

Mr John Pierce  
Chairman  
Australian Energy Market Commission  
PO Box A2449  
SYDNEY SOUTH NSW 1235

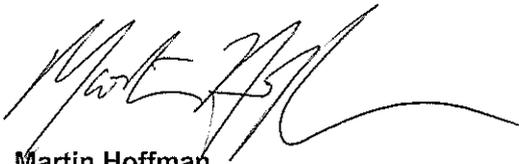
Dear Mr Pierce

The Standing Council on Energy and Resources (SCER) has agreed to submit a rule change request to the Australian Energy Market Commission on the reform of distribution pricing arrangements.

This rule change request has been developed based on recommendations contained in the AEMC Power of choice review and is in line with the broad energy reform package to support investment and market outcomes in the long term interests of consumers agreed by the Council of Australian Governments and SCER in December 2012.

The rule change proposal and associated draft rule are attached for your consideration.

Sincerely



**Martin Hoffman**  
Acting Chair  
Standing Council on Energy and Resources Senior Committee of Officials

18 September 2013.

Enc

Reform of the distribution network pricing arrangements under the National Electricity Rules to provide better guidance for setting, and consulting on, cost-reflective distribution network pricing structures and charges

Rule change request

18 September 2013

## 1. Name and address of rule change request proponent

Standing Council on Energy and Resources (SCER)  
SCER Senior Committee of Officials  
Standing Council on Energy and Resources Secretariat  
GPO box 1564  
Canberra ACT 2601

## 2. Description of the proposed rule change

This rule change request seeks to:

- (a) improve the clarity of, and strengthen existing pricing principles in the National Electricity Rules (NER) for distribution network service providers (DNSPs) to ensure they develop and set prices based on Long Run Marginal Cost (LRMC).
- (b) enable the Australian Energy Regulator (AER) to have sufficient time and opportunity to review DNSP's pricing proposals and requested variations in pricing structures to ensure the DNSP pricing arrangements are consistent with the amended pricing principles; and
- (c) improve the existing consultation requirements for DNSPs so that retailers and consumer groups have a greater opportunity to consider and influence network charges and the structure of those charges.<sup>1</sup>

Under the proposed changes, the DNSPs will continue to be responsible for designing their pricing arrangements, in accordance with their circumstances. SCER considers these changes will help in the effective transition to more efficient and flexible pricing options and reflects a balance between prescription and flexibility in the rules (i.e. ability for DNSPs to structure their network tariffs in innovative ways). Moreover, it provides for deliberation, consultation and accounting for the consumer impacts of this shift.

The rule change proposal promotes the National Electricity Objective (NEO) by encouraging development of more efficient network charges that better allow consumers to respond effectively in ways that minimise network costs over time while smoothing the transition for consumers.

The proposed rule specifically seeks to amend Chapter 6 of the NER including to:

- Amend the existing distribution network pricing principles so that DNSPs set cost reflective network charges, and structure those charges, in a manner that reflects the LRMC of providing network services.
- Require DNSPs to take into account the impacts on consumers of more efficient and flexible network structures and charges.
- Require DNSPs to provide a statement of the way they propose to structure their network charges (in the form of a network pricing structures statement) as part of their network regulatory proposals. The statement of proposed pricing structures would also be included in their annual pricing proposals, and published on their websites.
- Require DNSPs to consult formally with stakeholders when developing their network prices and charging structures during the regulatory proposal stage. DNSPs would also be required

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<sup>1</sup> Pricing structures for example can include flat prices (this is a price structure which has no time element incorporated but could include a block structure), time of use or variations of time of use, for example seasonal time of use, critical peak pricing, or demand based pricing options (\$ per kWh or kVA per day).

to consult with stakeholders regarding any significant amendments they make to their pricing structures and charges over the course of the regulatory control period.

- Require the AER to develop a consultation guideline that sets out how DNSPs should consult with retailers and consumer groups with respect to network pricing structures in its pricing proposal, the timing of such consultation, and any relevant information that DNSPs should provide as part of the consultation.
- Include a provision which enables the AER to consider any proposed variations to pricing structures as approved in the regulatory determination. The DNSPs would need to provide the AER the requested variations six months prior to the relevant pricing year. A time limit should be provided for the AER to confirm the variations.

The proposed rule would affect specifically the following clauses of Chapter 6 of the NER - clauses 6.1.3, 6.2.8, 6.8.2, 6.9.1 6.9.2, 6.9.3, 6.10.1, 6.10.2, 6.10.3, 6.10.4, 6.11.1, 6.12.1, 6.12.3, 6.13, 6.18.1, 6.18.2, 6.18.5, 6.18.6, 6.18.8, 6.18.9, 6.22.2.

### **3. Context to the rule change request**

In December 2012, the Council of Australian Governments and SCER agreed to a broad energy reform package to support investment and market outcomes in the long term interests of consumers. This included consideration of demand side participation (DSP) in the electricity market.

In delivering this reform package, SCER has considered the evidence that there are significant costs and foregone opportunities arising from the absence of clear price signals to end use consumers for network infrastructure (particularly at peak times).

This rule change seeks to address this issue, in part, by strengthening the pricing principles so that network prices and tariff structures become more cost reflective.

This rule change is also part of a broader package and should be viewed in this light. SCER is also pursuing a wide range of reforms aimed at ensuring that network infrastructure is planned, built, priced and utilised effectively. This includes improved demand forecasting, improved benchmarking and information collection and reforms to limited merits review. It also responds to other recommendations of the Power of Choice (PoC) review which promote better price signals to end users, opportunities for end users to participate in the market, and enabling technologies like smart meters.

The changes implied by this reform package point to a significant shift in the way customers use, purchase, interact with and are charged for, electricity. Electricity, however, is an essential service, and major changes to its provision are not to be taken lightly. SCER is cognisant that changes to network pricing through this rule change – when combined with enabling technologies – may result in significant changes in the distribution of network charges between customers and classes of customers. Sharper, more cost reflective prices will positively affect most users of electricity, but some will be impacted negatively.

In recognition of the distributional impacts of such a shift, it is important that changes in network tariff structures are subject to appropriate regulatory scrutiny. In particular, it is important that there are clear plans and pathways to more cost reflective pricing, which are based on all the available information, consulted on wherever possible, and signalled as far in advance as possible. In so doing, customers (and retailers) will be better able to adapt and respond to these new prices in ways that maximises their economic welfare.

Therefore, as part of the implementation of reforms, SCER agreed to progress this rule change proposal as recommended by the AEMC in its final report for the PoC review.<sup>2</sup>

#### *AEMC Power of choice review*

In November 2012, AEMC published its final report for the PoC review.<sup>3</sup> The purpose of the review was to investigate and identify the market and regulatory arrangements needed across the supply chain to facilitate efficient investment in, operation and use of DSP in the National Electricity Market (NEM).

The PoC review identified the opportunities (information, education, and technology, and flexible pricing options) for consumers to make more informed choices about the way they use electricity. The review also addressed the market conditions and incentives required for network operators, retailers and other parties to maximise the potential of efficient DSP and respond to consumers' choices. The overall objective of the review was to ensure that the community's demand for electricity services is met by the lowest cost combination of demand and supply side options.

The PoC final report recommended that there were opportunities to improve the efficiency of the electricity market by facilitating more active participation of the demand side.

The AEMC proposed changes to the electricity market rules and jurisdictional regulations, and proposed action for SCER and jurisdictions to progress. The recommendations covered the following priority areas for reform:

1. Building consumer awareness, education and engagement.
2. Engaging with consumers – provision of energy management services to residential and small business consumers.
3. Consumer information – access to electricity consumption data.
4. Enabling technology (i.e. metering and metering services).
5. DSP in wholesale electricity and ancillary services markets.
6. Efficient and flexible pricing options for consumers.
7. Distribution network incentives.
8. Distributed generation.
9. Energy efficiency measures and policies that impact or seek to integrate with the NEM.

#### *Efficient operation of price signals in the NEM*

In the final report for the PoC review, the AEMC recommended a gradual phase-in of efficient and flexible<sup>4</sup> retail energy pricing options for residential and small business consumers, in part through the introduction of cost-reflective distribution network pricing structures.

This was based on the AEMC's assessment of the existing efficiency of price signals in the NEM in accordance with the Terms of Reference of the review. The AEMC investigated among other things the existing price setting processes (and incentives for efficient operating and capital

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<sup>2</sup> <http://www.scer.gov.au/workstreams/energy-market-reform/>

<sup>3</sup> Australian Energy Market Commission, Power of choice review – giving consumers options in the way they use electricity, final report, AEMC, 30 November 2012

<sup>4</sup> The AEMC identified efficient and flexible pricing options as those that provide a more efficient signal for consumers to better value consumption and energy services than is currently the case.

expenditure) by distribution network businesses and how price signals may influence consumers' decisions on how and when to consume.<sup>5</sup>

The AEMC found that, currently, consumers are not always faced with retail electricity tariffs that accurately reflect the variability of costs of supplying and delivering electricity to consumers. These costs vary with the level of demand.

Consumers are generally provided with flat or inclining block pricing structures which do not necessarily signal the time-varying costs associated with their consumption on network and electricity supply costs. Therefore, most consumers are currently unable to capture the value of changing their electricity consumption patterns.

The AEMC identified a number of reasons why more efficient and flexible pricing options at the retailer level are not currently provided more widely. This included weak incentives in the existing regulatory arrangements for retailers and network businesses to introduce flexible pricing options; a lack of the appropriate metering technology; and a lack of consumer understanding of and engagement with flexible pricing.

This rule change request specifically addresses the current incentives and level of guidance within the NER for network businesses to set cost-reflective network pricing structures and charges for consumers. The issues regarding metering technology and consumer engagement are being progressed through separate requests to the AEMC.

SCER is currently considering the amendments required to give effect to the AEMC's recommendation for a phased approach at the jurisdictional level.<sup>6</sup> Any consequential changes required to the NER in light of these considerations will be made through that process.

#### **4. Nature and scope of issues the rule change request will address**

The PoC final report found that there were opportunities to strengthen the current regulatory arrangements for distribution network businesses to set network charges that better reflect the efficient costs of providing network services.<sup>7</sup> The AEMC also found there should be greater consideration and consultation by DNSPs with regard to the potential impacts on consumers of the network pricing structures and charges they develop and set.<sup>8</sup>

The AEMC PoC review final report contained a set of draft specifications. These outline the specific changes to Chapter 6 of the NER required to implement the AEMC's recommendations.<sup>9</sup>

##### **4.1. Amendment of the distribution network pricing principles**

*Ability and incentive to set cost-reflective pricing structures and charges*

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<sup>5</sup> It is important to recognise that while prices are important, prices on their own will not bring about efficient outcomes in terms of consumer decision making – consumers need other conditions to help inform their choices, such as capability to respond, information about cost impacts of consumption, technology platforms and the flexibility to choose based on preferences/circumstance.

<sup>6</sup> Australian Energy Market Commission, Power of choice review – giving consumers options in the way they use electricity, final report, AEMC, 30 November 2012, p.170-176.

<sup>7</sup> That is, signal the costs of supplying electricity at different times, and the costs of meeting peak demand in different parts of the network.

<sup>8</sup> Australian Energy Market Commission, Power of choice review – giving consumers options in the way they use electricity, final report, AEMC, 30 November, p.181.

<sup>9</sup> Australian Energy Market Commission, Power of choice review – giving consumers options in the way they use electricity, final report – draft specifications, AEMC, 30 November 2012.

Having network tariffs that reflect the structure of costs is important because this provides efficient signals for consumers to capture the value of their DSP actions, such as reducing consumption at peak times. This will in turn reduce network and other system costs over time.<sup>10</sup>

Currently, energy and network costs are averaged across the vast majority of residential and small business consumers, resulting in each consumer paying a proportion of total costs that depends on their absolute consumption level, rather than when they consume or their location.<sup>11</sup> As noted, there are a number of reasons for this, including the incentives on network businesses.

