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## Application for authorisation of proposed acquisition by Brookfield LP and MidOcean Energy of Origin Energy Limited

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Date: 26 May 2023

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I, Thomas Andrew Hallam of 31/2 Southbank Boulevard, Southbank VIC 3006, General Manager, Regulation & Network Strategy, AusNet Pty Ltd, affirm that:

- 1 I am the General Manager, Regulation & Network Strategy of AusNet Pty Ltd (**AusNet**) and I am authorised to make this statement of AusNet's behalf.
- 2 I make this statement from my own knowledge, based on my understanding of and involvement in AusNet's operations, my role as a senior manager of AusNet and my experience in the regulation of the energy industry in Australia.
- 3 Annexed to this statement is a tabbed bundle of documents marked 'TH-1' to 'TH-25'. Annexures marked 'TH-8', 'TH-17' and 'TH-25' are confidential to AusNet. In this statement, I refer to each document by reference to the relevant annexure number.
- 4 AusNet claims confidentiality over:
  - (a) the parts of this statement highlighted in **Confidential to AusNet**; and
  - (b) the confidential annexures to this statement, marked Confidential Annexure 'TH-8', 'TH-17' and 'TH-25',

on the basis that they contain commercially sensitive and confidential information concerning the business of AusNet.

## 1 Professional Qualifications and experience

- 5 I completed a Bachelor of Economics (Hons) from University of Tasmania in 1995.
- 6 In 1996, I joined the Productivity Commission as a graduate economist.
- 7 In 1999, I joined GPU PowerNet, a forerunner to AusNet, as a regulatory economist.
- 8 Since then, I have held different management roles within AusNet and its predecessor organisations, primarily covering the regulation of gas and electricity distribution and transmission, but also at times asset management, planning and network safety.
- 9 In my current role, I have primary responsibility for AusNet's regulatory and price review strategy, and general regulatory support to the AusNet business for AusNet's gas distribution and electricity transmission networks.
- 10 I oversee a team consisting of 10 people who are responsible for economic regulation, regulatory modelling, and customer research and engagement matters for AusNet.
- 11 I have gained extensive experience in the regulation of electricity and gas transmission and distribution through holding senior regulatory positions across all three regulated networks owned by AusNet and its forerunner organisations over 24 years.
- 12 In this statement, I outline below some of the key regulatory requirements which are imposed on AusNet, including under the National Electricity Rules (**NER**) and how those requirements affect AusNet in practice. I am familiar with these regulatory requirements because of my role in relation to regulatory and price review strategy, and general regulatory support.

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13 Where I refer to specific provisions of the NER, I have included at Annexure TH-1 copies of extracts from the NER with those specific provisions.

## 2 Overview of AusNet

14 AusNet is an Australian energy infrastructure company. It owns and operates the Victorian electricity transmission network, one of five Victorian electricity distribution networks and one of three Victorian gas distribution networks. It also operates a 'Development and Future Networks' (**DFN**) business, including under the brand name Mondo.

15 AusNet's transmission network transports electricity at high voltages from electricity generators to Victoria's five distribution networks, as well as to large industrial and commercial customers directly connected to the transmission network. The transmission network includes 61 terminal stations, approximately 13,000 towers and approximately 6,850 kilometres of high-voltage powerlines. AusNet's transmission network also includes transmission lines and other assets that, with interconnectors owned and operated by other providers, connect the Victorian network to the New South Wales, South Australian and Tasmanian parts of the National Electricity Market (**NEM**).

16 In Victoria, transmission network service provider (**TNSP**) functions are split between AusNet and the Australian Energy Market Operator (**AEMO**). AusNet is responsible, amongst other things, for the renewal, maintenance and operation of the Victorian electricity transmission network. AEMO is responsible, amongst other things for system planning, augmentation and the provision and pricing of shared transmission services to users. In addition to its role as a TNSP in Victoria, AEMO operates the NEM, including making decisions on which generators are dispatched. AEMO also manages the electricity systems in the NEM more generally, including monitoring supply and demand, voltage and frequency, and managing planned and unplanned outages, and emergencies.

17 AusNet owns and operates one of five electricity distribution businesses in Victoria. AusNet's electricity distribution network carries electricity from the high voltage transmission network and embedded generators to end users of electricity, such as households and businesses. AusNet's distribution network includes approximately 44,705 kilometres of overhead powerlines, 7,908 kilometres of underground cables, 417,145 power poles and 90,000 streetlights. This network covers 80,000 square kilometres, most of which is in rural or regional areas and feeds electricity to approximately 802,000 customers across eastern and north-eastern Victoria, and in Melbourne's north and east.

18 AusNet owns and operates one of the three gas distribution businesses in Victoria. AusNet's gas distribution network carries natural gas from transmission pipelines to end users in western Melbourne, central and western Victoria through a network of underground gas pipelines. The AusNet gas distribution network includes approximately 12,587 kilometres of gas pipelines in an area of 60,000 square kilometres. This network includes mains, mainline valves, pressure regulating facilities (including city gates, field and district regulators), service pipes and meters

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and ancillary equipment. AusNet distributes gas to approximately 792,000 residential, industrial and commercial customers in western Melbourne, Geelong and parts of Western Victoria. Most of the value and expenditures in AusNet's gas distribution systems relates to long lived assets such as gas pipelines that facilitate the provision of services to more than one customer.

19 AusNet also operates businesses which provides a range of services to support the management of electricity, gas and water networks that fall outside AusNet's regulated businesses. This includes energy monitoring and management, virtual power plant trials, batteries and contestable metering services for commercial and industrial customers.

20 AusNet is owned, by a series of holding companies at the top of which is Australian Energy Holdings No 1 Pty Limited (**AusNet Holdings**), AusNet Holdings is ultimately owned by a consortium of investors. Brookfield Super-Core Infrastructure Partners and Brookfield Infrastructure Partners together with certain Brookfield managed institutional investors hold a combined 45.4% interest in AusNet. The other investors in the consortium, and their interests in AusNet, are Australian Retirement Trust (15%), Healthcare of Ontario Pension Plan (9.9%), Investment Management Corporation of Ontario (9.9%), Alberta Investment Management Corporation (9.9%) and Canada's Public Sector Pension Investment Board (9.9%).

## 3 Electricity transmission

### 3.1 Pricing

21 AusNet's transmission services fall into three categories: prescribed transmission services, negotiated transmission services, and non-regulated transmission services, with each category subject to different levels of price regulation.

#### Prescribed transmission services

22 There are four categories of prescribed transmission services set out in rule 11.6.11 of the NER (an extract is included at pages 1-4 of Annexure TH-1), for which charges are levied:

- (a) prescribed common transmission services, which relate to services that provide equivalent benefits to all users without differentiation based on their location;
- (b) prescribed transmission use of services (**TUOS**), which relate to services that provide benefits to users depending on their location within the transmission system;
- (c) prescribed entry services (grandfathered entry connection services for generators who had a connection agreement in place on or before 9 February 2006); and
- (d) prescribed exit services (grandfathered exit connection services for customers who had a connection agreement in place on or before 9 February 2006).

23 The charges for prescribed common transmission services and TUOS services are calculated, set and levied by AEMO. These charges comprise costs charged by AusNet to AEMO and AEMO's own costs. The amounts charged by AusNet for non-contestable services are regulated by the Australian Energy Regulator (**AER**) and subject to audit by AEMO. The charges for

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prescribed entry services and prescribed exit services are levied by AusNet. Of the four charges only charges for prescribed entry services are paid by generators. All other charges are paid by distribution network service providers (*DNSPs*) and industrial customers directly connected to the transmission network.

- 24 Charges for prescribed entry services are levied by AusNet on generators in relation to assets used to provide services to generators that, as at 9 February 2006, either existed or were committed to be constructed and the value of which were, or were forecast to be, included in AusNet's regulatory asset base. Prescribed entry services are "grandfathered" services, with new connections now regulated under a different regime, which I discuss below.
- 25 Charges for prescribed entry services are subject to regulation by the AER.
- 26 There are currently eight generators connected to the AusNet transmission network that receive and are charged for prescribed entry services, being:
- (a) AES Jeeralang (a gas-fired power station)
  - (b) AES Yarra (gas-fired)
  - (c) Laverton (gas-fired)
  - (d) Loy Yang A (brown coal-fired)
  - (e) Loy Yang B (brown-coal fired)
  - (f) Southern Hydro (hydro)
  - (g) Valley Power (gas-fired); and
  - (h) Yallourn (brown coal-fired).
- 27 The Murraylink interconnector connecting the Victorian and South Australian transmission networks within the NEM, and the Basslink Interconnector connecting the Victorian and Tasmanian transmission networks, are treated in the same way as the above generators for pricing purposes and therefore are also charged prescribed entry service fees.

## **Negotiated transmission services**

- 28 '**Negotiated transmission services**' are defined in Chapter 10 of the NER as any of the following services:
- (a) a shared transmission service that:
    - (i) exceeds the network performance requirements (whether as to quality or quantity) as that shared transmission service is required to meet under any jurisdictional electricity legislation; or
    - (ii) except to the extent that the network performance requirement which that shared transmission service is required to meet are prescribed under jurisdictional electricity legislation, exceeds or does not meet the network performance

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requirements (whether as to quality or quantity) as set out in Schedule 5.1A or 5.1 of the NER;

- (b) connection services that are provided to serve a transmission network user, or group of transmission network users, at a single transmission network connection point, other than connection services that are provided by one network service provider to another network service provider to connect their networks;
- (c) non-contestable connection services as specified in rule 5.2A.4 of the NER; or
- (d) undertaking system strength connection works.

An extract from the NER regarding the definition of negotiated transmission services is included at page 5 of Annexure TH-1.

29 AusNet provides negotiated transmission services almost entirely in the context of connecting a new generator to the transmission network. The services may comprise upgrading the transmission network to a higher standard to accommodate the new generator or connection services themselves.

30 Where a connection or the augmentation of the shared transmission network requires capital works, these works may be contestable or non-contestable. A project is contestable if:

- (a) the cost of the project is reasonably expected to exceed \$10 million; and
- (b) the project is considered to be a 'separable augmentation', meaning that it will provide a distinct and definable service to AEMO and will not materially adversely affect the services provided to AEMO by an incumbent service provider.

## **Non-Contestable negotiated transmission services**

31 Where a project is not contestable, AusNet negotiates the price for the relevant connection or shared transmission services based on the regulatory framework discussed below.

