

Independent Competition and Regulatory Commission

Discussion Paper

Prescribed and Excluded Distribution Services

December 2002

The Independent Competition and Regulatory Commission (ICRC) is established by *the Independent Competition and Regulatory Commission Act 1997* (ICRC Act) to determine prices for regulated industries, advise government about industry matters, advise on access to infrastructure and determine access disputes. The Commission also has responsibilities under the Act for the determination of competitive neutrality complaints and providing advice about other government regulated activities.

The Commission has three commissioners:

Paul Baxter, Senior Commissioner
Robin Creyke, Commissioner
Peter McGhie, Commissioner.

Submission, correspondence or other inquiries may be sent to the Commission at the addresses below:

The Independent Competition and Regulatory Commission
PO Box 975
CIVIC SQUARE ACT 2608
or

Level 7 Eclipse House
197 London Circuit
CIVIC ACT 2608

The Secretariat may be contacted at the above addresses, by telephone 62050799, or by fax 62075887. The Commission's website is at www.icrc.act.gov.au. The E-mail address is icrc@act.gov.au or ian.primrose@act.gov.au

For further information on this inquiry or any other matters of concern to the Commission please contact Ian Primrose, Chief Executive Officer on 62050779.

Foreword

The Independent Competition and Regulatory Commission (the Commission) is conducting an investigation into prices for electricity distribution services provided by ActewAGL within the Australian Capital Territory (ACT). The investigation will allow price direction/determination to be issued for electricity services from 1 July 2004.

For electricity distribution, the Commission is required to regulate the prices charged by ActewAGL under the National Electricity Code (the Code). The Commission must have regard to the principles and objectives set out in Part D of the NEC. These can be summarised as:

- to enhance competition, particularly by encouraging new entrants;
- to prevent monopoly rents in an industry and market characterised by a high degree of market concentration;
- to ensure the fairness, transparency of the scheme and accountability of the regulator;
- to ensure that investment is made and used efficiently, including existing infrastructure; and
- to ensure that industry participants are able to achieve “reasonable” returns upon their investment, assuming efficiencies in relation to operation, investment and maintenance.

The Code requires the Commission to determine which distribution services are prescribed distribution services (and therefore subject to economic regulation in accordance with clauses 6.10.3 and 6.10.5 of the Code). Those distribution services that are not prescribed are deemed to be excluded distribution services, to which it is appropriate to apply a more light-handed regulatory approach than that set out in 6.10.5 of the NEC.

Submissions

Public involvement is an important element of the Commission’s processes. The Commission therefore invites submissions from interested parties. Submissions should have regard to the specific issues that have been raised, although additional issues that you feel are relevant may also be canvassed. Submissions should be in writing and delivered by mail, in person or by e-mail. If possible, an electronic version should also be provided in word processor, PDF or spreadsheet format.

Submissions on this Discussion Paper should be received no later than 1 February 2003.

Confidentiality

Special reference must be made to any issues in submissions for which confidential treatment is sought and all confidential parts of submissions must be clearly marked.

However, it is important to note that confidentiality cannot be guaranteed as the Freedom of Information Act and section 44 of the Independent Competition and Regulatory Commission Act provide measures for possible public access to certain documents.

Public access to submissions

All submissions that are not subject to confidentiality will be made available for public inspection at the Commission's offices immediately after registration by the Commission and also where possible via the Commission's website.

Table of Contents

FOREWORD	3
INTRODUCTION	7
BACKGROUND.....	7
TIMETABLE	9
ATTACHMENT 1	11
REGULATION OF EXCLUDED DISTRIBUTION SERVICES IN OTHER JURISDICTIONS	11
ATTACHMENT 2.....	13
SCHEDULE 6.6 – CATEGORIES OF DISTRIBUTION NETWORK COST.....	13
6 EXCLUDED DISTRIBUTION SERVICES	13
ATTACHMENT 3.....	15
6.10.2 OBJECTIVES OF THE DISTRIBUTION SERVICE PRICING REGULATORY REGIME TO BE ADMINISTERED BY THE JURISDICTIONAL REGULATORS.....	15

