



# **Issues Paper**

## **Regulatory investment test for distribution**

January 2013

© Commonwealth of Australia 2013

This work is copyright. Apart from any use permitted by the Copyright Act 1968, no part may be reproduced without permission of the Australian Competition and Consumer Commission. Requests and inquiries concerning reproduction and rights should be addressed to the Director Publishing, Australian Competition and Consumer Commission, GPO Box 3131, Canberra ACT 2601.

## Contents

<b>Introduction .....</b>	<b>4</b>
<b>1 NER requirements.....</b>	<b>6</b>
<b>2 Consultation procedure .....</b>	<b>7</b>
2.1 Invitation for written submissions.....	7
<b>3 Background .....</b>	<b>8</b>
3.1 RIT-D and the review of reliability standards.....	9
3.2 Our role under the RIT-D.....	10
3.3 The RIT-D in the revenue determination process .....	10
<b>4 Similarities and differences between the RIT-T and RIT-D.....</b>	<b>11</b>
4.1 Removal of the base case .....	11
4.2 Distribution level market benefits.....	12
4.3 Material and adverse NEM impacts for the purposes of interested parties.....	13
<b>5 RIT-D Issues .....</b>	<b>15</b>
5.1 Estimating costs.....	15
5.2 Determining discount rates .....	15
5.3 Methodologies for estimating market benefits .....	15
5.4 Methodologies for estimating costs .....	16
<b>6 RIT-D Guidelines Issues.....</b>	<b>17</b>
6.1 Operation and application of the RIT-D.....	17
6.2 Application of guidelines .....	18
6.3 Process to be followed.....	18
6.4 Estimating market benefits .....	18
6.5 Dispute Resolution.....	19
<b>APPENDIX A: History of the regulatory investment test .....</b>	<b>20</b>
<b>APPENDIX B: NER 5.17 .....</b>	<b>22</b>

# Introduction

As the Australian Energy Regulator (AER), we are responsible for the economic regulation of electricity transmission and distribution services in the national electricity market (NEM) as well as gas transportation services. We monitor the wholesale electricity and gas markets and are responsible for compliance with and enforcement of the National Electricity Rules (NER) and National Gas Rules.

Under amendments the Australian Energy Market Commission (AEMC) made to the NER, we must publish the regulatory investment test for distribution (RIT-D).<sup>1</sup> The RIT-D arose out of the AEMC's national distribution planning arrangements review. The RIT-D will replace the existing regulatory test for distribution investments.

Electricity distribution companies undertake numerous investment projects each year to augment parts of their networks. The purpose of the RIT-D is to ensure that these companies use appropriate measures to identify the most economical investment project among all possible alternatives (credible options). Credible options might be alternative network projects, or non-network initiatives like demand-side alternatives.

The RIT-D is to be applied to all distribution network investments, with exceptions where:

- the project is required to address an urgent and unforeseen network issue that would otherwise put network reliability at risk.
- the estimated capital cost of the most expensive credible option is under \$5 million.
- the cost can be fully recovered through charges other than standard control services or prescribed transmissions services.
- the need can only be addressed by expenditure on a connection asset which provides services other than standard control services or prescribed transmissions services.
- a refurbishment or replacement project is not intended to augment a network. Or, if augmentation occurs, the estimated cost of the most expensive credible option is under \$5 million.<sup>2</sup>

In terms of the overall assessment framework, the RIT-D process takes place before investment decisions are made. This is because it is applied in a way that ensures distribution companies assess all credible options before they choose the best option available to meet their network's augmentation needs (the preferred option). The preferred option is that which maximises the present value of the net economic benefit to all those who produce, consume and transport electricity in the NEM.<sup>3</sup> For the avoidance of doubt, a preferred option may have a net economic cost where the identified need is for reliability corrective action.

In conjunction with the RIT-D, we must develop and publish RIT-D application guidelines for the operation and application of the RIT-D (the application guidelines) and must do so by August 2013.<sup>4</sup> The application guidelines are designed to provide guidance to businesses applying the RIT-D and enhance transparency and consistency in investment decision making. We have prepared this issues paper as the first step in its consultation process in developing the RIT-D and application guidelines.

---

<sup>1</sup> AEMC, National electricity amendment (distribution network and expansion framework) rule 2012 no.5

<sup>2</sup> NER 5.17.3(a)

<sup>3</sup> NER 5.17.1(b)

<sup>4</sup> NER 5.17.2(a)

We recognise that changes in network reliability standards will affect the RIT-D. For example, reliability standards are currently being reviewed by the AEMC.<sup>5</sup> The AEMC's review addresses the benefits of a nationally consistent framework and recommends a high-level design for such a framework. The AEMC expects that the framework will potentially improve our ability to benchmark performance and determine efficient levels of expenditure to achieve reliability outcomes. We will take into account the outcomes of this and any other work streams in developing the RIT-D and accompanying application guidelines.

---

<sup>5</sup> AEMC, November 2012, Draft report - National workstream: review of distribution reliability outcomes and standards

# 1 **NER requirements**

Under clause 5.17.2(d), we are required to develop and publish the RIT-D and application guidelines by 31 August 2013. The RIT-D and application guidelines must comply with the principles set out in the NER and must be developed in accordance with the distribution consultation procedures.

Under the distribution consultation procedures we must publish the proposed RIT-D and application guidelines with an explanatory statement and invite written submissions. Within 80 business days of publishing the proposed RIT-D and guidelines, we must publish the final RIT-D and guidelines. We may also publish any issues, consultation and discussion papers as we consider appropriate.

Rule 5.17 of the NER is extracted at appendix B.

## 2 Consultation procedure

The release of this issues paper is part of our consultation process on the development of the RIT-D and application guidelines.

We will engage in the following consultation process:

- publish the issues paper and invite written submissions
- publish the proposed RIT-D, application guidelines and an explanatory statement and invite submissions
- publish the final RIT-D and application guidelines by 31 August 2013.

We will also hold workshops or public forums during the development of the RIT-D and application guidelines.

### 2.1 Invitation for written submissions

Interested parties are invited to review the matters raised in this issues paper and provide written submissions. Interested parties are also welcome to provide submissions on relevant issues not discussed in the paper.

We prefer that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will therefore be treated as public documents unless otherwise requested. Parties wishing to submit confidential information are requested to:

- clearly identify the information that is subject of the confidentiality claim
- provide a non-confidential version of the submission, in addition to a confidential one.

All non-confidential submissions will be placed on our website.

Any submissions must be received by close of business 25 February 2013 and should be addressed to:

Mr Chris Pattas

General Manager

Network Operations and Development

Australian Energy Regulator

Email: [AERInquiry@ aer.gov.au](mailto:AERInquiry@ aer.gov.au)

GPO Box 520

MELBOURNE VIC 3001

### 3 Background

In October 2012, the AEMC published a final rule determination to establish a national framework for electricity distribution planning and expansion (the Framework) from 1 January 2013.<sup>6</sup> The Framework aims to support distribution businesses and other market participants in making efficient investment decisions.