32 When negotiating the prices that are to be charged for negotiated transmission services, AusNet must apply 'negotiated transmission service criteria' set by the AER as part of its five yearly transmission determination. Those negotiated transmission service criteria must in turn give effect to and be consistent with negotiated transmission service principles set out in rule 6A.9.1 of version 109 of the NER (an extract of which is included at pages 1 -3 of Annexure TH-2). The negotiated transmission service criteria must also be applied by any commercial arbitrator in resolving a dispute. The negotiated transmission service principles set out in the NER include a requirement that the price for a negotiated transmission service:

- (a) should be based on the costs incurred in providing that service, determined in accordance with the principles and policies set out in the cost allocation methodology for the relevant TNSP. The AER has approved AusNet's cost allocation methodology and any future amendment would require AER approval (as shown in the document included at Annexure TH-3 and available at: <<https://www.aer.gov.au/networks->

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pipelines/determinations-access-arrangements/cost-allocation-method/ausnet-services-transmission-cost-allocation-method-2019>);

- (b) should be at least equal to the avoided cost of providing the negotiated transmission service, but no more than the cost of providing it on a standalone basis;
- (c) must be the same for all transmission network users unless there is a material difference in the cost of providing the negotiated transmission service to different users. In practice this means the same tariff structure options and methodology is used for like users (for example, in determining whether an upfront payment is required) rather than requiring each connecting generator to pay the same dollar amount;
- (d) should be subject to adjustment over time to the extent that the assets used to provide that service are subsequently used to provide services to another person; and
- (e) should be such as to enable the TNSP to recover the efficient costs of complying with all regulatory obligations or requirements associated with the provision of the negotiated transmission service.

33 A copy of AusNet's negotiated transmission service criteria, approved by the AER, is included at Annexure TH-4 and available at:  
<<https://www.aer.gov.au/system/files/AER%27s%20proposed%20negotiated%20transmission%20service%20criteria%20%28NTSC%29%20for%20Ausnet%20Services%20-%20November%202015.pdf>>.

34 AusNet must also prepare a negotiating framework that sets out procedures for negotiating terms and conditions for access to the Victorian transmission network. This is reviewed and approved by the AER as part of the AER's five yearly pricing determinations. The negotiating framework must include requirements that:

- (a) AusNet and the generator seeking access negotiate in good faith; and
- (b) AusNet provide all such commercial information reasonably required by the generator seeking access so as to facilitate effective negotiations;
- (c) AusNet identify and inform the generator seeking access of the reasonable costs of providing the service, and demonstrate that charges reflect costs;
- (d) the generator seeking access providing all such commercial information reasonably required for AusNet to engage in effective negotiation;
- (e) there is a process for dispute resolution that complies with the dispute resolution requirements in the NER;
- (f) there is a reasonable period of time for commencing, progressing and finalising negotiations, with requirements for each party to use reasonable endeavours to adhere to these time periods in negotiations;
- (g) AusNet specify arrangements for the payment of AusNet's reasonable direct expenses incurred in processing the application by the generator; and
- (h) AusNet determines the potential impact of the provision of a negotiated transmission service on other network users.



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- 35 AusNet's negotiated framework approved by the AER is included at Annexure TH-5 and available at: <<https://www.aer.gov.au/system/files/AER%20-%20Draft%20decision%20Ausnet%20Services%20transmission%20determination%20-%20Attachment%2014%20-%20Negotiating%20framework%20-%20July%202016.pdf>>.
- 36 Negotiations are ultimately subject to a dispute resolution process under procedures in Chapter 6A, Part K of Version 109 of the NER (an extract of which is included at pages 4 - 9 of Annexure TH-2). In particular, the AER can appoint a commercial arbitrator who can resolve the dispute. To the best of my knowledge AusNet has not been involved in any disputes raised under these procedures.
- 37 As discussed below, negotiations in relation to negotiated transmission services are led and overseen by AEMO.
- 38 With respect to non-contestable negotiated augmentation of the shared transmission network, a generator may still have the option in many cases to decide that any "connection" assets (eg, transmission lines, transformers) form the generator's system such that the generator owns, operates and controls those assets under its registration of the generating system rather than the incumbent declared transmission service operator (**DTSO**). In that sense, all 'connection' assets (ownership, operation and control) are contestable, and in more limited circumstances a generator may obtain an exemption to own, operate and/or control shared transmission network assets (and provide associated services to AEMO), meaning those aspects of project may also be contestable in practice between the generator and the incumbent DTSO. In any event, AEMO is responsible for the 'Use of System Agreement' (**UoSA**) including its terms (which I discuss further below at paragraph 46) in relation to the shared transmission network in Victoria that all generators must conclude with AEMO. AEMO, not AusNet, is responsible for the setting performance functional standards (**PFRs**) and performance control requirements for any shared network augmentation in Victoria which stipulate (in the case of PFRs) the standards of the service and the equipment that must be used. Once these standards are set by AEMO, determining the cost of performing the work is a relatively mechanical and less contentious and is negotiated between the incumbent DTSO and the generator under the AER approved negotiation framework.
- 39 For the financial year ending 30 June 2022, **Confidential to AusNet: the significant majority** of AusNet's transmission related revenue was derived from the provision of prescribed transmission services, while **Confidential to AusNet: less than 5%** was derived from negotiated transmission services with **Confidential to AusNet: less than 15%** derived from non-regulated transmission services.

## **Contestable transmission services**

- 40 Where a network project is contestable, AEMO must conduct a competitive tendering process in accordance with rule 8.11 of the NER (an extract of which is included at pages 6-13 of Annexure TH-1) to select a provider to build, own and operate the relevant network augmentation unless, in

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the case augmentations to facilitate a generator funded connection, the generator directly selects the DTSO it wishes to provide the network augmentation/service.

41 Contestable transmission services include contestable augmentations. The price and other terms for contestable augmentations are set through competitive tender processes.

42 In practice, in my experience there is significant competition for contestable transmission services and AusNet has lost a number of contestably awarded projects to other DTSOs. By way of example, contestably awarded projects won by parties other than AusNet in the last number of years include the Kiamal Solar Farm Terminal Station (and connection assets, as applicable) and Berrybank Wind Farm Terminal Station (and connection assets, as applicable) both awarded to TransGrid and the Elaine Wind Farm Terminal Station (and connection assets, as applicable) and Ararat Wind Farm Terminal Station (and connection assets, as applicable), both awarded to Transmission Operations Australia (now called Electricity Transmission Australia). In some cases, the generator themselves may build, own and operate the connection assets themselves as part of the generation facility. Examples of this occurring include the Mortlake South Wind Farm and the Crowlands Wind Farm.

43 Negotiations in relation to contestable connection and shared transmission services are also overseen by AEMO. The terms relating to the construction of the connection asset are negotiated bilaterally between the generator and the selected DTSO (either the incumbent DTSO or another DTSO). AEMO will have oversight of the pricing and terms of the work to be performed through a Project Construction and Coordination Deed (**PCCD**) to which the generator, the incumbent DTSO and the selected DTSO (if different to the incumbent DTSO) are parties, discussed below.

## 3.2 Connection and access

44 In order to connect a generator to the transmission network some or all of the following are required:

- (a) The provision of a physical connection between the connecting party's facilities and the shared transmission network, including the construction, operation and maintenance of any assets required to provide that physical connection.
- (b) The construction, operation and maintenance of a new terminal station (otherwise known as a substation) to form part of the shared transmission network to facilitate the connection or upgrades to an existing substation.
- (c) Construction of any upgrades necessary to the shared transmission network, as a result of the connection, to ensure it continues to meet regulatory requirements.
- (d) The construction, operation and maintenance of an 'extension' from the connecting party's facilities to transmission network assets that provide the physical connection – eg, that may comprise transmission lines and transformers between from the generator's system and boundary of the shared network aspect of the substation.

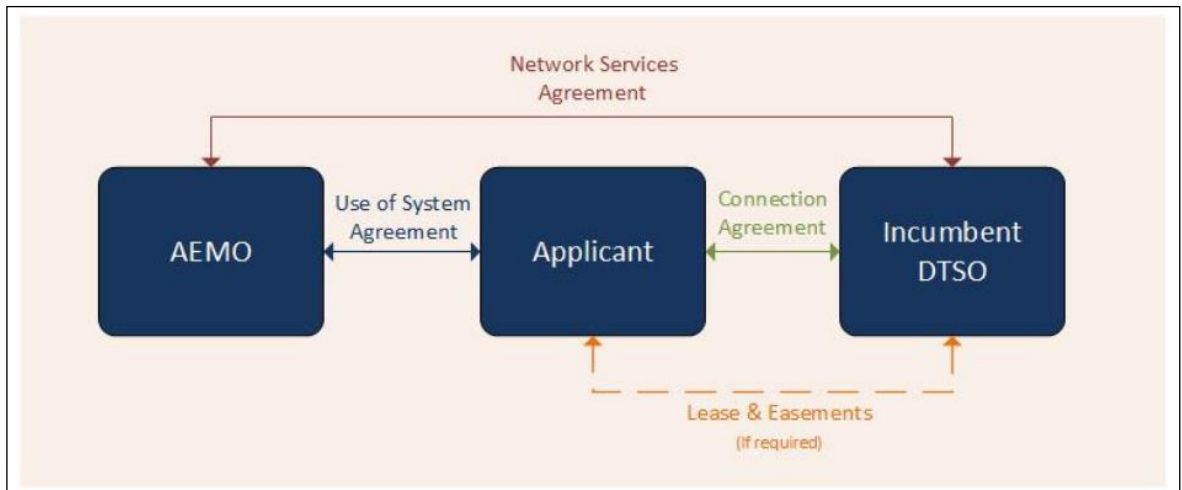
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- 45 The provision of some or all of these services will be contestable in the circumstances described above at paragraph 30.
- 46 Because AEMO's functions include the provision of shared transmission services to users, it is the party that ultimately enters into a UoSA with generators. AEMO, rather than AusNet, has the primary role in dealing with generators seeking connection and access to the Victorian network, with AusNet providing information and negotiating project, network and connection agreements as required.
- 47 Where no network augmentation is required for a connection, AEMO will enter into a UoSA with the connecting generator under which AEMO provides the connecting generator with ongoing shared network services, being transmission connection and access. At the same time, a Network Services Agreement between AEMO and AusNet allows AEMO to provide shared network services to the connecting generator under the UoSA. Under the Network Services Agreement, AusNet performs the network services required to ensure that AEMO can perform its functions vis-à-vis the connecting generator, and to consult with AEMO in respect of any upgrades, replacement or modification of the relevant network infrastructure. If the generator and AusNet agree that AusNet will own, operate and control any 'connection' assets, AusNet will also enter into a Connection Services Agreement with the connecting generator which covers the construction of connection assets and the connection service to be provided to facilitate the connection. As noted above, generators can own, operate and/or control such assets as part of their generating system, as alternative. This scenario occurs rarely in practice as almost all new connections require some form of shared network augmentation.
- 48 If a network augmentation is required for a connection:
- (a) AEMO is responsible for determining whether the relevant works are contestable or non-contestable. If AEMO determines works are contestable, it may also run the tender for and select the DTSO for these works, or the connecting generator may do so; and
  - (b) if AEMO determines the connection will require contestable augmentation works, a PCCD (or similar/equivalent) is then also entered into. The PCCD is an overarching agreement between AEMO, the generator, and the contestable and incumbent TNSPs (where they are different), that regulates the construction of the relevant infrastructure. As AEMO is a party to the PCCD, it has direct oversight of the process for construction and delivery of connection to a new generator and allows it to intervene if AusNet as the relevant incumbent DTSO (and contestable DTSO, if applicable) fails to meet its obligations under the PCCD.
- 49 If AEMO determines that augmentation is required, but that this will be non-contestable, the contractual structure will be as set out below in Figure 1, obtained from this website: <https://aemo.com.au/energy-systems/electricity/national-electricity-market-nem/participate-in-the-market/network-connections/victorian-transmission-connections/stage-4-contracts> (a copy of which is included at Annexure TH-6). The contractual structure where augmentation is required for a contestable connection illustrated in Figure 2, which is drawn from the same source as