The extent to which distribution network businesses adopt cost-reflective network pricing structures will depend on their commercial exposure to changes in both revenue and costs, their judgement about how retailers will incorporate network pricing structures into consumer tariffs, and how consumers then respond to those tariffs. A network business' commercial exposure depends on the overall effect of the regulatory regime (e.g. whether they can secure any financial rewards for reducing network costs under the NER, the degree to which costs can be rolled into the asset base and the regulated rate of return on those assets). The role of the regulator to consider and review network businesses' pricing is also an important factor.

The NER provides the framework and guiding principles for how network businesses should set and structure their network charges. The key principles are currently as follows:

- Principle 1: the revenue of each price class should lie on or between avoidable and standalone cost (6.18.5 (a));
- Principle 2: the distribution network business must "take into account" the LRMC for a network service in setting network prices and pricing parameters (6.18.5 (b) (1));
- Principle 3: network prices must be determined having regard to transaction costs (6.18.5 (b) (2) (i));
- Principle 4: network prices must be determined having regard to the ability of consumers to respond to the price signals (6.18.5 (b) (2) (ii)); and
- Principle 5: where prices that are based on the above principles do not recover expected revenue for the distribution business, the distribution business must adjust its prices in a way that recovers the outstanding amount in a way that minimises distortion to efficient patterns of consumption (6.18.5 (e)).<sup>12</sup>

The AEMC in the PoC review considered network charges should signal the efficient costs of providing the network (i.e. the LRMC of expanding the network to meet peak demand). The AEMC considered that it is these costs that should be signalled to consumers, as these can be most influenced by consumers' behaviour, such as in their choice of technology (i.e. types of appliances) they might purchase and use.<sup>13</sup>

While forward-looking efficient prices provide the appropriate price signal, the costs of historical investment decisions by networks also need to be recovered from consumers. This should be in a manner that minimises the distortions to decision-making.

While pricing taking into account LRMC is a requirement in the rules (principle 2 above), in practice network businesses have been reluctant to set network prices that reflect marginal cost in

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<sup>10</sup> Australian Energy Market Commission, Power of choice review – giving consumers options in the way they use electricity, final report, AEMC, 30 November, p.148-149.

<sup>11</sup> The network recovers its average cost by a combination of a fixed charge and variable charge.

<sup>12</sup> Clause 6.18.5 of the NER.

<sup>13</sup> Australian Energy Market Commission, Power of choice review – giving consumers options in the way they use electricity, final report, AEMC, 30 November, p.184.

this way and there is significant discretion about how network pricing structures and charges may be set under the existing pricing principles.

The AEMC highlighted a number of reasons for this. Firstly, the AEMC considered that the existing provision in the Rules provides network businesses with insufficient guidance on how to interpret the LRMC principle or how this should be reflected in network tariffs.<sup>14</sup> The AEMC highlighted in its supplementary paper, “DSP and profit incentives for DNSPs”<sup>15</sup>, that the minimal guidance provided in the current provision (clause 6.18.5 (b) (1)) was based on the assumption that price capped network businesses would have a commercial incentive to price at efficient costs. This may not be the case in practice however, as in the context of DSP, profits for price capped network businesses are linked to volumes, and network businesses will likely price in a manner that maximises profits/volumes. The AEMC noted that this may not necessarily be the same as setting prices in a way that minimises costs. Secondly, principle 2 only requires network businesses to ‘take into account’ the LRMC in price setting (i.e. there is no explicit obligation).<sup>16</sup>

The AEMC considered that as result, DNSPs have tended to use more stable pricing approaches (i.e. flat or inclining block) that reflect a compromise of a range of factors, including jurisdictional limitations on geographic price variation for specific customer classes; the transaction costs of developing or designing flexible tariffs; and perceptions on whether consumers are capable of responding to any tariffs developed.<sup>17</sup>

### **How the rule change request addresses the issues**

SCER has agreed that the pricing principles should be amended to encourage more efficient network pricing. Consequently, it is proposed that the pricing principles<sup>18</sup> are amended to include:

- a requirement for network tariffs developed by DNSPs to be based on the LRMC of providing network services, rather than just being required to take LRMC ‘into account’
- requirements to ensure that network charges are to be based on the drivers of network costs to the maximum extent possible
- a provision which allows network charges to reflect, as appropriate, any geographic variations in costs caused by current and forecast constraints within the distribution network.
- recognition that distributors may be limited in the extent to which they can base prices on LRMC, locational, or temporal factors by jurisdictional policies and practical constraints such as the need to limit transaction costs, lack of suitable metering, or have price structures that are not overly complex. Distributors should be required to identify in the Pricing Structures Statement where such constraints have limited the application of the pricing principles. The AER should have the ability to reject a PSS if they are not satisfied with the approach taken by distributors on this matter.

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<sup>14</sup> Australian Energy Market Commission, Power of choice review – giving consumers options in the way they use electricity, final report, AEMC, 30 November, p.184.

<sup>15</sup> Australian Energy Market Commission, Power of choice review – giving consumers options in the way they use electricity, Supplementary paper – DSP and Profit Incentives for DNSPs.

<sup>16</sup> Australian Energy Market Commission, Power of choice review – giving consumers options in the way they use electricity, final report, AEMC, 30 November, p.184.

<sup>17</sup> Australian Energy Market Commission, Power of choice review – giving consumers options in the way they use electricity, final report, AEMC, 30 November, p.185.

<sup>18</sup> Clause (6.18.5 (b) (1) of the NER.

SCER notes that the AER can develop guidelines, where it considers this necessary for informing interpretation of the NER. Development of a supporting guideline could improve the clarity for businesses with regard to how they should interpret the requirement to base network prices on LRMC. For example, a guideline could contain information relating to;

- How the rules provision requiring network charges to be based on LRMC may be interpreted, and the types of methodologies and approaches that may be used; and
- Relevant factors the AER may take into account in determining whether network prices and pricing structures developed by the DNSPs are consistent with LRMC.

It would be at the AER's discretion to determine whether development of a guideline would be of benefit to DNSPs in interpreting the pricing principles.

The proposed changes seek to reflect that network costs are largely driven by meeting peak demand requirements. This varies temporally and spatially across the network. Where network tariffs reflect the costs of meeting peak demand over time, consumers will be able to value network use more accurately, and thereby respond efficiently in ways to help minimise costs over time. This in turn will ensure energy expenditure is as low as efficiently possible for all consumers in the long run.

#### *Managing the introduction and evolution of cost reflective tariffs*

DNSPs are able to exercise wide discretion over the structure and application of network tariffs. This is appropriate as DNSPs hold the information required to price their own services efficiently. Therefore this proposal continues to place responsibility for proposing annual network tariffs in the hands of the DNSP.

However, there are stakeholders – particularly end use consumers and retailers – who are particularly affected by the choices that DNSPs make over their tariff structures. As DNSPs are monopolies, they may not always be appropriately incentivised to take the impacts on these customers fully into account in deciding on tariff structures.

Furthermore, these customers may need to plan some time ahead to adapt to the cost impacts of shifting tariff structures efficiently. At present, the information available to DNSPs' customers on future expected pricing changes is limited, and the annual tariff publication process is not obliged to align with past projections.

Therefore, this proposal requires DNSPs to develop and submit to the Regulator a “pricing structure statement” accompanying a DNSP's regulatory proposal. The intent of this statement is to provide information to:

- Assist customers and other stakeholders to respond effectively to changing prices and structures over the coming determination period by providing information on tariff classes, tariff structures and charging parameters
- Support the development of flexible network tariffs that can be passed through to customers in retail tariffs
- Provide transparency and allow scrutiny (in particular by AER) that pricing principles have been followed; and
- Inform the subsequent annual tariff publication processes.

Information that distributors might set out in their pricing structure statement which would be consistent with this intent could include, for example:

- how DNSPs have met the pricing principles;
- a breakdown of the tariff structures that the DNSP proposes to apply;

- expected take up of tariffs and allocation of revenue across tariffs (which may be based on historical usage);
- changes in tariff structures over the course of the regulatory control period including:
  - the introduction of new tariffs, retirement of old tariffs, changes from voluntary to mandatory status
  - an indication as to whether each individual tariff component would increase by more, less, or about the same as the average change over the regulatory control period;
- expected changes in network charges over the course of the determination period;
- expected customer impacts by class;
- how customer consultation, jurisdictional policies and practical constraints (or other relevant provisions in the Rules) have shaped proposed network structures;
- how residual costs will be recovered; and
- expected risks and volatility.

A DNSPs pricing structures statement must inform its pricing proposals during a regulatory control period. Pricing proposals must in turn be consistent with the pricing structures statement.

In developing the pricing structure statement, it is expected that a distributor would consult with its customers to ascertain the impact of pricing structures it is contemplating, and the Regulator would give regard to the pricing principles for direct control services.

In addition to information on pricing structures, the Pricing Structures Statement will also include information on expected changes in network charges and changes in individual tariff components relative to the average change. In light of this, the AEMC is asked to consider during the consultation on this rule change:

- If the proposed consultation timings are compatible with when DNSPs can reasonably be expected to have information which informs their expected changes in network charges and their strategy for changing tariff components relative to the average change; and
- In order to avoid an excessive consultation burden, if there may be circumstances when DNSPs would not need to consult on expected changes in network charges and changes to tariff components (for example due to smoothing, overs and unders, or changes in consumption).

The ultimate outcome should be a more transparent, predictable and useful process which will help DNSPs and customers adopt and adapt to more cost reflective tariffs over the regulatory control period.

#### *Taking into account consumer impacts in designing cost-reflective network charges*

The introduction of flexible pricing options may expose many consumers to a range of new and different tariff structures, even though some consumers already have flexible pricing options (i.e. peak, off -peak, shoulder). As part of the AEMC PoC review, it was highlighted that consumer engagement and participation will be critical if the benefits of flexible pricing options are to be realised.

Clause 6.18.5 (b) (2) (ii) of the existing pricing principles sets out that DNSPs are to have regard to whether a consumer is able or likely to respond to price signals. This principle could be interpreted to mean that network charges should be set in a way that matched the price responsiveness of consumers, rather than how such structures and charges may impact particular

types of consumers (i.e., those with limited capacity to respond to proposed pricing options).<sup>19</sup> As a result there may be a risk that costs may be shifted onto consumers with flat retail tariffs as these consumers are less likely to respond and adjust their behaviour.<sup>20</sup>

To address this issue, it is proposed that Clause 6.18.5 (b) (2) (ii) be removed and replaced with a requirement that DNSPs appropriately consider and set out how their proposed pricing structures and charges may impact particular classes of consumers.

An important way for DNSPs to meet this principle is to engage in appropriate consultation on the structure of network prices. The proposal for consultation requirements in developing network pricing structures and charges is provided in section 2.

In addition, in order to provide greater clarity and certainty on the setting of tariff classes, it is proposed that clause 6.18.3(d) be amended so that the two sub-clauses are requirements rather than just matters to be taken into account.

#### *Recovering residual costs*

Network charges which are set to recover LRMC could lead to under recovery of total network cost (LRMC sits below average costs for natural monopoly network businesses). However, any remaining costs would also need to be recovered by the DNSP.

The rules set out that where prices based on efficient pricing principles do not recover full costs, the remaining costs should be recovered in a non-distortionary manner. Generally, there are two approaches that could be considered to achieve this. First, through Ramsey pricing, which suggests that recovery of such costs are most efficiently allocated to consumers with the lowest price responsiveness, or at times when demand responsiveness is lowest. A second approach, also consistent with efficiency, is to recover remaining costs in the form of a postage stamp (where the unit charge does not vary with consumption or location) that is applied as widely as possible so as not to affect existing utilisation of the network.

