



Explanatory statement

**Draft regulatory investment test for  
transmission and regulatory investment for  
transmission application guidelines**

March 2010

© Commonwealth of Australia 2010

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

Shortened forms .....	iv
<b>1 Introduction .....</b>	<b>1</b>
<b>2 Electricity Rules requirements.....</b>	<b>1</b>
<b>3 Invitation for written submissions .....</b>	<b>2</b>
<b>4 Nature and reasons for proposed RIT-T and RIT-T application guidelines..</b>	<b>3</b>
4.1 RIT-T issues paper .....	3
<b>5 Regulatory investment test for transmission .....</b>	<b>5</b>
5.1 The nature of the test.....	5
5.2 Classes of costs .....	7
5.3 Classes of market benefits .....	9
5.4 Method for estimating costs and market benefits .....	15
5.5 Determining discount rates .....	19
<b>6 RIT-T application guidelines.....</b>	<b>21</b>
6.1 Operation and application of the RIT-T.....	21
6.2 Process to be followed in applying the RIT-T .....	24
6.3 Dispute resolution .....	25

## Shortened forms

ACCC	Australian Competition and Consumer Commission
ACG	Allen Consulting Group
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
COAG	Council of Australian Governments
CPRS	carbon pollution reduction scheme
DNSP	distribution network service provider
Electricity Rules	National Electricity Rules
ERIG	Energy Reform Implementation Group
MCE	Ministerial Council on Energy
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
NGF	National Generators Forum
NSP	network service provider
REC	renewable energy certificate
RET	renewable energy target
RIT-D	regulatory investment test for distribution
RIT-T	regulatory investment test for transmission
TEC	Total Environment Centre
TNSP	transmission network service provider

# 1 Introduction

The Australian Energy Regulator (AER) is responsible for the economic regulation of electricity transmission and distribution services in the national electricity market (NEM) as well as some gas transportation services. The AER also monitors the wholesale electricity and gas markets and is responsible for compliance with and enforcement of the National Electricity Rules (Electricity Rules) and National Gas Rules.

Under recent amendments to the Electricity Rules, the AER must publish the regulatory investment test for transmission (RIT-T). The RIT-T will replace the existing regulatory test for transmission investments and will be used by transmission network service providers (TNSPs) to assess the efficiency of proposed investment options.<sup>1</sup>

The purpose of the RIT-T is to identify the transmission investment option which maximises net economic benefits and, where applicable, meets the relevant jurisdictional or Electricity Rule based reliability standards. The RIT-T will provide a single framework for all transmission investments and remove the current distinction in the existing regulatory test between reliability driven projects and projects motivated by the delivery of market benefits.

In conjunction with the RIT-T, the AER must develop and publish RIT-T application guidelines to provide guidance on the operation and application of the RIT-T (the application guidelines). The application guidelines are also designed to provide guidance to businesses applying the RIT-T and enhance transparency and consistency in investment decision making.

In September 2009 the AER released an issues paper as the first stage in the development of the RIT-T and application guidelines. The issues paper sought submissions on those areas that the AER is required to clarify or specify in the RIT-T and application guidelines.

This explanatory statement sets out the proposed RIT-T and RIT-T application guidelines and satisfies the AER's obligations under clause 6A.20(b)(2) of the Electricity Rules. A copy of the proposed RIT-T and RIT-T application guidelines are available on the AER's website at [www.aer.gov.au](http://www.aer.gov.au).

## 2 Electricity Rules requirements

Under clause 5.6.5B of the Electricity Rules, the AER is required to develop and publish the RIT-T and application guidelines by 1 July 2010. The RIT-T and application guidelines must comply with the principles set out in the Electricity Rules and must be developed in accordance with the transmission consultation procedures.

---

<sup>1</sup> The existing regulatory test will continue to apply to projects which address a need on the distribution network. The AEMC has recently proposed a new project assessment process for distribution, the regulatory investment test for distribution (RIT-D). This proposal is currently being considered by the Ministerial Council on Energy. If introduced, the proposed RIT-D will replace the regulatory test.

The transmission consultation procedures in rule 6A.20 of the Electricity Rules require the AER to publish:

- the proposed RIT-T and application guidelines
- an explanatory statement and
- an invitation for written submissions.

Stakeholders must be allowed at least 30 business days to make submissions to the AER on the draft RIT-T and application guidelines. Within 80 business days of publishing the proposed RIT-T and the application guidelines, the AER must publish the final RIT-T and application guidelines, as well as an accompanying final decision.

### **3 Invitation for written submissions**

Interested parties are invited to review the matters raised in the proposed RIT-T and application guidelines and provide written submissions.

The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultation 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 the AER's website. The AER does not generally accept blanket claims for confidentiality over the entirety of the information provided and such claims should not be made unless all information is truly regarded as confidential. The identified information should genuinely be of a confidential nature and not otherwise publicly available. In addition to this, parties must identify the specific documents or relevant parts of those documents which contain confidential information. The AER does not accept documents or parts of documents which are redacted or 'blacked-out'. For further information regarding the AER's use and disclosure of information see the *ACCC/AER Information Policy*, October 2008, which is available on the AER's website.

Any submissions must be received by close of business 14 May 2010 and should be addressed to:

Mr Tom Leuner  
General Manager  
Markets  
Australian Energy Regulator  
GPO Box 520  
MELBOURNE VIC 3001  
Email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

## 4 Nature and reasons for proposed RIT-T and RIT-T application guidelines

Clause 5.6.5B(g) of the Electricity Rules requires the AER to develop and publish the first RIT-T and RIT-T application guidelines by 1 July 2010.

In its Rule determination<sup>2</sup>, the Australian Energy Market Commission (AEMC) cited a number of benefits of the measures outlined in the RIT-T rule including:

- the amalgamation of the reliability and market benefits limbs of the regulatory test will or is likely to optimise the decision making process in relation to transmission planning by promoting dynamic and allocative efficiency. By including the assessment of market benefits, the RIT-T should promote more efficient investment over time
- greater prescription of market benefits and costs, and how they should be assessed, should improve the consistency and transparency across transmission investment assessment and should, over time, promote more efficient decision making
- requiring a project specification consultation report should improve the transparency and application of the RIT-T which will, or is likely to, promote more efficient outcomes over time
- a substantial increase in the amount of consultation undertaken should unearth a greater number of efficient investment options and therefore lead to more efficient outcomes overtime and
- exemptions in certain cases from the project assessment draft report stage promotes the efficient use of resources where appropriate, thus reducing the regulatory burden faced by TNSPs and as a result promotes good regulatory practice.