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Figure 1. Berrybank Wind Farm is an example. In that case the generator, GPG, selected TransGrid to construct the substation and the line connecting to the generator whilst AusNet was responsible for the 'turn in' work. 'Turn in' work refers to the interface of a new or augmented transmission network terminal station (or substation) and the existing transmission network. A PCCD was entered into between AEMO, GPG as the applicant, AusNet as the incumbent DTSO and TransGrid as the selected DTSO for the contestable work. AEMO was mainly responsible for the PCCD, which set out the PFRs for the substation as well as the turn-in or interface works. Following construction, AusNet provides network shared transmission services to AEMO in connection with the interface work. TransGrid provides shared transmission services in relation to the substation. There would be a direct agreement between TransGrid and GPG with respect to its connection services. There would also be a direct agreement between GPG and AEMO where AEMO provides TUOS to the generator.

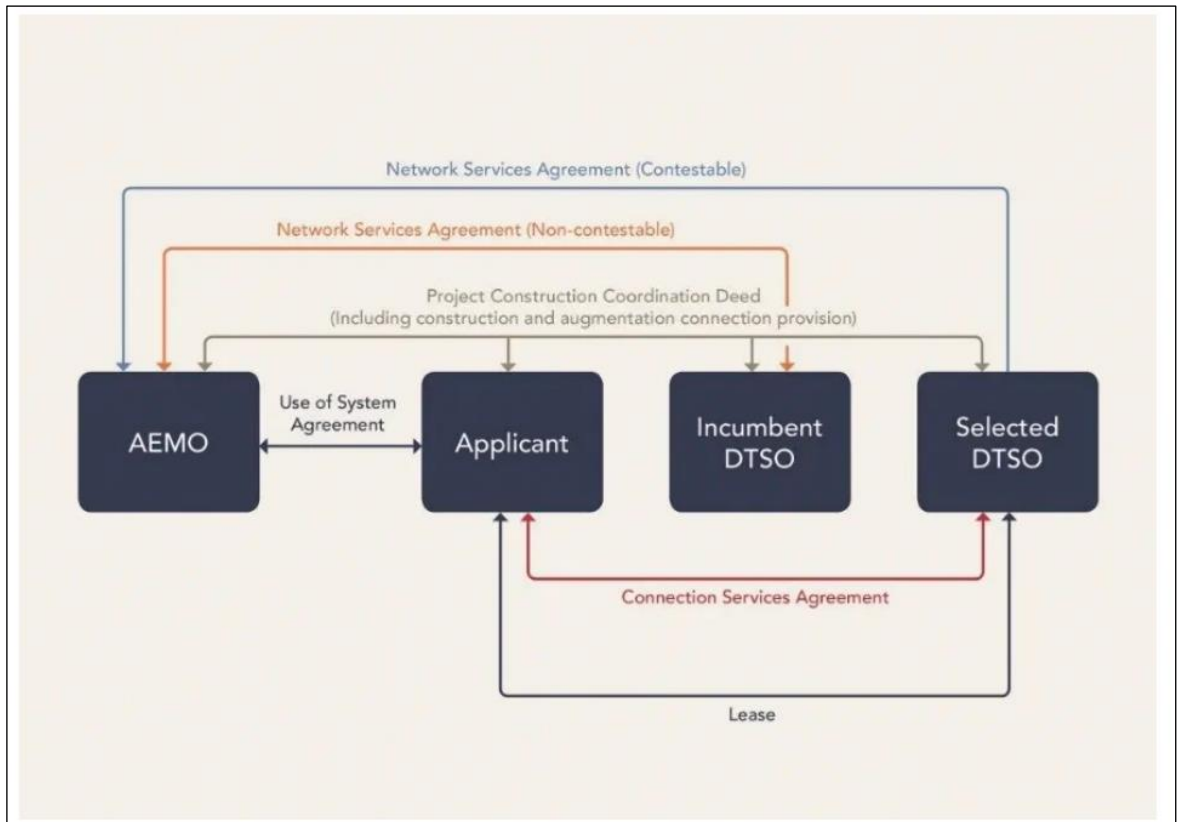
**Figure 1: Contractual structure for Victorian transmission connection not requiring contestable augmentation (incumbent DTSO builds, own and operates the augmentation)**



Source: AEMO

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Figure 2: **Contractual structure for Victorian transmission connection requiring contestable augmentation**



Source: AEMO

50 As a result of the above, AEMO is directly involved in any new connection by a generator and in regulating ongoing access to the network. AusNet's role in the connection process, if it is not the selected DTSO in respect of the contestable works, is limited to matters such as:

- (a) providing information in accordance with rule 5.3.2(f) of the NER (an extract of which is included at page 17 of Annexure TH-1), which requires AusNet to facilitate the processing of a connection enquiry or an application to connect. A failure to assist AEMO in making information available to a generator seeking connection can result in civil penalties for AusNet under the NER;
- (b) contracting with AEMO under a Network Services Agreement to allow AEMO to provide shared transmission services to the connecting generator; and
- (c) carrying out any works such as upgrades to the transmission network necessary to accommodate the new generator that are not contestable.

51 Whilst in most cases AusNet has a role in the connection process, in my opinion it does not have the ability to discriminate between connecting generators in the application process because of AEMO's oversight or involvement. It is also required, under rule 5.2.3(d) of the NER (an extract of which is included at pages 53-55 of Annexure TH-1), to cooperate with AEMO (as the TNSP which processes connection enquiries or applications to connect) to allow applications to be processed expeditiously and in accordance with rule 5.3 of the NER (an extract of which is

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included at pages 14-52 of Annexure TH-1) – a failure to meet these obligations results in AusNet being liable for civil penalties under the NER.

52 Furthermore, when negotiating the relevant Connection Services Agreement, AusNet must negotiate in good faith (rule 5.3.6(f), an extract of which is included at page 42 of Annexure TH-1), and the agreement must also include performance standards meeting the technical requirements set out in schedules 5.1 and 5.2 of the NER (which are included at pages 59 -140 of Annexure TH-1) regarding system standards and network performance. AusNet is expressly prohibited from imposing conditions on the connecting generator which are more onerous than those contemplated in schedule 5.1 or 5.2, precluding it from using these technical requirements as a way of discriminating between generators when negotiating connection to the transmission network.

53 The above processes and contractual arrangements are subject to a robust dispute resolution framework mandated by the NER. As discussed, the AER can appoint a commercial arbitrator to resolve any dispute in relation to negotiated connection services.

### 3.3 Augmentation, renewal and maintenance of the electricity transmission network

54 AEMO rather than AusNet is responsible for planning, procuring and directing any augmentation of the Victorian transmission network. An augmentation is defined in section 2(1) of the National Electricity Law (**NEL**) (an extract of which is included at Annexure TH-7) as work to enlarge the transmission system or increase its capacity to transmit electricity.

55 AusNet is responsible for the renewal and maintenance of the transmission network but is subject to oversight by a number of bodies including the AER, AEMO, the Victorian Essential Services Commission, and Energy Safety Victoria.

#### ***AusNet's obligations***

56 AusNet is subject to onerous obligations in relation to the renewal and maintenance of the transmission network. AusNet must undertake.

57 The *Electricity Safety Act 1998* (Vic) (**Electricity Safety Act**) requires AusNet to operate and maintain its transmission network to minimise safety risks as well as risks of damage to property and to mitigate bushfire danger arising from the transmission network. AusNet must submit an electricity safety management scheme (**ESMS**) to Energy Safe Victoria (**ESV**). ESV may require AusNet to obtain an independent validation of the scheme, or any part of it, and may also require the validation to assess the design, construction, operation, maintenance and decommissioning of the transmission network or any part of it. AusNet is required to comply with its ESMS once approved by ESV. A copy of AusNet's current ESMS for electricity transmission network is included at Confidential Annexure TH-8.

58 AusNet is subject to regular audits by ESV of its safety and maintenance management including compliance with bushfire mitigation plans, the code of practice for electric line clearance, the electric lines and municipal emergency plan and the ESMS. There are significant financial penalties if AusNet fails to comply with such an audit or is found through such an audit not to

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have complied with the relevant provisions of the Electricity Safety Act and relevant regulations made under this legislation.

