *AER* to revoke and substitute a *revenue cap determination* that applies to it where:

(1) an event that is beyond the reasonable control of the provider has occurred during that *regulatory control period* and:

(i) the occurrence of that event during that period (or of an event of a similar kind) could not reasonably have been foreseen by the provider at the time of the making of the *revenue cap determination* ("the **event**"); or

(ii) the occurrence of that event during that period (or of an event of a similar kind) was outside a reasonable probability at the time of the making of the *revenue cap determination.*

. . .

(4) the total of the capital expenditure required during the *regulatory control period*, to rectify the adverse consequences of the event:

(i) exceeds 5% of the value of the regulatory asset base (or $10 million, whichever is greater) for the relevant *transmission system* as at the beginning of the *regulatory control period*;

(ii) is such that, if undertaken, the provider can demonstrate that it is reasonably likely (in the absence of any other reduction in capital expenditure) to result in the total actual capital expenditure for that *regulatory control period* exceeding the total of the forecast capital expenditure for that *regulatory control period* as accepted or determined by the *AER* in accordance with clause 6A.6.7(b), clause 6A.13.2(b)(3) or clause 6A.14.1(2) (as the case may be); and

(iii) the provider can demonstrate it is not able to reduce capital expenditure in other areas to avoid the consequence referred to in subparagraph (ii) without materially adversely affecting the *reliability* and security of the relevant *transmission system*;

…

6A.7.2 Network support pass through

(c) Where a *Transmission Network Service Provider* seeks a determination as referred to in paragraph (b), the provider must, within 60 *business days* of the end of the previous *regulatory year*, submit to the *AER* a written statement which specifies:

(4) such other information as may be required by the *AER* for the purpose of this clause ~~pursuant to *information guidelines* in force under clause 6A.17.2.~~

6A.7.3 Cost pass through

Positive pass through

(c) To seek the approval of the *AER* to pass through a *positive pass through amount*, a *Transmission Network Service Provider* must submit to the *AER*, within ~~60~~ 90 *business days* of the relevant *positive change event* occurring, a written statement which specifies:

…

(3) such other information as may be required by the *AER* for the purpose of this clause ~~pursuant to *information guidelines* in force under clause 6A.17.2.~~

Negative pass through

(f) A *Transmission Network Service Provider* must submit to the *AER*, within

~~60~~ 90 *business days* of becoming aware of the occurrence of a *negative change event* for the provider, a written statement which specifies:

...

(6) such other information as may be required by the *AER* for the purpose of this clause ~~pursuant to *information guidelines* in force under clause 6A.17.2.~~

6A.8 Contingent Projects

6A.8.1 Acceptance of a Contingent Project in a revenue cap determination

...

(b) The *AER* must determine that a *proposed contingent project* is a *contingent project* if the *AER* is satisfied that:

(2) the *proposed contingent capital expenditure*:

...

(iii) exceeds 5% of the value of the regulatory asset base (or $10 million whichever is lower) for the relevant *transmission system* as at the beginning of the first year of the relevant *regulatory control period*;

~~(3) the *proposed contingent project* and the *proposed contingent capital expenditure*, as described or set out in the *Revenue Proposal*, and the information provided in relation to these matters, complies with the requirements of *submission guidelines* made under clause 6A.10.2; and~~

...

6A.8.2 Amendment of revenue cap for contingent project

...

(b) An application referred to in paragraph (a):

...

(3) must contain the following information:

...

(iv) how the forecast of the total capital expenditure for the *contingent project* meets the threshold ~~of 5% of the value of the regulatory asset base as~~ referred to in clause 6A.8.1(b)(2)(iii); and

...

