

# National Electricity Rules Version 49

## Status Information

This is a draft consolidation based on the latest electronically available version of the National Electricity Rules as at 5 April 2012.

This draft consolidated version of the National Electricity Rules includes a markup of the following draft amendment:

Draft National Electricity Amendment (Cost pass through arrangements for network service providers) Rule 2012

This version of the National Electricity Rules only contains the sections of the National Electricity Rules that are amended by the draft Rule.

This version of the National Electricity Rules is provided for information purposes only. The Australian Energy Market Commission does not guarantee the accuracy, reliability or completeness of this consolidated version. The official Draft National Electricity Amendment (Cost pass through arrangements for network service providers) Rule 2012 will be published separately on the website of the Australian Energy Market Commission.



## 6 Economic Regulation of Distribution Services

### 6.5.9 The X factor

- (a) A *building block determination* is to include the X factor for each control mechanism for each *regulatory year* of the *regulatory control period*.
- (b) The X factor:
  - (1) must be set by the AER with regard to the *Distribution Network Service Provider's total revenue requirement* for the *regulatory control period*; and
  - (2) must be such as to minimise, as far as reasonably possible, variance between expected revenue for the last *regulatory year* of the *regulatory control period* and the *annual revenue requirement* for that last *regulatory year*; and
  - (3) must conform with whichever of the following requirements is applicable:
    - (i) if the control mechanism relates generally to *standard control services* – the X factor must be designed to equalise (in terms of net present value) the revenue to be earned by the *Distribution Network Service Provider* from the provision of *standard control services* over the *regulatory control period* with the provider's *total revenue requirement* for the *regulatory control period*;
    - (ii) if there are separate control mechanisms for different *standard control services* – the X factor for each control mechanism must be designed to equalise (in terms of net present value) the revenue to be earned by the *Distribution Network Service Provider* from the provision of *standard control services* to which the control mechanism relates over the *regulatory control period* with the portion of the provider's *total revenue requirement* for the *regulatory control period* attributable to those services.
- (c) There may be different X factors:
  - (1) for different regulatory years of the regulatory control period; and
  - (2) if there are 2 or more control mechanisms – for each control mechanism.

### 6.5.10 Pass through events

- (a) A building block proposal must include a proposed pass through clause with a proposal as to the events that should be defined as pass through events having regard to the nominated pass through event considerations.
- (b) In determining whether to accept the pass through events nominated by a Distribution Network Service Provider in its building block proposal, the AER must take into account the nominated pass through event considerations.

## 6.6 Adjustments after making of building block determination.

### 6.6.1 Cost pass through

(a1) Any of the following is a *pass through event* for a distribution determination:

- (1) a *regulatory change event*;
- (2) a *service standard event*;
- (3) a *tax change event*;
- (4) a *retailer insolvency event*; and

#### **Note**

Clause 6.6.1(a1)(4) assumes that the [National Electricity \(Retail Support\) Amendments Rules 2010](#) as published by the Ministerial Council on Energy has commenced operation.

(5) any other event specified in a *distribution determination* as a *pass through event* for the determination.

- (a) If a *positive change event* occurs, a *Distribution Network Service Provider* may seek the approval of the AER to pass through to *Distribution Network Users* a *positive pass through amount*.
- (b) If a *negative change event* occurs, the AER may require the *Distribution Network Service Provider* to pass through to *Distribution Network Users* a *negative pass through amount* as determined by the AER under paragraph (g).

#### **Positive pass through**

- (c) To seek the approval of the AER to pass through a *positive pass through amount*, a *Distribution Network Service Provider* must submit to the AER, within 90 *business days* of the relevant *positive change event* occurring, a written statement which specifies:
  - (1) the details of the *positive change event*; and
  - (2) the date on which the *positive change event* occurred; and
  - (3) the *eligible pass through amount* in respect of that *positive change event*; and
  - (4) the *positive pass through amount* the provider proposes in relation to the *positive change event*; and
  - (5) the amount of the *positive pass through amount* that the provider proposes should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred; and~~the amount of the *positive pass through amount* that the provider proposes should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*; and~~
  - (6) evidence:
    - (i) of the actual and likely increase in costs referred to in subparagraph (3); and

- (ii) that such costs occur solely as a consequence of the *positive change event*; and
- (7) such other information as may be required under any relevant *regulatory information instrument*.
- (d) If the AER determines that a *positive change event* has occurred in respect of a statement under paragraph (c), the AER must determine:
  - (1) the *approved pass through amount*; and
  - (2) the amount of that *approved pass through amount* that should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred,~~the amount of that *approved pass through amount* that should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*,~~taking into account the matters referred to in paragraph (j).
- (e) If the AER does not make the determinations referred to in paragraph (d) within 60 *business days* from the date it receives the *Distribution Network Service Provider's* statement and accompanying evidence under paragraph (c), then, on the expiry of that period, the AER is taken to have determined that:
  - (1) the *positive pass through amount* as proposed in the provider's statement under paragraph (c) is the *approved pass through amount* in respect of that *positive change event*; and
  - (2) the amount of that *positive pass through amount* that the provider proposes in its statement under paragraph (c) should be passed through to *Distribution Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred, is the amount that should be so passed through in each such *regulatory year*.~~the amount of that *positive pass through amount* that the provider proposes in its statement under paragraph (c) should be passed through to *Distribution Network Users* in each *regulatory year* during the *regulatory control period*, is the amount that should be so passed through in each such *regulatory year*.~~