The key components of the Framework include:

- a distribution annual planning review;
- a distribution annual planning report;
- demand side engagement obligations on distribution businesses;
- joint planning arrangements;
- the RIT-D and associated dispute resolution process, and;
- Implementation and transition

As outlined in the AEMC's final rule determination, the Framework promotes efficient outcomes by:

- Creating incentives for, and a framework within which, distribution businesses can explore non-network options as alternatives to capital expenditure. This will also incentivise and assist non-network providers to efficiently plan and offer alternative, cost effective options to network augmentations.
- Establishing a clearly defined and efficient planning process which facilitates distribution business to identify and resolve potential problems on their networks. This therefore promotes the efficient operation of, and investment in, distribution networks.
- Providing greater transparency to, and information on, distributions business' planning activities. This will assist network users to plan where best to connect to the network, thereby promoting efficient use of electricity services.

The RIT-D forms one part of the Framework introduced by the AEMC's rule change determination. The RIT-D introduces a framework for distribution businesses to consider which investment option would be the most economical option to address the investment needs of the distribution network, whether it be a network or non-network option. The RIT-D assessment and consultation process will also provide transparency on the investment decision-making process. The annual planning review processes provide an annual overview of the distribution businesses' network. In contrast, the RIT-D assessment and consultation process provides an in-depth consideration of the investment options to address an identified need on the distribution network.

Under the Framework, RIT-D provisions have been included in the NER since 1 January 2013. The RIT-D is intended to replace the current regulatory test for electricity distribution projects.

The RIT-D provisions of the NER are closely modelled on the Regulatory Investment Test for Transmission (RIT-T) provisions, which previously replaced the regulatory test for electricity

---

<sup>6</sup> AEMC, October 2012, National electricity amendment (distribution network planning and expansion framework) rule 2012 No. 5



transmission projects. Both the RIT-D and the RIT-T have the effect of amalgamating the reliability and market benefits limbs included in the earlier regulatory tests. However, while the RIT-D provisions mirror the RIT-T provisions in many aspects, there are some key differences which are discussed in this Issues Paper.

A history of the regulatory investment test is included at appendix A.

### 3.1 RIT-D and the review of reliability standards

Clause 5.17.1(b) of the NER states that distribution investment decisions may have a negative net economic benefit where the identified need is for reliability corrective action. With this in mind, changes in distribution reliability standards are likely to have an impact on the RIT-D.

The AEMC is undertaking a review of distribution reliability standards and outcomes. This review has a national workstream and a NSW workstream.

In the NSW workstream, the AEMC published a Final Report in August 2012. The AEMC's analysis found that NSW consumers would benefit from reduced distribution reliability standards. This is because the cost savings of reducing reliability levels are larger than the costs to customers of reduced reliability levels.<sup>7</sup>

In the national workstream, the AEMC published a draft report on 28 November 2012.<sup>8</sup> The draft report sets out the AEMC's view that there would be net benefits associated with introduction of a consistent framework across the NEM for setting, delivering and reporting on reliability targets. The AEMC is currently considering the high level features of a national framework for distribution reliability standards.

The proposed national framework deals with investment decision making and is therefore likely to have an impact on the RIT-D and its application.<sup>9</sup> The AEMC's draft report proposes the following approach:

- Output reliability targets would be used, as opposed to specific input planning or other operational management requirements which have the effect of mandating certain levels of redundancy within the network. An outputs-based approach would allow distribution businesses to meet their reliability targets through innovative and potentially more cost effective means.
- Process controls or performance safeguards would be established, rather than distribution businesses having strict obligations to comply with the output reliability targets each year.

We believe an outputs-based approach could create incentives for networks to deliver services valued by customers at an efficient cost. This would be achieved if the outputs-based approach was coupled with incentive frameworks that promote efficient capex and opex. Such incentive frameworks could include an amended Service Target Performance Incentive Scheme (STPIS)

If the new approach to reliability standards allows for increased flexibility in how to meet the network's reliability needs, distribution businesses would have greater potential to meet their reliability standards through more innovative and cost effective means. This could include reducing peak demand or using

---

<sup>7</sup> AEMC, August 2012, Review of distribution reliability outcome and standards - NSW Workstream

<sup>8</sup> AEMC, November 2012, Draft report - National Workstream: Review of distribution reliability outcomes and standards

<sup>9</sup> AEMC, November 2012, Draft report - National Workstream: Review of distribution reliability outcomes and standards, Chapter 6

embedded generation where there are constraints on the network. Further, an outputs-based approach that creates incentives for networks to deliver services valued by customers at an efficient cost could result in more accurate valuation of the benefits derived from improved network reliability.

Consequently, this could contribute to a more efficient application of the RIT-D. Business would justify their reliability augmentations based on the net benefits of improved reliability, taking into account the value of customer reliability (VCR). Thus, if an outputs based approach to reliability were adopted NEM-wide over mandated reliability standards, we consider that clause 5.17.1(b) of the NER should be abolished.

## 3.2 Our role under the RIT-D

Among our various roles, we regulate electricity distribution services in the NEM and have a significant role under the RIT-D process. This role includes the following responsibilities:

- Developing and publishing the RIT-D and its application guidelines in accordance with the consultation procedures.<sup>10</sup>
- Determining whether any classes of market benefits or financial costs (additional to those included in the NER) should be applied to the RIT-D.<sup>11</sup>
- Where appropriate, amending or replacing the RIT-D and its accompanying guidelines.<sup>12</sup>
- Allowing RIT-D proponents, where appropriate, extensions for submitting particular reports, such as their draft project assessment reports.<sup>13</sup>
- Administering the RIT-D process undertaken by RIT-D proponents and resolving disputes concerning RIT-D projects.<sup>14</sup>

## 3.3 The RIT-D in the revenue determination process

As part of our capex incentive scheme considerations, we may also take RIT-D assessments into account during the revenue determination process. For instance, we may, under the new ex-post review provisions of the rules, review RIT-Ds undertaken by the DNSP for network projects undertaken in the regulatory control period.<sup>15</sup> The outcome of such review may have a bearing on capital expenditure (capex) during the re-set process.

---

<sup>10</sup> NER 5.17.1(a), NER 5.17.2(a)

<sup>11</sup> NER 5.17.1(c)(4)(viii), NER 5.17.1(c)(6)(iv)

<sup>12</sup> NER 5.17.2(e)

<sup>13</sup> NER 5.17.4(i)(2)

<sup>14</sup> NER 5.17.5

<sup>15</sup> NER S6.2.2A, Reduction for inefficient past capital expenditure

## 4 Similarities and differences between the RIT-T and RIT-D

While the RIT-D is a similar test to the RIT-T, there are innate differences in electricity distribution and transmission.

