

Guideline

Transmission Efficiency Test and revenue determination guideline for non-contestable network infrastructure projects

Draft amendments

May 2024~~April 2023~~

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AER reference: [AER24008643-14718066](#)

Amendment record

Version	Date	Pages
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02	7 May 2024	87

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Glossary

Term	Definition
AER	Australian Energy Regulator.
Consumer Trustee	A person or body appointed under section 60 of the EII. The Consumer Trustee is required to act independently and in the long-term financial interests of NSW electricity consumers. AEMO Services Ltd has been appointed as consumer trustee.
contestable augmentation	Has the meaning given to that term in the EII Regulation.
Contractual arrangement	Contracts that the Network Operator enters as required under the Consumer Trustee's authorisation or Minister's authorisation or direction. This includes contracts made between the Infrastructure Planner and the Network Operator for carrying out a network infrastructure project under section 63(4)(a) of the EII Act.
EII Act, the Act	<i>Electricity Infrastructure Investment Act 2020 (NSW).</i>
EII Regulation	<i>Electricity Infrastructure Investment Regulation (NSW) 2021</i> made under the EII Act.
Infrastructure Planner	A person authorised to exercise the functions of an infrastructure planner under section 63 of the EII Act. The Infrastructure Planner performs a range of planning and contracting functions. The Energy Corporation of NSW has been appointed to undertake the role of Infrastructure Planner for the five renewable energy zones listed in section 23 of the EII Act.
NEL	National Electricity Law as it applies in NSW.
NER	National Electricity Rules.
Network Operator	Has the meaning given to that term in the EII Act.
NSW Government	The NSW Government department or entity responsible for developing and implementing policy and legislative proposals relating to the NSW Infrastructure Roadmap (which is enabled by the EII Act). The relevant department or entity may change from time to time in line with NSW machinery of government changes.
Project, network infrastructure project	A REZ Network Infrastructure Project or Priority Transmission Infrastructure Project as defined in the EII Act.
Priority transmission infrastructure project	Has the meaning given to that term in the EII Act.
RAB	Regulatory asset base
Regulated activities	Activities for which a Network Operator is paid under a revenue determination under section 38(1) of the EII Act.
Regulator	A person or body appointed as a regulator under section 64 of the EII Act. The AER has been appointed as a Regulator for the purposes of Part 5 of the EII Act.
Renewable Energy Zone (REZ)	Has the meaning given to that term in the EII Act.
REZ network Infrastructure project	Has the meaning given to the term in the EII Act.
Transmission Efficiency Test	The test to be applied to calculate the prudent, efficient and reasonable capital costs for development and construction of a network infrastructure project under section 38(4) of the EII Act.

1 Introduction

1.1 Purpose of this Guideline

The AER is required to make revenue determinations for Network Operators authorised or directed to carry out¹ network infrastructure projects² under the *Electricity Infrastructure Investment Act 2020 (NSW)* (EII Act) and *Electricity Infrastructure Investment Regulation 2021 (NSW)* (EII Regulation). These projects relate to implementation of the NSW Electricity Infrastructure Roadmap.³

The Infrastructure Planner for a renewable energy zone (REZ) must make assessments and recommendations to the Consumer Trustee about REZ network infrastructure projects required for the REZ.⁴ This includes assessing and recommending options to provide the intended network capacity for the REZ, staging and sequencing of REZ network infrastructure projects, funding, procurement and cost recovery for the recommended REZ network infrastructure projects and other matters prescribed in the EII Regulation.

Following this process, a Network Operator may be selected to carry out a network infrastructure project in one of two ways:

- a. Under a non-contestable process, a Network Operator is selected directly by the Infrastructure Planner.
- b. Under a contestable process, a Network Operator is selected through a competitive assessment process conducted by the Infrastructure Planner.⁵

In both cases, the Network Operator must be authorised by the Consumer Trustee, or authorised or directed by the Minister,⁶ before carrying out the network infrastructure project. We must make a revenue determination for Network Operators with an authorisation.⁷ Under either approach the Network Operator has no discretion in the identification of network options and selection of the preferred project to be carried out.

The regulatory process varies between the non-contestable and contestable processes. However, both processes provide consumer protections by seeking to limit the costs of carrying out network infrastructure projects to an efficient, prudent and reasonable level. The non-contestable process is subject to a more typical regulatory assessment by us, while the contestable process relies on the Infrastructure Planner conducting a competitive assessment process to reveal prudent, efficient and reasonable costs.

To meet the objectives of the EII Act, we are required to prepare guidelines setting out how we will exercise our functions under Part 5 of the EII Act for non-contestable revenue

¹ EII Act, s. 38 and EII Regulation 47. Carrying out a network infrastructure project may include owning or leasing, constructing, financing, operating, and/or maintaining assets

² Under the EII Act, network infrastructure projects can be REZ Network Infrastructure Projects or Priority Transmission Infrastructure Projects. In this guideline, where we refer to a 'project' or 'network infrastructure project' we are referring to either. Where the EII Act and EII Regulation specify differences in processes for these types of network infrastructure projects, these differences are noted in this Guideline. The key difference is that REZ Network Infrastructure Projects authorised by the Consumer Trustee, require the Consumer Trustee to calculate a maximum capital cost. This is not required for REZ Network Infrastructure Projects directed by the Minister, or for Priority Transmission Infrastructure Projects authorised or directed by the Minister.

³ Under the roadmap NSW will plan and implement up to five renewable energy zones (REZs). For a detailed explanation of the roadmap and the entities undertaking it, please see <https://www.energy.nsw.gov.au/nsw-plans-and-progress/major-state-projects/electricity-infrastructure-roadmap>.

⁴ EII Act, s. 30 and EII Regulation, s. 43.

⁵ EII Regulation, ss. 43(2) and 45.

⁶ EII Act, ss. 31(1)(b), 32(1)(a) and 36(2). The Consumer Trustee may authorise or the Minister direct or authorise a REZ network infrastructure project. EII Act, ss. 32(1)(b) and s. 36(2), The Minister is the only person able to authorise or direct a priority transmission infrastructure project.

⁷ EII Act, s. 38(1).

determinations.⁸ We have based the non-contestable revenue determination process and regulatory framework on Chapter 6A of the National Electricity Rules (NER). Chapter 6A of the NER does not apply to a revenue determination under the EII Act, however we are required, as far as is reasonably practicable, to make guidelines consistent with Chapter 6A of the NER, as that Chapter applies to making a revenue determination.⁹ Therefore, as part of our Guideline for NSW non-contestable network infrastructure projects (Guideline) we include a modified version of Chapter 6A of the NER, which we refer to as EII Chapter 6A (**Appendix A**). ~~We have separately made available a marked up copy of NER Chapter 6A to provide an easy comparative for interested stakeholders.~~

Our application of this Guideline which includes EII Chapter 6A will be consistent with NER Chapter 6A, except where the EII Act or EII Regulation require an alternative approach, or we consider that compelling reasons exist to deviate based on the relevant objects and principles of the EII Act. In these instances, we shall provide reasons in our non-contestable revenue determination.

It is important to read this Guideline in conjunction with the EII Act, EII Regulation and any supporting guidelines, incentive schemes and models referred to herein.

Consistent with the NSW Government policy paper,¹⁰ in developing this Guideline we have sought to:

- maintain consistency with NER Chapter 6A, NER guidelines, incentive schemes and models to the extent appropriate
- enable the EII Act framework to adapt as rule changes to the national framework are made by the Australian Energy Market Commission or changes to the applicable NER guidelines, incentive schemes or models are made by us
- ensure we have a clear basis to apply an approach that is consistent with the equivalent NER Chapter 6A rules when making or administering revenue determinations under the EII Act
- support continuous improvement by maintaining flexibility for us to adjust aspects of the framework over time in response to market developments and as we, the Infrastructure Planner, Consumer Trustee and Network Operators gain more operational experience implementing the EII Act framework
- substantially replicate Chapter 6A of the NER to provide clarity and certainty for Network Operators and investors in network infrastructure projects.

1.1.1 Our approach to this Guideline

EII Regulation 47A¹¹ prescribes what our Guideline for non-contestable revenue determinations must and must not deal with. It states that our Guideline must deal with matters set out in the NER, Chapter 6A, including:

- a. The building blocks approach
- b. The regulatory asset base
- c. Return on capital (applying the AER Rate of Return Instrument).
- d. Depreciation
- e. The estimated cost of corporate income tax
- f. Forecast operating expenditure (opex)
- g. Forecast capital expenditure (capex)

⁸ EII Act, s. 64(4).

⁹ EII Regulation, cl. 47A(3)(b).

¹⁰ NSW Government (Office of Energy and Climate Change), [Regulatory framework for the Transmission Efficiency Test and Regulator's determinations for network infrastructure projects: Policy paper \(nsw.gov.au\)](#), April 2022. We note from 1 January 2024 the Office of Energy and Climate Change is known as Energy, Climate Change and Sustainability and is part of the NSW Department of Climate Change, Energy, the Environment and Water.

¹¹ EII Regulation, cl. 47A(4).

- h. Reopening of a revenue determination for capex
- i. Network support pass through
- j. Cost pass through.

Our approach to these matters is set out in **Appendix A** (EII Chapter 6A), with additional explanatory material in this Guideline for matters where our approach differs significantly to our application of the NER. The body of this Guideline focuses on how we will undertake our regulatory role in making non-contestable revenue determinations,¹² including:

- which of our NER guidelines, incentive schemes and models apply to non-contestable determinations, or where we will develop specific EII guidelines, incentive schemes and models, (**section 3.3**).
- the information and consultation requirements on a Network Operator in submitting a revenue proposal to us, (**sections 3.5.1 and 3.5.2**).
- our approach to assessing a Network Operator's revenue proposal and making a revenue determination (i.e., a propose/respond model), with a focus on where this approach significantly deviates from our application of NER Chapter 6A, (**chapter 5**).
- how we will apply the Transmission Efficiency Test to each network infrastructure project, (**section 5.2**).
- our approach to depreciation, (**section 5.3**).

EII Regulation 47A(5) states that our Guideline for non-contestable revenue determinations must not deal with the following matters under the NER, Chapter 6A:

- a. Pricing
- b. Benchmarking reports
- c. Ring-fencing arrangements
- d. Shared assets
- e. The X-factor
- f. Small-scale incentive schemes
- g. Demand management innovation allowance mechanism
- h. Contingent projects
- i. Transmission consultation procedures
- j. Removal of assets from the regulatory asset base.

The EII Regulation contains a framework for the AER to make revenue determinations for contestable augmentations.¹³ The guideline sets out the process we will follow for assessing a non-contestable cost component of a contestable augmentation revenue determination (**chapter 6**).

Ring-fencing arrangements do form part of the non-contestable regulatory framework but these arrangements will be set out in separate EII guidelines. This requirement is specified under EII Regulation 42.

1.2 Who are we?

The AER exists to ensure energy consumers are better off, now and in the future. We are the economic regulator for electricity and gas networks in every state and territory in Australia except Western Australia. We regulate electricity networks under the National Electricity Law (NEL) and NER. We also regulate natural gas pipelines under the National Gas Law and the National Gas Rules.

¹² EII Regulation, cl. 47A(3)(a). We have developed a separate guideline for our role under the contestable process, available at: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/revenue-determination-guideline-for-nsw-contestable-network-projects>.

¹³ [EII Regulation, cl. 47E](#).

On 12 November 2021 we were appointed as a Regulator under the EII Act.¹⁴ A key function in this role is to apply a Transmission Efficiency Test and make revenue determinations for Network Operators authorised by the Consumer Trustee or authorised (or directed) by the Minister to undertake network infrastructure projects in NSW (under Part 5 of the EII Act).¹⁵ This Guideline only applies to non-contestable revenue determinations. Other functions undertaken by us under the EII Act, which are not covered by this Guideline, include:

- making annual contribution determinations in relation to the Electricity Infrastructure Fund (Part 7 of the EII Act);
- approving a risk management framework developed by the Consumer Trustee (Part 6 of the EII Act); and
- being consulted on tender rules in relation to long-term energy service agreements (Part 6 of the EII Act).

1.3 Authority for this Guideline

This Guideline is consistent with the regulatory framework for making revenue determinations established under the EII Act and EII Regulation.¹⁶ The NSW Government developed these regulations based on policy positions published in April 2022.¹⁷

Section 38(5) of the EII Act requires us to publish guidelines on our website about the Transmission Efficiency Test. We apply the Transmission Efficiency Test to calculate the prudent, efficient and reasonable capital costs for development and construction of a network infrastructure project (Transmission Efficiency Test guideline). Section 47 of the EII Regulation also requires us to publish guidelines about the exercise of our functions more broadly under Part 5 of the EII Act, which include making (and remaking) revenue determinations. We have combined these two functions into a guideline relating to non-contestable network infrastructure projects (this Guideline) and a separate guideline for contestable network infrastructure projects.¹⁸

Any references in the EII Act or EII Regulation to ‘transmission efficiency test guidelines’ and ‘guidelines published by the regulator under section 47’ should be taken to refer to this Guideline and our guideline relating to contestable network infrastructure projects.

We may amend this Guideline from time to time. Should we amend this Guideline, we will publish the proposed amendment on our website for a period of at least 20 business days and consider any submissions received within that period.¹⁹ We are not required to consult on any amendments we consider to be minor or administrative.²⁰ It is likely that most updates to Appendix A resulting from relevant changes to Chapter 6A of the NER will be minor or administrative in nature.²¹ However, should a change to Chapter 6A of the NER have a material impact on Appendix A, we will consult on the proposed change.

1.4 Interaction with the National Electricity Rules

Chapter 6A of the NER sets out the national framework for economic regulation of transmission network service providers, including the making of revenue determinations.²²

¹⁴ IPART has also been appointed as a Regulator to undertake certain functions under the EII Act. See: <https://www.aer.gov.au/networks-pipelines/nsw-renewable-energy-zones>.

¹⁵ EII Act, s. 36(4).

¹⁶ See *Electricity Infrastructure Investment Regulation 2021 (NSW)*. Also, EII Act s. 64(4) and EII Regulation, cl. 47A.

¹⁷ NSW Government (Office of Energy and Climate Change), *Regulatory framework for the Transmission Efficiency Test and Regulator’s determinations for network infrastructure projects*, April 2022.

¹⁸ Our contestable guideline was published on 19 August 2022.

¹⁹ EII Regulation, cls. 47C(1).

²⁰ EII Regulation, cl. 47C(2)(b).

²¹ EII Regulation, cl. 47C(2).

²² The NEL and NER do not regulate the carrying out of a network infrastructure project by a Network Operator under the EII Act.

Some differences exist between the EII and NER revenue determination approaches which reflect that the scope of our assessment under the EII Act is narrower than the scope of our assessment of a transmission network service provider's revenue proposal under the NER. For example, revenue determinations made under the EII Act will not consider the prudence of the authorised network option against other potential network options. The Infrastructure Planner performs this role. Our assessment is limited to considering the prudence, reasonableness and efficiency of capital costs the Network Operator proposes in its revenue proposal to comply with the terms of the Consumer Trustee's authorisation or the Minister's authorisation or direction.

1.4.1 EII non-contestable framework

Section 37 of the EII Act sets out principles that we must consider in making our revenue determination. The principles are:

- a. a Network Operator is entitled to recover the prudent, efficient and reasonable costs it incurs in carrying out the infrastructure project,
- b. incentives should be given to Network Operators to promote economic efficiency,
- c. a Network Operator is entitled to revenue for the ongoing ownership, control and operation of an infrastructure project that is commensurate with the regulatory and commercial risks to the Network Operator,
- d. a Network Operator is entitled to be informed of material issues being considered by the regulator under Division 3 of Part 5 of the EII Act,
- e. other principles prescribed by the EII Regulation.²³

The EII Act²⁴ and EII Regulation²⁵ require that a revenue determination include amounts for different components including:

- a. repayment of capital costs as determined under the Transmission Efficiency Test
- b. return on capital costs that have not been repaid
- c. an allowance for operating costs
- d. indexation of the regulatory asset base
- e. the estimated cost of corporate income tax of the Network Operator
- f. an increase or decrease in the Network Operator's revenue resulting from the operation of AER incentive schemes
- g. other risks for which the Network Operator is not already compensated under the component specified in the EII Act, section 38(2)(b)
- h. repayment of prudent, efficient and reasonable capital costs not included in part (a).²⁶

Taken together, these efficiency principles and revenue determination components replicate the structure of the building block model that we apply to regulated network businesses under the NER.

1.4.2 Application of this Guideline to distribution network projects

We expect network infrastructure projects under the EII Act to generally be of the nature of transmission networks. However, it is possible that brownfields network infrastructure projects could involve distribution assets. The building block framework we will apply to transmission networks under the EII Act is aligned to the framework we also use for regulating distribution networks under the NER. For simplicity, we intend to apply this Guideline to both transmission

²³ Including EII Regulation, cls. 46(1)(b), (2) and (3).

²⁴ EII Act, s. 38(2).

²⁵ EII Regulation, cl. 50A.

²⁶ This component is included because the TET only applies to development and construction capital costs not capex related to other activities such as replacement or augmentation.

and distribution network infrastructure projects.

2 Overview of the non-contestable framework

Under the EII Act, the Infrastructure Planner will make assessments and recommendations about certain matters relating to regulated network infrastructure projects, to the Consumer Trustee.²⁷ Following consideration of the Infrastructure Planner’s recommendation, the Consumer Trustee may:

1. Recommend that the Minister direct a Network Operator to complete a REZ network infrastructure project; or
2. Authorise a Network Operator to carry out a REZ network infrastructure project.²⁸

In addition to directing a Network Operator to carry out a network infrastructure project (only on the recommendation of the Consumer Trustee),²⁹ the Minister may also direct or authorise a Network Operator to carry out a priority transmission infrastructure project.³⁰

We have no role in the authorisation or direction of network infrastructure projects. Our role as the Regulator is to determine the amount payable to the Network Operator for carrying out the network infrastructure project³¹ irrespective of how that project was authorised or directed. We do this by assessing the prudence, efficiency and reasonableness of the Network Operator’s proposed costs in relation to authorized or directed network infrastructure project.³²

Table 1 sets out the key steps associated with the non-contestable framework with indicative timing. It covers the process for an initial determination, made following a new authorisation by the Consumer Trustee (or direction by the Minister), and subsequent determinations that are made (generally) every five years or in accordance with the EII Act.³³

Broadly, non-contestable revenue determinations include two stages:

- a. **Pre-lodgement**, including steps that the Infrastructure Planner, Consumer Trustee or Network Operator must undertake to recommend a network infrastructure project and to enable the Network Operator to submit its initial or subsequent revenue proposals.
- b. **Revenue determination**, including steps we will take to consider and consult on a revenue proposal and the preliminary position paper before making ~~draft and the~~ final determinations. Further detail on our assessment approach is set out in chapter 5.

Table 1: Key process steps associated with the non-contestable framework*

Milestone	Initial determination	Subsequent determination (generally every 5 years)
Pre-lodgement		
Consumer Trustee or Minister notifies the AER that an authorisation or direction has been made to a Network Operator.	The authorisation or direction is published.	n/a
AER develops and issues information notice under s.38(7)	Best endeavours to provide at least 80 business days before	At least 80 business days before Network Operator’s revenue

²⁷ EII Act, s. 30(1) and EII Regulation, cl. 43.

²⁸ EII Act, s. 31(1).

²⁹ EII Act, s. 33.

³⁰ EII Act, ss. 32(1) & 36(2).

³¹ EII Act, s. 38(1).

³² EII Act s. 38(6).

³³ EII Act s. 40.

Milestone	Initial determination	Subsequent determination (generally every 5 years)
of the EII Act to a Network Operator.	Network Operator's revenue proposal is due.	proposal is due.
Network Operator submits a cost allocation methodology for approval by the AER. ³⁴	Best endeavours to submit at least 60 business days before Network Operator's revenue proposal is due.	At least 60 business days before Network Operator's revenue proposal is due.
AER decides to approve or refuse to approve a Network Operator's cost allocation methodology	Not more than 30 business days from receipt of Network Operator's cost allocation methodology.	Not more than 30 business days from receipt of Network Operator's cost allocation methodology.
Network Operator consults with stakeholders on the network infrastructure project and its draft revenue proposal.	Network Operator uses best endeavours to conduct pre-lodgement stakeholder consultation consistent with the AER's Better Resets Handbook. ³⁵ Where stakeholder engagement issues are identified by the Network Operator, these are raised with the AER early.	Prior to submitting a revenue proposal to the AER, noting the time required to accept stakeholder submissions and incorporate them into a final revenue proposal.

Revenue determination

Network Operator submits to the AER its revenue proposal and response to information notice. ³⁶	By the date specified in the Consumer Trustee's authorisation or Minister's direction or authorisation, or stated in contractual arrangements, for making a revenue determination.	At least 160 business days before the end of the current regulatory control period under the EII Act.
AER conducts compliance and confidentiality checks and publishes compliant revenue proposal for public consultation and submissions.	Publish compliant revenue proposal upon completion of compliance check.	Publish compliant revenue proposal upon satisfactory compliance check.
Submissions on Network Operator's revenue proposal close	14 business days from receipt of the 15 business days from the date of publishing the Network Operator's revenue proposal.	14 business days from receipt of the 15 business days from the date of publishing the Network Operator's revenue proposal.
AER commences assessment under EII Act and EII Regulation, and this Guideline.	We may request further or clarifying information during our assessment process.	We may request further or clarifying information during our assessment process.
AER advises the Network Operator of material issues under consideration and consults with the Infrastructure Planner. ³⁷	Periodically throughout the revenue determination process, including but not limited to before our draft and final determinations.	Periodically throughout the revenue determination process, including but not limited to before our draft and final determinations.

³⁴ Our request for a cost allocation methodology will be included in the information notice issued under EII Act, s. 38(7).

³⁵ See: AER, *Better resets handbook - Towards consumer centric network proposals*, December 2021.

³⁶ EII Regulation, cl. 48.

³⁷ EII Regulation, cl. 48; EII Act s. 37(1)d.