### **Negative pass through**

- (f) A *Distribution Network Service Provider* must submit to the AER, within 90 *business days* of becoming aware of the occurrence of a *negative change event* for the provider, a written statement which specifies:
  - (1) the details of the *negative change event* concerned; and
  - (2) the date the *negative change event* occurred; and
  - (3) the costs in the provision of *direct control services* that the provider has saved and is likely to save as a result of the *negative change event* until:
    - (i) unless subparagraph (ii) applies – the end of the *regulatory control period* in which the *negative change event* occurred; or

- (ii) if the distribution determination for the regulatory control period following that in which the negative change event occurred does not make any allowance for the pass through of those cost savings - the end of the regulatory control period following that in which the negative change event occurred; and  
~~the costs in the provision of standard control services that the provider has saved and is likely to save until the end of the regulatory control period as a result of the negative change event; and~~
- (4) the aggregate amount of those saved costs that the provider proposes should be passed through to *Distribution Network Users*; and
- (5) the amount of the costs referred to in subparagraph (4) the provider proposes should be passed through to *Distribution Network Users* in the regulatory year in which, and each regulatory year after that in which, the negative change event occurred; and~~the amount of the costs referred to in subparagraph (4) the provider proposes should be passed through to *Distribution Network Users* in each regulatory year during the regulatory control period; and~~
- (6) such other information as may be required under any relevant regulatory information instrument.
- (g) If a *negative change event* occurs (whether or not the occurrence of that *negative change event* is notified by the provider to the AER under paragraph (f)) and the AER determines to impose a requirement on the provider in relation to that *negative change event* as described in paragraph (b), the AER must determine:
- (1) the *required pass through amount*; and
- (2) taking into account the matters referred to in paragraph (j):
- (i) how much of that *required pass through amount* should be passed through to *Distribution Network Users* (the "*negative pass through amount*"); and
- (ii) the amount of that *negative pass through amount* that should be passed through to *Distribution Network Users* in the regulatory year in which, and each regulatory year after that in which, the negative change event occurred.~~the amount of that *negative pass through amount* that should be passed through to *Distribution Network Users* in each regulatory year during the regulatory control period.~~
- (h) A *Distribution Network Service Provider* must provide the AER with such information as the AER requires for the purpose of making a determination under paragraph (g) within the time specified by the AER in a notice provided to the provider by the AER for that purpose.

### Consultation

- (i) Before making a determination under paragraph (d) or (g), the AER may consult with the relevant *Distribution Network Service Provider* and such other persons as the AER considers appropriate, on any matters arising out of the relevant *pass through event* the AER considers appropriate.

### Relevant factors

- (j) In making a determination under paragraph (d) or (g) in respect of a *Distribution Network Service Provider*, the AER must take into account:
- (1) the matters and proposals set out in any statement given to the AER by the provider under paragraph (c) or (f); and
  - (2) in the case of a positive change event, the increase in costs in the provision of direct control services that, as a result of the positive change event, the provider has incurred and is likely to incur until:
    - (i) unless subparagraph (ii) applies – the end of the regulatory control period in which the positive change event occurred; or
    - (ii) if the distribution determination for the regulatory control period following that in which the positive change event occurred does not make any allowance for the recovery of that increase in costs – the end of the regulatory control period following that in which the positive change event occurred; and
  - (2A) in the case of a negative change event, the costs in the provision of standard control services that, as a result of the negative change event, the provider has saved and is likely to save until:
    - (i) unless subparagraph (ii) applies – the end of the regulatory control period in which the negative change event occurred; or
    - (ii) if the distribution determination for the regulatory control period following that in which the negative change event occurred does not make any allowance for the pass through of those cost savings to Distribution Network Users – the end of the regulatory control period following that in which the negative change event occurred;
- ~~in the case of a positive change event, the increase in costs in the provision of standard control services that the provider has incurred and is likely to incur until the end of the regulatory control period as a result of the positive change event; and~~
- (3) in the case of a *positive change event*, the efficiency of the provider's decisions and actions in relation to the risk of the *positive change event*, including whether the provider has failed to take any action that could reasonably be taken to reduce the magnitude of the *eligible pass through amount* in respect of that *positive change event* and whether the provider has taken or omitted to take any action where such action or omission has increased the magnitude of the amount in respect of that *positive change event*; and
  - (4) the time cost of money based on the weighted average cost of capital for the provider for the regulatory control period in which the pass through event occurred;~~the time cost of money based on the weighted average cost of capital for the provider for the relevant regulatory control period; and~~

- (5) the need to ensure that the provider only recovers any actual or likely increment in costs under this paragraph (j) to the extent that such increment is solely as a consequence of a *pass through event*; and
- (6) in the case of a *tax change event*, any change in the way another *tax* is calculated, or the removal or imposition of another *tax*, which, in the *AER's* opinion, is complementary to the *tax change event* concerned; and
- (7) whether the costs of the *pass through event* have already been factored into the calculation of the provider's annual revenue requirements for the regulatory control period in which the *pass through event* occurred or will be factored into the calculation of the provider's annual revenue requirement for a subsequent regulatory control period; and
- (7A) the extent to which the costs that the provider has incurred and is likely to incur are the subject of a previous determination made by the *AER* under this clause 6.6.1; and
- ~~whether the costs of the *pass through event* have already been factored into the calculation of the provider's annual revenue requirement; and~~
- (8) any other factors the *AER* considers relevant.

#### **Extension of time limits**

- (k) The *AER* must, by written notice to a *Distribution Network Service Provider*, extend a time limit fixed in clause 6.6.1(c) or clause 6.6.1(f) if the *AER* is satisfied that the difficulty of assessing or quantifying the effect of the relevant *pass through event* justifies the extension.