(e) If the *AER* is satisfied that the *trigger event* has occurred, and that the forecast of the total capital expenditure for the *contingent project* meets the

threshold ~~of 5% of the value of the regulatory asset base as~~ referred to in clause 6A.8.1(b)(2)(iii), it must:

(1) determine:

(i) the amount of capital and incremental operating expenditure, for each remaining *regulatory year* which the *AER* considers is reasonably required for the purpose of undertaking the *contingent project*;

~~(ii) the total capital expenditure which the *AER* considers is reasonably required for the purpose of undertaking the *contingent project*;~~

~~(3) the likely commencement and completion dates for the *contingent project*; and~~

…

(f) In making the determinations referred to in paragraph (e)(1), the *AER* must accept the relevant amounts and dates, contained in the *Transmission Network Service Provider*'s application, as referred to in subparagraphs

(b)(3)(ii) – (vii), if the *AER* is satisfied that:

(1) the forecast of the total capital expenditure for the *contingent project* is a reasonably derived for the purpose of undertaking the *contingent project* and meets the threshold ~~of 5% of the value of the regulatory asset base as~~ referred to in clause 6A.8.1(b)(2)(iii);

(2) those amounts referred to in (b)(3)(iii) are reasonable estimates of:

(3) the efficient capital expenditure and incremental operating expenditure for the remainder of the regulatory control period; and

(3) the incremental revenue,

that is likely to be required for the purpose of undertaking the

contingent project; and

(3) those dates are reasonable.

…

Part E - Procedure – Revenue cap determinations and negotiating frameworks

6A.10 Revenue Proposal and proposed negotiating framework

6A.10.1 Submission of proposal, framework and information

…

(c) The *Revenue Proposal* and the proposed *negotiating framework* must comply with the requirements of~~, and must contain or be accompanied by such information as is required by, the *submission guidelines* made for that purpose under~~ this rule 6A.10.

(d) The proposed *negotiating framework* must also comply with the requirements of clause 6A.9.5.

(e) A *Transmission Network Service Provider* may elect to submit a *Revenue Proposal* in accordance with the *AER's Submission Guidelines.*

(f) The *Revenue Proposal* and proposed *negotiating framework* is deemed to comply with the requirements of clause 6A.10 if it contains or is accompanied by such information as is required by the *submission guidelines.*

6A.10.2 Submission guidelines

(a) The *AER* must make guidelines, referred to as "*submission guidelines*", for the purposes of this Part E.

(b) The *submission guidelines* must specify:

(1) the form which the *Revenue Proposal* and *negotiating framework* is to take;

…

(4) such other information as the *AER* considers should be contained in, or should accompany, a *Revenue Proposal* on the basis that such information is necessary to enable the *AER* and other interested parties to:

(i) understand how the *Transmission Network Service Provider* derived the elements of its *Revenue Proposal*; and

(ii) form an opinion as to whether the *Revenue Proposal* complies with the requirements of Parts B and E of Chapter 6A; and

(c) Without limiting any other provision of this rule 6A.10, the *submission guidelines* must provide that:

(1) the information accompanying the *Revenue Proposal* must include:

(i) the *post-tax revenue model*, completed in such a way as to show its application to the *Transmission Network Service Provider*; and

(ii) the completed *roll forward model*; and

(2) the completed *post-tax revenue model* and proposed *roll forward model*, and the information in those models, will not be publicly disclosed without the consent of the provider, except to the extent that the information is provided or otherwise available apart from its being contained in those models.

(d) The *AER* must develop and make the *submission guidelines* by 31 December 2006, and there must be *submission guidelines* in force at all times after that date.

(e) The *submission guidelines* may be amended or replaced by the *AER* from time to time, in accordance with the *transmission consultation procedures.*

6A.10.3 Information Required for a Revenue proposal

(a) The Revenue Proposal must contain as a minimum:

…

(7) ~~that the *Revenue Proposal* must be accompanied by~~ such information as is necessary to enable the *AER* and other interested parties to understand the manner in which the *Transmission Network Service Provider* proposes that negotiations as to the price of *negotiated transmission services* or the amount of *access charges* will be conducted in accordance with the provider's proposed *negotiating framework*;

~~(8) such other information as the *AER* considers should be contained in, or should accompany, a *Revenue Proposal* on the basis that such information is necessary to enable the *AER* and other interested parties to:~~

~~(v) understand how the *Transmission Network Service Provider* derived the elements of its *Revenue Proposal*; and~~