Milestone	Initial determination	Subsequent determination (generally every 5 years)
AER publishes a preliminary position paper for public consultation. AER publishes a draft determination for public consultation.	Approximately 55 business days from receipt of Network Operator's revenue proposal. 64 business days from receipt of Network Operator's revenue proposal.	Approximately 55 business days from receipt of Network Operator's revenue proposal. 64 business days from receipt of Network Operator's revenue proposal.
Submissions on preliminary position paper close. Network Operator submits revised revenue proposal.	15 business days from the date of publishing the preliminary position paper. 92 business days from date of receipt of Network Operator's revenue proposal.	15 business days from the date of publishing the preliminary position paper. 92 business days from date of receipt of Network Operator's revenue proposal.
Submissions on AER draft determination and Network Operator's revised revenue proposal close. Material is published.	103 business days from date of receipt of Network Operator's revenue proposal.	103 business days from date of receipt of Network Operator's revenue proposal.
AER undertakes assessment of relevant aspects of revised revenue proposal and considers submissions received.	Ongoing from receipt of stakeholder submissions. Network Operator's revised regulatory proposal.	Ongoing from receipt of stakeholder submissions. Network Operator's revised regulatory proposal.
AER publishes final determination and supporting analysis.	126 business days from date of receipt of Network Operator's revenue proposal.	126 business days from date of receipt of Network Operator's revenue proposal.
Annual revenue adjustment process consistent with the revenue control mechanism in the determination. ³⁸	N/A	See section 5.5.

*All timing is indicative only.

The Regulations indicate that, if we are unable to make a revenue determination within 126 business days, we must prepare a report to the NSW Energy Minister that sets out our reasons for not making the determination within that timeframe, the date by which we expect to make the revenue determination and publish the report on our website.³⁹

³⁸ EII Act, s. 40 and EII Regulation, cl. 51.

³⁹ EII Act, s. 50(3).

3 Pre-lodgement

There are steps that the Infrastructure Planner, Consumer Trustee, Network Operator and AER must undertake before a Network Operator is able to submit its initial or subsequent revenue proposal and for us to commence assessing that proposal. This section outlines:

- The roles and responsibilities of the Consumer Trustee, Network Operator and AER, under the EII Act and EII Regulation in completing the key process steps set out in table 1.
- How we will approach the pre-lodgement process.

3.1 Consumer Trustee authorisation or Minister's authorisation/direction

As noted in chapter 1, the Consumer Trustee may authorise, or the Minister direct or authorise a Network Operator to carry out a REZ network infrastructure project based on the recommendations of the Infrastructure Planner.⁴⁰ The Infrastructure Planner's recommendations for a REZ network infrastructure project must cover:

- the different options for network infrastructure projects to provide the intended network capacity for the renewable energy zone
- staging and sequencing of network infrastructure projects
- funding, procurement and cost recovery for the recommended network infrastructure projects
- other matters prescribed by the EII Regulation.⁴¹

Should the Consumer Trustee recommend the Minister give a direction⁴² to a Network Operator to carry out a REZ network infrastructure project the Minister's direction must specify:

- the Network Operator required to carry out the infrastructure project,
- the location and description of the infrastructure project,
- the requirements for the development and construction of the infrastructure project,
- the staging and sequencing of the planning, design and construction of the infrastructure project,
- the date by which the Network Operator, taking all reasonable steps, is to complete the planning, design and construction stages of the infrastructure project,
- other matters prescribed by EII Regulation.⁴³

3.2 Maximum capital cost for a REZ network infrastructure project

Where the Consumer Trustee authorises a Network Operator to carry out a REZ network infrastructure project, the Consumer Trustee must also set a maximum capital cost for the prudent, efficient and reasonable capital costs to develop and construct each network

⁴⁰ EII Act, s. 31(1). For priority transmission infrastructure projects, the Minister does not require recommendations from the Infrastructure Planner. See EII Act, ss. 32(3) and 34(1).

⁴¹ EII Act, s. 30(2).

⁴² EII Act, s. 31(a).

⁴³ EII Act, s. 32(2), EII Regulation, cls. 20(1)(a); specify the grounds on which the Minister is satisfied giving the direction is consistent with the objects of the Act, and (a1); specify the contractual arrangements that the network operator is required to enter to carry out the infrastructure project, and (b); contain other matters the Minister considers relevant.

infrastructure project,⁴⁴ and to notify us of that amount.⁴⁵

This maximum capital cost remains confidential and acts as an upper constraint on the capital expenditure (capex) allowance for development and construction costs that we can determine as part of applying the Transmission Efficiency Test.

3.3 Application of guidelines, incentive schemes and models

The EII Regulation requires us to make guidelines that are consistent with Chapter 6A of the NER as far as reasonably practicable.⁴⁶

Where applicable, we intend to apply our current NER Chapter 6A guidelines, incentive schemes and models to non-contestable infrastructure projects under the EII Act,⁴⁷ subject to terminology modifications (see Appendix A).

The benefits of this approach include:

- It achieves the requirements in the EII Regulation of maintaining consistency with NER Chapter 6A, NER guidelines, incentive schemes and models to the extent appropriate.⁴⁸
- The current NER Chapter 6A guidelines, incentive schemes and models were developed through extensive stakeholder consultation, including with transmission network service providers, who will likely be the Network Operators for non-contestable determinations.
- Network Operators (who are likely to be incumbents) and other key stakeholders are familiar with the policy intent, application and operation of the guidelines, incentive schemes and models.
- Minimising the possibility for inconsistency between the EII Act and NER guidelines that have no material differences, including in their application.
- Reducing the administrative burden on Network Operators, stakeholders and us by not having to consult on a suite of EII Act specific guidelines that are identical to or are not materially different to their NER equivalent.
- It sets a reasonable precedent should we have a regulatory role in renewable energy zones in other jurisdictions.

The following current NER Chapter 6A guidelines, models and incentive schemes will apply to Network Operators under the EII framework:⁴⁹

1. AER current NER guidelines

- a. Better Resets Handbook – Towards consumer centric network proposals
- b. Expenditure forecast assessment guideline
- c. Expenditure incentives guideline

2. AER current NER incentive schemes

- a. Efficiency benefit sharing scheme
- b. Capital expenditure sharing scheme

3. AER current models

⁴⁴ Excluding priority transmission infrastructure projects.

⁴⁵ EII Act, ss. 31(2), 38(6).

⁴⁶ EII Regulation, cls. 47A and 47B. The list in the EII Regulation is not exhaustive and we may also apply any other supporting guidelines, incentive schemes or models that are consistent with those made under Chapter 6A of the NER.

⁴⁷ A small number of NER transmission guidelines, incentive schemes and models are not relevant given the nature of network infrastructure projects under the EII Act.

⁴⁸ EII Regulation, cl. 47B(3).

⁴⁹ All current relevant supporting handbooks, guidance notes and the like published on the AER's website will also apply to Network Operators under the EII framework.

- a. Electricity post-tax revenue model (PTRM) and associated handbooks, (as modified in accordance to the AER's guidance note 'Amendments to NER PTRM for determinations under the Electricity Infrastructure Investment Act and Regulations' to ~~remove the X-factor as smoothing is undertaken at the contribution determination stage~~)⁵⁰
- b. Electricity roll-forward model and associated handbooks.

The financeability guidelines as developed under the NER Chapter 6A.6.3A(p)–(s) will also apply under the EII Framework.

In its revenue proposal a Network Operator may propose to modify the application of a guideline, incentive scheme or model but must provide reasons for doing so. Depending on the circumstances and the reasoning, we may be willing to consider modifying our current incentive schemes and we would do this on a case-by-case basis.

We will amend or update guidelines, incentive schemes and models made under Chapter 6A of the NER in accordance with the NER. When this occurs, we will direct Network Operators, scheme entities and other key stakeholders to the consultation process. This approach aligns with that outlined in section 1.1.1 and avoids duplication of consultation processes unless material differences arise.

4. EII specific guidelines

Regulation 42 requires us to issue guidelines for Network Operators that address the following:

- ...
- (i) *the legal separation of the entity through which a network operator conducts regulated activities from any other entity through which it conducts business,*
 - (ii) *the establishment and maintenance of consolidated and separate accounts for regulated activities and other activities conducted by the network operator,*
 - (iii) *the limitations on the flow of information from or within the network operator if there is the potential for a competitive advantage or disadvantage to arise, and*
 - (b) *set standards about the legal and functional separation of the regulated activities of a network operator from other activities of the network operator, and*
 - (c) *monitor compliance by network operators with the standards.*

We will also develop an:

- EII Confidentiality Guideline.
- EII Cost Allocation Guideline
- EII Service target performance incentive scheme. This scheme would apply to non-contestable determinations from the second regulatory control period onwards.⁵¹

Following further direction from the NSW Government we anticipate finalising guidelines required under Regulation 42. We will consult with stakeholders on these guidelines. We will commence development of a service target performance incentive scheme at a later date, noting that this scheme will apply to non-contestable determinations from the second regulatory control period.⁵² We will also consult with stakeholders on development of this scheme.

⁵⁰ The guidance note provides direction on how to modify the PTRM to remove sections or calculations that are to be excluded from an EII determination, such as the X-factor smoothing (EII Regulation, cl. 47A(5)(e)) ~~which excludes the X-factor~~. Revenue smoothing occurs through the annual contribution determination process under the EII Act, s. 56.

⁵¹ EII Regulation, cl. 47B(2).

⁵² EII Ch 6A, cl. 6A.19.2.

3.4 Submitting a cost allocation method

Under clause 6A.19.4 of EII Chapter 6A, a Network Operator must submit a cost allocation methodology to us for approval in compliance with the cost allocation principles⁵³ and the EII specific Cost Allocation Guideline. We consider it likely that most Network Operators subject to a non-contestable determination will be incumbent transmission network services providers and as such have an existing cost allocation methodology that they can update to address the EII Act, EII Regulation and relevant guidelines. This reduces the administrative burden of having to prepare an additional cost allocation methodology.

A Network Operator must submit a cost allocation method to the AER no less than 60 business days prior to the deadline for the Network Operator to submit its revenue proposal.

We will publish a decision as to whether we have approved or refused to approve a Network Operator's cost allocation methodology within 30 business days of receiving it, failing which we will be taken to have approved it.⁵⁴

3.5 Notifying the AER of an intention to submit a revenue proposal

We encourage open engagement between a Network Operator and us, including prior to lodging a revenue proposal to assist in early identification of potential issues.

When preparing its initial or subsequent revenue proposal, a Network Operator should, provide an overview of its approach to issues like:

- a. The methodology the Network Operator intends to use to forecast operating expenditure and capital expenditure.
- b. The Network Operator's approach to stakeholder consultation in developing its revenue proposal.
- c. The Network Operator's approach to applying incentive schemes and pass-through events.
- d. Any other matter the Network Operator considers relevant to bring to our attention.

We expect that we and the Network Operator would commence these discussions at a reasonable time in advance of the Network Operator submitting its revenue proposal. We intend to have an open dialogue with Network Operators on any emerging issues through bilateral and stakeholder engagement meetings prior to the submission of their formal revenue proposal. Where possible, we will provide feedback to the Network Operator and other stakeholders on any pre-lodgement issues to support and facilitate the engagement process between the Network Operator and its stakeholders in the development of the revenue proposal. The level and timing of our feedback may vary depending upon the nature of the engagement undertaken by the Network Operator and the availability of information and data available to us.

3.5.1 Pre-lodgement stakeholder consultation

We expect a Network Operator will use its best endeavours to engage with stakeholders ahead of submitting its revenue proposal to us. This may include, but is not limited to, consulting stakeholders on the nature of the project through to the costs that it proposes to incur to meet the requirements of the Consumer Trustee's authorisation or the Minister's authorisation or direction. We expect that a Network Operator, where possible and appropriate, will incorporate the findings of this pre-lodgement stakeholder engagement into its revenue proposal. We acknowledge that a non-contestable infrastructure project may have interlinkages with a contestable project that is based on extensive commercially sensitive information. We appreciate that this may constrain the

⁵³ EII Ch 6A, cl. 6A.19.4(c).

⁵⁴ EII Ch 6A, cl. 6A.19.4(d).

information shared as part of ability of the Network Operator's stakeholder engagement. For an initial revenue determination, the timing between an authorisation or direction and the due date for a revenue proposal is unknown and may vary between non-contestable determinations. In these instances, we expect that a Network Operator will use its best endeavours to publish a draft of its revenue proposal for public comment and reflect consumer views in its revenue proposal to us.

For subsequent revenue determinations our expectation is that a Network Operator will publish its draft revenue proposal and allow time for stakeholders to make a submission and reflect consumer views in its revenue proposal before submitting it to us.

In undertaking stakeholder consultation, a Network Operator should aim to satisfy the principles set out in the *AER's Better Resets Handbook – Towards consumer centric network proposals*:⁵⁵

- a. clear, accurate and timely
- b. accessible and inclusive
- c. transparent
- d. measurable.

Our guidance note on regulation of actionable ISP projects also provides helpful advice on best practice stakeholder consultation for large transmission projects.⁵⁶

The Network Operator's stakeholder consultation will be narrower than that of transmission network service providers under the NER, as the Consumer Trustee's authorisation or Minister's authorisation or direction will specify most aspects of the non-contestable project. A Network Operator should adapt our guidance on consumer engagement to reflect the more limited scope of their engagement.

We do not expect Network Operators to re-engage with stakeholders on issues that remain unchanged and previously consulted on and settled by the Infrastructure Planner, Consumer Trustee or Minister. Where it is appropriate to rely on the outcomes of earlier engagement processes to support its revenue proposal, a Network Operator may decide to do so.

3.5.2 Information notices under section 38(7) of the EII Act

Under the EII Act we will issue written notices to a Network Operator requiring it to provide information that we require to make a revenue determination.⁵⁷ A Network Operator must comply with any information notice we issue unless it has a lawful excuse.⁵⁸

Prior to receiving a revenue proposal, we will issue a notice for information we require to be included in a proposal to enable us to make a revenue determination. Before issuing this information notice, we will engage with the relevant Network Operator. We may also issue a draft information notice to the Network Operator for comment. The information notice will, as a minimum, include the information contained in section 4.1.1 of this Guideline but may also include expenditure and other information to support our assessment of the Network Operator's revenue proposal. Where relevant, information provided in response to a notice may be required to be subject to independent assurance (audit or review) and be supported by a statutory declaration.

We may also request information be provided voluntarily during our assessment of a revenue proposal to assist us in making our revenue determination.

⁵⁵ AER, [Better Resets Handbook - Towards consumer centric network proposals](#), 9 December 2021.

⁵⁶ AER, [Guidance note - Regulation of actionable ISP Projects](#), March 2021.

⁵⁷ EII Act, s.38(7)-(8) and EII Regulation, cl. 48.

⁵⁸ EII Act, s.38(9).

4 Revenue determination process

This section sets out the revenue determination process, including the contents of a Network Operator's revenue proposal and consultation processes.

4.1 Revenue proposal

4.1.1 Contents of a revenue proposal

A revenue proposal from a Network Operator must include all information and matters set out in EII Chapter 6A, Schedule 6A.1.⁵⁹ It must further:

- (1) Include a statement of how the Network Operator's revenue proposal is consistent with the relevant Consumer Trustee authorisation or Minister's direction or authorisation and, if it is different, identify and provide reasons for the differences.
- (2) Identify any parts of the revenue proposal the Network Operator claims to be confidential and the ground for the confidentiality claim in accordance with the EII Act, EII Regulation and EII Confidentiality Guideline.
- (3) Include the revenue (in total and annually) to be paid to the Network Operator for carrying out the project, including a break-down of the total and annual amounts into their components (as set out under section 38 of the EII Act and the EII Regulation).⁶⁰
- (4) Include a schedule of payments setting out quarterly amounts proposed to be paid to the Network Operator by the Scheme Financial Vehicle (as defined under the EII Act) for carrying out the project, and the methodology by which these quarterly amounts are to be calculated from the total revenue.⁶¹
- (5) Include a formulaic description of any mechanisms that will be used to adjust⁶² the revenue proposed to be paid to the Network Operator and the schedule of payments within the regulatory control period (for example, to adjust payments for actual inflation). For each mechanism, provide:
 - a. a description of the components to be adjusted
 - b. the timing of the adjustment for each component, or relevant trigger event
 - c. a detailed explanation of the proposed method of indexation, escalation or adjustment
 - d. identification of the authoritative source (or sources) of indices or data to be used for any indexation, escalation or adjustment.
- (6) Include proposed costs incurred by the Network Operator in complying with a regulatory requirement and how those costs were calculated.⁶³
- (7) Include payments required to be made by the Network Operator to the Infrastructure Planner under any contractual arrangement. These costs may include the costs of early development works, preparatory activities and project management undertaken by the Infrastructure Planner (including land, easements, project development work, client delivery and related costs) that are being passed through to the Network Operator.
- (8) Include for all financial values the dollar terms in which the amounts are presented.
- (9) Total development and construction capex necessary to carry out the network infrastructure

⁵⁹ Some matters in EII Chapter 6A, Schedule 6A.1 only apply to subsequent regulatory control periods. These are noted in appendix A.

⁶⁰ EII Act, ss. 38(1), 38(2) and EII Regulation, cls. 48 and 50A.

⁶¹ EII Regulation, cl. 52.

⁶² EII Regulation, cl. 51.

⁶³ EII Regulation, cl. 46(1).

project according to the Consumer Trustee's authorisation or Minister's direction or authorisation.

- a. A forecast of development and construction capex the Network Operator will incur in the first regulatory control period.
 - b. A forecast of development and construction capex the Network Operator will incur in one or more subsequent regulatory control periods.
 - c. How the proposed staging of development and construction capex complies with the terms of the Consumer Trustee's authorisation or Minister's authorisation or direction.
 - d. Any actual or forecast development and construction capex the Network Operator has or expects to incur before the commencement of the first regulatory control period.
- (10) Include matters relating to depreciation for the purposes of EII Regulation 47D(3).
- (11) Be accompanied by an overview paper which includes:
- a. a summary of the revenue proposal, the purpose of which is to explain the revenue proposal in reasonably plain language to electricity consumers;
 - b. a summary of the scope and terms of the Consumer Trustee's authorisation or the Minister's direction or authorisation and the network infrastructure project required to be carried out;
 - c. a description of how the Network Operator has engaged with electricity consumers and, if so, what feedback was provided and how that feedback has been taken into account in developing the revenue proposal; and
 - d. for each determination after the initial determination, a comparison of the Network Operator's proposed revenue cap with its approved revenues for the preceding regulatory control period (by total and by component).

A revenue proposal must be accompanied by the information requested in an information notice issued under the EII Act.⁶⁴

The Network Operator must also provide a public version of its revenue proposal that includes a summary of its pre-lodgement engagement and any supporting information (including a response to any information notice) for publication on our website.

4.1.2 Treatment of confidential information through revenue determination process

The EII Confidentiality Guideline⁶⁵ will set out handling of confidential information in relation to:

- a Network Operator's revenue proposal, which is required for the AER to make a revenue determination under sections 38 of the EII Act and EII Regulation 48.
- a Network Operator's responses to any information notices we issue under section 38(7) of the EII Act.
- any other information provided by the Network Operator that is necessary for us to perform our functions.

The Confidentiality Guideline will also set out how Network Operators should submit confidentiality claims to us and our process for considering confidentiality claims.

A Network Operator is entitled to include commercially sensitive information as part of its revenue proposal.

Consistent with this Guideline, a Network Operator should discuss its approach to confidential

⁶⁴ EII Act, s. 38(7).

⁶⁵ EII Regulation, cl. 47 requires us to publish guidelines on its website about the exercise of our functions under Part 5 of the Act, including making a revenue determination.

information with us prior to lodging the revenue proposal so that any issues can be addressed prior to submission.

We may publish on our website the Network Operator's revenue proposal and other information it may provide in response to an information request under section 38 of the EII Act. However, we must not publish this other information if we are satisfied that it is confidential or commercially sensitive.⁶⁶

When publishing our revenue determination, we can decide not to publish parts of our revenue determination if we are satisfied that it is not appropriate, considering the following matters:

- the public interest;
- the extent to which publishing the part of the revenue determination would disclose information that is confidential or commercially sensitive; and
- the effect of publishing the part of the revenue determination on future competitive assessment processes.⁶⁷

Therefore, when assessing a Network Operator's confidentiality claims we may have regard to the above-mentioned matters.

4.2 AER preliminary position paper

We will publish a preliminary position paper approximately 55 business days after receiving the Network Operator's revenue proposal. The purpose of this paper is to provide an early indication of our assessment of the revenue proposal and receive feedback from stakeholders.

The preliminary position paper will set out:

- a short summary of the revenue proposal including the areas where we are likely to accept the Network Operator's proposed position in our final decision.
- a short summary of the areas of differences between our assessment and the Network Operator's revenue proposal. Where practical, we will provide an indication of the materiality of these differences on the total revenue amount proposed by the Network Operator.
- explanation of our position on any material and/or contentious matters where we are unlikely to accept the proposed revenue proposal position and are seeking further information from the Network Operator
- our position on any material issues raised in written submissions on the revenue proposal
- upcoming timelines and milestones for the revenue determination process
- information on how stakeholders can provide feedback to the AER

We will undertake our usual confidentiality checks prior to publication of a preliminary position paper in relation to the revenue proposal or financeability request in accordance with clause 6A.11.2A of EII Chapter 6A.

4.24.3 Consultation on revenue proposal and preliminary position paperdraft decision

We intend to publish and consult on:

- a. The Network Operator's revenue proposal and information requested under an information

⁶⁶ EII Regulation, cls. 53(5) and (6).

⁶⁷ EII Regulation, cl. 53(4)(b).

notice⁶⁸ as soon as practicable following our compliance and confidentiality checks⁶⁹

b. Our ~~draft decision~~ preliminary position paper

We will provide an opportunity for stakeholders to make submissions on the Network Operator's revenue proposal and our preliminary position paper. We will allow provide stakeholders approximately 158 business days from us publishing the Network Operator's revenue proposal and 28 business days between us publishing our draft determination to provide submissions on each.