- 59 In my opinion it would be inconceivable that responsible officers in AusNet would deliberately neglect any issue relating to renewal or maintenance of the transmission network that would put AusNet at risk of not meeting its obligations under the Electricity Safety Act. In particular, I consider it would be inconceivable because of the significant legal, reputational and financial repercussions for AusNet that I outline below, should AusNet fail to meet its obligations under the Electricity Safety Act.
- 60 AusNet holds an electricity transmission licence issued by the Victorian Essential Services Commission (**ESC**) (a copy of which is included at Annexure TH-9) which requires that AusNet maintain its technical capacity to undertake all transmission activities authorised by its licence and comply with various codes and the Electricity Safety Act. The Victorian Electricity System Code requires AusNet to develop and implement plans for the acquisition, creation, replacement, maintenance, operation, refurbishment, repair, retirement and disposal of transmission network. The ESC audits AusNet's compliance with this obligation.
- 61 Under the NER, AusNet is required to arrange for the maintenance and operation of its network to minimise interruptions, ensure ongoing transmission to agreed capabilities, and to restore agreed capabilities of the network as soon as reasonably practicable following interruption at a connection point for a generator.
- 62 Schedule 5.1 of the NER (an extract of which is included at pages 59–80 of Annexure TH-1) also requires AusNet to meet specific maintenance obligations in connection agreements with generators, including requirements to maintain required facilities consistent with good electricity industry practice and pursuant to agreed performance standards (eg, to ensure ongoing services that meet agreed capabilities, and to minimise interruptions), and to follow agreed protocols to co-ordinate maintenance works with generators. Compliance with connection agreements is a requirement of the NER, and a failure to meet these obligations also exposes AusNet to contractual breach claims by generators.
- 63 There are significant legal, reputational and financial repercussions for AusNet should it fail to meet its obligations of ongoing maintenance and quality of transmission services.
- 64 First, in relation to safety issues that may arise through lack of maintenance, as noted above AusNet is subject to obligations in the Electricity Safety Act to operate and maintain its transmission network to minimise safety and property damage risks as well as any bushfire danger. It is also required under section 142 of Electricity Safety Act (an extract of which is included at Annexure TH-10) and section 27 of the *Electricity Safety (Management) Regulations 2019* (Vic) (**ESMR**) (an extract of which is included at Annexure TH-11) to report all serious electrical incidents to ESV. AusNet's maintenance of its transmission network is also audited by ESV with regard to compliance with the safety requirements of the Electricity Safety Act and ESMR. These include annual audits of AusNet's bushfire mitigation plan and several audits each

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year with respect to other safety and maintenance activities of AusNet. There are significant civil penalties that can apply if AusNet is found to have failed to meet these safety obligations.

65 Second, AusNet's licence to operate the Victorian transmission network could be significantly impacted if it failed to meet its licence obligations. In the event this occurred the ESC could impose further onerous licence conditions or, in the worst case, revoke its licence.

66 Third, as part of AusNet's transmission pricing determination, the AER has established a Service Target Performance Incentive Scheme (**STPIS**). The STPIS applies measures that incentivise AusNet to maintain and improve transmission service performance. In particular, the STPIS scheme provides for payments that are specifically linked to improving the capability of the transmission network and reducing the frequency and length of outages that impact network reliability. For example, AusNet is penalised financially under a service component of the STPIS if it causes unplanned outages that exceed parameters determined by AER (eg, in relation to matters such as average outage duration). A market impact component also penalises AusNet for outages that affect wholesale market outcomes, such as the ability of generators to dispatch into the NEM at competitive prices, again based on parameters determined by AER. AusNet is required to provide to the AER each year a true and fair statement of its operating performance of the Victorian electricity transmission network, for the purposes of applying the STPIS.

67 If a generator is concerned about AusNet's service quality or renewal and maintenance works and expenditure, there are a number of actions it can take:

- (a) any connection agreement between a generator and AusNet would specify the standard of services required. A claim in damages could be made for a failure to comply with any connection agreement;
- (b) a generator can also complain to the AER if it believes that AusNet's conduct is inconsistent with its obligations under the NEL and the NER, as well as other relevant regulatory obligations. The AER may use its powers to investigate and bring enforcement proceedings against AusNet if it considers the concerns have basis in fact and require its intervention;
- (c) a generator could also complain to the ESV or ESC if AusNet's actions could involve a breach of the Electricity Safety Act or AusNet's licence;
- (d) Generators, as well as other stakeholders in the electricity transmission system, can also raise concerns regarding AusNet's service delivery and capital and maintenance works through the AER's five yearly pricing determinations, which involve substantial public consultation.

## ***Renewal and maintenance planning***

68 As part of its five yearly pricing proposal, AusNet sets out a renewal and operating proposal which is subject to review and submissions by interested parties and ultimately, AER approval. Whilst the AER ultimately approves broad categories of expenditure, its approval reflects AusNet's more detailed renewal and maintenance proposal and involves a consideration of the progression of AusNet's renewal and maintenance works in the preceding five year period.



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- 69 Rule 5.12.2 of the NER (an extract of which is included at pages 141-146 of Annexure TH-1) requires AusNet to prepare an Asset Renewal Plan. When preparing its asset renewal plan AusNet works together with AEMO to jointly identify and plan for network renewal. This involves an assessment of required upgrades, replacements, refurbishments, or retirement of existing network assets by AusNet, and in particular, involves consultation between AusNet and AEMO as to the most economic renewal and maintenance options in the context of AEMO's planned augmentations. If AEMO identifies that a particular part of the network requires renewal to address, for example, congestion or security issues in transmission, then this will be addressed in AusNet's Asset Renewal Plan (a copy of which is included at Annexure TH-12) which is published alongside AEMO's Victorian Annual Planning Report.
- 70 AusNet's asset replacement decisions are governed by its assets management practices which must comply with the legal and regulatory requirements outlined earlier. Those practices are reflected in AusNet's asset renewal planning guide, which the AER found was prudent and consistent with best industry practice. This guide establishes a process that involves three broad steps:
- (a) identifying the assets at risk, whereby assets are assigned health index scores and failure rate curves. These metrics provide an indication of asset health, with candidates for replacement being first identified by ranking the assets with the highest condition scores (ie, assets in the worst condition);
  - (b) determining asset unavailability, which is calculated by reference to the asset's failure rate and mean time to recovery; and
  - (c) monetising the baseline risk associated with the asset's condition, whereby AusNet values:
    - (i) supply security risk, being load at risk that would not be supplied in the event of an asset failure;
    - (ii) health and safety risk, being hazards to the safety of individuals in the event of asset explosive failure or failure that involves fire;
    - (iii) financial risk cost, which is the cost of reactively replacing the failed asset;
    - (iv) environmental risk; and
    - (v) plant collateral damage risk.
- 71 AusNet's current asset renewal planning guide is included at Annexure TH-13.
- 72 This risk-based approach inherently prioritises asset replacements that have both a high risk and high consequence of failure.
- 73 Where there is an identified need for replacement of an existing asset, and that expenditure exceeds \$7 million, a 'Regulatory Investment Test – Transmission' (**RIT-T**) process is applied to determine the preferred option for the investment. The RIT-T for such replacement work is undertaken by AusNet pursuant to a process set out in the NER.

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74 In relation to maintenance AusNet conducts maintenance planning to ensure it meets its quality obligations noted above. As discussed below AEMO receives information concerning maintenance of the Victorian transmission network on an ongoing basis as part of the 'projected assessment of system adequacy processes' (**PASA**).

## 3.4 Outages

75 Transmission network outages involve a temporary interruption in the flow of electricity in a part of the transmission network.

76 Transmission network outages fall into two categories:

- (a) Planned outages are planned and scheduled in advance of them occurring and are primarily for the purposes of undertaking works on transmission network assets. These are scheduled with AEMO in advance and require AEMO approval before they can take place; and
- (b) Unplanned outages, which occur for unforeseen reasons such as emergency events such as fires or other natural disasters. These are required to be notified to AEMO as soon as possible when they occur.

77 Maintenance works on transmission network assets almost always require a planned outage to be scheduled with AEMO. In practice, AusNet works closely with AEMO to coordinate the scheduling of such outages. This is because AEMO requires a high level of information regarding planned outages to be able to coordinate various planned outages across the Victorian generation and transmission system and importantly to manage the system security requirements of the network. AEMO withholds permission for an outage if it considers it would create unnecessary risk to the security or reliability of the network. Given the dynamic nature of electricity transmission, AEMO must also be updated frequently with information concerning planned outages.

78 The key mechanism by which AEMO is informed of planned outages and maintenance work scheduled by AusNet is through the PASA. Pursuant to the PASA, AusNet is required to provide AEMO with information regarding planned outages on a weekly basis. When AEMO receives this information, it assesses the proposed outage, particularly with regard to forecast demand and the security of the transmission network. Only after AEMO has conducted this assessment will AusNet be notified if the outage may proceed.

79 Generators are informed of network outages through the publication of a network outage schedule (**NOS**) by AEMO. It includes information, among other things, relating to whether an outage request has been submitted by AusNet or another TNSP, how long that outage is anticipated to take, and whether that outage will proceed subject to AEMO's permission. The NOS is updated each half hour by AEMO and published on the AEMO website, and also disseminated to participants in the NEM through a live data feed known as the MMS interchange, which is a service provided by AEMO to facilitate data exchange between it and NEM participants. AusNet also informs generators it has connection agreements with of outages that

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may affect that generator pursuant to contractual obligations in the connection agreement. The connection agreements include requirements that AusNet develop a coordinated outage plan with the relevant generator with the objective of coordinating outages, provide timely information concerning such outages and the length of time they are expected run for, and minimising any delays in restoring power supply. The generators are likely to be well-informed of the reasons for outages, the length of time in which it would be expected for them to be resolved, and the procedures that AusNet must follow.

80 Planned outages can only take place following a detailed outage assessment by AEMO, as provided for under AEMO's published Outage Assessment guidelines and AEMO's oversight and system security functions under the NER. Under AEMO's guidelines, AEMO requires that TNSPs submitting requests for planned outages include information confirming that potentially affected generator(s) are aware of any outage which directly impacts on their connection to the network, and that the affected generator(s) have not raised any objection to the outage. In addition, if a contingency plan is required when submitting an outage, the planned outage submission by the TNSP must include information regarding arrangements between a generator and TNSP which accommodate the network outage. Any arrangements detailed in the Network Outage Scheduler that require a manual response from a generator will be confirmed with the generator by AEMO directly, and prior to AEMO giving permission for the outage to proceed.

81 As a result, generators may raise objections to a planned outage notified to them by AusNet as the relevant TNSP (under contractual obligations to notify of planned outages, as well as through the process of submitting planned outages to AEMO). The generator may do so by raising the objection with AusNet or more directly with AEMO, who will require the issue to be resolved for the outage to proceed (among other matters taken into consideration).