It is proposed that the AEMC consider as part of the rule-change process which mechanism for recovering residual costs is most appropriate (postage stamp, Ramsey or something else).

In making their decision on the preferred approach the AEMC is asked to consider:

- allowing for recovery of residual costs in a way that does not distort or undermine flexible pricing, where flexible pricing is available;
- potential impacts on particular classes of consumers; and
- the appropriate balance between potential impacts on particular classes of consumers and efficient pricing.

Should the AEMC feel that a single approach is not appropriate for all jurisdictions or distribution network areas, the AEMC could also consider whether the AER should be given the discretion to determine the best approach at the time of making a regulatory determination.

#### *Side constraints*

In the PoC the AEMC considered that existing side constraint provision (6.18.6 (e)) appears to be redundant and lacks clarity on whether consumers with interval meters would be deemed exempt from application of the pricing side constraint, and considered that this should be removed.<sup>21</sup>

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<sup>19</sup> Australian Energy Market Commission, Power of choice review – giving consumers options in the way they use electricity, final report, AEMC, 30 November, p.187

<sup>20</sup> AEMC, op.cit, p.187

<sup>21</sup> AEMC, op.cit, p.189.

This proposal specifically seeks to remove clause 6.18.6 (e) of the NER. This is to clarify that regardless of whether consumers have interval meters or accumulation meters, the side constraint provisions apply to their tariff.

The distributor pricing structure statement will be an important guiding document for changes in tariff structures through the regulatory period, with the direction proposed by the distributor and agreed by the regulator. Consumers will expect that the tariff structures prevailing at the end of a regulatory period will form the basis of those at the beginning of the next, and that further substantial change will be proposed and evaluated through a subsequent pricing structure statement. Therefore, this proposal proposes that the side constraints under clause 6.18.6 apply between as well as within regulatory control periods.

#### **4.2. Consultation on network pricing structures and charges**

It is important that, in developing new pricing structures and charges, consumers are appropriately engaged and have an understanding of any changes so that they can make informed choices and decisions.

The AEMC proposed that there should be a greater role for consumers and retailers to review flexible pricing options set by network businesses. This has also been raised by IPART in its rule change request to the AEMC.<sup>22</sup>

There are two existing processes under the NER into which greater consultation on the development of network charges could be incorporated: the regulatory determination process and the annual price setting process.

First, network businesses are required to submit a 'regulatory proposal' to the AER which forms the basis for a network determination on allowable revenues. Two important consultation requirements with respect to submission of the regulatory proposal are:

- for a network business to show how it has engaged with electricity consumers and has sought to address any relevant concerns identified as a result of that engagement;<sup>23</sup> and
- provision for stakeholders to provide submissions to the AER on the regulatory proposal.<sup>24</sup>

Network businesses are not however currently required to indicate how they intend to structure their network prices in their regulatory proposals, thus consultation on pricing structures is not required at this stage.

Second, DNSPs are also required to submit a pricing proposal every year for review by the AER. That proposal sets out the proposed tariffs and tariff structure, the classes of consumers to which the tariffs apply for each year, and sets out any variation and the nature of such variation that could occur for network tariffs during the year. DNSPs are not required to consult on either the level or structure of network tariffs under this process.

#### *How SCER proposes to address these issues*

SCER considers providing a greater opportunity for retailers and consumer groups to review and influence pricing structures will facilitate the transition to and development of more efficient network charges which better allow consumers to respond effectively in ways that minimise network costs over time.

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<sup>22</sup>AEMC, op.cit, p.190-192.

<sup>23</sup>Clause 6.8.2 (c) (2) is a new clause recently implemented as a result of the AEMC rule determination on network regulation rule change.

<sup>24</sup> Clause 6.9.3 and clause 6.8.2 of the NER.

It is therefore proposed that the following amendments are made to Chapter 6 of the NER:

- Require DNSPs to provide a statement of network prices and pricing structures at the same time as their regulatory proposals, which would outline how they meet the pricing principles. The development of network pricing structures would be subject to the broader consultation requirements during the regulatory proposal stage.
- Require DNSPs to update where necessary the statement of price trends for network prices and pricing structures statement each year alongside their annual pricing proposals. Where DNSPs seek to vary pricing structures significantly during the regulatory period, this would need to be consulted on, with any proposed variations submitted as part of the annual pricing proposal for consideration and approval by the AER. DNSPs should explain how the proposed variations better meet the pricing principles than the existing structure, and how consumer impacts have been taken into account in developing them.
- Require the AER, when considering whether to approve a proposed pricing structure statement to take into account the extent to which the proposed pricing structure statement addresses issues raised by consumers. (SCER considers that this could be achieved using a similar provision to that developed under Rule 6.5.6(e)(5A))
- Require annual prices submitted by the DNSP to the AER to comply with the most recently approved pricing structures statement.
- Require DNSPs to publish the pricing structures statement alongside other relevant tariff information they are required to publish on their websites, to support greater transparency and information provision to the wider market.<sup>25</sup>
- Require the AER to develop a consultation guideline that sets out how DNSPs should consult with retailers and consumer groups with respect to varying pricing structures in their pricing proposals, how DNSPs may consider impacts on different types of consumers, the timing of such consultation and any relevant information that DNSPs should provide as part of the consultation.
- Include a provision which enables the AER to consider any requested variations to the pricing structures that were approved initially in the regulatory determination. The DNSPs would need to provide the requested variations to the AER six months prior to the relevant pricing year. AER should have a time limit to confirm the DNSP pricing variations. Where the AER does not approve a variation the most recently approved pricing structure would continue to apply.
- Changes to the timing of the pricing proposal process may also be required as a result of these changes.

In considering the requirement to submit a statement of network prices and pricing structures at the same time as their regulatory proposals, the AEMC is requested to consider during its consultation process whether the appropriate balance has been struck between allowing sufficient time for consumers and retailers to provide meaningful input and the ability of the DNSPs to have reliable information on network charges.

The AEMC is also requested to consider if there may be circumstances when DNSPs would not need to consult on changes to charges (for example due to smoothing, overs and unders, or changes in consumption).

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<sup>25</sup> Clause 6.18.9 of the NER

## **5. How the proposed rule will or is likely to contribute to the achievement of the National Electricity Objective.**

The National Electricity Objective is set out in section 7 of the National Electricity Law. The NEO states:

*“The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to-*

- a. Price, quality, safety, reliability and security of supply of electricity; and*
- b. The reliability, safety and security of the national electricity system”.*<sup>26</sup>

The proposed rule would contribute to the achievement of the NEO as it is likely to promote efficient investment in, and the efficient operation of, electricity services, in particular distribution network services.

Recent rises in retail electricity prices have primarily been driven by increases in network charges. A large share of network costs is attributable to peak demand. As noted, in most cases existing network charges do not necessarily reflect the costs of supplying and delivering electricity at peak times.

The proposed rule seeks to improve the efficiency of price signals to consumers and to encourage the take-up of efficient DSP. This will be achieved through strengthening the incentives on distribution network businesses to set pricing structures and charges that accurately reflect the efficient costs of the network. Flexible pricing options that accurately reflect network costs assimilate information about the value of reducing or shifting consumption at different times so as to reduce the impacts on network and electricity supply infrastructure. More efficient network pricing and hence uptake of efficient DSP can help to avoid investment in supply side infrastructure and so lower system costs. It may also encourage better investment decisions by networks because it provides better signals of when investment is required.

The proposed rule is in the long term interests of consumers as it requires DNSPs to accurately reflect the cost of providing network services. This in turn provides consumers with better opportunities to actively participate in the market, capture the value of changing their consumption (i.e. compare the value of electricity services with the costs incurred through the electricity supply chain), and hence manage and reduce their energy costs. Over the longer term, more efficient pricing of networks should have significant flow-on impacts to overall electricity expenditure faced by consumers due to better utilisation of the network and deferral of peak demand driven network investment.

The AEMC as part of the PoC review provided a high level estimate of the potential benefits that could be realised with more efficient and flexible pricing options. These are provided in Chapter 11 of the PoC final report.

## **6. AEMO’s declared network functions**

The proposed rule will not affect the Australian Energy Market Operator’s declared network functions.

## **7. Expected costs, benefits and impacts of the proposed rule**

*Benefits*

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<sup>26</sup> Section 7 of the National

The proposed rule is likely to result in significant benefits across the electricity supply chain. Benefits are likely to include:

- improved price signals to consumers;
- incentives and stronger obligations on DNSPs to reflect efficient costs of providing network services;
- efficient investment in networks to meet peak demand;
- potential lower network charges for end use consumers than otherwise would have been due to more efficient investment in and use of electricity services;
- better opportunities for retailers and consumers to input to distribution network pricing structures and charges; and
- transparency of information on impacts of proposed network prices to consumers.

#### *Costs*

The proposed rule largely places requirements on DNSPs and the AER. While there may be some implementation and administration costs, these are not likely to be excessive given the requirements can be undertaken as part of (or in conjunction with) existing processes and practices. Further they place requirements on DNSPs which should be part of their existing business practices and roles.

It is noted that there would be some costs with moving to flexible pricing options, however these are expected not to outweigh the benefits of the proposed changes and the take-up of efficient DSP in the long run.

The expected costs, benefits and impacts for each party are outlined below.

#### *End use consumers*

The proposed rule is expected to impact consumers to the extent that they will have greater choice of pricing options, and have a better understanding of the network charges they may face. This information will help consumers manage costs. Further, there will be more opportunities for consumers to make informed choices based on the benefits that the end use services provide. As noted, in the longer term, it is expected that more efficient pricing will reduce upward pressure on electricity prices and hence lead to lower electricity costs for all consumers.

#### *DNSPs*

The proposed rule improves the incentives and provides greater guidance to network businesses on how to apply the pricing principles under the rules to set efficient and flexible network prices. This should allow for greater innovation and flexibility for network businesses to set more flexible pricing options that accurately reflect the costs of meeting peak demand on the network. This would promote efficiency in the use of and investment in networks and reduce the costs of providing electricity services to consumers.

The proposed rule also requires network businesses to consider impacts on consumers of their pricing structures and charges, and ensure that retailers and consumers have been engaged in their regulatory and annual pricing proposals. This will allow network businesses to consider the impacts of their pricing structures and charges and whether consumers will be able to respond effectively. It is not expected that such arrangements will impose a substantial regulatory burden on DNSPs, given DNSPs may consolidate consultation on pricing with consultation on regulatory determinations under the November 2012 economic regulation rules.

### *Retailers*

The proposed changes require DNSPs to consult with retailers in developing pricing structures and charges. This should increase opportunities for retailers to consider network pricing structures consistent with the preferences of customers. This is likely to further support product innovation in the retail market.

### *The AER*

The proposed rule would provide greater clarity to the AER on how distribution network businesses are to apply the pricing principles under the rules, and thus set efficient network prices. This should provide transparency and reduce any uncertainty for the AER when assessing distribution network pricing structures and charges as part of the regulatory determinations and annual pricing proposals.

The proposed rule requires the AER to have a greater role to monitor and verify DNSP pricing proposals. Further, the reforms place requirements on the AER to develop information guidelines to support the distribution businesses. It is considered that the requirements will not have a significant administrative burden on the AER because this can be undertaken as part of existing processes.

## **8. Summary of consultation**

Stakeholder consultation on the issues associated with the distribution pricing arrangements that govern how DNSPs set charges was undertaken through the various stages of the AEMC PoC review.

Submissions were received from a large number of stakeholders during each stage of the review. Overall there was broad consensus on the need to improve and strengthen the existing pricing arrangements for distribution network businesses.