Introduction

Clause 6.10.4(a) of the National Electricity Code (the Code) requires the Independent Competition and Regulatory Commission (the Commission) to determine which, if any, distribution services provided by a Distribution Network Service Provider (ActewAGL in the case of the Territory) should be deemed to be prescribed distribution services and accordingly subject to economic regulation in accordance with the principles set out in code clauses 6.10.3 and 6.10.5. The Code recommends that any services deemed to be excluded distribution services be subjected to a more light handed form of economic regulation in accordance with clause 6.10.4(b).

As part of the work for the 2004 electricity network price direction the Commission is in the processes of defining which services will be considered as prescribed services and which services will be considered excluded services.

Background

The definition of what constitutes prescribed distribution services is fundamental to the price review process, as it effectively determines which services are to be subject to economic regulation by the Commission. Whether a service is defined as a prescribed or excluded distribution service will affect the information that ActewAGL will need to supply to the Commission on the capital costs, operating costs, and maintenance costs, associated with supplying that service. Given this, it is important that both ActewAGL and the Commission are clear on what may constitute a prescribed distribution service.

In the current price direction, the Commission has not defined what constitutes prescribed or excluded distribution services. However, in the 1999 determination the Commission noted that in response to the draft price direction, ACTEW had stated that:

Services that are currently treated as excluded distribution services include:

- Moving mains, services or meters at the customers request;
- Temporary supply
- Higher quality and reliability standards than required in general practice (usually cost of supplementary supply cables);
- Maintenance of public lighting assets.

In relation to the Commission's proposal for regulation of non-prescribed distribution services, ACTEW would be concerned if this implied any form of regulation for contestable services.

The Commission stated also that

[it did] not intend to impose any form of regulation on services that are not prescribed distribution services during this regulatory period. It should be noted, however, that the Commission may well decide to do so for future regulatory periods.

Broadly, the Commission can either:

- *Define by inclusion.* Develop a definition that describes each prescribed distribution service, or
- *Define by exclusion.* Define and list excluded distribution services, and then classify every other distribution service as prescribed.¹

Evidence from other states indicates that other regulators have tended to either define by exclusion or use a very broad definition of prescribed distribution services (See Attachment 1). For example, Victoria uses a definition by exclusion and has an exhaustive list of excluded services, while South Australia defines both prescribed and excluded services. NSW and Queensland have not defined excluded services and have used very general definitions of prescribed services that would mean that all distribution services are prescribed.

In support of a definition by exclusion, the Commission notes that Clause 6 of Schedule 6.6 of the Code provides a list of services which could be excluded services (see Attachment 2).

The Commission preference is to adopt an approach which provides for a broad definition of prescribed distribution services with specific exclusions for excluded distribution services.

Clause 6.10.4(a) of the Code prescribes the issues that the Commission must take into account when making its decision on whether a distribution service should be classified as prescribed or excluded (see Attachment 3). Amongst other things, clause 6.10.4(a) requires the Commission to have regard to the principles set out clause 6.10.3, and the effectiveness of the form of economic regulation specified under clause 6.10.5 in achieving the efficiency objectives included in clause 6.10.2.

The criteria set out in clause 6.10.4(a) do not establish a practical framework for going about the task of classifying services as excluded or prescribed. Consequently, the Commission is considering a ‘working test’ that reflects the principles espoused by the Code.

The purposed working test is based on the view that only services that can potentially be provided on a competitive basis should be classified as excluded distribution services.

¹ An example of such a definition is “prescribed distribution services are those distribution services that are not specifically defined to be excluded distribution services”.

However, a test that focuses on competition to determine whether or not a service should be classified as excluded will lead to a relatively narrow set of excluded distribution services.

The proposed working test places significant emphasis on the criteria related to competition. However other key issues will be considered, including whether there is the *potential for competition* or *the existence of effective competition* is used to determine whether a service is excluded. The Commission believes that *potential for competition* is a more useful test because:

- An assessment of effective competition falls prey to a ‘chicken and egg’ syndrome. Effective competition is unlikely to develop if a service is provided under a regulatory cap, however, if there is no effective competition the service would be classified as prescribed.²
- The degree of competition may change over the regulatory period.
- If a service is classified as excluded and competition does not become established, customers could be protected by light-handed regulation.

Therefore, the Commission proposes the following working test:

A service should be classified as an excluded distribution service if there is potential for competition in the provision of the service.

This test should be used as a guide for developing a list of excluded distribution services, however, it should not be considered to be determinative.

The Commission may also wish to exclude services where the it considers it would be more appropriate, efficient and equitable to regulate these services in a manner other than through the form of regulation applying to prescribed distribution services. However, the Commission is aware that any decision to exclude distribution services must be taken in line with the principles of the code.

Once the Commission has determined the services that are prescribed and excluded, the Commission will need to determine the form of light-handed regulation for these services. The Commission notes that ActewAGL has previously indicated that contestable services should not be subject to any form of regulation. The form of light-handed regulation to apply will be addressed in the issues paper.

Timetable

The Commission suggests the following approach for progressing a definition of prescribed and excluded distribution services.

² Clause 6.10.2(h) of the Code requires the Tribunal to develop a regulatory regime that promotes competition in the provision of network services where economically feasible.

Action	Timing
ActewAGL provide list of distribution services to ICRC	Pre- Christmas
The Commission make a preliminary assessment of what constitutes prescribed and excluded distribution services	Jan/Feb 2003
The Commission release for comment a brief issues paper on how the Commission proposes to go about defining prescribed distribution services including a list of potentially excluded services.	End February 2003
The Commission define in the issues paper following ActewAGL's submission a draft list of excluded distribution services.	June 2003

Given the timing of the determination of excluded and prescribed services, ActewAGL will need to separately identify costs related to 'potentially' excluded services in its information return.

Attachment 1

Regulation of excluded distribution services in other jurisdictions

Regulator	Definition of Prescribed Distribution Services	Basis of Excluded Services	Form of Regulation of Excluded Services
<p>IPART NSW</p>	<p>General definition of prescribed distribution services that incorporates all distribution services (December 1999 Determination)</p> <p>Those services performed by each DNSP that are associated with or ancillary to access to that DNSP's network for the supply of electricity within that DNSP's service area.</p>	<p>Not applicable</p>	<ul style="list-style-type: none"> - Not applicable
<p>ESC Victoria (two categories for excluded services)</p>	<p>The services of connection to, and use of, the distribution system (except those that are specifically defined to be excluded services)</p>	<p>Non-contestable excluded services</p> <ul style="list-style-type: none"> - where the service is not contestable or where it is not safe or technically feasible to open provision of the excluded service - the service cannot be feasibly unbundled from distributors activities or - where the benefits of facilitating competition are immaterial 	<ul style="list-style-type: none"> - Charges are levied by the DNSP in accordance with their licence provisions - Charges for services that are not contestable are subject to approval by the ESC - ESC assess the proposed charges against a set of Excluded Service Principles (4) and Methodologies - Information and Reporting Requirements placed on DNSPs, which in most cases will be reported publicly.
		<p>Contestable excluded services</p> <p>conducted on a case-by-base basis, with consultation, to determine whether or not effective competition or potential competition exists.</p> <p>Effective competition – consider whether any firms have significant market</p>	<ul style="list-style-type: none"> - Charges are levied by the DNSP in accordance with their licence provisions - Not subject to approval or assessment against Excluded Service Principles or Reporting

Regulator	Definition of Prescribed Distribution Services	Basis of Excluded Services	Form of Regulation of Excluded Services
		<p>have significant market power (8 factors to consider)</p> <p>Potential competition – 3 assumptions to be satisfied. If the market meets the characteristics it is assumed it is likely to exhibit economically efficient prices and the service is treated as 'contestable'</p> <p>- the materiality of benefits must also be considered</p>	Requirements
Queensland Competition Authority	<p>The part of the business applied to providing outputs that are regulated by the Authority's <i>Prescribed Services Determination</i>. (Definition similar to NSW)</p>	<p>DNSPs/stakeholders can apply on a case-by-case basis to have specific services treated as excluded.</p> <p>It must be demonstrated that the market for the service is 'contestable', that is subject to potential – if not actual – competition.</p> <p>A contestable market will be determined to exist if :</p> <ul style="list-style-type: none"> - the DNSP does not have substantial market power ie the DNSP does not dominate the market, assumed the case where the DNSP has less than 40% market share - Or the market lacks significant barriers to entry 	<p>Initially, all distribution services are declared as 'prescribed' and subject to the economic regulation under the Code (non-distribution services are regulated separately).</p> <p>Where the market is contestable, and the service declared excluded, the service will not be subject to any regulation.</p>
South Australia	<p>South Australian Electricity Pricing Order 1999. Define two categories of prescribed services – Network services and Connection services. Definitions for these services more specific than those for NSW and QLD,</p>	<p>South Australian Electricity Pricing Order 1999 – List of Excluded Distribution Services by category including public lighting, new and upgrading of connection points, special standard services, metering services.</p>	<p>Excluded services must be priced by the DNSP on a 'fair and reasonable' basis</p>

Attachment 2

Schedule 6.6 – Categories of Distribution Network Cost

6 Excluded Distribution Services

Services and activities that the Jurisdictional Regulator may define as excluded distribution service may include but are not limited to the following:

- (a) the transportation of electricity not consumed in the Distribution Network Service Provider's system (i.e. on behalf of another Distribution Network Service Provider).
- (b) new connection and augmentation of existing connection to the distribution network.
- (c) services (including metering, electric lines or electrical plant) for the specific benefit of any network user requested by that network user and not made available by the distribution network service provider as a normal part of prescribed distribution service to all customers. These services can include:
 - (1) charges for moving mains, services or meters forming part of the distribution network to accommodate extension, redesign or redevelopment of any premises;
 - (2) the provision of electric plant (i.e. mobile generators) for the specific purpose of enabling the provision of top-up or standby supplies of electricity; and
 - (3) the provision of prepayment meters to customers, but only to the extent that the charge for the provision of those meters exceed charges for the provision of standard meters for such customers;
- (d) the relocation of electric lines and plant and the carrying out of associated works pursuant to any statutory obligations imposed on the Distribution Network Service Provider;
- (e) charges for temporary supplies;
- (f) capital contributions or other forms of prudential requirements for new works and augmentations;
- (g) charges for reserve and duplicate supply;
- (h) charges for supplies with higher quality and reliability standards than required by general practice;
- (i) charges for connection points requiring more than the least overall cost, technically acceptable assets;

- (j) charges for distribution services and system augmentation required to receive energy from an Embedded Generator;
- (k) charges for generator access for Embedded Generators under clause 5.5;
- (l) charges for non-compliance with the connection agreement, including but not limited to reactive power, power factor, harmonics, voltage dips and test supply requirements;
- (m) charges for multiple connection points to a single property not recovered through prescribed distribution service prices;
- (n) charges for public lighting;
- (o) charges for provision of metering to a standard in excess of that required for the billing of prescribed distribution network service;
- (p) charges for provision of *TUOS/DUOS disclosure statements* to *Distribution Customers* under clause 6.14.8.

Attachment 3

6.10.2 Objectives of the distribution service pricing regulatory regime to be administered by the Jurisdictional Regulators

The distribution service pricing regulatory regime to be administered under Part D of the Code must seek to achieve the following outcomes:

- (a) an efficient and cost-effective regulatory environment;
- (b) an incentive-based regulatory regime which:
 - (1) provides an equitable allocation between Distribution Network Users and Distribution Network Owners of efficiency gains reasonably expected by the Jurisdictional Regulators to be achievable by the Distribution Network Owners;
 - (2) provides for, on a prospective basis, a sustainable commercial revenue stream which includes a fair and reasonable rate of return to Distribution Network Owners on efficient investment, given efficient operating and maintenance practices of the Distribution Network Owners;
 - (3) ensures consistency in the application of regulations applicable to:
 - (i) connection to distribution networks;
 - (ii) distribution service pricing; and
 - (4) provides for the recovery by *Distribution Network Service Providers* of *Customer TUOS usage charges* from those *Distribution Customers* that have a *metering installation* capable of capturing relevant *transmission system* and *distribution system* usage data, in a way that preserves the location and time signals of the *Customer TUOS usage prices*;
- (c) prevention of monopoly rent extraction by Network Owners;
- (d) an environment which fosters an efficient level of investment within the distribution sector, and upstream and downstream of the distribution sector;
- (e) an environment which fosters efficient operating and maintenance practices within the distribution sector;
- (f) an environment which fosters efficient use of existing infrastructure;
- (g) reasonable recognition of pre-existing policies of governments which are Distribution Network Owners regarding distribution asset values, revenue paths and prices;
- (h) promotion of competition in upstream and downstream markets and promotion of competition in the provision of network services where economically

feasible;

- (i) reasonable regulatory accountability through transparency and public disclosure of regulatory processes and the basis of regulatory decisions;
- (j) reasonable certainty and consistency over time of the outcomes of regulatory processes, recognising the adaptive capacities of Code Participants in the provision and use of distribution network assets;
- (k) reasonable and well defined regulatory discretion which permits an acceptable balancing of the interests of Distribution Network Owners, Distribution Network Users and the public interest.

6.10.3 Principles for regulation of distribution service pricing

The regime under which the revenues of Distribution Network Owners and Distribution Network Service Providers (as appropriate) are to be regulated is to be administered by the Jurisdictional Regulators in accordance with the following principles:

- (a) Concerns over monopoly pricing in respect of the distribution network will, wherever economically efficient and practicable, be addressed through the introduction of competition in the provision of distribution services.
- (b) Where pro-competitive and structural reforms alone are not a practicable or adequate means of addressing the problems of monopoly pricing in respect of distribution services or protecting the interests of Distribution Network Users, the form of economic regulation to be applied is described in clause [6.10.5](#).
- (c) The form of economic regulation applied by the Jurisdictional Regulators must not be changed during a regulatory control period.
- (d) Subject to clause 6.10.3(c), if a Jurisdictional Regulator proposes to amend the form of economic regulation specified in clause [6.10.5](#) applied to a Distribution Network Owner, the Jurisdictional Regulator must:
 - (1) give two years prior notice to the Distribution Network Owner of the new economic regulation arrangements to apply from the commencement of the next regulatory control period; and
 - (2) publish a description of the process and timetable for re-setting the form of economic regulation at a time which provides all affected parties with adequate notice to prepare for, participate in, and respond to that process, prior to the commencement of the regulatory control period to which that form of economic regulation is to apply.
- (e) The regulatory regime to be administered by the Jurisdictional Regulator must be consistent with the objectives outlined in clause [6.10.2](#) and must also have regard to the need to:

- (1) provide Distribution Network Owners with incentives and reasonable opportunities to increase efficiency;
- (2) create an environment in which generation, energy storage, demand side options and network augmentation options are given due and reasonable consideration;
- (3) take account of and be consistent with the allocation of risk between Network Owners and Network Users;
- (4) take account of and be consistent with any obligations of Code Participants in relation to distribution networks under Chapter 5;
- (5) provide a fair and reasonable risk-adjusted cash flow rate of return to Distribution Network Owners on efficient investment given efficient operating and maintenance practices on the part of the Distribution Network Owners where:
 - (i) assets created at any time under a take or pay contract are valued in a manner consistent with the provisions of that contract;
 - (ii) subject to clause 6.10.3(e)(5)(i), assets (also known as "sunk assets") in existence and generally in service on 1 July 1999 are valued at a value determined by the Jurisdictional Regulator or consistent with the regulatory asset base established in the participating jurisdiction;
 - (iii) subject to clause 6.10.3(e)(5)(i), valuation of assets brought into service after 1 July 1999 ("new assets"), any subsequent revaluation of any new assets and any subsequent revaluation of assets existing and generally in service on 1 July 1999 is to be undertaken on a basis to be determined by the Jurisdictional Regulator. In determining the basis of asset valuation to be used, the Jurisdictional Regulator must have regard to:
 - A the agreement of the Council of Australian Governments of 19 August 1994, that deprival value should be the preferred approach to valuing network assets;
 - B any subsequent relevant decisions of the Council of Australian Governments; and
 - C such other matters reasonably required to ensure consistency with the objectives specified in clause [6.10.2](#); and
 - (iv) benchmark returns to be established by the Jurisdictional Regulator are to be consistent with the method of valuation of new assets and revaluation, if any, of existing assets and consistent with achievement of a commercial economic return on efficient investment;
- (6) provide reasonable certainty and consistency over time of the outcomes of regulatory processes having regard for:
 - (i) the need to balance the interests of Network Users and Network Owners;
 - (ii) the capital intensive nature of the distribution sector, the relatively long lives of distribution assets, and the variable and frequent augmentation of

the distribution network;

- (iii) the need to minimise the economic cost of regulatory actions and uncertainty;
- (iv) relevant previous regulatory decisions made by authorised persons including:
 - A the initial revenue setting and asset valuation decisions made by a government at a time at which that government was a Distribution Network Owner in the context of industry reform pursuant to the Competition Principles Agreement;
 - B decisions made by Jurisdictional Regulators and any regulatory intentions previously expressed; and
 - C decisions made by ministers under jurisdictional legislation.

6.10.4 Economic regulation of distribution services

- (a) The Jurisdictional Regulator is responsible for determining which, if any, distribution services provided by a Distribution Network Owner or Distribution Network Service Provider (as appropriate) in the relevant participating jurisdiction should be deemed to be prescribed distribution services and accordingly subject to economic regulation in accordance with the principles set out in clauses [6.10.3](#) and [6.10.5](#). In making this determination the Jurisdictional Regulator is to have regard to:
 - (1) the principles for regulation of distribution service pricing described in clause [6.10.3](#);
 - (2) the extent of effective competition in the provision of that distribution service;
 - (3) whether sufficient competition exists to warrant the application of a regulatory approach which is more "light handed" than the approach described in clause [6.10.5](#);
 - (4) the effectiveness of the form of economic regulation specified under clause [6.10.5](#) in achieving the efficiency objectives included in clause [6.10.2](#); and
 - (5) the form, if any, of that regulation.
- (b) Distribution services which are not prescribed distribution services are deemed to be excluded distribution services and without limiting the discretion of the Jurisdictional regulator under clause [6.10.4\(a\)](#), excluded distribution services are those to which it is appropriate to apply a regulatory approach which is more "light-handed" than the regulation described in clause [6.10.5](#) and the Jurisdictional Regulator must determine the form of regulation which is to be applied to excluded distribution services.

6.10.5 Form and mechanism of economic regulation

In respect of distribution services subject to economic regulation pursuant to clause [6.10.4\(a\)](#):

- (a) economic regulation shall be of the prospective CPI minus X form, or some incentive-based variant of the CPI minus X form, and may take into account the performance of the *Distribution Network Service Provider* and/or *Distribution Network Owner* (as appropriate) under any *prescribed distribution service* standards imposed by the *Code* and any regulatory regime administered by the *Jurisdictional Regulator*, provided it is consistent with the objectives and principles outlined in clauses [6.10.2](#) and [6.10.3](#);
- (b) the Jurisdictional Regulator shall specify the form of economic regulation to be applied to the *Distribution Network Service Provider* to be in the form of either:
 - (1) a revenue cap; or
 - (2) a weighted average price cap; or
 - (3) a combination of the above.
- (c) The Jurisdictional Regulator is to apply the form of economic regulation specified in clauses 6.10.5(a), and (b) to each *Distribution Network Owner* for the regulatory control period which is to be a period of not less than 3 years.
- (d) In setting a separate regulatory cap to be applied to each *Network Owner* in accordance with clause 6.10.5(b), the Jurisdictional Regulator must take into account each *Distribution Network Owner's* revenue requirements during the regulatory control period, having regard for:
 - (1) the demand growth which the *Distribution Network Owner* is expected to service using any appropriate measure including but not limited to:
 - (i) energy consumption by categorisation of *Distribution Customers* or other relevant groups of persons who consume energy;
 - (ii) demand by categorisation of *Distribution Customers* or other relevant groups of persons who consume energy;
 - (iii) numbers of *Distribution Customers* or other relevant groups of persons who consume energy by categorisation of *Distribution Customers*; and
 - (iv) length of the distribution network;
 - (2) the service standards applicable to the *Distribution Network Owner* and/or *Distribution Network Service Provider* (as appropriate) under the *Code* and any other standards imposed on the *Distribution Network Owner* and/or *Distribution Network Service Provider* (as appropriate) by any regulatory regime administered by the Jurisdictional Regulator and by agreement with the relevant *Network Users* or *Distribution Network Users*;
 - (3) price stability;
 - (4) the Jurisdictional Regulator's reasonable judgment of the potential for

efficiency gains to be realised by the Network Owner in expected operating, maintenance and capital costs, taking into account the expected demand growth and service standards referred to in clauses 6.10.5(d)(1) and (2);

- (5) the Distribution Network Owner's weighted average cost of capital applicable to the relevant network service, having regard to the risk adjusted cash flow rate of return required by investors in commercial enterprises facing similar business risks to those faced by the Distribution Network Owner in the provision of that network service;
 - (6) the provision of a fair and reasonable risk-adjusted cash flow rate of return on efficient investment including sunk assets subject to the provisions of clause [6.10.3\(e\)\(5\)](#);
 - (7) the right of the Distribution Network Owner or Distribution Network Service Provider (as appropriate) to recover reasonable costs arising from but not limited to:
 - (i) any State and Commonwealth taxes which it has paid in connection with the operation of its business as a provider of distribution services;
 - (ii) charges paid to Transmission Network Service Providers and other Distribution Network Service Providers arising from the provision of distribution services;
 - (iii) payments made to Embedded Generators for demand side management programs and local energy storage facilities which provide distribution service of a kind set out in or similar to those set out in part 4.5 of schedule [6.6](#) or in accordance with clause 5.6.2 where the Jurisdictional Regulator determines that this is appropriate;
 - (8) any correction factors arising from the previous regulatory period;
 - (9) any reduction or increase in energy losses in the distribution network;
 - (10) the on-going commercial viability of the distribution industry; and
 - (11) any other relevant financial indicators.
- (e) Notwithstanding clause 6.10.5(c), the Jurisdictional Regulator may revoke a determination during a regulatory control period only where it appears to the Jurisdictional Regulator that:
- (1) the determination was set on the basis of false or materially misleading information provided to the Jurisdictional Regulator; or
 - (2) there was a material error in the setting of the determination and the prior written consent of parties affected by any proposed subsequent re-opening of the determination has been obtained by the Jurisdictional Regulator.

- (f) If the Jurisdictional Regulator revokes a determination under clause 6.10.5(e), then the Jurisdictional Regulator may make a new determination in substitution for the revoked determination to apply for the remainder of the regulatory control period for which the revoked determination was to apply.
- (g) Prior to the end of a regulatory control period, the Jurisdictional Regulator must publish a description of the process and timetable for re-setting the level of regulatory cap to apply in the next regulatory control period and must provide to all affected parties adequate notice to allow them to prepare for, participate in, and respond to that process.