Examples of differences between transmission and distribution businesses include:

- Transmission network alterations and outages can directly impact generation dispatch and the market price, whereas this is unlikely in the distribution sector.
- Transmission services typically include ancillary services such as frequency control and reactive power control that are not required of the distribution businesses.
- Transmission networks typically have a greater level of redundancy than is found in a distribution network.
- In general, transmission businesses have larger but fewer capital projects than their distribution counterparts.

Therefore, the assessment of RIT-Ds may differ to that taken for RIT-Ts. For instance, it is expected that some of the methodologies used for calculating market benefits will be different for distribution projects than what they would be for transmission projects.

Additionally, where the requirements for transmission and distribution projects are the same, there may still be scope to improve on the processes established in the RIT-T.

Stakeholders should have regard to the regulatory test, RIT-T and RIT-T guidelines when considering their response to this Issues Paper. We are interested in what provisions of the RIT-T should be included in the RIT-D, modified or excluded altogether.

We are interested in how the differences in electricity distribution and transmission may require us to adjust our approach to the way RIT-T and RIT-D should be considered.

Several significant differences between the RIT-D and the RIT-T are outlined below.

### 4.1 Removal of the base case

The RIT-D removes the requirement under the RIT-T for each credible option to be compared against a base case where no option is implemented. RIT-D proponents would otherwise have been required to develop a 'do nothing' option for each credible option.

This amendment reflects the fact that distribution network service providers are obligated to meet statutory reliability requirements. A 'do nothing' option is not feasible where the identified need is reliability corrective action or to meet a deterministic standard. Consequently, removing the requirement to assess all credible options against a base case will remove a level of unnecessary analysis for reliability driven projects. For these projects, it is arguable that the relative ranking of the options is more important than the absolute values of the net economic benefits for each option.

We are interested in how stakeholders believe this will change the analysis for RIT-D proponents.

## 4.2 Distribution level market benefits

Clause 5.17.1(c)(4) requires RIT-D proponents to consider whether each credible option could deliver market benefits from changes relating to:

- Voluntary load curtailment
- Involuntary load shedding and customer interruptions caused by network outages, using a reasonable forecast of the value of electricity to customers
- Other parties' costs from differences in the timing of new plant, capital costs, as well as operating and maintenance costs
- Timing of expenditure
- Load transfer capacity and the capacity of Embedded Generators to take up load
- Additional option value where this had not already been included in other classes of market benefits
- Electrical energy losses; and
- Any other class of market benefit determined to be relevant by us.

These requirements differ from the RIT-T in that they don't specify the requirement to account for changes in competition benefits, ancillary service costs and changes in fuel consumption arising through different patterns of generation dispatch.

These requirements also differ from those under the RIT-T in that they include changes in load transfer capacity and the capacity of embedded generators to take up load. These market benefits are non-network solutions that seek to meet consumers' energy needs without augmenting the NEM. Embedded generation allows energy consumers to generate their own electricity rather than sourcing electricity from the grid. Load transfer identifies the potential to shift the timing of usage away from peak periods, or to shift usage away from highly utilised assets to lower utilisation areas.

Non-network options have been increasingly recognised as efficient alternatives to network augmentation. The importance of non-network options is reflected in the AEMC's Power of Choice Review, which recognised the benefits of demand management in preventing the need for network augmentation.<sup>16</sup> Demand management can produce market benefits if it helps meet consumers' energy needs by managing growth in overall or peak demand for energy services. This is partly accounted for under improvements in voluntarily load curtailment.

However, broader types of market benefits may result from demand-side activities. These are likely to relate to savings in wholesale markets from reductions in electricity demand. We are likely to include an additional, broader class of market benefit to ensure that all the market benefits from improved demand management are accounted for.

We are seeking stakeholder views on how any of the factors which should deliver market benefits listed above should be clarified.

---

<sup>16</sup> AEMC, November 2012, Power of choice review - giving consumers options in the way they used their electricity

We are also interested in whether we should look at any additional distribution level market benefits, other than those specified under clause 5.17.1(c)(4). In particular, we are interested in whether broader types of demand side participation are likely to result in distribution level market benefits. In addressing this, we recommend that stakeholders have regard to the AEMC's Power of Choice Review.<sup>17</sup>

Specifically, noting the recently released Power of Choice report, does the RIT-D consideration of market benefits need to be amended to support demand side participation?

The RIT-D process is designed to capture significant new projects and programs. It is feasible that the scale of these new projects and programs could be large enough to have a material impact on overall network reliability. In these cases, it is most likely that the reliability impact will be a positive one and this would then result in the DNSP receiving an incentive payment under the Service Target Performance Incentive Scheme (STPIS). It is also technically feasible that the STPIS outcomes could be negatively impacted by a RIT-D project or program. In both of these cases, it would be reasonable to assess the STPIS impact and potentially adjust the STPIS targets to account for the forecast reliability change. How should the consideration of market benefits under the RIT-D recognise the impact the proposed works would have on the STPIS?

A portion of electricity is naturally lost in its transmission and distribution. RIT-D proponents pass through these costs on the network, although proponents are obligated to comply with certain efficiency standards.<sup>18</sup> How should the economic cost of electricity loss be treated within the market benefits assessment?

### 4.3 Material and adverse NEM impacts for the purposes of interested parties

Clause 5.17.2(b)(2)(iii) of the NER requires us to provide guidance on what will be considered a material and adverse NEM impact for the purposes of interested parties.

Interested parties are defined as end users or their representatives who we consider could suffer a material and adverse NEM impact from the proposed preferred option. This differs from the previous definition of interested parties, which defined interested parties as end users or representatives who we consider, or who have identified themselves, as potentially suffering a material and adverse market impact from the proposed preferred option.

By specifying material and adverse 'NEM impacts' as opposed to 'market impacts', we consider there is likely to be more clarity in how this should be interpreted. For example, this would ensure that the focus of the RIT-D is kept in the context of the NEM specifically, as opposed to other impacts like those relating to environmental or planning issues. The NEM is defined in the National Electricity Law as:<sup>19</sup>

1. the wholesale exchange operated and administered by the Australian Energy Market Operator (AEMO) under the National Electricity Law and the NER; and
2. the national electricity system

---

<sup>17</sup> AEMC, November 2012, Power of choice review - giving consumers options in the way they used their electricity  
AEMC, November 2012, Power of choice review - giving consumers options in the way they used the

<sup>19</sup> National Electricity (South Australia) Act 1996, Part 1.2

We are seeking stakeholder views on who should be considered an interested party under this definition. We are interested in what guidance stakeholders would find useful in interpreting the definition of interested parties.

We are of the view that the change in terminology from material and adverse 'market impacts' to 'NEM impacts' improves clarity. We are seeking stakeholders' views on this.

## 5 RIT-D Issues

This part of the paper sets out some of the requirements for the RIT-D under the NER and seeks stakeholder views on each of the issues raised.

