**attachment a­­**

**reference no: AER Rate of return guideline review 2018**

***Terms of Reference***

The Australian Competition and Consumer Commission (ACCC) / Australian Energy Regulator (AER) seeks experts in corporate finance, specifically, imputation credits and gearing. This is to provide advice for the AER’s review of the Rate of Return Guideline (Guideline) in 2018.

Background

The AER is responsible for the economic regulation of electricity networks and gas pipelines in Australia.[[1]](#footnote-1) In undertaking this role, the AER sets the allowed revenues or prices for these monopoly service providers[[2]](#footnote-2) over a fixed period determined in advance (usually 5 years),[[3]](#footnote-3) in accordance with the relevant legislation.[[4]](#footnote-4) As part of determining the total revenues or prices that a service provider may earn, the AER applies a ‘building block’ framework that includes a return on capital building block which is derived from a regulated rate of return and a income tax building block.[[5]](#footnote-5)

The rate of return guideline (Guideline) sets out the approach the AER proposes to use to estimate the efficient rate of return on equity and debt given the risk of providing regulated energy network services. The Guideline also sets out the approach the AER proposes to use to estimate the value of imputation credits under the Australian tax system. The value of imputation credits mostly impacts on the separate company tax building block. However, the WACC must be set on a nominal vanilla basis consistent with the estimate of the value of imputation credits. The guideline does not consider the AER’s position on forecast inflation or transaction costs (equity and debt raising costs).

The relevant legislation for service providers requires the allowed rate of return to be a weighted average cost of capital (WACC), subject to its achievement of the allowed rate of return objective.[[6]](#footnote-6) The allowed rate of return objective is that the rate of return for a service provider is to be commensurate with the efficient financing costs of a benchmark efficient entity with a similar degree of risk as that which applies to the service provider in respect of the provision of its regulated energy network services. Estimation of the rate of return is complex and the rate of return is a significant driver of regulated revenue for energy networks.

The AER is currently undergoing a process of reviewing our rate of return guidelines. A review must occur every five years. The current guideline was published in December 2013. As such the timeline of the review process requires a draft guideline to be published in May 2018 and the final guideline be published by 17 December 2018.

In October 2017, the AER published an issues paper requested views on our current approach to set the allowed rate of return. Rather than a ‘blank slate’ approach of reviewing every aspect of the rate of return, we took the approach of identifying key issues for the review in the paper. The issues paper can be obtained by clicking the following [link](https://www.aer.gov.au/system/files/AER%20-%20Rate%20of%20return%20issues%20paper%20-%2031%20October%202017_0.pdf).

We received 22 submissions on our issues paper comprising of 8 from Networks, 2 from Network owners, 9 from consumers and 3 from others. The submissions can be obtained by clicking the following [link](https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/review-of-rate-of-return-guideline/initiation). The topics most discussed includes gamma and gearing.

The AER will hold concurrent discussions with various experts that are participating in the guideline review process to discuss the key topics raised in the submissions. This mechanism is called ‘hot tubbing’ of expert advisers. The purpose of “hot tubbing” is to identify, scope, and narrow the relevant issues, identify the points on which the views of the experts differ and the reasons for any disagreement. The process also require experts to appear together as a concurrent expert panel for the purposes of answering questions from the AER board and potentially other parties, and providing comments on the views of the other experts on the same panel.

Services required

This request is for a capped-price contract. The consultant/s should breakdown the quote according to the time to be spent on gearing and associated cost and the time to be spent on gamma and associated cost.

The AER may require additional work from the service provider/s if the need arise. The scope and cost of any additional work should be discussed with the AER and quote provided prior to commencement.

In accordance with the consultancy deed of standing offer, the consultant’s quote should include estimated travel and accommodation costs (and a maximum capped amount) to attend the two concurrent evidence sessions in Sydney on 15 March and 5 April 2018.

Concurrent expert evidence sessions

The AER seeks a finance consultant to attend and participate in the concurrent expert evidence session on 15 March 2018 to discuss and review the key issues relating to gearing and the concurrent evidence session on 5 April 2018 to discuss and review the key issues relating to gamma. These sessions are to assist the AER Board in making a decision which will best achieve the NEO and NGO by allowing them to clearly define the issues of agreement and areas of disagreement between relevant experts. Both sessions will be held at the following location:

ACCC & AER office

Level 20, 175 Pitt Street

Sydney, NSW, 2000

An independent facilitator will chair the sessions. More information on the concurrent expert evidence sessions is in the AER’s positions paper.[[7]](#footnote-7) The draft background paper on gearing for the hot tub is in attachment B in this document.