A summary of stakeholder positions can be found in the AEMC PoC final report.

## Power of Choice – Distribution Pricing Principles – Proposed rule

Note: the proposed rule is shown as a mark-up to current provisions of the Rules.

## 6 Economic Regulation of Distribution Services

### Part A Introduction

#### 6.1 Introduction to Chapter 6

##### 6.1.1 AER's regulatory responsibility

The *AER* is responsible, in accordance with this Chapter, for the economic regulation of *distribution services* provided by means of, or in connection with, *distribution systems* that form part of the *national grid*.

##### 6.1.1A [Deleted]

#### 6.1.2 Structure of this Chapter

- (a) This Chapter deals with the classification and economic regulation of *distribution services*.
- (b) It is divided into parts as follows:
  - (1) this Part is introductory;
  - (2) Part B confers power on the *AER* to classify *distribution services*, to determine the forms of control for *distribution services*, and to make distribution determinations;
  - (3) Part C sets out the building block approach to the regulation of services classified as *standard control services*;
  - (4) Part D regulates the prices that may be charged by *Distribution Network Service Providers* for the provision of services classified as *negotiated distribution services*;
  - (4A) Part DA deals with the preparation of, requirements for and approval of, *connection policies*;
  - (5) Part E sets out the procedure and approach for the making of a distribution determination;
  - (6) Part F regulates cost allocation;
  - (7) Part G contains the distribution consultation procedures;
  - (8) Part H deals with ring-fencing;
  - (9) Part I deals with *tariff classes* and tariffs;
  - (10) Part J deals with billing and settlements;

- (11) Part K deals with prudential requirements, prepayments and capital contributions;
- (12) Part L deals with dispute resolution;
- (13) Part M deals with the disclosure of transmission and distribution charges;
- (14) Part N provides for services provided by, or in connection with, *dual function assets* to be the subject of distribution determinations; and
- (15) Part O sets out the requirements to prepare *annual benchmarking reports*.

### 6.1.3 Access to direct control services and negotiated distribution services

- (a) Subject to and in accordance with the *Rules*:
  - (1) a person (a ***Service Applicant***) may apply to a *Distribution Network Service Provider* for provision of *direct control services* or *negotiated distribution services*;
  - (2) a *Distribution Network Service Provider* must provide *direct control services* or *negotiated distribution services* (as the case may be) on *terms and conditions of access* as determined under Chapters 4, 5, this Chapter 6 and Chapter 7 of the *Rules*.
- (b) The *terms and conditions of access* are:
  - (1) in relation to *negotiated distribution services*:
    - (i) the price of those services (including, if relevant, *access charges*); and
    - (ii) other terms and conditions for the provision of those services;
  - (2) in relation to *direct control services*:
    - (i) the price of those services under **the pricing structure statement and the approved pricing proposal**; and
    - (ii) other terms and conditions for the provision of those services.

### 6.1.4 Prohibition of DUOS charges for the export of energy

- (a) A *Distribution Network Service Provider* must not charge a *Distribution Network User* *distribution use of system charges* for the export of electricity generated by the user into the *distribution network*.
- (b) This does not, however, preclude charges for the provision of *connection services*.

## Part B Classification of Distribution Services and Distribution Determinations

### 6.2 Classification

#### 6.2.1 Classification of distribution services

- (a) The *AER* may classify a *distribution service* to be provided by a *Distribution Network Service Provider* as:
- (1) a *direct control service*; or
  - (2) a *negotiated distribution service*.

**Note**

If the *AER* decides against classifying a *distribution service*, the service is, subject to Chapter 5A, not regulated under the *Rules*.

- (b) The *AER* may group *distribution services* together for the purpose of classification and, if it does so, a single classification made for the group applies to each service comprised in the group as if it had been separately classified.
- (c) The *AER* must, in classifying a *distribution service* or *distribution services*, have regard to:
- (1) the form of regulation factors; and
  - (2) the form of regulation (if any) previously applicable to the relevant service or services and, in particular, any previous classification under the present system of classification or under the previous regulatory system (as the case requires); and
  - (3) the desirability of consistency in the form of regulation for similar services (both within and beyond the relevant jurisdiction); and
  - (4) any other relevant factor.
- (d) In classifying *distribution services* that have previously been subject to regulation under the present or earlier legislation, the *AER* must act on the basis that, unless a different classification is clearly more appropriate:
- (1) there should be no departure from a previous classification (if the services have been previously classified); and
  - (2) if there has been no previous classification – the classification should be consistent with the previously applicable regulatory approach.
- (e) If the *Rules*, however, require that a particular classification be assigned to a *distribution service* of a specified kind, a *distribution service* of the relevant kind is to be classified in accordance with that requirement.

#### 6.2.2 Classification of direct control services as standard control services or alternative control services

- (a) *Direct control services* are to be further divided into 2 subclasses:
- (1) *standard control services*; and
  - (2) *alternative control services*.

- (b) The *AER* may group *direct control services* together for the purpose of classification and, if it does so, a single classification made for the group applies to each service comprised in the group as if it had been separately classified.
- (c) The *AER* must, in classifying a *direct control service* as a *standard control service* or an *alternative control service*, have regard to:
  - (1) the potential for development of competition in the relevant market and how the classification might influence that potential; and
  - (2) the possible effects of the classification on administrative costs of the *AER*, the *Distribution Network Service Provider* and users or potential users; and
  - (3) the regulatory approach (if any) applicable to the relevant service immediately before the commencement of the distribution determination for which the classification is made; and
  - (4) the desirability of a consistent regulatory approach to similar services (both within and beyond the relevant jurisdiction); and
  - (5) the extent the costs of providing the relevant service are directly attributable to the person to whom the service is provided; and

**Example:**

In circumstances where a service is provided to a small number of identifiable customers on a discretionary or infrequent basis, and costs can be directly attributed to those customers, it may be more appropriate to classify the service as an alternative control service than as a standard control service.

- (6) any other relevant factor.
- (d) In classifying *direct control services* that have previously been subject to regulation under the present or earlier legislation, the *AER* must act on the basis that, unless a different classification is clearly more appropriate:
  - (1) there should be no departure from a previous classification (if the services have been previously classified); and
  - (2) if there has been no previous classification – the classification should be consistent with the previously applicable regulatory approach.
- (e) If the *Rules*, however, require that a *direct control service* of a specified kind be classified either as a *standard control service* or as an *alternative control service*, a *direct control service* of the relevant kind is to be classified in accordance with that requirement.

### 6.2.3 Term for which classification operates

A classification forms part of a distribution determination and operates for the *regulatory control period* for which the distribution determination is made.

**Note:**

The classification is to be reviewed in the course of the making of the next distribution determination, and (subject to these Rules) a reclassification may be made for the purposes of that determination.

#### **6.2.4 Duty of AER to make distribution determinations**

- (a) The *AER* must make a distribution determination for each *Distribution Network Service Provider*.
- (b) When the *AER* makes a distribution determination it must follow the process set out in Part E.
- (c) If more than one *distribution system* is owned, controlled or operated by a *Distribution Network Service Provider*, then, unless the *AER* otherwise determines, a separate distribution determination is to be made for each *distribution system*.
- (d) If 2 or more parts of the same *distribution system* were separately regulated at the commencement of this Chapter, then, unless the *AER* otherwise determines, a separate distribution determination is to be made for each of those parts of the *distribution system*.

#### **6.2.5 Control mechanisms for direct control services**

- (a) A distribution determination is to impose controls over the prices of *direct control services*, the revenue to be derived from *direct control services* or both.
- (b) The control mechanism may consist of:
  - (1) a schedule of fixed prices;
  - (2) caps on the prices of individual services;
  - (3) caps on the revenue to be derived from a particular combination of services;
  - (4) tariff basket price control;
  - (5) revenue yield control; or
  - (6) a combination of any of the above.
- (c) In deciding on a control mechanism for *standard control services*, the *AER* must have regard to:
  - (1) the need for efficient tariff structures; and
  - (2) the possible effects of the control mechanism on administrative costs of the *AER*, the *Distribution Network Service Provider* and users or potential users; and
  - (3) the regulatory arrangements (if any) applicable to the relevant service immediately before the commencement of the distribution determination; and
  - (4) the desirability of consistency between regulatory arrangements for similar services (both within and beyond the relevant jurisdiction); and
  - (5) any other relevant factor.
- (d) In deciding on a control mechanism for *alternative control services*, the *AER* must have regard to:
  - (1) the potential for development of competition in the relevant market and how the control mechanism might influence that potential; and

- (2) the possible effects of the control mechanism on administrative costs of the *AER*, the *Distribution Network Service Provider* and users or potential users; and
- (3) the regulatory arrangements (if any) applicable to the relevant service immediately before the commencement of the distribution determination; and
- (4) the desirability of consistency between regulatory arrangements for similar services (both within and beyond the relevant jurisdiction); and
- (5) any other relevant factor.

### 6.2.6 Basis of control mechanisms for direct control services

- (a) For *standard control services*, the control mechanism must be of the prospective CPI minus X form, or some incentive-based variant of the prospective CPI minus X form, in accordance with Part C.
- (b) For *alternative control services*, the control mechanism must have a basis stated in the distribution determination.
- (c) The control mechanism for *alternative control services* may (but need not) utilise elements of Part C (with or without modification).

#### Examples:

The control mechanism might be based on the building block approach.

The distribution determination might provide for the application of clause 6.6.1 to pass through events with necessary adaptations and specified modifications.

### 6.2.7 Negotiated distribution services

*Negotiated distribution services* are regulated in accordance with Part D.

### 6.2.8 Guidelines

- (a) The *AER*:
  - (1) must make and *publish* the *Shared Asset Guidelines*, the *Capital Expenditure Incentive Guidelines*, the *Rate of Return Guidelines*, the *Expenditure Forecast Assessment Guidelines*, the *Distribution Confidentiality Guidelines* ~~and~~, the *Cost Allocation Guidelines* and the [consultation on pricing guidelines](#) in accordance with these *Rules*; and
  - (2) may, in accordance with the *distribution consultation procedures*, make and *publish* guidelines as to any other matters relevant to this Chapter.
- (b) A guideline may relate to a specified *Distribution Network Service Provider* or *Distribution Network Service Providers* of a specified class.
- (c) Except as otherwise provided in this Chapter, a guideline is not mandatory (and so does not bind the *AER* or anyone else) but, if the *AER* makes a distribution determination that is not in accordance with the guideline, the *AER* must state, in its reasons for the distribution determination, the reasons for departing from the guideline.

- (d) If a guideline indicates that there may be a change of regulatory approach in future distribution determinations, the guideline should also (if practicable) indicate how transitional issues are to be dealt with.
- (e) Subject to paragraph (f), the *AER* may, from time to time and in accordance with the *distribution consultation procedures*, amend or replace a guideline.
- (f) The *AER* may make administrative or minor amendments to any guideline without complying with the *distribution consultation procedures*.
- (g) This clause 6.2.8 does not apply to the *Distribution Ring-Fencing Guidelines*.

