

RESPONSE TO AEMC'S DRAFT RULE DETERMINATION

NATIONAL ELECTRICITY AMENDMENT
(PARTICIPANT DEROGATION - ACT DNSP
REVENUE SMOOTHING) RULE 2017

ACTEWAGL DISTRIBUTION

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ActewAGL

for you

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1. Introduction

ActewAGL Distribution (**ActewAGL**) provides the following submission in response to the AEMC's Draft Rule Determination and Draft Rule concerning its request for a participant derogation.¹

ActewAGL is pleased that the AEMC has made a Draft Rule in response to its request for a participant derogation. ActewAGL embraces the policy intent of the Draft Determination and Rule, which is to minimise price volatility for consumers and allow for any higher or lower revenues as a result of the outcome of proceedings concerning the Australian Energy Regulator's (**AER's**) distribution determination for ActewAGL of 30 April 2015 (**2015 determination**) to be recovered by ActewAGL or returned to its customers in the subsequent regulatory control period.² This policy intent is consistent with that underpinning ActewAGL's proposed participant derogation. ActewAGL further agrees that the derogation should be designed to allow ActewAGL to recover only the revenue that it is entitled to recover and not derive any windfall gains or losses as a result of its application.³

The AEMC explains the key drivers for the Draft Rule as being to:⁴

- confer on the AER greater discretion to decide whether smoothing should occur between the current regulatory control period and the subsequent regulatory control period and as to the smoothing profile;
- set out a process to be followed if the AER is required to reopen the subsequent distribution determination to incorporate an adjustment to revenue for that period; and
- more clearly distinguish between the different processes that need to apply depending on the final outcome of the proceedings and the timing of implementation of that outcome.

ActewAGL does not take issue with these components of the Draft Rule.

However, ActewAGL observes that certain provisions of the Draft Rule may not achieve what is intended by the AEMC in circumstances where:

- ActewAGL's control mechanism for distribution standard control services is an average revenue cap control; and
- ActewAGL's revenue differentials include revenue differentials for ActewAGL's transmission standard control services and annual metering charges for type 5 and 6 metering services.

Accordingly, ActewAGL proposes changes to the Draft Rule to ensure that it operates effectively to achieve the AEMC's policy intent.

¹ AEMC, *Draft Rule Determination National Electricity Amendment (Participant derogation - ACT DNSP revenue smoothing) Rule 2017*, 26 April 2017 (**Draft Determination**); AEMC, *Draft National Electricity Amendment (Participant derogation - ACT DNSP Revenue Smoothing) Rule 2017 (Draft Rule)*.

² AEMC, *Draft Determination*, pages i, 11.

³ AEMC, *Draft Determination*, pages i, 11.

⁴ AEMC, *Draft Determination*, pages, 11 to 12.

As part of its response to the Draft Determination and Rule, ActewAGL has prepared the following documents which are attached to this submission:

- a mark-up of the Draft Rule with ActewAGL's proposed revisions (**ActewAGL's Revised Rule**) (Attachment 1);
- a clean version of ActewAGL's Revised Rule (Attachment 2); and
- a table explaining ActewAGL's proposed revisions to the Draft Rule (**Explanatory Table**) (Attachment 3).

This submission describes in further detail the key changes in ActewAGL's Revised Rule to clauses 8A.15.4, 8A.15.5 and 8A.15.6 of the AEMC's Draft Rule and the definitions used in those clauses. ActewAGL's proposed changes to other clauses are described in the Explanatory Table in Attachment 3.

In formulating its amendments to the AEMC's Draft Rule, ActewAGL has had regard to the AEMC's comment during ActewAGL's 18 May meeting with the AEMC that it is seeking to avoid importing into the derogation concepts and terms that are a product of the AER's 2015 determination, rather than the NER. However, in order to ensure the derogation operates effectively and as intended, in particular having regard to ActewAGL's form of control, it is necessary to refer in the derogation to concepts and terms that are a product of the AER's 2015 determination. As discussed in describing ActewAGL's revisions to scenario 1 below, the Draft Rule already makes an assumption premised on the AER's distribution determinations for the NSW DNSPs that is not embodied in the NER (and indeed is inconsistent with requirements of the NER as they apply to the AER's distribution determination for ActewAGL for the current regulatory control period) in that it is premised on ActewAGL having a revenue cap form of control, rather than an average revenue cap control. Further, given that the derogation is intended to apply for a limited period in a specific set of circumstances, it is neither practicable nor necessary to disregard these circumstances in the drafting of the derogation.