The contractor’s duties are to include:

* Preparation in advance of each expert evidence session, including review and consideration of a range of relevant material, including:
  + the current 2013 Guideline,
  + issues papers and submissions published as part of our 2018 review of our Guideline
  + previous expert advice provided to the AER,
  + expert reports from regulated energy businesses
  + previous and current regulatory proposal from regulated energy businesses
  + recent Tribunal and Full Federal Court decisions
* Contribute to a statement of agreed positions, developed jointly with the other experts participating in the concurrent expert evidence sessions and assisted by an AER-appointed independent facilitator. A statement of agreed positions will be published prior to each expert evidence session.
* Participation in expert evidence sessions
* Review and sign-off of the transcript of the expert evidence session
* Post-session review of the initial statement of agreed position and contribute amendments if necessary

Expert reports on gamma and gearing

The AER requires advice from the consultant on gamma and gearing to this Guideline review process. In providing its advice, the consultant should have regard to:

* The National Gas and Electricity Objectives and the Allowed Rate of Return Objective (see below)
* The revenue and pricing principles in National Electricity Law and National Gas Law (see below)
* A range of relevant material, including:
  + The current 2013 Guideline
  + Issues papers and submissions published as part of our 2018 review of our Guideline
  + previous expert advice provided to the AER,
  + expert reports from regulated energy businesses
  + previous and current regulatory proposal from regulated energy businesses
  + recent Tribunal and Full Federal Court decisions

In addition to the general advice required above, the AER also requires the consultant’s advice to address:

* The consultant’s view on gamma, including:
  + Views on the AER’s current approach in estimating gamma
  + Views on the use of tax statistics as one source of information to inform both the estimation of the utilisation rate and the distribution rate used for estimating gamma
  + Views on Hathaway’s report on estimating gamma directly from Franking Credits Redeemed/Company Taxation Paid from the Australian Taxation Office
  + Views on the use of the updated equity ownership data from the Australian Bureau of Statistics to inform the estimate of the utilisation rate used for estimating gamma
  + Views on the use of annual report data for the top 20 or more ASX listed firms to inform the distribution rate of BEE
  + Views on the weights to be attached to different data sources
* The consultant’s view on gearing, including:
  + Views on the AER’s current approach for estimating a benchmark gearing ratio
  + Views on the use of non-market value financial report and regulatory information as a source of data to inform the gearing estimate (including the use of book gearing values and debt to RAB values)

Among the submissions to the Guideline review, the Energy Networks Australia submitted a brief report by Hathaway. In this report he suggested the combination of the items Company Taxation Paid and the subsequent Franking Credits Redeemed calculated from tax tables from the Australian Taxation Office website could directly give a national estimate of gamma. This report is based on his earlier May 2014 report on Imputation credit redemption ATO data 1988-2011 for Ausgrid. The consultant should have regard to Hathaway’s reports in forming his view on the appropriate approaches to inform the gamma estimate and the relative weights to be placed on them. The reports can be obtained by clicking on the following links: [link 1](https://www.aer.gov.au/system/files/Energy%20Networks%20Association%20-%20submission%20on%20rate%20of%20return%20issues%20paper%20-%2012%20December%202017%20-%20Attachment%20C%20-%20Letter%20-%20Dr%20Neville%20Hathaway%20-%20Tax%20Statistics.pdf) and [link 2](https://www.erawa.com.au/cproot/11760/2/Attachment%206%20-%20Hathaway%20Capital%20Research%20-%20Imputation%20Credit%20Redemption%20ATO%20Data.pdf). The AER’s most recent decision on gamma can be obtained by clicking on the following [link](https://www.aer.gov.au/system/files/AER%20-%20Draft%20decision%20Murraylink%20transmission%20determination%20-%20Attachment%204%20-%20Value%20of%20imputation%20credits%20-%2028%20September%202017.pdf).

Where he consider it desirable, the consultant is free to add commentary on other matters they consider of relevance in coming to the right approach to estimating gamma and gearing.

The consultant is required to provide a draft report for comment of AER staff and a final report taking into account AER staff comments. Where the consultant has a dissenting view, that opinion should be documented, giving a brief explanation as to why he hold that view.