### 3.5 AusNet's information handling procedures with respect to electricity transmission

82 AusNet is subject to Transmission Ring-fencing Guidelines (*TRFG*) issued by the AER.

83 Version 4 of the TRFG includes requirements in relation to the equal provision of certain ring-fenced information. It provides that where AusNet shares information in connection with prescribed transmission services with an affiliate that provides contestable electricity services, AusNet must provide access to that ring-fenced information to its affiliates' competitors as well on request. AusNet must comply with this requirement in relation to information sharing in version 4 of the TRFG as soon as reasonably practicable and in any event, by no later than 1 March 2024.

84 In practice, key competitively relevant information relating to electricity transmission is published by AEMO in any event. This includes:

- (a) the Integrated System Plan, which sets out a comprehensive roadmap for the NEM, including any future network investment;
- (b) the Victorian Annual Planning Report which considers the adequacy of the Victorian transmission network to meet its reliability and security requirements, and identifies development opportunities to address emerging network limitations;

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- (c) NEM electricity demand forecasts which include operational consumption and maximum demand and, since 2016, minimum demand (available at: <http://forecasting.aemo.com.au/>);
- (d) Electricity Statement of Opportunities which contains an assessment of supply adequacy in the NEM over the next 10 years, highlighting opportunities for generation and demand-side investment (available at: <https://www.aemo.com.au/energy-systems/electricity/national-electricity-market-nem/nem-forecasting-and-planning/forecasting-and-reliability/nem-electricity-statement-of-opportunities-esoo>); and
- (e) NEM constraint reports which detail interconnector capacity and constraints in the transmission network (available at: <https://www.aemo.com.au/energy-systems/electricity/national-electricity-market-nem/system-operations/congestion-information-resource/network-status-and-capability>);
- (f) Outage information through NOS and the MMS interchange as described above.

85 Based on the information available from sources such as the above, I consider that AusNet is unlikely to possess any additional insight that may give a generator a meaningful competitive advantage over other generators, particularly as AEMO is the entity that ultimately makes and publishes decisions relating to network investment, outages and network congestion.

## 3.6 Compliance with TRFG

86 Version 4 of the TRFG introduces requirements in relation to self-compliance reporting and independent audit, which AusNet must comply with from 1 March 2023.

87 Clause 6.1 of the TRFG requires AusNet to establish and maintain appropriate internal procedures to ensure it complies with the TRFG. In accordance with clause 6.2.1 of the TRFG, AusNet must prepare and submit to the AER an annual TRFG compliance report, which may be made publicly available by the AER, must identify the measures AusNet has taken to ensure compliance with the TRFG, any compliance breaches and the purpose of all transactions between AusNet and an affiliate. Clause 6.2.1 of the TRFG requires that AusNet's annual TRFG compliance report must be independently verified for compliance with each provision of the TRFG by a qualified independent auditor.

88 Clause 6.3 of the TRFG requires AusNet to notify the AER in writing within 15 business days of becoming aware of a breach of its obligations under the TRFG.

89 Clause 6.4 of the TRFG provides that the AER may, at any time, require a TNSP to provide a written response to a complaint or concern the AER raises with the TNSP about its compliance with the TRFG, including where the AER has previously required the TNSP to provide one or more written responses to the relevant complaint or concern. This obligation applies from no later than 1 March 2024.

## 4 Electricity distribution

### 4.1 Pricing

90 AusNet's electricity distribution services fall into two key categories: direct control services, and negotiated distribution services, with each category subject to different levels of price regulation.

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## **Direct control services**

91 These services comprise:

- (a) standard control services, being network services that a DNSP provides to all retail customers. AusNet provides the following standard control services:
  - (i) common Distribution Services, comprising use of the distribution network for the conveyance/flow of electricity, including services relating to network integrity;
  - (ii) standard connection services, comprising a connection service other than a basic connection service. In the case of AusNet, the only standard connection service is an underground connection in specified circumstances; and
  - (iii) negotiated connection services, comprising a connection service other than a basic connection service or a standard connection service; and
- (b) alternative control services, which include basic connection services, metering, public lighting and ancillary services. These services can be attributed to a particular customer and therefore the costs of providing the service are recovered from the relevant customer, rather than through network tariffs. Although the actual price for quote-based ancillary network services depends upon the time a job takes, in my view, it is implausible to think that AusNet would tell customers that work would take longer based on the identity of their retailer.

92 The prices of direct control services are regulated by the AER through its five yearly distribution determinations, including approval of a tariff structure statement, and through the approval of annual pricing proposals, which must comply with the tariff structure statement.

## **Negotiated distribution services**

93 No negotiated distribution services have been included in AusNet's 2021 – 2026 Distribution Access Arrangement Proposal approved by the AER (available at: <<https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/ausnet-services-determination-2021-26/proposal>>). In the 2016 – 2020 AusNet distribution access proposal, the only services classified by AER as negotiated distribution services were new public lighting services (including greenfield sites), alteration and relocation of DNSP public lighting assets and the construction of a reserve feeder.

94 In my experience, during the 2016-2022 regulatory period, when AusNet provided negotiated distribution services, counterparties in relation to such services were sophisticated entities capable of protecting their own interests when negotiating with AusNet and apprising themselves of regulatory protection and escalation rights to AER if necessary.

95 I discuss three specific types of tariffs below.

## ***Tariff trials***

96 Rule 6.18.1C of the NER (an extract of which is included at pages 147-148 of Annexure TH-1) permits DNSPs to undertake tariff trials. These are proposed new tariffs that are not determined in accordance with the DNSP's tariff structure statement (**TSS**). Tariff trials proposed by AusNet

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and other DNSPs must be notified to the AER, affected retailers and affected retail customers no later than four months prior to the start of the regulatory year (with each regulatory year corresponding to a financial year within a five year regulatory period set by the AER). If the trial is proposed in the first year of a regulatory period, details of the trial must be included in the DNSP's TSS, which is submitted together with a DNSP's regulatory proposal as part of the five yearly distribution determination process.

97 There is also a limit to the extent of any such tariff trial or trials. Rules 6.18.1C(a)(1) and (2) of the NER (an extract of which is included at pages 147-148 of Annexure TH-1) provide that the forecast revenue from the tariff that is the subject of the tariff trial during each regulatory year can be no greater than 0.5% of the DNSP's annual revenue requirement (an individual new tariff threshold), and the DNSPs forecast revenue from the tariffs, as well as from any other tariff trial tariffs, cannot be greater than 1% of the annual revenue requirement for that regulatory year (a cumulative new tariff threshold). However, in order to provide an increased incentive for trials to be undertaken, these thresholds have been temporarily increased by a transitional rule in rule 11.141.8 of the NER (an extract of which is included at page 149 of Annexure TH-1), which increases these thresholds to 1% and 5% respectively.

98 The AER has also provided industry guidance as to how it considers tariff trials should be conducted, a copy of which is included at Annexure TH-14. AusNet is generally free to approach a retailer to run a tariff trial, or vice versa. AusNet has found it difficult in practice to attract interest from retailers in running tariff trials.

99 EnergyAustralia is the default retailer for the AusNet electricity distribution area, and the retailer with the largest number of customers within this area. For this reason, AusNet has to date conducted tariff trials with EnergyAustralia. For example, AusNet has conducted a tariff trial with EnergyAustralia in relation to a large scale storage battery. For that trial to be effective, a retailer with a large number of customers in the area that would be fed by the battery needed to be selected. I am not aware of any tariff trials that AusNet has conducted with Origin.

100 In my view, AusNet would not have the ability to discriminate in favour of Origin in connection with the running of tariff trials. This is because:

- (a) First, the fundamental protection is that the process is very transparent, with the proposed new tariff required to be notified to the AER. Any attempted preferential treatment of Origin would be apparent from the information on the trial required to be notified to the AER. There is considerable consultation around these kinds of trials and in order for them to be effective, they require a lot of work with retailers, customers and potentially the government in some cases.
- (b) Second, AusNet is subject to the obligation in the Distribution Ring-fencing Guidelines (**DRFG**) issued by the AER not to discriminate between a related electricity service provider and a competitor of a related electricity service provider in connection with the provision of direct control services.

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- (c) Third, a tariff trial is by definition temporary and has limited (if any) impact on ongoing competition between retailers. If a trial is successful then a new tariff class would be introduced via the TSS and annual pricing proposal, which would be available to all retailers and their customers.

## ***Individual customer calculated tariffs***

- 101 At present, AusNet does not have any individually calculated customer (**ICC**) tariffs. ICC tariffs are typically designed to reflect the actual cost of providing electricity distribution services to the customer's specific connection point and, in so doing, better signal to large customers the actual cost of their connection and network use through locational price signals.
- 102 In AusNet's most recent distribution determination process for the regulatory period 2021 to 2026, the AER requested in its draft decision that AusNet introduce tariff choice for large business customers in addition to the default tariff in the form of ICC tariffs. AusNet considered the merit of introducing ICC tariffs but ultimately proposed not to introduce such tariffs. This was because AusNet considered its Critical Peak Demand tariffs for medium and large businesses to be amongst the most cost reflective in the NEM and that, in circumstances where all customers are already assigned to the cost reflective tariff structure, additional tariff choices would result in a customer picking the cheapest non-cost reflective tariff option. AusNet indicated in its response to the draft decision that it would prefer to gather further data during the regulatory period through carefully designed trials before introducing changes to the tariff. This position was accepted by the AER in the final distribution determination.
- 103 I do not consider that, in the event AusNet introduced ICC tariffs, such tariffs could be designed in a way so as to favour Origin.
- (a) First, the introduction of such tariffs would occur via the TSS. This is a document that is submitted together with a regulatory proposal as part of the five yearly distribution determination process.
- (b) Second, ICC tariffs are designed to provide locational price signals and are not tied to a particular retailer. That is, the tariff attaches to the customer at that particular location, and in the event the customer was to switch retailers, the ICC tariff would continue to apply.

## ***Pricing for distribution connection services***

- 104 The regulatory regime for connection charges under Chapter 5A comprises two overlapping regimes:
- (a) connection services are covered by AER distribution determinations made under Chapter 6 of the NER, as either 'standard control' or 'alternative control' services; and
- (b) connection charges are also regulated under the DNSP's connection policy.
- 105 Chapter 6 Part DA of the NER requires a DNSP to prepare a connection policy setting out when it may require a retail customer or a real estate developer to pay a connection charge. The

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connection policy must be consistent with the following (in light of rule 6.7A.1(b)(1) of the NER, an extract of which is included at pages 150-151 of Annexure TH-1):

- (a) connection charge principles set out in rule 5A.E.1 of the NER (an extract of which is included at pages 152-153 of Annexure TH-1); and
- (b) connection charge guidelines made by the AER.