#### **6.6.1A Reporting on jurisdictional schemes**

- (a) If during a *regulatory control period*:
  - (1) a scheme becomes a *jurisdictional scheme*; or
  - (2) a *Distribution Network Service Provider* first becomes subject to *jurisdictional scheme obligations* under a *jurisdictional scheme*; and
  - (3) the relevant *jurisdictional scheme* is not an *approved jurisdictional scheme*,then a *Distribution Network Service Provider* may request the *AER* to determine how the *Distribution Network Service Provider* is to report to the *AER* on its recovery of *jurisdictional scheme* amounts in respect of that scheme for each *regulatory year* of the *regulatory control period* and on the adjustments to be made to subsequent *pricing proposals* to account for over or under recovery of those amounts.
- (b) To make a request under paragraph (a), a *Distribution Network Service Provider* must submit to the *AER*, as soon as practicable after the event referred to in subparagraph (a)(1) or (2), a written statement which specifies:
  - (1) the name of the relevant *jurisdictional scheme*;
  - (2) the date of the event referred to in subparagraph (a)(1) or (2);

- (3) details of how the *Distribution Network Service Provider* proposes to:
  - (i) estimate the *jurisdictional scheme amounts* for the relevant *jurisdictional scheme* for the purposes of clause 6.18.7A(b);
  - (ii) carry out any adjustments to *jurisdictional scheme amounts* for the relevant *jurisdictional scheme* for the purposes of clause 6.18.7A(b); and
  - (iii) report to the *AER* on the recovery process under clause 6.18.7A (a) to (c).
- (c) The *AER* must as soon as practicable after receiving a statement under paragraph (b), *publish* the statement.
- (d) Before making a determination under paragraph (e), the *AER* may consult with the relevant *Distribution Network Service Provider* and such other persons as the *AER* considers appropriate, on any matters arising out of the statement the *AER* considers appropriate.
- (e) Within 60 *business days* of receiving the statement under paragraph (b), the *AER* must make a determination on how the *Distribution Network Service Provider* is to report to the *AER* on its recovery of *jurisdictional scheme amounts* for the relevant *jurisdictional scheme* for each *regulatory year* of the *regulatory control period* and on the adjustments to be made to subsequent *pricing proposals* to account for over or under recovery of those amounts.
- (f) If the *AER* does not make the determination referred to in paragraph (e) within 60 *business days* of receiving the statement under paragraph (b) then, on expiry of that period, the *AER* is taken to have approved the process proposed in the *Distribution Network Service Provider's* statement.

### **6.11.2 Notice of distribution determination**

The *AER* must as soon as practicable, but not later than 2 months before the commencement of the relevant *regulatory control period*, *publish*:

- (1) notice of the making of the distribution determination; and
- (2) the distribution determination itself; and
- (3) the *AER's* reasons for making the distribution determination in its final form including the constituent decisions i.e. the decisions made in accordance with rule 6.12 on which the distribution determination is predicated.

### **6.11.3 Commencement of distribution determination**

- (a) A distribution determination takes effect at the commencement of the *regulatory control period* to which it relates.
- (b) If a period intervenes between the end of one *regulatory control period* and the commencement of a new distribution determination providing for the next *regulatory control period*:
  - (1) the previous distribution determination continues in force during the intervening period; and

- (2) the previous *approved pricing proposal* continues in force (despite any contrary provision of these *Rules*) during the intervening period and the first *regulatory year* of the later *regulatory control period*; and
- (3) the later distribution determination is to make provision for appropriate adjustments to the *approved pricing proposals* for subsequent *regulatory years* of the *regulatory control period*.

## 6.12 Requirements relating to draft and final distribution determinations

### 6.12.1 Constituent decisions

A distribution determination is predicated on the following decisions by the *AER* (**constituent decisions**):

- (1) a decision on the classification of the services to be provided by the *Distribution Network Service Provider* during the course of the *regulatory control period*;
- (2) a decision on the *Distribution Network Service Provider's* current *building block proposal* in which the *AER* either approves or refuses to approve:
  - (i) the *annual revenue requirement* for the provider, as set out in the *building block proposal*, for each *regulatory year* of the *regulatory control period*; and
  - (ii) the commencement and length of the *regulatory control period* as proposed in the *building block proposal*;
- (3) a decision in which the *AER* either:
  - (i) acting in accordance with clause 6.5.7(c), accepts the total of the forecast capital expenditure for the *regulatory control period* that is included in the current *building block proposal*; or
  - (ii) acting in accordance with clause 6.5.7(d), does not accept the total of the forecast capital expenditure for the *regulatory control period* that is included in the current *building block proposal*, in which case the *AER* must set out its reasons for that decision and an estimate of the total of the *Distribution Network Service Provider's* required capital expenditure for the *regulatory control period* that the *AER* is satisfied reasonably reflects the *capital expenditure criteria*, taking into account the *capital expenditure factors*;
- (4) a decision in which the *AER* either:
  - (i) acting in accordance with clause 6.5.6(c), accepts the total of the forecast operating expenditure for the *regulatory control period* that is included in the current *building block proposal*; or
  - (ii) acting in accordance with clause 6.5.6(d), does not accept the total of the forecast operating expenditure for the *regulatory control period* that is included in the current *building block proposal*, in which case the *AER* must set out its reasons for that decision and an estimate of the total of the *Distribution Network Service Provider's* required operating expenditure for the *regulatory control period* that the *AER* is

satisfied reasonably reflects the *operating expenditure criteria*, taking into account the *operating expenditure factors*;