~~(vi) form an opinion as to whether the *Revenue Proposal* complies with the requirements of Parts B and E of Chapter 6A; and~~

(8) such other information as the *Transmission Network Service Provider* considers should be contained in, or should accompany, a *Revenue Proposal* on the basis that such information is necessary to enable the *AER* and other interested parties to:

(i) understand how the *Transmission Network Service Provider* derived the elements of its *Revenue Proposal*; and

(ii) form an opinion as to whether the *Revenue Proposal* complies with the requirements of Parts B and E of Chapter 6A; and

(9) in the case of amounts, values or inputs that:

(i) cannot be determined before the submission of the *Revenue Proposal*; or

(ii) are required to be estimated, approved or otherwise determined by the *AER* but are not so estimated, approved or otherwise determined before the submission of the *Revenue Proposal*,

what amounts, values or inputs are ~~to be~~ used in their place for the purposes of the *Revenue Proposal* or revised *Revenue Proposal* (as the case may be).

~~(c) Without limiting any other provision of this rule 6A.10, the *submission guidelines* must provide that:~~

(b) the information accompanying the Revenue Proposal must include:

(i) the *post-tax revenue model*, completed in such a way as to show its application to the *Transmission Network Service Provider*; and

(ii) the completed *roll forward model*; and

(c) the completed post-tax revenue model and proposed roll forward model, and the information in those models, must not be publicly disclosed without the consent of the provider, except to the extent that the information is provided or otherwise available apart from its being contained in those models.

~~(d) The *AER* must develop and make the *submission guidelines* by 31 December 2006, and there must be *submission guidelines* in force at all times after that date.~~

~~(e) The *submission guidelines* may be amended or replaced by the *AER* from time to time, in accordance with the *transmission consultation procedures*.~~

(d) that the Revenue Proposal must contain at least the information and matters relating to capital expenditure set out in clause S6A.1.1 of schedule 6A.1;

(e) *that the Revenue Proposal must contain at least the information and matters relating to operating expenditure set out in clause S6A.1.2 of schedule 6A.1;*

(f) *that the Revenue Proposal must contain at least the additional information and matters set out in clause S6A.1.3 of schedule 6A.1;*

6A.11 Preliminary examination and consultation

6A.11.1 Preliminary examination and determination of non-compliance with submission guidelines

(a) If the *AER* determines that:

(1) a *Revenue Proposal* submitted by a *Transmission Network Service Provider*;

(2) a proposed *negotiating framework* submitted by the provider; or

(3) information contained in or accompanying such a *Revenue Proposal* or proposed *negotiating framework*,

under clause 6A.10.1 does not comply with the requirements of Clause 6A.10, the *submission guidelines* (where the provider has elected to submit a revenue proposal in accordance with those guidelines), or clause 6A.9.5 (in respect of the proposed *negotiating framework*) the *AER* must notify the provider of that determination as soon as practicable after receiving that *Revenue Proposal*, proposed *negotiating framework* or information (as the case may be).

(b) A determination referred to in paragraph (a) must be accompanied by written reasons that set out:

(1) the respects in which the *Revenue Proposal*, proposed *negotiating framework* or information does not comply with the relevant requirements of Clause 6A.10, the *submission guidelines* or clause 6A.9.5 (as the case may be) and the requirements that have not been complied with; and

…

6A.11.3 Consultation

(a) Except to the extent that the *submission guidelines* provide it will not be publicly disclosed (and, in that case, the relevant *Transmission Network Service Provider* has not otherwise consented), the *AER* must *publish*:

(1) the *Revenue Proposal*;

(2) the proposed *negotiating framework;* and

(3) the information,

submitted or resubmitted to it by the provider under rules 6A.9, 6A.10 or

6A.11, together with:

(4) the *AER*'s proposed *Negotiated Transmission Service Pricing Criteria*

for the provider; and

(5) an invitation for written submissions on the documents and information referred to in paragraphs (1), (2), (3) and (4),

as soon as practicable after the *AER* determines that the *Revenue Proposal*, proposed *negotiating framework* and information comply with the requirements of clause 6A.10, the *submission guidelines* or clause 6A.9.5.