The AER concurs that the RIT-T and the application guidelines have an important role to play in promoting more efficient transmission investment decision making in the NEM. The requirement to assess market benefits, the increase in the level of consultation, and the requirement to produce a project specification consultation report all should lead to greater consistency and transparency in TNSP decision making. The greater specification and worked examples in the RIT-T application guidelines should also lead to greater consistency in how the RIT-T is applied.

### 4.1 RIT-T issues paper

The AER's issues paper released in September 2009 provided an overview of the history of the development of the regulatory test and RIT-T, the requirements for the RIT-T and application guidelines set out in clause 5.6 of the Electricity Rules and a

---

<sup>2</sup> AEMC 2009, *Regulatory Investment Test for Transmission*, Final Rule Determination, 25 June 2009, p. 6.

discussion of the relevant issues the AER must address in the RIT-T and application guidelines. The issues paper identified a number of questions on which comments from interested parties were specifically sought. Interested parties were also encouraged to provide comments on other relevant issues not discussed in the paper. The AER received submissions from:

- the Australian Energy Market Operator (AEMO)
- Grid Australia
- the National Generators Forum (NGF)
- Origin Energy (which supported the positions presented in the NGF submission)
- the Total Environment Centre (TEC)

Submissions can be found on the AER's website.



## **5 Regulatory investment test for transmission**

The Electricity Rules set out detailed requirements for the RIT-T. Clause 5.6.5B sets out the purpose of the RIT-T, the nature of analysis required under the RIT-T and the classes of costs and market benefits that a TNSP must consider for each credible option.

These requirements mean that the Electricity Rules prescribe much of the detail that the AER has included in the proposed RIT-T. This explanatory statement sets out the AER's reasons for the proposed RIT-T provisions with particular focus on those provisions which are not prescribed in the Electricity Rules.

### **5.1 The nature of the test**

#### **AER issues paper**

Under clause 5.6.5B of the Electricity Rules the purpose of the RIT-T is to identify the credible option that maximises the present value of net economic benefit to all those who produce consume and transport electricity in the market. In addition the RIT-T must:

- be based on a cost benefit analysis of various credible options under a range of reasonable scenarios of future supply and demand compared to the situation where no option is implemented
- not require a disproportionate level of analysis to the scale and likely impact of each credible option
- be able to be applied in a predictable, transparent and consistent manner, and
- provide that any cost or market benefit which cannot be measured as a cost or market benefit to generators, distribution network service providers, TNSPs or consumers of electricity may not be included in a RIT-T analysis.

The issues paper noted that given this prescription, it is likely that the RIT-T would adopt much of the detail in the Electricity Rules.

#### **Issues raised in submissions**

The Australian Competition and Consumer Commission (ACCC) previously considered that that the regulatory test should only include costs and benefits which are directly related to the proposed project (i.e. a partial equilibrium analysis) with any second round effects on other areas of the economy (i.e. a general equilibrium analysis) not taken into account. AEMO noted that it is investigating whether the RIT-T should adopt a general equilibrium approach. It considered that this approach could deliver a more appropriate result because:

- the partial equilibrium analysis has tended to emphasise marginal movements in bids, costs and dispatch in the wholesale spot market which are challenging to

model over the life of the asset and may not accurately reflect the overall benefits of an investment

- by considering movements in the average delivered price of electricity under a general equilibrium analysis of the broader economy, valid benefits may be identified that cannot be captured, and
- there are second round effects in the economy that a general equilibrium analysis should be able to quantify.

The TEC argued that the AER should design the RIT-T to align with broader energy policy which has the urgent mandate to reduce greenhouse emissions. The TEC considered that demand management is the most cost-effective means for reducing electricity sector greenhouse gas emissions and the RIT-T must include strong incentives for TNSPs to undertake investigation and implementation of demand management as the primary option to assess potential constraints.

### **AER considerations**

The Electricity Rule requirements regarding the RIT-T are very prescriptive and the AER's ability to vary the nature of the test is limited. The AER proposes that the RIT-T adopt wording in clause 5.6.5B(b) of the Electricity Rules and provide that the preferred option is the credible option that maximises the net economic benefit to all those that produce consume and transport electricity in the market.

The AER considers that this wording is consistent with the partial equilibrium analysis currently undertaken by TNSPs under the regulatory test and that this approach is an adequate means of analysing the potential benefits for the majority of transmission investments. Requiring a general equilibrium approach for all RIT-T assessments would require a level of analysis which is disproportionate to the scale and likely impact of most investment options.

Nevertheless, there may be merit in AEMO continuing to investigate whether a general equilibrium analysis may be an appropriate mechanism for defining the benefits of some investments. To the extent that this identifies additional classes of market benefits and costs that accrue to all those that produce consume and transport electricity in the market, AEMO may request that the AER allow it to include these classes of market benefits under clause 5.6.5B(c)(4)(x) and of the Electricity Rules.

Regarding the TEC's concerns that the RIT-T should align with broader greenhouse policy, the AER notes that the purpose of the RIT-T (as set out in clause 5.6.5B(b) of the Electricity Rules) is concerned with economic efficiency. While the AER can require TNSPs to consider the direct implications of environmental policies in a RIT-T analysis (such as the imposition of a carbon tax), the AER does not consider it appropriate that the RIT-T be used as a direct mechanism to deliver environmental policy objectives.

The AER also does not consider that the RIT-T should provide stronger incentives for demand management options over other network or generation options. TNSPs are required to consider demand management options where they meet the requirements for a credible option in clause 5.6.5D of the Electricity Rules. However a TNSP

should not favour these types of investments where they do not deliver the most economically efficient outcome.

### **AER conclusions**

The AER proposes that paragraph 1 of the RIT-T state that the preferred option is the credible option that maximises net economic benefit to all those who produce, consume and transport electricity in the market compared to all other credible options.

## **5.2 Classes of costs**

### **AER issues paper**

Clause 5.6.5B(c)(8) of the Electricity Rules provides that the RIT-T must require TNSPs to quantify the following classes of costs:

- the costs incurred in constructing or providing the credible option
- operating and maintenance costs
- the costs of complying with laws, regulations and applicable administrative instruments in relation to the construction and operation of the credible option, and
- any other class of costs identified by a TNSP (and agreed to by the AER) or specified in the RIT-T.

In its issues paper, the AER considered that these classes of cost could largely be prescribed in the RIT-T and sought interested parties views on whether any additional classes of costs should be included.

The AER argued that a carbon pollution reduction scheme (CPRS) would not require any additional classes of costs or market benefits. The cost of purchasing carbon permits associated with a generation option could be considered as an operating and maintenance cost under clause 5.6.5B(c)(8)(ii). Similarly if a transmission investment allows the additional dispatch of a low emission generator, then the reduction in the cost of purchasing carbon permits could be treated as a market benefit under clause 5.6.5B(c)(4)(iv).