- (5) a decision in relation to the rate of return on whether to apply or depart from a value, method or credit rating level set out in a *statement of regulatory intent* in accordance with clause 6.5.4;
- (6) a decision on the regulatory asset base as at the commencement of the *regulatory control period* in accordance with clause 6.5.1 and schedule 6.2;
- (7) a decision on the estimated cost of corporate income tax to the provider for each *regulatory year* of the *regulatory control period* in accordance with clause 6.5.3 and, where relevant, a *statement of regulatory intent* under clause 6.5.4;
- (8) a decision on whether or not to approve the depreciation schedules submitted by the *Distribution Network Service Provider* and, if the *AER* decides against approving them, a decision determining depreciation schedules in accordance with clause 6.5.5(b);
- (9) a decision on how any applicable *efficiency benefit sharing scheme*, *service target performance incentive scheme*, or demand management and embedded generation connection incentive schemes is to apply to the *Distribution Network Service Provider*;
- (10) a decision in which the *AER* decides other appropriate amounts, values or inputs;
- (11) a decision on the control mechanism (including the X factor) for *standard control services* (to be in accordance with the relevant *framework and approach paper*);
- (12) a decision on the control mechanism for *alternative control services* (to be in accordance with the relevant *framework and approach paper*);
- (13) a decision on how compliance with a relevant control mechanism is to be demonstrated;
- (14) a decision on the additional *pass through events* that are to apply for the *regulatory control period* [in accordance with clause 6.5.10](#);
- (15) a decision on the *negotiating framework* that is to apply to the *Distribution Network Service Provider* for the *regulatory control period* (which may be the *negotiating framework* as proposed by the provider, some variant of it, or a framework substituted by the *AER*);
- (16) a decision in which the *AER* decides the *Negotiated Distribution Service Criteria* for the *Distribution Network Service Provider*;
- (17) a decision on the procedures for assigning customers to *tariff classes*, or reassigning customers from one *tariff class* to another (including any applicable restrictions);
- (17A) a decision on the approval of the proposed *pricing methodology* for *transmission standard control services* (if rule 6.26 applies);
- (18) a decision on whether depreciation for establishing the regulatory asset base as at the commencement of the following *regulatory control period* is to be based on actual or forecast capital expenditure;

- (19) a decision on how the *Distribution Network Service Provider* is to report to the AER on its recovery of *designated pricing proposal charges* for each *regulatory year* of the *regulatory control period* and on the adjustments to be made to subsequent *pricing proposals* to account for over or under recovery of those charges; and
- (20) a decision on how the *Distribution Network Service Provider* is to report to the AER on its recovery of *jurisdictional scheme amounts* for each *regulatory year* of the *regulatory control period* and on the adjustments to be made to subsequent *pricing proposals* to account for over or under recovery of those amounts. A decision under this subparagraph (20) must be made in relation to each *jurisdictional scheme* under which the *Distribution Network Service Provider* has *jurisdictional scheme* obligations at the time the decision is made.

## Schedule 6.1 Contents of building block proposals

### S6.1.3 Additional information and matters

A *building block proposal* must contain at least the following additional information and matters:

- (1) an identification and explanation of any significant interactions between the forecast capital expenditure and forecast operating expenditure programs;
- (2) ~~[Deleted] a proposed pass-through clause with a proposal as to the events that should be defined as pass-through events;~~
- (3) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes the *efficiency benefit sharing scheme* should apply for the relevant *regulatory control period*;
- (4) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes the *service target performance incentive scheme* should apply for the relevant *regulatory control period*;
- (5) a description, including relevant explanatory material, of how the *Distribution Network Service Provider* proposes the demand management and embedded generation connection incentive scheme (if applicable) should apply for the relevant *regulatory control period*;
- (6) the provider's calculation of revenues or prices for the purposes of the control mechanism proposed by the provider together with:
  - (i) details of all amounts, values and inputs (including X factors) relevant to the calculation; and
  - (ii) an explanation of the calculation and the amounts, values and inputs involved in the calculation; and
  - (iii) a demonstration that the calculation and the amounts, values and inputs on which it is based comply with relevant requirements of the Law and the *Rules*;
- (7) the provider's calculation of the regulatory asset base for the relevant *distribution system* for each *regulatory year* of the relevant *regulatory*

*control period* using the *roll forward model* referred to in clause 6.5.1 of the *Rules*, together with:

- (i) details of all amounts, values and other inputs used by the provider for that purpose; and
  - (ii) a demonstration that any such amounts, values and other inputs comply with the relevant requirements of Part C of Chapter 6 of the *Rules*; and
  - (iii) an explanation of the calculation of the regulatory asset base for each *regulatory year* of the relevant *regulatory control period* and of the amounts, values and inputs referred to in subparagraph (i);
- (8) the commencement and length of the period nominated by the *Distribution Network Service Provider* for the purposes of clause 6.5.2(c)(2) of the *Rules*;
- (9) the provider's calculation of the proposed rate of return, including any proposed departure from the values, methods or credit rating levels set out in an applicable *statement of regulatory intent*;
- (10) the *post-tax revenue model* completed to show its application to the *Distribution Network Service Provider* and the completed *roll-forward model*;
- (11) the provider's estimate of the cost of corporate income tax for each *regulatory year* of the *regulatory control period*;
- (12) the depreciation schedules nominated by the *Distribution Network Service Provider* for the purposes of clause 6.5.5 of the *Rules*, which categorise the relevant assets for these purposes by reference to well accepted categories such as:
- (i) asset class (eg *distribution lines* and *substations*); or
  - (ii) category driver (eg *regulatory obligation or requirement*, replacement, *reliability*, net market benefit, and business support),

together with:

- (iii) details of all amounts, values and other inputs used by the provider to compile those depreciation schedules; and
  - (iv) a demonstration that those depreciation schedules conform with the requirements set out in clause 6.5.5(b) of the *Rules*; and
  - (v) an explanation of the calculation of the amounts, values and inputs referred to in subparagraph (iii);
- (13) the commencement and length of the *regulatory control period* proposed by the *Distribution Network Service Provider*.