**Note: no changes required to Parts C, D and DA of Chapter 6**

## **Part E Regulatory proposal**

### **6.8 Regulatory proposal and proposed pricing structure statement**

#### **6.8.1 AER's framework and approach paper**

- (a) The *AER* must make and *publish* a document (a *framework and approach paper*) that applies in respect of a distribution determination for a matter listed in paragraph (b) in accordance with this clause if:
  - (1) there is no *framework and approach paper* that applies in respect of that distribution determination for that matter; or
  - (2) there is a *framework and approach paper* that would apply in respect of that distribution determination for that matter, but the *AER* has *published* a notice under paragraph (c)(3) stating that it will make an amended or replacement *framework and approach paper* with respect to that matter.
- (b) A *framework and approach paper* that applies in respect of a distribution determination must set out:
  - (1) the *AER's* decision (together with its reasons for the decision), for the purposes of the forthcoming distribution determination, on the following matters:
    - (i) the form (or forms) of the control mechanisms; and
    - (ii) as to whether or not Part J of Chapter 6A is to be applied to determine the pricing of *transmission standard control services* provided by any *dual function assets* owned, controlled or operated by the *Distribution Network Service Provider*; and

**Note:**  
See clause 6.25(b).

  - (2) the *AER's* proposed approach (together with its reasons for the proposed approach), in the forthcoming distribution determination, to the following matters:
    - (i) the classification of *distribution services* under this Chapter;
    - (ii) the formulae that give effect to the control mechanisms referred to in subparagraph (1)(i);

- (iii) the application to the *Distribution Network Service Provider* of any *service target performance incentive scheme*;
  - (iv) the application to the *Distribution Network Service Provider* of any *efficiency benefit sharing scheme*;
  - (v) the application to the *Distribution Network Service Provider* of any *capital expenditure sharing scheme*;
  - (vi) the application to the *Distribution Network Service Provider* of any *demand management and embedded generation connection incentive scheme*;
  - (vii) the application to the *Distribution Network Service Provider* of any *small-scale incentive scheme*; and
  - (viii) the application to the *Distribution Network Service Provider* of the *Expenditure Forecast Assessment Guidelines*; and
  - (ix) whether depreciation for establishing the regulatory asset base for the relevant *distribution system* as at the commencement of the following *regulatory control period* is to be based on actual or forecast capital expenditure in accordance with clause S6.2.2B.
- (c) If there is a *framework and approach paper* that would apply in respect of the distribution determination for a matter listed in paragraph (b) then:
- (1) no later than 32 months before the end of the *regulatory control period* that precedes that for which the distribution determination is to be made, the *Distribution Network Service Provider* may request the AER in writing to make an amended or replacement *framework and approach paper* in respect of a matter. The request must specify the *Distribution Network Service Provider's* reasons for making that request;
  - (2) no later than 31 months before the end of the *regulatory control period* that precedes that for which the distribution determination is to be made, the AER must *publish* a notice inviting submissions on whether it is necessary or desirable to amend or replace that *framework and approach paper* in so far as it relates to a matter (other than any matter specified in a request from the *Distribution Network Service Provider* under subparagraph (1)); and
  - (3) no later than 30 months before the end of the *regulatory control period* that precedes that for which the distribution determination is to be made, the AER must make and *publish* a notice that:
    - (i) states that it will make an amended or replacement *framework and approach paper* in respect of the matters specified in a request from the *Distribution Network Service Provider* under subparagraph (1) (if any);
    - (ii) if subparagraph (i) applies, is accompanied by a copy of the request from the *Distribution Network Service Provider* under subparagraph (1); and
    - (iii) states whether it will make an amended or replacement *framework and approach paper* in respect of any matter other

than any matters referred to in subparagraph (i) above and, if so, the reasons why it considers that it is necessary or desirable to make an amended or replacement *framework and approach paper* in respect of that matter.

- (d) In making the decision referred to in paragraph (c)(3)(iii), the *AER* must have regard to any submissions made in response to the invitation under paragraph (c)(2).
- (e) Where paragraph (a) applies then, at least 23 months before the end of the current *regulatory control period*, the *AER* must, after consulting with the relevant *Distribution Network Service Provider* and other persons as the *AER* considers appropriate, make, amend or replace the *framework and approach paper*, as the case may be, and:
  - (1) give a copy of it to the relevant *Distribution Network Service Provider*; and
  - (2) *publish* it,as soon as is reasonably practicable.
- (f) Subject to clauses 6.12.3 and 6.25(d), a *framework and approach paper* is not binding on the *AER* or a *Distribution Network Service Provider*.
- (g) The *AER* may make and *publish* a *framework and approach paper* that applies in respect of a distribution determination for a matter that is not listed in paragraph (b) and, if it does so, this clause 6.8.1 applies as if that matter were listed in paragraph (b).

#### 6.8.1A Notification of approach to forecasting expenditure

- (a) A *Distribution Network Service Provider* must inform the *AER* of the methodology it proposes to use to prepare the forecasts of operating expenditure and capital expenditure that form part of its *regulatory proposal*.
- (b) A *Distribution Network Service Provider* must submit the information referred to in paragraph (a):
  - (1) at least 24 months before the expiry of a distribution determination that applies to the *Distribution Network Service Provider*; or
  - (2) if no distribution determination applies to the *Distribution Network Service Provider*, within 3 months after being required to do so by the *AER*.

#### 6.8.2 Submission of regulatory proposal and proposed pricing structure statement

- (a) A *Distribution Network Service Provider* must, whenever required to do so under paragraph (b), submit to the *AER* a regulatory proposal to the *AER* and proposed pricing structure statement related to the~~for~~ *distribution services that are* provided by means of, or in connection with, the *Distribution Network Service Provider's distribution system*.
- (b) A *regulatory proposal* and proposed pricing structure statement must be submitted:

- (1) at least 17 months before the expiry of a distribution determination that applies to the *Distribution Network Service Provider*; or
  - (2) if no distribution determination applies to the *Distribution Network Service Provider*, within 3 months after being required to do so by the *AER*.
- (c) A *regulatory proposal* must include (but need not be limited to) the following elements:
- (1) a classification proposal:
    - (i) showing how the *distribution services* to be provided by the *Distribution Network Service Provider* should, in the *Distribution Network Service Provider's* opinion, be classified under this Chapter; and
    - (ii) if the proposed classification differs from the classification suggested in the relevant *framework and approach paper* – including the reasons for the difference;
  - (2) for *direct control services* classified under the proposal as *standard control services* – a *building block proposal*;
  - (3) for *direct control services* classified under the proposal as *alternative control services* – a demonstration of the application of the control mechanism, as set out in the *framework and approach paper*, and the necessary supporting information;
  - (4) for *direct control services* – indicative prices for each year of the *regulatory control period*;
  - (5) for services classified under the proposal as *negotiated distribution services* – the proposed *negotiating framework*;
  - (5A) the proposed *connection policy*; and
  - (6) an identification of any parts of the *regulatory proposal* or the proposed pricing structure statement the *Distribution Network Service Provider* claims to be confidential and wants suppressed from publication on that ground in accordance with the *Distribution Confidentiality Guidelines*.

**Note:**

Additional information that must be included in a *regulatory proposal* is referred to in clause 6.3.1(c) and Schedule 6.1.

- (c1) The *regulatory proposal* must be accompanied by an overview paper which includes each of the following matters:
- (1) a summary of the *regulatory proposal* the purpose of which is to explain the *regulatory proposal* in reasonably plain language to electricity consumers;
  - (2) a description of how the *Distribution Network Service Provider* has engaged with electricity consumers and has sought to address any relevant concerns identified as a result of that engagement, including in relation to the development of the proposed pricing structure statement;

- (3) a description of the key risks and benefits of the *regulatory proposal* for electricity consumers; and
  - (4) a comparison of the *Distribution Network Service Provider's* proposed *total revenue requirement* with its *total revenue requirement* for the current *regulatory control period* and an explanation for any material differences between the two amounts.
- (c2) The *regulatory proposal* must be accompanied by information required by the *Expenditure Forecast Assessment Guidelines* as set out in the *framework and approach paper*.
- (d) The *regulatory proposal* must comply with the requirements of, and must contain or be accompanied by the information required by any relevant *regulatory information instrument*.
- (e) If more than one *distribution system* is owned, controlled or operated by a *Distribution Network Service Provider*, then, unless the *AER* otherwise determines, a separate *regulatory proposal* is to be submitted for each *distribution system*.
- (f) If, at the commencement of this Chapter, different parts of the same *distribution system* were separately regulated, then, unless the *AER* otherwise determines, a separate *regulatory proposal* is to be submitted for each part as if it were a separate *distribution system*.
- (g) A proposed pricing structure statement must give effect to and be consistent with the pricing principles for direct control services.

## 6.9 Preliminary examination and consultation

### 6.9.1 Preliminary examination

- (a) If the *AER* considers that:
- (1) –a regulatory proposal submitted by a Distribution Network Service Provider;
  - (2) a proposed pricing structure statement submitted by a Distribution Network Service Provider; or
  - (3) information contained in or accompanying such a regulatory proposal or proposed pricing structure statement,
- ~~(or the accompanying information)~~ does not comply, in any respect, with a requirement of the Law or the *Rules*, the *AER* may notify the *Distribution Network Service Provider* that it requires resubmission of the relevant proposal regulatory proposal, pricing structure statement or information.
- (b) The notice must be given as soon as practicable and must state why, and in what respects, the *AER* considers the *regulatory proposal, pricing structure statement* (or the accompanying information as the case may be) to be non-compliant.

## 6.9.2 Resubmission of proposal

- (a) A *Distribution Network Service Provider* must, within 20 *business days* after receiving a notice under clause 6.9.1, resubmit its *regulatory proposal*, *pricing structure statement* ~~(or the accompanying information)~~ (as the case may be) in an amended form that complies with the relevant requirements set out in the notice.
- (b) A *Distribution Network Service Provider* may only make changes to its *regulatory proposal*, *pricing structure statement* ~~(or the accompanying information)~~ (as the case may be) to address the deficiencies identified in the notice.

### 6.9.2A Confidential information

If the *Distribution Network Service Provider* has identified any part of the *regulatory proposal* or the proposed *pricing structure statement* as submitted or resubmitted to the *AER* (as the case may be) under this Part to be confidential, the *AER* must, as soon as is reasonably practicable, include on its website a notice that sets out:

- (a) the fact that the *regulatory proposal* or the proposed *pricing structure statement* contains information over which a claim of confidentiality has been made;
- (b) the proportion of material in the *regulatory proposal* or the proposed *pricing structure statement* that is subject to any claim of confidentiality compared to that which is not subject to any such claim; and
- (c) the comparative proportion of material in the *regulatory proposal* or the proposed *pricing structure statement* that is subject to any claim of confidentiality compared to that which is subject to claims of confidentiality in the *regulatory proposals* and proposed *pricing structure statements* of other *Distribution Network Service Providers*.

### 6.9.3 Consultation

- (a) Subject to the provisions of the Law and the *Rules* about the disclosure of *confidential information*, the *AER* must *publish*:
  - (1) ~~the~~ *regulatory proposal*;
  - (2) the proposed *pricing structure statement*; and
  - (3) ~~(and the accompanying information)~~;

~~submitted or resubmitted to it (as the case may be) by the *Distribution Network Service Provider* under clause 6.8.2 or 6.9.2, together with:~~

  - (4) the *AER's* proposed *Negotiated Distribution Service Criteria* for the *Distribution Network Service Provider*; and
  - (5) an invitation for written submissions on the ~~*regulatory proposal* and the proposed *Negotiated Distribution Service Criteria*~~ documents and information referred to in subparagraphs (1) to (3),

after the *AER* decides that the *regulatory proposal*, proposed pricing structure statement and information compl~~y~~<sup>ies</sup> (or that there is sufficient compliance) with the requirements of the Law and the *Rules*.

- (b) The *AER* must *publish*:
  - (1) an issues paper not more than 40 *business days* after the submission, under clause 6.8.2, of the *regulatory proposal*;
  - (2) an invitation for written submissions on the issues paper; and
  - (3) an invitation to attend a public forum on the issues paper.
- (b1) The issues paper referred to in paragraph (b) must identify preliminary issues, whether or not arising out of the ~~regulatory proposal~~documents referred to in paragraph (a), that the *AER* considers are likely to be relevant to its assessment of the ~~regulatory proposal~~those documents (however, nothing in this clause is to be taken as precluding the *AER* from considering other issues in making a distribution determination for the *Distribution Network Service Provider*).
- (b2) The *AER* must hold a public forum on the issues paper not more than 10 *business days* after the *publication* of the issues paper.
- (c) Any person may make a written submission to the *AER* on the *regulatory proposal*, the proposed pricing structure statement, the proposed *Negotiated Distribution Service Criteria* or the issues paper within the time specified in the invitations referred to in paragraphs (a)(2) and (b), which in each case must be not earlier than 30 *business days* after the *publication* of the issues paper.

