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Australian Pipeline Trust

Australian Pipeline Ltd
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ARSN 091 678 778

Murraylink Transmission Company ACN 089 875 605
For and on behalf of the Murraylink Transmission Partnership

12 July 2006

Dr John Tamblyn
Chairman
AEMC
PO Box H166
Australia Square
Sydney NSW 1215

by Post

Dear Dr Tamblyn

Information regarding Murraylink for AEMC Transmission Revenue Review

On 30 March 2006 Australian Pipeline Trust (APA) acquired the Murraylink electricity transmission asset.

This correspondence is in reply to the Commission's correspondence of 31 May 2006. We understand that the AEMC is seeking to preserve existing transmission revenue determinations and potentially other legacy arrangements that applied previously to Murraylink Transmission Company Pty Limited and that now apply to APA. Accordingly, we are pleased to provide you with information you have requested in relation to:

1. The regulatory asset base (RAB) roll forward principles that are expected to apply to Murraylink at the end of the current regulatory period

2. Any adjustments to the RAB for the current regulatory period

3. Any other regulatory arrangements that apply to the current regulatory that may affect regulatory arrangements in the next regulatory period.

Brief responses to each of these issues are provided below. Attached to this correspondence is a memorandum by the Allen Consulting Group (ACG), which addresses these issues in more detail.

APA appreciates the additional time the AEMC has allowed in providing this response.

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Expected RAB Roll Forward Principles at End of Current Regulatory Period

APA expects that the AER will adopt the roll forward method to update Murraylink's regulatory asset value. That is, it would use Murraylink's closing asset value at the end of 2013 as the starting point and then adjust it for prudent capital expenditure incurred in 2003-2012 (including a return on this expenditure), depreciation and inflation.

The roll forward arrangements should allow for the possibility of a reconsideration of previous asset valuation decisions and a possible subsequent adjustment.

RAB Adjustments in Current Regulatory Period

The 2003 Murraylink Decision on Maximum Allowed Revenue (the Decision) does not anticipate any capital expenditure in the current regulatory period.

At the current time APA has no plans for major capital expenditure on Murraylink. Usual "stay in business" capital expenditure is expected to be incurred. APA would expect that any prudent capital expenditure incurred would be considered in the determination of the RAB at the commencement of the next regulatory period.

While the capital expenditure and depreciation profile allowed for in the Decision are unusual, there appears to be no need for the AEMC to confirm any particular adjustments to Murraylink's RAB during the current regulatory period because these are clearly stated in the Decision and incorporated in Murraylink's current revenue path.

However, Murraylink's revenue path itself is subject to a number of adjustments in the current regulatory period and APA would appreciate the AEMC's assistance to confirm the appropriate adjustment mechanisms in the saving and transitional provisions being prepared for its transmission revenue review. APA believes the current AEMC process can provide some useful clarity and certainty on these issues.

- **Inflation adjustment** – Under the Decision, the AER allows adjustments to Murraylink's revenue for the difference between the original forecast of inflation and actual inflation. However, in the Decision, the ACCC did not specify precisely how adjustments are to be made to take account of these factors. APA requests that the AEMC confirms the inflation adjustment mechanism described by ACG on pages 3 and 4 of its memorandum.

- **Pass through rules** – APA expects the rules which allow the pass through of costs of specific events will be preserved and requests that the AEMC confirms them (see Attachment 2 of the ACG memorandum).

- **Performance incentive scheme** – APA expects that the performance incentive scheme (as corrected) for 2003-2008 will be preserved and requests that the AEMC confirms it (see Attachment 3 of the ACG memorandum).

Other Current Regulatory Arrangements that may Affect Arrangements in the Next Regulatory Period

In relation to other current regulatory arrangements that may apply the next regulatory period, APA expects the following

- **Efficiency gain carryover mechanism** –The AER will apply a "glide path" to efficiency gains attained during the current regulatory period in line with chapter 7 of the ACCC's 1999 draft statement of regulatory principles.

- **Depreciation** –The AER may continue to apply the depreciation profile used in the current regulatory decision but will consider APA's views on this at the time its next revenue path is determined.

- **Tax Depreciation** – APA expects the AER treatment of tax depreciation will be continue to be based on its regulatory asset value rather than its sale value.

We are happy to meet with the Commission to discuss these issues.

Yours Faithfully

Stuart Ronan
Regulatory Manager
02 9693 00389

Attachment 1 – Memorandum from the Allen Consulting Group

The Allen Consulting Group

MEMORANDUM

Date: 12 July 2006

To: Australian Pipeline Trust

Re: AEMC letter of 31 May 2006

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1. PURPOSE OF THIS NOTE

The purpose of this note is to assist Murraylink's owner, Australian Pipeline Trust (APA[1]) who has been asked by the Australian Energy Market Commission (AEMC) to provide information on the regulatory arrangements that surround the Australian Competition and Consumer Commission's (ACCC's) Murraylink decision[2]. In particular, the AEMC is seeking to preserve existing transmission revenue determinations and potentially other regulatory arrangements that apply to Murraylink. It has asked APA to provide information in relation to:

- the regulatory asset base (RAB) roll forward principles that are expected to apply to APA at the end of the current regulatory period;
- any adjustments to the RAB for the current regulatory period (such as contingency projects, cost pass through or revocation); and
- any other regulatory arrangements that apply to the current regulatory period that may affect regulatory arrangements in the next regulatory period.