**Project Deliverables**

The key deliverables are as follows:

* Preparation for and participation in the concurrent expert evidence sessions
* A written report addressing the advice sought as per the services required. This report should contain two sections, one on the gearing ratio and one on the imputation credits.

**Timeline[[8]](#footnote-8)**

|  |  |
| --- | --- |
| Contract signed (X) | Work commences (X) |
| Concurrent evidence sessions |  |
| Issues paper for expert evidence session 1 | 27 February 2018 |
| Initial statement of agreed positions session 1 | 10 March 2018 |
| Issues paper for expert evidence session 2 | 14 March 2018 |
| Expert evidence session 1 | 15 March 2018 |
| Session 1 transcript publication | 23 March 2018 |
| Initial statement of agreed positions session 2 | 2 April 2018 |
| Expert evidence session 2 | 5 April 2018 |
| Session 2 transcript publication | 13 April 2018 |
| Expert reports on equity and debt |  |
| Telephone meeting progress update with AER staff | 21 March 2018 |
| Draft expert report provided to AER staff | 9 April 2018 |
| Final expert report | 26 April 2018 |

**Samples of relevant material**

**Table 1 Previous expert advice provided to the AER on imputation credits**

|  |
| --- |
| [Dr Martin Lally, Review of Frontier report of gamma, June 2017](https://www.aer.gov.au/system/files/Dr%20Martin%20Lally%20-%20Review%20of%20Frontier%20Report%20on%20Gamma%20-%2013%20June%202017.pdf)  [Dr Martin Lally, Issues in the estimation of gamma, April 2017](https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/ausnet-services-determination-2017%E2%80%932022/final-decision)  [Dr Martin Lally, Gamma and the ACT decision, May 2016](https://www.aer.gov.au/system/files/Lally%2C%20Dr.%20Martin%20-%20Gamma%20and%20the%20Australian%20Competition%20Tribunal%20Decision%20-%2023%20May%202016_6.pdf)  [J. Handley, Report prepared for the Australian Energy Regulator: Advice on the NERA report 'Estimating distribution and redemption rates from taxation statistics', 20 May 2015](http://www.competitiontribunal.gov.au/__data/assets/pdf_file/0018/28611/B.14-Public.pdf)  [J. Handley, Report prepared for the Australian Energy Regulator: Further advice on the value of imputation credits, 16 April 2015](https://www.aer.gov.au/system/files/Handley%20-%20Further%20advice%20on%20the%20value%20of%20imputation%20credits%20-%2016%20April%202015.PDF)  [J. Handley, Report prepared for the Australian Energy Regulator: Advice on the value of imputation credits, 29 September 2014](http://www.competitiontribunal.gov.au/__data/assets/pdf_file/0003/28605/B.8-Public.PDF) |

**Table 2 AER rate of return guideline**

|  |
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| AER’s current [rate of return guideline](http://www.aer.gov.au/system/files/AER%20Rate%20of%20return%20guideline%20-%20December%202013.pdf) |
| AER’s current [rate of return guideline explanatory statement](http://www.aer.gov.au/system/files/AER%20Explanatory%20statement%20-%20rate%20of%20return%20guideline%20-%20December%202013.pdf) |
| AER’s current [rate of return guideline explanatory statement (appendices)](http://www.aer.gov.au/system/files/AER%20Explanatory%20statement%20-%20appendices%20-%20rate%20of%20return%20guideline%20-%20December%202013_0.pdf) |

**Table 3 Rate of return guideline review 2018 information**

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| --- |
| [AER rate of return guideline review 2018 information](https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/review-of-rate-of-return-guideline) |

Key consultant reports attached to revenue proposals / regulatory proposals / access arrangement proposals are shown in the tables below.