A DNSP's connection policy is approved by the AER as part of its 5 yearly distribution determination. A copy of AusNet's connection policy is included at Annexure TH-15, and a copy of the AER's connection charge guidelines is included at Annexure TH-16.

106 The connection services that AusNet provides, being services relating to the electrical or physical connection of a customer to the network, are classified as either alternative control services or standard control services. These services include:

- (a) basic connection services (alternative control): a connection service (being a service relating to a new connection for premises or a connection alteration for premises) related to a connection (or a proposed connection) between a distribution system and a retail customer's premises (excluding a non-registered embedded generator's premises) in the following circumstances:
  - (i) either the retail customer is typical of a significant class of retail customers who have sought or are likely to seek the service or the retail customer is or proposes to become a micro embedded generator; and
  - (ii) the provision of the service involves minimal or no augmentation of the distribution network; and
  - (iii) a model standing offer has been approved by the AER for providing that service as a basic connection service;
- (b) standard connection service (standard control): a connection service (other than a basic connection service) for a particular class (or sub-class) of connection applicant and for which a model standing offer has been approved by the AER;
- (c) negotiated connection (standard control): means a connection service (other than a basic connection service) for which AusNet provides a connection offer for a negotiated connection contract;
- (d) connection application and management services (alternative control): connection application related services; works initiated by a customer or retailer that are specific to the connection point;
- (e) enhanced connection services (alternative control): other or enhanced connection services provided at the request of a customer or third party that include those that are:
  - (i) provided with higher quality of reliability standards, or lower quality of reliability standards (where permissible) than required by the NER or any other applicable regulatory instruments;
  - (ii) in excess of levels of service or plant ratings required to be provided by AusNet.



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- 107 All connection service types offered by AusNet during the current regulatory control period are direct control services (ie, either standard control services or alternative control services) meaning they are subject to price regulation by the AER.
- 108 Basic connection services are regulated as alternative control services. AusNet's annual pricing proposal sets out the fees chargeable for different types of basic connection services. In addition, DNSPs are required to have a model standing offer to provide basic connection services, which must be approved by the AER. The model standing offer must include details of connection charges, which must be consistent with the annual pricing proposal and connection policy. A basic connection will typically involve the provision of a service cable in areas with overhead supply or making a connection in an existing pit for customers in underground supply area. The vast majority of connections to the AusNet distribution system are made pursuant to a basic connection offer (in the order of 90% when including all simple alternative control services and standard control services as defined in AER's Regulatory Information Notices). No capital contribution charge is payable in relation to a basic connection service.
- 109 Standard connection services are regulated as standard control services with the price approved by the AER pursuant to the TSS and annual pricing proposal process. In addition, AusNet is required to have a model standing offer in relation to standard connection services, which must be approved by the AER. The model standing offer must include, amongst other things, details of connection charges, which must be consistent with the annual pricing proposal and connection policy. A capital contribution charge may be payable in relation to a standard connection service.
- 110 In relation to negotiated connection services, these services generally require augmentation to the electricity distribution network. A capital contribution charge is payable in relation to negotiated connection services.
- 111 Capital contribution charges are payable for extensions or augmentations of the distribution system, including the customer's connection assets, in relation to connections where the expected demand exceeds an augmentation threshold (10 kVA on a single wire earth return line; or 100A single phase, or 100A per phase of a multi-phase supply). All connection applicants pay a capital contribution charge for any new network extensions required for their new connection or connection alteration, in addition to any augmentation of the connection assets. Capital contribution charges are calculated in accordance with AusNet's connection policy.
- 112 A capital contribution charge is a contribution paid by the connection applicant towards the cost of extending or augmenting the distribution network or installing or upgrading new connection assets required to enable the new connection, or connection alteration, to be made. Where a capital contribution charge is required, AusNet will notify the applicant of the amount of the capital contribution charge when making its connection offer.
- 113 Under the AER's connection charge guidelines, capital contributions for standard and negotiated connections are subject to a cost revenue test set out in those guidelines. No capital contributions can be sought for basic connection services. The cost revenue test provides that:

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A distribution network service provider may seek a capital contribution for standard control connection services from a connection applicant, if the incremental cost of the standard control connection services exceeds the estimated incremental revenue expected to be derived from the standard control connection services.

Note: The incremental cost or incremental revenue received attributable to any connection service classified as alternative control, negotiated control or unclassified services will not be included in the cost-revenue-test.

The amount of any capital contribution is to be calculated as the difference between the incremental revenue and the incremental cost attributable to the standard control services required by the connection applicant. Where the capital contribution is less than zero, no capital contribution is payable by the connection applicant, or the distribution network service provider.

- 114 The extract above is drawn from rule 5.1 of the AER's Connection Charge Guidelines (final version 3), a copy of which is included at Annexure TH-16.
- 115 The Electricity Distribution Code of Practice (***Electricity Distribution Code***) issued by the ESC states that augmentations required as part of a connection to the distribution network in Victoria are contestable services.
- 116 Negotiations for negotiated connection services must be carried out in accordance with the negotiating framework set out in rule 5A.C.3 of the NER, an extract of which is included at pages 154-156 of Annexure TH-1. The negotiating framework includes requirements that AusNet and the connection applicant negotiate in good faith, and that AusNet provide the connection applicant with information reasonably required by the applicant to negotiate on an informed basis. The negotiating framework also includes a dispute resolution framework pursuant to Part G of Chapter 5A, which includes dispute resolution by the AER.
- 117 The DRFG (discussed further below) require a DNSP not to discriminate between a related electricity service provider and a competitor, or potential competitor, of a related electricity service provider in connection with the provision of direct control services, which would include each type of connection service, including negotiated connection services. The non-discrimination obligation includes a requirement that a DNSP in like circumstances deal with a related electricity service provider and a competitor (or potential competitor) of the related electricity service provider on substantially the same terms.
- 118 AusNet's connection policy must be consistent with connection charge principles set out in rule 5A.E.1 of the NER (an extract of which is included at pages 152-153 of Annexure TH-1) and connection charge guidelines made by the AER. The connection policy outlines in detail the pricing methodology that applies to connection charges, including the capital costs payable by customers for new or expanded connections, metering costs, costs of minor variations, other incidental costs, and charges payable to account for any pioneer schemes.
- 119 Capital contribution charges are not required where the connection service is offered under the terms and conditions of a basic connection offer or maximum demand at the connection point

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does not exceed 10kVA on single wire earth return lines or 100A per each of the phases of a multi-phase low voltage supply.

- 120 In some circumstances (such as a new housing estate development under a pioneer scheme), AusNet may provide the service to a higher capacity so as to efficiently provide for forecast load growth at that location and charge the developer accordingly. Real estate developers are responsible for the design and construction of electrical reticulation and connection assets within the boundaries of their property development. AusNet is not involved in the pricing of these assets. These assets are then gifted to AusNet and become regulated assets. The connection of real estate developments to AusNet's distribution system typically involves extending the distribution network and augmenting the upstream network. In these circumstances, the real estate developer will pay AusNet to provide services to a higher capacity than what may be required currently to ensure the network is appropriately sized to allow for the expected future electricity demand from the development. Connection applications for real estate development connections are only accepted from the real estate developer. A copy of this connection policy is included at Annexure TH-15.
- 121 In the event AusNet elects to provide the service to a higher standard or capacity than necessary other than at the request of a customer (because, for example if AusNet identifies a growth area that requires a backbone upgrade, it will be funded by AusNet's general augmentation budget) AusNet does not charge the connection applicant for the additional cost. AusNet calculates all capital contribution charges specifically for the connection applicant except in the case of standard connection services, where AusNet applies pre-calculated capital contribution charges.
- 122 In the case of embedded generators seeking connections to AusNet's distribution network, the pricing of this negotiated connection process is governed by rule 5.3AA of the NER (an extract of which is included at pages 157-161 of Annexure TH-1). AusNet is subject to an obligation to negotiate in good faith to reach agreement as appropriate on charges.
- 123 I do not consider that AusNet could favour Origin through the customer connection pricing. This is because:
- (a) the vast majority of connections for retail customers are basic connection services, which are alternative control services, subject to a price cap form of control and, unless the customer elects otherwise, are provided pursuant to a model standing offer approved by the AER and do not vary depending on the customers retailer of choice;
  - (b) to the extent any connection services are standard connection services, a pre-calculated capital contribution applies and the service is provided pursuant to a model standing offer approved by the AER;
  - (c) where a negotiated connection service is supplied, this is a standard control service that is subject to a revenue cap form of control. Any capital charge is calculated in accordance with the formula in AusNet's connection policy; and

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- (d) in most cases, AusNet is not responsible for the construction of the connection assets and the associated pricing (unless the customer specifically requests AusNet to be involved) as they are generally constructed and gifted to AusNet by the connecting customers. Accordingly, any negotiation in relation to pricing in this context only relates to capital contribution charge which is calculated in accordance with the formula in AusNet's connection policy approved by the AER.

## 4.2 Connections and access

124 AusNet has no ability to refuse or delay connection to its electricity distribution network.

125 When a customer's premises already have a pre-existing connection to the distribution network, AusNet is required to use its best endeavours to energise the premises within one business day of the request if the request is made by 3pm, or within two business days if the request is made after 3pm. AusNet is also prohibited from discriminating between a related electricity service provider and a competitor as part of the DRFG when providing such services, as I discuss further below.

126 Where a new connection is required, AusNet must comply with requirements aimed at ensuring access to the distribution network. The requirements differ depending on the type of connection:

- (a) In relation to basic or standard connections, AusNet must make an offer to connect the customer to the network within 10 days of the connection request on the basis of the model standing offer approved by AER that I refer to above.
- (b) In relation to negotiated service connections (such as to new residential developments that require augmentation of the distribution network), use best endeavours to make an offer to connect the customer to the network within 65 business days of the request. AusNet must comply with the negotiation framework set out in rule 5A.C.3 of the NER (an extract of which is included at pages 154-156 of Annexure TH-1) which, amongst other things, imposes obligations on it to:
- (i) negotiate in good faith;
  - (ii) provide connection applicants with information the connection applicant reasonably requires in order to negotiate on an informed basis;
  - (iii) consult with other users of the distribution network who may be adversely affected by the proposed new connection or connection alteration;
  - (iv) take into account prescribed factors when assessing a connection application;
  - (v) make reasonable endeavours to make a connection offer that complies with the connection applicant's reasonable requirements; and
  - (vi) comply with its connection policy.