## **6A. Economic Regulation of Transmission Services**

### **6A.6.8 The X factor**

- (a) A *revenue determination* is to include the X factor for each *regulatory year* for a *Transmission Network Service Provider*.

- (b) The X factors for each *regulatory year* must be:
  - (1) providing they comply with the requirements set out in paragraph (c), the X factors for those *regulatory years* that are nominated in the *Transmission Network Service Provider's Revenue Proposal*; or
  - (2) to the extent that the X factors nominated in the *Transmission Network Service Provider's Revenue Proposal* do not so comply, the X factors determined for that purpose by the AER in its final decision on the *Transmission Network Service Provider's Revenue Proposal*.
- (c) The X factor for each *regulatory year* must be such that:
  - (1) the net present value of the expected *maximum allowed revenue* for the relevant *Transmission Network Service Provider* for each *regulatory year* (as calculated in accordance with the *post-tax revenue model*) is equal to the net present value of the *annual building block revenue requirement* for the provider for each *regulatory year* (as calculated in accordance with the *post-tax revenue model*); and
  - (2) the expected *maximum allowed revenue* for the provider for the last *regulatory year* (as calculated in accordance with the *post-tax revenue model*) is as close as reasonably possible to the *annual building block revenue requirement* for the provider for that *regulatory year* (as calculated in accordance with the *post-tax revenue model*).
- (d) For the avoidance of doubt, there may be a different X factor that applies for different *regulatory years* of the *regulatory control period*.

#### **6A.6.9 Pass through events**

- (a) A Revenue Proposal must include a proposed pass through clause with a proposal as to the events that should be defined as pass through events having regard to the nominated pass through event considerations.
- (b) In determining whether to accept the pass through events nominated by a Transmission Network Service Provider in its Revenue Proposal, the AER must take into account the nominated pass through event considerations.

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

#### **6A.7.3 Cost pass through**

- (a1) Any of the following is a pass through event for a transmission determination:
  - (1) a regulatory change event;
  - (2) a service standard event;
  - (3) a tax change event;
  - (4) an insurance event; and
  - (5) any other event specified in a transmission determination as a pass through event for the determination.

- (a) If a *positive change event* occurs, a *Transmission Network Service Provider* may seek the approval of the *AER* to pass through to *Transmission Network Users* a *positive pass through amount*.
- (b) If a *negative change event* occurs, the *AER* may require the *Transmission Network Service Provider* to pass through to *Transmission Network Users* a *negative pass through amount* as determined by the *AER* under paragraph (g).

### **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 90 *business days* of the relevant *positive change event* occurring, a written statement which specifies:
  - (1) the details of the *positive change event*;
  - (2) the date on which the *positive change event* occurred;
  - (3) the *eligible pass through amount* in respect of that *positive change event*;
  - (4) the *positive pass through amount* the provider proposes in relation to the *positive change event*;
  - (5) the amount of the *positive pass through amount* that the provider proposes should be passed through to *Transmission Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred;  
~~the amount of the *positive pass through amount* that the provider proposes should be passed through to *Transmission Network Users* in each *regulatory year* during the *regulatory control period*;~~
  - (6) evidence:
    - (i) of the actual and likely increase in costs referred to in subparagraph (3); and
    - (ii) that such costs occur solely as a consequence of the *positive change event*; and
  - (7) such other information as may be required pursuant to *information guidelines* in force under clause 6A.17.2.
- (d) If the *AER* determines that a *positive change event* has occurred in respect of a statement under paragraph (c), the *AER* must determine:
  - (1) the *approved pass through amount*; and
  - (2) the amount of that *approved pass through amount* that should be passed through to *Transmission Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred,  
~~the amount of that *approved pass through amount* that should be passed through to *Transmission Network Users* in each *regulatory year* during the *regulatory control period*,~~taking into account the matters referred to in paragraph (j).

- (e) If the *AER* does not make the determinations referred to in paragraph (d) within 60 *business days* from the date it receives the *Transmission Network Service Provider's* statement and accompanying evidence under paragraph (c), then, on the expiry of that period, the *AER* is taken to have determined that:

- (1) the *positive pass through amount* as proposed in the provider's statement under paragraph (c) is the *approved pass through amount* in respect of that *positive change event*; and
- (2) the amount of that *positive pass through amount* that the provider proposes in its statement under paragraph (c) should be passed through to *Transmission Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred, is the amount that should be so passed through in each such *regulatory year*.