**Table 4 Previously submitted expert reports on imputation credits**

**Table 5 Recent Tribunal and Full Federal Court decisions**

|  |
| --- |
| [**Federal Court of Australia, SA Power Networks v Australian Competition Tribunal (No 2) [2018] FCAFC 3, Jan 2018**](http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2018/2018fcafc0003)  [**Tribunal decision in ActewAGL – re Application by ActewAGL[2017] ACompT 2, October 2017**](http://www.judgments.fedcourt.gov.au/judgments/Judgments/tribunals/acompt/2017/2017acompt0002)  [**Federal Court of Australia, *Australian Energy Regulator v Australian Competition Tribunal (No 2) [2017] FCAFC 79*, May 2017**](http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2017/2017fcafc0079)  [**Tribunal decision in SA Power Networks – re Application by SA Power Networks [2016] ACompT11**](http://www.judgments.fedcourt.gov.au/__data/assets/word_doc/0003/520590/2016ACOMPT0011.docx)  [**Tribunal decision in AusGrid – re Applications by Public Interest Advocacy Centre Ltd and AusGrid [2016] ACompT1**](http://www.judgments.fedcourt.gov.au/__data/assets/word_doc/0008/508265/2016ACOMPT0001.docx)  [**Tribunal decision in Energex Limited – re Applications by Energex Limited (No 2) [2010] ACompT7**](http://www.judgments.fedcourt.gov.au/__data/assets/word_doc/0012/410322/2010ACOMPT0007.docx) |

Any reports referenced in the above reports can be provided upon request.

The consultant should see the gearing issues paper for past considerations of the AER on this topic.

**Context and framework**

The expert advice is required in the following context and framework:

1. The overarching requirement is that the rate of return on capital must be consistent with the relevant legislation; the NEL, NGL, NER and NGR (see above ‘Legal requirements for the allowed rate of return’). Specific to the return on equity, the NER and NGR require:
   1. The return on capital for each regulatory year must be calculated by applying an allowed rate of return that achieves the allowed rate of return objective.[[9]](#footnote-9)
   2. Subject to the achievement of the allowed rate of return objective, the allowed rate of return for a regulatory year must be a weighted average cost of capital (WACC) determined on a nominal vanilla basis consistent with the estimate of the value of imputation credits. This is a weighted average of the return on equity for the regulatory control period in which the regulatory year occurs and the return on debt for that regulatory year.[[10]](#footnote-10)
   3. In determining the allowed rate of return, regard must be had to
      1. relevant estimation methods, financial models, market data and other evidence
      2. the desirability of using an approach that leads to the consistent application of any estimates of parameters relevant to the return on equity and return on debt
      3. any interrelationships between estimates of parameters relevant to the return on equity and return on debt.[[11]](#footnote-11)
2. The rate of return guideline sets out the AER’s approach to determining the allowed rate of return in accordance with the relevant legislation. The expert advice should have regard to the guideline approach when identifying issues put forward by the relevant service providers in their proposals. In the guideline, the AER proposes to estimate:
   1. the returns on equity and debt for a benchmark efficient business[[12]](#footnote-12)
   2. the WACC (post corporate tax, pre personal tax) using a the nominal vanilla formula 

where:

* + 1. E(ke) is the expected required return on equity
    2. E(kd) is the expected required return on debt
    3. E/V is the proportion of equity in total financing (comprising equity and debt)
    4. D/V is the proportion of debt in total financing, and is equal to the AER’s proposed benchmark efficient entity gearing ratio of 0.6
    5. WACCvanilla is updated annually as a result of the estimated return on debt being updated annually.[[13]](#footnote-13)

The 2018 Guideline review aims to identify and review key issues[[14]](#footnote-14) to drive a more efficient process, acknowledge the significant analysis that was the basis of the AER’s current approach, while more effectively address matters that require further consideration.

**Legal requirements for the allowed rate of return**

In determining the rate of return, the AER is guided by requirements in:

* the national electricity law (NEL) and national gas law (NGL)
* the national electricity rules (NER) and national gas rules (NGR).

The expert advice is required in the context of these requirements.

***Requirements of the law***

Under the NEL and the NGL, the AER must determine the rate of return in a manner that will or is likely to contribute to the achievement of the national electricity objective (NEO) and the national gas objective (NGO).

The **national electricity objective (and NGO)** is to promote efficient investment in, and efficient operation and use of, electricity (gas) services for the long term interests of consumers of electricity (gas) with respect to:

* price, quality, safety, reliability and security of supply of electricity (gas), and
* the reliability, safety and security of the national electricity system.

If the AER is making a decision and there are two or more possible decisions that will or are likely to contribute to the achievement of the national electricity objective (NGO), the AER must make the decision that the AER is satisfied will or is likely to contribute to the achievement of the national electricity objective (NGO) to the greatest degree.

The AER must also take into account the revenue and pricing principles when determining the rate of return.