2. Recent Developments

ActewAGL sought a participant derogation having regard to a confluence of events which included the Australian Competition Tribunal (**Tribunal**) setting aside the Australian Energy Regulator's (**AER's**) distribution determination for ActewAGL of 30 April 2015 (**2015 determination**) and the AER's application for judicial review of that decision.⁵

On 24 May 2017 the Full Federal Court handed down its decision on the AER's appeal (*Australian Energy Regulator v Australian Competition Tribunal (No 2)* [2017] FCAFC 79). The Full Court upheld the AER's appeal on gamma and otherwise affirmed the Tribunal's decision on the operating expenditure and return on debt transition matters. Having regard to the Full Federal Court's decision, an affirmed or varied 2015 determination is now unlikely. Subject to any High Court appeal, the AER will likely be required to remake its 2015 determination in accordance with the Tribunal's original directions regarding the AER's operating expenditure and return on debt transition decisions.

⁵ ActewAGL's request for a participant derogation, at [4].

3. Forms of control pertaining to ActewAGL's distribution, transmission and metering services

3.1 Distribution standard control services

The form of control applicable to ActewAGL's provision of distribution standard control services under the 2015 determination is an average revenue cap.⁶ This differs from the form of control applicable to the NSW distribution network service providers' (DNSPs') provision of distribution standard control services, being a revenue cap.

An average revenue cap is a cap on the expected average revenue per unit of electricity sold.⁷ The DNSP complies with the average revenue cap by setting prices so the resultant expected average revenue is equal to or less than the average revenue cap, which is derived by reference to the maximum allowable revenue per unit of output. Significantly, an average revenue cap places no cap on the revenue recovered by the DNSP in any given regulatory year. The revenue recovered by the DNSP may be more or less than the maximum allowed revenue.

In its Stage 1 Framework and Approach Paper for ActewAGL and 2015 determination, the AER decided to apply an average revenue cap form of control to ActewAGL's distribution standard control services, with the cap being the maximum allowable revenue or annual revenue cap for the relevant regulatory year per kilowatt hour transported for that year as forecast in the determination.⁸ Consistent with this, the 2015 determination established a control mechanism for distribution standard control services pursuant to which prices in ActewAGL's pricing proposals must be consistent with the following formula:⁹

⁶ This form of control is also referred to as a 'revenue yield control' and this is the term used in the NER to describe this form of control: AER, *Stage 1 Framework and approach paper ActewAGL*, March 2013, page 30; NER, clause 6.5.2(b).

⁷ AER, *Stage 1 Framework and approach paper ActewAGL*, March 2013, page 30.

⁸ AER, 2015 determination, Attachment 14, page 14-6 (see also pages 14-13 to 14-14); AER, *Stage 1 Framework and approach paper ActewAGL*, March 2013, pages 28 and 37-38.

⁹ AER, 2015 determination, Attachment 14, pages 14-13 to 14-4.

Figure 14.1 Average revenue cap formula

$$1. AARC_t \geq \frac{\sum_{i=1}^n \sum_{j=1}^m p_t^{ij} q_{t-2}^{ij}}{kWh \text{ transported}_{t-2}} \quad i=1, \dots, n \text{ and } j=1, \dots, m \text{ and } t=1, \dots, 5$$

$$2. AARC_t = AAR_t \pm \frac{B_t}{kWh \text{ transported}_{t*}}$$

$$3. AAR_t = AAR_{t-1}(1 + \Delta CPI_t)(1 - X_t)(1 + S_t)$$

Where:

$AARC_t$ is the average annual revenue cap (in cents/kWh) in year t.

p_t^{ij} is the price of component i of tariff j in year t.

q_{t-2}^{ij} is the quantity of component i of tariff j in year t-2.