### 5.1 Estimating costs

Under clause 5.17.1(c)(6) of the NER, the RIT-D proponent must consider whether the following classes of costs would be associated with each credible option:

- Financial costs incurred in constructing or providing the credible option.
- Operating and maintenance costs over the operating life of the credible option.
- Cost of complying with laws, regulations and applicable administrative requirements in relation to the credible option.
- Any other financial costs determined to be relevant by us.

We are interested in stakeholder views regarding what other financial costs are likely to be relevant.

The RIT-T specifies that transmission network service providers could determine additional classes of costs if we agreed that they were relevant. We are seeking stakeholders' views on whether it should make a similar specification for RIT-D proponents under the RIT-D.

The RIT-T specifies that if the costs were materially uncertain, the cost should reflect the probability weighted present value of the direct costs of the credible option under a range of different cost assumptions. We are seeking stakeholders' views on whether we should make a similar specification under the RIT-D.

### 5.2 Determining discount rates

Clause 5.17.1(c)(9)(iii) of the NER requires the RIT-D to specify the appropriate method and value for specific inputs, where relevant, for determining the discount rate or rates to be applied.

The RIT-T and the current regulatory test (version 3) have specified a particular method for determining the discount rate for present value calculations. They state that a commercial discount rate appropriate for the analysis of a private enterprise investment in the electricity sector should be used. They also specify that this discount rate should be consistent with the cash flows being discounted.

We seek stakeholder views on whether the RIT-D should specify the same methodology for determining the discount rate as the RIT-T and current regulatory test.

### 5.3 Methodologies for estimating market benefits

Clause 5.17.1(c)(9)(1) of the NER requires the RIT-D to specify the method/s permitted for estimating the magnitude of different classes of market benefits.

We are also required to specify which methods are permitted for estimating market benefits under the RIT-D application guidelines. This issue is considered in more detail under section 6.4 of this Issues Paper, *Estimating market benefits*.

## 5.4 Methodologies for estimating costs

Clause 5.17.1(c)(9)(ii) of the NER requires the RIT-D to specify the method/s permitted for estimating the magnitude of different classes of costs.

The RIT-T requires different classes of costs to be quantified. For instance, costs incurred in providing, operating and maintaining the credible option. Where there is a material degree of uncertainty in the costs, the RIT-T requires the cost to be the probability weighted present value of the direct costs of the credible option under a range of different cost assumptions.

We seek stakeholder views on the methodology that the RIT-D should specify for estimating costs. We are interested in whether stakeholders think the methodology should be adopted from those specified under the RIT-T and regulatory test.



## 6 RIT-D Guidelines Issues

Clause 1.17.2 of the NER requires us to publish guidance for the operation and application of the RIT-D. We seek stakeholder views on the following matters relating to this guidance.

Clause 5.17.2(b)(2) of the NER requires the RIT-D guidelines to include guidance on the following:

- The operation and application of the RIT-D
- The process to be followed in applying the RIT-D
- What will be considered a material and adverse NEM impact for the purposes of the definition of interested parties (considered earlier)
- How disputes raised in relation to the RIT-D and its application will be addressed and resolved

We seek stakeholder views on what guidance and examples for distribution would be useful to in the RIT-D guidelines.

### 6.1 Operation and application of the RIT-D

Clause 5.17.2(c) of the NER requires that the guidelines include guidance and worked examples on the following:

- How to make a determination
- What constitutes a credible option
- Suitable modelling periods and approaches to scenario development
- The classes of market benefits
- Acceptable methodologies for valuing market benefits and the costs of a credible option
- The appropriate approach to undertaking a sensitivity analysis
- The appropriate approaches to assessing uncertainty and risks
- What may constitute an externality under the RIT-D

The RIT-T application guidelines have included guidance and worked examples on many of these topics. These are included under section 3 of the guidelines, titled *Operation and application of the RIT-T*<sup>20</sup>. These included but are not limited to:

- what constitutes a credible option
- what constitutes an externality
- the appropriate approach to undertaking sensitivity analysis
- the appropriate approaches to assessing uncertainty and risks

---

<sup>20</sup> AER, June 2010, Final: Regulatory investment test for transmission application guidelines, pp. 8-42

The RIT-T guidelines provide guidance and worked examples on these topics. Having regard to the RIT-T guidelines, we are interested in whether the RIT-T guidelines provide useful information which should be adopted in the RIT-D guidelines.

Additionally, we are interested in whether stakeholders consider the guidelines should provide guidance and worked examples on any additional areas that have not been specified under clauses 5.17.2(c) or 5.17.2(b)(2) of the NER.

## 6.2 Application of guidelines

Clause 11.50.5 of the NER addresses the transition from the regulatory test to the RIT-D. It states that we must provide guidance on when a regulatory test assessment will be considered to have commenced.<sup>21</sup>

Some electricity distribution projects are likely to be initiated around the commencement of the RIT-D. We will be required to set a cut-off so that there is no confusion in terms of whether the old regulatory test or the RIT-D should be applied.

Clause 11.50.5(c) requires each Network Service Provider that has commenced assessing a project under the regulatory test to submit a list of projects to us by 31 December 2013. This list will assist us in determining which projects have started off on a regulatory test assessment.

We seek views on what guidance we should give on when a regulatory test assessment will be considered to have commenced for the purposes of 11.50.5(c).

## 6.3 Process to be followed

Under clause 5.17.2(b)(2)(ii) of the NER, we must provide guidance on the process to be followed in applying the RIT-D. Details of the process to be followed are set out in clause 5.17.4 and include:

- Screening for non-network options
- Preparing and publishing a non-network options report
- Drafting a project assessment report
- Circumstances in which RIT-D proponents are exempt from drafting a project assessment report
- Processes required if a RIT-D proponent wishes to re-apply the RIT-D to a particular distribution project

We seek stakeholders' views on whether there are any particular areas where further guidance on the RIT-T assessment process would be useful.

## 6.4 Estimating market benefits

Under clause 5.17.2(c)(5) of the NER, the RIT-D guidelines must provide guidance and worked examples on the acceptable methodologies for valuing the market benefits of a credible option.

---

<sup>21</sup> AEMC, National electricity amendment (distribution network planning and expansion framework) Rule 2012 No. 5, pp. 92-93

Section 3.5 of the RIT-T application guidelines provides detailed examples of how to apply the regulatory test in a transmission setting.<sup>22</sup> This includes the scenarios that should be considered, the categories of market benefit, benefits accruing across regions, and uncertainties and risk.

However, the RIT-T application guidelines also state that the market benefit of a credible option is obtained by comparing, for each reasonable scenario, the state of the world with the credible option in place with the state of the world in the base case. Since the RIT-D does not require a comparison against a base case, it is expected that the RIT-D guidance will differ to the RIT-T guidance on this aspect.