Of relevance to the rate of return are the following **revenue and pricing principles**:

* A regulated network service provider should be provided with a reasonable opportunity to recover at least the efficient costs the operator incurs in:
  + providing regulated network services, and
  + complying with a regulatory obligation or requirement or making a regulatory payment.
* A regulated network service provider should be provided with effective incentives in order to promote economic efficiency with respect to regulated network services the operator provides. The economic efficiency that should be promoted includes:
  + efficient investment in a distribution system or transmission system with which the operator provides regulated network services; and
  + the efficient provision of electricity network services; and
  + the efficient use of the distribution system or transmission system with which the operator provides regulated network services.
* A price or charge for the provision of a regulated network service should allow for a return commensurate with the regulatory and commercial risks involved in providing the regulated control network service to which that price or charge relates.
* Regard should be had to the economic costs and risks of the potential for under and over investment by a regulated network service provider in, as the case requires, a distribution system or transmission system with which the operator provides regulated network services.
* Regard should be had to the economic costs and risks of the potential for under and over utilisation of a distribution system or transmission system with which a regulated network service provider provides regulated network services.

Equivalent provisions apply under the NGL.

The NEO and revenue and pricing principles have been in place for some time, and previous AER decisions were also conducted under this framework. However, what is new is the requirement concerning adopting the decision that would contribute to the achievement of the NEO ‘to the greatest degree’ if two or more decisions are possible.

***Requirements of the rules***

Under the NER, the allowed rate of return is to be determined such that it achieves the allowed rate of return objective.[[15]](#footnote-15)

The **allowed rate of return objective** is that the rate of return for a service provider is to be commensurate with the efficient financing costs of a benchmark efficient entity with a similar degree of risk as that which applies to the service provider in respect of the provision of regulated network services.

The NER requires that the allowed rate of return for a regulatory year must be:[[16]](#footnote-16)

* a weighted average of the return on equity for the regulatory control period in which that regulatory year occurs and the return on debt for that regulatory year
* determined on a nominal vanilla basis that is consistent with the estimate of the value of imputation credits.

In determining the allowed rate of return, the NER also require that regard must be had to:[[17]](#footnote-17)

* relevant estimation methods, financial models, market data and other evidence
* the desirability of using an approach that leads to the consistent application of any estimates of financial parameters that are relevant to the estimates of, and that are common to, the return on equity and the return on debt
* any interrelationships between estimates of financial parameters that are relevant.

There are also provisions in the NER that refer specifically to the return on equity, the return on debt and the value of imputation credits.[[18]](#footnote-18)

Equivalent provisions apply under the NGR.[[19]](#footnote-19)

The NER and NGR concerning the determination of the rate of return were revised in 2012 by the AEMC. The AER’s recent rate of return guideline was conducted under this framework.

However, these rules differ from the framework under which the AER made regulated determinations in the past. The current regulatory determinations are the first ones to be conducted under this new rules framework.

Of particular importance under the new rules framework is the introduction of the allowed rate of return objective, and the primacy given to this objective over other rule requirements.

**Context for the determination of the allowed rate of return**

***The current rate of return guideline***

In November 2012, the Australian Energy Market Commission (AEMC) published changes to the National Electricity and Gas Rules (NER, NGR). The AER’s Better Regulation program was initiated to update and improve its processes under these new rules, with the aim of delivering an improved regulatory framework focused on the long term interests of electricity and gas consumers.

The Better Regulation program involved the publication of several guidelines. The Rate of Return Guideline (the Guideline) was developed through extensive consultation with service providers, consumer representatives and other stakeholders and sets out the AER’s approach to determining the allowed rate of return in accordance with the relevant legislation.[[20]](#footnote-20) An explanatory statement (including appendices to the explanatory statement) accompanies the Guideline, and sets out the AER’s reasons for the positions it reached in the Guideline.[[21]](#footnote-21)

The Guideline and explanatory statement apply to both electricity and gas distribution and transmission service providers.

The Guideline sets out the approach the AER proposes to use to estimate the returns on equity and debt for a benchmark efficient entity.[[22]](#footnote-22) The Guideline also sets out the approach the AER proposes to use to estimate the value of imputation credits under the Australian tax system. The value of imputation credits mostly impacts on the separate corporate income tax building block. However, the rate of return must be set on a nominal vanilla basis consistent with the estimate of the value of imputation credits.