AAR_t is the average annual smoothed revenue in year t. For the 2015-16 regulatory year, AAR_{t-1} is the average annual smoothed expected revenue in the Post Tax Revenue Model for 2014-15.

$kWh \text{ transported}_{t-2}$ is the audited total kWh in year t-2.

$kWh \text{ transported}_{t*}$ is the forecast total kWh in year t.

B_t is the approved pass through amounts (positive or negative) with respect to regulatory year t, as determined by the AER. For the avoidance of doubt, ActewAGL will recover the approved vegetation clearance pass through via this B-factor in its 2015-16 pricing proposal.⁴¹

$$\Delta CPI_t = \left[\frac{CPI_{Mar,t-2} + CPI_{Jun,t-2} + CPI_{Sep,t-1} + CPI_{Dec,t-1}}{CPI_{Mar,t-3} + CPI_{Jun,t-3} + CPI_{Sep,t-2} + CPI_{Dec,t-2}} \right] - 1$$

CPI means the all groups index number for the weighted average of eight capital cities as published by the ABS, or if the ABS does not or ceases to publish the index, then CPI will mean an index which the AER considers is the best estimate of the index.

X_t the smoothing factor determined in accordance with the PTRM as approved in the AER's final decision, and annually revised for the return on debt update in accordance with the formula specified in the return on debt appendix I calculated for the relevant year.

S_t is the STPIS factor sum of the raw s-factors for all reliability of supply and customer service parameters (as applicable) to be applied in year t.⁴² S_t for 2015-16 and 2016-17 are set at zero.

Under this control mechanism, ActewAGL is entitled to impose prices such that ActewAGL's volume weighted average price (or, put another way, its expected average revenue) is less than or equal to the value of its average annual revenue cap ($AARC_t$) for that year, where:

- the average annual revenue cap ($AARC_t$) is, in effect, derived by adjusting the average annual smoothed revenue for that year for:
 - the STPIS factor sum of the raw s-factors for all applicable reliability of supply and customer service parameters for that year (S_t) (in years other than 2015/16 and 2016/17);
 - the approved pass through amounts for that year (B_t) per kilowatt hour transported for that year as forecast in the determination;

- the change in the smoothing factor for that year (X_t) as a consequence of the annual update of the return on debt in accordance with the determination; and
- the change in CPI; and
- the weighted average price for that year is calculated by applying a two year lagged volume weight to the price for each component of each tariff and then dividing the sum of the weighted prices by the two year lagged total kilowatt hour transported.

As a result, ActewAGL's total revenues recovered may be more or less than its smoothed revenue and its average actual revenue may be more or less than the average annual revenue cap in any given regulatory year. This is because under its control mechanism:

- ActewAGL's average annual smoothed revenue for the relevant regulatory year is subject to various adjustments including in respect of the STPIS and approved pass through amounts in deriving its average annual revenue cap;
- ActewAGL bears the demand risk because the average revenue cap operates to cap *expected* average revenue based on the forecasts of energy throughput in the determination, not *actual* average revenue, with the result that ActewAGL will earn more (less) than (adjusted) smoothed revenue where actual energy throughput for the relevant regulatory year is more (less) than forecast in the determination;¹⁰
- ActewAGL has the ability to rebalance prices (i.e. increase or decrease individual prices) provided the weighted average of its prices is less than or equal to the average annual revenue cap (AARC_t);¹¹ and
- the weighted average of its prices is derived using two year lagged volumes.

3.2 Transmission standard control services

ActewAGL has dual function assets, being high voltage transmission assets within its distribution network. ActewAGL provides distribution services within the Australian Capital Territory and transmission services to the south eastern region of New South Wales. Under clause 6A.29.1 of the NER TransGrid is the co-ordinating transmission network service provider for that region.