We seek stakeholder views on what methodologies the RIT-D application guidelines should adopt for valuing market benefits.

## 6.5 Dispute Resolution

The application guidelines must include guidance on how disputes raised regarding the RIT-D and its application will be addressed and resolved.

The NER sets out the process that must be followed by disputing parties and ourselves in resolving RIT-D disputes. Clause 5.17.5 of the NER permits Registered Participants, the AMEC, Connection Applicants, Intending Participants, AEMO, interested parties and non-network providers to dispute the conclusions made by the RIT-D proponent regarding:

- Failure to apply the RIT-D in accordance with the Rules.
- Errors in the RIT-D proponents' calculation when applying the RIT-D.

Disputes cannot be raised about matters which are treated as externalities by the RIT-D or relate to an individual's property rights.

Clause 5.17.5 of the NER also outlines the process for lodging disputes. It also outlines our responsibilities in the dispute resolution process. This includes what we are required to do in order to make a determination or reject a dispute notice. It also covers the conditions in which we can reject a dispute notice or make a determination directing a RIT-D proponent to amend a project assessment report.

We seek stakeholder views on what dispute resolution guidance would be of assistance. The RIT-T guidelines provide guidance on dispute resolution. Having regard to the RIT-T guidelines, we are interested in whether this content should be adopted into the RIT-D guidelines.

---

<sup>22</sup> AER, June 2010, RIT-T application guidelines, Section 3.5: Methodology for calculating market benefits

## APPENDIX A: History of the regulatory investment test

The regulatory test, RIT-T and RIT-D are cost benefit tests used by network businesses in the NEM to assess the efficiency of proposed investment options. The regulatory test for transmission investment had been replaced by RIT-T and now the regulatory test for distribution investment will be replaced by RIT-D. This appendix sets out some of the history that has led to the development of the RIT-D. This information may assist in understanding the factors which have influenced the development of the RIT-D.

### The regulatory test

In 1999 the Australian Competition and Consumer Commission (ACCC) developed the first regulatory test to replace the customer benefits test. After the initial stages of its operation, the ACCC undertook a comprehensive review of the regulatory test and in 2004 released the regulatory test version two. Following changes to the NER in 2006, we released version three of the regulatory test in November 2007.

The regulatory test is applied by network service providers (NSPs) and is based on a cost-benefit analysis framework which is used to assess and rank different investment options. When developing the regulatory test, we relied on the principles of economic efficiency and competitive neutrality. Given this, the test is designed to ensure that network and non-network investments (such as generation and demand side investment) are considered equally.

### The regulatory test consists of two limbs:

1. The reliability limb—applied to investments which are required to meet service standards obligations in the NER, state legislation, regulations or statutory instruments. A reliability augmentation will satisfy the test if it is the least cost option considering the total costs of the alternative options to those who produce, distribute and consume electricity in the NEM
2. The market benefits limb—applied to non-reliability driven investment. New investment will satisfy the test if it maximises the net present value of the market benefits having regard to alternative options, timing and market development.

The ACCC undertook considerable analysis to develop regulatory test versions one and two. Significant issues considered by the ACCC in promulgating these versions of the regulatory test included the development of an effective cost benefit analysis framework and the treatment of competition benefits under this framework.

Version three of the regulatory test involved minor amendments to ensure consistency with the NER and to simplify or clarify areas of the existing test.

### Development of the RIT-T

In 2006, the Council of Australian Governments (COAG) established the Energy Reform Implementation Group (ERIG) to review the operation of Australia's energy sector. ERIG considered that the investment decision making criteria in the regulatory test were appropriate and should be retained. However it recommended that the reliability and market benefits limbs of the test should be amalgamated.

The AEMC developed options to implement ERIG's transmission planning recommendations in its national transmission planning arrangements review. As part of this review, the AEMC proposed a new framework and process for assessing transmission investment to replace the current regulatory test. This framework included the development of a RIT-T which would provide a single cost benefit analysis framework to apply to all transmission investment. The RIT-T would remove the distinction between reliability driven projects and projects motivated by the delivery of market benefits. Proposed transmission projects would be assessed against both local reliability standards and their ability to deliver benefits to the market.

In July 2009, the AEMC amended the NER to implement its proposed framework and process for assessing transmission investment. Under these amendments transmission investment will be subject to assessment under the RIT-T developed by us and new consultation requirements in clauses 5.6.6 of the NER from 1 August 2010.

The amalgamation of the reliability limb and the market benefits limb is reflected in clause 5.6.5B(b) of the NER. Under this clause the RIT-T must identify the option that maximises the present value of net economic benefit to all those who produce, consume and transport electricity in the NEM.

### **Development of the RIT-D**

When the AEMC had amended the NER to include the RIT-T, a new project assessment process for distribution, the RIT-D, had already been under consideration. RIT-D provisions were included in the NER on 1 January 2013.

Like the RIT-T, the RIT-D is also intended to replace the regulatory test. The two tests are very similar and both have the effect of amalgamating the reliability and market benefits limbs included in the regulatory test.

## APPENDIX B: NER 5.17

National Electricity Amendment (Distribution Network Planning and Expansion Framework) Rule  
2012 No. 5

---

### 5.17 Regulatory investment test for distribution

#### 5.17.1 Principles

- (a) The *AER* must develop and *publish* the *regulatory investment test for distribution* in accordance with the *distribution consultation procedures* and this clause 5.17.1.
- (b) The purpose of the *regulatory investment test for distribution* 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 *National Electricity Market* (the preferred

option). For the avoidance of doubt, a preferred option may, in the relevant circumstances, have a negative net economic benefit (that is, a net economic cost) where the identified need is for reliability corrective action.

(c) The *regulatory investment test for distribution* must:

- (1) be based on a cost-benefit analysis that must include an assessment of reasonable scenarios of future supply and demand;
- (2) not require a level of analysis that is disproportionate to the scale and likely impact of each of the credible options being considered;
- (3) be capable of being applied in a predictable, transparent and consistent manner;
- (4) require the RIT-D proponent to consider whether each credible option could deliver the following classes of market benefits:
  - (i) changes in voluntary *load* curtailment;
  - (ii) changes in involuntary *load shedding* and *customer* interruptions caused by *network* outages, using a reasonable forecast of the value of electricity to *customers*;
  - (iii) changes in costs for parties, other than the RIT-D proponent, due to differences in:
    - (A) the timing of new *plant*;
    - (B) capital costs; and
    - (C) the operating and maintenance costs;
  - (iv) differences in the timing of expenditure;
  - (v) changes in load transfer capacity and the capacity of *Embedded Generators* to take up *load*;
  - (vi) any additional option value (where this value has not already been included in the other classes of market benefits) gained or foregone from implementing the credible option with respect to the likely future investment needs of the *National Electricity Market* ;
  - (vii) changes in *electrical energy losses*; and