We will publish all stakeholder submissions on our website, except where a stakeholder provides a submission in confidence. We prefer submissions that we can publish to enhance the transparency of our determination processes. Where a confidential submission is provided, we request that stakeholders also provide a redacted version suitable for publication.

We may hold a public forum on the Network Operator's revenue proposal and/or our after releasing our draft decision preliminary position paper. We will advise of our intention at the time of publishing ~~a regulatory proposal or~~ our preliminary position paper draft decision.

We encourage stakeholders to make written submissions and participate in the public forum if they wish to be involved in the revenue determination process.

⁶⁸ EII Act, s. 38(7).

⁶⁹ This is consistent with the requirement set out in EII Chapter 6A, cl. 6A.11.3.

5 AER's assessment approach

5.1 Compliance review of the revenue proposal

Upon receipt of the Network Operator's revenue proposal, we will:

- a. undertake a compliance review of the proposal to ensure that it meets requirements set out in EII Act and EII Regulation and this Guideline, including the completeness of models.
- b. assess whether the Network Operator has submitted information in compliance with our EII Confidentiality Guideline.
- c. assess whether the revenue proposal is consistent with the requirements of an authorisation made by the Consumer Trustee, or a direction or authorisation issued by the Minister; and
- d. assess that the Network Operator's response to any information notice we issue under the EII Act is complete
- e. for a REZ network infrastructure project authorised by the Consumer Trustee, assess whether the Network Operator's proposed capital cost to develop and construct a project exceeds the maximum capital cost set by the Consumer Trustee.

If the Network Operator's revenue proposal does not comply with requirements (a)–(e), we will notify the Network Operator, Consumer Trustee and Infrastructure Planner and discuss the areas of non-compliance as soon as practicable after receiving the revenue proposal.⁷⁰

If we notify the Network Operator of non-compliance in its revenue proposal the Network Operator must, within 10 business days of that notice, resubmit its revenue proposal or provide further information in a form that complies with the relevant requirements that we have set out.

If we accept the Network Operator's revenue proposal, we will publish the public version of it on our website for consultation, noting that we are unable to consider stakeholder views on aspects of the network infrastructure that have been set out in the Consumer Trustee's authorisation or Minister's authorisation or direction as these are matters outside the control of the Network Operator.

5.2 Transmission Efficiency Test and forecast capital expenditure

We will apply the Transmission Efficiency Test and forecast capital expenditure objectives, factors and criteria to calculate the total capex allowance a Network Operator may recover for a REZ network infrastructure project. The following section sets out our approach applying the Transmission Efficiency Test to development and construction capex and assessing a Network Operator's broader forecast capital expenditure.

5.2.1 Subsequent revenue proposals

In subsequent revenue proposals, Network Operators may seek to recover capex other than development and construction capex. In these instances, we will apply:

- a. The Transmission Efficiency Test for any further development and construction capex (where it goes beyond the initial regulatory control period)⁷¹
- b. The maximum capital cost for development and construction capex (again, where it goes beyond the initial regulatory control period)

⁷⁰ EII Act, s. 31(3). Noting that such discussions must preserve the confidentiality of the Consumer Trustee's maximum capital cost, where applicable.

⁷¹ EII Regulation, cl. 51(4) permits us to adopt, without recalculation, the existing capital costs calculated using the transmission efficiency test for the previous determination.

- c. Our forecast capital expenditure assessment for all remaining capex proposed (which is equivalent to the TET).

Therefore, in subsequent revenue proposals the Transmission Efficiency Test is an input to determine a Network Operator's total capex allowance (assuming development and construction capex extends beyond the initial regulatory period).

Our assessment process for the Transmission Efficiency Test and forecast capital expenditure is set out at clause 6A.6.7 of EII Chapter 6A.

5.2.2 Staging development and construction capex beyond the initial regulatory control period

We expect that a Network Operator will incur most development and construction capex within the first five years. However, we note that depending on the size and nature of the network infrastructure project, some building of the infrastructure may be staged beyond the initial regulatory control period, meaning development and construction capex would form part of the Network Operator's subsequent revenue proposals.

If development and construction capex is to be staged over more than one regulatory control period, we expect that the Consumer Trustee's authorisation or Minister's direction will state the timing, and if so, how this is reflected in any maximum capital cost the Consumer Trustee sets.

A Network Operator must provide a forecast of its development and construction capex necessary to carry out the network infrastructure project as required under the Consumer Trustee's authorisation (as detailed in section 4.1).

5.2.3 Prudent, efficient and reasonable

In applying the Transmission Efficiency Test, we must determine that the capital costs for development and construction for the network infrastructure project are prudent, efficient and reasonable.⁷²

Where practicable, we intend to ensure consistency between the NER Chapter 6A framework and the EII framework. In calculating the capital costs, we will calculate costs that are prudent and efficient as per our current *Expenditure Forecast Assessment Guideline for Electricity Transmission* (Expenditure Assessment Guideline). In our Expenditure Assessment Guideline, we state:

*"We consider that the notion of efficient costs complements the costs that a prudent operator would require to achieve the expenditure objectives. Prudent expenditure is that which reflects the best course of action, considering available alternatives. Efficient expenditure results in the lowest cost to consumers over the long term. That is, prudent and efficient expenditure reflects the lowest long-term cost to consumers for the most appropriate investment or activity required to achieve the expenditure objectives."*⁷³

In assessing whether the capital costs are reasonable, we will assess whether the costs, and the calculation of those costs, are based on reason or reasonably open based on the facts before us. Accordingly, in calculating prudent, efficient and reasonable capital costs, we will calculate costs that are prudent and efficient as per our current Expenditure Assessment Guideline, whilst ensuring that the calculations are reasonably open based on the facts before us.

5.2.4 Our approach to assessing forecast capex (other than development and construction capex)

The transmission networks we regulate under the NER are established 'brownfield' networks.

⁷² EII Act, s. 38(4).

⁷³ AER, [Forecast expenditure assessment guideline for transmission](#), 2013, p. 9. The Expenditure Assessment Guideline is framed around an assessment against the National Electricity Objective. In applying the guideline, we will have reference to the objectives of the EII Act.

That is, extensive infrastructure already exists. Therefore, our assessments examine the following additional categories of forecast capex:

- a. augmentations to the existing network (augmentation expenditure or augex)
- b. replacement of the existing network (replacement expenditure or repex)
- c. non-network capital expenditure
- d. connections and customer-initiated works capital expenditure.

In subsequent regulatory control periods and depending on the nature of the network infrastructure project, we expect to receive revenue proposals that include capex other than development and construction capex. Our approach to assess forecast capex is consistent with our Transmission Efficiency Test for assessing prudent, efficient and reasonable development and construction capex.

Some differences between the NER and EII regulatory frameworks may require us to modify the assessment techniques described in our expenditure forecast assessment guideline.⁷⁴ Potential modifications might include:

- a. Limited trend analysis in our initial determination but will be used for subsequent determinations.
- b. Predictive modelling for replacement expenditure and augmentation expenditure will be more relevant for subsequent determinations, where this category of capex is included in a Network Operator's revenue proposal.
- c. No cost benefit analysis as the assessment of different project options is done by the Infrastructure Planner in making recommendations to the Consumer Trustee.
- d. In considering the need for material replacement and augmentation expenditure in subsequent determinations, we will have regard to any instructions from the Consumer Trustee or Minister.⁷⁵
- e. We expect that applicable demand forecasts will be developed by the Infrastructure Planner, forming part of the basis of the Consumer Trustee's authorisation or Minister's authorisation or direction. Therefore, we will only assess a Network Operator's demand forecasts to the extent that they relate to any investment that is left to the discretion of the Network Operator.

5.2.5 Pre-period costs

It is possible that a Network Operator may incur costs related to the carrying out of a network infrastructure project prior to the first regulatory period commencing. As there will not be an existing determination or RAB for the Network Operator, these costs (if validly incurred) will need to be included in the post-tax revenue model as an opening RAB (together with appropriate financing costs). In order for these pre-period costs to be factored into amounts payable to a Network Operator they must be included in a Network Operator's revenue proposal for the initial regulatory period. The Network Operator will need to provide justification that the costs are:

- consistent with the relevant authorisation or Ministerial direction;
- related to the carrying out of the infrastructure project; and
- prudent, efficient and reasonable.

We will review the information provided by the Network Operator on the pre-period costs before deciding whether or not to include them in our determination. We expect most pre-period costs to

⁷⁴ Our assessment techniques are summarised in cl. 2.4 of the *AER's Expenditure Forecast Assessment Guideline – Transmission*.

⁷⁵ However, we expect any material augmentation will be covered by a separate authorisation or direction and separate revenue determination rather than being assessed as part of broader capex in a subsequent revenue determination under the original authorisation or direction.

be capital expenditures but will review any operating expenditures proposed to be recovered.

5.3 Depreciation

The approach to calculating depreciation is captured in the EII Regulation and EII Chapter 6A (Appendix A) ~~and varies from our current approach in the NER by requiring us to modify depreciation schedules prepared in accordance with the NER if we are satisfied that it is reasonably necessary to ensure:~~

- ~~a. the non-contestable revenue determination is consistent with the objects of the EII Act, specified in section 3(1)(a)–(c), and~~
- ~~b. the Network Operator is capable of efficiently obtaining finance to carry out the network infrastructure project.~~

~~This Regulation permits us to adjust depreciation if we consider that there is merit in doing it on a whole of regulated business basis assessing, amongst other things, key financial metrics.~~

~~Under the EII Regulation we must calculate the depreciation using the depreciation schedules prepared in accordance with NER Chapter 6A.⁷⁶~~

~~Our standard assessment approach, consistent with NER Chapter 6A.6.3 and the equivalent EII clause 6A.6.3, is set out in our assessment approaches for regulatory depreciation in our regulatory determinations.⁷⁷ One of the key considerations behind determining a depreciation schedule is ensuring it is calculated using a profile that reflects the nature of the asset (or category of assets) over its economic life.⁷⁸~~

5.3.1 Amending the depreciation schedule for financeability

~~The EII Regulation and EII Chapter 6A allow us to modify a depreciation schedule if a Network Operator is unable to efficiently obtain finance to carry out the infrastructure project (a financeability issue).⁷⁹ Specifically, we may depreciate the asset (or group of assets) using a profile that differs from the nature of the assets that we consider is appropriate to address a financeability issue.⁸⁰~~

~~To modify a depreciation schedule for a financeability issue, we must be satisfied that it is reasonably necessary to ensure:~~

- ~~a. the non-contestable revenue determination is consistent with the objects of the EII Act, specified in section 3(1)(a)–(c), and~~
- ~~b. the Network Operator is capable of efficiently obtaining finance to carry out the network infrastructure project.⁸¹~~

~~The process under which we will assess an application to amend the depreciation for a financeability issue is outlined in EII Chapter 6A.6.3A. Under EII Chapter 6A, a Network Operator~~

⁷⁶ –EII Regulation, cl. 47D(2). Where there is consistency between the NER Chapter 6A and EII Chapter 6A, for the purposes of determining depreciation in accordance with this EII Regulation, we will refer to EII Chapter 6A in this guideline.

⁷⁷ See for example our recent regulatory determination for Transgrid's 2023–28 regulatory control period under the NER and our determination for Transgrid's WSB augmentation project under the EII Framework. AER, *Transgrid 2023–28 – Draft Decision – Attachment 4 – Regulatory depreciation*, September 2022, pp. 3–7; AER, *Transgrid 2024–29 – Draft Decision – Waratah Super Battery project (non-contestable) – Appendix A – Assessment approaches*, September 2023, pp. 13–17.

⁷⁸ EII Chapter 6A, cl. 6A.6.3(b)(1).

⁷⁹ EII Chapter 6A.6.3A(n)(1); EII Regulation, cl. 47D(3).

⁸⁰ EII Chapter 6A, cl.6A.6.3A(n)(1). Any amendments for financeability must still conform with EII 6A.6.3(b)(2)–(3).

⁸¹ EII Regulation, cl. 47D(3).

can submit a financeability request to us,⁸² in which they can propose adjustments to the asset (or group of assets) to be depreciated on a basis other than on a straight-line depreciation approach.⁸³

EII Chapter 6A.6.3A sets out certain conditions under which a Network Operator may submit a financeability request to the AER. These conditions relate to:

- whether the relevant project (that is, the project the Network Operator is submitting a financeability request for) is an actionable ISP project⁸⁴
- whether it has obtained concessional financing in relation to this project or any other ISP project and whether any benefits are being retained by the Network Operator.⁸⁵

Following the Network Operator submitting a financeability request, we will apply the financeability test set out in EII Chapter 6A, to determine whether or not a financeability issue exists.⁸⁶ The financeability test assesses whether there is a financeability issue on a whole of regulated business basis—that is, if the Network Operator is also a Service Provider under the National Electricity and Gas Rules, we will take a view on financeability inclusive of any regulated assets.⁸⁷ As part of this test, we must determine the Network Operator’s financeability position⁸⁸ prior to and after the inclusion of the ISP project, in relation to a financeability threshold.⁸⁹

If the financeability test demonstrates that there is a financeability issue, we must, as part of our final decision, address the financeability issue by:⁹⁰

- a. preventing the Network Operator’s financeability position (as determined through the financeability test) from deteriorating below a particular threshold (also determined through the financeability test); or
- b. preventing the Network Operator’s financeability position from deteriorating from its initial position prior to the ISP project.

5.3.2 Financeability guideline

We are required to publish a financeability guideline under the NER Chapter 6A.⁹¹ The guideline will set out, among other considerations, how we will determine the financeability position of a Network Operator submitting a financeability request,⁹² the financeability threshold at which a financeability issue is identified,⁹³ and how modifications to the depreciation schedule will be made in the AER’s PTRM.⁹⁴ We will publish this financeability guideline under the NER by 31 December 2024.⁹⁵ To ensure regulatory consistency for the treatment of financeability across the two frameworks, once this financeability guideline is published, we will apply it to the EII framework when considering any financeability request submitted by a Network Operator.

⁸² EII Chapter 6A, cl. 6A.6.3A(b).

⁸³ EII Chapter 6A, cl. 6A.6.3A(b)(4).

⁸⁴ EII Chapter 6A, cl. 6A.6.3A(d).

⁸⁵ EII Chapter 6A, cl. 6A.6.3A(e).

⁸⁶ EII Chapter 6A, cl. 6A.6.3A(i) to (l).

⁸⁷ EII Chapter 6A, cl. 6A.6.3A(j).

⁸⁸ The Network Operator’s financeability position is calculated using the Maximum Allowable Revenue (MAR) derived from the prevailing Post Tax Revenue Model (PTRM). That is, the assessment is based on a Network Operator’s regulated business only and will use the benchmark gearing ratio set out in the applicable RORI, or the benchmark gearing ratio as adjusted for the increased equity component in that ratio in accordance with any relevant concessional finance agreement.

⁸⁹ The financeability threshold is equivalent to the benchmark credit rating in the applicable RORI.

⁹⁰ EII Chapter 6A, cl. 6A.6.3A(m).

⁹¹ NER Chapter 6A, cl. 6A.6.3A(p).

⁹² NER Chapter 6A, cl. 6A.6.3A(r)(1)–(2).

⁹³ NER Chapter 6A, cl. 6A.6.3A(r)(3).

⁹⁴ NER Chapter 6A, cl. 6A.6.3A(s).

⁹⁵ AEMC, *Rule determination –Accommodating financeability in the regulatory framework*, March 2024, p. 26.

In the event we receive a financeability request from a Network Operator prior to the final financeability guideline being published, we will use our reasonable endeavours to:

- assess whether there is a financeability issue through a financeability test,⁹⁶ and
- address a financeability issue (if found).⁹⁷

To the extent that a draft financeability guideline has been published under the NER,⁹⁸ we would look to apply the outcomes of the draft guideline where appropriate.

5.4 Forecast operating expenditure

Consistent with our approach to assessing forecast capex, we will apply our current expenditure forecast assessment guideline to assess Network Operators' revenue proposals and determine an opex allowance under the EII Act. We may modify our assessment approach to reflect differences between the EII framework and the NER framework where we identify the need to do so. Should we materially modify our approach, we will set these modifications out in our determination.

5.4.1 Establishing base opex for the initial revenue determination

In our initial determination for a network infrastructure project, we will have no base year from a preceding regulatory control period on which to assess revealed opex. In establishing a base from which to assess a Network Operator's proposed opex allowance we will consider the following factors in addition to our usual assessment approach:

- a. Input costs, metrics and benchmarks associated with any other NEM networks that the Network Operator or other similar businesses may own and operate (if applicable).
- b. Any elements of a contestable project that may impact the relevant non-contestable project's opex costs.
- c. The outcome of any detailed project review if required.
- d. Our approach to setting regulated opex for other network projects with similar characteristics (e.g. growth projects undertaken by TNSPs).

We expect that a Network Operator's initial proposed opex allowance should at a minimum adopt the general expectations set out in our expenditure forecast assessment guideline and be in accordance with the approved cost allocation methodology, and should identify and quantify:

- a. the number and cost of permanent and casual staff engaged to operate and/or maintain EII regulated network assets either exclusively or on a pro rata basis as appropriate,
- b. the cost of external contractors, consultants and other service providers providing operating and/or maintenance services in relation to the regulated network assets
- c. the cost-of-service contracts, insurance and other ongoing expenses exclusively associated with the regulated network assets.

5.5 Adjustment of a revenue determination

A network operator may include in its revenue proposal mechanism/s to adjust any amount provided for in our revenue determination. However, Regulation 51 of the EII Regulations

⁹⁶ EII Chapter 6A, cl. 6A.6.3A(i)–(l).

⁹⁷ EII Chapter 6A, cl. 6A.6.3A(m)–(n).

⁹⁸ NER Chapter 6A, cl. 6A.6.3A(p)–(s).

provides the AER with discretion as to whether or not to include an adjustment mechanism in its determination. The Regulations also state that a provision in our determination may specify that a particular adjustment:

- a. must be carried out at particular times or in particular circumstances.
- b. may or may not require the revenue determination to be revised and remade.

5.5.1 Assessment of adjustment mechanisms

We note that the EII contestable framework is largely consistent with the NER Chapter 6A framework and therefore provides for a number of adjustment mechanisms including pass through events and nominated pass through events. In assessing any proposed adjustment mechanisms, the AER is likely to have regard to the nominated pass-through event considerations referenced in the EII Chapter 6A Rules.

The ability of a network operator to propose adjustment mechanisms under the EII framework should not be interpreted as a retreat from incentive-based regulation. Incentive regulation is fundamental to promoting efficiency in both Chapter 6A of the NER and the EII Act.⁹⁹ For example, we note that we continue to expect expenditure forecasts proposed by a network operator and any adjustment mechanisms to be respectively unbiased estimates and symmetrical in their application.

5.5.2 Process for adjusting a Network Operator's revenues

The following sets out our process for adjusting a Network Operator's revenues as set out in our revenue determination.¹⁰⁰

1. *Network Operator submits to the AER proposed revenue adjustments, adjusted revenue and an adjusted payment schedule for the regulatory control period* – The information must be submitted by a specified date prior to the date the adjusted revenue will apply.
2. *Network Operator's revenue adjustment proposal must include evidence supporting the proposed adjustments* – This evidence would include details of inputs into the revenue adjustment mechanism and any supporting information.
3. *AER undertakes a compliance check and notifies the Network Operator whether we agree with the proposed revenue adjustments, adjusted revenue and an adjusted payment schedule for the regulatory control period* – We would review the Network Operator's proposal and undertake a compliance check against the relevant revenue adjustment provisions contained in our determination. We would advise the Network Operator whether we agree with the proposed revenue adjustments, require further information or require the Network Operator to amend and resubmit its proposal. We may amend the proposal if the Network Operator fails to submit an amended proposal that meets our requirements. Once we have approved the revenue adjustment proposal, we would advise the Network Operator and publish the adjusted revenue and payment schedule for the regulatory control period.

We expect to make revenue adjustments annually from the second year of the regulatory control period. For annual adjustments, we expect Network Operators to provide all relevant information required for us to assess the proposed adjustment at least 63 business days prior to the start of the annual period in which the adjusted revenue will first apply.

Our revenue determination may specify a trigger event which requires us to assess a proposed adjustment event outside of the annual process.¹⁰¹ A Network Operator must provide us with the relevant information to assess proposed adjustment as soon as practicable following the trigger

⁹⁹ EII Act 37(1)(b).

¹⁰⁰ EII Regulation, cl. 51.

¹⁰¹ EII Regulation, cl. 51(2)(b).

event. Where the AER approves a revenue adjustment, the adjusted revenue will apply from the start of the next full quarter (unless otherwise specified in the revenue determination).

We will endeavour to make revenue adjustment decisions within 42 business days of receipt of the revenue adjustment proposal.

5.6 Payments to be made by the Network Operator to the Infrastructure Planner

The EII Regulation sets out a range of costs a Network Operator is entitled to recover.¹⁰² We will determine these costs as part of our non-contestable revenue determination process. However, where a Network Operator is required to make payments to the Infrastructure Planner under a contractual arrangement as part of a relevant authorisation,¹⁰³ we will pass them through as part of our non-contestable revenue determination. That is, we do not review the efficiency, prudence or reasonableness of these costs but must still include them in our non-contestable revenue determination.

5.7 Transferring REZ network infrastructure to the NER

The EII Act provides for a network operator who is subject to a non-contestable revenue determination (and is also subject to an existing determination under the NER) to have its REZ network infrastructure assets transferred to the NER.¹⁰⁴ Since releasing our draft Guideline in November 2022, Regulations 54A–D have been made that set out the process and Ministerial Direction required for a Network Operator’s REZ network infrastructure to be transferred to a revenue determination made under the NER.

¹⁰² EII Regulation, cl. 46(1)(b).

¹⁰³ EII Regulation, cls. 46(1)(b)(ii) and 50A; EII Act, s. 38(2).