## 6.10 Draft distribution determination and further consultation

### 6.10.1 Making of draft distribution determination

- (a) The *AER* must make a draft distribution determination in relation to the *Distribution Network Service Provider*.
- (b) In making a draft distribution determination in relation to the *Distribution Network Service Provider*, and subject to clause 6.14, the *AER* must have regard to each of the following:
  - (1) the information included in or accompanying the *regulatory proposal* or the proposed pricing structure statement;
  - (2) written submissions on the issues paper received under clause 6.9.3, the ~~regulatory proposal~~documents referred to in subparagraph (1) and the proposed *Negotiated Distribution Service Criteria*; and
  - (3) any analysis undertaken by or for the *AER* that is *published* prior to the making of the draft distribution determination or as part of the draft distribution determination.
- (c) If the *AER* refuses to approve any aspect of a proposed pricing structure statement, the *AER*'s draft decision must include details of the changes required or matters to be addressed before the *AER* will approve the proposed statement.

### 6.10.2 Publication of draft determination and consultation

- (a) The *AER* must, as soon as practicable after the relevant date referred to in clause 6.8.2(b), *publish*:
- (1) the draft distribution determination and reasons under clause 6.10.1 and rule 6.12;
  - (2) notice of the making of the draft distribution determination;
  - (3) the *AER's* reasons for suggesting that the distribution determination should be made as proposed including the draft constituent decisions i.e. the decisions made in accordance with rule 6.12 on which the draft distribution determination is predicated;
  - (4) notice of a predetermination conference; and
  - (5) an invitation for written submissions on its draft distribution determination.
- (b) The *AER* must hold the predetermination conference at the time, date and place specified in the notice under subparagraph (a)(4) for the purpose of explaining the draft distribution determination.
- (c) Any person may make a written submission to the *AER* on the draft distribution determination within the time specified in the invitation referred to in paragraph (a)(5), which must be not earlier than 45 *business days* after the making of the draft determination.

### 6.10.3 Submission of revised proposal or pricing structure statement

- (a) In addition to making written submissions, the *Distribution Network Service Provider* may, not more than 45 *business days* after the publication of the draft distribution determination, submit a revised *regulatory proposal* or revised proposed pricing structure statement to the *AER*.
- (b) A *Distribution Network Service Provider* may only make the revisions referred to in paragraph (a) so as to incorporate the substance of any changes required to address matters raised by the draft distribution determination or the *AER's* reasons for it.
- (b1) a revised proposed pricing structure statement must give effect to and be consistent with the pricing principles for direct control services.
- (c) A revised *regulatory proposal* must comply with the requirements of, and must contain or be accompanied by the information required by, any relevant *regulatory information instrument* or the *Rules*.
- (c1) If the *Distribution Network Service Provider* has identified any part of the revised *regulatory proposal* or revised proposed pricing structure statement to the *AER* under this Part to be confidential, the *AER* must, as soon as is reasonably practicable, make available on its website a notice that sets out:
- (1) the fact that the revised *regulatory proposal* or the revised proposed pricing structure statement contains information over which a claim of confidentiality has been made;
  - (2) the proportion of material in the revised *regulatory proposal* or the revised proposed pricing structure statement that is subject to any claim

of confidentiality compared to that which is not subject to any such claim; and

- (3) the comparative proportion of material in the revised *regulatory proposal* or the revised proposed pricing structure statement that is subject to any claim of confidentiality compared to that which is subject to claims of confidentiality in the revised *regulatory proposals* or the revised proposed pricing structure statements of other *Distribution Network Service Providers*.
- (d) Subject to the provisions of the Law and the *Rules* about the disclosure of *confidential information*, the *AER* must *publish* a revised *regulatory proposal* or revised proposed pricing structure statement submitted by the *Distribution Network Service Provider* under paragraph (a), together with the accompanying information, as soon as practicable after receipt by the *AER*.
- (e) The *AER* may invite written submissions on the revised *regulatory proposal* or the revised proposed pricing structure statement.

#### **6.10.4 Submissions on specified matters**

If the *AER* invites submissions on a revised *regulatory proposal* or a revised proposed pricing structure statement under clause 6.10.3(e), the *AER* may invite further written submissions on the submissions received under clause 6.10.2(c) or 6.10.3(e) by *publishing* an invitation which specifies:

- (a) the matters in respect of which submissions are invited; and
- (b) the time for making submissions, which must not be earlier than 15 *business days* after the date on which the invitation was *published*.

### **6.11 Distribution determination**

#### **6.11.1 Making of distribution determination**

- (a) The *AER* must make a distribution determination in relation to the *Distribution Network Service Provider*.
- (b) In making a distribution determination in relation to the *Distribution Network Service Provider*, and subject to rule 6.14, the *AER* must have regard to each of the following:
  - (1) the information included in or accompanying the *regulatory proposal* and proposed pricing structure statement;
  - (2) written submissions received under this Part E; and
  - (3) any analysis undertaken by or for the *AER* that is *published* prior to the making of the distribution determination or as part of the distribution determination.
- (c) The *AER* must use its best endeavours to *publish*, a reasonable time prior to the making of the distribution determination, any analysis undertaken by or for it on which it proposes to rely, or to which it proposes to refer, for the purposes of the distribution determination.

### 6.11.1A Out of scope revised regulatory proposal or late submissions

On or before making a distribution determination, the *AER* must make available on its website:

- (a) a summary of any revisions to the relevant *regulatory proposal* or proposed pricing structure statement that have been made in a revised *regulatory proposal* or proposed pricing structure statement that do not comply with clause 6.10.3(b), together with an indication of the amount of that information;
- (b) a summary of any submissions on the draft distribution determination or revised *regulatory proposal* or proposed pricing structure statement that were made by the *Distribution Network Service Provider* and that contain information that the *Distribution Network Service Provider* was entitled to incorporate in the revised *regulatory proposal* or proposed pricing structure statement under clause 6.10.3(b), together with an indication of the amount of that information;
- (c) a summary of any submissions that purport to be made by the *Distribution Network Service Provider* under clause 6.10.4 but are in respect of matters other than those specified by the *AER* under that clause, together with an indication of the length of those submissions; and
- (d) a summary of any submissions on the draft determination or revised *regulatory proposal* or proposed pricing structure statement that were made by the *Distribution Network Service Provider* after the time for making the submissions has expired, together with an indication of the length of those submissions.

For the purpose of this clause 6.11.1A, revisions or submissions may be summarised by cross-referencing to the relevant *regulatory proposal*, -proposed pricing structure statement or submissions.

### 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;
- (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;

- (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 *Distribution Network Service 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*;

- (4A) a decision in which the *AER* determines:
- (i) whether each of the *proposed contingent projects* (if any) described in the current *regulatory proposal* are *contingent projects* for the purposes of the distribution 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 *regulatory 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 distribution determination, its reasons for that conclusion, having regard to the requirements of clause 6.6A.1(b);
- (5) a decision on the *allowed rate of return* for each *regulatory year* of the *regulatory control period* in accordance with clause 6.5.2;
- (5A) a decision on whether the return on debt is to be estimated using a methodology referred to in clause 6.5.2(i)(2) and, if that is the case, the formula that is to be applied in accordance with clause 6.5.2(1);
- (5B) a decision on the value of imputation credits as referred to in clause 6.5.3;
- (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 *Distribution Network Service Provider* for each *regulatory year* of the *regulatory control period* in accordance with clause 6.5.3;
- (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*, *capital expenditure sharing scheme*, *service target performance incentive scheme*, *demand management and embedded generation connection incentive scheme* or *small-scale incentive scheme* 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 form of the control mechanisms (including the X factor) for *standard control services* (to be in accordance with the relevant *framework and approach paper*) and on the formulae that give effect to those control mechanisms;

- (12) a decision on the form of the control mechanisms for *alternative control services* (to be in accordance with the relevant *framework and approach paper*) and on the formulae that give effect to those control mechanisms;
  - (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;
  - (14A) a decision on the *Distribution Network Service Provider's proposed pricing structure statement*, in which the AER either approves or refuses to approve that statement and sets out reasons for its decision;
  - (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 *Distribution Network Service 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 *retail customers* to *tariff classes*, or reassigning *retail 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;
- Note:**  
See clause S6.2.2B.
- (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;
  - (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; and
  - (21) a decision on the *connection policy* that is to apply to the *Distribution Network Service Provider* for the *regulatory control period* (which may be the *connection policy* as proposed by the *Distribution Network Service Provider*, some variant of it, or a policy substituted by the AER).

### 6.12.2 Reasons for decisions

- (a) The reasons given by the *AER* for a draft distribution determination under rule 6.10 or a final distribution determination under rule 6.11 must set out the basis and rationale of the determination, including:
  - (1) details of the qualitative and quantitative methods applied in any calculations and formulae made or used by the *AER*;
  - (2) the values adopted by the *AER* for each of the input variables in any calculations and formulae, including:
    - (i) whether those values have been taken or derived from the *Distribution Network Service Provider's* current building block proposal; and
    - (ii) if not, the rationale for the adoption of those values;
  - (3) details of any assumptions made by the *AER* in undertaking any material qualitative and quantitative analyses; and
  - (4) reasons for the making of any decisions, the giving or withholding of any approvals, and the exercise of any discretions as referred to in this Chapter 6, for the purposes of the determination, such reasons being expressed by reference to the requirements relating to such decisions, approvals or discretions as are contained in this Chapter.
- (b) The *AER* must include in its reasons for a draft distribution determination under rule 6.10 or a final distribution determination under rule 6.11 a statement, with supporting reasons, as to the extent to which the roll forward of the regulatory asset base as determined under clause 6.12.1(6) contributes to the achievement of the *capital expenditure incentive objective*.

### 6.12.3 Extent of AER's discretion in making distribution determinations

- (a) Subject to this clause and other provisions of this Chapter 6 explicitly negating or limiting the *AER's* discretion, the *AER* has a discretion to accept or approve, or to refuse to accept or approve, any element of a *regulatory proposal*.
- (b) The classification of *distribution services* must be as set out in the relevant *framework and approach paper* unless the *AER* considers that unforeseen circumstances justify departing from the classification as set out in that paper.
- (c) The form of the control mechanisms must be as set out in the relevant *framework and approach paper*.
- (c1) The formulae that give effect to the control mechanisms referred to in paragraph (c) must be as set out in the relevant *framework and approach paper* unless the *AER* considers that unforeseen circumstances justify departing from the formulae as set out in that paper.
- (d) The *AER* must approve the *total revenue requirement* for a *Distribution Network Service Provider* for a *regulatory control period*, and the *annual revenue requirement* for each *regulatory year* of the *regulatory control period*, as set out in the *Distribution Network Service Provider's* current *building block proposal*, if the *AER* is satisfied that those amounts have been properly calculated using the *post-tax revenue model* on the basis of amounts

calculated, determined or forecast in accordance with the requirements of Part C of this Chapter 6.