However the AER acknowledged that there may be merit in providing additional guidance and worked examples on the treatment of this policy in the application guidelines.

### **Issues raised in submissions**

Grid Australia and AEMO agreed that an approach whereby the purchase of carbon permits is treated in the same way as any other generation cost input is an appropriate means of treating the CPRS under the RIT-T. They also supported the AER providing more guidance and worked examples in the application guidelines on the treatment of the CPRS. AEMO considered that further guidance on how to develop scenarios regarding permit pricing and greenhouse gas intensity factors for various fuels may be warranted.

The TEC considered that the RIT-T should require TNSPs to quantify long term carbon costs to consumers and changes in carbon costs through the avoidance of greenhouse gas emissions and associated carbon costs should be explicitly referred to as a market benefit.

Grid Australia also considered that penalty payments by retailers as a result of the expanded renewable energy target (expanded RET) not being met should be incorporated as a cost within the RIT-T analysis.

### **AER considerations**

The AER proposes that a TNSP must include the present value of the direct costs of a credible option in its RIT-T analysis. In determining these costs, paragraph 2 of the draft RIT-T requires a TNSP to quantify the classes of costs prescribed in the Electricity Rules.

The AER considers that there are no additional classes of costs which should be included in the RIT-T beyond those that are prescribed in the Electricity Rules. A TNSP may consider additional classes of costs in a RIT-T analysis provided it obtains the AER's written agreement.

The AER considers that the RIT-T does not require an additional class of market benefit or cost to account for the proposed CPRS. Nor does it consider it necessary that the RIT-T explicitly refer to carbon costs as suggested by the TEC.

The objective of the proposed CPRS is to reduce carbon emissions. By capping emissions and allowing trade in carbon permits, the market determines a carbon price.<sup>3</sup> This market mechanism is designed to reduce carbon emissions by ensuring that the cost of polluting is reflected in the cost of providing goods and services and is treated in the same way as any other production input. Given this, the purchase of carbon permits should be treated in the same way as any other generation input and will be captured under the existing classes of costs and market benefits.

Under the draft RIT-T the capital, operating and maintenance costs of a credible option must include the costs associated with complying with laws, regulations and applicable administrative requirements regarding the construction and operation of the credible option. The AER considers that the cost of purchasing carbon permit associated with a generation option falls within the scope of this class of cost.

Similarly, if an option changes the parties' costs due to differences in the costs associated with purchasing carbon permits, this can be treated as a market benefit under the existing classes of market benefits prescribed in the Electricity Rules. In particular, a reduction in the cost of purchasing carbon permits could be treated as a change in the parties costs due to differences in operating and maintenance costs.

However the AER agrees with Grid Australia and AEMO that the application guidelines should provide further guidance and worked examples on how TNSPs should treat a CPRS under a RIT-T analysis. Section 3.5 (see Example 9) of the draft application guidelines sets out proposed guidance and a worked example.

---

<sup>3</sup> Australian Government, *Carbon Pollution Reduction Scheme: Australia's low pollution future—White paper summary report*, December 2008 pp. 11–13.

Regarding AEMO's suggestion that the AER provide guidance on greenhouse gas intensity factors, the AER notes that the ACIL Tasman Final report *Fuel resource, new entry and generation costs* provides estimates of emissions factors for various fuels for new and existing generation sources.<sup>4</sup> The AER seeks feedback on whether it would be appropriate to refer to documents such as this in its application guidelines.

Given that the proposed CPRS (or an alternative emissions trading scheme or carbon price) was not implemented at the time of publishing the draft application guidelines, the AER has not included guidance on permit pricing and the forward valuation of permits. However in the absence of more up to date information the AER considers that Australian Government estimates of future permit prices under the proposed CPRS may provide useful information for the purposes of applying the RIT-T.<sup>5</sup>

The AER agrees with Grid Australia that penalty payments associated with the expanded RET should be included when applying the RIT-T, however these payments should be treated as a negative market benefit rather than a cost. This is addressed further in 5.3 below.

## **AER conclusions**

The AER proposes that a TNSP must include the present value of the direct costs of a credible option in its RIT-T analysis. In determining these costs, paragraph 2 of the RIT-T requires a TNSP to quantify the classes of costs prescribed in the Electricity Rules. The AER has not included any additional classes of costs beyond those referred to in the Electricity Rules.

## **5.3 Classes of market benefits**

### **AER issues paper**

The Electricity Rules (clause 5.6.5B(c)(4)) provide that the RIT-T must require TNSPs to consider the following classes of market benefits:<sup>6</sup>

- changes in fuel consumption arising through different patterns of generation dispatch
- changes in voluntary load curtailment
- changes in involuntary load shedding
- changes in other parties' costs due to differences in timing of new plant, capital, operating and maintenance costs
- differences in the timing of transmission investments

---

<sup>4</sup> ACIL Tasman, *Final report—Fuel resource, new entry and generation costs in the NEM*, prepared for the Inter-regional Planning Committee, April 2009. Published on the AEMO website [www.aemo.com.au](http://www.aemo.com.au)

<sup>5</sup> See Australian Government, *Australia's Low Pollution Future—The Economics of Climate Change Mitigation*, 2008 available at <http://www.treasury.gov.au/lowpollutionfuture>

<sup>6</sup> Under clause 5.6.5B(c)(5) and (6) a TNSP is only required to consider classes of market benefit which it considers material.

- changes in network losses and ancillary services costs
- competition benefits
- any additional option value gained or foregone from implementing that credible option with respect to the likely future investment needs of the market, and
- any other classes of market benefit identified by a TNSP (and agreed to by the AER) or specified as a class of market benefit in the RIT-T.

The regulatory test (version three) defines competition benefits as net changes in market benefit arising from the impact of the option on participant bidding behaviour. The AER proposed in its issues paper that this definition be retained in the RIT-T.

The issues paper also noted that Electricity Rules require the inclusion of a new class of market benefit in the RIT-T for “any additional option value (where this value has not already been included in the other classes of market benefits) gained or foregone from implementing that *credible option* with respect to the likely future investment needs of the *market*.” The AER considered that this new class of market benefit for option value may require additional clarification in the RIT-T or the application guidelines and sought comment on what methods should be considered.

The AER’s also noted that there may be additional classes of market benefits or costs which should be included in the RIT-T. One area where an additional class of market benefit may be warranted is in the treatment of the expanded RET.