¹⁰⁴ EII Act, s. 42.

6 Non-contestable components of contestable augmentation determination

This section sets out the process for assessing a non-contestable cost component of a contestable augmentation revenue determination.

6.1 Framework for contestable augmentations

The EII Regulation contains a framework for the AER to make revenue determinations for contestable augmentations.¹⁰⁵ A contestable augmentation is a network infrastructure project carried out by a network operator to augment an existing network infrastructure project that is subject to a contestable revenue determination.¹⁰⁶ The contestable augmentation would be a separate network infrastructure project, subject to its own authorisation and revenue determination.¹⁰⁷

Under the EII Regulation, cost components of a contestable augmentation are determined through one of three methods:

1. as a result of a competitive assessment process (contestable costs)¹⁰⁸; or
2. using an appropriate referenced costs process contained in the contractual arrangements for the existing network infrastructure project (referenced costs)¹⁰⁹; or
3. by an AER assessment of the prudent, efficient and reasonable cost based on the application of our non-contestable Guideline (non-contestable costs)¹¹⁰.

After establishing an amount for each cost component, the AER must then combine the amounts into a revenue determination for the Network Operator.¹¹¹

Our process for assessing non-contestable cost components as part of a contestable augmentation must be set out in this Guideline.¹¹²

The broader process we will undertake in making a contestable augmentation determination, including information requirements and consultation with the Network Operator, will be set out in our contestable guideline. Any updated contestable guideline will also set out our approach to assessing contestable and referenced costs.

6.2 Assessment of non-contestable cost components

Our assessment of non-contestable cost components is only one component of a broader contestable augmentation determination. Most process elements of this Guideline will, therefore, not be relevant to that assessment. Relevant sections of the Guideline are set out below.

In proposing non-contestable costs, a Network Operator should have regard to the consultation expectations set out in section 3.5.1 of this Guideline.

¹⁰⁵ EII Regulation, cl. 47E.

¹⁰⁶ EII Regulation, cl. 3.

¹⁰⁷ EII Regulation cls. 47E(1) & 48(1A).

¹⁰⁸ EII Regulation, cl. 47E(2).

¹⁰⁹ EII Regulation, cl. 47E(3).

¹¹⁰ EII Regulation, cl. 47E(4).

¹¹¹ EII Regulation, cl. 47E(6).

¹¹² EII Regulation, cl. 47E(4).

Our assessment of proposed non-contestable costs will largely reflect the process set out in section 5 (AER’s assessment approach) of this Guideline. However, the EII Regulation requires us to also take into account the contractual arrangements for the related network infrastructure project, and any other contract entered into by the network operator under an authorisation in relation to the contestable augmentation.¹¹³ These requirements reflect the expectation that the structure of our determination, including adjustments and incentive schemes, will reflect the structure of the contestable determination for the related network infrastructure project.

The period for which we must set out the schedule of amounts required to be paid to the network operator for a contestable augmentation must also correspond with the term of the contractual arrangements for the related network infrastructure project.¹¹⁴ This may be a period of greater than five years. In these circumstances, we consider that bespoke models will need to be used to determine non-contestable cost components for the relevant project term.

6.3 Timeframe for our assessment

The timeframe for making a contestable augmentation determination differs from a standard non-contestable determination. The standard timeframe for the AER to make a revenue determination for a contestable augmentation is 84 business days.¹¹⁵ However, we may, by written notice to the network operator, extend the time period by a further 42 business days if satisfied the extension is reasonably necessary because:

- the revenue determination is complex, and
- we are not satisfied that a cost component should be considered a contestable or referenced cost.¹¹⁶

Noting this shorter timeframe, we expect to use a truncated approach to that set out in table 1 (section 2 of this Guideline). We expect to generally undertake a single round of public consultation either on the relevant non-contestable cost components as set out in the revenue proposal, or on an issues paper that we develop.¹¹⁷ Consistent with our approach to contestable determinations, we will not undertake consultation on contestable or referenced cost components of a contestable augmentation.

¹¹³ EII Regulation, cl. 47E(5).

¹¹⁴ EII Regulation, cl. 52(2)(d).

¹¹⁵ EII Regulation, cl. 50(a1).

¹¹⁶ EII Regulation, cl. 50(2A).

¹¹⁷ The AER may publish on its website information given to the AER under clause 48 that relates to a determination under clause 47E(4) for a contestable augmentation (EII Regulation, cl. 53(5)(b)).

Appendix A: Economic regulation of NSW non-contestable revenue determinations under Part 5 of the *EII Act 2020* (EII Chapter 6A)

This EII Chapter 6A states the general obligation of the AER under the *Electricity Infrastructure Investment 2020* (NSW) (EII Act) to make revenue determinations for Network Operators subject to an authorisation as defined in section 36(4) of the EII Act.

Interpretation

- (a) A reference in a rule of the *National Electricity Rules* or any guideline, incentive scheme or model made by the AER under the *National Electricity Rules* or *National Electricity Law* is taken to mean that rule, guideline, incentive scheme or model under this EII Chapter 6A.
- (b) Italicised expressions in this EII Chapter 6A are as defined in Chapter 6A and/or the glossary in Chapter 10 of the *National Electricity Rules*, unless the expression is listed in column 1 of the table below, in which case the meaning that applies is that listed in column 2.

<u>Italicised expression</u>	<u>Meaning</u>
<i>Concessional finance</i>	<u>An arrangement between a government funding body and a Network Operator under which the government funding body directly or indirectly provides financial support to the Network Operator pursuant to a concessional finance agreement.</u>
<i>Concessional finance agreement</i>	<u>An agreement between a Network Operator, or a related entity of the Network Operator, and a government funding body which the government funding body specifies to be such an agreement for the purposes of clauses 6A.3.3 or 6A.3.3(b).</u>
<i>Financeability request</i>	<u>Has the meaning given in clause 6A.6.3A(b).</u>
<i>Prescribed transmission service</i>	Services related to carrying out a network infrastructure project for which the Network Operator is subject to an authorisation (as defined in section 36(4) of the EII Act).
<i>Regulatory control period</i>	Regulatory control period means the period to which a total revenue cap applies to a Network Operator by virtue of a revenue determination under the EII Act.
<i>Regulatory information notice or RIN</i>	Information notice or notice, issued by the Regulator under section 38(7) of the EII Act.
<i>Regulatory obligation or requirement</i>	Regulatory requirement (as defined in section 46(3) of the EII Regulations).
<i>Transmission determination</i>	Revenue determination, <u>as referred to in rule 6A.4 as substituted (if at all) pursuant to clause 6A.7.1 or rule 6A.15 or as amended pursuant to 6A.3.3.</u>

<i>Transmission network or transmission system</i>	Network infrastructure project (includes a REZ network infrastructure project or a priority transmission infrastructure project, each as defined in the EII Act).
<i>Transmission network service provider or TNSP; Distribution network service provider or DNSP</i>	Network Operator, <u>as defined in the Dictionary of the EII Act.</u>

(c) Additional italicised expressions used in this EII Chapter 6A (but not in NER Chapter 6A or the glossary in Chapter 10 of the *National Electricity Rules*) are listed in column 1 of the table below with the meaning that applies listed in column 2.

<u>Italicised expression</u>	<u>Meaning</u>
<i>Network operator</i>	Network Operator has the meaning given in the Dictionary of the EII Act: <u>network operator means a person who owns, controls or operates, or proposes to own, control or operate, network infrastructure.</u>
<i>Revenue determination</i>	<u>Has the meaning given in rule 6A.4, as substituted (if at all) pursuant to clause 6A.7.1 or rule 6A.15 or as amended pursuant to 6A.3.3.</u>

Part A Introduction

[Deleted]

Part B Revenue determinations generally

6A.2 Revenue determinations

6A.2.1 Duty of AER to make revenue determinations

- (a) As required by section 38(1) of the EII Act, the *AER* must determine the amount payable to a *Network Operator* to whom Division 3 of the EII Act applies.
- (b) The *AER* will determine the amount referred to in clause 6A.2.1(a) in accordance with the EII Act, EII Regulation and this EII Chapter 6A.

6A.2.2 Components of transmission determinations

[Deleted]

6A.2.3 Guidelines, schemes and models

(a)–(c) [Deleted]

Part C Regulation of Revenue – Regulated Network Services

6A.3 Allowed revenue from network services

6A.3.1 Allowed revenue for regulatory year

The revenue that a *Network Operator* may earn in any *regulatory year* of a *regulatory control period* from the provision of regulated network services is the *maximum allowed revenue* subject to any adjustments referred to in clause 6A.3.2, and is to be determined in accordance with:

- (1) the *revenue determination*; and
- (2) the provisions of this Part C.

6A.3.2 Adjustment of maximum allowed revenue

The *maximum allowed revenue* that a *Network Operator* may earn in any *regulatory year* of a *regulatory control period* from the provision of regulated network services is subject to adjustment in accordance with clauses 6A.7 or 6A.15.

6A.3.3 Concessional finance adjustments

Notification and provision of concessional finance agreement

- (a) A *Network Operator* who has entered into a *concessional finance agreement* that requires any of the benefits of the *concessional finance* to be shared with consumers of electricity, must provide the *AER* with a copy of that agreement within 40 business days of entering into that agreement.
- (b) A *concessional finance agreement* provided under paragraph (a) must include:
 - (1) the name of the government funding body providing the concessional

- finance and the contact details for that body;
- (2) a description of the expenditure in relation to which the *concessional finance* is being provided;
 - (3) a statement about whether the benefits of the relevant *concessional finance* will be passed through to consumers of electricity as:
 - (i) an adjustment to the regulatory asset base of the *Network Operator*;
 - (ii) an amount to be passed through to NSW electricity customers; or
 - (iii) a combination of the mechanisms referred to in subparagraphs (i) and (ii),

(Network CF Adjustment)

- (4) where paragraph (3)(i) applies, a description of the assets to which the *concessional finance* applies, as well as the value, timing and details of the adjustment to be made to the regulatory asset base and the relevant asset lives of the associated assets;
- (5) where paragraph (3)(ii) applies, the amount, or methodology to determine the amount, to be passed through to NSW electricity customers in each *regulatory year* of each *regulatory control period* that the amount is to be passed through;
- (6) where paragraph (3)(iii) applies, the information in subparagraphs (4) and (5); and
- (7) if the *concessional finance agreement* was entered into by a related entity of the *Network Operator*, the name, ACN and contact details of the entity that is party to the agreement.

Making of a Network CF Adjustment

- (c) If a Network CF Adjustment is conditional on one or more events specified in the *concessional finance agreement*, then the *Network Operator* must provide written notice to the *AER* as soon as practicable once the conditions are satisfied.
- (d) Except where paragraph (e) or (k) applies, the *AER* must make a Network CF Adjustment in accordance with the *concessional finance agreement* within 40 *business days* of receiving the:
 - (1) *concessional finance agreement* under paragraph (a), if the *concessional finance agreement* does not specify that the Network CF Adjustment is conditional on one more or events; or
 - (2) notice under paragraph (c), if the *concessional finance agreement* specifies that the Network CF Adjustment is conditional on one more events.
- (e) If the *AER* receives:
 - (1) a *concessional finance agreement* pursuant to paragraph (a); or
 - (2) a notice pursuant to paragraph (c),during the last two *regulatory years* of a *regulatory control period* and it is not practicable to implement the Network CF Adjustment in the current *regulatory control period*, then:
 - (3) the *AER* must notify the *Network Operator* that it is not practicable to

- implement the Network CF Adjustment in the current *regulatory control period* within 40 business days of receiving the *concessional finance agreement* under paragraph (a);
- (4) the time period under which the AER must take action under paragraph (d) does not apply; and
- (5) the AER must make the Network CF Adjustment within 40 *business days* of the AER making the *revenue determination* in respect of the forthcoming *regulatory control period*, or do so as part of the *revenue determination* itself.
- (f) If the relevant Network CF Adjustment under paragraph (d) or (e) will apply in one or more *regulatory years* of a subsequent *regulatory control period*, then:
- (1) if the *concessional finance agreement* provides that the Network CF Adjustment applies in the same way in the next *regulatory control period*, the Network CF Adjustment is binding on the AER and the *Network Operator* for that subsequent *regulatory control period*; and
- (2) if the *concessional finance agreement* provides that the Network CF Adjustment does not apply in the same way in the next *regulatory control period*, then the *Network Operator* must notify the AER for each relevant *regulatory control period* pursuant to the process set out in paragraphs (b)(3) to (b)(6).

Note

Where a *concessional finance agreement* applies over multiple *regulatory control periods*, the *Network Operator* is required to notify the AER in its next *Revenue Proposal*. See clause 6A.10.1(i).

Annual updates of Network CF Adjustment

- (g) If:
- (1) paragraph (b)(3)(ii) or (b)(3)(iii) applies; and
- (2) the amount of benefits to be passed through to consumers of electricity is a variable amount that is not the same every *regulatory year*,
- then the *Network Operator* must confirm with the AER, prior to the commencement of each *regulatory year*, the value of the Network CF Adjustment to be made in the forthcoming *regulatory year* with sufficient notice for the adjustment to take effect. Prior to providing the confirmation to the AER, the *Network Operator* must ensure that the value to be provided has been endorsed and approved by the relevant *government funding body*.
- (h) If the *Network Operator* has not provided sufficient notice under paragraph (g), the AER must notify the *Network Operator* that it is not practicable to implement the Network CF Adjustment for that *regulatory year* as soon as practicable.

Information provision to AER regarding concessional finance agreement

- (i) A *Network Operator* must provide the AER with such information as the AER requires for the purpose of making a Network CF Adjustment under paragraph (d), (e) or (g) within the timeframe specified by the AER in a notice provided to the *Network Operator* by the AER for that purpose.
- (j) Before making a Network CF Adjustment under paragraph (d), (e) or (g), the AER may:

- (1) request information from the *government funding body*; and
- (2) consult with the *government funding body* in respect of the *concessional finance agreement* and may disclose to the *government funding body* any information received from the *Network Operator* under paragraphs (b) and (i) for that purpose.
- (k) If the *AER* is satisfied that making a *Network CF Adjustment* under paragraph (d) or (e) involves issues of such complexity or difficulty that the time limit for making the *Network CF Adjustment* should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the *Network Operator* of that extension not later than 10 *business days* before the expiry of that time limit.
- (l) If the *AER* gives a written notice to the *Network Operator* stating that it requires information from a *government funding body* in order to make a *Network CF Adjustment* under paragraph (d) or (e), then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the *Network Operator* and when the *AER* receives that information from that *government funding body* is to be disregarded.
- (m) If the *AER* receives confidential information from a *government funding body* pursuant to paragraph (l), the *AER* must treat that information as confidential information.

Amendment or termination of a concessional finance agreement

- (n) If the *concessional finance agreement* provided by the *Network Operator* in accordance with paragraph (a) is varied such that it affects the *Network CF Adjustment* or is terminated, then the *Network Operator* must (as applicable):
 - (1) provide to the *AER* a copy of the varied *concessional finance agreement* within 40 *business days* of the variation; or
 - (2) provide to the *AER* the details of the arrangement agreed between the *government funding body* and the *Network Operator* with respect to the terminated *concessional finance agreement*.
- (o) If the *Network Operator* gives notice of a variation or termination of a *concessional finance agreement* under paragraph (n), then the *AER* must review the *concessional finance arrangement* in accordance with the process under paragraphs (a) to (m) as if that *concessional finance arrangement* is a new *concessional finance agreement* and adjust, replace or terminate the existing *Network CF Adjustment* (as applicable).

Nature of concessional finance benefits sharing

- (p) Any *Network CF Adjustment* made under this clause 6A.3.3, or arrangement reached between the *government funding body* and the *Network Operator* under paragraph (n)(2), must not reverse, disallow or recover, or have the effect of, reversing, disallowing or recovering any of the *concessional finance benefits* that have already been shared with consumers of electricity under previous *Network CF Adjustments*.

6A.4 Revenue determinations

6A.4.1 Introduction

- (a) The procedure and approach for the making of a *revenue determination* for a

Network Operator is contained in Part E of this EII Chapter 6A and involves the submission to the *AER* of a *Revenue Proposal* by the Network Operator.

- (b) Such a *Revenue Proposal* must comply with the requirements of the EII Act, EII Regulation and this Guideline including EII Chapter 6A, and in particular must:
 - (1) be prepared using the *post-tax revenue model* referred to in clause 6A.5;
 - (2) comply with the requirements of, and contain or be accompanied by the information required by, any relevant written notice under section 38(7) of the EII Act; and
 - (3) contain the information and matters specified in Schedule 6A.1.

6A.4.2 Contents of revenue determination

- (a) A *revenue determination* for a Network Operator is to specify, for a regulatory control period, the following matters:
 - (1) the amount of the estimated *total revenue cap* for the regulatory control period or the method of calculating that amount;
 - (2) the *annual building block revenue requirement* for each *regulatory year* of the regulatory control period;
 - (3) **[Deleted]**;
 - (3A) the regulatory asset base as at the commencement of the regulatory control period;
 - (4) appropriate methodologies for the indexation of the regulatory asset base;
 - (5) the values that are to be attributed to the *performance incentive scheme parameters* for the purposes of the application to the Network Operator of any *service target performance incentive scheme* that applies in respect of the regulatory control period;
 - (6) the values that are to be attributed to the *efficiency benefit sharing scheme parameters* for the purposes of the application to the Network Operator of any *efficiency benefit sharing scheme* that applies in respect of the regulatory control period;
 - (6A) how any *capital expenditure sharing scheme*, is to apply to the Network Operator; and
 - (7) the commencement and length of the regulatory control period.
 - (8) **[Deleted]**
- (a1) A *revenue determination* for a Network Operator is also to specify 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.
- (b) Unless otherwise determined by the *AER*:
 - (1) the *total revenue cap* may not relate to more than one network infrastructure project that is owned, controlled or operated by a Network Operator; and
 - (2) there is to be a separate *total revenue cap* for each such network

infrastructure project.

- (c) [Deleted]

6A.5 Post-tax revenue model

6A.5.1 Introduction

- (a) The process of preparing a *revenue determination* for a Network Operator involves the submission of a *Revenue Proposal* to the AER by the Network Operator under clause 6A.10.1. The Network Operator is required to prepare the *Revenue Proposal* using the *post-tax revenue model* in relation to that proposal, in accordance with the requirements of this EII Chapter 6A.
- (b) The principal purpose of the *post-tax revenue model* is to calculate the *maximum allowed revenue* under the *revenue determination*.
- (c) The *post-tax revenue model*, together with the *Revenue Proposal*, form the basis on which the AER assesses a *Revenue Proposal* and makes a *revenue determination*.

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

The AER may prepare and *publish* a *post-tax revenue model*.

6A.5.3 Contents of post-tax revenue model

[Deleted]

6A.5.4 Building blocks approach

- (a) **Building blocks generally**

The *annual building block revenue requirement* for a Network Operator for each *regulatory year* of a regulatory control period must be determined using a building blocks approach, under which the building blocks are:

- (1) indexation of the regulatory asset base - see paragraph (b)(1);
- (2) a return on capital for that year - see paragraph (b)(2);
- (3) the depreciation for that year - see paragraph (b)(3);
- (4) the estimated cost of corporate income tax of the Network Operator for that year - see paragraph (b)(4);
- (5) the revenue increments or decrements (if any) for that year arising from the application of any *efficiency benefit sharing scheme*, *capital expenditure sharing scheme*, *service target performance incentive scheme* - see paragraph (b)(5);
- (5A) [Deleted];
- (6) the forecast operating expenditure accepted or substituted by the AER for that year – see paragraph (b)(6); and
- (7) compensation for other risks - see paragraph (b)(7).

- (b) **Details about the building blocks**

For the purposes of paragraph (a):

- (1) for indexation of the regulatory asset base:

- (i) the regulatory asset base is calculated in accordance with clause 6A.6.1 and schedule 6A.2; and
 - (ii) the building block comprises a negative adjustment equal to the amount referred to in clause S6A.2.4(c)(4) for that year;
- (2) the return on capital is calculated in accordance with clause 6A.6.2;
 - (3) the depreciation is calculated in accordance with clause 6A.6.3 and EII Regulation;
 - (4) the estimated cost of corporate income tax is determined in accordance with clause 6A.6.4;
 - (5) the revenue increment or decrements referred to in subparagraph (a)(5) are those that arise as a result of the operation of any applicable *efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme*, as referred to in clauses 6A.6.5, 6A.6.5A or 6A.7.4.
- (5A)[Deleted].
- (6) the forecast operating expenditure is accepted or substituted by the *AER* in accordance with clause 6A.6.6(c), clause 6A.6.6(c1) or clause 6A.13.2(b)(3) and (5) (as the case may be); and
 - (7) the compensation for other risks is such amounts as the *AER* determines are necessary for that year to compensate a Network Operator for risks that are not otherwise compensated for in the return on capital.
- (c) A determination must also include amounts for different components listed in section 38(2) of the EII Act.

6A.5.5 Shared assets

[Deleted]

6A.5.6 Expenditure Forecast Assessment Guidelines

- (a) The *AER* may specify guidelines (the *Expenditure Forecast Assessment Guidelines*) and the approach the *AER* proposes to use to assess the forecasts of operating expenditure and capital expenditure that form part of Network Operators' Revenue Proposals and the information the *AER* requires for the purposes of that assessment.

6A.5A Capital expenditure incentive mechanisms

- (a) In addition to applying the Transmission Efficiency Test and *Expenditure Forecast Assessment Guideline*, the *AER* may specify that the *Expenditure Incentive Guidelines* will apply to revenue determinations.
- (b) The *capital expenditure incentive objective* is to ensure that, where the value of a regulatory asset base is subject to adjustment in accordance with EII Chapter 6A then the only capital expenditure that is included in an adjustment that increases the value of that regulatory asset base is capital expenditure that reasonably reflects the *capital expenditure criteria*.

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

6A.6.1 Regulatory asset base

Nature of regulatory asset base

- (a) The regulatory asset base for a network infrastructure project owned, controlled or operated by a Network Operator is the value of those assets that are used by the Network Operator to provide regulated network services, but only to the extent that they are used to provide such services.