127 Some aspects of the connection process can only be performed by AusNet (auditing third party network system designs and connection assets) and some can be undertaken by customers (project management; some design services, and construction) (**contestable distribution**

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**services**). A connection applicant can elect to use an approved contractor instead of AusNet to provide contestable distribution services. If the customer elects to use an Approved Contractor, the customer can request that AusNet conduct the tender exercise on their behalf, for which a fee applies.

128 In relation to the supply of metering services, AusNet is required to comply with a range of technical requirements under rule 7.3.1(a) of the NER (an extract of which is included at page 162 of Annexure TH-1), AEMO's metrology procedure (an extract of which is included at Exhibit TH-18) and the ESC's Electricity Customer Metering Code of Practice (an extract of which is included at Exhibit TH-19). Given AusNet is subject to these detailed technical regulations, in my view, AusNet will not be able to vary its service quality in relation metering services.

#### **4.3 Augmentation, renewal and maintenance of the electricity distribution network**

129 The starting position in considering whether AusNet would have any ability to favour Origin in relation to augmentation, renewal or maintenance of the distribution network is understanding that the customers of any one retailer are spread out over the distribution network and interspersed with the customers of other retailers. As a consequence of EnergyAustralia being the default retailer for the AusNet distribution network, EnergyAustralia may have a higher proportion of customers than in other areas. As a general matter however, customers of the various retailers are spread throughout the distribution network. As the distribution network benefits generally from any significant assets, I find it difficult to conceive of a situation where AusNet could undertake augmentation, replacement or maintenance works that favour the customers of a particular retailer. Even if this were possible in relation to some customers, such as large commercial and industrial customers with very high usage needs, then such a strategy would be easily detected as, given the sophistication of such customers with respect to their energy supply, any reduction in distribution maintenance or service quality would be identified and result in claims by such customers against AusNet.

130 In my view, to favour a particular retailer, it would be necessary for that retailer to have a customer in a relatively isolated area of the network that only or predominately serves that customer. Even if such a customer could be identified, for the reasons set out below, in my view the regulatory regime would operate to prevent augmentation, renewal or maintenance expenditure being undertaken in a manner that would favour that customer. AusNet's augmentation, renewal or maintenance of the distribution network is governed by a number of regulatory instruments.

131 AusNet must comply with the power system performance and quality of supply standards in schedule 5.1 of the NER (an extract of which is included at pages 59-80 of Annexure TH-1). That schedule sets out the planning, design and operating criteria that must be applied by network service providers, including AusNet. Therefore, AusNet must ensure that its distribution network at least meets the standards in schedule 5.1, which cover matters such as reliability, frequency variations, power frequency voltage, voltage fluctuations, stability, protection systems and fault clearance times. As such, to the extent maintenance activities or replacement capital expenditure

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is required in order to meet the standards in schedule 5.1, AusNet does not have any relevant discretion as to whether it undertakes that expenditure.

- 132 Significant capital expenditure is governed by the Regulatory Investment Test – Distribution (**RIT-D**) process in rule 5.17 of the NER (an extract of which is included at pages 163-178 of Annexure TH-1). As described in the NER, the purpose of the test is to identify the credible option that maximises the present value of the net economic benefit to all those who produce, consume and transport electricity in the NEM. The RIT-D process applies where the estimated capital cost of the proposed investment exceeds \$6 million. The RIT-D is a highly transparent process, involving consultation with all registered participants in the NEM, AEMO, interested parties and non-network providers and persons registered on AusNet's industry engagement register. Unless an exemption applies, a draft project assessment report is required to be published and consulted on, and then a final project assessment report must be published. Any disputes in relation to the application of the RIT-D may be referred to the AER.
- 133 As part of its five yearly pricing proposal, AusNet sets out a renewal and operating proposal for its electricity distribution network which is subject to review and submissions by interested parties and ultimately, AER approval. Whilst the AER ultimately approves broad categories of expenditure, its approval reflects AusNet's specific renewal and maintenance proposal and involves a consideration of the progression of AusNet's renewal and maintenance works in the preceding five year period.
- 134 AusNet is also subject to technical obligations under the Electricity Distribution Code of Practice (**Distribution Code**), including as to good asset management and quality of supply. AusNet is subject to guaranteed service levels under the Distribution Code. AusNet must make payments to customers whose annual electricity consumption is 160MWh or less where they experience a particular number or length of unplanned sustained interruptions per year.
- 135 Also relevant are AusNet's obligations under the Electricity Safety Act. As I discuss above at paragraph 57, the Electricity Safety Act requires a major electricity company (which includes a distribution company) to design, construct, operate, maintain and decommission its supply network to minimise as far as practicable:
- (a) hazards and risks to the safety of any person arising from the supply network;
  - (b) hazards and risks of damage to the property of any person arising from the supply network; and
  - (c) bushfire danger arising from the supply network.
- 136 The Electricity Safety Act requires AusNet to submit an electricity safety management ESMS to ESV. ESV may require AusNet to obtain an independent validation of the scheme, or any part of it, and may also require the validation to assess the design, construction, operation, maintenance and decommissioning of the supply network or any part of it. ESV must accept an ESMS if it is satisfied that it is appropriate and complies with the Electricity Safety Act and regulations relating to such schemes. AusNet is required to comply with ESMS. A copy of AusNet's current ESMS for electricity distribution network is included at Confidential Annexure TH-17.

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137 In my view, it would be inconceivable that responsible officers of AusNet would deliberately neglect any issue relating to maintenance of the distribution network that would put AusNet at risk of not meeting its obligations under the Electricity Safety Act. This is because, most fundamentally, AusNet would not jeopardise its social licence to operate by deliberately failing to renew and maintain a section of the network so as to attempt to provide a financial benefit to Origin.

138 Further, as I describe above in relation to transmission maintenance requirements, AusNet must submit to regular audits of its safety and maintenance management by Energy Safety Victoria with respect to AusNet's electricity distribution. AusNet faces severe financial penalties for failure to comply with these audits, or if an audit reveals Ausnet has not complied with applicable provisions of the Electricity Safety Act and associated regulations. This contributes to my view that it would be inconceivable that responsible officers of AusNet would deliberately neglect any issue relating to maintenance of the distribution network.

#### **4.4 AusNet's information handling procedures with respect to electricity distribution**

139 AusNet is subject to the DRFG issued by the AER.

140 The DRFG include requirements in relation to the equal provision of information. The DRFG provide that where AusNet shares ring-fenced information with an affiliate that provides contestable electricity services, AusNet must provide access to that ring-fenced information to others equally.

141 The DRFG contain provisions that ensure a distribution business cannot provide its affiliated generator with first mover advantage by sharing information relating to its distribution business with an affiliated retailer that is not shared with all retailers (eg, planned network investment, outage information and areas of network congestion). They do so in the following ways:

- (a) Clause 4.3.3 of the DRFG (an extract of which is included at Annexure TH-20) requires AusNet as a DNSP to ensure the information it provides in relation to regulated Distribution Services to any associate that takes part in a related business is available to any other party.
- (b) AusNet would be required to establish an information sharing protocol that sets out how and when it will make equal information available to other electricity services providers, in accordance with clause 4.3.4(d) of the DRFG (an extract of which is included at Annexure TH-20). As at the date of this statement, AusNet does not have an affiliated generator and therefore does not currently have an information sharing protocol in place for this purpose.
- (c) AusNet would be required to establish, maintain and keep an information register about information that has been shared, in accordance with clause 4.3.4 of the DRFG (an extract of which is included at Annexure TH-20). This register also documents the kind of information requested by an electricity service provider and describes the kind of information requested in sufficient detail that allows other legal entities to make an

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informed decision about whether they wish to request the same information. To the extent that a request for information of the same kind listed on the information register is made, the DRFG require that a DNSP must comply with that request.

142 In practice AusNet publishes information relevant to customers and retailers within its distribution network to all customers and retailers at the same time in the following ways:

- (a) advance notice of network investment;
- (b) advance notice of outages; and
- (c) advance notice of areas of network congestion.

143 The sharing of information set out above is heavily regulated and audited. For example, outage notifications are audited monthly by the ESC under AusNet's distribution license and guaranteed service levels. AusNet is also required under the NER to publish a large amount of network planning documentation which covers areas of network congestion, including under the RIT-D process and demand management rules. There are also additional reporting requirements in Victoria that goes above the national requirements pursuant under AusNet's distribution license conditions and the Distribution Code.

## 4.5 Compliance with DRFG

144 The DRFG includes requirements in relation to self-compliance reporting and independent audit, which AusNet must comply with.

145 Clause 6.1 of the DRFG requires AusNet to establish and maintain appropriate internal procedures to ensure it complies with the DRFG. Each year, AusNet prepares and submits to the AER a ring-fencing compliance report. The report may and has been made publicly available by the AER and identifies the measures AusNet has taken to ensure compliance with the DRFG, any compliance breaches and the purpose of all transactions between AusNet and an affiliate.

146 Clause 6.2.1 of the DRFG requires that AusNet's annual DRFG compliance report must be independently verified for compliance with each provision of the DRFG by a qualified independent auditor. Most recently, EY was appointed as the qualified independent auditor in relation to this obligation for AusNet. This audit report may and has been made publicly available by the AER.

147 In practice, AusNet meets with the AER to discuss the results of the annual AusNet compliance report and independent audit report.

148 Clause 6.4 of the DRFG provides that the AER may, at any time, require a DNSP to provide a written response to a complaint or concern the AER raises with the TNSP about its compliance with the DRFG, including where the AER has previously required the DNSP to provide one or more written responses to the relevant complaint or concern.