The AER argued that where it is likely that the expanded RET will be met, the policy will not require any special treatment under the RIT-T as the costs of each investment will be reflected in the existing classes of costs and benefits. However where it is forecast that there will be insufficient renewable energy certificates (RECs) to meet the target and retailers pay the penalty, the AER considered that an additional class of market benefit or cost may be warranted. In these circumstances, the existence of the penalty will affect the assessment of future investment patterns and the costs and benefits of generator dispatch under different options.

The AER proposed that the additional cost imposed on the market from the expanded RET could be captured by including the capped penalty for a REC shortfall in the scenario analysis. This could be achieved by treating any penalty payment under each scenario (projected REC shortfall x penalty value) as an additional class of market benefit or cost in the RIT-T. The AER also considered that further guidance on this approach as well as worked examples may need to be included in the application guidelines.

## **Issues raised in submissions**

### **Competition benefits**

AEMO and Grid Australia both argue that the definition of competition benefits in the regulatory test is appropriate and suitable for inclusion in the RIT-T. Both argue, however, that the application guidelines should include worked examples of the calculation of competition benefits.

The NGF argues that there may be scope to better capture competition benefits associated with the removal of intra-regional constraints. It suggested that the concept of competition benefits in the regulatory test does not allow for the benefits of removing constraints from overcoming ‘disorderly’ generator bidding behaviour. The NGF considers that one possible proxy for capturing these benefits is the marginal costs of constraints (MCC) measure developed by the AER.

### **Option value**

AEMO considered that provided market benefits of all options are valued consistently and appropriately weighted scenarios are applied to the options, then each option will comprise the value of any inherent flexibility or optionality. Given this, AEMO considered that there was generally no need for a separate class of market benefit for optionality. However it also noted that option benefit as a separate class may be useful for pre-emptively acquiring easements for future transmission investments.

Grid Australia considered that calculating option value could be undertaken in a variety of ways. It cited a dynamic programming as one possible approach to calculating the additional option value of an investment. It considered that the RIT-T should not preclude approaches such as dynamic programming to calculate ‘option value’ as an additional class of market benefit within the NPV scenario analysis.

The NGF considered that the scenario analysis in the existing regulatory test could be bolstered in the RIT-T by “providing more explicit consideration of the benefits and costs of building transmission now versus building it later through an option value approach”. The NGF also considered that a probabilistic approach to scenario analysis could deliver similar benefits to an option value approach if applied appropriately.

The TEC considered that benefits and costs associated with network augmentation deferral should be incorporated in the RIT-T as option value. It also considered that option value requires additional clarification in the RIT-T or application guidelines.

### **Treatment of the Expanded Renewable Energy Target**

Grid Australia considered that the AER’s proposed approach is an appropriate way of accounting for the expanded RET as part of a RIT-T analysis and supported providing further guidance and worked examples in the application guidelines. However it noted that the differences in the tax treatment between the costs of acquiring and surrendering RECs (which are tax deductible) and the cost of penalty payments (which are not tax deductible) will influence the maximum price retailers are willing to pay for RECs and should be factored into the RIT-T analysis.

AEMO also agreed with the AER’s analysis regarding the treatment of the expanded RET under a RIT-T analysis. However it also considered that the RIT-T could be applied to limit the overall cost of the scheme on the market by co-optimising the net benefits of the next most efficient renewable source with the network option required to accommodate it. This can be done by comparing the net benefits (generation source and network) of the preferred option and comparing it to the next best generation source and network solution.

### **Additional classes of costs or benefits**

In addition to costs and market benefits related to the CPRS and expanded RET, the TEC considered that the RIT-T should explicitly refer to changes in demand side participation measures as a class of market benefit.

### **AER considerations**

The proposed RIT-T provides that market benefit includes all of the classes of benefit listed in clause 5.6.5B(c)(4) of the Electricity Rules and one additional class of benefit where it is expected that the expanded RET will not be met. The draft RIT-T requires a TNSP to quantify all classes of market benefits which it determines to be material.

### **Competition benefits**

The AER believes that the inclusion of competition benefits as a class of market benefit under the RIT-T serves a very important role. An augmentation to the transmission network is likely to increase competition between existing generators, causing them to submit offers which are closer to short run marginal cost. The AER believes that that it is essential that these benefits arising from an increase in competition between generators across the NEM can be captured in the RIT-T.

The submissions of Grid Australia and AEMO commented on how competition benefits should be defined in the RIT-T. The AER agrees with Grid Australia and AEMO that competition benefits should be defined as the net changes in market benefit arising from the impact of the credible option on participant bidding behaviour.

‘Disorderly’ bidding behaviour may arise where congestion on the transmission network exists between the generator’s location and the regional reference node (where the actual price is determined). In these circumstances a generator may manage the risk of not being dispatched by bidding in a non-cost reflective way (for example a generator may bid in at the market floor price of -\$1000/MWh).

While the definition of competition benefits in the regulatory test (version three) does not include benefits associated with removing ‘disorderly’ generator bidding behaviour, the test does allow a TNSP to include these benefits through its sensitivity testing. The AER proposes that under the RIT-T a TNSP should have the ability to model disorderly bidding in its reasonable scenario analysis. Further guidance on this is set out in section A.8 in appendix A of the application guidelines. The AER notes that modelling disorderly bidding is difficult and will not be warranted in most RIT-T assessments.

Regarding the NGF’s proposal, while the MCC data provides useful information on transmission congestion levels and trends, the AER does not consider that the MCC data should be used as a measure of competition benefits. The MCC measure is based on generator’s actual bids. To the extent that these bids do not represent the generator’s marginal costs, the MCC data is not an accurate measure of the economic cost of congestion and is therefore not appropriate for inclusion in a RIT-T analysis.



## **Option value**

In its Final Rule determination, the AEMC explained its rationale for requiring the inclusion of option value as a new class of market benefit in the RIT-T. The AEMC stated that:

“...option value is a benefit that results from allowing new information that can affect the need for, or specification of the original investment, to become available. The improved information, say on outturn demand as compared with forecast demand, allows a network investment to be more appropriately specified, leading to potential cost savings.”<sup>7</sup>

The AEMC was keen to ensure that the RIT-T captured the value of this flexibility.

The AER agrees with AEMO that there is generally no need for a separate class of market benefit to account for option value. Where the future is uncertain, a TNSP may consider it appropriate to consider investment options which retain some flexibility and allow it to respond to new information in the future. Provided that the calculation of market benefits and costs of these options are considered over a range of probability weighted reasonable scenarios that reflect the range of future potential outcomes, any additional option value should be captured under the existing classes of costs and benefits.

The discussion of uncertainty and risk in section 3.6 of the application guidelines provide examples of how the probability weighting of credible options under the RIT-T can capture any option value. Taking into account the submissions of the NGF and TEC, the application guidelines particularly focus on how the value of flexibility can be considered under a RIT-T analysis.