~~the amount of that *positive pass through amount* that the provider proposes in its statement under paragraph (c) should be passed through to *Transmission Network Users* in each *regulatory year* during the *regulatory control period*, is the amount that should be so passed through in each such *regulatory year*.~~

#### **Negative pass through**

- (f) A *Transmission Network Service Provider* must submit to the *AER*, within 60 *business days* of becoming aware of the occurrence of a *negative change event* for the provider, a written statement which specifies:

- (1) the details of the *negative change event* concerned;
- (2) the date the *negative change event* occurred;
- (3) the costs in the provision of *prescribed transmission services* that the provider has saved and is likely to save as a result of the *negative change event* until:
  - (i) unless sub paragraph (ii) applies – the end of the *regulatory control period* in which the *negative change event* occurred; or
  - (ii) if the *transmission determination* for the *regulatory control period* following that in which the *negative change event* occurred does not make any allowance for the pass through of the cost savings - the end of the *regulatory control period* following that in which the *negative change event* occurred;

~~the costs in the provision of *prescribed transmission services* that the provider has saved and is likely to save until the end of the *regulatory control period* as a result of the *negative change event*;~~

- (4) the aggregate amount of those saved costs that the provider proposes should be passed through to *Transmission Network Users*;
- (5) the amount of the costs referred to in subparagraph (4) the provider proposes should be passed through to *Transmission Network Users* in the *regulatory year* in which, and each *regulatory year* after that in which, the *negative change event* occurred; and ~~the amount of the~~

~~costs referred to in subparagraph (4) the provider proposes should be passed through to Transmission Network Users in each regulatory year during the regulatory control period; and~~

- (6) such other information as may be required pursuant to *information guidelines* in force under clause 6A.17.2.
- (g) If a *negative change event* occurs (whether or not the occurrence of that *negative change event* is notified by the provider to the AER under paragraph (f)) and the AER determines to impose a requirement on the provider in relation to that *negative change event* as described in paragraph (b), the AER must determine:
- (1) the *required pass through amount*; and
  - (2) taking into account the matters referred to in paragraph (j):
    - (i) how much of that *required pass through amount* should be passed through to *Transmission Network Users* (the *negative pass through amount*); and
    - (ii) the amount of that *negative pass through amount* that should be passed through to *Transmission Network Users* in the regulatory year in which, and each regulatory year after that in which, the *negative change event* occurred.~~the amount of that *negative pass through amount* that should be passed through to *Transmission Network Users* in each regulatory year during the regulatory control period.~~
- (h) A *Transmission Network Service Provider* must provide the AER with such information as the AER requires for the purpose of making a determination under paragraph (g) within the time specified by the AER in a notice provided to the provider by the AER for that purpose.

### Consultation

- (i) Before making a determination under paragraph (d) or (g), the AER may consult with the relevant *Transmission Network Service Provider* and such other persons as the AER considers appropriate, on any matters arising out of the relevant *pass through event* as the AER considers appropriate.

### Relevant factors

- (j) In making a determination under paragraph (d) or (g) in respect of a *Transmission Network Service Provider*, the AER must take into account:
- (1) the matters and proposals set out in any statement given to the AER by the provider under paragraphs (c) or (f) (as the case may be);
  - (2) in the case of a *positive change event*, the increase in costs in the provision of *prescribed transmission services* that, as a result of the *positive change event*, the provider has incurred and is likely to incur until:
    - (i) unless subparagraph (ii) applies – the end of the *regulatory control period* in which the *positive change event* occurred; or

- (ii) if the transmission determination for the regulatory control period following that in which the positive change event occurred does not make any allowance for the recovery of that increase in costs – the end of the regulatory control period following that in which the positive change event occurred;
- (2A) in the case of a negative change event, the costs in the provision of prescribed transmission services that, as a result of the negative change event, the provider has saved and is likely to save until:
- (i) unless subparagraph (ii) applies – the end of the regulatory control period in which the negative change event occurred; or
- (ii) if the transmission determination for the regulatory control period following that in which the negative change event occurred does not make any allowance for the pass through of those cost savings to Transmission Network Users – the end of the regulatory control period following that in which the negative change event occurred;
- ~~in the case of a positive change event, the increase in costs in the provision of prescribed transmission services that the provider has incurred and is likely to incur until the end of the regulatory control period as a result of the positive change event;~~
- (3) in the case of a *positive change event*, the efficiency of the provider's decisions and actions in relation to the risk of the *positive change event*, including whether the provider has failed to take any action that could reasonably be taken to reduce the magnitude of the *eligible pass through amount* in respect of that *positive change event* and whether the provider has taken or omitted to take any action where such action or omission has increased the magnitude of the amount in respect of that *positive change event*;
- (4) the time cost of money based on the weighted average cost of capital for the provider for the regulatory control period in which the pass through event occurred; and~~the time cost of money based on the weighted average cost of capital for the provider for the relevant regulatory control period;~~
- (5) the need to ensure that the provider only recovers any actual or likely increment in costs under this paragraph (j) to the extent that such increment is solely as a consequence of a *pass through event*;
- (6) in the case of a *tax change event*, any change in the way another tax is calculated, or the removal or imposition of another tax, which, in the AER's opinion, is complementary to the *tax change event* concerned;  
~~and~~
- (6A) whether the costs of the pass through event have already been factored into the calculation of the provider's maximum allowed revenue for the regulatory control period in which the pass through event occurred or will be factored into the calculation of the provider's maximum allowed revenue for a subsequent regulatory control period;

- [\(6B\) the extent to which the costs that the provider has incurred and is likely to incur are the subject of a previous determination made by the AER under this clause 6A.7.3; and](#)
- (7) any other factors the *AER* considers relevant.