The AER determined that the transmission pricing rules in Part J of Chapter 6 of the NER would apply to ActewAGL's dual function assets in the 2014/15 to 2018/19 regulatory period. ActewAGL's dual function assets support TransGrid's transmission network and therefore service a broader customer base than just ActewAGL's distribution customers.¹² Under the transmission pricing rules, ActewAGL's dual function asset costs are spread across a broader customer base comprising all customers connected to TransGrid's network. If the distribution pricing rules were

¹⁰ In determining on an average revenue cap form of control for ActewAGL, the AER concluded that ActewAGL's forecasting and pricing behaviour has not exploited these characteristics of the average revenue cap form of control: AER, *Stage 1 Framework and approach paper ActewAGL*, March 2013, page 33-35.

¹¹ As above.

¹² AER, *Stage 2 Framework and Approach - ActewAGL*, January 2014, page 14. See also AER, *Stage 1 Framework and Approach - ActewAGL*, March 2013.

to apply to ActewAGL's dual function assets, ActewAGL's dual function asset costs would be recovered from its distribution customers alone.

In accordance with clause 6.26 of the NER, in making the 2015 determination the AER divided the revenue calculated under Part C of Chapter 6 into a portion relevant to ActewAGL's transmission standard control services provided by its dual function assets and a portion relevant to its distribution standard control services. As such, in its 2015 determination, the AER determined annual revenue requirements and smoothed expected revenues for each regulatory year in respect of each of ActewAGL's distribution standard control services and its transmission standard control services.¹³

Under the 2015 determination, ActewAGL has a revenue cap control mechanism for its transmission standard control services.¹⁴ Under that control mechanism, a maximum allowed revenue (MAR) formula is used to calculate ActewAGL's allowable revenues for transmission standard control services. The annual smoothed expected revenue for those services is an input to that control mechanism.

3.3 Metering services

In the 2015 determination, the AER classified type 5 and 6 metering services as alternative control services and specified annual metering charges in respect of those services.¹⁵ The AER determined to apply price caps for individual type 5 and 6 metering services as the form of control.¹⁶ A building block approach is used to determine ActewAGL's revenue requirement for type 5 and 6 metering services. ActewAGL recovers its annual metering charges from customers with a regulated type 5 or 6 meter.¹⁷

4. Revisions to scenario 1 - clause 8A.15.4

ActewAGL has proposed changes to clause 8A.15.4 of the AEMC's Draft Rule to ensure the derogation operates as intended having regard to ActewAGL's form of control for distribution standard control services.¹⁸

4.1 Amendments to price smoothing mechanism

Clause 8A.15.4 of the AEMC's Draft Rule provides for price smoothing to occur between the current regulatory control period and the subsequent regulatory control period in circumstances where either the AER remakes its 2015 determination prior to 1 March 2018 or the Tribunal affirms or varies the 2015 determination prior to 1 December 2017 (termed 'scenario 1' in the AEMC's Draft Determination).

In scenario 1, the AEMC's Draft Rule operates as follows:

¹³ AER, 2015 determination, Attachment 1.

¹⁴ AER, 2015 determination, Attachment 14, page 14-15.

¹⁵ AER, 2015 determination, Attachment 16, pages 16-21 to 16-55 and 16-61.

¹⁶ AER, 2015 determination, Attachment 16, page 16-26.

¹⁷ ActewAGL, 2017/18 Network Pricing Proposal, pages 43 to 46.

¹⁸ These changes are summarised in row 7 of the Explanatory Table in Attachment 3.

- In circumstances where the AER decides to minimise price variations by allowing revenue recovery across regulatory control periods, the AER determines an adjustment amount and a subsequent adjustment amount (clause 8A.15.4(b)). The adjustment amount is defined by reference to the total annual revenue that ActewAGL may earn for the final regulatory year in accordance with the annual revenue requirement and control mechanism that apply under the remade, affirmed or varied 2015 determination (as applicable) (clause 8A.15.1). The subsequent adjustment amount is the inverse of the adjustment amount.
- ActewAGL's pricing proposal for the final year of the current regulatory control period (i.e. 2018/19) must only provide for recovery of (clause 8A.15.4(d)):
 - ActewAGL's total annual revenue for that year determined in accordance with the annual revenue requirement and control mechanism under the distribution determination in force for that year; plus or minus (as applicable)
 - the adjustment amount.
- The subsequent adjustment amount is then included as a revenue increment or decrement to the annual revenue requirement determined under rule 6.4 for the first regulatory year of the subsequent regulatory control period (clause 8A.15.4(e)).

