



National Electricity Amendment (Participant derogation - ACT DNSP Revenue Smoothing) Rule 2017 No. 7

under the National Electricity Law to the extent applied by:

- (a) the National Electricity (South Australia) Act 1996 of South Australia;
- (b) the Electricity (National Scheme) Act 1997 of the Australian Capital Territory;
- (c) the Electricity - National Scheme (Queensland) Act 1997 of Queensland;
- (d) the Electricity - National Scheme (Tasmania) Act 1999 of Tasmania;
- (e) the National Electricity (New South Wales) Act 1997 of New South Wales;
- (f) the National Electricity (Victoria) Act 2005 of Victoria;
- (g) the National Electricity (Northern Territory)(National Uniform Legislation) Act 2015; and
- (h) the Australian Energy Market Act 2004 of the Commonwealth.

The Australian Energy Market Commission makes the following Rule under the National Electricity Law.

John Pierce
Chairman
Australian Energy Market Commission

National Electricity Amendment (Participant derogation - ACT DNSP Revenue Smoothing) Rule 2017 No. 7

1 Title of Rule

This Rule is the *National Electricity Amendment (Participant derogation - ACT DNSP Revenue Smoothing) Rule 2017 No.7*.

2 Commencement

This Rule commences operation on 15 August 2017, immediately following Schedule 1 of the *National Electricity Amendment (Participant derogation – NSW DNSPs Revenue Smoothing) Rule 2017 No. 6*.

3 Amendment of the National Electricity Rules

The National Electricity Rules are amended as set out in Schedule 1.

Schedule 1 Amendment to the National Electricity Rules

(Clause 3)

[1] Chapter 8A New Part 15

In Chapter 8A, after Part 14, insert:

Part 15 Derogations granted to ActewAGL

8A.15 Derogations from Chapter 6 for the current regulatory control period and subsequent regulatory control period

8A.15.1 Definitions

In this *participant derogation*, rule 8A.15:

2015 determination means the distribution determination for the current regulatory control period published by the *AER* on 30 April 2015 in respect of ActewAGL.

ActewAGL means ActewAGL Distribution, the joint venture between Icon Distribution Investments Limited ACN 073 025 224 and Jemena Networks (ACT) Pty Ltd ACN 008 552 663, which is registered by *AEMO* as a *Network Service Provider* in accordance with section 12(1) of the *National Electricity Law* and clause 2.5.1 of the *Rules* to own, control and operate the *distribution system* in the Australian Capital Territory, or any successor to its business.

adjustment amount means an amount that operates as if it were:

- (a) a revenue increase; or
- (b) a revenue decrease,

to the total revenue for distribution standard control services that may be earned by ActewAGL for the final regulatory year of the current regulatory control period in accordance with:

- (c) the formulae that give effect to the applicable control mechanism;
- (d) the applicable forecast demand (kWh); and
- (e) the applicable *annual revenue requirement*,

under the remade 2015 determination.

adjustment determination means the *AER's* determination:

- (a) if clause 8A.15.4 applies, of whether there is, and the relevant amounts of, an adjustment amount (including any adjustments made

under clause 8A.15.4(d)(1)(ii) and 8A.15.4(d)(2)(ii) and a subsequent adjustment amount; or

- (b) if clause 8A.15.5 or 8A.15.6 applies, of the relevant amounts of the distribution variation amount, transmission variation amount and metering variation amount.

current regulatory control period means the period of five years that commenced on 1 July 2014 and ends on 30 June 2019, which includes ActewAGL's 'transitional regulatory control period' and 'subsequent regulatory control period' as those terms are defined in clause 11.55.1.

distribution standard control services means *standard control services* provided by ActewAGL other than *transmission standard control services*.

distribution variation amount means an amount equal to:

- (a) the sum of the total revenue for distribution standard control services for ActewAGL for each regulatory year of the current regulatory control period in accordance with:

- (1) the formulae that give effect to the applicable control mechanism;
- (2) the applicable forecast demand (kWh); and
- (3) the applicable *annual revenue requirement*,

under the remade 2015 determination; minus

- (b) the sum of:

- (1) the total revenue for distribution standard control services for ActewAGL for the first and second regulatory years of the current regulatory control period in accordance with:

- (i) the formulae that give effect to the applicable control mechanism;
- (ii) the applicable forecast demand (kWh); and
- (iii) the applicable *annual revenue requirement*,

under the 2015 determination; plus

- (2) the total revenue for distribution standard control services for ActewAGL for the third, fourth and final regulatory years of the current regulatory control period under the undertakings that apply for those regulatory years,

provided that such amount includes any adjustments necessary for the *AER* to be satisfied that the amount achieves the revenue recovery principle under clause 8A.15.5(d) or 8A.15.6(d) (as the case may be).

metering services means type 5 and 6 metering services classified as *alternative control services* and in respect of which annual metering service charges are specified in the remade 2015 determination or 2015 determination (as the case may be).

metering variation amount means an amount equal to:

- (a) the sum of the total revenue for metering services for ActewAGL for each regulatory year of the current regulatory control period in accordance with:
 - (1) the formulae that give effect to the applicable control mechanism;
 - (2) the applicable forecast volume; and
 - (3) the applicable building block revenue requirement,under the remade 2015 determination; minus
- (b) the sum of:
 - (1) the total revenue for metering services for ActewAGL for the first and second regulatory years of the current regulatory control period in accordance with:
 - (i) the formulae that give effect to the applicable control mechanism;
 - (ii) the applicable forecast volume; and
 - (iii) the applicable building block revenue requirement,under the 2015 determination; plus
 - (2) the total revenue for metering services for ActewAGL for the third, fourth and final regulatory years of the current regulatory control period under the undertakings that apply for those regulatory years,

provided that such amount includes any adjustments necessary for the *AER* to be satisfied that the amount achieves the revenue recovery principle under clause 8A.15.5(d) or 8A.15.6(d) (as the case may be).

NUOS charges means charges comprising ActewAGL's prices for distribution standard control services, *designated pricing proposal charges* and *jurisdictional scheme amounts*.

regulatory year means each consecutive period of 12 calendar months in the current regulatory control period or subsequent regulatory control period (as the case may be) (the current regulatory control period and subsequent regulatory control period each being a **regulatory control period**), the first such 12 month period commencing at the beginning of the regulatory control period and the final 12 month period ending at the end of the regulatory control period.

remade 2015 determination means the 2015 determination as remade by the *AER* following the Tribunal's decision.

revenue recovery principle means the principle that ActewAGL must be given the ability to recover the same, but no more, revenue (in net present value equivalent terms) as it would have recovered if:

- (a) the remade 2015 determination had been in force from the commencement of the current regulatory control period; and
- (b) the formulae giving effect to the control mechanisms specified in the remade 2015 determination had been applied in each regulatory year of the current regulatory control period.

scheme means any applicable *efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme, demand management incentive scheme, demand management innovation allowance mechanism and small-scale incentive scheme*.

subsequent adjustment amount means an amount that:

- (a) is equivalent in net present value terms to the adjustment amount, incorporating any adjustments made under clause 8A.15.4(d)(1)(ii) or 8A.15.4(d)(2)(ii) (as the case may be); and
- (b) represents a revenue increase (where the adjustment amount is a negative amount) or a revenue decrease (where the adjustment amount is a positive amount) to ActewAGL's *annual revenue requirement* for the first regulatory year of the subsequent regulatory control period.

subsequent distribution determination means the distribution determination for ActewAGL that is made by the *AER* for the subsequent regulatory control period.

subsequent regulatory control period means the *regulatory control period* for ActewAGL that immediately follows the current regulatory control period.

substituted total revenue amount has the meaning given in clause 8A.15.4(d).

total revenue means the total revenue that ActewAGL is entitled to earn from the provision of distribution standard control services, *transmission standard control services* or metering services (as the case may be) for the relevant regulatory year.

transmission variation amount means an amount equal to:

- (a) the sum of the total revenue for *transmission standard control services* for ActewAGL for each regulatory year of the current regulatory control period in accordance with:
 - (1) the formulae that give effect to the applicable control mechanism; and
 - (2) the applicable *annual revenue requirement*,
under the remade 2015 determination; minus
- (b) the sum of the total revenue for *transmission standard control services* for ActewAGL for each regulatory year of the current regulatory control period in accordance with:
 - (1) the formulae that give effect to the applicable control mechanism; and
 - (2) the applicable *annual revenue requirement*,
under the 2015 determination,

provided that such amount includes any adjustments necessary for the *AER* to be satisfied that the amount achieves the revenue recovery principle under clause 8A.15.5(d) or 8A.15.6(d) (as the case may be).

Tribunal means the Australian Competition Tribunal.

Tribunal's decision means the decision of the Tribunal in relation to the 2015 determination delivered on 26 February 2016 to remit the matter back to the *AER* pursuant to section 71P(2)(c) of the *National Electricity Law*, as varied as a consequence of the outcome of judicial review of that decision.

undertaking means an undertaking given to, and accepted by, the *AER* under section 59A of the *National Electricity Law* in respect of the revenue earned and/or prices charged by ActewAGL for the relevant regulatory year.

8A.15.2 Expiry date

This *participant derogation* expires on the date that immediately follows the end of the subsequent regulatory control period.

8A.15.3 Application of Rule 8A.15

- (a) This *participant derogation* prevails to the extent of any inconsistency with:
 - (1) any other provision of the *Rules*; and
 - (2) a remade 2015 determination.
- (b) Nothing in this *participant derogation* has the effect of:
 - (1) changing the application of the *Rules* to the making of a remade 2015 determination; or
 - (2) rendering a change, in whole or in part, to the terms of a distribution determination that applies in respect of the current regulatory control period.

8A.15.4 Recovery of revenue across the current regulatory control period and subsequent regulatory control period

General

- (a) This clause 8A.15.4 applies in respect of ActewAGL if a remade 2015 determination is made by the *AER* prior to 1 March 2018.

Adjustment determination

- (b) The *AER* may determine at the time of making the remade 2015 determination for ActewAGL:
 - (1) an adjustment amount; and
 - (2) a subsequent adjustment amount,if the *AER* is satisfied that the application of the adjustment amount and subsequent adjustment amount under paragraphs (d) and (e), respectively, would:
 - (3) be reasonably likely to minimise variations in NUOS charges:
 - (i) between the fourth and final regulatory years of the current regulatory control period; and
 - (ii) between the final regulatory year of the current regulatory control period and the first regulatory year of the subsequent regulatory control period,for ActewAGL; and
 - (4) achieve the revenue recovery principle in respect of ActewAGL.

Note:

When determining the adjustment amount and subsequent adjustment amount, the *AER* must also take into account the *national electricity objective* and may take into account the revenue and pricing principles: see *National Electricity Law*, s.16(1)(a) and (2)(b).

- (c) Paragraphs (d) and (e) do not apply in respect of ActewAGL if the *AER* has not determined an adjustment amount and subsequent adjustment amount under paragraph (b).

Recovery in current regulatory control period

- (d) A *pricing proposal* submitted by ActewAGL, and approved by the *AER*, for the final regulatory year of the current regulatory control period must, in respect of revenue for distribution standard control services, only provide for the recovery of:

- (1) where the applicable adjustment amount operates as if it were a revenue increase:

- (i) ActewAGL's total revenue for distribution standard control services in accordance with the formulae that give effect to the applicable control mechanism, the applicable forecast demand (kWh) and the applicable *annual revenue requirement*, under the remade 2015 determination; plus
- (ii) the adjustment amount, incorporating any adjustments that the *AER* considers necessary to achieve the revenue recovery principle in accordance with subparagraph (b)(4); or

- (2) where the applicable adjustment amount operates as if it were a revenue decrease:

- (i) ActewAGL's total revenue for distribution standard control services in accordance with the formulae that give effect to the applicable control mechanism, the applicable forecast demand (kWh) and the applicable *annual revenue requirement*, under the remade 2015 determination; minus
- (ii) the adjustment amount, incorporating any adjustments that the *AER* considers necessary to achieve the revenue recovery principle in accordance with subparagraph (b)(4),

(such amount being the **substituted total revenue amount**).

Recovery in subsequent regulatory control period

- (e) The *AER* must include the subsequent adjustment amount determined under paragraph (b) as:

(1) if subparagraph (d)(1) applies, a revenue decrease; or

(2) if subparagraph (d)(2) applies, a revenue increase,

to ActewAGL's *annual revenue requirement* determined under rule 6.4 for the first regulatory year of the subsequent regulatory control period.

(f) Any subsequent adjustment amount included as a revenue increase or revenue decrease under paragraph (e) must not be considered by the *AER* when determining whether any amount is payable or recoverable by ActewAGL under any scheme that applies to it in respect of the subsequent regulatory control period.

8A.15.5 Recovery of revenue in subsequent regulatory control period only and no reopening of subsequent distribution determination required

General

(a) This clause 8A.15.5 applies in respect of ActewAGL if a remade 2015 determination is made by the *AER* on or after 1 March 2018, but prior to 1 May 2019.

Adjustment determination

(b) If paragraph (a) applies, the *AER* must determine at the time of making the remade 2015 determination:

(1) the distribution variation amount;

(2) the transmission variation amount; and

(3) the metering variation amount,

for ActewAGL.

Recovery in subsequent regulatory control period

(c) The *AER* must include an amount equivalent in net present value terms to:

(1) the distribution variation amount;

(2) the transmission variation amount; and

(3) the metering variation amount,

determined under paragraph (b) as:

- (4) if the applicable distribution variation amount, transmission variation amount or metering variation amount (as the case may be) is a positive amount, a revenue increase; or
- (5) if the applicable distribution variation amount, transmission variation amount or metering variation amount (as the case may be) is a negative amount, a revenue decrease; or
- (6) if the applicable distribution variation amount, transmission variation amount or metering variation amount (as the case may be) is zero, no adjustment,

to ActewAGL's:

- (7) in the case of the distribution variation amount and transmission variation amount, *annual revenue requirement* determined under rule 6.4; and
- (8) in the case of the metering variation amount, applicable building block revenue requirement,

for the first regulatory year of the subsequent regulatory control period.

- (d) When making an adjustment determination under this clause 8A.15.5, the *AER* must be satisfied that the application of the distribution variation amount, transmission variation amount and metering variation amount under paragraph (c) achieves the revenue recovery principle in respect of ActewAGL.
- (e) A distribution variation amount, transmission variation amount or metering variation amount included as a revenue increase or revenue decrease under paragraph (c), must not be considered by the *AER* when determining whether any amount is payable or recoverable by ActewAGL under any scheme that applies to it in respect of the subsequent regulatory control period.

8A.15.6 Recovery of revenue in subsequent regulatory control period only and reopening of distribution determination is required

General

- (a) This clause 8A.15.6 applies in respect of ActewAGL if a remade 2015 determination is made by the *AER* on or after 1 May 2019, but prior to 1 December of the fourth last regulatory year of the subsequent regulatory control period.

Adjustment determination

- (b) If paragraph (a) applies, the *AER* must determine at the time of making the remade 2015 determination:

- (1) the distribution variation amount;
 - (2) the transmission variation amount; and
 - (3) the metering variation amount,
- for ActewAGL.

Recovery in subsequent regulatory control period

- (c) If paragraph (a) applies, the *AER* must revoke ActewAGL's subsequent distribution determination and make a new distribution determination in substitution for that revoked determination, that:
- (1) applies to the remaining regulatory years of the subsequent regulatory control period; and
 - (2) includes an amount equivalent in net present value terms to:
 - (i) the transmission variation amount;
 - (ii) the distribution variation amount; and
 - (iii) the metering variation amount,determined for ActewAGL as:
 - (iv) if the applicable distribution variation amount, transmission variation amount or metering variation amount (as the case may be) is a positive amount, a revenue increase; or
 - (v) if the applicable distribution variation amount, transmission variation amount or metering variation amount (as the case may be) is a negative amount, a revenue decrease; or
 - (vi) if the applicable distribution variation amount, transmission variation amount or metering variation amount (as the case may be) is zero, no adjustment,to:
 - (vii) in the case of the distribution variation amount and transmission variation amount, the *annual revenue requirement* of one or more of the regulatory years in the remainder of ActewAGL's subsequent regulatory control period, subject to the sum of all such increases or decreases for the relevant regulatory years being equivalent in net present value terms to the sum of the

distribution variation amount and transmission variation amount; and

- (viii) in the case of the metering variation amount, the applicable building block revenue requirement of one or more of the regulatory years in the remainder of ActewAGL's subsequent regulatory control period, subject to the sum of all such increases or decreases for the relevant regulatory years being equivalent in net present value terms to the metering variation amount.
- (d) When making an adjustment determination under this clause 8A.15.6, the *AER* must be satisfied that the application of the distribution variation amount, transmission variation amount and metering variation amount under paragraph (c) achieves the revenue recovery principle in respect of ActewAGL.
- (e) The substituted distribution determination made under paragraph (c) must only:
 - (1) vary from the revoked distribution determination to the extent necessary to reflect the increase or decrease (as the case may be) to:
 - (i) in the case of the distribution variation amount and transmission variation amount, the *annual revenue requirement*; and
 - (ii) in the case of the metering variation amount, the applicable building block revenue requirement, of one or more of the regulatory years of the subsequent regulatory control period under paragraph (c); and
 - (2) be made after the *AER* has first consulted with ActewAGL and such other persons as the *AER* considers appropriate.
- (f) If the *AER* revokes and substitutes the subsequent distribution determination under paragraph (c), that revocation and substitution must take effect from the commencement of the next regulatory year.
- (g) A distribution variation amount, transmission variation amount and metering variation amount included as a revenue increase or revenue decrease under paragraph (c), must not be considered by the *AER* when determining whether any amount is payable or recoverable by ActewAGL under any scheme that applies to it in respect of the subsequent regulatory control period.

8A.15.7 Requirements for adjustment determination

The *AER* must in respect of an adjustment determination made for ActewAGL:

- (a) make the adjustment determination after consulting with ActewAGL and any other persons as the *AER* considers appropriate;
- (b) *publish* its adjustment determination at the time of publication of the remade 2015 determination; and
- (c) include in its adjustment determination, the reasons for the *AER*'s determination of:
 - (1) if clause 8A.15.4 applies, the adjustment amount (including any adjustments made under clause 8A.15.4(d)(1)(ii) or 8A.15.4(d)(2)(ii)) and subsequent adjustment amount or, where the *AER* has not determined an adjustment amount and subsequent adjustment amount, the reasons for that decision; or
 - (2) if clause 8A.15.5 or 8A.15.6 applies, the distribution variation amount, transmission variation amount and metering variation amount.

8A.15.8 Application of Chapter 6 under participant derogation

- (a) Except as otherwise specified in this rule 8A.15 or Chapter 11, Chapter 6 applies to:
 - (1) the remainder of the current regulatory control period; and
 - (2) the making of the subsequent distribution determination,in respect of ActewAGL.
- (b) If clause 8A.15.4 applies, the reference to 'any applicable distribution determination' in clauses 6.18.2(b)(7), 6.18.2(b)(8), 6.18.8(a)(1) and 6.18.8(c) will be taken to be the applicable distribution determination as supplemented by the requirements for ActewAGL's *pricing proposal* under clause 8A.15.4(d).
- (c) For the purposes of the application of clauses 8A.15.4, 8A.15.5 and 8A.15.6 (as applicable) in respect of ActewAGL, Chapter 6 and 6A are amended for the remainder of the current regulatory control period and the subsequent regulatory control period as follows:
 - (1) the requirement under the *Rules* for pricing for *direct control services* in a *pricing proposal* to comply with the *tariff structure statement* does not apply to the extent necessary to allow for the submission of a *pricing proposal* by ActewAGL,

and subsequent approval of such *pricing proposal* by the *AER*, in accordance with this *participant derogation*;

- (2) if any variation in proposed tariffs occurs as a result of:
 - (i) the remade 2015 determination; or
 - (ii) application of this *participant derogation*,such variations will be taken to be explained by ActewAGL for the purposes of clauses 6.18.2(b)(7A) and 6.18.8(a)(2);
- (3) to the extent that ActewAGL's tariffs vary from tariffs which would result from complying with the pricing principles in clause 6.18.5(e) to (g) due to the application of this *participant derogation*, such variation is taken to be a variation from the pricing principles permitted under clause 6.18.5(c);
- (4) to the extent that ActewAGL's *tariff structure statement* varies from a *tariff structure statement* which would result from complying with the *pricing principles for direct control services* due to the application of this *participant derogation*, such variation is permitted under the *Rules*;
- (5) clause 6.18.6 does not apply to the extent that ActewAGL's tariffs vary from tariffs which would otherwise result from complying with clause 6.18.6, due to the application of this *participant derogation*;
- (6) if the *AER* amends a *pricing proposal* under clause 6.18.8(b)(2) or 6.18.8(c), then in addition to the requirements in clause 6.18.8(c1), the *AER* must also have regard to:
 - (i) any variation in proposed tariffs that result from the remade 2015 determination; and
 - (ii) any variation in proposed tariffs that result from the application of this *participant derogation*;
- (7) if clause 8A.15.6 applies, clause 6.5.9(b)(2) does not apply to the extent necessary to include a revenue increase or revenue decrease (as the case may be) to the *annual revenue requirement* or other building block revenue requirement of one or more regulatory years for the subsequent regulatory control period for ActewAGL under clause 8A.15.6(c);
- (8) if clause 8A.15.4 applies, the reference to 'the other revenue increments or decrements' in clauses 6.4.3(a)(6) and 6.4.3(b)(6) is taken to include such increments or decrements as adjusted to the extent necessary to take into account the

application of the substituted total revenue amount under clause 8A.15.4(d); and

- (9) if clause 8A.15.5 or 8A.15.6 applies, clauses 6A.23.3(e)(5), (f) and (g) do not apply in respect of any transmission variation amount.

[END OF RULE AS MADE]