The Guideline does not consider the AER’s position on forecast inflation or transaction costs (equity and debt raising costs), though the AER’s position on these matters has been established through previous regulatory determinations.

The Guideline is not legally binding on the AER or service providers. However, if the AER or a service provider chooses to depart from the Guideline, it must state its reasons for doing so in the relevant regulatory determination.

**Judicial review**

The regulatory determinations made by the AER under the NER and NGR are subject to judicial review in the Federal Court of Australia. Accordingly, the consultant’s services and the consultant’s final report must be performed to the following standards:

* To a professional standard which is robust, transparent, well-reasoned and defendable.
* Conform with the updated expert evidence practice note issued by the Federal Court of Australia in October 2016, including the Expert Witness Code of Conduct[[23]](#footnote-23)

Any work required of the consultant as a result of a review would be the subject of a separate contract. The consultant may be requested to provide services in support of the final decision of the AER and the consultant must not unreasonably decline a request for assistance.

1. Excludes Western Australia and the Northern Territory. [↑](#footnote-ref-1)
2. A list of these service providers can be find at: <https://www.aer.gov.au/networks-pipelines/service-providers-assets> [↑](#footnote-ref-2)
3. This period is known in an electricity context as a regulatory control period or in a gas context as an access arrangement period. [↑](#footnote-ref-3)
4. For electricity networks, this means the National Electricity Law (NEL) and National Electricity Rules (NER). For gas networks, this means the National Gas Law (NGL) and National Gas Rules (NGR). [↑](#footnote-ref-4)
5. That is, the rate of return on capital is multiplied by the regulated asset base (for electricity networks) or the capital base (gas networks) to derive the return on capital building block for a given year. [↑](#footnote-ref-5)
6. NER, clauses 6.5.2(b), 6.5.2(d), 6A.6.2(b) and 6A.6.2(d). NGR, rule 87(2) and 87(4). [↑](#footnote-ref-6)
7. AER, Positions paper Review of the rate of return guidelines – Process for the guideline review, November 2017, p. 2: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/review-of-rate-of-return-guideline> [↑](#footnote-ref-7)
8. Dates within brackets are indicative based on the assumed contract signing date. [↑](#footnote-ref-8)
9. NER, clauses 6.5.2(b) and 6A.6.2(b). NGR, rule 87(2). The allowed rate of return objective is that the rate of return for a service provider is to be commensurate with the efficient financing costs of a benchmark efficient entity with a similar degree of risk as that which applies to the service provider in respect of the provision of its regulated services. [↑](#footnote-ref-9)
10. NER, clauses 6.5.2(d) and 6A.6.2(d). NGR, rule 87(4). The value of imputation credits is referred to in clause 6.5.3 and 6A.6.4 of the NER and rule 87A of the NGR. [↑](#footnote-ref-10)
11. NER, clauses 6.5.2(e) and 6A.6.2(e). NGR, rule 87(5). [↑](#footnote-ref-11)
12. The guideline defines the benchmark efficient business as a pure play, regulated energy network business operating within Australia. [↑](#footnote-ref-12)
13. AER, *Better regulation rate of return guideline*, December 2013, pp. 7–9. [↑](#footnote-ref-13)
14. AER, Positions paper Review of the rate of return guidelines– Process for the guideline review, November 2017, p. 7. [↑](#footnote-ref-14)
15. NER, clauses 6.5.2(b) and 6A.6.2(b). [↑](#footnote-ref-15)
16. NER, clauses 6.5.2(d) and 6A.6.2(d). The value of imputation credits is referred to in clause 6.5.3 and 6A.6.4 of the NER and rule 87A of the NGR. [↑](#footnote-ref-16)
17. NER, clauses 6.5.2(e) and 6A.6.2(e). [↑](#footnote-ref-17)
18. See NER, clause 6A.6.2 and clause 6.5.2. [↑](#footnote-ref-18)
19. See NGR, rule 87. [↑](#footnote-ref-19)
20. AER, *Rate of return guideline*, December 2013. [↑](#footnote-ref-20)
21. AER, *Explanatory statement—Rate of return guideline*, December 2013; AER, *Explanatory statement—Rate of return guideline—Appendices*, December 2013. [↑](#footnote-ref-21)
22. The guideline defines the benchmark efficient business as a pure play, regulated energy network business operating within Australia. [↑](#footnote-ref-22)
23. <http://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-expt> [↑](#footnote-ref-23)