However, in circumstances where ActewAGL operates under an average revenue cap, it is unclear what is meant by the reference to 'total annual revenue' that ActewAGL may earn for the final regulatory year in accordance with the annual revenue requirement and control mechanism in clause 8A.15.4(d) of the AEMC's Draft Rule and its definition of the 'adjustment amount'.

As described above, ActewAGL's control mechanism contemplates that ActewAGL may be entitled to earn an amount that differs from smoothed revenues (even where smoothed revenues are adjusted in accordance with its control mechanism for STPIS rewards/penalties (S_t), approved pass through amounts (B_t), the X factor annually revised for the updated return on debt and the change in CPI) and that, indeed, may differ from the $AARC_t$ multiplied by actual/forecast energy throughput.

Further, clause 8A.15.4(d) of the AEMC's Draft Rule operates to impose a revenue cap on ActewAGL in determining prices for the 2018/19 regulatory year, rather than an adjustment to ActewAGL's average annual revenue cap. It does this by limiting the revenue that ActewAGL may recover in the final year of the current regulatory control period to ActewAGL's total annual revenue for that year determined in accordance with the annual revenue requirement and control mechanism under the distribution determination in force for that year, plus or minus (as applicable) the adjustment amount.

In effect, the AEMC has imported into its Draft Rule a presumption as to the form of control (namely, that ActewAGL's form of control is a revenue cap) that does not reflect the requirements of the NER. Under the NER, a DNSP's control mechanism need not be a revenue cap (clause 6.2.5(b)), is determined by the AER as a constituent decision in its distribution determination (clause 6.12.1(11)) and must be in accordance with the AER's framework and approach paper (see also clause 6.12.3(c)). By treating ActewAGL as having a revenue cap, it appears that the AEMC has imported into the derogation a presumption as to the form of ActewAGL's distribution determination, specifically the form of control mechanism it establishes, which does not reflect

the control mechanism under the 2015 determination or the NER requirement that ActewAGL's form of control for the current regulatory control period be in accordance with the AER's Stage 1 Framework and Approach Paper and so an average revenue cap (which requirement will operate to require that ActewAGL's average revenue cap form of control is retained in any remade 2015 determination).

In order to ensure the adjustment mechanism in the pricing proposal will operate effectively having regard to ActewAGL's revenue cap form of control, in its Revised Rule ActewAGL has:

- amended the definition of the 'adjustment amount' in clause 8A.15.1 to refer to the annual smoothed revenue that is used in deriving the average annual smoothed revenue for ActewAGL for the final regulatory year of the current regulatory control period in accordance with the control mechanism for distribution standard control services that applies under the remade, affirmed or varied 2015 determination (as applicable);
- amended clause 8A.15.4(d) of the AEMC's Draft Rule (clause 8A.15.4(f) of ActewAGL's Revised Rule) so that it provides for an adjustment to be made to ActewAGL's average annual revenue cap ($AARC_t$) and no longer imposes a revenue cap on ActewAGL for the purposes of determining pricing for 2018/19;
- included a new definition of 'average adjustment amount' in clause 8A.15. This is because, having regard to ActewAGL's form of control, the adjustment to ActewAGL's control mechanism to provide for the annual distribution adjustment amount would need to be made to ActewAGL's average annual revenue cap in year t ($AARC_t$) so as not to impose a revenue cap on ActewAGL. Accordingly, it is necessary to average the annual distribution adjustment amount across forecast energy throughput for the relevant regulatory year in providing for the adjustment for the purposes of the pricing proposal for 2018/19;
- replaced the definition of 'substituted total annual revenue amount' with a new definition of 'substituted average annual revenue cap'; and
- revised clause 8A.15.4(e) of the AEMC's Draft Rule (clause 8A.15.4(g) of ActewAGL's Revised Rule) to provide that the subsequent adjustment amount is included as a revenue increment or decrement (as applicable) to ActewAGL's distribution standard control service revenue determined under rule 6.26 for the first regulatory year of the subsequent regulatory control period. This amendment is required to ensure that the subsequent adjustment amount is recovered or returned (as applicable) to ActewAGL's distribution standard control service customers, and not also or instead recovered or returned (as applicable) to users of ActewAGL's transmission standard control services. This is because ActewAGL has dual function assets and, in making its 2015 determination in accordance with rule 6.26, the AER divided the revenues calculated under Part C of Chapter 6 into a portion relevant to ActewAGL's distribution standard control services and a portion relevant to its transmission standard control services. As such, the AER determined annual revenue requirements for each of ActewAGL's distribution standard control services and its transmission standard control services.¹⁹ The AER is likely to do the same in any remade determination. If the