Both AEMO and Grid Australia, however, submitted there was some merit in retaining the ability to consider option value as a separate class of market benefit. Grid Australia argued, for example, that option value could be derived in a variety of ways and therefore the RIT-T should not preclude these approaches to calculating option value. Paragraph 5(i) of the RIT-T has been drafted to allow any additional option value not captured under the existing classes of market benefits and costs.

### **Treatment of the Expanded Renewable Energy Target**

The AER does not consider that an additional class of market benefit is necessary where it is expected that the expanded RET will be met. As discussed in the issues paper, the price of the REC will rise to the level necessary to induce compliance with the target and the benefits of meeting that target will be identical in all states of the world and can be ignored in applying the RIT-T. Differences in resource costs for meeting the target will be reflected in the existing classes of costs already considered under the RIT-T (that is, the operating and capital costs). Given this, the AER does not consider it necessary to include an additional class of market benefit or cost to address the concerns raised by AEMO.

However, the AER does consider that there should be an additional class of market benefit in the RIT-T where it is forecast that there will be insufficient RECs to meet the target and retailers pay the penalty. As noted in the AER's issues paper, the penalty will affect the assessment of future investment patterns and the costs and

---

<sup>7</sup> AEMC (2009), *Regulatory Investment Test for Transmission*, Final Rule Determination, p.41

market benefits of generator dispatch under different investment options. The AER has included further guidance and a worked example at section 3.5 (see Example 10) of the application guidelines.

The AER agrees with Grid Australia that the differences in tax treatment between acquiring and surrendering RECs and the cost of penalty payments should be factored into a RIT-T analysis. The difference in tax treatment suggests that the intention of the expanded RET is to place a greater value on a REC than is reflected in the REC price. The difference in tax treatment will affect the investment decisions of participants in the NEM and should be reflected in the RIT-T.

The AER proposes that for the purposes of calculating any market benefits from an investment option, the penalty price should be “grossed up” by the relevant company tax rate. This will ensure that the penalty price is consistent with the post-tax REC faced by market participants and ensure that the calculation of market benefits reflects direct impacts on stakeholders within the NEM.

#### **Additional classes of costs or benefits**

The AER considers that the market benefits associated with demand side participation measures will be captured under the existing classes of market benefits in the RIT-T. For example if a demand side reduction option will delay the need for investment in generation plant, differences in capital and operational and maintenance costs associated with the change in timing of the new generator can be considered under the existing classes of market benefits in the RIT-T.

Therefore an additional class of market benefit for changes in demand side participation measures does not need to be included in the RIT-T as a separate class of market benefit.

#### **AER conclusions**

The AER proposes that:

- paragraph 5(h) of the RIT-T define competition benefits as the net changes in market benefit arising from the impact of the credible option on participant bidding behaviour
- option value is listed in the RIT-T as a separate class of market benefit in the RIT-T, while the application guidelines will set out the AER’s view on how option value can be captured under the existing classes of market benefits and costs
- paragraph 5(j) of the RIT-T provide that a TNSP should consider the negative of an penalty paid or payable (meaning the penalty price multiplied by the shortfall) for not meeting the renewable energy target, grossed up if not tax deductible to its value it is were deductible
- no additional classes of market benefit are required to be specified in the RIT-T.

The AER notes that under clause 5.6.5B(c), TNSPs may consider other relevant classes of costs and market benefits which are agreed to by the AER in writing.

## 5.4 Method for estimating costs and market benefits

### AER issues paper

Under clause 5.6.5B(c)(10) of the Electricity Rules the RIT-T must specify the methods permitted for estimating:

- the magnitude of the different classes of costs and market benefits and
- market benefits which may occur outside the TNSP's region.

The RIT-T must also require sensitivity analysis of any modelling relating to the cost benefit analysis.

The AER's issues paper noted that the regulatory test (version three) provides guidance on the methodology that must be used in estimating costs and benefits. The regulatory test states that:

in estimating the magnitude of costs and benefits, a pool dispatch modelling methodology, or any other applicable methodology, should be used. If pool dispatch modelling methodology is used, it must incorporate:

- (a) a realistic treatment of plant characteristics, including for example minimum generation levels and variable operation costs; and
- (b) a realistic treatment of the network constraints and losses.

In the issues paper, the AER noted that it may be appropriate to include a similar provision in the RIT-T. The issues paper also invited comment on appropriate methods for estimating market benefits which occur outside a TNSP's region.

### Issues raised in submissions

#### Estimating magnitude of classes of costs and market benefits

Grid Australia considered that the different nature of costs and benefits included in the RIT-T analysis means that there is not a single method that is appropriate for calculating all costs and benefits. It noted that the pool dispatch modelling referred to in the current test is not appropriate for all costs and benefits.

Grid Australia also considered that for market development modelling under the reasonable scenario analysis, the RIT-T should not require the use of a 'least cost' modelling approach where it is not the most appropriate or proportionate approach. It argued that under the least cost approach it may be necessary to consider changes in minimum reserve levels over the period of analysis which relies on assumptions regarding future network development and can result in modelling which requires hundreds of simulations to be run.

It considered that an alternative approach would be a form of market development modelling based on when new entry is expected to become economically viable. This approach relies on relatively uncontroversial assumptions and has been used by NEMMCO to derive the Annual National Transmission Statement (ANTS).

Grid Australia submitted that the RIT-T should adopt a similar approach to the regulatory test and provide guidance on the methodologies that may be used, without being overly prescriptive.

### **Benefits which occur outside the TNSP's region**

AEMO considered that it was intended that the regulatory test should capture benefits across the NEM. Grid Australia considered that the Electricity Rules only require a TNSP to identify any class of market benefit that arises outside of its own region on an *aggregate* basis across all regions. Given this, the RIT-T should make clear that TNSPs are only required to qualitatively identify where benefits arise outside of their region. Any guidance on quantifying benefits that cross more than one region would already be provided as part of the more general guidance on estimating benefits.

### **AER considerations**

#### **Methodology for calculating market benefits**

The AER proposes that to calculate the market benefit of a credible option under the RIT-T, a TNSP is to:

- **derive** the states of the world with and without the credible option in place in each reasonable scenario
- **compare** the relevant states of the world with and without the credible option in place in each reasonable scenario to derive the market benefit of the credible option in each reasonable scenario, and
- **weight** the market benefits arising in each reasonable scenario by the probability of that reasonable scenario occurring.

A detailed explanation of these steps (and the terms state of the world and reasonable scenario) are set out in section 3.5 of the application guideline.