- (viii) any other class of market benefit determined to be relevant by the *AER*.
- (5) with respect to the classes of market benefits set out in subparagraphs (4)(i) and (ii), ensure that, if a credible option is for reliability corrective action, the consideration and any quantification assessment of these classes of market benefits will only apply insofar as the market benefit delivered by that credible option exceeds the minimum standard required for reliability corrective action;
- (6) require the RIT-D proponent to consider whether the following classes of costs would be associated with each credible option and, if so, quantify the:
  - (i) financial costs incurred in constructing or providing the credible option;
  - (ii) operating and maintenance costs over the operating life of the credible option;
  - (iii) cost of complying with laws, regulations and applicable administrative requirements in relation to the construction and operation of the credible option; and
  - (iv) any other financial costs determined to be relevant by the *AER*.
- (7) require a RIT-D proponent, in exercising judgement as to whether a particular class of market benefit or cost applies to each credible option, to have regard to any submissions received on the non-network options report and/or draft project assessment report where relevant;
- (8) provide that any market benefit or cost which cannot be measured as a market benefit or cost to persons in their capacity as *Generators, Distribution Network Service Providers, Transmission Network Service Providers* or consumers of electricity must not be included in any analysis under the *regulatory investment test for distribution*; and
- (9) specify:
  - (i) the method or methods permitted for estimating the magnitude of the different classes of market benefits;
  - (ii) the method or methods permitted for estimating the magnitude of the different classes of costs;



- (iii) the appropriate method and value for specific inputs, where relevant, for determining the discount rate or rates to be applied;
  - (iv) that a sensitivity analysis is required for modelling the cost-benefit analysis; and
  - (v) that the credible option that maximises the present value of net economic benefit to all those who produce, consume or transport electricity in the *National Electricity Market* may, in some circumstances, be a negative net economic benefit (that is, a net economic cost) where the identified need is for reliability corrective action.
- (d) A RIT-D proponent may, under the *regulatory investment test for distribution*, quantify each class of market benefits under paragraph (c)(4) where the RIT-D proponent considers that:
- (1) any applicable market benefits may be material; or
  - (2) the quantification of market benefits may alter the selection of the preferred option.
- (e) The *regulatory investment test for distribution* permits a single assessment of an integrated set of related and similar investments.

#### **5.17.2 Regulatory investment test for distribution application guidelines**

- (a) At the same time as the *AER* develops and *publishes* a proposed *regulatory investment test for distribution* under the *distribution consultation procedure*, the *AER* must also develop and *publish* guidelines for the operation and application of the *regulatory investment test for distribution* in accordance with the *distribution consultation procedures* and this clause 5.17.2.
- (b) The regulatory investment test for distribution application guidelines must:
- (1) give effect to and be consistent with this clause 5.17.2 and clauses 5.15.2, 5.17.3, 5.17.4 and 5.17.5; and
  - (2) provide guidance on:
    - (i) the operation and application of the *regulatory investment test for distribution*;
    - (ii) the process to be followed in applying the *regulatory investment test for distribution*;

- (iii) what will be considered to be a material and adverse *National Electricity Market* impact for the purposes of the definition of *interested parties* in clause 5.15.1.
  - (iv) how disputes raised in relation to the *regulatory investment test for distribution* and its application will be addressed and resolved.
- (c) The regulatory investment test for distribution application guidelines must provide guidance and worked examples as to:
  - (1) how to make a determination under clause 5.17.4(c);
  - (2) what constitutes a credible option;
  - (3) the suitable modelling periods and approaches to scenario development;
  - (4) the classes of market benefits to be considered for the purposes of clause 5.17.1(c)(4);
  - (5) the acceptable methodologies for valuing the market benefits of a credible option referred to in clause 5.17.1(c)(4);
  - (6) acceptable methodologies for valuing the costs of a credible option referred to in clause 5.17.1(c)(6);
  - (7) the appropriate approach to undertaking a sensitivity analysis for the purposes of clause 5.17.1(c)(9)(iv);
  - (8) the appropriate approaches to assessing uncertainty and risks; and
  - (9) what may constitute an externality under the *regulatory investment test for distribution*.
- (d) The *AER* must develop and *publish* the first *regulatory investment test for distribution* and regulatory investment test for distribution application guidelines by 31 August 2013, and there must be a *regulatory investment test for distribution* and regulatory investment test for distribution application guidelines in force at all times after that date.
- (e) The *AER* may, from time to time, amend or replace the *regulatory investment test for distribution* and regulatory investment test for distribution application guidelines in accordance with the *distribution consultation procedures*, provided the *AER publishes* any amendments to, or replacements of, the *regulatory investment test for distribution* or regulatory investment test for distribution application guidelines at the same time.

- (f) An amendment referred to in paragraph (e) does not apply to a current application of the *regulatory investment test for distribution* and the regulatory investment test for distribution application guidelines under the *Rules* by a RIT-D proponent.
- (g) For the purposes of paragraph (f), a “current application” means any action or process initiated under the *Rules* which relies on or is referenced to the *regulatory investment test for distribution* and/or the regulatory investment test for distribution application guidelines and is not completed at the date of the relevant amendment to the *regulatory investment test for distribution* and/or the regulatory investment test for distribution application guidelines.
- (h) The *AER* may publish the *regulatory investment test for distribution*, the regulatory investment test for distribution application guidelines, the *regulatory investment test for transmission* and the regulatory investment test for transmission application guidelines in a single document.

#### **5.17.3 Projects subject to the regulatory investment test for distribution**

- (a) A RIT-D proponent must apply the *regulatory investment test for distribution* to a RIT-D project except in circumstances where:
  - (1) the RIT-D project is required to address an urgent and unforeseen *network* issue that would otherwise put at risk the reliability of the *distribution network* or a significant part of that *network* as described in paragraph (c);
  - (2) the estimated capital cost to the *Network Service Providers* affected by the RIT-D project of the most expensive potential credible option to address the identified need is less than \$5 million (as varied in accordance with a cost threshold determination);
  - (3) the cost of addressing the identified need is to be fully recovered through charges other than charges in respect of *standard control services* or *prescribed transmission services*;
  - (4) the identified need can only be addressed by expenditure on a *connection asset* which provides services other than *standard control services* or *prescribed transmission services*;
  - (5) the RIT-D project is related to the refurbishment or replacement of existing assets and is not intended to *augment* a *network*; or
  - (6) the refurbishment or replacement expenditure also results in an *augmentation* to the *network*, and the estimated capital cost of the most expensive potential credible option to address the

identified need in respect of the *augmentation* component is less than \$5 million (as varied in accordance with a cost threshold determination).