¹⁹ AER, 2105 determination, Attachment 1.

subsequent adjustment amount, which represents that part of ActewAGL's smoothed revenues for distribution standard control services the recovery of which is to be moved over the current and subsequent regulatory control periods, is to be recovered or returned from customers of those services only, it is necessary for the Rule to provide that that amount is a revenue increment or decrement (as applicable) to ActewAGL's distribution standard control service revenue.

4.2 No smoothing for transmission standard control services or annual metering charges in scenario 1

It appears that the AEMC may have sought to provide in its Draft Rule for the smoothing of revenues for transmission standard control services and type 5 and 6 metering services under scenario 1. This is because the Draft Rule defines the 'adjustment amount' that is subject to smoothing across periods by reference to the 'total annual revenue', which is in turn defined to include the revenue ActewAGL is entitled to earn from transmission standard control services and type 5 and 6 metering services.

However, the Draft Rule is not effective to provide for such recovery. This is because:

- the definition of 'adjustment amount' qualifies the reference to 'total annual revenue' by reference to:
 - the 'annual revenue requirement' under the remade, affirmed or varied 2015 determination, which necessarily excludes revenues for type 5 and 6 metering services, given that the term 'annual revenue requirement' is defined by reference to Part C of Chapter 6, Part C of Chapter 6 is particular to standard control services and type 5 and 6 metering services are alternative control services (not standard control services); and
 - the 'control mechanism' in the singular, whereas, as described above, the control mechanism for each of transmission standard control services and type 5 and 6 metering services are separate and discrete to that for distribution standard control services;²⁰
- the mechanism for smoothing in the current regulatory control period is the pricing proposal which cannot operate to smooth revenues for transmission standard control services (as these revenues are not recovered through the pricing proposal); and
- the mechanism for smoothing in the subsequent regulatory control period is the 'annual revenue requirement' for year 1, which is not an effective mechanism for the smoothing of the recovery of revenues for type 5 and 6 metering services and does not ensure the recovery of distribution revenues that are subject to smoothing from (and only from) ActewAGL's distribution customers, and the recovery of transmission revenues that are subject to smoothing from the beneficiaries of ActewAGL's transmission services (and not solely or disproportionately from ActewAGL's distribution customers).

²⁰

The control mechanism for transmission standard control services is a revenue cap: AER, 2015 determination, Attachment 14, page 14-15. The control mechanism for type 5 and 6 metering services is a price cap: AER, 2015 determination, Attachment 16, page 16-26.

Consistent with its proposed participant derogation, in its Revised Rule ActewAGL does not propose any smoothing of any higher or lower revenues from transmission standard control services or type 5 and 6 metering services in scenario 1.²¹ This is because:

- the provision for smoothing of distribution standard control services should provide sufficient flexibility to address any price volatility in overall NUOS charges that may otherwise arise from the recovery of the revenue impact of the remade 2015 determination in respect of transmission standard control services in the final year of the current regulatory control period; and
- unlike with respect to distribution standard control services revenue, ActewAGL does not expect the revenue impact of the remade 2015 determination in respect of type 5 and 6 metering services to be significant such that it will cause price volatility if it is only recovered in the final year of the current regulatory control period in circumstances where scenario 1 applies.