#### *The base case*

The Electricity Rules require that the RIT-T be based on a cost benefit analysis which includes “an assessment of reasonable scenarios of future supply and demand if each credible option were implemented compared to the situation where no option is implemented”. In response to this requirement, the AER proposes that to derive the market benefit of a credible option under a given reasonable scenario, the RIT-T include a requirement for a TNSP to compare (for each reasonable scenario):

- a state of the world with the credible option in place, and
- a state of the world without the credible option in place (the base case).

#### *Probability weighting*

The AER notes that for market benefits limb assessments under the regulatory test (version three), a TNSP must consider the costs and market benefits of **likely** alternative investment options **in a majority of reasonable scenarios**. The AER considers that this approach may have acted as a potential barrier to TNSPs effectively valuing flexibility in a regulatory test analysis as:

- a TNSP could only consider options which it considered were likely, and
- it was unclear how a TNSP should consider the expected net economic benefits under different reasonable scenarios where these scenarios have very different probabilities of arising.

To overcome some of these issues, the AER proposes that to calculate the overall market benefit of a credible option, the market benefits in each reasonable scenario should be probability weighted by the likelihood of that reasonable scenario arising. The probability weighted benefits in each reasonable scenario could then be summed to derive the overall market benefit for a particular credible option.

This approach for ranking options is more robust and transparent than an approach based on comparing likely benefits over a majority of reasonable scenarios. Requiring a TNSP to specify a probability weighting for each scenario allows interested parties to more thoroughly understand the assumptions a TNSP has made in comparing options. It also allows a TNSP to better capture the market benefits of a credible option that may arise in a reasonable scenario which has a low probability, but very high market impact.

A TNSP will have discretion on the method it considers should be used to assign probabilities to each reasonable scenario. The draft application guidelines provide simple examples of possible methodologies (see section 3.6). The guidelines and the draft RIT-T also note that where a TNSP has no material evidence for assigning a higher probability for one reasonable scenario over another, it may weight all reasonable scenarios equally. This approach is similar to the current approach in the regulatory test (version three) as selecting the option with the greatest benefit over a majority of reasonable scenarios implicitly assumes that the likelihood of any one reasonable scenario arising is the same as for all other reasonable scenarios.

#### *Sensitivity analysis*

Clause 5.6.5B(c)(11) of the Electricity Rules requires that a sensitivity analysis is required of any modelling relating to the cost benefit analysis. The AER proposes that a TNSP's reasonable scenario analysis should incorporate sensitivities for key variables and parameters that are likely to materially affect the calculation of the market benefit of an option.

#### *Modelling methodologies*

Market dispatch outcomes can be modelled using pool dispatch models that project wholesale spot market outcomes in the presence of each credible. The AER agrees with Grid Australia that this modelling method may not be appropriate for calculating all classes of cost and market benefit.

Where the market benefits of credible options under consideration are not materially affected by changes in outcomes in the wholesale spot market, it may be appropriate to use an alternative modelling methodology. Given this the AER proposes that the RIT-T require a TNSP to use a market dispatch modelling methodology unless the TNSP can provide reasons why this methodology is not relevant. The TNSP's reasons would be set out in the project assessment draft report (or, in respect of a proposed preferred option which is subject to the exemption in clause 5.6.6(y) of the Electricity Rules, the project specification consultation report).

Least cost market development modelling aims to minimise the total cost of meeting demand over time. It considers costs in the market and seeks to replicate the outcomes that would be expected under price-taking conditions where investors make informed decisions. The AER considers that this approach is appropriate as it relies on relatively uncontroversial assumptions, and is therefore more likely to be applied consistently and can more easily be replicated by third parties.

In contrast, a market driven market development modelling requires forecasts of electricity spot prices and models new plant entry based on the ability of new plant to recover their costs using these forecasts. This framework requires assumptions to be made about the bidding behaviour of existing and future market participants and may be much more difficult for third parties to scrutinise. Given these considerations, that AER proposes that the RIT-T require a TNSP to undertake least cost market development modelling and also undertake market driven market development modelling if appropriate.

The AER does not agree with Grid Australia that the least cost approach requires a TNSP to consider changes in minimum reserve levels over the period of analysis. The reserve margin level developed by AEMO can be treated as an exogenous input into a least-cost market development model.

#### **Methodology for calculating costs**

The AER considers that the direct costs of an option may vary for different reasons than would be considered under a reasonable scenario analysis. For example while a reasonable scenario of high or low demand growth may affect the market benefits of a credible option, it is unlikely to significantly affect the cost of the options. In contrast variables such as exchange rates, the price of copper or thermal coal may significantly affect the cost of a credible option.

Given this, the AER proposes that the cost of a credible option be quantified separately from the market benefits of the option. The AER proposes that the RIT-T provide that where there is a material degree of uncertainty regarding the costs of a credible option, the cost is the probability weighted present value of the direct costs of the credible option under a range of different cost assumptions. This requires a TNSP to undertake a separate weighted averaging of the direct costs of a credible option as well as the market benefits of a credible option.

#### **Benefits which occur outside the TNSP's region**

The AER agrees with AEMO that it was intended that the existing regulatory test should capture benefits across the NEM. To clarify this intention in the RIT-T, the AER proposes including a new paragraph which explicitly states that the method for estimating market benefits must include benefits which occur outside the region in which the TNSP's network is located.

The method for calculating market benefits detailed in the application guidelines should implicitly include market benefits arising across all regions in the NEM. Given this, the AER agrees with Grid Australia that the guidance on quantifying benefits that accrue in more than one region is provided as part of the more general guidance on estimating benefits. The AER considers that TNSPs are not required to **separately** quantify benefits that arise in each region of the NEM.

## **AER conclusions**

The AER proposes that the RIT-T provide that:

- market benefit is calculated by:
  - (i) comparing, for each reasonable scenario:
    - (A) the *state of the world* with the *credible option* in place, with
    - (B) the *state of the world* in the *base case*and
  - (ii) weighting any positive or negative benefit derived in (i) by the probability of each relevant *reasonable scenario* occurring.
- in determining market benefits, a TNSP must use a market dispatch modelling methodology unless it can provide reasons why this methodology is not relevant
- the method for estimating market benefits must include benefits which occur outside the TNSP's region
- where there is a material degree of uncertainty regarding the costs of a credible option, the cost is the probability weighed present value of the direct costs of the option under a range of different cost assumptions.

## **5.5 Determining discount rates**

### **AER issues paper**

Clause 5.6.5B(c)(10)(ii) of the Electricity Rules requires the RIT-T to specify the appropriate method and value for specific inputs, where relevant, for determining discount rate or rates to be applied.