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

- (b) The *AER* may develop and *publish* a model for the roll forward of the regulatory asset base for a network infrastructure project, referred to as the *roll forward model*.
- (c) **[Deleted]**
- (d) **[Deleted]**

Contents of roll forward model

- (e) **[Deleted]**

Other provisions relating to regulatory asset base

- (f) Other provisions relating to regulatory asset bases are set out in schedule 6A.2 of this EII Act Chapter 6A.

6A.6.2 Return on capital

The return on capital for a *Network Operator* for a *regulatory year* (RC_t) is to be calculated using the following formula:

$$RC_t = a_t \times v_t$$

where:

a_t is the *allowed rate of return* for the Network Operator for the *regulatory year*; and

v_t is the value, as at the beginning of the *regulatory year*, of the regulatory asset base for the network infrastructure projects owned, controlled or operated by the Network Operator (as established in accordance with clause 6A.6.1 and schedule 6A.2).

- (a) The return on capital for a Network Operator for a *regulatory year* is to be calculated in accordance with the formula set out in clause 6A.6.2 of the *NER*, applying the applicable *AER Rate of Return Instrument*.

6A.6.3 Depreciation

- (a) The depreciation for each *regulatory year*:
 - (1) must be calculated on the value of the assets as included in the regulatory asset base, as at the beginning of that *regulatory year*, for the relevant network infrastructure project; and
 - (2) subject to paragraph (d), must be calculated
 - (i) providing such depreciation schedules conform with the requirements set out in paragraph (b), using the depreciation schedules for each asset or category of assets that are nominated in the relevant Network Operator's revenue proposal; or
 - (ii) to the extent the depreciation schedules nominated in the Network

Operator's revenue proposal do not so conform, using the depreciation schedules determined for that purpose by the AER in its final decision on the Network Operator's revenue proposal.

- (b) The depreciation schedules referred to in paragraph (a) must conform to the following requirements:
- (1) except as provided in ~~paragraph (e) and clause 6A.6.3A~~, the schedules must depreciate using a profile that reflects the nature of the assets or category of assets over the economic life of that asset or category of assets;
 - (2) the sum of the real value of the depreciation that is attributable to any asset or category of assets over the economic life of that asset or category of assets (such real value being calculated as at the time the value of that asset or category of assets was first included in the regulatory asset base for the relevant network infrastructure project) must be equivalent to the value at which that asset or category of assets was first included in the regulatory asset base for the relevant network infrastructure project; and
 - (3) the economic life of the relevant assets and the depreciation methodologies and rates underpinning the calculation of depreciation for a given regulatory control period must be consistent with those determined for the same assets on a prospective basis in the *revenue determination* for that period.
- (c) **[Deleted]**
- (d) The AER must modify the depreciation schedules referred to in paragraph (b) if it is satisfied that it is reasonably necessary to ensure:
- (1) the *revenue determination* is consistent with the objects specified in section 3(1)(a) to (c) of the EII Act; and
 - (2) the Network Operator is capable of efficiently obtaining finance to carry out the network infrastructure project.

6A.6.3A Financeability adjustment

Definitions

(a) In this clause:

benchmark gearing ratio means the benchmark gearing ratio set out in the *applicable rate of return instrument* applicable at the time the AER applies the *financeability test*.

financeability threshold means the benchmark credit rating used to estimate the return on debt component in the *applicable rate of return instrument*.

a reference to *concessional finance agreement* means a *concessional finance agreement* entered into after 14 December 2023.

Financeability request by Network Operator

(b) Subject to paragraphs (c) and (d), if an asset (or group of assets) forms part of an *actionable ISP project*, a *Network Operator* may, in conjunction with:

(1) **[Deleted]**

(2) a Revenue Proposal under clause 6A.10.1,

(3) [Deleted]

submit a request to the AER to:

(4) approve that the asset (or group of assets) be depreciated on a basis other than in accordance with clause 6A.6.3(b)(1)

(5) [Deleted]

(a *financeability request*)

(c) A *financeability request* must include:

(1) the Network Operator's proposed adjustments to the depreciation of the asset (or group of assets);

(2) if applicable, the information in paragraph (f); and

(3) any information required under the *financeability guidelines*.

(d) A *Network Operator*:

(1) [Deleted]

(2) may only submit a *financeability request* once for an *actionable ISP project*, or a stage of an *actionable ISP project* if the *actionable ISP project* is a staged project in a draft or final *Integrated System Plan*, as part of a Revenue Proposal under clause 6A.10.1.

(e) A *Network Operator* must only submit a *financeability request* if the following conditions are satisfied:

(1) where the *Network Operator* has entered into one or more *concessional finance agreements* for the *actionable ISP project* to which the *financeability request* relates:

(i) all of the benefits under each relevant *concessional finance agreement* are being passed through to consumers of electricity under clause 6A.3.3; or

(ii) where the benefits under each relevant *concessional finance agreement* are not all being passed through to consumers of electricity, the *concessional finance agreement* specifies how the benefits of the *concessional finance* that are retained by the *Network Operator* are to be taken into account by the AER in applying the *financeability test* and with the written approval of the *government funding body*; and

(2) where the *Network Operator* has entered into one or more *concessional finance agreements* for any *actionable ISP project* other than the *actionable ISP project* to which the *financeability request* relates:

(i) all of the benefits under each relevant *concessional finance agreement* are being passed through to consumers of electricity under clause 6A.3.3; or

(ii) where the benefits under each relevant *concessional finance agreement* are not all being passed through to consumers of electricity, each relevant *concessional finance agreement* specifies how the benefits of the *concessional finance* that are retained by the *Network Operator* are to be taken into account by the AER in

applying the *financeability test*.

(f) If the *Network Operator* submits a *financeability request*, then in conjunction with a *Revenue Proposal* under clause 6A.10.1, it must also provide to the *AER*:

(1) in the circumstances specified in paragraph (e)(1)(ii) or (e)(2)(ii), to the extent not already provided under clause 6A.3.3:

(i) a copy of every *concessional finance agreement* (including any amendments to it) relating to any *actionable ISP project* it, or a related entity of it, has entered into;

(ii) if applicable, the written approval of the *government funding body* to which the *financeability request* relates;

(iii) if a *concessional finance agreement* was entered into by a related entity of the *Network Operator*, the name, ACN and contact details of the related entity that is party to the agreement and an explanation of the benefit of the *concessional finance* to the *Network Operator*;

(iv) a description of the capital expenditure in relation to which the *concessional finance* is being provided; and

(v) a description of the benefits of the *concessional finance* to the *Network Operator* and an explanation of how the benefits are to be taken into account by the *AER* in applying the *financeability test*, in accordance with the *concessional finance agreement*.

(2) [Deleted]

(g) The *AER* may consult with the relevant *government funding body* in respect of the *financeability request* and in doing so, may:

(1) request information from the *government funding body*; or

(2) disclose any information received from the *Network Operator* in the *financeability request* for that purpose.

(h) If the *AER* receives confidential information from a *government funding body*, the *AER* must treat that information as confidential information.

Financeability test by *AER*

(i) If the *AER* receives a *financeability request*, it must apply the *financeability test*:

(1) in accordance with paragraphs (j) to (l) and the *financeability guidelines*; and

(2) having regard to the information set out in the *financeability request* and relevant *concessional finance agreements*.

(j) The purpose of the *financeability test* is to determine whether or not there is a *financeability issue* as described in paragraph (l) for a *Network Operator*.

(k) To determine whether or not there is a *financeability issue* for a *Network Operator*, the *AER* must:

(1) first, determine a *financeability position* without the *actionable ISP project* using the *post-tax revenue model* to determine the *Network Operator's maximum allowed revenue*, using:

- (i) the benchmark gearing ratio; or
- (ii) if a *government funding body* and *Network Operator* have agreed in a *concessional finance agreement* to adjust the benchmark gearing ratio by increasing the equity component in that ratio for one or more previous *actionable ISP projects*, the benchmark gearing ratio as adjusted in accordance with the relevant *concessional finance agreements*,

(step one); and

- (2) second, determine a financeability position using the same process used under subparagraph (1), but including the relevant *actionable ISP project* and, if applicable, any adjustment to the benchmark gearing ratio for the increased equity component in that ratio agreed in a *concessional finance agreement* for that project (step two),

(together, the *financeability test*).

- (l) A *financeability issue* exists for the purposes of paragraph (k) if the *financeability test* demonstrates that the financeability position for the *Network Operator* is:

- (1) equivalent to or higher than the financeability threshold at step one, and deteriorates below the financeability threshold following the application of step two; or

- (2) lower than the financeability threshold at step one, and deteriorates below that financeability position following the application of step two,

(each, a *financeability issue*).

Addressing a financeability issue

- (m) If the *financeability test* demonstrates that there is a *financeability issue*, the *AER* must, as part of:

- (1) **[Deleted]**

- (2) the decision under clause 6A.13.1, if the financeability request is submitted in accordance with clause 6A.6.3A(b)(2),

- (3) **[Deleted]**

address the *financeability issue* by:

- (1) if paragraph (l)(1) applies, preventing the *Network Operator's* financeability position determined in step one from deteriorating below the financeability threshold following the application of step two; or

- (2) if paragraph (l)(2) applies, preventing the *Network Operator's* financeability position determined in step one from deteriorating below that financeability position following the application of step two,

to the extent possible.

- (n) If the *AER* makes a determination or decision under paragraph (m) to address a *financeability issue*, it may address the *financeability issue* by doing any one or more of the following:

- (1) depreciating the asset (or group of assets) forming part of the *actionable ISP project* using a profile that it considers appropriate; and

(2) [Deleted]

(3) taking other steps through another mechanism available to the AER under this EII Chapter 6A.

(o) If the AER determines under paragraph (n) that the depreciation adjustment or other steps will apply in a subsequent *regulatory control period*, then the depreciation adjustment is binding on the AER and the Network Operator for that subsequent *regulatory control period*.

Financeability guidelines

(p) [Deleted]

(q) [Deleted]

(r) [Deleted]

(s) [Deleted]

6A.6.4 Estimated cost of corporate income tax

The estimated cost of corporate income tax of a Network Operator for each *regulatory year* (ETC_t) must be estimated in accordance with the following formula:

$$ETC_t = (ETI_t \times r_t) (1 - \gamma)$$

where:

ETI_t is an estimate of the taxable income for that *regulatory year* that would be earned by a benchmark efficient entity as a result of the provision of regulated network services if such an entity, rather than the Network Operator, operated the business of the Network Operator, such estimate being determined in accordance with the *post-tax revenue model*;

r_t is the expected statutory income tax rate for that *regulatory year* as determined by the AER; and

γ is the *allowed imputation credits* for the Network Operator for the *regulatory year*, which must be calculated by applying the current Rate of Return Instrument made by the AER under the National Electricity Law.

6A.6.5 Efficiency benefit sharing scheme

(a) The AER may apply an incentive scheme or schemes (*efficiency benefit sharing scheme*) that provide for a fair sharing between Network Operators and NSW electricity customers of:

- (1) the efficiency gains derived from the operating expenditure of Network Operators for a regulatory control period being less than; and
- (2) the efficiency losses derived from the operating expenditure of Network Operators for a regulatory control period being more than,

the forecast operating expenditure accepted or substituted by the AER for that regulatory control period in accordance with clause 6A.6.6(c), clause 6A.6.6(c1) or clause 6A.13.2(b)(3) and (5) (as the case may be).

(b) In implementing an *efficiency benefit sharing scheme*, the AER must have regard to:

- (1) the need to provide Network Operators with a continuous incentive

- (that is equal in each year of any regulatory control period) to reduce operating expenditure;
 - (2) the desirability of both rewarding Network Operators for efficiency gains and penalising Network Operators for efficiency losses;
 - (3) any incentives that Network Operators may have to inappropriately capitalise operating expenditure;
 - (4) **[Deleted]**
 - (5) the principles in section 37 of the EII Act and clause 46(1)(b) of the EII Regulation.
- (c)–(h) **[Deleted]**

6A.6.5A Capital expenditure sharing scheme

- (a) A *capital expenditure sharing scheme* is a scheme that provides Network Operators with an incentive to undertake efficient capital expenditure during a regulatory control period.
- (b)–(d) **[Deleted]**
- (e) In deciding:
 - (1) whether to apply a *capital expenditure sharing scheme* to a Network Operator for a regulatory control period; and
 - (2) the nature and details of any *capital expenditure sharing scheme* that is to apply to a Network Operator for a regulatory control period,
 the *AER* must:
 - (3) make that decision in a manner that contributes to the achievement of the *capital expenditure incentive objective*; and
 - (4) take into account:
 - (i) the *capital expenditure sharing scheme principles*, and the matters referred to in paragraph (g), as they apply to the Network Operator;
 - (ii) the circumstances of the Network Operator; and
 - (iii) the principles in section 37 of the EII Act and clause 46(1)(b) of the EII Regulation.
- (f) The *capital expenditure sharing scheme principles* are:
 - (1) Network Operators should be rewarded or penalised for improvements or declines in efficiency of capital expenditure; and
 - (2) the rewards and penalties should be commensurate with the efficiencies or inefficiencies in capital expenditure, but a reward for efficient capital expenditure need not correspond in amount to a penalty for the same amount of inefficient capital expenditure.
- (g) The matters the *AER* must also take into account are:
 - (1) the interaction of the scheme with other incentives that Network Operators may have in relation to undertaking efficient operating or capital expenditure; and

- (2) the *capital expenditure objectives* and, if relevant, the *operating expenditure objectives*.

6A.6.6 Forecast operating expenditure

- (a) A *Revenue Proposal* must include the total forecast operating expenditure for the relevant regulatory control period which the Network Operator considers is required in order to achieve each of the following (the *operating expenditure objectives*):
 - (1) meet or manage the expected demand for regulated network services over that period;
 - (2) comply with all regulatory requirements (as defined in the EII Regulation).
 - (3) **[Deleted]**
 - (4) maintain the safety of the network infrastructure project through the supply of regulated network services.
- (b) The forecast of required operating expenditure of a Network Operator that is included in a *Revenue Proposal* must:
 - (1) comply with the requirements of any written notice under section 38(7) of the EII Act;
 - (2) be for expenditure that is properly allocated to regulated network services in accordance with the principles and policies set out in the *Cost Allocation Methodology* for the Network Operator; and
 - (3) include both:
 - (i) the total of the forecast operating expenditure for the relevant regulatory control period; and
 - (ii) the forecast operating expenditure for each *regulatory year* of the relevant regulatory control period.
- (c) Subject to paragraph (c1), the *AER* must accept the forecast of required operating expenditure of a Network Operator that is included in a *Revenue Proposal* if the *AER* is satisfied that the total of the forecast operating expenditure for the regulatory control period reasonably reflects each of the following (the *operating expenditure criteria*):
 - (1) the efficient costs of achieving the *operating expenditure objectives*;
 - (2) the costs that a prudent operator would require to achieve the *operating expenditure objectives*; and
 - (3) a realistic expectation of the cost inputs required to achieve the *operating expenditure objectives*.
- (c1) If:
 - (1) a Network Operator made *network support payments* in accordance with a relevant agreement for *network support services* in the previous regulatory control period; and
 - (2) the Network Operator must continue to make *network support payments* to fulfil obligations under the relevant agreement for *network support services* in the relevant regulatory control period,

the *AER* must accept the forecast of required operating expenditure of the Network Operator included in a *Revenue Proposal* in relation to the remainder of costs required to meet obligations under the relevant agreement for network support services in the relevant regulatory control period.

- (d) Subject to paragraph (c1), if the *AER* is not satisfied as referred to in paragraph (c), it must not accept the forecast of required operating expenditure of a Network Operator that is included in a *Revenue Proposal*.
- (e) In deciding whether or not the *AER* is satisfied as referred to in paragraph (c), the *AER* must have regard to the following (the *operating expenditure* factors):
 - (1) **[Deleted]**
 - (2) **[Deleted]**
 - (3) **[Deleted]**
 - (4) the most recent benchmark operating expenditure that would be incurred by an efficient Network Operator over the relevant regulatory control period;
 - (5) the actual and expected operating expenditure of the Network Operator during any preceding regulatory control periods;
 - (5A) the extent to which the operating expenditure forecast includes expenditure to address the concerns of electricity consumers as identified by the Network Operator in the course of its engagement with electricity consumers;
 - (5B) the extent to which a component of the operating expenditure forecast includes expenditure related to payments required to be made by the Network Operator to the Infrastructure Planner under a contractual arrangement the Network Operator was required to enter into under the relevant authorisation or direction;
 - (6) the relative prices of operating and capital inputs;
 - (7) the substitution possibilities between operating and capital expenditure;
 - (8) whether the operating expenditure forecast is consistent with any incentive scheme or schemes that apply to the Network Operator under clauses 6A.6.5 or 6A.7.4;
 - (9) the extent the operating expenditure forecast is referable to arrangements with a person other than the Network Operator that, in the opinion of the *AER*, do not reflect arm's length terms;
 - (10) **[Deleted]**
 - (11) **[Deleted]**
 - (12) **[Deleted]**;
 - (13) **[Deleted]**
 - (13A) the principles in section 37 of the EII Act and section 46(1)(b) of the EII Regulation; and
 - (14) any other factor the *AER* considers relevant and which the *AER* has notified the Network Operator in writing, ~~prior to the submission of its revised Revenue Proposal under clause 6A.12.3~~, is an *operating*

expenditure factor.

- (f) **[Deleted]**

6A.6.7 Transmission Efficiency Test and forecast capital expenditure

- (a) A *Revenue Proposal* must include the total forecast capital expenditure for the relevant regulatory control period which the Network Operator considers is required to achieve each of the following (the *capital expenditure objectives*):
- (1) **[Deleted]**;
 - (2) comply with all regulatory requirements (as defined in the EII Regulation) associated with the provision of regulated network services; and
 - (3) **[Deleted]**
 - (4) maintain the safety of the network infrastructure project through the supply of regulated network services.
- (b) The forecast of required capital expenditure of a Network Operator that is included in a *Revenue Proposal* must:
- (1) comply with the requirements of any relevant notice issued under section 38(7) of the EII Act;
 - (2) be for expenditure that is properly allocated to regulated network services in accordance with the principles and policies set out in the *Cost Allocation Methodology* for the Network Operator;
 - (3) include:
 - (i) the total of the forecast capital expenditure for the relevant regulatory control period;
 - (ii) the forecast capital expenditure for each *regulatory year* of the relevant regulatory control period; and
 - (iii) the amounts in each of paragraphs (i) and (ii) broken down into:
 - (A) forecast capital expenditure for development and construction; and
 - (B) forecast capital expenditure for activities other than development and construction.
 - (4) **[Deleted]**
- (c) Subject to (c1), the *AER* must accept the forecast of required capital expenditure of a Network Operator that is included in a *Revenue Proposal* if the *AER* is satisfied that the total of the forecast capital expenditure for the regulatory control period reasonably reflects each of the following (*capital expenditure criteria*):
- (1) the efficient costs of achieving the *capital expenditure objectives*;
 - (2) the costs that a prudent operator would require to achieve the *capital expenditure objectives*; and
 - (3) a realistic expectation of the cost inputs required to achieve the *capital expenditure objectives*.

- (c1) The forecast capital expenditure for development and construction of a network infrastructure project must not exceed the maximum capital cost, if any, notified to the *AER* by the Consumer Trustee under section 31(2) of the EII Act.
- (d) If the *AER* is not satisfied as referred to in paragraph (c), it must not accept the forecast of required capital expenditure of a Network Operator.
- (e) In deciding whether or not the *AER* is satisfied as referred to in paragraph (c), the *AER* must have regard to the following (the *capital expenditure factors*):
 - (1) **[Deleted]**
 - (2) **[Deleted]**
 - (3) **[Deleted]**
 - (4) the most recent benchmark capital expenditure that would be incurred by an efficient Network Operator over the relevant regulatory control period;
 - (5) the actual and expected capital expenditure of the Network Operator during any preceding regulatory control periods;
 - (5A) the extent to which the capital expenditure forecast includes expenditure to address the concerns of electricity consumers as identified by the Network Operator in the course of its engagement with electricity consumers;
 - (5B) the extent to which a component of the capital expenditure forecast includes expenditure related to payments required to be made by the Network Operator to the Infrastructure Planer under a contractual arrangement the Network Operator was required to enter into under the relevant authorisation or direction;
 - (6) the relative prices of operating and capital inputs;
 - (7) the substitution possibilities between operating and capital expenditure;
 - (8) whether the capital expenditure forecast is consistent with any incentive scheme or schemes that apply to the Network Operator under clauses 6A.6.5A or 6A.7.4;
 - (9) the extent to which the capital expenditure forecast is referable to arrangements with a person other than the Network Operator that, in the opinion of the *AER*, do not reflect arm's length terms;
 - (10) **[Deleted]**
 - (11) **[Deleted]**
 - (12) **[Deleted]**
 - (13) **[Deleted]**
 - (13A) the principles in section 37 of the EII Act and clause 46(1)(b) of the EII Regulation; and
 - (14) any other factor the *AER* considers relevant and which the *AER* has notified the Network Operator in writing is a *capital expenditure factor* ~~prior to the submission of its revised Revenue Proposal under clause 6A.12.3, is a capital expenditure factor.~~

(f) [Deleted]

Forecast capital expenditure and contingent projects

[Deleted]

Note:

The whole of capital expenditure is subject to review for prudence, efficiency and reasonableness but, in applying the Transmission Efficiency Test as set out in (c1) above, only components for development and construction are considered as required by section 38(4) of the EII Act.

6A.6.8 The X factor

[Deleted]

6A.6.9 Pass through events

- (a) A *Revenue Proposal* may include a proposal as to the events that should be defined as *pass through events* under clause 6A.7.3(a1)(5) having regard to the *nominated pass through event considerations*.
- (b) In determining whether to accept the pass through events nominated by a Network Operator in its *Revenue Proposal* under paragraph (a), the *AER* must take into account the *nominated pass through event considerations*.

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

6A.7.1 Reopening of revenue determination for capital expenditure

- (a) Subject to paragraph (b), a Network Operator may, during a regulatory control period, apply to the *AER* to revoke and substitute a *revenue determination* that applies to it where:
 - (1) an event that is beyond the reasonable control of the Network Operator has occurred during that regulatory control period and the occurrence of that event during that period (or of an event of a similar kind) could not reasonably have been foreseen by the provider at the time of the making of the *revenue determination* ('the event');
 - (2) no forecast capital expenditure was accepted or substituted by the *AER* for that period under clause 6A.6.7(c) or clause 6A.13.2(b)(4) and (5) (as the case may be) in relation to the event that has occurred;
 - (3) the Network Operator proposes to undertake capital expenditure to rectify the adverse consequences of the event;
 - (4) the total of the capital expenditure required during the regulatory control period to rectify the adverse consequences of the event:
 - (i) exceeds 10% of the value of the regulatory asset base for the relevant Network Operator for the first year of the relevant regulatory control period;
 - (ii) is such that, if undertaken, it is reasonably likely (in the absence of any other reduction in capital expenditure) to result in the total actual capital expenditure for that regulatory control period exceeding the total of the forecast capital expenditure for that

regulatory control period as accepted or substituted by the *AER* in accordance with clause 6A.6.7(c) or clauses 6A.13.2(b)(4) and (5) (as the case may be); and

- (5) The Network Operator can demonstrate that it is not able to reduce capital expenditure in other areas to avoid the consequence referred to in clause 6A.7.1(a)(4)(ii) without materially adversely affecting the *reliability* and security of the relevant network infrastructure project;
- (6) a failure to rectify the adverse consequences of the event would be likely to materially adversely affect the *reliability* and security of the relevant network infrastructure project; and
- (7) the event is not a *pass through event*.

In this paragraph (a), a reference to an event includes a series of events or a state of affairs, which may include a greater than anticipated increase in demand.

- (b) An application referred to in paragraph (a) must not be made within 90 *business days* prior to the end of a *regulatory year*.
- (c) Following its receipt of an application made in accordance with paragraphs (a) and (b), the *AER* must:
 - (1) consult with the Network Operator and such other persons as it considers appropriate in relation to the application; and
 - (2) make its decision on the application within 40 *business days* from the later of the date the *AER* receives the application and the date the *AER* receives any information required by the *AER* under paragraph (f1).
- (d) The *AER* must, and must only, revoke a *revenue determination* following an application made in accordance with paragraphs (a) and (b) if the *AER* is satisfied of each of the matters referred to in paragraph (a).
- (e) If the *AER* revokes a *revenue determination* under paragraph (d), the *AER* must make a new *revenue determination* in substitution for the revoked determination to apply for the remainder of the regulatory control period for which the revoked determination was to apply.
- (f) The substituted *revenue determination* must only vary from the revoked *revenue determination* to the extent necessary:
 - (1) to adjust the forecast capital expenditure for that regulatory control period to accommodate the amount of such additional capital expenditure as the *AER* determines is appropriate (in which case the amount of that adjustment will be taken to be accepted by the *AER* under clause 6A.6.7(c)); and
 - (2) to reflect the effect of any resultant increase in forecast capital expenditure on:
 - (i) the forecast operating expenditure for the remainder of the regulatory control period;
 - (ii) the *maximum allowed revenue* for each *regulatory year* in the remainder of the regulatory control period; and
 - (iii) **[Deleted]**.

- (f1) A Network Operator must provide the *AER* with such additional information as the *AER* requires for the purpose of making a decision on an application made by that Network Operator under paragraph (a) within the time specified by the *AER* in a notice provided to the Network Operator by the *AER* for that purpose.

Extension of time limit

- (g) If the *AER* is satisfied that the revocation and substitution of a revenue determination under paragraphs (d) and (e) involves issues of such complexity or difficulty that the time limit fixed in subparagraph (c)(2) should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the Network Operator of that extension not later than 10 *business days* before the expiry of that time limit.
- (h) If the *AER* extends the time limit under paragraph (g), it must make available on its website a notice of that extension as soon as is reasonably practicable.
- (i) Subject to paragraph (i3), if the *AER* gives a written notice to the Network Operator stating that it requires information from an *Authority* in order to make a decision on an application made by the Network Operator under paragraph (a) then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the Network Operator and when the *AER* receives that information from that *Authority* is to be disregarded.
- (i1) Subject to paragraph (i3), if the *AER* gives a written notice to the Network Operator stating that, in order to make a decision on an application made by the Network Operator under paragraph (a), it requires information that it anticipates will be made publicly available by a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the Network Operator and when that information is made publicly available is to be disregarded
- (i2) Where the *AER* gives a notice to the Network Operator under paragraph (i) or (i1), it must:
- (1) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (i) or (i1), as the case may be, has commenced;
 - (2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (i) or (i1), as the case may be, has ended; and
 - (3) if the information specified in that notice is required from an *Authority*, promptly request that information from the relevant *Authority*.
- (i3) Paragraphs (i) and (i1) do not apply if the *AER* gives the notice specified in those paragraphs to the Network Operator later than 10 *business days* before the expiry of the time limit fixed in subparagraph (c)(2).

Revocation and substitution of revenue determination

- (j) If the *AER* revokes and substitutes a *revenue determination* under paragraph (e), that revocation and substitution must take effect from the commencement of the next *regulatory year*.

6A.7.2 Network support pass through

- (a) This clause applies where a *network support event* occurs with respect to a *regulatory year* ('the **previous regulatory year**').
- (b) If a *network support event* occurs, a Network Operator must seek a determination by the *AER* to pass through a *network support pass through amount*.
- (c) Where a Network Operator seeks a determination as referred to in paragraph (b), the Network Operator must, within 60 *business days* of the end of the previous *regulatory year*, submit to the *AER* a written statement which specifies:
 - (1) the details of the *network support event* including whether the event was a *negative network support event* or a *positive network support event*;
 - (2) the amount that the Network Operator proposes should be passed through in the *regulatory year* following the previous *regulatory year* as a result of the *network support event*;
 - (3) evidence:
 - (i) of the actual increase in the amount of *network support payments*, including certification by an independent and appropriately qualified expert; and
 - (ii) that such amounts occur solely as a consequence of the positive *network support event*; and
 - (4) such other information as may be required pursuant to the any relevant notice under section 38(7) of the EII Act.
- (d) If the *AER* determines that a *positive network support event* has occurred in respect of a statement under paragraph (c), the *AER* must determine the *network support pass through amount*, taking into account the matters referred to in paragraph (i).
- (e) If the *AER* does not make the determination referred to in paragraph (d) within 60 *business days* from the date it receives the Network Operator's statement and accompanying evidence under paragraph (c), then, on the expiry of that period, the *AER* is taken to have determined that the amount as proposed in the Network Operator's statement under paragraph (c) is the *network support pass through amount*.
- (f) If a *negative network support event* occurs (whether or not the occurrence of that event is notified by the Network Operator to the *AER* under paragraph (c)) and the *AER* determines to impose a requirement on the Network Operator in relation to that *negative network support event*, the *AER* must determine the *network support pass through amount* taking into account the matters referred to in paragraph (i).
- (g) A Network Operator must provide the *AER* with such information as the *AER* requires for the purpose of making a determination under paragraph (f) within the time specified by the *AER* in a notice provided to the Network Operator by the *AER* for that purpose.

Consultation

- (h) Before making a determination under paragraph (d) or (f), the *AER* may

consult with the relevant Network Operator and such other persons as the *AER* considers appropriate, on any matters arising out of the relevant *network support event* as the *AER* considers appropriate.

Relevant factors

- (i) In making a determination under paragraph (d) or (f), the *AER* must take into account:
 - (1) the matters and proposals set out in any statement given to the *AER* by the Network Operator under paragraph (c);
 - (2) in the case of a *positive network support event*, the increase in costs in the provision of regulated network services that the Network Operator has incurred in the preceding *regulatory year* as a result of the *positive network support event*;
 - (3) in the case of a *positive network support event*, the efficiency of the Network Operator's decisions and actions in relation to the risk of the event, including whether the Network Operator has failed to take any action that could reasonably be taken to reduce the magnitude of the *positive network support event* and whether the Network Operator has taken or omitted to take any action where such action or omission has increased the magnitude of the amount in respect of that event;
 - (4) the time cost of money based on the *allowed rate of return* for the Network Operator for the relevant regulatory control period;
 - (5) the need to ensure that the Network Operator only recovers any actual increment in costs under this paragraph (i) to the extent that such increment is solely as a consequence of a *network support event*; and
 - (6) any other factors the *AER* considers relevant.

6A.7.3 Cost pass through

- (a1) Any of the following is a *pass through event* for a revenue determination:
 - (1) a regulatory requirement as defined in section 46(3) of the EII Regulation;
 - (2) a *service standard event*;
 - (3) a *tax change event*;
 - (4) an *insurance event*;
 - (5) any other event specified in a revenue determination as a *pass through event* for the determination;
 - (6) an *inertia shortfall event*; and
 - (7) a *fault level shortfall event*.
- (a) If a *positive change event* occurs, a Network Operator may seek the approval of the *AER* to pass through a *positive pass through amount*.
- (b) If a *negative change event* occurs, the *AER* may require the Network Operator to pass through a *negative pass through amount* as determined by the *AER* under paragraph (g).

Positive pass through

- (c) To seek the approval of the *AER* to pass through a *positive pass through amount*, a Network Operator must submit to the *AER*, within 90 *business days* of the relevant *positive change event* occurring, a written statement which specifies:
- (1) the details of the *positive change event*;
 - (2) the date on which the *positive change event* occurred;
 - (3) the *eligible pass through amount* in respect of that *positive change event*;
 - (4) the *positive pass through amount* the Network Operator proposes in relation to the *positive change event*;
 - (5) the amount of the *positive pass through amount* that the Network Operator proposes should be passed through in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred;
 - (6) evidence:
 - (i) of the actual and likely increase in costs referred to in subparagraph (3); and
 - (ii) that such costs occur solely as a consequence of the *positive change event*; and
 - (7) such other information as may be required pursuant to any relevant notice under section 38(7) of the EII Act.
- (d) If the *AER* determines that a *positive change event* has occurred in respect of a statement under paragraph (c), the *AER* must determine:
- (1) the *approved pass through amount*; and
 - (2) the amount of that *approved pass through amount* that should be passed through in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred,
- taking into account the matters referred to in paragraph (j).
- (e) Subject to paragraph (l), the *AER* does not make the determinations referred to in paragraph (d) within 40 *business days* from the later of the date it receives the Network Operator's statement and accompanying evidence under paragraph (c), and the date it receives any additional information required under paragraph (e1), then, on the expiry of that period, the *AER* is taken to have determined that:
- (1) the *positive pass through amount* as proposed in the Network Operator's statement under paragraph (c) is the *approved pass through amount* in respect of that *positive change event*; and
 - (2) the amount of that *positive pass through amount* that the Network Operator proposes in its statement under paragraph(c) should be passed through in the *regulatory year* in which, and each *regulatory year* after that in which, the *positive change event* occurred, is the amount that should be so passed through in each such *regulatory year*.

Negative pass through

- (f) A Network Operator must submit to the *AER*, within 90 *business days* of

becoming aware of the occurrence of a *negative change event* for the Network Operator, a written statement which specifies:

- (1) the details of the *negative change event* concerned;
 - (2) the date the *negative change event* occurred;
 - (3) the costs in the provision of regulated network services that the Network Operator has saved and is likely to save as a result of the *negative change event* until:
 - (i) unless sub paragraph(ii) applies – the end of the regulatory control period in which the *negative change event* occurred; or
 - (ii) if the revenue determination for the regulatory control period following that in which the *negative change event* occurred does not make any allowance for the pass through of the cost savings - the end of the regulatory control period following that in which the *negative change event* occurred;
 - (4) the aggregate amount of those saved costs that the Network Operator proposes should be passed through;
 - (5) the amount of the costs referred to in subparagraph (4) the Network Operator proposes should be passed through in the *regulatory year* in which, and each *regulatory year* after that in which, the *negative change event* occurred; and
 - (6) such other information as may be required pursuant to any relevant notice under section 38(7) of the EII Act.
- (f1) If the occurrence of the *negative change event* is not notified by the Network Operator to the *AER* under paragraph (f) then, as soon as is reasonably practicable and before making a determination referred to in paragraph (g), the *AER* must notify the Network Operator of the occurrence of that *negative change event*.
- (g) If a *negative change event* occurs (whether or not the occurrence of that *negative change event* is notified by the Network Operator to the *AER* under paragraph (f)) and the *AER* determines to impose a requirement on the Network Operator in relation to that *negative change event* as described in paragraph (b), the *AER* must determine:
- (1) the *required pass through amount*; and
 - (2) taking into account the matters referred to in paragraph (j):
 - (i) how much of that *required pass through amount* should be passed through (the *negative pass through amount*); and
 - (ii) the amount of that *negative pass through amount* that should be passed through in the *regulatory year* in which, and each *regulatory year* after that in which, the *negative change event* occurred.
- (g1) Subject to paragraph (l), if the *AER* does not make the determinations referred to in paragraph (g) within 40 *business days* from:
- (1) where the Network Operator notifies the *AER* of the occurrence of the *negative change event* under paragraph (f) - the later of the date the *AER* receives the Network Operator's statement under paragraph (f) and the

date the *AER* receives any information required by the *AER* under paragraph (h); or

- (2) where the Network Operator does not notify the *AER* of the occurrence of the negative change event under paragraph (f) – the later of the date the *AER* notifies the Network Operator under paragraph (g1) and the date the *AER* receives any information required by the *AER* under paragraph (h),

then the *AER* is taken to have determined that the required pass through amount is zero.

- (h) A Network Operator must provide the *AER* with such information as the *AER* requires for the purpose of making a determination under paragraph (g) within the time specified by the *AER* in a notice provided to the Network Operator by the *AER* for that purpose.

Consultation

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

Relevant factors

- (j) In making a determination under paragraph (d) or (g) in respect of a Network Operator, the *AER* must take into account:
 - (1) the matters and proposals set out in any statement given to the *AER* by the Network Operator under paragraphs (c) or (f) (as the case may be);
 - (2) in the case of a *positive change event*, the increase in costs in the provision of regulated network services that, as a result of the *positive change event*, the Network Operator has incurred and is likely to incur until:
 - (i) unless subparagraph (ii) applies – the end of the regulatory control period in which the *positive change event* occurred; or
 - (ii) if the revenue determination for the regulatory control period following that in which the *positive change event* occurred does not make any allowance for the recovery of that increase in costs – the end of the regulatory control period following that in which the *positive change event* occurred;
 - (2A) in the case of a *negative change event*, the costs in the provision of regulated network services that, as a result of the *negative change event*, the Network Operator has saved and is likely to save until:
 - (i) unless subparagraph(ii) applies – the end of the regulatory control period in which the *negative change event* occurred; or
 - (ii) if the revenue determination for the regulatory control period following that in which the *negative change event* occurred does not make any allowance for the pass through of those cost savings – the end of the regulatory control period following that in which the *negative change event* occurred;
 - (3) in the case of a *positive change event*, the efficiency of the Network

- Operator's decisions and actions in relation to the risk of the *positive change event*, including whether the Network Operator has failed to take any action that could reasonably be taken to reduce the magnitude of the *eligible pass through amount* in respect of that *positive change event* and whether the Network Operator has taken or omitted to take any action where such action or omission has increased the magnitude of the amount in respect of that *positive change event*;
- (4) the time cost of money based on the *allowed rate of return* for the Network Operator for the regulatory control period in which the *pass through event* occurred;
 - (5) the need to ensure that the Network Operator only recovers any actual or likely increment in costs under this paragraph (j) to the extent that such increment is solely as a consequence of a *pass through event*;
 - (6) in the case of a *tax change event*, any change in the way another *tax* is calculated, or the removal or imposition of another *tax*, which, in the *AER's* opinion, is complementary to the *tax change event* concerned;
 - (6A) whether the costs of the *pass through event* have already been factored into the calculation of the Network Operator's *maximum allowed revenues* for the regulatory control period in which the *pass through event* occurred or will be factored into the calculation of the Network Operator's *maximum allowed revenues* for a subsequent regulatory control period;
 - (6B) the extent to which the costs that the Network Operator has incurred and is likely to incur are the subject of a previous determination made by the *AER* under this clause 6A.7.3; ~~and~~
 - (6C) the principles in section 37 of the EII Act and section 46(1)(b) of the EII Regulation; and
 - (7) any other factors the *AER* considers relevant.

Extension of time limits

- (k) The *AER* must, by written notice to a Network Operator, extend a time limit fixed in paragraph (c) or (f) if the *AER* is satisfied that the difficulty of assessing or quantifying the effect of the relevant *pass through event* justifies the extension.
- (l) If the *AER* is satisfied that the making of a determination under paragraph (d) or (g) involves issues of such complexity or difficulty that the time limit fixed in paragraph (e) or (g1) should be extended, the *AER* may extend that time limit by a further period of up to 60 *business days*, provided that it gives written notice to the Network Operator of that extension not later than 10 *business days* before the expiry of that time limit.
- (m) If the *AER* extends a time limit under paragraph (l), it must make available on its website a notice of that extension as soon as is reasonably practicable.
- (n) Subject to paragraph (q), if the *AER* gives a written notice to the Network Operator stating that it requires information from an *Authority* in order to make a determination under paragraph (d) or (g) then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the Network Operator and when the *AER* receives that information from

that *Authority* is to be disregarded.

- (o) Subject to paragraph (q), if the *AER* gives a written notice to the Network Operator stating that, in order to make a determination under paragraph (d) or (g), it requires information that it anticipates will be made publicly available by a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the *AER* gives that notice to the Network Operator and when that information is made publicly available is to be disregarded.
- (p) Where the *AER* gives a notice to the Network Operator under paragraph (n) or (o), it must:
 - (1) as soon as reasonably practicable make available on its website a notice stating when the period referred to in paragraph (n) or (o), as the case may be, has commenced;
 - (2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (n) or (o), as the case may be, has ended; and
 - (3) if the information specified in that notice is required from an *Authority*, promptly request that information from the relevant *Authority*.
- (q) Paragraphs (n) and (o) do not apply if the *AER* gives the notice specified in those paragraphs to the Network Operator later than 10 *business days* before the expiry of the time limit fixed in paragraphs (e) or (g1).

6A.7.4 Service target performance incentive scheme

- (a) The *AER* must develop and *publish* an incentive scheme or schemes (*service target performance incentive scheme*) that comply with the principles in paragraph (b).
- (b) The principles are that the *service target performance incentive scheme* should:
 - (1) provide incentives for each Network Operator to:
 - (i) provide greater *reliability* of the network infrastructure project at all times when users place greatest value on the *reliability* of the network infrastructure project; and
 - (ii) improve and maintain the *reliability* of those elements of the network infrastructure project that are most important to determining *spot prices*;
 - (2) result in a potential adjustment to the revenue that the Network Operator may earn from the provision of regulated network services in each *regulatory year* in respect of which the *service target performance incentive scheme* applies;
 - (3) ensure that the maximum revenue increment or decrement as a result of the operation of the *service target performance incentive scheme* will fall within a range that is between 1% and 5% of the *maximum allowed revenue* for the relevant *regulatory year*;
 - (4) take into account the regulatory requirements (as defined in the EII Regulation) with which Network Operators must comply;
 - (5) take into account any other incentives provided for in the *Rules* that

Network Operators have to minimise capital or operating expenditure;
and

- (6) take into account the age and ratings of the assets comprising the relevant network infrastructure project.
- (c) At the same time as it *publishes* a *service target performance incentive scheme*, the *AER* must also *publish* parameters (the *performance incentive scheme parameters*) for the scheme. For the avoidance of doubt, the parameters may differ as between Network Operators and over time.
- (d) The *AER* must set out in each *service target performance incentive scheme* any requirements with which the values attributed to the *performance incentive scheme parameters* must comply, and those requirements must be consistent with the principles set out in paragraph (b).
- (e) The *AER* may specify that the *service target performance incentive scheme* will apply to revenue determinations that are remade under section 40 of the EII Act. The *service target performance incentive scheme* must not apply to the first regulatory control period for which a network infrastructure project is subject to a revenue determination under section 38 of the EII Act.
- (f) The *AER* must develop and *publish* the first *service target performance incentive scheme* by 31 December 2027 and there must be a *service target performance incentive scheme* in force at all times after that date.

6A.7.5 Small-scale incentive scheme

[Deleted]

6A.7.6 Demand management innovation allowance mechanism

[Deleted]

6A.7.7 Concessional finance adjustments

The revenue determination will be amended in a manner determined by the AER to reflect the adjustment made by the AER pursuant to clauses 6A.3.3(d), (e) and (g), as relevant.

6A.8 Contingent Projects

[Deleted]

Part D [Deleted]

Part E Procedure - Revenue determinations

6A.10 Revenue Proposal

6A.10.1A AER's framework and approach paper

[Deleted]

6A.10.1B Notification of approach to forecasting expenditure

[Deleted]

6A.10.1 Submission of proposal

- (a) A Network Operator must submit to the AER a *Revenue Proposal* relating to the regulated network services that are provided by means of, or in connection with, a network infrastructure project that is owned, controlled or operated by that Network Operator:
- (1) if any of those regulated network services are subject to a revenue determination, 160 business days before the expiry of the period in respect of which that revenue determination applies; or
 - (2) if any of those regulated network services are not subject to a revenue determination, by the date specified in a notice to the Network Operator.
- (b) ~~[Deleted]~~ If applicable, a Network Operator may also submit to the AER a financeability request in conjunction with the Revenue Proposal submitted under paragraph (a).
- (c) The *Revenue Proposal* must comply with the requirements of and must contain or be accompanied by such information as is required by, any notice issued under section 38(7) of the EII Act.
- (d) ~~[Deleted]~~ If a financeability request is submitted pursuant to paragraph (b):
- (1) the financeability request must comply with the requirements of clauses 6A.6.3A(c) to 6A.6.3A(f) (as applicable);
 - (2) the Revenue Proposal must set out the required revenue for the following scenarios:
 - (i) without the relevant actionable ISP project; and
 - (ii) with the relevant actionable ISP project, both with and without the financeability request; and
 - (3) the Network Operator must provide the AER with such additional information that the AER reasonably requests for the purposes of applying the financeability test or addressing the financeability issue in accordance with clause 6A.6.3A(m).
- (e) ~~[Deleted]~~
- (f) The *Revenue Proposal* must also:
- (1) ~~[Deleted]~~
 - (2) identify any parts of the *Revenue Proposal* the Network Operator claims to be confidential and wants suppressed from publication on that ground in accordance with the EII Confidentiality Guidelines.
- (g) The *Revenue Proposal* must be accompanied by an overview paper which includes each of the following matters:
- (1) a summary of the *Revenue Proposal* the purpose of which is to explain the *Revenue Proposal* in reasonably plain language to electricity consumers;
 - (2) a summary of the scope and terms of the Consumer Trustee's authorisation or the Minister's direction or authorisation and the network infrastructure project the authorisation or direction requires the Network Operator to carry out;
 - (3) a description of whether the Network Operator has engaged with

electricity consumers and, if so, what feedback was provided and how that feedback has been taken into account in developing the *Revenue Proposal*;

(4) a statement identifying any elements of the *Revenue Proposal* that are to be set on a contestable basis; ~~and~~

~~(5)~~ for each revenue determination after the initial determination, a comparison of the Network Operator's proposed revenue cap with its approved revenues for the preceding regulatory control period (by total and by component); ~~and-~~

~~(5)~~(6) if applicable, a description of the *financeability request* and a summary of the *Network Operator's proposal* under clause 6A.6.3A(c).

~~(h)~~ [Deleted]

~~(i)~~(i) Where clause 6A.3.3(f) applies, the *Revenue Proposal* must be accompanied by a copy of the relevant *concessional finance agreement*.

6A.10.2 [Deleted]

6A.11 Preliminary examination and consultation

6A.11.1 Preliminary examination and determination of non-compliance with relevant requirements

(a) If the *AER* determines that:

(1) a *Revenue Proposal* submitted by a Network Operator; or

(2) ~~[Deleted]~~a *financeability request* submitted by a *Network Operator*; or

(3) [Deleted]

(4) information contained in or accompanying such a *Revenue Proposal*, under clause 6A.10.1 does not comply with the requirements of:

(5) any relevant regulatory information instrument under section 38(7) of the EII Act; ~~or-~~

(6) ~~[Deleted]~~if applicable, the requirements of clauses 6A.6.3A(c) to (e); or

(7) [Deleted]

(8) this EII Chapter 6A; or

(9) the maximum capital cost amount under sections 31(2) and 38(6) of the EII Act,

the *AER* must notify the Network Operator, Consumer Trustee and Infrastructure Planner of that determination as soon as practicable after receiving that *Revenue Proposal*, *financeability request* or information.

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

(1) the respects in which the *Revenue Proposal*, *financeability request* or information does not comply with the relevant requirements of any relevant information notice or requirements of clauses 6A.6.3A(c) to (e) and the requirements that have not been complied with; and

(2) in the case of information which does not comply with those

requirements, the reason that the submission of information in accordance with those requirements would assist the *AER* in assessing the *Revenue Proposal*.

6A.11.2 Resubmission of proposal or information

- (a) If the *AER* notifies a Network Operator of a determination under clause 6A.11.1, the Network Operator must, within 10 business days of that notice, resubmit its *Revenue Proposal*, *financeability request* or the required information (as the case may be) in a form that complies with the relevant requirements set out in that determination.
- (b) A Network Operator may only make changes to its *Revenue Proposal*, *financeability request* or the required information for the purposes of paragraph (a) to address the matters raised in the determination under clause 6A.11.1.

6A.11.2A Confidential information

If the Network Operator has identified any part of the *Revenue Proposal* or the *financeability request* 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, make available on its website a notice that sets out:

- (a) the fact that the *Revenue Proposal* or the *financeability request* contains information over which a claim of confidentiality has been made;
- (b) the proportion of material in the *Revenue Proposal* or the *financeability request* 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 *Revenue Proposal* or the *financeability request* that is subject to any claim of confidentiality compared to that which is subject to claims of confidentiality in the *Revenue Proposals* or *financeability requests* (as applicable) of other Network Operators.

If the Network Operator has identified any part of the *Revenue Proposal* or the *financeability request* 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, make available on its website a notice that sets out the fact that the *Revenue Proposal* or the *financeability request* contains information over which a claim of confidentiality has been made.

6A.11.3 Consultation

(a) Subject to the provisions of the EII Act, ~~and~~ the EII Regulation and the *financeability guidelines* about the disclosure of confidential information, the *AER* must *publish*:

- (1) the *Revenue Proposal*; ~~and~~
- (2) ~~[Deleted]~~ if applicable, the *financeability request*; and
- (3) ~~[Deleted]~~
- (4) the information requested under an information notice issued under section 38(7) of the EII Act,

submitted or resubmitted to it (as the case may be) by the Network Operator

under clause 6A.10 or this clause 6A.11, together with an invitation for written submissions on the documents and information referred to in subparagraphs (1)-(4), as soon as practicable after the AER determines that the *Revenue Proposal*, *financeability request* and information comply with the requirements of any information notice issued under section 38(7) of the EII Act or clauses 6A.6.3A(c) to (e) (as applicable).

- (b) ~~[Deleted]~~
- (b1) ~~[Deleted]~~
- (b2) ~~[Deleted]~~
- (c) Any person may make a written submission to the AER on the *Revenue Proposal* or the *financeability request*, within the times specified in the invitation referred to in paragraph (a).

6A.12 Draft decision and further consultation

~~[Deleted]~~

6A.12.1 Making of draft decision

- ~~(a) The AER must make a draft decision in relation to the Network Operator. (a1) In making a draft decision in relation to the Network Operator, and subject to clause 6A.16, the AER must have regard to each of the following:
 - ~~(1) the information contained in or accompanying the *Revenue Proposal*, including information provided in response to an information notice issued under section 38(7) of the EII Act;~~
 - ~~(2) written submissions received under clause 6A.11.3 and the documents referred to in subparagraph (1); and~~
 - ~~(3) any analysis undertaken by or for the AER that is *published* at the time of the making of the draft decision in relation to the Network Operator or as part of that draft decision.~~~~
- ~~(b) The AER's draft decision must be made in accordance with, and must comply with, the relevant requirements of clause 6A.14.~~
- ~~(c) If the AER refuses to approve any of the amounts or values referred to in clause 6A.14.1(1), the AER's draft decision must include details of the changes required or matters to be addressed before the AER will approve those amounts or values.~~
- ~~(d) [Deleted]~~
- ~~(e) [Deleted]~~

6A.12.2 Publication of draft decision and consultation

- ~~(a) The AER must, as soon as practicable after the relevant date referred to in clause 6A.10.1(a), *publish*:
 - ~~(1) its draft decision and reasons under clause 6A.12.1 and clause 6A.14; and~~
 - ~~(2) notice of the making of the draft decision;~~
 - ~~(3) [Deleted]~~~~

~~(4) — an invitation for submissions on its draft decision.~~

~~(b) — [Deleted]~~

~~(c) — Any person may make a written submission to the AER on the draft decision within the time specified in the invitation referred to in subparagraph (a4).~~

6A.12.3 — Submission of revised proposal

~~(a) — In addition to making such other written submissions as it considers appropriate, the Network Operator may, not more than 25 business days after the publication of the draft decision, submit to the AER:~~

~~(1) — a revised *Revenue Proposal*.~~

~~(2) — [Deleted]~~

~~(3) — [Deleted]~~

~~(b) — A Network Operator may only make the revisions referred to in paragraph (a) so as to incorporate the substance of any changes required by, or to address matters raised in, the draft decision.~~

~~(c) — A revised *Revenue Proposal* must comply with the requirements of and must contain or be accompanied by such information as is required by, any relevant a notice under section 38(7) of the EII Act.~~

~~(d) — [Deleted]~~

~~(e) — [Deleted]~~

~~(e1) — If the Network Operator has identified any part of the revised *Revenue Proposal* 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 *Revenue Proposal* contains information over which a claim of confidentiality has been made;~~

~~(2) — the proportion of material in the revised *Revenue Proposal* that is subject to any claim of confidentiality compared to that which is not subject to any such claim.~~

~~(3) — [Deleted]~~

~~(f) — Subject to the provisions of the EII Act and the EII Regulation about the disclosure of confidential information, the AER must *publish*:~~

~~(1) — any revised *Revenue Proposal*~~

~~(2) — [Deleted]~~

~~(3) — [Deleted]~~

~~that is submitted by the Network Operator under paragraph (a), together with the accompanying information, as soon as practicable after receipt by the AER.~~

~~(g) — The AER may invite written submissions on the revised *Revenue Proposal*.~~

6A.12.4 — Submissions on specified matters

~~[Deleted]~~

6A.13 Final decision

6A.13.1 Making of final decision

- (a) The *AER* must make a final decision in relation to the Network Operator.
 - (a1) In making a final decision in relation to the Network Operator, and subject to clause 6A.16, the *AER* must have regard to each of the following:
 - (1) the information contained in or accompanying the *Revenue Proposal*; and, if applicable, the *financeability request*;
 - (2) written submissions received under this Part E; and
 - (3) any analysis undertaken by or for the *AER* that is *published* as part of the final decision.
 - (a2) **[Deleted]**
- (b) The *AER's* final decision must be made in accordance with, and must comply with, the relevant requirements of clause 6A.14, and if applicable, clause 6A.6.3A and the *financeability guidelines*.

6A.13.2 Refusal to approve amounts, values or framework

- (a) **[Deleted]**
- (b) If the *AER's* final decision is to refuse to approve an amount or value referred to in clause 6A.14.1(1) for the reason that, or a reason which includes the reason that, the *AER* is not satisfied that:
 - (1) the total of the forecast operating expenditure for the regulatory control period reasonably reflects the operating expenditure criteria, taking into account the operating expenditure factors; or
 - (2) the total of the forecast capital expenditure for the regulatory control period reasonably reflects the *capital expenditure criteria*, taking into account the *capital expenditure factors*,the *AER* must:
 - (3) where subparagraph (1) applies, include in its final decision (in addition to the estimate referred to in clause 6A.14.1(3)(ii)) the forecast operating expenditure for each *regulatory year* which the *AER* is satisfied reasonably reflects the *operating expenditure criteria*, taking into account the *operating expenditure factors*, subject only to the requirement that the total of such forecasts must equate to the estimate referred to in clause 6A.14.1(3)(ii);
 - (4) where subparagraph (2) applies, include in its final decision (in addition to the estimate referred to in clause 6A.14.1(2)(ii)) the forecast capital expenditure for each *regulatory year* which the *AER* is satisfied reasonably reflects the *capital expenditure criteria*, taking into account the *capital expenditure factors*, subject only to the requirement that the total of such forecasts must equate to the estimate referred to in clause 6A.14.1(2)(ii) and capital expenditure for development and construction of the network infrastructure project must not exceed the maximum capital cost, if any, notified to the *AER* by the Consumer Trustee under section 31(2) of the EII Act; and

- (5) use each such amount (and its components) in place of the forecast of required operating or capital expenditure that is included in the current *Revenue Proposal* for the purposes of calculating the amount or value that it has refused to approve in its final decision.

(c) [Deleted]

(d) [Deleted]

6A.13.2A Out of scope revised documents or late submissions

[Deleted]

6A.13.3 Notice of final decision and revenue determination

The *AER* must as soon as practicable after making its revenue determination, but not later than the date specified in clause 50 of the EII Regulation, publish:

- (1) notice of the making of the final decision and determination; and
- (2) the final decision, including the reasons required to be included in it; and
- (3) the revenue determination.

6A.13.4 Making of transmission determination

[Deleted]

6A.14 Requirements relating to ~~draft and~~ final decisions

6A.14.1 Contents of decisions

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

- (1) on the Network Operator's current *Revenue Proposal* in which the *AER* either approves or refuses to approve:
 - (i) the *total revenue cap* for the Network Operator for the regulatory control period;
 - (ii) subject to addressing any *financeability issue in accordance with clauses 6A.6.3A(m)*, the *maximum allowed revenue* for the Network Operator for each *regulatory year* of the regulatory control period;
 - (iii) the values that are to be attributed to the *performance incentive scheme parameters* for any *service target performance incentive scheme* that is to apply to the Network Operator in respect of the regulatory control period;
 - (iv) the values that are to be attributed to the *efficiency benefit sharing scheme parameters* for any *efficiency benefit sharing scheme* that is to apply to the Network Operator in respect of the regulatory control period; and
 - (v) the commencement and length of the regulatory control period that has been proposed by the Network Operator,as set out in the *Revenue Proposal*, setting out the reasons for the decision;
- (2) in which the *AER* either:
 - (i) acting in accordance with clause 6A.6.7(c), accepts the total of the forecast capital expenditure for the regulatory control period that is

- included in the current *Revenue Proposal* has satisfied the capital expenditure criteria, taking into account the capital expenditure forecasts including the *AER's* calculation under the Transmission Efficiency Test; or
- (ii) acting in accordance with clause 6A.6.7(d), does not accept the total of the forecast capital expenditure for the regulatory control period that is included in the current Revenue Proposal, in which case the AER must set out its reasons for that decision and an estimate of the total of the Network Operator's required total capital expenditure including development and construction capital expenditure for the regulatory control period that the *AER* is satisfied reasonably reflects the *capital expenditure criteria*, taking into account the *capital expenditure factors*;
- (3) in which the *AER* either:
- (i) acting in accordance with clause 6A.6.6(c) or clause 6A.6.6(c1), accepts the total of the forecast operating expenditure for the regulatory control period that is included in the current *Revenue Proposal*; or
 - (ii) acting in accordance with clause 6A.6.6(d), does not accept the total of the forecast operating expenditure for the regulatory control period that is included in the current *Revenue Proposal*, in which case the *AER* must set out its reasons for that decision and an estimate of the total of the Network Operator's required operating expenditure for the regulatory control period that the *AER* is satisfied reasonably reflects the *operating expenditure criteria*, taking into account the *operating expenditure factors*;
- (4) **[Deleted]**
- (5) ~~[Deleted]~~ in which the AER determines whether there is a *financeability issue* following the application of the *financeability test* and if so, how to address the *financeability issue* in accordance with clause 6A.6.3A(m);
- (5A) in which the *AER* determines how any applicable *capital expenditure sharing scheme* is to apply to the Network Operator;
- (5B) on the *allowed rate of return* for each *regulatory year* of the regulatory control period;
- (5C) on the *allowed imputation credits* for each *regulatory year* of the regulatory control period;
- (5D) on the regulatory asset base as at the commencement of the regulatory control period in accordance with clause 6A.6.1 and Schedule 6A.2;
- (5E) 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 S6A.2.2B.
- (6) on whether to modify the depreciation schedules in accordance with clause 6A.6.3(d) and the EII Regulation; and
- (7) **[Deleted]**

- (8) **[Deleted]**
- (9) on the additional *pass through events* that are to apply for the regulatory control period in accordance with clause 6A.6.9.

6A.14.2 Reasons for decisions

- (a) The reasons given by the *AER* for ~~a draft decision under clause 6A.12~~ or a final decision under clause 6A.13 must set out the basis and rationale of the decision, including:
 - (1) details of the qualitative and quantitative methodologies applied in any calculations and formulae made or used by the *AER* for the purposes of its decision;
 - (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 Network Operator's current *Revenue 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 for the purposes of the decision; and
 - (4) reasons for the making of any decisions, the giving or withholding of any approvals, and the exercise of any discretion, as referred to in this Chapter, for the purposes of the decision, 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 decision under clause 6A.12~~ or a final decision under clause 6A.13 a statement, with supporting reasons, as to the extent to which the roll forward of the regulatory asset base from the previous regulatory control period to the commencement of the regulatory control period contributes to the achievement of the capital expenditure incentive objective.

6A.14.3 Circumstances in which matters must be approved or accepted

[Deleted]

6A.15 Revocation of revenue determination for wrong information or error

- (a) The *AER* may (but is not required to) revoke a *revenue determination* during a regulatory control period in accordance with section 54 of the EII Regulation.
 - (1)–(4) **[Deleted]**
- (b) If the *AER* revokes a *revenue determination* under paragraph (a), the *AER* must make a new *revenue determination* in substitution for the revoked *revenue determination* to apply for the remainder of the regulatory control period for which the revoked *revenue determination* was to apply.
- (c) If the *AER* revokes and substitutes a *revenue determination* under paragraphs (a) and (b), the substituted *revenue determination* must only vary from the

revoked *revenue determination* to the extent necessary to correct the relevant error or deficiency.

- (d) **[Deleted]**
- (e) **[Deleted]**
- (f) The *AER* may only revoke and substitute a *revenue determination* under this clause 6A.15, if it has first consulted with the relevant Network Operator, Consumer Trustee and Infrastructure Planner and such other persons the *AER* considers appropriate as required by the EII Regulation.

6A.16 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 EII Act Chapter 6A (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 EII Act or the EII Regulation permits or requires such information to be publicly released by the *AER*.

6A.16A Confidentiality Guidelines

- (a) The *AER* must make and *publish* guidelines (Confidentiality Guidelines).
- (b) The Confidentiality Guidelines must specify the manner in which the Network Operator may make confidentiality claims in its *Revenue Proposal*, which may include categories of confidential information by reference to which Network Operators must classify any claims of confidentiality in their *Revenue Proposals*.
- (c) **[Deleted]**
- (d) **[Deleted]**

Part F Information Disclosure

6A.17 Information disclosure by Network Operators

6A.17.1 Information to be provided to AER

[Deleted]

6A.17.2 Information Guidelines

[Deleted]

6A.18 [Deleted]

Part G Cost Allocation

6A.19 Cost allocation

6A.19.1 Duty to comply with Cost Allocation Methodology

A Network Operator must comply with the *Cost Allocation Methodology* that has been approved in respect of that Network Operator from time to time by the AER under this rule 6A.19.

6A.19.2 Cost Allocation Principles

The following principles constitute the *Cost Allocation Principles*:

- (1) the detailed principles and policies used by a Network Operator to allocate costs between different categories of regulated network services must be described in sufficient detail to enable the AER to replicate reported outcomes through the application of those principles and policies;
- (2) the allocation of costs must be determined according to the substance of a transaction or event rather than its legal form;
- (3) only the following costs may be allocated to a particular category of regulated network services:
 - (i) costs which are directly attributable to the provision of those regulated network services; and
 - (ii) costs which are not directly attributable to the provision of those regulated network services but which are incurred in providing those regulated activities, in which case such costs must be allocated to the provision of those regulated network services using an appropriate allocator which should:
 - (A) except to the extent the cost is immaterial or a causal based method of allocation cannot be established without undue cost and effort, be causation based; and
 - (B) to the extent the cost is immaterial or a causal based method of allocation cannot be established without undue cost and effort, be an allocator that accords with a well-accepted *Cost Allocation Methodology*;
- (4) any *Cost Allocation Methodology* which is used, the reasons for using that methodology and the numeric quantity (if any) of the chosen allocator must be clearly described;
- (5) the same cost must not be allocated more than once;
- (6) the principles, policies and approach used to allocate costs must be consistent with the AER's guideline made pursuant to section 42 of the EII Regulation.
- (7) [Deleted]

(8) [Deleted]

Note:

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

6A.19.3 Cost Allocation Guidelines

- (a) The *AER* may apply the EII Cost Allocation Guidelines.
- (b) The EII Cost Allocation Guideline must give effect to and be consistent with the *Cost Allocation Principles*.
- (c) Without limiting the generality of paragraph (b), the EII Cost Allocation Guidelines may specify:
 - (1) the format of a *Cost Allocation Methodology*;
 - (2) the detailed information that is to be included in a *Cost Allocation Methodology*;
 - (3) the categories of regulated network services which are to be separately addressed in a *Cost Allocation Methodology*, such categories being determined by reference to the nature of those services, the persons to whom those services are provided or such other factors as the *AER* considers appropriate; and
 - (4) the allocation methodologies which are acceptable and the supporting information that is to be included in relation to such methodologies in a *Cost Allocation Methodology*.
- (d) The EII Cost Allocation Guidelines are binding on the *AER* and each Network Operator to which they apply.
- (e) [Deleted]

6A.19.4 Cost Allocation Methodology

- (a) Each Network Operator must submit to the *AER* for its approval a document setting out its proposed *Cost Allocation Methodology*:
 - (1) [Deleted]
 - (2) [Deleted]
 - (3) prepared in accordance with the requirements set out in clause 6A.19.4 within 60 business days before the Network Operator's revenue proposal is due to the *AER*.
- (b) The *Cost Allocation Methodology* proposed by a Network Operator must give effect to and be consistent with the EII Cost Allocation Guideline.
- (c) The *AER* may approve or refuse to approve a *Cost Allocation Methodology* submitted under paragraph (a).
- (d) The *AER* must notify the relevant Network Operator of its decision to approve or refuse to approve the *Cost Allocation Methodology* submitted to it under paragraph (a) within 30 business days of its submission, failing which the *AER* will be taken to have approved it.
- (e) As part of giving any approval referred to in paragraph (c), the *AER* may, after consulting with the relevant Network Operator, amend the *Cost Allocation*

Methodology submitted to it, in which case the *Cost Allocation Methodology* as so amended will be taken to be approved by the *AER*.