- (b) If a potential credible option to address an identified need includes expenditure on a *dual function asset*, the project must be assessed under the *regulatory investment test for distribution* unless the identified need was identified through joint planning under rule 5.14 and the project to address the identified need is a RIT-T project.
- (c) For the purposes of paragraph (a)(1), a RIT-D project will be required to address an urgent and unforeseen *network* issue that would otherwise put at risk the *reliability* of the *distribution network* or a significant part of that *network* if:
  - (1) it is necessary that the assets or services to address the issue be operational within six months of the issue being identified;
  - (2) the event or circumstances causing the identified need was not reasonably foreseeable by, and was beyond the reasonable control of, the *Network Service Provider(s)* that identified the identified need; and
  - (3) a failure to address the identified need is likely to materially adversely affect the *reliability* and *secure operating state* of the *distribution network* or a significant part of that *network*.
- (d) With the exception of *negotiated distribution services* and *negotiated transmission services*, for each RIT-D project to which the *regulatory investment test for distribution* does not apply in accordance with paragraph (a)(1)-(6), the *Network Service Providers* affected by the RIT-D project must ensure, acting reasonably, that the investment required to address the identified need is planned and developed at least cost over the life of the investment.
- (e) A RIT-D proponent must not treat different parts of an integrated solution to an identified need as distinct and separate options for the purposes of determining whether the *regulatory investment test for distribution* applies to each of those parts.

#### **5.17.4 Regulatory investment test for distribution procedures**

- (a) If a RIT-D project is subject to the *regulatory investment test for distribution* under clause 5.17.3, then the RIT-D proponent must consult with the following persons on the RIT-D project in accordance with this clause 5.17.4:
  - (1) all *Registered Participants*, *AEMO*, *interested parties* and non-network providers; and

- (2) if the RIT-D proponent is a *Distribution Network Service Provider*, persons registered on its demand side engagement register.

#### **Screening for non-network options**

- (b) Subject to paragraph (c), a RIT-D proponent must prepare and *publish* a non-network options report under paragraph (e) if a RIT-D project is subject to the *regulatory investment test for distribution* under clause 5.17.3.
- (c) A RIT-D proponent is not required to comply with paragraph (b) if it determines on reasonable grounds that there will not be a non-network option that is a potential credible option, or that forms a significant part of a potential credible option, for the RIT-D project to address the identified need.
- (d) If a RIT-D proponent makes a determination under paragraph (c), then as soon as possible after making the determination it must *publish* a notice setting out the reasons for its determination, including any methodologies and assumptions it used in making its determination.

#### **Non-network options report**

- (e) A non-network options report must include:
  - (1) a description of the identified need;
  - (2) the assumptions used in identifying the identified need (including, in the case of proposed reliability corrective action, why the RIT-D proponent considers reliability corrective action is necessary);
  - (3) if available, the relevant annual deferred *augmentation* charge associated with the identified need;
  - (4) the technical characteristics of the identified need that a non-network option would be required to deliver, such as:
    - (i) the size of *load* reduction or additional *supply*;
    - (ii) location;
    - (iii) contribution to *power system security* or *reliability*;
    - (iv) contribution to *power system* fault levels as determined under clause 4.6.1; and
    - (v) the operating profile;



- (5) a summary of potential credible options to address the identified need, as identified by the RIT-D proponent, including network options and non-network options.
- (6) for each potential credible option, the RIT-D proponent must provide information, to the extent practicable, on:
  - (i) a technical definition or characteristics of the option;
  - (ii) the estimated construction timetable and commissioning date (where relevant); and
  - (iii) the total indicative cost (including capital and operating costs); and
- (7) information to assist non-network providers wishing to present alternative potential credible options including details of how to submit a *non-network* proposal for consideration by the RIT-D proponent.
- (f) The non-network options report must be *published* in a timely manner having regard to the ability of parties to identify the scope for, and develop, alternative potential credible options or variants to the potential credible options.
- (g) At the same time as *publishing* the non-network options report, the RIT-D proponent, if it is a *Distribution Network Service Provider*, must notify persons registered on its demand side engagement register of the report's *publication*.
- (h) *Registered Participants, AEMO, interested parties*, non-network providers and (if relevant) persons registered on the *Distribution Network Service Provider's* demand side engagement register must be provided with not less than three months in which to make submissions on the non-network options report from the date that the RIT-D proponent *publishes* the report.

#### **Draft project assessment report**

- (i) If one or more *Network Service Providers* wishes to proceed with a RIT-D project following a determination under paragraph (c) or the *publication* of a non-network options report then the RIT-D proponent, having regard, where relevant, to any submissions received on the non-network options report, must prepare and *publish* a draft project assessment report within:
  - (1) 12 months of:
    - (i) the end of the consultation period on a non-network options report; or

- (ii) where a non-network options report is not required, the publication of a notice under paragraph (d); or
- (2) any longer time period as agreed to in writing by the *AER*.
- (j) The draft project assessment report must include the following:
  - (1) a description of the identified need for the investment;
  - (2) the assumptions used in identifying the identified need (including, in the case of proposed reliability corrective action, reasons that the RIT-D proponent considers reliability corrective action is necessary);
  - (3) if applicable, a summary of, and commentary on, the submissions on the non-network options report;
  - (4) a description of each credible option assessed;
  - (5) where a *Distribution Network Service Provider* has quantified market benefits in accordance with clause 5.17.1(d), a quantification of each applicable market benefit for each credible option;
  - (6) a quantification of each applicable cost for each credible option, including a breakdown of operating and capital expenditure;
  - (7) a detailed description of the methodologies used in quantifying each class of cost and market benefit;
  - (8) where relevant, the reasons why the RIT-D proponent has determined that a class or classes of market benefits or costs do not apply to a credible option;
  - (9) the results of a net present value analysis of each credible option and accompanying explanatory statements regarding the results;
  - (10) the identification of the proposed preferred option;
  - (11) for the proposed preferred option, the RIT-D proponent must provide:
    - (i) details of the technical characteristics;
    - (ii) the estimated construction timetable and commissioning date (where relevant);
    - (iii) the indicative capital and operating cost (where relevant);

- (iv) a statement and accompanying detailed analysis that the proposed preferred option satisfies the *regulatory investment test for distribution*; and
  - (v) if the proposed preferred option is for reliability corrective action and that option has a proponent, the name of the proponent; and
- (12) contact details for a suitably qualified staff member of the RIT-D proponent to whom queries on the draft report may be directed.
- (k) The RIT-D proponent must *publish* a request for submissions on the matters set out in the draft project assessment report, including the proposed preferred option, from:
  - (1) *Registered Participants, AEMO, non-network providers and interested parties*; and
  - (2) if the RIT-D proponent is a *Distribution Network Service Provider*, persons on its demand side engagement register.
- (l) If the proposed preferred option has the potential to, or is likely to, have an adverse impact on the quality of service experienced by consumers of electricity, including:
  - (1) anticipated changes in voluntary *load* curtailment by consumers of electricity; or
  - (2) anticipated changes in involuntary *load shedding* and customer interruptions caused by *network* outages,then the RIT-D proponent must consult directly with those affected customers in accordance with a process reasonably determined by the RIT-D proponent.
- (m) The consultation period on the draft project assessment report must not be less than six weeks from the *publication* of the report.