- (e) The *AER* must approve a proposed *regulatory control period* if the proposed period consists of 5 *regulatory years*.
- (f) **[Deleted]**
- (g) The *AER* must approve a proposed *negotiating framework* if the *AER* is satisfied that it adequately complies with the requirements of Part D.
- (h) If the *AER* refuses to approve the proposed *negotiating framework*, the approved amended *negotiating framework* must be:
  - (1) determined on the basis of the current proposed *negotiating framework*; and
  - (2) amended from that basis only to the extent necessary to enable it to be approved in accordance with the *Rules*.
- (i) The *AER* must approve the proposed *connection policy* if the *AER* is satisfied that it adequately complies with the requirements of Part DA.
- (j) If the *AER* refuses to approve the proposed *connection policy*, the approved amended *connection policy* must be:
  - (1) determined on the basis of the current proposed *connection policy*; and
  - (2) amended from that basis only to the extent necessary to *enable* it to be approved in accordance with the *Rules*.
- (k) The *AER* must approve a *Distribution Network Service Provider's* proposed *pricing structure statement* if the *AER* is satisfied that the statement gives effect to and is consistent with the *pricing principles for direct control services*.
- (l) If the *AER* refuses to approve the proposed *pricing structure statement*, the *pricing structure statement* that applies for the last *regulatory year* of the previous *regulatory control period* will apply for the relevant *regulatory control period*, subject to any subsequent amendment approved under rule 6.13 or clause 6.18.1B.

### 6.13 Revocation and substitution of distribution determination for wrong information or error

- (a) The *AER* may (but is not required to) revoke a distribution determination or amend an existing *pricing structure statement* during a *regulatory control period* if it appears to the *AER* that the distribution determination or *pricing structure statement* is affected by a material error or deficiency of one or more of the following kinds:
  - (1) a clerical mistake or an accidental slip or omission;
  - (2) a miscalculation or misdescription;
  - (3) a defect in form; or
  - (4) a deficiency resulting from the provision of false or materially misleading information to the *AER*.

- (b) If the *AER* revokes a distribution determination under paragraph (a), the *AER* must make a new distribution determination in substitution for the revoked distribution determination to apply for the remainder of the *regulatory control period* for which the revoked distribution determination was to apply.
- (c) If the *AER* revokes and substitutes a distribution determination under paragraphs (a) and (b), the substituted distribution determination must only vary from the revoked distribution determination to the extent necessary to correct the relevant error or deficiency.
- (c1) If the *AER* amends a *pricing structure statement* under paragraph (a), the amended statement applies, subject to subsequent amendment under clause 6.18.1B, to the setting of prices for the next *regulatory year* and the remainder of the relevant *regulatory control period*.
- (c2) If the *AER* amends a *pricing structure statement* under paragraph (a), the amended statement must only vary from the existing *pricing structure statement* to the extent necessary to correct the relevant error or deficiency.
- (d) The *AER* may only revoke and substitute a distribution determination or amend a *pricing structure statement* under this rule 6.13, if it has first consulted with the relevant *Distribution Network Service Provider* and such other persons as it considers appropriate.

## 6.14 Miscellaneous

- (a) The *AER* may, but is not required to, consider any submission made pursuant to an invitation for submissions after the time for making the submission has expired.
- (b) Nothing in this Part E is to be construed as precluding the *AER* from *publishing* any issues, consultation and discussion papers, or holding any conferences and information sessions, that the *AER* considers appropriate.
- (c) Subject to paragraph (d), as soon as practicable after the *AER* receives a submission in response to an invitation for submissions that is made under this Chapter (whether or not the submission was made before the time for making it has expired), the *AER* must *publish* that submission.
- (d) The *AER* must not *publish* a submission referred to in paragraph (c) to the extent it contains information which has been clearly identified as confidential by the person making the submission.
- (e) The *AER* may give such weight to *confidential information* identified in accordance with paragraph (d) in a submission as it considers appropriate, having regard to the fact that such information has not been made publicly available.
- (f) Paragraph (d) does not apply to the extent that any other provision of the Law or the *Rules* permits or requires such information to be publicly released by the *AER*.

### 6.14A Distribution Confidentiality Guidelines

- (a) The *AER* must, in accordance with the *distribution consultation procedures*, make and *publish* guidelines (*Distribution Confidentiality Guidelines*).

- (b) The *Distribution Confidentiality Guidelines* must specify the manner in which the *Distribution Network Service Provider* may make confidentiality claims in its *regulatory proposal* and proposed pricing structure statement, which may include categories of confidential information by reference to which *Distribution Network Service Providers* must classify any claims of confidentiality in their *regulatory proposals*.
- (c) There must be *Distribution Confidentiality Guidelines* in force at all times after the date on which the AER first publishes the *Distribution Confidentiality Guidelines* under these Rules.
- (d) The *Distribution Confidentiality Guidelines* are binding on the AER and each *Distribution Network Service Provider* to which they apply.

## No changes to Part F to H – Cost allocation, distribution consultation procedures and ring-fencing arrangements

### Part I Distribution Pricing Rules

#### 6.18 Distribution Pricing Rules

##### 6.18.1 Application of this Part

This Part applies to tariffs and *tariff classes* related to *direct control services*.

##### 6.18.1A Pricing structure statement

- (a) In making a distribution determination under Part E of this Chapter 6, the AER must include a decision to approve a proposed pricing statement as part of that distribution determination, in accordance with that Part.
- (b) A pricing structure statement is a statement of expected price structures and must set out the tariff structures that the Distribution Network Service Provider proposes to apply in its pricing proposals during a regulatory control period. A pricing structure statement must include:
  - (1) the tariff classes that are to apply for the relevant regulatory control period;
  - (2) the proposed tariff structures for each tariff class
  - (3) the elements of the charging parameters for each proposed tariff structure
  - (4) a description of how the pricing structure statement addresses the pricing principles for direct control services, and
  - (5) a statement of expected price trends giving an indication of how the Distribution Network Service Provider expects prices to change over the regulatory control period and the reasons for the expected changes.
- (c) The pricing structure statement proposed by a Distribution Network Service Provider and approved by the AER in accordance with Part E of this Chapter 6 or clause 6.18.1B must give effect to and be consistent with the pricing principles for direct control services.

- (d) A Distribution Network Service Provider must comply with the pricing structure statement approved by the AER in accordance with Part E of this Chapter 6 or clause 6.18.1B, and any other applicable requirements in the Rules, when the provider is setting the prices that may be charged for direct control services.
- (e) Subject to rule 6.13 and clause 6.18.1B, a pricing structure statement may not be amended during the regulatory control period.

### **6.18.1B Amending a pricing structure statement**

- (a) No later than six months before the start of a regulatory year (other than the first regulatory year of a regulatory control period) (relevant regulatory year), a Distribution Network Service Provider may request the AER to approve an amendment to its current pricing structure statement.
- (b) A request for an amendment to a pricing structure statement under paragraph (a) must include:
  - (1) the proposed amended pricing structure statement;
  - (2) a description of the differences between the proposed amended pricing structure statement and the Distribution Network Service Provider's current pricing structure statement and how the proposed amended pricing structure statement better reflects the pricing principles for direct control services than the current pricing structure statement;
  - (3) a description of how the Distribution Network Service Provider has consulted with electricity consumers on the proposed amended pricing structure statement in accordance with the consultation on pricing guidelines; and
  - (4) a description of how the proposed amended pricing structure statement would impact retail customers within different tariff classes.
- (c) A proposed amended pricing structure statement must give effect to and be consistent with the pricing principles for direct control services.
- (d) The AER must on receipt of a Distribution Network Service Provider's request for an amendment to its pricing structure statement publish the request.
- (e) No later than 4 months before the start of the relevant regulatory year, the AER must make a decision on the Distribution Network Service Provider's proposed amended pricing structure statement, in which the AER either approves or refuses to approve that pricing structure statement and sets out reasons for its decision.
- (f) The AER must approve a Distribution Network Service Provider's proposed amended pricing structure statement if the AER is satisfied that the statement gives effect to and is consistent with the pricing principles for direct control services.
- (g) If the AER refuses to approve the proposed amended pricing structure statement, the current pricing structure statement will apply for the relevant regulatory year and, subject to any subsequent amendment approved under

this clause 6.18.1B or rule 6.13, the remainder of the *regulatory control period*.

### **6.18.1C Consultation on pricing guidelines**

- (a) The AER must, in accordance with the *distribution consultation procedures*, make and *publish* guidelines (the *consultation on pricing guidelines*) relating to how a *Distribution Network Service Provider* must consult with consumers on the development of a proposed amended *pricing structure statement*.
- (b) The *consultation on pricing guidelines* must set out the customer consultation to be undertaken by a *Distribution Network Service Provider* in developing any proposed or amended *pricing structure statement*.
- (c) There must be *consultation on pricing guidelines* in force at all times after the date on which the AER first *publishes* the *consultation on pricing guidelines* under these *Rules*.
- (d) The *consultation on pricing guidelines* are not binding on the AER or a *Distribution Network Service Provider*.

[note: transitional rules will need to specify the date by which the AER must publish the first *consultation on pricing guidelines*.]

### **6.18.2 Pricing proposals**

- (a) A *Distribution Network Service Provider* must:
  - (1) submit to the AER, as soon as practicable, and in any case within 15 *business days*, after *publication* of the distribution determination, a *pricing proposal* (the **initial pricing proposal**) for the first *regulatory year* of the *regulatory control period*; and
  - (2) submit to the AER, at least 2 months before the commencement of the second and each subsequent *regulatory year* of the *regulatory control period*, a further *pricing proposal* (an **annual pricing proposal**) for the relevant *regulatory year*.
- (b) A *pricing proposal* must:
  - (1) set out the *tariff classes* that are to apply for the relevant *regulatory year*; ~~and~~
  - (2) set out the proposed tariffs for each *tariff class*; ~~and~~
  - (3) set out, for each proposed tariff, the *charging parameters* and the elements of service to which each *charging parameter* relates; ~~and~~
  - (4) set out, for each *tariff class* related to *standard control services*, the expected weighted average revenue for the relevant *regulatory year* and also for the current *regulatory year*; ~~and~~
  - (5) set out the nature of any variation or adjustment to the tariff that could occur during the course of the *regulatory year* and the basis on which it could occur; ~~and~~
  - (6) set out how *designated pricing proposal charges* are to be passed on to customers and any adjustments to tariffs resulting from over or under recovery of those charges in the previous *regulatory year*; ~~and~~

- (6A) set out how *jurisdictional scheme amounts* for each *approved jurisdictional scheme* are to be passed on to customers and any adjustments to tariffs resulting from over or under recovery of those amounts; ~~and~~
  - (6B) describe how each *approved jurisdictional scheme* that has been amended since the *last jurisdictional scheme approval date* meets the *jurisdictional scheme eligibility criteria*; ~~and~~
  - (7) demonstrate compliance with the *Rules*, ~~and~~ any applicable distribution determination and the *Distribution Network Service Provider's current pricing structure statement*; and
  - (8) describe the nature and extent of change from the previous *regulatory year* and demonstrate that the changes comply with the *Rules*, ~~and~~ any applicable distribution determination and the *Distribution Network Service Provider's current pricing structure statement*.
- (c) The AER must on receipt of a *pricing proposal* from a *Distribution Network Service Provider* publish the proposal.

### 6.18.3 Tariff classes

- (a) A *pricing proposal* must define the *tariff classes* into which *retail customers for direct control services* are divided.
- (b) Each customer for *direct control services* must be a member of 1 or more *tariff classes*.
- (c) Separate *tariff classes* must be constituted for *retail customers* to whom *standard control services* are supplied and *retail customers* to whom *alternative control services* are supplied (but a customer for both *standard control services* and *alternative control services* may be a member of 2 or more *tariff classes*).
- (d) A *tariff class* must be constituted ~~with regard to~~ on the following basis:
  - (1) ~~the need to group~~ *retail customers* must be grouped together on an economically efficient basis; and
  - (2) ~~the need to avoid~~ unnecessary transaction costs must be avoided.