The regulatory test (version three) provides that the present value calculations must use a commercial discount rate appropriate for the analysis of a private enterprise investment in the electricity sector and should be consistent with the cash flows being discounted. Further guidance on the discount rate which should be applied is outlined in the current regulatory test application guidelines (which accompany the regulatory test (version three)).

In the issues paper, the AER argued that the same approach to specifying the method for determining the discount rate as is currently in the regulatory test (version three) and regulatory test application guidelines should be adopted in the RIT-T and accompanying application guidelines. However, the AER invited interested parties' views on this.

### **Issues raised in submissions**

AEMO and Grid Australia argue that the approach to discount rates outlined in the current regulatory test and the further guidance in the current regulatory test application guidelines would be appropriate to include within the RIT-T and the

application guidelines. Grid Australia adds that the issue of the appropriate discount rate does not need to be re-examined in developing the RIT-T and the application guidelines.

### **AER considerations**

The AER agrees with AEMO and Grid Australia that the current approach to specifying the method for determining the discount rate as is currently in the regulatory test (version three) and regulatory test application guidelines should be adopted in the RIT-T and accompanying application guidelines.

The appropriate treatment of the discount rate in the context of regulatory test assessments was explicitly considered by the ACCC in its development of the regulatory test (version two) and by the AER in its final determination on the regulatory test (version three).<sup>8</sup>

### **AER conclusions**

The AER proposes that paragraph 15 of the RIT-T provide that the present value calculations must use a commercial discount rate appropriate for the analysis of a private enterprise investment in the electricity sector and should be consistent with the cash flows being discounted.

---

<sup>8</sup> For example see ACCC, *Decision—Review of the regulatory test for network augmentations*, August 2004, pp. 47–48;



## **6 RIT-T application guidelines**

Clause 5.6.5B(d) of the Electricity Rules requires the AER to publish guidance for the operation and application of the RIT-T. Under clause 5.6.5B(e)(2) the application guidelines must provide guidance on:

- the operation and application of the RIT-T
- the process to be followed in applying the RIT-T, and
- how RIT-T disputes will be addressed and resolved.

### **6.1 Operation and application of the RIT-T**

#### **AER issues paper**

Under clause 5.6.5B(f), the application guidelines must provide guidance and worked examples on:

- what constitutes a credible option
- acceptable methodologies for valuing costs
- what may constitute an externality
- classes of market benefits to be considered
- the suitable modelling periods and approaches to scenario development
- the acceptable methodologies for valuing market benefits, including option value, competition benefits and market benefits that accrue across regions
- appropriate approach to undertaking sensitivity analysis
- the appropriate approaches to assessing uncertainty and risks
- when a person is sufficiently committed to a credible option for reliability corrective action to be characterised as a proponent.

The AER's issues paper noted that the existing regulatory test application guidelines provide information which may be useful in developing the RIT-T application guidelines. This includes information on:

- determining costs
- calculating and modelling market benefits (including competition benefits)
- the appropriate method for determining the discount rate
- selecting options, and

- scenario and sensitivity analysis.

The issues paper also noted that additional guidance on the treatment of climate change policies under a RIT-T analysis may be warranted.

## **Issues raised in submissions**

### **Proponents**

Grid Australia considered that guidance on when a person is sufficiently committed to be characterised as a proponent will assist in limiting RIT-T disputes and assist non-network proponents understand the criteria they will need to satisfy to demonstrate they are sufficiently committed. To be considered sufficiently committed, non-network proponents should be required to already have agreed a conditional contract with the TNSP and the option should meet similar conditions to those currently required under the regulatory test for ‘committed projects’.

### **Valuing market benefits**

As noted, Grid Australia and AEMO considered that the application guidelines should provide further guidance on the treatment of the CPRS, option value and competition benefits. Grid Australia considered that the guidelines should discuss alternative approaches to calculating competition benefits and option value, but should not prescribe or exclude any particular approach.

### **Externalities**

Grid Australia noted that providing additional guidance as to what may constitute an externality under the RIT-T will assist stakeholders to clarify the scope for potential RIT-T disputes.

### **Scenario development and modelling periods**

Grid Australia considered that the application guidelines should not be prescriptive on the modelling period that should be adopted for a RIT-T analysis. A 15 year modelling period could be highlighted as a generally suitable period, however a longer period may be appropriate in some circumstances and the guidelines should have sufficient flexibility to alter the period on a case by case basis.

## **AER considerations**

Part 3 and appendix A provide guidance and worked examples on each of the matters listed in clause 5.6.5B(f) of the Electricity Rules. This part of the guidelines was developed with the assistance of Frontier Economics (Frontier) and Dr Darryl Biggar. It aims to aid in the consistent application of the RIT-T and clarify technical concepts and provisions. The following part addresses each of the issues raised in response to the AER’s issues paper.

### **Proponents**

The AER agrees that guidance on when a person is sufficiently committed to be characterised as a proponent will assist non-network proponents understand the criteria they should. However the AER does not consider that a project should necessarily need to satisfy all of the criteria for a committed project to be sufficiently committed to be characterised as a proponent. While some of these criteria may be

relevant in assessing whether a person is sufficiently committed, requiring strict adherence to all of the criteria may unnecessarily exclude projects which are capable of meeting the identified need and being delivered in the required time frame.

The AER proposes that the application guidelines provide more general guidance on when a person is sufficiently committed to be characterised as a proponent. Section 3.2 provides that a person can be characterised as a proponent where it identifies itself in writing to the TNSP and has demonstrated a willingness and ability to devote or procure the required human and financial resources to the:

- technical specification and refinement of the option if the TNSP agrees to consider the option as a credible option under the RIT-T, and
- development of the option if it is identified as the preferred option under the RIT-T.

### **Valuing market benefits**

The AER has addressed these comments in the discussion on the RIT-T in section 5.3 above.

### **Externalities**

The AER agrees with Grid Australia that additional guidance on what constitutes an externality under the RIT-T will assist stakeholders understand the scope for potential RIT-T disputes. The draft application guidelines set out proposed guidance and examples in section 3.8.

### **Scenario development and modelling periods**

The AER agrees with Grid Australia that the application guidelines should not prescribe the modelling period that should be used when applying the RIT-T. The length of modelling period should depend on the complexity and size of the credible option being considered. This is consistent with the principle in the Electricity Rules that the RIT-T should not require a disproportionate level of analysis to the scale and likely impact of each credible option.

The AER proposes that the RIT-T provide scope for a TNSP to determine the appropriate modelling period and the application guidelines provide general guidance on the period that would be appropriate. The draft application guidelines note that it is unlikely that a period of less than 5 years would adequately reflect the potential market benefits of any credible option and that for very long lived high cost investments, it may be necessary to adopt a modelling period of 20 years or more.