**Exemption from the draft project assessment report**

- (n) A RIT-D proponent is not required to prepare and *publish* a draft project assessment report under paragraph (i) if:
  - (1) the RIT-D proponent made a determination under paragraph (c) and has *published* a notice under paragraph (d); and
  - (2) the estimated capital cost to the *Network Service Providers* affected by the RIT-D project of the proposed preferred option is less than \$10 million (varied in accordance with a cost threshold determination).



**Final project assessment report**

- (o) As soon as practicable after the end of the consultation period on the draft project assessment report, the RIT-D proponent must, having regard to any submissions received on the draft project assessment report, *publish* a final project assessment report.
- (p) If the RIT-D project is exempt from the draft project assessment report stage under paragraph (n), the RIT-D proponent must *publish* the final project assessment report as soon as practicable after the publication of the notice under paragraph (d).
- (q) At the same time as *publishing* the final project assessment report, a RIT-D proponent that is a *Distribution Network Service Provider* must notify persons on its demand side engagement register of the report's *publication*.
- (r) The final project assessment report must set out:
  - (1) if a draft project assessment report was prepared:
    - (i) the matters detailed in that report as required under paragraph (j); and
    - (ii) a summary of any submissions received on the draft project assessment report and the RIT-D proponent's response to each such submission; and
  - (2) if no draft project assessment report was prepared, the matters specified in paragraph (j).
- (s) If the preferred option outlined in the final project assessment report has an estimated capital cost to the *Network Service Providers* affected by the RIT-D project of less than \$20 million (varied in accordance with a cost threshold determination), the RIT-D proponent may discharge its obligations to *publish* its final project assessment report under paragraphs (o) and (p) by including the final project assessment report as part of its *Distribution Annual Planning Report* (where the RIT-D proponent is a *Distribution Network Service Provider*) or its *Transmission Annual Planning Report* (where the RIT-D proponent is a *Transmission Network Service Provider*).

**Reapplication of regulatory investment test for distribution**

- (t) If:
  - (1) a RIT-D proponent has *published* a final project assessment report in respect of a RIT-D project;
  - (2) a *Network Service Provider* still wishes to undertake the RIT-D project to address the identified need; and

- (3) there has been a material change in circumstances which, in the reasonable opinion of the RIT-D proponent means that the preferred option identified in the final project assessment report is no longer the preferred option,

then the RIT-D proponent must reapply the *regulatory investment test for distribution* to the RIT-D project, unless otherwise determined by the *AER*.

- (u) For the purposes of paragraph (t), a material change in circumstances may include, but is not limited to, a change to the key assumptions used in identifying:
  - (1) the identified need described in the final project assessment report; or,
  - (2) the credible options assessed in, the final project assessment report.
- (v) When making a determination under paragraph (t) the *AER* must have regard to:
  - (1) the credible options (other than the preferred option) identified in the final project assessment report;
  - (2) the change in circumstances identified by the RIT-D proponent; and
  - (3) whether a failure to promptly undertake the RIT-D project is likely to materially affect the *reliability* and *secure operating state* of the *distribution network* or a significant part of that *network*.

#### **5.17.5 Disputes in relation to application of regulatory investment test for distribution**

- (a) *Registered Participants*, the *AEMC*, *Connection Applicants*, *Intending Participants*, *AEMO*, *interested parties*, and non-network providers may, by notice to the *AER*, dispute conclusions made by the RIT-D proponent in the final project assessment report on the grounds that:
  - (1) the RIT-D proponent has not applied the *regulatory investment test for distribution* in accordance with the *Rules*; or
  - (2) there was a manifest error in the calculations performed by the RIT-D proponent in applying the *regulatory investment test for distribution*.

- (b) A dispute under this clause 5.17.5 may not be raised in relation to any matters set out in the final project assessment report which:
  - (1) are treated as externalities by the *regulatory investment test for distribution*; or
  - (2) relate to an individual's personal detriment or property rights.
- (c) Within 30 days of the date of *publication* of the final project assessment report under clause 5.17.4(o), (p) or (s) (as the case may be), the party disputing matters in the final project assessment report (a disputing party) must:
  - (1) give notice of the dispute in writing setting out the grounds for the dispute (the dispute notice) to the *AER*; and
  - (2) at the same time, give a copy of the dispute notice to the RIT-D proponent.
- (d) Subject to paragraph (h), within 40 days of receipt of the dispute notice or within an additional period of up to 60 days where the *AER* notifies a relevant party that the additional time is required to make a determination because of the complexity or difficulty of the issues involved, the *AER* must either:
  - (1) reject any dispute by written notice to the person who initiated the dispute if the *AER* considers that the grounds for the dispute are invalid, misconceived or lacking in substance; and
  - (2) notify the RIT-D proponent that the dispute has been rejected; or
  - (3) subject to paragraph (f) and (g), make and *publish* a determination:
    - (i) directing the RIT-D proponent to amend the matters set out in the final project assessment report; or
    - (ii) stating that, based on the grounds of the dispute, the RIT-D proponent will not be required to amend the final project assessment report.
- (e) A RIT-D proponent must comply with an *AER* determination made under subparagraph (d)(3)(i) within a timeframe specified by the *AER* in its determination.
- (f) In making a determination under paragraph (d)(3), the *AER*:
  - (1) must only take into account information and analysis that the RIT-D proponent could reasonably be expected to have considered or undertaken at the time that it performed the *regulatory investment test for distribution*;

- (2) must *publish* its reasons for making a determination;
  - (3) may disregard any matter raised by the disputing party or the RIT-D proponent that is misconceived or lacking in substance; and
  - (4) where making a determination under subparagraph (d)(3)(i), must specify a reasonable timeframe for the RIT-D proponent to comply with the *AER's* direction to amend the matters set out in the final project assessment report.
- (g) The *AER* may only make a determination under subparagraph (d)(3)(i) if it determines that:
  - (1) the RIT-D proponent has not correctly applied the *regulatory investment test for distribution* in accordance with the *Rules*; or
  - (2) there was a manifest error in the calculations performed by the RIT-D proponent in applying the *regulatory investment test for distribution*.
- (h) The *AER* may request additional information regarding the dispute from the disputing party or the RIT-D proponent in which case the period of time for rejecting a dispute under paragraph (d)(1) or making a determination under paragraph (d)(3) is automatically extended by the time it takes the relevant party to provide the additional information to the *AER* provided:
  - (1) the *AER* makes the request for additional information at least seven days prior to the expiry of the relevant period; and
  - (2) the RIT-D proponent or disputing party provides the additional information within 14 days of receipt of the request under subparagraph (1).
- (i) A disputing party or the RIT-D proponent (as the case may be) must as soon as reasonably practicable provide any information requested under paragraph (h) to the *AER*.