### 6.18.4 Principles governing assignment or re-assignment of retail customers to tariff classes and assessment and review of basis of charging

- (a) In formulating provisions of a distribution determination governing the assignment of *retail customers* to *tariff classes* or the re-assignment of *retail customers* from one *tariff class* to another, the AER must have regard to the following principles:
  - (1) *retail customers* should be assigned to *tariff classes* on the basis of one or more of the following factors:
    - (i) the nature and extent of their usage;
    - (ii) the nature of their *connection* to the *network*;

- (iii) whether remotely-read interval metering or other similar metering technology has been installed at the *retail customer's* premises as a result of a *regulatory obligation or requirement*;
- (2) *retail customers* with a similar *connection* and usage profile should be treated on an equal basis;
- (3) however, *retail customers* with micro-generation facilities should be treated no less favourably than *retail customers* without such facilities but with a similar load profile;
- (4) a *Distribution Network Service Provider's* decision to assign a customer to a particular *tariff class*, or to re-assign a customer from one *tariff class* to another should be subject to an effective system of assessment and review.

**Note:**

If (for example) a customer is assigned (or reassigned) to a *tariff class* on the basis of the customer's actual or assumed *maximum demand*, the system of assessment and review should allow for the reassignment of a customer who demonstrates a reduction or increase in *maximum demand* to a *tariff class* that is more appropriate to the customer's *load profile*.

- (b) If the *charging parameters* for a particular tariff result in a basis of charge that varies according to the usage or load profile of the customer, a distribution determination must contain provisions for an effective system of assessment and review of the basis on which a customer is charged.

### 6.18.5 Pricing principles

- (a) For each *tariff class*, the revenue expected to be recovered should lie on or between:
  - (1) an upper bound representing the stand alone cost of serving the *retail customers* who belong to that class; and
  - (2) a lower bound representing the avoidable cost of not serving those *retail customers*.
- (b) A tariff, and if it consists of 2 or more *charging parameters*, each *charging parameter* for a *tariff class*:
  - (1) must ~~take into account~~ be based on the long run marginal cost ~~for of providing~~ the service or, in the case of a *charging parameter*, for the element of the service to which the *charging parameter* relates; and
  - (2) must be determined having regard to:
    - (i) ~~transaction costs associated with the tariff or each charging parameter; and~~ **[deleted]**
    - (ii) how the tariff may impact whether *retail customers* ~~within of~~ the relevant *tariff class* ~~are able or likely to respond to price signals;~~
    - (iii) the additional costs associated with demand at times of greatest utilisation of the distribution network and for which network investment is most likely to be contemplated;
    - (iv) the extent to which the long run marginal cost of providing the service may vary by customer location.

~~(v) any transaction costs associated with implementing the tariff. -~~

~~(3) must comply with relevant jurisdictional instruments~~

- (c) If, however, as a result of the operation of paragraph (b), the *Distribution Network Service Provider* may not recover the expected revenue, the provider must adjust its tariffs so as to ensure recovery of expected revenue with minimum distortion to efficient patterns of consumption.

### 6.18.6 Side constraints on tariffs for standard control services

- (a) This clause applies only to *tariff classes* related to the provision of *standard control services*.
- (b) The expected weighted average revenue to be raised from a *tariff class* for a particular *regulatory year* of a *regulatory control period* must not exceed the corresponding expected weighted average revenue for the preceding *regulatory year* (in ~~that the current or previous~~ *regulatory control period*, as applicable) by more than the permissible percentage.
- (c) The permissible percentage is the greater of the following:
- (1) the CPI-X limitation on any increase in the *Distribution Network Service Provider's* expected weighted average revenue between the two *regulatory years* plus 2%;

**Note:**

The calculation is of the form  $(1 + \text{CPI})(1 - X)(1 + 2\%)$

- (2) CPI plus 2%.

**Note:**

The calculation is of the form  $(1 + \text{CPI})(1 + 2\%)$

- (d) In deciding whether the permissible percentage has been exceeded in a particular *regulatory year*, the following are to be disregarded:
- (1) the recovery of revenue to accommodate a variation to the distribution determination under rule 6.6 or 6.13;
  - (2) the recovery of revenue to accommodate pass through of *designated pricing proposal charges to retail customers*;
  - (3) the recovery of revenue to accommodate pass through of *jurisdictional scheme amounts for approved jurisdictional schemes*; and
  - (4) the recovery of revenue to accommodate any increase in the *Distribution Network Service Provider's annual revenue requirement* by virtue of an application of a formula referred to in clause 6.5.2(l).

~~(e) This clause does not, however, limit the extent a tariff for retail customers with remotely read interval metering or other similar metering technology may vary according to the time or other circumstances of the customer's usage.~~

**No changes to clauses 6.18.7 and 6.18.7A - recovery of designated pricing proposal charges and jurisdictional scheme amounts**

**6.18.8 Approval of pricing proposal**

- (a) The *AER* must approve a *pricing proposal* if the *AER* is satisfied that:
- (1) the proposal complies with this Part, any relevant clauses in Chapter 11, ~~and~~ any applicable distribution determination and the Distribution Network Service Provider's current pricing structure statement; and
  - (2) all forecasts associated with the proposal are reasonable.
- (b) If the *AER* determines that a *pricing proposal* is deficient:
- (1) the *AER* may require the *Distribution Network Service Provider*, within 10 *business days* after receiving notice of the determination, to re-submit the proposal with the amendments necessary to correct the deficiencies identified in the determination and (unless the *AER* permits further amendment) no further amendment; or
  - (2) the *AER* may itself make the amendments necessary to correct the deficiencies.
- (c) If the service provider fails to comply with a requirement under paragraph (b), or the resubmitted proposal fails to correct the deficiencies in the former proposal, the *AER* may itself amend the proposal to bring it into conformity with the requirements of this Part, ~~and~~ any applicable distribution determination and the Distribution Network Service Provider's current pricing structure statement.
- (d) An *approved pricing proposal* takes effect:
- (1) in the case of an initial *pricing proposal* – at the commencement of the first *regulatory year* of the *regulatory control period* for which the distribution determination is made; and
  - (2) in the case of an annual *pricing proposal* – at the commencement of the *regulatory year* to which the proposal relates.

**Note:**

The operation of this paragraph may, in some instances, be displaced or modified by clause 6.11.3(b).

**6.18.9 Publication of information about tariffs and tariff classes**

- (a) A *Distribution Network Service Provider* must maintain on its website:
- (1A) its current pricing structure statement;
- (1) a statement of the provider's *tariff classes* and the tariffs applicable to each class; and
  - (2) for each tariff – the *charging parameters* and the elements of the service to which each *charging parameter* relates; and
  - (3) a statement of expected price trends (to be updated for each *regulatory year*) giving an indication of how the *Distribution Network Service Provider* expects prices to change over the *regulatory control period* and the reasons for the expected changes.

- (b) The information for a particular *regulatory year* must, if practicable, be posted on the website 20 *business days* before the commencement of the relevant *regulatory year* and, if that is not practicable, as soon as practicable thereafter.

**No change to rule 6.19 - Data Required for Distribution Service Pricing**

**[Note: no changes to Parts J and K – billing and capital contributions etc]**

**Part L Dispute resolution**

**6.22 Dispute Resolution**

**6.22.1 Dispute Resolution by the AER**

- (a) A dispute between a *Distribution Network Service Provider* and a *Service Applicant* as to the *terms and conditions of access* to a *direct control service* or to a *negotiated distribution service* is an access dispute for the purposes of Part 10 of the Law.
- (b) A dispute between a *Distribution Network Service Provider* and a *Service Applicant* about *access charges* is an access dispute for the purposes of Part 10 of the Law.
- (c) A dispute between a *Distribution Network Service Provider* and a *Connection Applicant* about matters referred to in clause 5.5(f) or clause 5.5(h) is an access dispute for the purposes of Part 10 of the Law.

**6.22.2 Determination of dispute**

- (a) In determining an access dispute about *terms and conditions of access* to a *direct control service*, the AER must apply:
- (1) in relation to price, the *Distribution Network Service Provider's approved pricing proposal* and the *Distribution Network Service Provider's pricing structure statement* or, in respect of the *Distribution Network Service Provider's transmission standard control services* in respect of which the AER has made a determination under clause 6.25(b) that pricing in respect of those services should be regulated under Part J of Chapter 6A through the application of rule 6.26, the *Distribution Network Service Provider's approved pricing methodology*;
  - (2) in relation to other terms and conditions, Chapters 4, 5, this Chapter 6 and Chapter 7 and any other *applicable regulatory instrument*; and
  - (3) in relation to all *terms and conditions of access* (including price) the decisions of AEMO or the AER where those decisions relate to those terms and conditions and are made under Chapters 4, 5, this Chapter 6 and Chapter 7.
- (b) In determining an access dispute about the *terms and conditions of access* to a *direct control service*, the AER may:
- (1) have regard to other matters the AER considers relevant; and

- (2) hear evidence or receive submissions from *AEMO* about *power system security* and from *Distribution Network Users* who may be adversely affected.

**Note:**

Section 130 of the Law requires the *AER*, in making an access determination, to give effect to a network revenue or pricing determination applicable to the services that are the subject of the dispute even though the determination may not have been in force when the dispute arose.

- (c) In determining an access dispute about *terms and conditions of access* to a *negotiated distribution service*, the *AER* must apply:
  - (1) in relation to price (including *access charges*), the *Negotiated Distribution Service Criteria* that are applicable to the dispute in accordance with the relevant distribution determination; and
  - (2) in relation to other terms and conditions, the *Negotiated Distribution Service Criteria* that are applicable to the dispute and Chapters 4, 5, this Chapter 6 and Chapter 7 of the *Rules*; and
  - (3) in relation to all *terms and conditions of access* (including price) the decisions of *AEMO* or the *AER* where those decisions relate to those terms and conditions and are made under Chapters 4, 5, this Chapter 6 and Chapter 7 of the *Rules*;

and must have regard:

- (4) to the relevant *negotiating framework* prepared by the *Distribution Network Service Provider* and approved by the *AER*.
- (d) In determining an access dispute about the *terms and conditions of access* to a *negotiated distribution service*, the *AER* may:
  - (1) have regard to other matters the *AER* considers relevant; and
  - (2) hear evidence or receive submissions from *AEMO* and *Distribution Network Users* notified and consulted under the *Distribution Network Service Provider's negotiating framework*.
- (e) In determining an access dispute about *access charges*, or involving *access charges*, the *AER* must give effect to the following principle:

*Access charges* should be based on the costs reasonably incurred by the *Distribution Network Service Provider* in providing *distribution network user access* and, where they consist of compensation referred to in clause 5.5(f)(4)(ii) and (iii), on the revenue that is likely to be foregone and the costs that are likely to be incurred by a person referred to in those provisions where an event referred to in those provisions occurs.

### **6.22.3 Termination of access dispute without access determination**

- (a) If the *AER* considers that an access dispute could be effectively resolved by some means other than an access determination, the *AER* may give the parties to the dispute notice of the alternative means of resolving the dispute.
- (b) The giving of such a notice is a specified dispute termination circumstance for the purposes of section 131(3) of the Law.

**Note:**

It follows that the *AER* may exercise its power to terminate the dispute without making an access determination (See section 131(1)(d) of the Law).

**[Note: no changes to Parts M to O and Schedules to Chapter 6]**

## Chapter 10 Terms

Consideration to be given to appropriate definitions for:

- *pricing principles for direct control services*

The principles set out in clause 6.18.5.

- *pricing structure statement*

For a *Distribution Network Service Provider*, means the pricing structure statement approved by the *AER* for that *Distribution Network Service Provider* as referred to in clause 6.18.1A.

- *consultation on pricing guidelines*

The guidelines referred to in clause 6.18.1C.