2. INTRODUCTORY REMARK

The regulatory arrangements to which the AEMC refers are not well defined in the current regulatory instruments. Also, the manner in which Murraylink's RAB and revenue have been set has some unique characteristics compared to other transmission assets. Accordingly, how a reasonable person at the time of the Murraylink decision would expect the ACCC to deal with certain matters during the current regulatory period, and then when the revenue cap for Murraylink is next reviewed, needs to be pieced together from the Murraylink decision and the other regulatory statements and decisions that evidence the ACCC's standard practice at the time.

Accordingly, in this note we reflect appropriate sections of:

- the ACCC's 1999 draft statement of regulatory principles for electricity transmission;

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[1] 'APA' is Australian Pipeline Trust's code at the Australian Stock Exchange.

[2] ACCC 2003, *Decision: Murraylink Transmission Company Application for Conversion and Maximum Allowable Revenue* (**Murraylink decision**), 1 October.

- the electricity transmission revenue path decisions that the ACCC made before its Murraylink decision, in particular in relation to TransGrid in 2005;
- the ACCC's Murraylink decision; and
- the Australian Energy Regulator's (AER's) 2005 compendium of regulatory guidelines, which largely confirms the ACCC's 2004 statement of regulatory principles;
- the AER's Directlink decision.

This note covers an explanation of:

- adjustments that are being made to Murraylink's RAB in the current regulatory period;
- adjustments that could be made to Murraylink's revenue in the current regulatory period; and
- the next regulatory decision for Murraylink.

We note at the outset that a change to the RAB during a regulatory period is only meaningful if the price control (revenue cap) is also changed, and so the first and second matters noted above are not independent.

3. ADJUSTMENTS TO MURRAYLINK'S RAB IN THE CURRENT REGULATORY PERIOD

There are two factors that could conceivably have an impact on Murraylink's regulatory asset base during the regulatory period.

3.1 Capital expenditure

While adjustments for forecast capital expenditure are commonly made to the RABs of other transmission assets during a regulatory period, this is not the case for Murraylink for the current regulatory period. The ACCC has made no allowance for capital expenditure such in Murraylink's revenue path.[3]

This is not to say that Murraylink's asset base will not be adjusted to incorporate any actual capital expenditure during the period when the regulatory asset base is set at the start of the next regulatory period. We deal with the means by which this would occur in section 5.2 of this paper.

3.2 Depreciation

Murraylink's RAB is adjusted for depreciation in an unusual manner. As the ACCC valued Murraylink on the basis of the capital costs of an alternative project assessed under the regulatory test, it took the view that it was appropriate to adopt the same asset classes and lives as the alternative project for the purposes of calculating depreciation (see Table 1), even though Murraylink has no easements and a different design life.

[3] Murraylink decision, p. 164.

Table 1
MURRAYLINK ASSET VALUE AND LIVES

	Murraylink (based on Alternative 3)	
	Capital cost ($M)	Remaining Life (yrs)
Substation costs	57.327	40
Transmission costs	41.551	50
Easement costs	4.080	∞
Total capital cost	102.958	

Source: Murraylink decision, p. 166, and ACCC letter to MTC of 7 April 2004. Values are in October 2003 dollars.

4. ADJUSTMENTS TO MURRAYLINK'S REVENUE IN THE CURRENT REGULATORY PERIOD

Murraylink's revenue path is subject to a number of adjustments during the current regulatory period.

Below we describe the five adjustment factors in turn.

4.1 Adjustments for actual inflation

Murraylink's nominal revenue is based on forecast annual inflation of 2.07 per cent. Central to CPI-X regulation is that asset owners are protected from inflation risk, and, consistent with this, the AER allows a routine annual process each year by which adjustments are made to Murraylink's revenue for the difference between the original forecast of inflation and actual inflation. However, in the Murraylink decision, the ACCC did not specify precisely how such adjustments were made. APA's response to the AEMC's request for information creates an opportunity for APA to have this clarified and, accordingly, we do so here.

In all electricity transmission revenue path decisions other than Murraylink, the ACCC and the AER have set a smooth revenue path in accordance with the variables and formulae shown in **Attachment 1**, which comfortably take account of actual inflation each year. In the case of Murraylink, the ACCC did not set a constant X factor or a smooth revenue path.[4] For this reason, the most practicable means to adjust Murraylink's actual revenue path is to: (1) convert Murraylink's forecast nominal revenue path into real terms by stripping off the ACCC's inflation forecasts (i.e. convert it into constant price terms, as at the end of the first year of the regulatory period — the reason for choosing this base date is discussed further below); and then (2) add on actual inflation over the subsequent years of the period as shown in Table 2.

[4] ACCC letter to MTC of 7 April 2004, p. 5.