…

6A.12.3 Submission of revised proposal or framework

…

(e) The *Transmission Network Service Provider* may apply to the *AER* to seek an extension to submit a revised Revenue proposal or revised negotiating framework. The application:

(1) must be made no longer than 10 business days after the publication of the draft decision;

(2) must state the reasons for the extension.

(f) The *AER* must approve an extension to submit a revised Revenue proposal or revised negotiating framework:

(1) if the application is made no longer than 10 days after the publication of the draft decision; and

(2) the *AER* is satisfied that the timeframe given to develop a revised revenue proposal is insufficient based on the draft determination.

6A.14 Requirements relating to draft and final decisions

6A.14.1 Contents of decisions

…

(2) in which the *AER* determines:

(i) whether the total of the forecast capital expenditure for the *regulatory control period* as set out in the current *Revenue Proposal* ~~is a reasonable estimate of the *Transmission Network Service Provider's* required capital expenditure for the *regulatory control period*~~ was reasonably derived, taking into account the matters referred to in clause 6A.6.7(b)(3); and

(ii) (if the *AER* determines that ~~it is not a reasonable estimate~~ the forecast capital expenditure was not reasonably derived), its reasons for that determination and an estimate of the provider's required capital expenditure for the r*egulatory control period* that the *AER* considers to be reasonable, taking into account the matters referred to in clause 6A.6.7(b)(3), together with the reasons for that conclusion;

(3) in which the *AER* determines:

(i) whether the total of the forecast operating expenditure for the *regulatory control period* as set out in the current *Revenue Proposal* ~~is a reasonable estimate of the provider's required operating expenditure for the *regulatory control period*~~ was reasonably derived, taking into account the matters referred to in clause 6A.6.6(b)(2); and

(ii) if the *AER* determines that ~~it is not a reasonable estimate~~ the forecast operating expenditure was not reasonably derived, its reasons for that determination and an estimate of the provider's required operating expenditure for the *regulatory control period* that the *AER* considers to be reasonable taking into account the matters referred to in clause 6A.6.6(b)(2), together with the reasons for that conclusion;

…

6A.14.2 Reasons for decisions

…

(b) Where the *AER* has determined under rule 6A.14.1 that the provider's forecasts of operating or capital expenditure were not reasonably derived, the reasons given by the *AER* must also include:

(1) the factors that is was required to take into account;

(2) the extent to which an assessment of each factor led the AER to the conclusion that the forecast was not reasonably derived;

…

6A.14.3 Circumstances in which approval must be given

…

(b) The *AER* must approve:

(1) the *total revenue cap* for a *Transmission Network Service Provider* for a *regulatory control period*; and

(2) the *maximum allowed revenue* for the provider for each *regulatory year* of the *regulatory control period*,

as set out in the current *Revenue Proposal*, if the *AER* is satisfied that:

(3) those amounts have been properly calculated using ~~the~~ a *post-tax revenue model* that complies with the requirements of Clause 6A.5;

…

Part F - Information Disclosure

6A.17 Information disclosure by Transmission Network Service Providers

6A.17.1 Information to be provided to *AER*

(a) In this rule 6A.17, "**certified annual statement**" means an annual statement provided by a *Transmission Network Service Provider* under this rule 6A.17 ~~and certified in accordance with the *information guidelines*~~.

(b) A *Transmission Network Service Provider* must submit to the *AER*~~, in the manner and form set out in the *information guidelines*~~, by a date that is determined by the AER, annual statements that:

(1) provide a true and fair statement of the financial and operating performance of the provider;

(2) are certified in accordance with applicable Australian Accounting Standards and this Clause ~~the *information guidelines*~~;

(3) ~~otherwise comply with the requirements of this clause and the *information guidelines*.~~ Provide sufficient information to enable the *AER* to do the following:

(i) to monitor, report on and enforce the compliance of the provider with the *total revenue cap* for the provider for a *regulatory control period*,

the *maximum allowed revenue* for the provider for each *regulatory year*, and any requirements that are imposed on the provider under a *transmission determination*;

(ii) to monitor, report on and enforce compliance with the provider's *Cost Allocation Methodology*;

(iii) to collate data regarding the financial, economic and operational performance of the provider to be used as input to the *AER's* decision-making regarding the making of *revenue cap determinations* or other regulatory controls to apply in future *regulatory control periods*;

(iv) to prepare and publish annual performance statistics in relation to the service standards *published* by the provider under [clause 6.5.7(b)]; and

(v) to monitor and report on the performance of the provider under any *service target performance incentive scheme* that applies to it.

(3) Include the following information:

(i) information on the amount of each instance, during the relevant reporting period, of a reduction under [old clause 6.5.8(b)] in the prices payable by a *Transmission Network User* for the relevant *prescribed transmission services* provided by the provider, including reductions in a *Transmission Customer's Customer TUOS general charges* or *common service charges* (or both);

(ii) information on each instance, during the relevant reporting period, of a reduction in the *Customer TUOS general charges* or *common service charges* (or both) that were recovered from other *Transmission Customers* through their *Customer TUOS general charges* or *common service charges* (or both, as appropriate) under [old clause 6.5.8]; and

(iii) information to substantiate any claim by the provider that the information provided to the *AER* with respect to reductions in the prices payable by a *Transmission Network User* for the relevant *prescribed transmission services* under subparagraph (2) or (3), is confidential information.

(c) In addition to the certified annual statements, the *AER* may require a *Transmission Network Service Provider* to provide, by a date and in the form and manner specified by the *AER*, any additional information the *AER* reasonably requires for a purpose set out in paragraph (d).

(d) The certified annual statements and additional information provided by a

Transmission Network Service Provider to the *AER* under this rule 6A.17 are deemed to comply with paragraph (b)(3) if they comply with the *information guidelines* may be used by the *AER* only for the following purposes:

(1) to monitor, report on and enforce the compliance of the provider with the *total revenue cap* for the provider for a *regulatory control period*, the *maximum allowed revenue* for the provider for each *regulatory year*, and any requirements that are imposed on the provider under a *transmission determination*;

(2) to monitor, report on and enforce compliance with the provider's *Cost Allocation Methodology*;

(3) to collate data regarding the financial, economic and operational performance of the provider to be used as input to the *AER's* decision-making regarding the making of *revenue cap determinations* or other regulatory controls to apply in future *regulatory control periods*;

(4) to prepare and publish annual performance statistics in relation to the service standards *published* by the provider under [clause 6.5.7(b)]; and

(5) to monitor and report on the performance of the provider under any *service target performance incentive scheme* that applies to it.

(e) The *AER* may request or undertake verification or independent audit of any information sought by it, or provided to it, under this rule 6A.17.

6A.17.2 Information Guidelines

...

Contents of information guidelines

(d) The *information guidelines* must provide for the manner and form in which *Transmission Network Service Provider*s must may submit certified annual statements to the *AER*, including the date each year by which those statements must be submitted to the *AER* under Clause 6A.17.1.

(e) The *information guidelines* may only require the inclusion in the certified annual statements of:

(1) such information as the *AER* reasonably requires for a purpose set out in clause 6A.17.1(d);

(2) information on the amount of each instance, during the relevant reporting period, of a reduction under [old clause 6.5.8(b)] in the prices payable by a *Transmission Network User* for the relevant *prescribed transmission services* provided by the provider, including reductions in a *Transmission Customer's Customer TUOS general charges* or *common service charges* (or both);

(3) information on each instance, during the relevant reporting period, of a reduction in the *Customer TUOS general charges* or *common service charges* (or both) that were recovered from other *Transmission Customers* through their *Customer TUOS general charges* or *common service charges* (or both, as appropriate) under [old clause 6.5.8]; and

(4) information to substantiate any claim by the provider that the information provided to the *AER* with respect to reductions in the prices payable by a *Transmission Network User* for the relevant *prescribed transmission services* under subparagraph (2) or (3), is confidential information.