- (f) A Network Operator may amend its *Cost Allocation Methodology* from time to time but the amendment only comes into effect:
 - (1) 60 business days after the submission of the amendment, together with detailed reasons for the amendment, to the *AER* (unless the *AER* approves that amendment earlier, in which case it will come into effect when that earlier approval is given); and
 - (2) subject to such changes to the *Cost Allocation Methodology* (including the proposed amendment) as the *AER* notifies to the Network Operator within that period, being changes that the *AER* reasonably considers are necessary or desirable as a result of that amendment.
- (g) A Network Operator must amend its *Cost Allocation Methodology* where the amendment is required by the *AER* to take into account any change to the EII Cost Allocation Guideline, but the amendment only comes into effect:
 - (1) on the date that the *AER* approves that amendment, or 90 business days after the submission of the amendment, whichever is the earlier; and
 - (2) subject to such changes to the *Cost Allocation Methodology* (including the proposed amendment) as the *AER* notifies to the Network Operator within that period, being changes that the *AER* reasonably considers are necessary or desirable as a result of that amendment.
- (h) A Network Operator must maintain a current copy of its *Cost Allocation Methodology* on its website.

Part H Transmission Consultation Procedures

[Deleted]

Part I Ring-Fencing Arrangements for Network Operators

[Deleted]

Part J Prescribed Transmission Services – Regulation of Pricing

[Deleted]

Part K Commercial arbitration for disputes about terms and conditions of access for prescribed and negotiated transmission services

[Deleted]

Schedule 6A.1 Contents of Revenue Proposals

Note: For the first determination for a non-contestable network infrastructure project any requirement to present historical information will not apply. The Guideline and/or information notice issued under section 38(7) of the EII Act Information Notice will specify the variations and omissions from these requirements for an initial revenue proposal.

S6A.1.1 Information and matters relating to capital expenditure

A *Revenue Proposal* must contain at least the following information and matters relating to capital expenditure:

- (1) a forecast of the required capital expenditure that complies with the requirements of the Transmission Efficiency Test and forecast capital expenditure requirements in clause 6A.6.7 and identifies the forecast capital expenditure by reference to well accepted categories such as:
 - (i) asset class (e.g., *transmission lines, substations* etc.); or
 - (ii) category driver (e.g., authorization or direction or *requirements, replacement, reliability, net market benefit, business support* etc.),and identifies, in respect of proposed material assets:
 - (iii) the location of the proposed asset;
 - (iv) the anticipated or known cost of the proposed asset; and
 - (v) the categories of regulated network services which are to be provided by the proposed asset;
- (2) the methodology used for developing the capital expenditure forecast;
- (3) **[Deleted]**;
- (4) the key assumptions that underlie the capital expenditure forecast;
- (5) a certification of the reasonableness of the key assumptions by the directors of the Network Operator;
- (6) capital expenditure for each of the past *regulatory years* of the previous and current regulatory control period, and the expected capital expenditure for each of the last two *regulatory years* of the current regulatory control period, categorised in the same way as for the capital expenditure forecast and separately identifying for each such *regulatory year*:
 - (i) margins paid or expected to be paid by the Network Operator in circumstances where those margins are referable to arrangements that do not reflect arm's length terms; and
 - (ii) expenditure that should have been treated as operating expenditure in accordance with the policy submitted under paragraph (9) for that *regulatory year*;
- (7) an explanation of any significant variations in the forecast capital expenditure from historical capital expenditure;

Note: Sub-clauses (6) and (7) will not apply to the initial determination for a network infrastructure project.
- (8) any *non-network options* considered by the Network Operator; and

- (9) the policy that the Network Operator applies in capitalising operating expenditure.

S6A.1.2 Information and matters relating to operating expenditure

A *Revenue Proposal* must contain at least the following information and matters relating to operating expenditure:

- (1) a forecast of the required operating expenditure that complies with the requirements of clause 6A.6.6 and identifies the forecast operating expenditure by reference to well accepted categories such as:
 - (i) particular programs; or
 - (ii) types of operating expenditure (e.g., maintenance, payroll, materials etc.),and identifies in respect of each such category:
 - (iii) to what extent that forecast expenditure is on costs that are fixed and to what extent it is on costs that are variable; and
 - (iv) the categories of regulated network services to which that forecast expenditure relates;
- (2) the methodology used for developing the operating expenditure forecast;
- (3) the forecasts of key variables relied upon to derive the operating expenditure forecast and the methodology used for developing those forecasts of key variables;
- (4) the methodology used for determining the cost associated with planned maintenance programs designed to improve the performance of the relevant network infrastructure project for the purposes of any service target performance incentive scheme that is to apply to the Network Operator in respect of the relevant regulatory control period;
- (5) the key assumptions that underlie the operating expenditure forecast;
- (6) a certification of the reasonableness of the key assumptions by the directors of the Network Operator;
- (7) operating expenditure for each of the first three *regulatory years* of the current regulatory control period, and the expected operating expenditure for each of the last two *regulatory years* of that regulatory control period, categorised in the same way as for the operating expenditure forecast;
- (8) an explanation of any significant variations in the forecast operating expenditure from historical operating expenditure; and
- (9) any *non-network options* considered by the Network Operator.

Note: Sub-clauses (4) and (8) will not apply to the initial determination for a network infrastructure project.

S6A.1.3 Additional information and matters

A *Revenue Proposal* must contain at least the following additional information and matters:

- (1) an identification and explanation of any significant interactions between the forecast capital expenditure and forecast operating expenditure programs;

- (1A) which of the following incentive schemes the Network Operator proposes will apply to the Network Operator:
- (i) *service target performance incentive scheme*;
 - (ii) *efficiency benefit sharing scheme*;
 - (iii) *capital expenditure sharing scheme*;
- (2) the values that the Network Operator proposes are to be attributed to the *performance incentive scheme parameters* for the purposes of the application to the Network Operator of any EII service target performance incentive scheme that applies in respect of the relevant regulatory control period, and an explanation of how the values proposed to be attributed to those parameters comply with any requirements relating to them set out in that scheme;
- (3) the values that the Network Operator proposes are to be attributed to the *efficiency benefit sharing scheme parameters* for the purposes of the application to the Network Operator of any *efficiency benefit sharing scheme* that applies in respect of the relevant regulatory control period, and an explanation of how the values proposed to be attributed to those parameters comply with any relevant requirements set out in that scheme;
- (3A) a description, including relevant explanatory material, of how the Network Operator proposes any *capital expenditure sharing scheme* that applies in respect of the forthcoming *revenue determination* should apply to it;
- (3B) **[Deleted]**
- (3C) **[Deleted]**
- (4) the Network Operator's calculation of:
- (i) the estimated *total revenue cap* for it for the relevant regulatory control period; and
 - (ii) the *maximum allowed revenue* for it for each *regulatory year* of the relevant regulatory control period,
- using the *post-tax revenue model* referred to in clause 6A.5, together with:
- (iii) details of all amounts, values and other inputs used by the Network Operator for that purpose;
 - (iv) a demonstration that any such amounts, values and other inputs comply with the relevant requirements of Part C of Chapter 6A; and
 - (v) an explanation of the calculation of the amounts referred to in subparagraphs (i) and (ii) and of the amounts, values and inputs referred to in subparagraph (iii);
- (4A) the Network Operator's calculation of the *allowed rate of return* for each *regulatory year* of the relevant regulatory control period;
- (4B) the Network Operator's calculation of the *allowed imputation credits* for each *regulatory year* of the regulatory control period;
- (5) the Network Operator's calculation of the regulatory asset base for the relevant network infrastructure project for each *regulatory year* of the relevant regulatory control period using the *roll forward model* referred to in clause 6A.6.1, together with:
- (i) details of all amounts, values and other inputs used by the Network

- Operator for that purpose;
- (ii) a demonstration that any such amounts, values and other inputs comply with the relevant requirements of Part C of Chapter 6A; and
 - (iii) an explanation of the calculation of the regulatory asset base for each *regulatory year* of the relevant regulatory control period and of the amounts, values and inputs referred to in subparagraph (i);
- (6) **[Deleted]**
- (7) the depreciation schedules nominated by the Network Operator for the purposes of clause 6A.6.3, which categorise the relevant assets for these purposes by reference to well accepted categories such as:
- (i) asset class (e.g., *transmission lines* and *substations*); or
 - (ii) category driver (e.g., authorization or direction or *requirements*, replacement, *reliability*, net market benefit, and business support),
- and also by location, together with:
- (iii) details of all amounts, values and other inputs used by the Network Operator to compile those depreciation schedules;
 - (iv) a demonstration that those depreciation schedules conform with the requirements set out in clause 6A.6.3(b) of the NER and the EII Regulation; and
 - (v) an explanation of the calculation of the amounts, values and inputs referred to in subparagraph (iii);
- (8) **[Deleted]**
- (8A) whether the depreciation schedules contain any proposed modifications in accordance with clause 6A.6.3(d) and the EII Regulation and, if so, the reasons why the Network Operator considers that such modifications are reasonably necessary under section 47D(3) of the EII Regulation;
- (9) **[Deleted]**
- (10) **[Deleted]**
- (11) Include a statement of whether the Network Operator's revenue proposal is consistent with the relevant Consumer Trustee authorisation or Minister's direction or authorisation and, if it is different, identify and provide reasons for the differences.
- (12) Include the revenue (in total and annually) to be paid to the Network Operator for carrying out the project, including a break-down of the total and annual amounts into their components (as set out under section 38 of the EII Act and the EII Regulation).
- (13) Include a schedule of payments setting out quarterly amounts proposed to be paid to the Network Operator by the Scheme Financial Vehicle (as defined under the EII Act) for carrying out the project, and the methodology by which these quarterly amounts are to be calculated from the total revenue.
- (14) Include a formulaic description of any mechanisms that will be used to adjust the revenue proposed to be paid to the Network Operator and the schedule of payments within the regulatory control period (for example, to adjust payments for actual inflation or movements in the wage price index). For each

mechanism, provide:

- (i) a description of the components to be adjusted
 - (ii) the timing of the adjustment for each component, or relevant trigger event
 - (iii) a detailed explanation of the proposed method of indexation, escalation or adjustment
 - (iv) identification of the authoritative source (or sources) of indices or data to be used for any indexation, escalation or adjustment.
- (15) Include the proposed costs imposed on the Network Operator and how those costs were calculated.¹¹⁸
- (16) Include payments required to be made by the Network Operator to the Infrastructure Planner under any contractual arrangement. These costs may include the costs of early development works, preparatory activities and project management undertaken by the Infrastructure Planner (including land, easements, project development work, client delivery and related costs) that are being passed through to the Network Operator.
- (17) Include for all financial values the dollar terms in which the amounts are presented.
- (18) Total development and construction capex necessary to carry out the network infrastructure project according to the Consumer Trustee's authorisation or Minister's direction or authorisation:
- (i) A forecast of development and construction capex the Network Operator will incur in the first regulatory control period.
 - (ii) A forecast of development and construction capex the Network Operator will incur in one or more subsequent regulatory control periods.
 - (iii) How the proposed staging of development and construction capex complies with the terms of the Consumer Trustee's authorisation or Minister's authorisation or direction.
- (19) Be accompanied by an overview paper which includes:
- (i) a summary of the revenue proposal, the purpose of which is to explain the revenue proposal in reasonably plain language to electricity consumers;
 - (ii) a summary of the scope and terms of the Consumer Trustee's authorisation or the Minister's direction and the network infrastructure project the authorisation requires the Network Operator to carry out;
 - (iii) a description of how the Network Operator has engaged with electricity consumers and, if so, what feedback was provided and how that feedback has been taken into account in developing the revenue proposal; and
 - (iv) for each determination after the initial determination, a comparison of the Network Operator's proposed revenue cap with its approved revenues for the preceding regulatory control period (by total and by component).

¹¹⁸ EII Regulation, s. 46(b)(1).

Schedule 6A.2 Regulatory Asset Base

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

(a) **Application of this clause**

This clause S6A.2.1:

- (1) applies to the establishment of the value of the regulatory asset base for a network infrastructure project as at the beginning of a regulatory control period on the roll forward of the regulatory asset base to that regulatory control period from the previous regulatory control period; and
- (2) also applies to the establishment of the value of the regulatory asset base for a network infrastructure project as at the beginning of a regulatory control period where the network infrastructure project was not immediately before that time the subject of a *revenue determination*.

(b) **Roll forward model to comply with this clause**

The *roll forward model* referred to in clause 6A.6.1 must provide for those values to be established in accordance with the requirements of clauses S6A.2.1 and S6A.2.2.

(c) **[Deleted]**

(d) **[Deleted]**

(e) **[Deleted]**

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

Except as otherwise provided in paragraph (d) or (g), the value of the regulatory asset base for a network infrastructure project as at the beginning of the first *regulatory year* of a regulatory control period must be calculated by adjusting the value (the previous value) of the regulatory asset base for that network infrastructure project as at the beginning of the first *regulatory year* of the immediately preceding regulatory control period (the previous control period) as follows:

- (1) The previous value of the regulatory asset base must be:
 - (i) increased by the amount of all capital expenditure incurred during the previous control period; and
 - (ii) reduced by the amount of any capital expenditure that has been recovered by way of a pass through under clause 6A.7.2 or clause 6A.7.3 where the amount of that capital expenditure would otherwise have been included in the value of the regulatory asset base.
- (2) The previous value of the regulatory asset base must be increased by the amount of the estimated capital expenditure approved by the *AER* for any part of the previous control period for which actual capital expenditure is not available.
- (3) The previous value of the regulatory asset base must be adjusted for the difference between:

- (i) the estimated capital expenditure for any part of a previous regulatory control period where that estimated capital expenditure has been included in that value; and
- (ii) the actual capital expenditure for that part of the previous regulatory control period.

This adjustment must also remove any benefit or penalty associated with any difference between the estimated and actual capital expenditure.

- (4) The previous value of the regulatory asset base must only be increased by actual or estimated capital expenditure to the extent that all such capital expenditure is properly allocated to the provision of regulated network services in accordance with the *Cost Allocation Methodology* for the relevant Network Operator.
- (5) The previous value of the regulatory asset base must be reduced by the amount of depreciation of the regulatory asset base during the previous control period, calculated in accordance with the rates and methodologies allowed in the revenue determination (if any) for that period.
- (6) The previous value of the regulatory asset base must be reduced by the disposal value of any asset where that asset has been disposed of during the previous control period.
- (7) **[Deleted]**
- (8) Without prejudice to the application of any other provision of this paragraph (f), the previous value of the regulatory asset base may be increased by the inclusion of:
 - (i) past capital expenditure that has not been included in that value because that capital expenditure was incurred in connection with the provision of services that are not regulated network services, and in these circumstances, such capital expenditure must only be included to the extent the asset in respect of which that capital expenditure was incurred is subsequently used for the provision of regulated network services; and
 - (ii) past capital expenditure that has not been included in that value, but only to the extent that such past capital expenditure:
 - (A) relates to an asset that is used for the provision of regulated network services;
 - (B) is considered by the *AER* to be reasonably required in order to achieve one or more of the *capital expenditure objectives*;
 - (C) is properly allocated to regulated network services in accordance with the principles and policies set out in the *Cost Allocation Methodology* for the relevant Network Operator; and
 - (D) has not otherwise been recovered.
- (g) The previous value of the regulatory asset base must be reduced by any amount determined by the *AER* in accordance with clause S6A.2.2A(f), (i) or (j).

S6A.2.2 Prudency and efficiency of capital expenditure

[Deleted]

S6A.2.2A Reduction for inefficient past capital expenditure

- (a) Prior to making a decision on the regulatory asset base for a network infrastructure project as required by clause 6A.14.1(5D), the *AER* may determine under this clause S6A.2.2A that the amount of capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) should be reduced.
- (a1) For the purposes of this clause S6A.2.2A, "review period" means:
 - (1) the previous control period (excluding the last *regulatory years* of that previous control period); and
 - (2) the last *regulatory years* of the regulatory control period preceding the previous control period.
- (b) The *AER* may only make a determination under paragraph (a) if any of the following requirements is satisfied:
 - (1) the requirement set out in paragraph (c) (the *overspending requirement*);
 - (2) the requirement set out in paragraph (d) (the *margin requirement*); or
 - (3) the requirement set out in paragraph (e) (the *capitalisation requirement*).
- (c) The *overspending requirement* is satisfied where the sum of all capital expenditure incurred during the review period exceeds the sum of:
 - (1) the forecast capital expenditure accepted or substituted by the *AER* for the review period as such forecast capital expenditure has been adjusted in accordance with clauses 6A.7.1(f) and 6A.8.2(h); and
 - (2) any capital expenditure that is recovered by way of such part of an *approved pass through amount*, or of a *network support pass through amount*, as is permitted to be passed through during the review period less any capital expenditure that is included in a *negative pass through amount*, or in a *network support pass through amount*, that is required to be passed through during the review period.
- (d) The *margin requirement* is satisfied where the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) includes capital expenditure that represents a margin paid by the Network Operator in circumstances where the margin is referable to arrangements that, in the opinion of the *AER*, do not reflect arm's length terms.
- (e) The *capitalisation requirement* is satisfied where the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) includes expenditure that, under the Network Operator's applicable capitalisation policy submitted to the *AER* as part of its *Revenue Proposal*, should have been treated as operating expenditure.

- (f) Where the *overspending requirement* is satisfied, and subject to paragraphs (g) and (h), the AER may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) should be reduced by such amount as the AER is satisfied corresponds to capital expenditure incurred during the review period that does not reasonably reflect the *capital expenditure criteria*.
- (g) The amount determined by the AER under paragraph (f):
 - (1) must not be greater than the amount calculated in accordance with paragraph (c);
 - (2) must be determined in a manner that is consistent with the *capital expenditure incentive objective*, and
 - (3) must be determined taking into account the *Expenditure Incentive Guidelines*.
- (h) In making a determination under paragraph (f), the AER must:
 - (1) have regard to the *capital expenditure factors*; and
 - (2) only take into account information and analysis that the Network Operator could reasonably be expected to have considered or undertaken at the time that it undertook the relevant capital expenditure.
- (i) Where the *margin requirement* is satisfied, and subject to paragraph (k), the AER may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) should be reduced by such of the margin referred to in paragraph (d) as the AER is reasonably satisfied would not have been paid if the arrangements to which the margin is referable had been on arm's length terms.
- (j) Where the *capitalisation requirement* is satisfied, and subject to paragraph (k), the AER may determine that the amount of the capital expenditure as a result of which the previous value of the regulatory asset base would otherwise be increased in accordance with clause S6A.2.1(f) should be reduced by any or all of the amount of expenditure referred to in paragraph (e) which should have been treated as operating expenditure.
- (k) A determination made under paragraph (i) or (j) must be consistent with the *capital expenditure incentive objective* and, in making such a determination, the AER must take into account the *Capital Expenditure Incentive Guidelines* and the AER's *Guidance Note - Regulation of actionable ISP projects*.
- (l) Nothing in this clause S6A.2.2A is to be taken to preclude the AER from:
 - (1) requiring a Network Operator to provide such information; or
 - (2) from undertaking such analysis,
 as the AER considers appropriate to enable it to make a statement, with supporting reasons, as referred to in clause 6A.14.2(a).

S6A.2.2B Depreciation

- (a) Pursuant to clause 6A.14.1(5D), the AER must decide, ~~for a draft decision under rule 6A.12 or~~ for a final decision under clause 6A.13, whether depreciation for establishing the regulatory asset base for a network

infrastructure project as at the commencement of the following regulatory control period is to be based on actual or forecast capital expenditure.

- (b) The decision referred to in paragraph (a) must be consistent with the *capital expenditure incentive objective* and EII Regulation.
- (c) In making the decision referred to in paragraph (a), the AER must have regard to:
 - (1) the incentives that the Network Operator has in relation to undertaking efficient capital expenditure, including as a result of the application of any incentive scheme or any other incentives under the EII Regulation;
 - (2) the substitution possibilities between assets with relatively short economic lives and assets with relatively long economic lives and the relative benefits of such asset types;
 - (3) the extent to which any capital expenditure incurred by the Network Operator has exceeded the corresponding amount of forecast capital expenditure accepted or substituted by the AER and the amount of that excess expenditure which is not efficient;
 - (4) the *Capital Expenditure Incentive Guidelines*; and
 - (5) the *capital expenditure factors* and Transmission Efficiency Test.

S6A.2.3 Removal of assets from regulatory asset base

[Deleted]

S6A.2.4 Roll forward of regulatory asset base within the same regulatory control period

(a) Application of this clause

This clause S6A.2.4 applies to the establishment of the value of the regulatory asset base for a network infrastructure project as at the beginning of one *regulatory year* in a regulatory control period on the roll forward of the regulatory asset base to that *regulatory year* from the immediately preceding *regulatory year* (if any) in that regulatory control period.

(b) Roll-forward model to comply with this clause

The *roll-forward model* referred to in clause 6A.6.1 must provide for that value to be established in accordance with the requirements of this clause S6A.2.4.

(c) Method of adjustment of value of regulatory asset base

The value of the regulatory asset base for a network infrastructure project as at the beginning of the second or a subsequent year (**the later year**) in a regulatory control period must be calculated by adjusting the value (**the previous value**) of the regulatory asset base for that network infrastructure project as at the beginning of the immediately preceding *regulatory year* (**the previous year**) in that regulatory control period as follows:

- (1) The previous value of the regulatory asset base must be increased by the amount of forecast capital expenditure accepted or substituted by the AER for the previous year in accordance with clause 6A.6.7(c) or clauses 6A.13.2(b)(4) and (5) (as the case may be).

- (2) The previous value of the regulatory asset base must be reduced by the amount of depreciation included in the *annual building block revenue requirement* for the previous year.
 - (3) The previous value of the regulatory asset base must be reduced by the disposal value of any asset included in that value where the asset is forecast to be disposed of during the previous year.
 - (4) The previous value of the regulatory asset base must be increased by an amount necessary to maintain the real value of the regulatory asset base as at the beginning of the later year by adjusting that value for inflation.
- (d) **Allowance for working capital**

If the *AER* determines that it is appropriate to do so, it may include an allowance for working capital in the regulatory asset base for a network infrastructure project which is rolled forward in accordance with this clause S6A.2.4.

Schedule 6A.3 CRNP methodology and modified CRNP methodology

[Deleted]

Schedule 6A.4 Application of this Chapter to AEMO and declared transmission system operators

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