Table 2

MURRAYLINK'S REVENUE PATH

	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Forecast MAR (nom)		8.90	12.803	12.508	12.613	12.720	12.828	12.936	13.045	13.156	13.267
Forecast inflation		2.07%	2.07%	2.07%	2.07%	2.07%	2.07%	2.07%	2.07%	2.07%	2.07%
Forecast MAR (real)		8.90	12.543	12.006	11.861	11.719	11.579	11.440	11.302	11.167	11.033
Actual March CPI	141.3	144.1	147.5	151.9							
Actual inflation		n/a	1.98%	2.36%	2.98%						
Inflation adjusted MAR (nom)		8.90	12.792	12.533	12.751						

Source: The Murraylink decision, p. 168, ACCC letter to MTC of 7 April 2004, and www.abs.gov.au.

Note: The period 2003-04 is for the nine months from 1 October 2003 to 30 June 2004. The 'inflation adjusted MAR (nom)' has been calculated solely for the purpose of demonstrating an adjustment for inflation. It has no regard for any adjustment for any pass through events or the results of Murraylink's performance incentive scheme such as those described in sections 4.2 and 4.3 below.

Even so, there are different approaches that could be adopted to adjust for the difference between forecast and actual inflation, which would lead to different results. We have adopted the following assumptions in Table 2.

- *Choice of inflation index* – it is convention to use a lagged period of 'actual inflation' when calculating revenues for the following regulatory year, and the most common lagged period when revenues are in financial year terms is actual inflation over the year to March (i.e. the most recent year available). We note, however, that the year to December could also be use.

- *Treatment of inflation for the first year* – the ACCC almost always sets revenue for the first year of the regulatory period using a forecast of inflation (which is not adjusted for actual inflation) and then revenue for future years is calculated by applying the 'CPI-X' to the first year revenues. The effect of this approach is that no adjustment is made for the difference between forecast and actual inflation for the first year of the regulatory period (i.e. the forecast of inflation for the first year of the regulatory period is deemed to be actual inflation). We have followed this 'normal ACCC' approach – and it is for this reason that the calculations in Table 2 express figures in constant price terms as at the end of the first year of the regulatory period (this has the effect of not adjusting for any forecast error in inflation for the first year of the regulatory period). We note, however, that an alternative approach would be to adjust for forecast errors in year 1 as well as subsequent years (although the fact that the first year was 9 months raises further choices, which are not discussed here).

4.2 Pass through events

The ACCC has allowed for rules to determine the extent to which additional costs caused by specific pass through events — over which the owner of Murraylink has no control — will be passed through to transmission customers by adjusting the Murraylink revenue path.

The pass through rules for Murraylink were not stated in full in the Murraylink decision. In response to the ACCC preliminary view, Murraylink Transmission Company (MTC) proposed a revised set of pass through rules on 19 August 2003. In its Murraylink decision, the ACCC only commented upon these revised rules. We have prepared a set of pass through rules in **Attachment 2** that reflects our understanding of the MTC's proposed revised rules and the ACCC's final decision.

4.3 Performance penalty and reward payments in the period 2003-08

Murraylink's revenue will be adjusted with regard for its performance incentive scheme. However, the ACCC did not document the full scheme in the Murraylink decision and there were error in what it did document.

The S-factor equations in Tables 9.4, 9.5 and 9.6 of the Murraylink decision are incorrect.[5] There is clearly an inconsistency between them and Table 9.3. For this paper, we have assumed that Tables 9.4, 9.5 and 9.6 have been corrected to comply with Table 9.3.

From the Murraylink decision, the ACCC's Service Standard Guidelines[6], which have been adopted by the AER, and our understanding of correspondence between the ACCC and MTC in early 2005, we have described our understanding of the ACCC's decision on Murraylink's performance incentive scheme in **Attachment 3** of this paper.

4.4 Performance penalty and reward payments in the period 2008-13

The AER will review Murraylink's performance incentive scheme in 2008.

4.5 Revocation

We note that, under the current National Electricity Rules, only the AER has a discretion to reopen the Murraylink revenue cap decision and only under clause 6.2.4(d) of the NER. The rules allow for the AER to revoke and remake a revenue determination in three very specific circumstances:

- the determination is based on false or misleading information;
- there has been a material error and the parties affected by the re-opening have provided their written consent; and
- there has been a substantial change in ownership that, in the regulator's opinion, may lead to a material change in revenue requirement.

We note that the ACCC revoked and remade Murraylink's revenue determination in April 2004 due it making material errors. This event underlines the importance of the rules allowing for

[5] Murraylink decision, pp. 178-9.

[6] ACCC 2003, *Decision: Statement of Principles for the Regulation of Transmission Revenues: Service Standard Guidelines* (**Service Standard Guidelines**), 12 November.

revocation in such circumstances and it is reasonable to expect that such an allowance with continue.

5. THE NEXT REGULATORY DECISION FOR MURRAYLINK

At the time the ACCC made its Murraylink decision, it would be reasonable to have expected that certain regulatory principles in relation to the following five matters would apply to the AER's decision on Murraylink's RAB and revenue path for the next regulatory period.

5.1 Regulatory asset base roll-forward

While the regulatory test was used to value Murraylink initial regulatory asset base, it would have been a reasonable expectation at the time of the Murraylink decision to assume that the AER would adopt the roll forward method to update Murraylink's regulatory asset value, that is, to use the value determined as the starting point and to adjust for capital expenditure (with an adjustment for foregone return on assets – see below), depreciation and inflation.

The ACCC has used the roll-forward approach in all of its decisions (albeit with some adjustments where 'errors' were considered to have been made in the original ODRC[7] valuations) including to calculate the regulatory asset base for TransGrid for their second regulatory period.[8] In its TransGrid decision, the ACCC stated that 'for existing assets, a roll-forward of the asset base best satisfies the objectives of the National Electricity Code (now the National Electricity Rules)'. The ACCC reached this view even though its formal statement of how it would regulate at least at the time of its draft decision — its Draft Statement of Regulatory Principles[9] (DRP) — foreshadowed the reapplication of the ODRC method.

In its Directlink decision, the AER also confirmed for Directlink the approach we expect for Murraylink when it said[10]:

> In addition, the AER does not expect that a regulatory reset for DJV would involve another regulatory test assessment to adjust its asset value.
>
> In respect of the suggestion that the length of the regulatory period prevents the revisiting of the RAB, the AER is of the view that substantial caution should be exercised when contemplating the revaluation of assets. In particular, there is potential for revaluation decisions to create uncertainty for investors and reduce investment in markets where substantial, ongoing investment is necessary. The AER is of the view that once an asset base has been set it generally should only be adjusted for inflation, disposals, depreciation and capex, and should not be revalued consistent with chapter 6 of the National Electricity Rules.

5.2 Inclusion of capital expenditure incurred during 2003-12 in the regulatory asset base from 2013

It would have been a reasonable expectation at the time of the Murraylink decision that the ACCC would apply what has become known as the *ex-post* approach for determining how the RAB for Murraylink should be adjusted in respect of actual capital expenditure incurred during

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7 ODRC means optimised depreciated replacement cost.

8 ACCC 2005, *Decision: NSW and ACT Transmission Network Revenue Cap TransGrid 2004-05 to 2008-09*, 27 April, pp. 63-4.

9 ACCC 1999, *Draft Statement of Principles for the Regulation of Transmission Revenues* (**Draft Statement of Regulatory Principles or DRP**), 27 May.

10 Directlink decision, pp. 18-9.

the current regulatory period, if there is any. The *ex-post* approach is described (albeit in ambiguous terms) in the ACCC's DRP, which applied when the Murraylink decision was made. The AER has confirmed this transitional arrangement[11]:

> the [*ex-ante*] approach outlined in chapter 5 of this SRP in relation to capex would only apply for future revenue cap decisions. The valuation of past capex for the purpose of the next revenue cap reset for that TNSP would be guided by [the *ex-post* approach in] chapter 5 of the DRP and appendix B of the SRP.

The SRP is the ACCC's Statement of Regulatory Principles[12] that it published in 2004. The AER has adopted the SRP in its Compendium of Electricity Transmission Regulatory Guidelines.[13]

Accordingly, the ACCC took an *ex-post* approach to the inclusion of TransGrid's actual capital expenditure during its first regulatory period.[14] The *ex-post* approach that the ACCC applied to TransGrid involved it conducting a process-based prudence assessment of capital expenditure that had not been forecast at the start of the period. This prudence assessment was defined in terms of 'good industry practice' and took into account the information available to TransGrid at the time it decided to proceed with the capital expenditure. Any capital expenditure the ACCC deemed to be inefficient was excluded from the regulatory asset base, otherwise it was included.

The AER confirmed this approach in the Directlink decision:

> The maximum allowed revenue (MAR) for Directlink does not include any allowance for capital works as none has been proposed by DJV. To the extent, however, that DJV undertakes prudent works to improve its reliability beyond the minimum level it may be appropriate to include the cost of these works into the capital base at the next revenue reset.

However, provided the prudence test is passed, under the *ex-post* approach (as applied in the TransGrid decision, amongst others), the AER would include in the asset base the actual cost of the unforecast capital expenditure that the AER determined to be prudent <u>plus</u> an amount to allow for the return on investment from the time the investment was made.[15] That is, if Murraylink undertakes capital expenditure that is prudent, the amount that is added to the RAB at the commencement of the next regulatory period is the cost of the relevant project, plus the 'return on assets' that was not earned during the current regulatory period.

5.3 Efficiency gain (or loss) carry forward mechanism

It would have been a reasonable expectation at the time of the Murraylink decision to expect that the AER will apply a glide path to facilitate the sharing of efficiency gains as described in

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[11] AER 2005, *Compendium of Electricity Transmission Regulatory Guidelines,, Statement of Regulatory Principles*, August, p. 5.

[12] ACCC 2004, *Decision, Statement of Principles for the Regulation of Electricity Transmission Revenues* (**Statement of Regulatory Principles or SRP**), 8 December.

[13] AER 2005, *Compendium of Electricity Transmission Regulatory Guidelines, Statement of Regulatory Principles*, August.

[14] ACCC 2005, *Decision: NSW and ACT Transmission Network Revenue Cap TransGrid 2004-05 to 2008-09*, 27 April, pp. 70-2.

[15] For the application to the TransGrid matter, see: ACCC 2005, *Decision: NSW and ACT Transmission Network Revenue Cap TransGrid 2004-05 to 2008-09*, 27 April, p. 87.

the ACCC's DRP, which applied when the Murraylink decision was made. The AER has confirmed this[16]:

> the approach outlined in chapter 6 of this SRP in relation to opex would only apply for future revenue cap decisions. The treatment of past opex for the purpose of the next revenue cap reset for that TNSP would be guided by chapter 7 of the DRP.

The approach in chapter 7 of the DRP involves the following treatment of opex efficiency gains (the extent to which actual opex expenditure might be less that the opex allowed for in the revenue path):

- for the current regulatory period, the opex allowance for Murraylink will remain as determined in the Murraylink decision, and this allows APA to retain any efficiency gains during the current period; and
- when setting the opex allowance for the next regulatory period, the AER will implement a straight-line glide path to enable the efficiency gains that were achieved in the first regulatory period, and that continue to retained by APA, to be reduced at a rate of 20 per cent per year over the second regulatory period.

5.4 Depreciation

For the next Murraylink revenue path determination, it will be open for APA to argue for a change to the depreciation regime going forward (i.e. changing the profile of the recovery of capital in the subsequent and future regulatory periods).

It might have been a reasonable expectation at the time of the Murraylink decision to expect that the AER will continue to apply the same depreciation profile determined by the ACCC in the original Murraylink decision, rather than one that reflects the actual Murraylink assets and their design lives when updating the RAB for Murraylink. However, this has yet to be considered by the AER.

5.5 Tax depreciation allowance

And it would have been a reasonable expectation at the time of the Murraylink decision to expect that derivation of tax depreciation allowances will continue to be based upon Murraylink's regulatory asset value rather than its sale value, reflecting the ACCC/AER's standard approach as reflected in its decisions on all of the regulated entities that have been traded in recent years.

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16 AER 2005, *Compendium of Electricity Transmission Regulatory Guidelines,*, *Statement of Regulatory Principles*, August, p. 5.

Attachment 1

A typical revenue path decision

A typical revenue path decision[17] not including Murraylink:

1. MAR_1 = the maximum allowed revenue for year 1

2. X = a percentage that determines the rate by which the base annual revenue falls in real terms, determined by the ACCC in accordance with the building blocks revenue requirement

3. The revenue formula for the maximum allowed revenue in year t:

$$MAR_t = AR_t + (AR_{t-1} + AR_{t-2}) \times 0.5 \times S_{ct} + P_t$$

for $t = 2, 3 \ldots 10$

where:

AR_t = $AR_{t-1} \times (1 + \Delta CPI) \times (1 - X)$

ΔCPI = is the annual percentage change in the All Groups Consumer Price Index (Average of the Eight State Capitals) published by the Australian Bureau of Statistics from March in year t-2 to March in year t-1

S_{ct} = the service incentive adjustment factor determined in accordance with a performance incentive scheme

P_t = any pass through amount/s the AER has determined for year t in accordance with the approved pass through rules

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[17] For example that described in the Directlink decision, p. 29-30.

Attachment 2

Murraylink pass through rules

This set of pass through rules has been prepared to reflect MTC's proposed rule, the ACCC's Murraylink decision, the recent establishment of the AEMC and the AER, and APA's purchase of Murraylink.

1. REGULATED PASS THROUGH

1.1 Rules form part of revenue cap

These Pass Through Rules form part of the revenue cap set by the ACCC to apply to Murraylink Transmission Company for the regulatory control period commencing on 9 October 2003. Any Pass Through Amount approved under these Pass Through Rules forms part of the revenue cap.

1.2 Pass Through Event

Each of the following is a Pass Through Event:

(a) a Change in Taxes Event;

(b) a Service Standards Event;

(c) a Terrorism Event; and

(d) an Insurance Event.

1.3 Entitlement to pass through

If a Pass Through Event occurs, APA is entitled or may be required to amend the revenue cap to pass through the financial effect of the Pass Through Event in accordance with the procedures set out in these Pass Through Rules.

1.4 Form of Pass Through Amount

A Pass Through Amount will reasonably reflect the factors in clause 3.4 and be expressed as an increase or decrease in the amount of the revenue cap (with its Relevant Coordinating Network Service Providers to determine the corresponding change in transmission charges in accordance with the National Electricity Rules).

2. ANNUAL INSURANCE INFORMATION

2.1 APA to provide annual insurance information

APA will provide to the AER a copy of insurance premium invoices at least 50 business days before the start of each financial year.

3. PROCEDURE

3.1 Initiation of pass through

(a) If AER believes APA is or will be entitled or required to pass through the financial effect of a Pass Through Event, it may instruct APA to give a Notice of Proposed Pass Through to the AER in relation to a Pass Through Event specified by the AER.

(b) If the AER instructs APA to give a Notice of Proposed Pass Through to the AER in relation to a Pass Through Event specified by the AER, APA will do so in accordance with clause 3.2.

(c) If APA believes it is or will be entitled or required to pass through the financial effect of a Pass Through Event, then it may give a Notice of Proposed Pass Through to the AER in accordance with clause 3.2.

3.2 Notice of Proposed Pass Through

A Notice of Proposed Pass Through will include:

(a) details and documentary evidence of the relevant Pass Through Event;

(b) the date on which the relevant Pass Through Event took effect or will take effect;

(c) the estimated financial effects of the Pass Through Event on the provision of revenue capped transmission services; and

(d) the Pass Through Amount proposed by APA in respect of the relevant Pass Through Event.

3.3 Determination by the AER

(a) The AER will, within the Assessment Period, determine whether the Pass Through Event specified in the Notice of Proposed Pass Through did occur (or will occur).

(b) If the AER determines that the Pass Through Event did occur (or will occur), the AER will determine:

   (i) the Pass Through Amount in respect of the relevant Pass Through Event; and

   (ii) the date from, and period over which, the Pass Through Amount may be applied, and notify APA in writing of the AER's decision.

(c) If the AER does not give a notice to APA under clause 3.3(b)(ii) within the Assessment Period, then the AER is taken to have notified APA of its determination that:

   (i) the relevant Pass Through Event has occurred (or will occur); and

   (ii) the Pass Through Amount and form of the Pass Through Amount are as specified in the Notice of Proposed Pass Through given by APA under clause 3.2.

3.4 Relevant Factors

In making a determination under clause 3.3, the AER must seek to ensure that the financial effect on APA associated with the Pass Through Event concerned is economically neutral taking into account:

(a) the relative amounts of revenue capped transmission services provided by APA;

(b) the time cost of money for the period over which the Pass Through Amount is to be applied;

(c) the financial effect on APA associated with the provision of revenue capped transmission services attributable to the Pass Through Event and the time at which the financial effect took place or will take place;

(d) in relation to a Change in Taxes Event:

(i) the amount of any increase or reduction in another tax, rate, duty, charge, levy or other like or analogous impost intended to offset in whole or in part the relevant Change in Tax Event and the manner in which and the period of over which that increase or reduction occurs; and

(ii) the amount included in the operating expenses or other cost inputs of APA's revenue cap;

(e) in relation to a Terrorism Event, any loss, damage, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with:

(i) the Terrorism Event; or

(ii) any action taken in controlling, preventing, suppressing or in any way relating to the Terrorism Event;

(f) in relation to an Insurance Event:

(i) the amount of any loss, damage, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with the Insurance Event and including without limitation:

(A) the cost of any material increase or decrease in premium paid or payable by APA beyond that provided for in APA's revenue cap;

(B) the cost of any material increase or decrease in deductible paid or payable by APA beyond that provided for in APA's revenue cap; and

(C) if an Insurance Event occurs and APA either does not continue the relevant Insurance or continues the Insurance on different terms, losses resulting from any uninsured event or partially uninsured event where that event would have been insured or fully insured by Insurance at the date of the Determination, and

(ii) the economic consequences for APA of a decision to Self Insure

(g) in relation to a Service Standards Event, the financial effect on APA associated with any increased or decreased costs or risks (including in the nature, scope or asymmetry of risks) resulting from the Service Standards Event including, where relevant, an appropriate self insurance allowance relating to the increased risks.

3.5 Application of Pass Through Amount

Within 10 business days of APA receiving or taking to have received a notice under clause 3.3 determining a Pass Through Amount, APA will notify its Relevant Coordinating Network Service Providers of:

(a) the Pass Through Amount; and

(b) the date from and period over which the Pass Through Amount will apply,

4. INFORMATION DISCLOSURE

4.1 Non-confidential information

Unless designated by APA as confidential, the AER may disclose publicly information provided to it by APA under clauses 2.1 and 3.2 of these Pass Through Rules.

4.2 Confidential information

If APA designates as confidential any information provided to the AER under clauses 2.1 and 3.2 of these Pass Through Rules, the AER will not disclose publicly that information, subject to clause 6.2.6 of the National Electricity Rules.

5. DEFINITIONS

The terms in these Pass Through Rules have the same meaning as in Chapter 10 of the National Electricity Rules.

5.1 Additional Definitions

ACCC means the Australian Competition and Consumer Commission.

AER means the Australian Energy Regulator.

AEMC means Australian Energy Market Commission.

Applicable Law means any legislation, delegated legislation (including regulations), rules, codes, licences or guidelines relating to the provision of one or more revenue capped transmission service, and includes the National Electricity Rules and the National Electricity Law.

APA means Australian Pipeline Trust.

Assessment Period means 40 business days from the date the AER receives from APA a Notice of Proposed Pass Through or a period not longer than 80 business day determined by the AER at its discretion.

Authority means any government or regulatory department, body, instrumentality, minister, agency or other authority or any body which is the successor to the administrative responsibilities to that department, body, instrumentality, minister agency or authority, and includes the Essential Services Commission of Victoria, the Essential Services Commission of South Australia, NEMMCO, AEMC and the AER.

Change in Taxes Event means:

(a) a change in the way or rate at which a Relevant Tax is calculated (including a change in the application or official interpretation of Relevant Tax);

(b) the removal of a Relevant Tax or imposition of a new Relevant Tax,

to the extent that the change, removal or imposition:

(c) occurs after the date of the Determination; and

(d) results in a change in the amount APA is required to pay or is taken to pay (whether directly, under any contract or as part of the operating expenses or other cost inputs of APA's revenue cap) by way of Relevant Taxes.

Determination means the determination of the ACCC setting the revenue cap for APA in relation to the regulatory control period commencing on 9 October 2003.

Insurance means insurance whether under a policy or a cover note or other similar arrangement:

(a) for risks of the sort for which APA was covered at the date of the Determination;

(b) for amounts not less than amounts underwritten in favour of APA at the date of the Determination; and

(c) on terms, including without limitation terms specifying deductibles payable and any applicable exclusions, no less favourable to APA than the terms in place at the date of the Determination.

Insurance Event means where one or more of the following circumstances occurs:

(a) where Insurance in respect of any risk becomes unavailable to APA;

(b) where Insurance in respect of any risk becomes unavailable to APA at reasonable commercial rates;

(c) where Insurance in respect of any risk becomes unavailable to APA on terms which are at least as favourable to APA as those generally available at the date of the Determination;

(d) where the cost of Insurance (including, without limitation, premiums and deductibles) in respect of any risk becomes materially higher or lower than the cost of Insurance at the date of the Determination;

(e) where an insurance benefit payment to APA under its Insurance in respect of any risk is reduced by a deductible amount; or

(f) where an insurance benefit payable to APA under its Insurance in respect of any risk is not paid to APA due to the business failure of an insurer.

NEMMCO means National Electricity Market Management Company Limited (ACN 071 010 327).

Notice of Proposed Pass Through means a notice described in clause 3.2.

Pass Through Amount means a variation to APA's revenue cap as a result of a Pass Through Event determined in accordance with these Pass Through Rules.

Relevant Coordinating Network Service Provider means VENCorp for the Victorian region and ElectraNet SA for the South Australian region.

Relevant Tax means any tax, rate, duty, charge, levy or other like or analogous impost that is:

(a) paid, to be paid, or taken to be paid by APA in connection with the provision of transmission services, or:

(b) included in the operating expenses or other cost inputs of APA's revenue cap;

but excludes

(c) income tax (or State equivalent tax) or capital gains tax;

(d) penalties and interest for late payment relating to any tax, rate duty, change, levy or other like or analogous impost;

(e) fees and charges paid or payable in respect of a Service Standards event;

(f) stamp duty, financial institutions duty, bank accounts debits tax or similar taxes or duties;

(g) any tax, rate, duty, charge, levy or other like or analogous impost that replaces the taxes or charges referred to in (c) to (f).

Self Insure means where APA elects following the occurrence of an Insurance Event to self insure for all or part of a risk of the sort for which APA previously maintained Insurance.

Service Standards Event means a decision made by the AER or any other Authority or any introduction of or amendment to an Applicable Law after the date of the Determination that:

(a) has the effect of:

   (i) imposing or varying minimum standards on APA relating to revenue capped transmission services that are different to the minimum standards applicable to APA in respect of revenue capped transmission services at the date of the Determination;

   (ii) altering the nature or scope of services that comprise the revenue capped transmission services;

   (iii) substantially varying the manner in which APA is required to undertake any activity forming part of revenue capped transmission services from date of the Determination; or

   (iv) increasing or reducing APA's risk in providing the revenue capped transmission services, and

(b) results in APA incurring (or being likely to incur) materially higher or lower costs in providing revenue capped transmission services than it would have incurred but for that event.

Terrorism Event means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

VENCorp means The Victorian Energy Networks Corporation.

5.2 References to certain general terms

Unless the contrary intention appears, a reference in these Rules to:

(a) **(variations or replacement)** a document (including these Rules) includes any variation or replacement of it;

(b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to these Rules;

(c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(d) **(singular includes plural)** the singular includes the plural and vice versa;

(e) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, syndicate, an unincorporated body or association, or any Authority;

(f) **(successors)** a particular person includes a reference to the person's successors, substitutes (including persons taking by novation) and assigns;

(g) **(meaning not limited)** the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

(h) **(reference to anything)** anything (including any amount) is a reference to the whole and each part of it.

5.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of these Rules.

Attachment 3

Murraylink's performance incentive scheme

This performance incentive scheme for Murraylink reflects the ACCC's Murraylink decision, the ACCC/AER's Service Standard Guidelines, and subsequent corrections to tables in the decision..

1. DEFINITION OF CIRCUIT AVAILABILITY

The ACCC/AER Service Standard Guidelines and Murraylink decision (clarified by the Directlink decision) define circuit availability as follows:

Table A3.1

DEFINITION OF CIRCUIT AVAILABILITY

Sub-measures	Circuit availability (planned) Circuit availability (forced peak) Circuit availability (forced off-peak)
Unit of Measure	Percentage of total possible hours available
Definition	Forced outage event means the urgent and unplanned reduction in the real power transfer capability of Murraylink that occurs as a necessary consequence of the actual or imminent occurrence of an event that poses, or has the potential to pose, an immediate threat to the safety of persons, hazard to any equipment or property or a threat to power system security. Scheduled outage event means the actual planned reduction in the real power transfer capability of Murraylink that does not occur as a result of a forced outage event. Peak time is from 7.00 am to 10.00 pm weekdays (excluding public holidays in Victoria or South Australia). Off–peak is all other times.
Source of data	Murraylink outage register and disturbance and outage report
Formula	$100\% - \frac{\text{Hours of total capacity unavailable}}{\text{Total possible no. of defined circuit hours}}$
Exclusions	Exclude unregulated transmission assets. Exclude from 'circuit unavailability' any outages shown to be caused by a fault or other event on a 'third party system' e.g. intertrip signal, generator outage, customer installation (Murraylink owner to provide list) Excluded force majeure events (defined below)
Inclusions	'Circuits' includes overhead lines, underground cables, power transformers, phase shifting transformers, static VAr compensators, capacitor banks, and any other primary transmission equipment essential for the successful operation of the transmission system. Circuit 'unavailability' to include outages from all causes including planned, forced and emergency events, including extreme events.

Force majeure events	The following definition provides guidance of what the AER may consider a force majeure event, rather than specifically prescribe every event that may possibly occur. For the purpose of applying the service standards performance-incentive scheme, 'force majeure events' are any events, acts or circumstances or combination of events, acts and circumstances which (despite the observance of good electricity industry practice) are beyond the reasonable control of the party affected by any such event, which may include, without limitation, the following: • fire, lightning, explosion, flood, earthquake, storm, cyclone, action of the elements, riots, civil commotion, malicious damage, natural disaster, sabotage, act of a public enemy, act of God, war (declared or undeclared), blockage, revolution, radioactive contamination, toxic or dangerous chemical contamination or force of nature • action or inaction by a court, government agency (including denial, refusal or failure to grant any authorisation, despite timely best endeavour to obtain same) strikes, lockouts, industrial and/or labour disputes and/or difficulties, work bans, blockades or picketing • acts or omissions (other than a failure to pay money) of a party other than the TNSP which party either is connected to or uses the high voltage grid or is directly connected to or uses a system for the supply of electricity which in turn is connected to the high voltage grid where those acts or omissions affect the ability of the TNSP to perform its obligations under the service standard by virtue of that direct or indirect connection to or use of the high voltage grid.

Source: ACCC/AER Service Standard Guidelines, p. 4, Murraylink decision p. 205, and Directlink decision, p. 37-8.

3. PERFORMANCE TARGETS

Murraylink's performance targets are as follows:

Table A3.2

PERFORMANCE TARGETS

	Performance for max penalty	Target performance	Performance for max reward	Weight
Circuit availability (planned)	99.04%	99.17%	99.38%	40%
Circuit availability (forced peak)	98.90%	99.48%	100.00%	40%
Circuit availability (forced off-peak)	98.84%	99.34%	99.94%	20%

Source: Murraylink decision, p. 178.

3. S-FACTOR EQUATIONS

These targets are used as the basis of the ACCC's S-factor equations as below:

Table .1

S-FACTOR FOR PLANNED CIRCUIT AVAILABILITY (S_1)

Planned availability	Formula for S_1
Greater than 99.38%	0.0040
Less than 99.38% and greater than 99.17%	1.90476 x Planned availability – 1.88895
99.17%	0.0000
Less than 99.17% and greater than 99.04%	3.07692 x Planned availability – 3.05138
Less than 99.04%	-0.0040

Table .2

S-FACTOR FOR FORCED PEAK CIRCUIT AVAILABILITY (S_2)

Forced peak availability	Formula for S_2
Greater than 100.00%	0.0040
Less than 100.00% and greater than 99.48%	0.76923 x Forced peak availability – 0.76523
99.48%	0.0000
Less than 99.48% and greater than 98.90%	0.68965 x Forced peak availability – 0.68607
Less than 98.90%	-0.00400

Table .3

S-FACTOR FOR FORCED OFF PEAK CIRCUIT AVAILABILITY (S_3)

Forced off-peak availability	Formula for S_3
Greater than 99.94%	0.0020
Less than 99.94% and greater than 99.34%	0.33333 x Forced off-peak availability – 0.33113
99.34%	0.0000
Less than 99.34% and greater than 98.84%	0.40000 x Forced off-peak availability – 0.39736
Less than 98.84%	-0.0020

4. METHODOLOGY CALCULATION OF PENALTIES AND REWARD

The S-factor for a given year *t*, $S_{ct} \quad = \quad S_1 + S_2 + S_3$

5. INFORMATION REQUIREMENTS

The AER's Service Standard Guidelines set out the information requirements for the administration of Murraylink's performance incentive scheme and its intention to issue an annual performance statement.