(f) The *information guidelines* may provide for the information that should must accompany a written statement seeking approval of the *AER* to pass through a *positive pass through amount* or a *negative pass through amount* under clause 6A.7.3

Part G - Cost Allocation

6A.19 Cost allocation

…

6A.19.2 Cost Allocation Principles

Note. The *Cost Allocation Guidelines* are required by clause 6A.19.3 to give effect to and be consistent with, the *Cost Allocation Principles.*

(a) The following principles constitute the *Cost Allocation Principles*:

…

6A.19.4 Cost Allocation Methodology

…

(b) The *Cost Allocation Methodology* proposed by a *Transmission Network Service Provider* must give effect to and be consistent with the *Cost Allocation Guidelines Principles*.

(c) The *AER* may approve or refuse to approve a *Cost Allocation Methodology*

submitted under paragraph (a).

…

~~(g) A *Transmission Network Service Provider* must amend its *Cost Allocation Methodology* where the amendment is required by the *AER* to take into account any change to the *Cost Allocation Guidelines,* but the amendment only comes into effect:~~

~~(1) on the date that the *AER* approves that amendment, or 3 months after the submission of the amendment, whichever is the earlier; and~~

~~(2) subject to such changes to the *Cost Allocation Methodology* (including the proposed amendment) as the *AER* notifies to the *Transmission Network Service Provider* within that period, being changes that the *AER* reasonably considers are necessary or desirable as a result of that amendment.~~

(h) A *Transmission Network Service Provider* must maintain a current copy of its *Cost Allocation Methodology* on its website.

Schedule 6A.2 - Regulatory Asset Base

S6A.2.1 Establishment of opening regulatory asset base for a regulatory control period

…

(f) **Method of adjustment of value of regulatory asset base**

…

(8) Without prejudice to the application of any other provision of this paragraph (f), the previous value of the regulatory asset base may be increased by the inclusion of past capital expenditure that has not been included in that value because that capital expenditure was incurred in connection with the provision of services that are not *prescribed transmission services*, and in these circumstances, such capital expenditure must only be included to the extent the asset in respect of which that capital expenditure was incurred is subsequently used for the provision of *prescribed transmission services*.

(9) Without prejudice to the application of any other provision of this paragraph (f), the previous value of the regulatory asset base may be increased by the inclusion of past capital expenditure that was previously

removed from the regulatory asset base because of Clause 6A.2.3 but is now contributing to *prescribed transmission services*.

(g) **AER may adjust asset base for expenditure above forecast**

(1) Where the actual capital expenditure during the previous regulatory control period exceeds the forecast capital expenditure during the previous regulatory control period, a *Transmission Network Service Provider* may apply to the *AER* to review its capital expenditure.

(2) To the extent that

(i) the AER determines the capital expenditure during the previous regulatory control period was prudent and efficient; and

(ii) the amount of actual prudent and efficient capital expenditure for that part of the previous *regulatory control period* is greater than the amount forecast,

the AER may adjust the asset base for any penalty associated with not including all prudent and efficient capital expenditure in the regulatory asset base during the regulatory control period.

(3) To the extent that

(i) the AER determines the capital expenditure during the previous regulatory control period was prudent or efficient; and

(ii) the amount of actual prudent and efficient capital expenditure for that part of the previous *regulatory control period* is less than the amount forecast,

the AER may adjust the asset base for any benefit associated with including the excess capital expenditure in the regulatory asset base during the regulatory control period.

S6A.2.2 Prudency and efficiency of capital expenditure

In determining the prudency or efficiency of capital expenditure under clause S6A.2.1(d)(2) ~~or~~ S6A.2.1(e)(2) or 6.8.2.1(g), the *AER* must have regard to:

...

S6A.2.5 Restrictions on adjustment of regulatory asset base

For the avoidance of doubt, where S6A.2.1(g) does not apply and, in accordance with clause S6A.2.1(f)(1) or (2), the value of the regulatory asset base is increased by capital expenditure for a *regulatory year* that is: