

DRAFT WATER CHARGE (INFRASTRUCTURE) RULES 2009

I, _____ the Minister for Climate Change and Water, having regard to advice given by the Australian Competition and Consumer Commission, make the following Rules under section 92 of the *Water Act 2007*.

Dated: _____

Part 1 Preliminary

1 Name of Rules

These Rules are the *Water Charge (Infrastructure) Rules 2009*.

2 Commencement

These Rules commence on the day after these Rules are registered.

3 Definitions

(1) In these Rules, unless the contrary intention appears:

application period, in relation to a Part 7 operator, means the period commencing—

- (a) on the commencement date; or
- (b) on the day on which the operator becomes a Part 7 operator—
whichever is the later, and ending—
- (c) 3 months after that date or day, as the case requires; or
- (d) if the operator makes an application to the ACCC under rule 46 during that period of 3 months— when the ACCC approves or determines the regulated charges set out in the application.

business day does not include a Saturday or a Sunday and—

- (a) in relation to an obligation of an infrastructure operator, does not include a day that is a public holiday in the place where the operator's principal place of business is situated;
- (b) in relation to the ACCC, does not include a day that is a public holiday in the Australian Capital Territory.

civil penalty means a civil penalty within the meaning of Division 4 of Part 8 of the Act.

Note: Subsection 92(9) of the Act provides that the civil penalty for a contravention of a provision of the water charge rules is 200 penalty units.

Subsection 147(3) of the Act provides that the pecuniary penalty for a contravention of a civil penalty provision must not exceed:

- (a) if the wrongdoer is an individual—the relevant amount specified for the civil penalty provision; or
- (b) otherwise—an amount equal to 5 times the amount of the relevant amount specified for the civil penalty provision.

commencement date means the day after these Rules are registered.

contract includes agreement.

customer, in relation to an infrastructure operator, means a person who is entitled to infrastructure services, as the holder of a water access right, an irrigation right or a water delivery right, or who seeks infrastructure services, from the operator.

discount includes bonus, rebate and allowance.

infrastructure service means access, or a service provided in relation to access, to water service infrastructure and includes the storage, delivery, drainage and taking of water.

initial period, in relation to a Part 6 operator, means the period in respect of which a decision or determination by an agency of a State, under a law of the State relating to infrastructure services, has effect in relation to fees or charges of the operator, being a decision or determination that is in force immediately before the commencement date, or on or after the commencement date but on or before 1 July 2010.

levy, in relation to a regulated charge, includes impose or demand or cause to be imposed or demanded.

managed water resources means all water resources that are—

- (a) Basin water resources;
- (b) water resources (not being Basin water resources) in a referring State, or part of a referring State, if—
 - (i) a law of the referring State provides that section 100B of the Act applies to the State, or that part of the State; and
 - (ii) the regulations under the Act provide that section 100B of the Act applies to the State, or that part of the State;
- (c) water resources (not being Basin water resources) in the Northern Territory, or a part of the Northern Territory, if—

- (i) a law of the Northern Territory provides that section 100B of the Act applies to the Territory, or that part of the Territory; and
- (ii) the regulations provide that section 100B of the Act applies to the Northern Territory, or that part of the Northern Territory—

but does not include water resources that are prescribed for the purposes of paragraph 100B(3)(a) of the Act.

member owned operator has the meaning given by rule 5.

network service plan means a plan prepared and completed in accordance with Part 5.

Part 5 operator has the meaning given by rule 16.

Part 6 operator has the meaning given by rule 23.

Part 7 operator has the meaning given by rule 45.

regulatory asset base, in relation to a Part 6 operator, means the value, as determined in accordance with Schedule 2, for the purposes of the relevant regulatory period, of the operator's assets that are used by the operator to provide infrastructure services for which regulated charges apply.

regulated charge means a charge of a kind referred to in paragraph 91(1)(a), (b) or (d) of the Act but does not include—

- (a) a fee to which rule 13 of the *Water Market Rules 2009* applies; or
- (b) a fee to which rule 6 or 8 of the *Water Charge (Termination Fees) Rules 2009* applies.

regulatory period, in relation to a Part 6 operator, means—

- (a) the period of 3 years commencing immediately after the initial period; or
- (b) the period of 4 years commencing immediately after the end of the period referred to in paragraph (a) and each subsequent period of 4 years; or
- (c) if the ACCC has approved another period under rule 24, that other period—

as the case requires.

related customer, in relation to an infrastructure operator, has the meaning given by rule 6.

schedule of charges has the meaning given by rule 4.

surcharge includes penalty.

the Act means the *Water Act 2007*.

transitional period means the period of 3 months after the commencement date.

(2) In these Rules:

GL is an acronym for gigalitre.

4 Schedule of charges

For the purposes of these Rules, a *schedule of charges* is a document that—

- (a) is issued by or on behalf of an infrastructure operator that sets out all regulated charges that the operator may levy in respect of an infrastructure service provided by the operator; and
- (b) includes details of the regulated charges sufficient to enable a customer of the infrastructure operator to determine the customer's liability under the regulated charges in respect of a period during which the customer receives, or is entitled to receive, infrastructure services from the infrastructure operator; and
- (c) if a discount or surcharge applies to a regulated charge, includes details of the discount or surcharge and the circumstances in which it is applicable; and
- (d) if the schedule is issued by an irrigation infrastructure operator and sets out regulated charges that include fees or charges of a kind referred to in paragraph 91(1)(a) of the Act, includes a statement setting out the process for determining the amount of those regulated charges and showing separately, as applicable, the components of those charges attributable to—
 - (i) the storage of water in connection with infrastructure services provided through the irrigation network;
 - (ii) bulk water charges imposed on the operator by another infrastructure operator;
 - (iii) connecting or disconnecting a customer to water service infrastructure;
 - (iv) the holding of, or management of, a water access entitlement by the irrigation infrastructure operator.

5 Member owned operator

An infrastructure operator is a *member owned operator* for the purpose of these Rules if the total volume of water to which its customers are entitled in relation to a water access entitlement held by the operator is more than the total volume of water to which its customers are entitled under water access entitlements not held by the operator.

6 Related customer

In these Rules, a customer of an infrastructure operator is a *related customer* in relation to that infrastructure operator if—

- (a) the customer is a beneficiary of a trust of which the infrastructure operator is a trustee; or
- (b) where the infrastructure operator is a company within the meaning of the *Corporations Act 2001*, the customer is—
 - (i) a related body corporate within the meaning of that Act in relation to the infrastructure operator; or
 - (ii) a member of the company; or
- (c) where the infrastructure operator is a body corporate incorporated under a law of a State or of the Commonwealth (other than the *Corporations Act 2001*), the customer is a member of the body corporate; or
- (d) the customer has any other legal or equitable interest in the infrastructure operator.

Part 2 Conditions applying to regulated charges and exemptions relating to certain contracts

7 Conditions applying to regulated charges

Except as expressly authorised by these Rules, an infrastructure operator must not, after the transitional period, levy a regulated charge relating to an infrastructure service provided by the operator to a customer unless the operator has, in accordance with these Rules, given a copy of its current schedule of charges—

- (a) in the case of a customer who was a customer before the end of the transitional period, at least 10 business days before the service is provided; or
- (b) in the case of a customer who becomes a customer after the transitional period, before the service is provided—

and, except to the extent that an exemption under rule 9 applies, the regulated charge for that service is the charge specified for that service in that schedule of charges.

Civil penalty: 200 penalty units.

8 Additional conditions applying to Part 5, 6 and 7 operators

- (1) Except as expressly authorised by these Rules, a Part 5 operator must not, on or after the relevant date within the meaning of rule 17, levy a regulated charge relating to an infrastructure service provided by the operator to a customer, unless the operator has provided to its customers the relevant network service plan and information statement in accordance with Part 5.

- (2) Except as expressly authorised by these Rules, but subject to rules 33, 39 and Division 4 of Part 6, a Part 6 operator must not, after the initial period, levy a regulated charge relating to an infrastructure service provided by the operator to a customer unless—
- (a) the operator's regulated charges have been approved or determined by the ACCC in accordance with Division 2 of Part 6 and (except in the case of the first year of a regulatory period) Division 3 of Part 6; and
 - (b) the regulated charge for that infrastructure service does not exceed the maximum charge for that infrastructure service approved or determined by the ACCC in accordance with Division 2 or 3 of Part 6, as the case requires.
- (3) Except as expressly authorised by these Rules, a Part 7 operator must not, after the application period, levy a regulated charge relating to an infrastructure service provided by the operator to a customer unless—
- (a) the operator's regulated charges have been approved or determined by the ACCC in accordance with Part 7; and
 - (b) the regulated charge for that infrastructure service does not exceed the maximum charge for that infrastructure service approved or determined by the ACCC in accordance with Part 7.

Civil penalty: 200 penalty units

9 Exemption relating to regulated charges under certain contracts

- (1) Where an infrastructure operator and a customer —
- (a) entered into a contract in writing before the commencement date for the provision of infrastructure services to the customer at agreed regulated charges specified in the contract; or
 - (b) propose to enter into such a contract on or after the commencement date –
- and the operator and the customer each believe that disclosure of the details of the regulated charges for those services would have a material and adverse effect on the operation of the business of the infrastructure operator and the business of the customer, the operator and the customer jointly may apply in writing to the ACCC for an exemption from the requirement under these Rules that the operator include its regulated charges for those services in its schedule of charges.
- (2) An application under subrule (1) must be made—
- (a) if the contract was entered into before the commencement date, within 3 months after the commencement date; or
 - (b) in any other case, before the contract is entered into—

and must include the reasons for the belief referred to subrule (1).

- (3) Before the ACCC makes a decision in relation to an application under this rule, the ACCC may, in writing, request the infrastructure operator and the customer to provide further information relating to the application within a period specified by the ACCC.
- (4) The ACCC must, within 30 business days after receiving an application, grant, or refuse to grant, the exemption.
- (5) In calculating the 30-day period referred to in subrule (4), disregard, if the ACCC has requested further information under subrule (3)—a day during any part of which the request, or any part of the request, remains unfulfilled.
- (6) If the ACCC—
 - (a) is unable to make a decision within the 30-day period referred to in subrule (4) or, if that period is extended or further extended, that period as extended; and
 - (b) within that period, gives written notice to the infrastructure operator and the customer who made the application under subrule (1) explaining why the ACCC has been unable to make the decision within that period—

that period is extended, or further extended, by a period of 10 business days.
- (7) The ACCC must refuse to grant the exemption if it is not satisfied that disclosure of details of regulated charges under a contract would have a material and adverse effect on the operation of the business of the infrastructure operator and the business of the customer.
- (8) The ACCC must give notice in writing of its decision on an application under this rule to each of the applicants and, if it refuses to grant the exemption, must include in the notice the reasons for its refusal.
- (9) If the ACCC has not either granted, or refused to grant, an exemption sought in an application under this rule within the period of 30 business days, or within that period as extended or further extended under subrule (6), after receipt of the application, the exemption is to be taken to have been granted at the expiration of that period.
- (10) If the ACCC grants an exemption under this rule, the ACCC must, subject to rule 55, publish on the ACCC's Internet website a notice to the effect that the exemption has been granted.
- (11) If, under this rule, an exemption is granted, or is to be taken as having been granted, to an infrastructure operator and a customer in respect of a contract—
 - (a) the operator is not required to include the regulated charges under the contract in its schedule of charges; and
 - (b) the ACCC must not include those regulated charges in any matter that it publishes on its Internet site.

Part 3 Restriction of differing regulated charges for same infrastructure service

10 Restriction of certain regulated charges

After the transitional period, a member owned operator must not, in specifying the regulated charges in relation to an infrastructure service of the same class, specify different regulated charges payable for—

- (a) an infrastructure service provided in respect of an irrigation right held against the member owned operator; and
- (b) an infrastructure service provided otherwise than in respect of an irrigation right held against the member owned operator—

if the difference between the amount of the charge referred to in paragraph (b) and the amount of the charge referred to in paragraph (a) is more than the difference between the actual costs necessarily incurred in providing each of those infrastructure services.

Civil penalty: 200 penalty units.

Part 4 Infrastructure operator to provide schedule of charges to customers

11 Infrastructure operators to provide schedule of charges to existing customers and new customers

(1) A person who—

- (a) is an infrastructure operator on the commencement date; or
- (b) becomes an infrastructure operator during the transitional period—

must, before the end of the transitional period, give to each of its customers a copy of its schedule of charges that are to have effect immediately after the end of the transitional period.

(2) An infrastructure operator must give a copy of its current schedule of charges to each person who becomes a customer of the operator after the transitional period.

Note: Rule 7 requires the schedule of charges to be given to customers before an infrastructure service is provided and, in the case of existing customers, at least 10 business days before an infrastructure service is provided.

12 Infrastructure operators to provide schedule of charges when changes occur

(1) When, after the transitional period, an infrastructure operator proposes to change any regulated charges, the operator must give to each of its customers a copy of its schedule of charges, incorporating those changes.

- (2) The infrastructure operator must give the notice under subrule (1) at least 10 business days before the changes take effect.

Civil penalty: 200 penalty units.

Note: Conditions apply under rule 8 to changes made by Part 5, 6 or 7 operators.

13 Infrastructure operators to provide schedule of charges on request

An infrastructure operator who, after the transitional period, receives a request in writing from any person for details of its current regulated charges for infrastructure services provided by the operator to its customers must give the person a copy of its current schedule of charges within 20 business days after receiving the request.

14 Part 5 operators to provide information statements

A Part 5 operator, when giving a copy of its current schedule of charges to each of its customers, must also provide the relevant information statement prepared in accordance with rule 22.

15 Publication of schedule of charges

(1) Where, under subrule 11(1) or 12, an infrastructure operator to whom this rule applies is required to give a copy of its current schedule of charges to its customers, the infrastructure operator must also cause that schedule to be published within the period within which that schedule is required to be provided to customers—

- (a) if the operator has a business Internet site, on a part of that site to which access is unrestricted; or
- (b) in a newspaper circulating generally in the area where the infrastructure operator's water service infrastructure is situated or, if there is no such newspaper, in such newspapers as circulate generally in each part of the area; or

(c) in the *Gazette*.

(2) This rule applies to an infrastructure operator if the sum of the volume of water from managed water resources—

(a) to which the infrastructure operator is entitled under water access entitlements held by the operator; and

(b) to which its customers are entitled under water access entitlements—

is at least 10 GL.

Part 5 Regulated charges of Part 5 operators and network service plans

16 Application of Part

(1) This Part applies to—

- (a) a member owned operator if the sum of the volume of water from managed water resources—
 - (i) to which the member owned operator is entitled under water access entitlements held by the operator; and
 - (ii) to which its customers are entitled under water access entitlements—
 is more than 125 GL; or
 - (b) an infrastructure operator that is not a member owned operator if the sum of the volume of water from managed water resources—
 - (i) to which the infrastructure operator is entitled under water access entitlements held by the operator; and
 - (ii) to which its customers are entitled under water access entitlements—
 is more than 125 GL but not more than 250 GL.
- (2) An infrastructure operator to whom this Part applies is a *Part 5 operator*.

17 Part 5 operators to provide network service plan and information statement

- (1) A Part 5 operator must not, on or after the relevant date, provide to its customers, or publish, regulated charges for infrastructure services relating to the operator's water service infrastructure unless—
- (a) the Part 5 operator has provided to its customers for those infrastructure services a network service plan relating to the water service infrastructure, and an information statement relating to that plan, in accordance with this Part; and
 - (b) the period of 5 years to which the network service plan applies has not expired; and
 - (c) the regulated charges are those shown in the network service plan or, in the case of changes to regulated charges made after the network service plan was provided, those regulated charges as varied, or further varied, as explained in the information statement prepared in accordance with rule 22 that accompanies the schedule of charges as required under rule 14.
- (2) In this rule, *relevant date* means—
- (a) if the Part 5 operator is a Part 5 operator before 1 July 2010—1 July 2011;
 - (b) in any other case, the date that is 24 months after the Part 5 operator became a Part 5 operator.

Civil penalty: 200 penalty units.

18 Consultation before network service plan completed

- (1) A Part 5 operator must, before completing a network service plan relating to its water service infrastructure, provide to the operator's customers for infrastructure services relating to that water service infrastructure, a network consultation paper indicating options and alternatives, as appropriate, for maintaining the water service infrastructure during a 5 year period.
- (2) The network consultation paper referred to in subrule (1) must include at least the following:
 - (a) the proposed date of commencement of the period of 5 years to which the network service plan is to apply, being—
 - (i) if the Part 5 operator was a Part 5 operator on 1 July 2010—a date no later than 1 July 2011; and
 - (ii) in any other case, a date no later than 24 months after the Part 5 operator became a Part 5 operator; and
 - (b) options and alternatives, as appropriate, for the maintenance, improvement, enhancement or expansion of the operator's water service infrastructure and levels of service during the 5 year period, together with estimates of capital and recurrent expenditure proposed in each year of the 5 year period for each option or alternative and, where appropriate, a suggested ranking in priority for implementation; and
 - (c) details of known or anticipated factors that are or may be relevant to the several options and alternatives, such as risks, compliance with requirements under applicable legislation relating to environmental, safety or construction matters and contractual obligations; and
 - (d) anticipated regulated charges during the 5 year period to which the plan relates; and
 - (e) any relevant reports of consultant engineers or other experts identifying maintenance or other requirements of the water service infrastructure or options for meeting such requirements.
- (3) A Part 5 operator, when providing the network consultation paper to customers, must invite the customers to submit comments in writing addressed to the operator, including suggestions for additional options or alternatives, and preferred options and alternatives, within a period specified by the operator, not being less than 2 months after the network consultation paper is provided to the customers.
- (4) A Part 5 operator may, when providing the network consultation paper to customers, or at a later time, invite the customers to attend a meeting with the operator at which comments on the paper may be made, being a meeting of which the operator gives at least 10 business days' notice.

19 Network service plan

- (1) A Part 5 operator must prepare and complete a 5 year plan relating to its water service infrastructure having regard to the outcome of its consultation with its customers in accordance with rule 18 that includes—
 - (a) the date on which it is intended that the 5 year period to which the plan relates begins, being a date—
 - (i) if the Part 5 operator was a Part 5 operator on 1 July 2010— no later than 1 July 2011; and
 - (ii) in any other case, no later than 24 months after the Part 5 operator became a Part 5 operator; and
 - (b) details of the operator's plans for the levels of service it intends to provide for customers in each year of the 5 year period;
 - (c) details of the operator's plans for the maintenance, improvement, enhancement or expansion of the water service infrastructure in each year of the 5 year period; and
 - (d) estimates of capital and recurrent expenditure relating to the water service infrastructure in each year of the 5 year period and estimates of revenue required for that expenditure; and
 - (e) plans for the financing of capital works during each year of the 5 year period; and
 - (f) details of any grants or subsidies that have been or may be received or applied for, together with details of conditions to which grants or subsidies may be subject; and
 - (g) estimates of the regulated charges during each year of the 5 year period stated without an inflation factor but identifying the inflation index published by the Australian Bureau of Statistics that the operator will apply to those estimates during each year of the period.
- (2) A Part 5 operator must give, or cause to be given, a copy of the network service plan, prepared and completed in accordance with this Part—
 - (a) to each person who is a customer when the plan is completed, together with a summary of the consultation under rule 18, a summary of submissions and comments received from customers and an explanation of the decisions made by the operator in completing the plan; and
 - (b) to each person who becomes a customer during the period to which the plan relates.

20 Part 5 operator to give ACCC a copy of the network service plan

- (1) A Part 5 operator must give a copy of a network service plan prepared under rule 19 to the ACCC no later than the date on which the Part 5 operator provides copies of the

plan to its customers in accordance with that rule.

- (2) The ACCC, after receiving a copy of a network service plan under this rule—
 - (a) must submit the plan to a qualified engineer for comment and advice on the prudence and efficiency of the plan; and
 - (b) must give the Part 5 operator a copy of any comment and advice received from the qualified engineer.
- (3) A Part 5 operator—
 - (a) must, within 20 business days after receiving a copy of the qualified engineer's comment or advice, give a copy to each of its customers;
 - (b) must, within 20 business days after receiving a request in writing from a customer for a copy of the qualified engineer's comment or advice received by the operator, give a copy to the customer.
- (4) A Part 5 operator may amend or vary its network service plan to the extent appropriate to give effect to any comment or advice given by the qualified engineer but, for the purposes of rule 21, if the plan has been provided to customers before the operator received the qualified engineer's comment and advice, the 5 year period of the plan commences when the plan was first provided to customers.

21 The 5 year period of a network service plan

The 5 year period of a network service plan provided by an infrastructure operator to its customers under rule 19 is the period that commences on—

- (a) if the plan is provided to customers in accordance with subrule 19(2) at least one month before the date for that commencement specified in the plan, that date; or
- (b) if the plan is not provided at least one month before the date for that commencement specified in the plan, one month after the plan was provided to customers in accordance with subrule 19(2)—

and, in either case, ends—

- (c) immediately before the fifth anniversary of the date of commencement specified in the plan; or
- (d) if the infrastructure operator prepares and completes another network service plan before that anniversary, immediately before the 5 year period of that plan commences; or
- (e) upon the infrastructure operator ceasing to be a Part 5 operator.

22 Part 5 operator to provide an information statement with schedule of charges

After a Part 5 operator has provided its customers with a network service plan prepared and completed in accordance with this Part, the operator, when giving to each of its

customers a copy of its current schedule of charges, must also provide an information statement that includes—

- (a) a statement of the actual revenue received from regulated charges in respect of each completed year of the network service plan; and
- (b) a statement of the anticipated revenue from regulated charges in respect of the current year of the period and each future year of the period; and
- (c) details of, and an explanation of the reasons for, any adjustments made to the regulated charges in respect of that year as estimated in the network service plan, whether on account of unforeseen circumstances and events or changes in estimated costs, financing, grants or subsidies; and
- (d) an explanation of the reasons for different regulated charges determined in accordance with rule 10 in respect of each completed year of the network service plan.

Part 6 ACCC to approve or determine regulated charges of Part 6 operators

Division 1 – General

23 Application of Part

- (1) This Part applies to an infrastructure operator that is not a member owned operator if the sum of the volume of water from managed water resources—
 - (a) to which the infrastructure operator is entitled under water access entitlements held by the operator; and
 - (b) to which its customers are entitled under water access entitlements—is more than 250 GL.
- (2) Where an infrastructure operator becomes an operator to whom subrule (1) applies after the commencement date, this Part applies to the operator as if a reference in this Part or in subrule 8(2) to the initial period were a reference to the period ending on 30 June next occurring not earlier than 15 months after the operator became an operator to whom subrule (1) applies.
- (3) An infrastructure operator to whom subrule (1) applied at the commencement of a regulatory period in respect of which its regulated charges have been approved or determined by the ACCC but to whom subrule (1) ceases to apply during that period, is to be taken, for the purposes of this Part, except rule 25 or 34, to be an operator to whom this Part applies for the remainder of the year of the regulatory period in respect of which its regulated charges have been approved or determined.
- (4) An infrastructure operator to whom this Part applies is a *Part 6 operator*.

24 Approval of application for a different regulatory period

- (1) A Part 6 operator that is also a supplier of urban water services the charges for which are determined by an agency of a State, under a law of the State, in respect of a period other than a period referred to in paragraph (a) or (b) of the definition of regulatory period, may make an application in writing to the ACCC for that other period, or a part of that other period, to be a regulatory period in relation to that operator for the purposes of an application under rule 25.
- (2) The ACCC, having regard to the circumstances, may approve the application.

Division 2 Approval or determination of regulated charges for each year of each regulatory period

25 Application by Part 6 operator to ACCC

- (1) A Part 6 operator that proposes to levy regulated charges after the initial period must apply in writing to the ACCC for approval or determination of its regulated charges under this Division in respect of the first and each subsequent year of each relevant regulatory period.
- (2) An application under subrule (1) must include the information referred to in Schedule 1 in respect of each year of the regulatory period.

26 ACCC may request further information

Before the ACCC makes a decision in relation to the regulated charges of a Part 6 operator that makes an application under this Division, the ACCC may, in writing, request the operator to provide further information relating to the application within a period specified by the ACCC.

27 ACCC must publish application

After receiving an application under this Division, the ACCC must publish on the ACCC's Internet site a notice which includes, subject to Division 1 of Part 8—

- (a) a copy of the application;
- (b) a copy of any further information received in response to a request under rule 26;
- (c) an invitation to interested parties to make submissions to the ACCC in relation to the application before a date specified in the notice.

28 ACCC to consider submissions and publish draft approval or determination

The ACCC, after considering submissions received before the date specified in the notice published under rule 27 in relation to an application under this Division—

- (a) must prepare a draft of an approval or determination of the applicant's regulated charges in respect of the first and each subsequent year of the relevant regulatory period; and
- (b) must publish on its Internet site a notice which, subject to Division 1 of Part 8, includes—

- (i) the draft approval or determination; and
- (ii) the reasons for its decisions; and
- (iii) an invitation to interested parties to make submissions to the ACCC in relation to the draft approval or determination before a date specified in the notice.

29 ACCC to approve or determine the regulated charges

- (1) The ACCC, after considering submissions received before the date specified in the notice published under paragraph 28(b), must, subject to subrule (2), approve, or determine, the regulated charges set out in the application under this Division.
- (2) The ACCC must not approve the regulated charges set out in an application under this Division unless the ACCC is satisfied—
 - (a) that the determination of the applicant's regulatory asset base used to calculate those charges (where relevant) is in accordance with Schedule 2; and
 - (b) that the total forecast revenue used to calculate those charges for each year of the regulatory period recovers the prudent and efficient costs of providing infrastructure services, including costs incurred in complying with regulatory obligations and requirements.
- (3) If the ACCC is not satisfied as to the matters referred to in subrule (2), the ACCC must determine the regulated charges on the basis of the applicant's regulatory asset base determined in accordance with Schedule 2 (where relevant) and so as to be satisfied as to the matters referred to in paragraph 2(b).
- (4) In approving or determining regulated charges under this rule, the ACCC must have regard to whether the regulated charges would contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Act.

30 Period within which ACCC to approve or determine regulated charges

- (1) The ACCC must, within 13 months after receiving an application under this Division from a Part 6 operator, approve or determine the regulated charges set out in the application.
- (2) In calculating the 13-month period referred to in subrule (1), disregard, if the ACCC has requested further information under rule 26—a day during any part of which the request, or any part of the request, remains unfulfilled.
- (3) If the ACCC—
 - (a) is unable to make a decision within the period of 13 months referred to in subrule (1) or, if that period is extended, that period as extended; and
 - (b) within that period, gives written notice to the Part 6 operator who made the application under this Division explaining why the ACCC has been unable to make the decision within that period—

that period is extended, or further extended by a period of 3 months.

- (4) As soon as practicable after the ACCC gives a notice under subrule (3), the ACCC must cause a copy of the notice to be made available on the ACCC's Internet site.

31 ACCC to give notice to Part 6 operator of its approval or determination and publish the decision

- (1) The ACCC must give notice in writing to the Part 6 operator of its approval or determination, as the case requires, under rule 29 of the operator's regulated charges.
- (2) The ACCC must, on or after the day on which it gives notice to the Part 6 operator under subrule (1), cause the notice, and the reasons for its decision, to be made available on the ACCC's Internet site.

32 Effect of approval or determination under this Division

An approval or determination by the ACCC of regulated charges under this Division has effect as an approval or determination of regulated charges—

- (a) in respect of the first year of the regulatory period to which the application relates; and
- (b) in respect of each subsequent year of the regulatory period, subject to review and further approval or determination in accordance with Division 3.

33 Transitional provision for temporary continuation of existing charges

- (1) Except as provided in subrule (2) or (3), a Part 6 operator must not levy regulated charges in respect of a regulatory period if the ACCC has not, under this Division, approved or determined the regulated charges in respect of the first and each subsequent year of that regulatory period before the end of the initial period, or a subsequent regulatory period, as the case requires.
- (2) If the ACCC has not approved or determined the regulated charges of a Part 6 operator in respect of the first and each subsequent year of a regulatory period before the end of the initial period, the operator may levy fees and charges not exceeding its fees and charges as in force immediately before the end of the initial period until, and only until—
 - (a) the expiration of the specified period; or
 - (b) the ACCC approves or determines the regulated charges in respect of the first and each subsequent year of the regulatory period in accordance with this Division—whichever first occurs.
- (3) If the ACCC has not approved or determined the regulated charges of a Part 6 operator in respect of the first and each subsequent year of a regulatory period before the end of the preceding regulatory period, the operator may levy fees and charges in respect of the first year of the regulatory period that do not exceed the regulated charges for the last year of the preceding regulatory period approved or determined

under Division 3 (or, if varied under Division 4, as so varied) until, and only until—

- (a) the expiration of the specified period; or
- (b) the ACCC approves or determines the regulated charges in accordance with this Division—

whichever first occurs.

(4) In this rule, *specified period* means—

- (a) the period ending 6 months after the end of the initial period or regulatory period, as the case requires; or
- (b) if the period of 13 months referred to in subrule 30(1) is extended, or further extended, the period ending when that period, as extended or further extended, ends—

whichever is the later.

Division 3 Annual review of regulated charges for second or subsequent year of a regulatory period

34 Application by Part 6 operator to ACCC for annual review of regulated charges

(1) A Part 6 operator whose regulated charges in respect of a regulatory period have been approved or determined under Division 2 and, if varied under Division 4, as so varied, must apply to the ACCC for approval or determination of its regulated charges in respect of the second year and each subsequent year of the regulatory period, as reviewed in accordance with this Division.

(2) An application by a Part 6 operator under subrule (1) must include—

- (a) the operator's forecast of demand for, or consumption of, infrastructure services for the year to which the application relates; and
- (b) the operator's estimate of demand or consumption during the current year; and
- (c) information about how the forecast and estimate were calculated; and
- (d) proposed regulated charges in respect of the year to which the application relates.

35 ACCC may request further information

Before the ACCC makes a decision in relation to the regulated charges of a Part 6 operator who makes an application under this Division, the ACCC may, in writing, request the operator to provide further information relating to the application within a period specified by the ACCC.

36 ACCC to publish application and draft approval or determination

After receiving an application under rule 34, the ACCC—

- (a) must prepare a draft of an approval or determination of the applicant's regulated charges in respect of the year to which the application relates; and
- (b) must publish on its Internet site a notice which, subject to Division 1 of Part 8, includes—
 - (i) a copy of the application; and
 - (ii) a copy of any further information received in response to a request under rule 35; and
 - (iii) the draft approval or determination; and
 - (iv) the reasons for its decisions; and
 - (v) an invitation to interested parties to make submissions to the ACCC in relation to the draft approval or determination before a date specified in the notice.

37 ACCC to approve or determine regulated charges

- (1) Subject to subrule (2), the ACCC must, within 3 months after receiving an application under this Division from a Part 6 operator, and after considering any submissions received before the date specified in the notice under paragraph 36(b), approve or determine the regulated charges in respect of the year to which the application relates.
- (2) The ACCC must not approve regulated charges under subrule (1) other than the regulated charges approved or determined under Division 2 and, if varied under Division 4, as so varied, in respect of the year to which the application relates except to the extent, if any, that it is reasonably necessary to make variations to those charges having regard to—
 - (a) the changes in the demand or consumption forecasts set out in the application under rule 34; and
 - (b) price stability.
- (3) If the ACCC is not satisfied as to the matters referred to in subrule (2), the ACCC must determine the regulated charges with such changes as enable the ACCC to be satisfied as to those matters.
- (4) In calculating the 3-month period referred to in subrule (1), disregard, if the ACCC has requested further information under rule 35 – a day during any part of which the request, or any part of the request, remains unfulfilled.
- (5) If the ACCC—
 - (a) is unable to make a decision within the period of 3 months referred to in subrule (1) or, if that period is extended, that period as extended; and
 - (b) within that period, gives written notice to the Part 6 operator who made the application under subrule (1) explaining why the ACCC has been unable to make

the decision within that period—

that period is extended, or further extended, by a period of one month.

- (6) As soon as practicable after the ACCC gives a notice under paragraph (5)(b), the ACCC must cause a copy of the notice to be made available on the ACCC's Internet site.

38 Notice of the decision and effect of approval or determination under this Division

- (1) The ACCC must give notice in writing to the Part 6 operator of its approval or determination, as the case requires, under rule 37 of the operator's regulated charges under this Division.
- (2) The ACCC must, on or after the day on which it gives notice to the Part 6 operator under subrule (1), cause the notice, and the reasons for its decisions, to be made available on the ACCC's Internet site.
- (3) An approval or determination of an application under this Division has effect as an approval or determination of the regulated charges in respect of the year of a regulatory period in respect of which the application was made.

39 Transitional provision for temporary continuation of existing regulated charges

- (1) Except as provided in subrule (2), a Part 6 operator must not levy regulated charges in respect of the second or a subsequent year of a regulatory period if the ACCC has not, under this Division, approved or determined the regulated charges of the operator in respect of that year.
- (2) If the ACCC has not, under this Division, approved or determined the regulated charges of a Part 6 operator in respect of the second or a subsequent year of a regulatory period before the beginning of that year, the operator may levy regulated charges in respect of that year that do not exceed the regulated charges for that year approved or determined under Division 2 (or, if varied under Division 4, as so varied) until, and only until—
- (a) the expiration of the specified period; or
- (b) the ACCC approves or determines the regulated charges in accordance with this Division—
- whichever first occurs.
- (3) In this rule, *specified period* means—
- (a) the period ending 3 months after the end of the preceding year of the regulatory period; or
- (b) if the period of 3 months referred to in subrule 37(1) is extended, or further extended, the period ending when that period, as extended or further extended, ends—

whichever is the later.

Division 4 – Variation of approval or determination

40 ACCC may vary approval or determination in certain circumstances

- (1) A Part 6 operator may apply in writing to the ACCC for a variation of the approval or determination under Division 2 or 3 (or, if previously varied under Division 4, as so varied) of its regulated charges in respect of a regulatory period if—
 - (a) an event occurs during the regulatory period that materially and adversely affects the operator's water service infrastructure or otherwise materially and adversely affects the operator's business; and
 - (b) the operator could not reasonably have foreseen the event.
- (2) An application under subrule (1)—
 - (a) must set out details of the event; and
 - (b) must state the Part 6 operator's proposals for rectifying the material and adverse effects of the event; and
 - (c) must state—
 - (i) the total amount that the Part 6 operator anticipates will be required during the remainder of the regulatory period to rectify those material and adverse effects;
 - (ii) whether that amount is likely to exceed 5% of the value of the operator's regulatory asset base as at the beginning of the regulatory period; and
 - (iii) whether it is reasonably likely (in the absence of any reduction of any other capital expenditure) that the total actual expenditure during the regulatory period will exceed the total forecast expenditure for that period; and
 - (d) must demonstrate that the Part 6 operator is not able to reduce its expenditure to avoid the consequences referred to in subparagraphs (c)(i) and (ii) without materially and adversely affecting the reliability and safety of the operator's water service infrastructure or the operator's ability to comply with any relevant regulatory or legislative obligations; and
 - (e) must set out details of the variation of its regulated charges sought by the Part 6 operator.

41 ACCC may request further information

Before the ACCC makes a decision in relation to an application under this Division, the ACCC may, in writing, request the Part 6 operator to provide further information relating to the application within a period specified by the ACCC.

42 ACCC must publish application

After receiving an application under this Division, the ACCC must publish on the ACCC's Internet site a notice which, subject to Division 1 of Part 8, includes—

- (a) a copy of the application;
- (b) a copy of any further information received in response to a request under rule 41.

43 ACCC to decide whether or not to vary its approval or determination

(1) The ACCC must, within 3 months after receiving an application under this Division, decide whether or not to vary its approval or determination of the applicant's regulated charges under Division 2 or 3.

(2) In calculating the 3-month period referred to in subrule (1), disregard, if the ACCC has requested further information under rule 41—a day during any part of which the request, or any part of the request, remains unfulfilled.

(3) If the ACCC—

(a) is unable to make a decision within the period of 3 months or, if that period is extended, or further extended, that period as extended; and

(b) within that period, gives written notice to the Part 6 operator who made the application explaining why the ACCC has been unable to make the decision within that period—

that period is extended, or further extended, by a period of one month.

(4) As soon as practicable after the ACCC gives a notice under paragraph (3)(b), the ACCC must cause a copy of the notice to be available on the ACCC's Internet site.

(5) The ACCC must not vary an approval or determination of regulated charges under this Division unless it is satisfied—

(a) as to the matters relating to the event referred to in paragraphs 40(1)(a) and (b) as set out in the application; and

(b) that the total expenditure required during the remainder of the regulatory period to rectify the material and adverse effects of the event—

(i) exceeds 5% of the value of the applicant's regulatory asset base as at the beginning of the regulatory period; and

(ii) is reasonably likely to exceed the total forecast expenditure; and

(c) that the applicant has demonstrated that it is not able reduce its expenditure to avoid the consequences referred to in paragraph (4)(b) without materially adversely affecting the reliability and safety of the applicant's water service infrastructure or the applicant's ability to comply with any relevant regulatory or legislative obligations.

44 ACCC to give notice of its decision under this Division and publish the decision

- (1) The ACCC must give notice in writing to the Part 6 operator of its decision on the variation of the operator's regulated charges under this Division.
- (2) The ACCC must, on or after the day on which it gives notice to the Part 6 operator under subrule (1), cause the notice, and the reasons for its decisions, to be made available on the ACCC's Internet site, subject to Division 1 of Part 8.

Part 7 ACCC to approve or determine regulated charges of Part 7 operators

45 Application of Part

- (1) This Part applies to a member owned operator if—
 - (a) the sum of the volume of water from managed water resources—
 - (i) to which the member owned operator is entitled under water access entitlements held by the operator; and
 - (ii) to which its customers are entitled under water access entitlements—
is more than 10 GL; and
 - (b) the member owned operator has made a distribution to any of its related customers—
 - (i) within the 12 months immediately before the commencement date; or
 - (ii) at any later time.
- (2) For the purposes of this rule, a member owned operator is to be taken to have made a distribution to any of its related customers if it has—
 - (a) declared a dividend for its related customers; or
 - (b) distributed profits, or any part of its profits, whether in the form of dividends or otherwise, to any of its related customers; or
 - (c) has distributed its reserves, or any part of its reserves, to its related customers; or
 - (d) issued bonus shares to its related customers.
- (3) An infrastructure operator to whom this Part has applied ceases to be an operator to whom this Part applies—
 - (a) if it ceases to be a member owned operator; or

(b) upon the expiration of 5 years after the operator last made a distribution to any of its related customers.

(4) An infrastructure operator to whom this Part applies is a *Part 7 operator*.

46 Application by Part 7 operator to ACCC

(1) A Part 7 operator that proposes to levy regulated charges after the application period must apply in writing to the ACCC for approval or determination of its regulated charges under this Part.

(2) An application under subrule (1) must include the information referred to in Schedule 3.

47 ACCC may request further information

Before the ACCC makes a decision in relation to an application under this Part from a Part 7 operator, the ACCC may, in writing, request the operator to provide further information relating to the application within a period specified by the ACCC.

48 ACCC to publish application and draft approval or determination

After receiving an application under this Part from a Part 7 operator, the ACCC—

(a) must prepare a draft of an approval or determination of the regulated charges set out in the application; and

(b) must publish on the ACCC's Internet site a notice which, subject to Division 1 of Part 8, includes—

(i) a copy of the application; and

(ii) a copy of any further information received in response to a request under rule 47; and

(iii) the draft approval or determination; and

(iv) the reasons for its decisions; and

(v) an invitation to interested parties to make submissions to the ACCC in relation to the draft approval or determination before a date specified in the notice.

49 ACCC to approve or determine the regulated charges

(1) The ACCC, after considering submissions received before the date specified in the notice published under paragraph 48(b), subject to subrule (2), must approve or determine the regulated charges set out in the application under this Part.

(2) The ACCC must not approve regulated charges set out in an application under this Part that include a return on investment unless the ACCC is satisfied that the return is commensurate with the commercial risks involved.

- (3) If the ACCC is not satisfied as to the matters referred to in subrule (2), the ACCC must determine such changes to the regulated charges as will enable the ACCC to be satisfied as to the matters referred to in that subrule.
- (4) In approving or determining regulated charges set out in an application under this Part, the ACCC may have regard to whether or not the regulated charges would contribute to achieving the Basin water charging objectives and principles set out in Schedule 2 of the Act.

50 Period within which ACCC to approve or determine regulated charges

- (1) The ACCC must, within 3 months or, if that period is extended or further extended, that period as extended, after receiving an application under this Part from a Part 7 operator, approve or determine the regulated charges set out in the application.
- (2) In calculating the 3-month period referred to in subrule (1), disregard, if the ACCC has requested further information under rule 47—a day before the end of the period specified in the request during any part of which the request, or any part of the request, remains unfulfilled.
- (3) If the ACCC—
 - (a) is unable to make a decision within the period of 3 months referred to in subrule (1) or, if that period is extended or further extended, that period as extended; and
 - (b) within that period, gives written notice to the Part 7 operator who made the application under this Part explaining why the ACCC has been unable to make the decision within that period—

that period is extended, or further extended, by a further period of one month.
- (4) As soon as practicable after the ACCC gives a notice under subrule (3), the ACCC must cause a copy of the notice to be made available on the ACCC's Internet site.

51 ACCC to give notice to Part 7 operator of its approval or determination and publish the decision

- (1) The ACCC must give notice in writing to the Part 7 operator of its approval or determination, as the case requires, of regulated charges under rule 49.
- (2) The ACCC must, on or after the day on which it gives notice to the Part 7 operator under subrule (1), cause the notice, and the reasons for its decisions, to be made available on the ACCC's Internet site.

Part 8 General

Division 1 Disclosure of information

52 ACCC to publish submissions

Where the ACCC receives a submission in response to an invitation under Part 6 or 7, the

ACCC must, subject to this Division, cause the submission to be available on the ACCC's Internet site as soon as possible.

53 ACCC not to publish applications and submissions if confidential

- (1) Except as provided in subrule (2), the ACCC must not publish an application or a submission under Part 6 or 7, or include any information from an application or submission in its reasons for its decisions under Part 6 or 7, if—
 - (a) the person who made the application or submission claimed, when making the application or submission, that it contains confidential information; and
 - (b) the ACCC decides that the application or submission contains confidential information.
- (2) If a person claimed, when making an application or submission under Part 6 or 7, that the application or submission contained confidential information and the ACCC considers that it does contain confidential information, the ACCC may publish the application or submission, and any information from an application or submission, if the confidential information is omitted but, before so doing, must cause a note to that effect to be included in the document at the place in the document from which the information is omitted.
- (3) In this rule, *application* includes further information provided by the applicant at the request of the ACCC under rule 26, 35, 41 or 47.

54 Where ACCC disagrees with claim that information is confidential

- (1) If—
 - (a) a person who makes an application or submission under Part 6 or 7 claims that the application or submission contains confidential information; and
 - (b) the ACCC decides that the application or submission does not contain confidential information as claimed; and
 - (c) the ACCC wishes to publish the application or submission—the ACCC must give the person written notice of the ACCC's decision within 10 business days after receiving the application or submission.
- (2) The notice under subrule (1) must include—
 - (a) a statement that the person may withdraw the claim of confidentiality by giving the ACCC written notice to that effect; and
 - (b) a statement that, if the person wishes to withdraw the claim, the person must do so within 10 business days after receiving the ACCC's notice under subrule (1); and
 - (c) a statement that, if the person decides not to withdraw the claim, the following applies:

- (i) the ACCC may publish the application or submission if the information claimed to be confidential is omitted and a note to the effect that confidential information is omitted is inserted in the application or submission at the place from which the information is omitted; and
 - (ii) the ACCC must not have regard to the omitted information when approving or determining the regulated charges under Part 6 or 7.
- (3) If the person withdraws the claim, the ACCC may publish the entire application or submission.
- (4) If the person does not withdraw the claim within 10 business days after receiving the ACCC's notice under subrule (1), then the ACCC—
 - (a) may publish the application or submission if the confidential information is omitted and a note to the effect that confidential information is omitted is inserted in the application or submission at the place from which the information is omitted; and
 - (b) must not have regard to the omitted information when approving or determining the regulated charges under Part 6 or 7.
- (5) In this rule, *application* includes further information provided by the applicant at the request of the ACCC under rule 26, 35, 41 or 47.

55 Exempt contracts

If, under rule 9, an exemption has been granted, or is to be taken as having been granted, in respect of a contract between an infrastructure operator and a customer, the ACCC must not publish any information to which the exemption relates other than the names of the parties to the contract and the date on which the exemption was granted.

56 Monitoring water charges and compliance

Nothing in this Division prevents the ACCC from including information to which this Part applies in its reports to the Minister under section 94 of the Act.

Division 2 Proceedings

57 Proceedings to recover loss or damage

A person who suffers loss or damage as a result of conduct, or an omission, of another person that contravenes these Rules may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

Schedule 1 Information to be included in an application under Division 2 of Part 6

1 Consultation

Information on whether the Part 6 operator, in putting together its application under Division 2 of Part 6, consulted with its customers and if so, details of the extent and nature of the consultation processes including matters consulted on and customer feedback received.

2 Regulatory and legislative obligations

Details of any regulatory and legislative obligations—under relevant Acts, legislative instruments and licences—that apply to the Part 6 operator in respect of its infrastructure services.

These details are to be provided for each year of the initial period or the regulatory period, as the case requires, that is set to expire and for each year of the following regulatory period. In particular, the Part 6 operator must highlight any changes in these between the two periods.

3 Service standards

Details of the service standards the Part 6 operator has or will deliver in respect of its infrastructure service. These could include minimum standards for key performance indicators or performance targets.

These details are to be provided for each year of the initial period or the regulatory period, as the case requires, that is set to expire and for each year of the following regulatory period.

In particular, the Part 6 operator must highlight any changes in these between the two periods.

4 Revenue

Details of the Part 6 operator' s—

- (a) forecast and actual revenue from providing infrastructure services for each year of the initial period or regulatory period that is set to expire;
- (b) forecast revenue from providing infrastructure services for each year of the following regulatory period.

5 Regulatory asset base

Details of the Part 6 operator's assets, and their value, that are used to provide infrastructure services and—

- (a) the forecast and actual contributions from customers and government and the assumptions underpinning any forecasts;

- (b) the forecast and actual proceeds from asset disposals and the nature and type of assets anticipated to be sold;
- (c) the regulatory depreciation of assets and the reasons for the depreciation;
- (d) from the above, the actual or forecast regulatory asset base.

These details are to be provided for each year of the initial period or regulatory period, as the case requires, that is set to expire and for each year of the following regulatory period.

6 Rate of return

Details of the rate of return proposed by the Part 6 operator and the basis for that rate, including the methodology used to determine the rate and the values of all inputs used in the calculation of the rate.

7 Renewals annuity

Where relevant, details of the Part 6 operator's renewals annuity used to fund capital or operating expenditure, that is required for the provision of infrastructure services including:

- (a) the nature of the assets included in the annuities calculation;
- (b) the basis of the long term capital expenditure forecasts that support the calculation—when and on what basis the forecasts were made;
- (c) the service levels that underpin the capital expenditure forecasts;
- (d) the annuity term;
- (e) the discount rate used to calculate the annuity;
- (f) from the above, the actual or forecast balance of the renewals annuity.

These details are to be provided for each year of the initial period or regulatory period, as the case requires, that is set to expire and for each year of the following regulatory period.

8 Capital expenditure

Details of the Part 6 operator's capital expenditure required to provide infrastructure services including:

- (a) Forecast and actual capital expenditure;
- (b) the major projects completed or to be completed over the period including the actual or forecast cost and timing of these projects;
- (c) the expected outcomes of these projects and their justification;

- (d) evidence that the expected levels of expenditure are prudent and efficient—for example, the results of an independent engineer’s assessment.

These details are to be provided for each year of the initial period or regulatory period, as the case requires, that is set to expire and for each year of the following regulatory period.

9 Operating expenditure

Details of the Part 6 operator's operating and maintenance expenditure including:

- (a) forecast and actual operating expenditure;
- (b) the key reasons for the expenditure;
- (c) a justification of the forecast and actual operating expenditure;
- (d) evidence of productivity improvements.

These details are to be provided for each year of the initial period or regulatory period, as the case requires, that is set to expire and for each year of the following regulatory period.

10 Tax

Details of the Part 6 operator’s forecast and actual tax liabilities relating to the provision of infrastructure services including carried forward losses and tax depreciation.

These details are to be provided for each year of the initial period or regulatory period, as the case requires, that is set to expire and for each year of the following regulatory period.

11 Demand or consumption.

Details of the Part 6 operator’s demand or consumption for its infrastructure services including—

- (a) forecast and actual demand or consumption;
- (b) a description of the methodology used to forecast demand or consumption;
- (c) assumptions on which the forecasts are based;
- (d) consistency with historical data.

These details are to be provided for each year of the initial period or regulatory period, as the case requires, that is set to expire and for each year of the following regulatory period.

12 Regulated charges

Details of the Part 6 operator’s proposed regulated charges for its infrastructure

services for each year of the initial period or regulatory period, as the case requires, that is set to expire and for each year of the following regulatory period.

Schedule 2 Determination of regulatory asset base in relation to a Part 6 operator

1 Determination of regulatory asset base for first Part 6 period

The regulatory asset base of a Part 6 operator, for the purposes of the first regulatory period under these Rules in relation to the operator as a Part 6 operator (*first Part 6 period*)—

- (a) in the case of an operator whose fees and charges were determined by an agency of a State under a law of the State in respect of the period immediately before the first Part 6 period (*preceding period*), is to be determined in accordance with the formula—

$$\{(A - B) + C\} - (D + E)$$

where

A is the value of the operator's assets that were used for the preceding period.

B is the value of such of those assets that were not used by the operator to provide infrastructure services during the preceding period and any assets contributed by customers or government.

C is the actual (or, in the case of the last year of the preceding period, forecast) capital expenditure on assets used by the operator to provide infrastructure services (net of actual customer and government capital expenditure contributions) in respect of each year of the preceding period.

D is the regulatory depreciation in respect of assets used to provide infrastructure services (as determined for each year of the preceding period).

E is the actual (or, in the case of the last year of the preceding period, forecast) revenue received by the operator from disposal of assets used to provide infrastructure services in the preceding period; and

- (b) in the case of any other Part 6 operator, is to be determined by applying a recognised valuation methodology.

2 Determination of regulatory asset base for a regulatory period after the first Part 6 period

The regulatory asset base of a Part 6 operator, for the purposes of the second or a subsequent regulatory period in relation to the operator as a Part 6 operator, is to be determined in accordance with the formula—

$$(A + B) - (C + D)$$

where—

A is the regulatory asset base of the operator determined under this Schedule in respect of the preceding regulatory period.

B is the total of the actual (or, in the case of the last year of the preceding regulatory period, forecast) capital expenditure on assets used by the operator to provide infrastructure services (net of actual customer and government capital expenditure contributions) in respect of each year of the preceding regulatory period.

C is the regulatory depreciation in respect of assets used to provide infrastructure services in respect of each year of the preceding regulatory period.

D is the actual (or, in the case of the last year of the preceding regulatory period, forecast) revenue received by the operator from disposal of assets used to provide infrastructure services in respect of each year of the preceding regulatory period.

Schedule 3 Information to be included in an application under Part 7

1 Regulated charges

Details of the Part 7 operator's—

- (a) current regulated charges;
- (b) regulated charges for which the operator is seeking approval;
- (c) the period for which those regulated charges will apply, where relevant.

2 Asset base

Details of the Part 7 operator's asset base required for provision of infrastructure services including—

- (a) the nature and type of assets on which returns to investors have, or will be, paid;
- (b) the valuation of the assets on which returns to investors have been, or will be, paid;
- (c) the method and assumptions used to calculate the valuation of those assets including estimated remaining economic lives and the basis for past and future depreciation;
- (d) the financing of those assets showing—
 - (i) the proportion contributed or financed by its members;
 - (ii) the proportion of assets contributed or financed by government;
 - (iii) the proportion financed through renewals annuity charges;
 - (iv) the proportion financed through non-annuity charges, whether or not debt funding is used;
- (e) the Part 7 operator's method and assumptions used to calculate the return on those assets.

3 Costs recovered through the Part 7 operator's charges or regulated charges

Details of the Part 7 operator's—

- (a) total operating costs incurred in providing infrastructure services;
- (b) depreciation of capital assets required for provision of infrastructure services;
- (c) taxation in relation to the provision of infrastructure services;

- (d) rate of return on investment in relation to the provision of infrastructure services—

These details must be provided in relation to the regulated charges for which approval or determination is sought and for the preceding three financial years.

4 Distributions

Details of the distributions that the Part 7 operator has made, or will make, to related customers including—

- (a) the amount of the distribution pool and the source of the reserve or surplus from which the distribution is, or was, drawn;
- (b) for each class of related customer, the methodology used to determine a related customer's share of the distribution pool;
- (c) the timing of the distribution;
- (d) details of how the distribution is made to related customers;
- (e) any terms, conditions or obligations associated with the distribution.

These details must be provided in relation to the financial year in relation to which approval or determination of regulated charges is sought and for the preceding three financial years.