## **Part E Procedure – Revenue determinations, negotiating frameworks and pricing methodologies**

### **6A.14 Requirements relating to draft and final decisions**

#### **6A.14.1 Contents of decisions**

A draft decision under rule 6A.12 or a final decision under rule 6A.13 is a decision by the *AER*:

- (1) on the *Transmission Network Service Provider's* current *Revenue Proposal* in which the *AER* either approves or refuses to approve:
  - (i) the *total revenue cap* for the provider for the *regulatory control period*;
  - (ii) the *maximum allowed revenue* for the provider for each *regulatory year* of the *regulatory control period*;
  - (iii) the values that are to be attributed to the *performance incentive scheme parameters* for the *service target performance incentive scheme* that is to apply to the provider in respect of the *regulatory control period*;
  - (iv) the values that are to be attributed to the *efficiency benefit sharing scheme parameters* for the *efficiency benefit sharing scheme* that is to apply to the provider in respect of the *regulatory control period*; and
  - (v) the commencement and length of the *regulatory control period* that has been proposed by the provider,as set out in the *Revenue Proposal*, setting out the reasons for the decision;
- (2) in which the *AER* either:
  - (i) acting in accordance with clause 6A.6.7(c), accepts the total of the forecast capital expenditure for the *regulatory control period* that is included in the current *Revenue Proposal*; or
  - (ii) acting in accordance with clause 6A.6.7(d), does not accept the total of the forecast capital expenditure for the *regulatory control period* that is included in the current *Revenue Proposal*, in which case the *AER* must set out its reasons for that decision and an estimate of the total of the *Transmission Network Service Provider's* required capital expenditure for the *regulatory control period* that the *AER* is satisfied reasonably reflects the *capital expenditure criteria*, taking into account the *capital expenditure factors*;
- (3) in which the *AER* either:
  - (i) acting in accordance with clause 6A.6.6(c) or clause 6A.6.6(c1), accepts the total of the forecast operating expenditure for the

*regulatory control period* that is included in the current *Revenue Proposal*; or

- (ii) acting in accordance with clause 6A.6.6(d), does not accept the total of the forecast operating expenditure for the *regulatory control period* that is included in the current *Revenue Proposal*, in which case the *AER* must set out its reasons for that decision and an estimate of the total of the *Transmission Network Service Provider's* required operating expenditure for the *regulatory control period* that the *AER* is satisfied reasonably reflects the *operating expenditure criteria*, taking into account the *operating expenditure factors*;
- (4) in which the *AER* determines:
- (i) whether each of the *proposed contingent projects* (if any) described in the current *Revenue Proposal* are *contingent projects* for the purposes of the *revenue determination* in which case the decision must clearly identify each of those *contingent projects*;
  - (ii) the capital expenditure that it is satisfied reasonably reflects the *capital expenditure criteria*, taking into account the *capital expenditure factors*, in the context of each *contingent project* as described in the current *Revenue Proposal*;
  - (iii) the *trigger events* in relation to each *contingent project* (in which case the decision must clearly specify those *trigger events*); and
  - (iv) if the *AER* determines that such a *proposed contingent project* is not a *contingent project* for the purposes of the *revenue determination*, its reasons for that conclusion, having regard to the requirements of clause 6A.8.1(b);
- (5) in which the *AER* sets out the amounts, values or inputs that it has used in place of those referred to in clause 6A.10.2(b)(9);
- (6) on the provider's current proposed *negotiating framework*, in which the *AER* either approves or refuses to approve the proposed *negotiating framework*, setting out reasons for its decision;
- (7) in which the *AER* specifies the *Negotiated Transmission Service Pricing Criteria* for the *Transmission Network Service Provider*, setting out the reasons for the decision; ~~and~~
- (8) on the *Transmission Network Service Provider's* current proposed *pricing methodology*, in which the *AER* either approves or refuses to approve that methodology and sets out reasons for its decision; ~~and~~;
- (9) on the additional *pass through events* that are to apply for the *regulatory control period* in accordance with clause 6A.6.9.

## 10. Glossary

### *eligible pass through amount*

In respect of a *positive change event* for a *Transmission Network Service Provider*, the increase in costs in the provision of *prescribed transmission services* that, as a result of that *positive change event*, the *Transmission Network Service Provider* has incurred and is likely to incur (as opposed to the revenue impact of that event) until:

- (a) unless paragraph (b) applies – the end of the *regulatory control period* in which the *positive change event* occurred; or
- (b) if the *transmission determination* for the *regulatory control period* following that in which the *positive change event* occurred does not make any allowance for the recovery of that increase in costs (whether or not in the forecast operating expenditure or forecast capital expenditure accepted or substituted by the AER for that *regulatory control period*) – the end of the *regulatory control period* following that in which the *positive change event* occurred.

In respect of a *positive change event* for a *Distribution Network Service Provider*, the increase in costs in the provision of *direct control services* that, as a result of that *positive change event*, the *Distribution Network Service Provider* has incurred and is likely to incur (as opposed to the revenue impact of that event) until:

- (a) unless paragraph (b) applies – the end of the *regulatory control period* in which the *positive change event* occurred; or
- (b) if the *distribution determination* for the *regulatory control period* following that in which the *positive change event* occurred does not make any allowance for the recovery of that increase in costs (whether or not in the forecast operating expenditure or forecast capital expenditure accepted or substituted by the AER for that *regulatory control period*) – the end of the *regulatory control period* following that in which the *positive change event* occurred.

~~In respect of a *positive change event* for a *Transmission Network Service Provider*, the increase in costs in the provision of *prescribed transmission services* that the *Transmission Network Service Provider* has incurred and is likely to incur until the end of the *regulatory control period* as a result of that *positive change event* (as opposed to the revenue impact of that event):~~

~~In respect of a *positive change event* for a *Distribution Network Service Provider*, the increase in costs in the provision of *direct control services* that the *Distribution Network Service Provider* has incurred and is likely to incur until the end of the *regulatory control period* as a result of that *positive change event* (as opposed to the revenue impact of that event):~~

### *nominated pass through event considerations*

The *nominated pass through event considerations* are whether:

- (a) the event proposed is an event covered by a category of *pass through event* specified in clause 6.6.1(a1)(1) to (4) (in the case of a distribution

determination) or clause 6A.7.3(a1)(1) to (4) (in the case of a *transmission determination*);

- (b) the nature or type of event can be clearly identified at the time the determination is made for the service provider;
- (c) a prudent service provider could reasonably prevent an event of that nature or type from occurring or substantially mitigate the cost impact of such an event;
- (d) a service provider could insure against the event, including:
  - (1) the availability (including the extent of availability in terms of liability limits) of insurance against the event on reasonable commercial terms; or
  - (2) whether the event can be self-insured on the basis that:
    - (i) it is possible to calculate the self-insurance premium; and
    - (ii) the potential loss to the relevant service provider would not have a significant impact on the service provider's ability to provide *network services*.

### ***pass through event***

For a distribution determination - the events specified in clause 6.6.6(1)(a1).

For a *transmission determination* – the events specified in clause 6A.7.3 (a1).

~~Any of the following is a *pass through event*:~~

- ~~(a) a *regulatory change event*;~~
- ~~(b) a *service standard event*;~~
- ~~(c) a *tax change event*;~~
- ~~(d) a *terrorism event*.~~

~~An *insurance event* is a *pass through event* for a *transmission determination* (in addition to those listed above).~~

~~An event nominated in a distribution determination as a *pass through event* is a *pass through event* for the determination (in addition to those listed above).~~

### ***required pass through amount***

In respect of a *negative change event* for a *Transmission Network Service Provider*, the costs in the provision of *prescribed transmission services* that, as a result of that *negative change event*, the *Transmission Network Service Provider* has saved and is likely to save (as opposed to the revenue impact of that event) until:

- (a) unless paragraph (b) applies – the end of the *regulatory control period* in which the *negative change event* occurred; or
- (b) if the *transmission determination* for the *regulatory control period* following that in which the *negative change event* occurred does not make any allowance for the pass through of the saved costs (whether or not in the forecast operating expenditure or forecast capital expenditure accepted or substituted by the AER for that *regulatory control period*) – the end of the

regulatory control period following that in which the negative change event occurred.

In respect of a negative change event for a Distribution Network Service Provider, the costs in the provision of direct control services that, as a result of the negative change event, the Distribution Network Service Provider has saved and is likely to save (as opposed to the revenue impact of that event) until:

- (a) unless paragraph (b) applies – the end of the regulatory control period in which the negative change event occurred; or
- (b) if the distribution determination for the regulatory control period following that in which the negative change event occurred does not make any allowance for the pass through of the saved costs (whether or not in the forecast operating expenditure or forecast capital expenditure accepted or substituted by the AER for that regulatory control period) – the end of the regulatory control period following that in which the negative change event occurred.

~~In respect of a negative change event for a Transmission Network Service Provider, the costs in the provision of prescribed transmission services that the Transmission Network Service Provider has saved and is likely to save until the end of the regulatory control period as a result of that negative change event (as opposed to the revenue impact of that event).~~

~~In respect of a negative change event for a Distribution Network Service Provider, the costs in the provision of direct control services that the Distribution Network Service Provider has saved and is likely to save up to the end of the regulatory control period as a result of the negative change event (as opposed to the revenue impact of that event).~~

**~~terrorism event~~**

~~An act (including, but not limited to, the use of force or violence or the threat of force or violence) of any person or group of persons (whether acting alone or on behalf of in connection with any organisation or government), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons (including the intention to influence or intimidate any government and/or put the public, or any section of the public, in fear) and which materially increases the costs to a Transmission Network Service Provider of providing prescribed transmission services or the costs to a Distribution Network Service Provider of providing direct control services.~~



**CHAPTER 11**





## 11. Savings and Transitional Rules

### Part Z[X] Cost pass through arrangements for network service providers

#### 11.[xx] Rules consequential on the making of National Electricity Amendment (Cost pass through arrangements for network service providers) Rule 2012

##### 11.[xx].1 Definitions

In this rule 11.[xx]:

**Amending Rule** means the National Electricity Amendment (Cost pass through arrangements for network service providers) Rule 2012.

**commencement date** means the date the Amending Rule commences operation.

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

**Powerlink** means Queensland Electricity Transmission Corporation Ltd (ACN 078 849 233).

**terrorism event** means *terrorism event* as defined in Chapter 10 of the *Rules* as in force immediately before the commencement date.

##### 11.[xx].2 Terrorism event is a cost pass through event in the current regulatory control period

Despite the Amending Rule, a terrorism event is a *pass through event* for a *Network Service Provider* during its current regulatory control period.

##### 11.[xx].3 Transitional arrangement for Powerlink

- (a) Powerlink may, by written notice to the AER not later than 90 days after the commencement date, apply to include in its *transmission determination* for the current regulatory control period, one or more nominated *pass through events*.
- (b) Within [x] *business days* of receiving a notice under paragraph (a), the AER must determine whether the *pass through events* nominated by Powerlink in the notice under paragraph (a) should be included in its *transmission determination*.
- (c) In making a determination under paragraph (c), the AER must take into account the *nominated pass through event considerations*.
- (d) If the AER determines under paragraph (b) that Powerlink's *transmission determination* should include a *pass through event* nominated by Powerlink, the AER must within [x] *business days*:
  - (1) promptly notify Powerlink of that determination in writing; and
  - (2) revoke and substitute Powerlink's *transmission determination*.

- (e) The substituted *transmission determination* under paragraph (d)(2) must only vary from the revoked determination to the extent necessary to include the accepted *pass through events* in the *transmission determination*.
- (f) If the *AER* determines under paragraph (b) that Powerlink's *transmission determination* should not include a *pass through event* nominated by Powerlink under paragraph (a), it must promptly notify Powerlink.