### **AER conclusions**

With the assistance of Frontier Economics and Dr Darryl Biggar, the AER has prepared part 3 and appendix A of the draft application guidelines to address the requirements in 5.6.5B(f) of Electricity Rules. While this part of the guideline elaborates on and clarifies ideas and concept in the RIT-T, it should be read in conjunction with the RIT-T and is not a substitute for the RIT-T.

## **6.2 Process to be followed in applying the RIT-T**

### **AER issues paper**

Under clause 5.6.5B(e)(2)(ii) the application guidelines must include guidance on the process to be followed in applying the RIT-T.

In its issues paper the AER noted that there is significant detail on the RIT-T process set out in clause 5.6.6 of the Electricity Rules and sought interested parties views on what additional guidance on the RIT-T process should be included in the application guidelines.

### **Issues raised in submissions**

Grid Australia considered that the requirements in the Electricity Rules regarding the RIT-T assessment process are sufficiently detailed such that substantial additional guidance is not required.

The TEC considered that the 12 week consultation period for the project specification consultation report is insufficient and recommended a 26 week period as a minimum. It also considered that there was no justification for exempting TNSPs from publishing a draft project assessment report where the preferred option is less than \$35 million.

### **AER considerations**

The Electricity Rules set out the process for applying the RIT-T and the framework for consulting with interested parties in significant detail, including:

- requiring TNSPs to prepare a project specification consultation report, a project assessment draft report and a project assessment conclusion report
- the information that must be included in these reports, and
- the methods and timeframes for consultation on these reports.

Given this detail, the AER agrees with Grid Australia that substantial additional guidance on the process to be followed in applying the RIT-T is not required in the application guidelines and the proposed guidelines outline the process as set out in the Electricity Rules. The AER has attempted to present this information in a clear and non-technical manner so that it is of use to potential interested parties who are less informed about the process set out in the Electricity Rules.

The only additional guidance proposed for inclusion in the application guidelines is a suggestion TNSPs publish on their own websites:

- the project specification consultation report (or a summary of the report) and the closing date for submissions
- the project assessment draft report (or a summary of the report) and the closing date for submissions on the report

- the project assessment conclusions report and note that a process exists for resolving RIT-T disputes and that the timeframes for lodging a dispute notice with the AER.

This proposal is in addition to AEMO publishing a summary of these reports on its website and the draft application guidelines explicitly state that this is not a requirement under the Electricity Rules. The AER considers that the publication of this material by TNSPs as well as AEMO may facilitate a more transparent and informed consultation process.

Regarding the TEC's concerns about the 12 week consultation period for a project specification consultation report and the circumstances in which a TNSP is exempt from publishing a draft project assessment report, this AER notes that these are matters which are specified in the Electricity Rules and cannot be varied by the AER in the RIT-T or application guidelines.

### **AER conclusions**

Taking into account the detailed consultation requirements set out in the Electricity Rules, the AER considers that substantial additional guidance on the process to be followed in applying the RIT-T is not required in the application guidelines. Given this, the AER proposes that the draft application guidelines outline the process which must be followed under the Electricity Rules in a clear and non-technical format. This is included in part 4 of the draft application guidelines.

## **6.3 Dispute resolution**

### **AER issues paper**

Under clause 5.6.5B(e)(2)(ii) the application guidelines must include guidance on how disputes raised regarding the RIT-T and its application will be addressed and resolved.

Clause 5.6.6A of the Electricity Rules sets out the process that must be followed by TNSPs, disputing parties and the AER in resolving RIT-T disputes.

In its issues paper the AER noted that it has published regulatory test dispute resolution guidelines which sets out the process for raising regulatory test disputes. While the Electricity Rules requirements regarding disputes have changed significantly since the publication of these guidelines, the AER considered that some aspects of the guidelines may provide a useful basis for considering the development of the dispute resolution provisions of the RIT-T.

### **Issues raised in submissions**

Grid Australia considered that the current regulatory test dispute resolution guidelines provide useful information regarding the flow of information, procedural fairness and confidentiality and that this should be included in the RIT-T application guidelines. It also considered that clarification on what matters may be treated as an externality under the RIT-T will assist stakeholders understand the scope for disputes under the RIT-T.

The TEC considers that any electricity consumer should be able to contest network investment decisions through the dispute resolution process. It also considered that non-network proponents are less likely to be informed or able to dispute a network project, and given this, it is essential that the process is accessible to small proponents.

### **AER considerations**

The AER has reviewed the RIT-T dispute resolution provisions set out in the Electricity Rules and the information in the existing regulatory test dispute resolution guidelines. The AER considers that the application guidelines should include information and guidance on:

- who can dispute a RIT-T assessment
- what aspects of an assessment can be disputed, and
- requirements for lodging a dispute notice with the AER
- the procedure and timeframe for resolving disputes, and
- the potential for a cost determination by the AER.

The draft application guidelines include provisions in part 5 which address each of these matters. This information is consistent with the process for resolving RIT-T disputes set out in clause 5.6.6A of the Electricity Rules.. The AER has attempted to present this information in a clear manner so that it is of use to non-network proponents that are less informed about the dispute resolution process set out in the Electricity Rules. The AER has not included information on information disclosure and confidentiality. The draft application guidelines instead refer disputing parties to the ACCC/AER *Information Policy*, October 2008. This will ensure that disputing parties access the most up to date information on the AER’s policy on the use and disclosure of information obtained during the course of a dispute.

Regarding the TEC’s concern that any electricity consumer should be able to dispute network investment decisions, the AEMC has previously considered which parties should be eligible to dispute regulatory test assessment processes in earlier rule change processes.<sup>9</sup> The AER notes that the parties who may dispute a RIT-T assessment are set out in clause 5.6.6A of the Electricity Rules. This includes an interested party which is defined as:

“...a person including an end user or its *representative* who, in the AER’s opinion, has or identifies itself to the AER as having the potential to suffer a material and adverse market impact from the proposed *transmission investment* that is the *preferred option* identified in the *project assessment conclusions report*.”

This is not a matter which can be varied by the AER in the RIT-T or application guidelines.

---

<sup>9</sup> For example see AEMC, *Rule determination—National electricity amendment (dispute resolution for regulatory test) rule*, June 2006; MCE, *National Electricity Rules—Rule change application reform of the dispute resolution process for the regulatory test*, October 2005.

## **AER conclusions**

The AER proposes that the application guidelines provide information and guidance on:

- who can dispute a RIT-T assessment
- what aspects of an assessment can be disputed
- requirements for lodging a dispute notice with the AER
- the procedure and timeframe for resolving disputes, and
- the potential for a cost determination by the AER.

These provisions are included in part 5 of the draft application guidelines.