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## 5 Gas distribution

### 5.1 Pricing

- 149 AusNet's gas distribution network is classified as a covered pipeline service provider (**CPSP**) under the NGR. This means the gas distribution network is to full price regulation by the AER.
- 150 Under this form of regulation, the AusNet's gas distribution services are classified as 'reference services' or 'non-reference services'.
- 151 Non-reference services are discrete distribution services that are generally ancillary to reference services. They are made available to users or prospective users of the gas distribution network as agreed or as determined in accordance with Part 12A of the NGR. AusNet's revenue from non-reference service is currently 2% but is expected to comprise only 1% of the total revenue of its gas distribution business in the forthcoming regulatory period.
- 152 Reference services comprise haulage services, which involve transporting gas through a distribution pipeline to end-use customers, or 'alternative control services', which include supply of a gas meter and gas meter installation testing, disconnection, reconnection of a gas meter, and special meter reads.
- 153 As with the electricity distribution framework, the AER makes five yearly access arrangement decisions in relation to the revenue AusNet can recover from its gas distribution customers. As part of that process, the AER reviews, revises, and approves AusNet's proposal for the forthcoming five yearly period, including in relation to:
- (a) the services that are to be reference services;
  - (b) the total revenue AusNet considers it should be able to earn for each regulatory year, through the application of a building block model; and
  - (c) how total revenue is to be allocated between reference and other services in accordance with revenue and pricing principles set out in the NGR.
- 154 Pursuant to the AER's determinations, AusNet's gas access arrangement provides for gas distribution prices to be charged based on three classes of tariff structure:
- (a) Tariff V is a volume-based tariff that is applied to the majority of customers connected to the AusNet's network. The annual gigajoule (**GJ**) volume limit for Tariff V is 10,000 GJ in any 12-month period. The Maximum Hourly Quantity (**MHQ**) demand limit is 10 GJ consumption in any one hour;
  - (b) Tariff D is a demand-based tariff and applies only to large business customers connected to the AusNet's network. To qualify for Tariff D, a customer should be consuming either more than 10,000 GJ in any 12-month period, or the MHQ limit of 10 GJ in any hour; and
  - (c) Tariff M is a demand-based tariff and applies only to large business customers connected to the AusNet's network. To qualify for Tariff M, an existing Tariff V customer should be using either more than the Tariff V consumption limits of 10,000 GJ of gas in any 12-month period or more than MHQ limit of 10 GJ in any hour. Where a Tariff V customer's load exceeds the 10,000 GJ per year or 10GJ per hour limits they may be transferred to Tariff M.

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- 155 It is possible for AusNet to charge more or less than the reference tariff, if a customer agrees. However, in any access dispute, the reference tariff for a reference service must be applied.
- 156 There are also gas ring-fencing requirements (**GRFR**) contained in the National Gas Law (**NGL**) and the National Gas Rules (**NGR**) that regulate the way AusNet prices its gas distribution services. The GRFR prohibits AusNet and other CPSPs from entering into a contract for the provision of pipeline services to an 'associate' if that contract:
- (a) has the purpose or effect (or likely effect) of substantially lessening competition in a market for natural gas services; or
  - (b) is on terms that differ to those it would offer to separate unrelated entities on an arm's length basis.
- 157 AusNet and other CPSPs are required to report their compliance with these requirements and other regulatory obligations to the AER annually for the period ending 30 June, pursuant to an Annual Compliance Order issued in November 2008 by the AER (a copy of which is included at Annexure TH-21).
- 158 In relation to non-reference services, the prices for those services are not regulated upfront by the AER, but instead agreed by negotiation between AusNet and the customer. If agreement cannot be reached, the dispute resolution process under Chapter 6 of the NGL applies and, subject to limited exceptions, the AER can make a binding determination about any matter relating to the provision of a pipeline service to a prospective user or user including price, in accordance with section 193 of the NGL (an extract of which is included at Annexure TH-22).

## 5.2 Connection and access

- 159 Under the NGR, AusNet and other DNSPs cannot refuse connections services to gas distribution networks:
- (a) In relation to basic or standard connections, meaning those that do not require substantial work to the distribution network, or where AER has approved a model standing offer, AusNet and other DNSPs are required to make an offer to connect the customer to the network within 10 business days of the connection request in accordance with rule 119S of the NGR (an extract of which is included at page 1 of Annexure TH-23).
  - (b) In relation to a negotiated service connections (such as to new residential developments that require augmentation of the distribution network), AusNet and other DNSPs are required to negotiate in accordance with the negotiation framework set out in rule 119K of the NGR (an extract of which is included at pages 2 – 4 of Exhibit TH-23)<sup>1</sup> and use best endeavours to make an offer to connect the customer to the network within 65 business days of the request under rule 119V of the NGR (an extract of which is included at page 5 of Annexure TH-23).

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<sup>1</sup> NGR, rule 119K sets out the negotiation framework that a DNSP must follow before making an offer in relation to a negotiated service connection, including providing information regarding the commercial terms and engineering requirements for a connection in a timely manner, and requiring that a DNSP conduct negotiations for a negotiated connection in good faith.

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160 After an offer is accepted by a connecting applicant, clause 3.1(b) of the ESC's Gas Distribution Systems Code of Practice (**Gas Distribution Code**) (an extract of which is included at Annexure TH-24) sets out customer's 'connection entitlement' which requires a DNSP to use its best endeavours to connect a customer's gas installation:

- (a) at a supply address previously supplied by the Distributor within one business day or within a period agreed with the customer; or
- (b) at a new supply address on the date agreed with the customer or, where no date is agreed, within 20 business days.

161 The Gas Distribution Code includes guaranteed service levels in Schedule 1. If AusNet fails to connect gas customers to the distribution network within one day of the agreed connection date, then it is required to pay \$80 per day (to a maximum of \$240) for each day the connection is delayed under these requirements. Failure of AusNet to make this payment to customers in the event of delays can result in the ESC seeking civil penalties pursuant to the *Essential Services Commission Act 2001* (Vic). This is because of the requirement under clause 1.6 of the Gas Distribution Code.

### 5.3 Augmentation, renewal and maintenance of the gas distribution network

162 As with its electricity distribution network, the customers of each gas retailer are spread out over AusNet's gas distribution network and interspersed with the customers of other retailers. AGL is the default gas retailer for the AusNet gas distribution network, and so AGL may have a higher proportion of customers than in other areas. Generally, however, customers of the various retailers are spread throughout the distribution network. As the distribution network benefits generally from any significant assets, I find it difficult to conceive of a situation where AusNet could undertake augmentation, replacement or maintenance works that favour a particular retailer's customers.

163 Even if discrimination was possible, for the reasons I discuss below, in my view the regulatory regime would operate in such a way as to prevent augmentation, renewal or maintenance expenditure being undertaken in a manner that would favour that customer. The manner in which AusNet undertakes augmentation, renewal or maintenance of the gas distribution network is governed by several regulatory instruments.

164 Part 2 of the Gas Distribution Code requires AusNet to:

- (a) use reasonable endeavours to maintain the capability of its distribution system in accordance with clause 2.3;
- (b) establish a firm maintenance program for its distribution network each year for the forthcoming year, as well as an indicative maintenance program for the following five years (updated on a rolling basis) in accordance with clause 2.3)

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- (c) meet guaranteed service levels for tariff V customers (which includes the substantial majority of residential, commercial and industrial customers)<sup>2</sup> – these guaranteed services levels include obligations to pay financial compensation to customers affected by repeated unplanned interruptions to gas supply, or interruptions to gas supply that are not restored within periods set out in the Gas Distribution Code in accordance with clause 2.2 and Schedule 1, Part E; and
- (d) meet additional obligations related to the ongoing operation and system security of its distribution network, including to establish operational and system security standards for its network, maintain ongoing supply pressure and delivery to connection points, and to ensure that gas delivered meets prescribed standards of quality in accordance with clause 2.1.

- 165 These requirements place positive obligations on AusNet to maintain its gas distribution network to ensure ongoing delivery of gas to all customers, within parameters prescribed by the ESC. Compliance with these requirements precludes any failure to maintain pipelines servicing non-Origin customers. AusNet's compliance is audited by the ESC, and failure to implement requisite systems ensuring consistent maintenance across its network, or any identified breaches, would impact AusNet's gas licence in Victoria.
- 166 Energy Safe Victoria routinely audits AusNet's operation and maintenance program pursuant to the *Gas Safety Act 1997* (Vic), *Pipelines Act 2005* (Vic) and the *Gas Industry Act 2001* (Vic) to prevent any operation and maintenance failures. A copy of AusNet's current Gas Safety Case submitted to the ESC in accordance with the *Gas Safety Act 1997* (Vic) and the Gas Safety (Safety Case) Regulations 2018 is included at Confidential Annexure TH-25.
- 167 Energy Safe Victoria's audits would reveal any failure of AusNet to renew or maintain part of its gas distribution network, which would lead to regulatory enforcement outcomes and, as with an electricity distribution failure, significant community safety and reputational risks.
- 168 The AER's determinations, discussed above at paragraph 153 also involve the AER reviewing and approving AusNet's planned expenditure in respect of augmentation, renewal and maintenance of its gas distribution network for the five year period that is the subject of the access arrangement decision.
- 169 Through this process AusNet must submit any planned augmentations of and investment in its gas distribution network to the AER. These form part of AusNet's proposal for access arrangements for the forthcoming five year period. The AER reviews AusNet's plans having regard to criteria focused on the efficiency of the expenditure, the costs that a prudent operator would require to achieve the same expenditure objectives, and realistic expectations of demand and cost inputs for the expenditure. The AER will not approve or disapprove of particular projects or investments, however if the AER determines that the proposed expenditure does not meet its expenditure criteria, it will decline to accept AusNet's proposed expenditure.

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<sup>2</sup> 'Tariff V' is a volume based tariff for customers who use less than 10,000 GJ within a 12 month period or less than 10 GJ per hour, see AusNet 2022 Gas Distribution Annual Tariff Submission, 1 January 2022.

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170 When submitting its proposal to the AER, AusNet must include a substantial amount of data concerning AusNet's proposed plans for augmentation, renewal and maintenance of the gas distribution network. Among this data AusNet must also provide evidence to show why, if applicable, there are any substantial changes in expenditure for augmentation, renewal or maintenance from the previous five year access arrangement period. This evidence is required to satisfy the AER's investigation that AusNet's plans are prudent and efficient, having regard to its criteria for economically efficient regulation of the infrastructure.

171 AusNet's submissions, including supporting information and models, in the AER's five yearly determinations are published by the AER and therefore available for review and comment by interested parties.

## **5.4 Gas ring fencing requirements**

172 The AER issued an Annual Compliance Order under section 48(1) of the NGL in November 2008. It requires AusNet to report on its compliance with key regulatory obligations (including obligations relating to ring fencing and associated contracts) for the 12-month period ending 30 June of each year.

Signed by Thomas Andrew Hallam

on 26 May 2023

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Signature of Thomas Andrew Hallam