4.3 No true-up if 2015 determination is affirmed or varied in scenario 1

ActewAGL observes that the AEMC's Draft Rule does not provide for any true-up of revenue earned in the current regulatory control period if the 2015 determination is affirmed or varied by the Tribunal in scenario 1 (e.g. to address over-recovery under the section 59A undertakings relative to the 2015 determination as affirmed or varied). Since it is now likely that the AER will be required to remake its 2015 determination, ActewAGL has not sought to address this omission in its proposed amendments. Further, as discussed above, given that remittal to the AER for the remaking of its operating expenditure and debt transition decisions is now likely, scenario 1 is very unlikely to result in any event.

5. Revisions to scenarios 2 & 3 - clauses 8A.15.5 & 8A.15.6

ActewAGL proposes changes to clauses 8A.15.5 and 8A.15.6 of the AEMC's Draft Rule to ensure the derogation operates as intended in circumstances where:

- ActewAGL's control mechanism for distribution standard control services is an average revenue cap control; and
- ActewAGL's revenue differentials include revenue differentials for ActewAGL's transmission standard control services and annual metering charges for type 5 and 6 metering services.²²

Clause 8A.15.5 of the AEMC's Draft Rule is intended to allow ActewAGL to recover or return to customers any increased or decreased revenue as a result of the outcome of the proceedings in the subsequent regulatory control period in circumstances where the 2015 determination is remade by the AER or affirmed or varied by the Tribunal too late to be reflected in 2018/19 pricing but in sufficient time to be reflected in the subsequent distribution determination (termed 'scenario 2' in the AEMC's Draft Determination).²³ As such, the Draft Rule provides for the revenue impact to be recovered/returned over the subsequent regulatory control period without

²¹ ActewAGL's request for a participant derogation, at [43].

²² These changes are summarised in row 9 of the Explanatory Table in Attachment 3.

²³ AEMC, Draft Determination, pages 28 to 30.

need for revocation and substitution of the subsequent distribution determination. The Draft Rule does this by requiring the AER to include the 'subsequent adjustment amount', which is the net present value equivalent of the 'variation amount', as a revenue increment/decrement to ActewAGL's annual revenue requirement determined under rule 6.4 for the first regulatory year of the subsequent regulatory control period (clause 8A.15.5(c)).

Clause 8A.15.6 of the AEMC's Draft Rule is intended to allow ActewAGL to recover or return to customers any increased or decreased revenue as a result of the outcome of the proceedings in the subsequent regulatory control period in circumstances where the 2015 determination is remade by the AER or affirmed or varied by the Tribunal before 1 December 2020 but too late to be reflected in the subsequent distribution determination without revocation or substitution of that determination (termed 'scenario 3' in the AEMC's Draft Determination). As such, the Draft Rule provides for the revenue impact to be recovered/returned over the remaining years of the subsequent regulatory control period following revocation and substitution of the subsequent distribution determination. The Draft Rule does this by requiring the AER to include the 'subsequent adjustment amount' (the net present value equivalent of the 'variation amount') as a revenue increment/decrement to ActewAGL's annual revenue requirement for one or more of the remaining regulatory years of the subsequent regulatory control period (clause 8A.15.6(c)).

As described below, the AEMC's 'variation amount' definition and, as a consequence, its 'subsequent adjustment amount' definition does not operate effectively to provide for recovery of revenue differentials in respect of ActewAGL's distribution standard control services, transmission standard control services or annual metering charges for type 5 and 6 metering services.

5.1 Distribution standard control services

The AEMC recognises in its Draft Determination that under scenarios 2 and 3 the derogation should operate to allow ActewAGL to recover or return to customers any increased or decreased revenue as a result of the outcome of the judicial review proceedings over the subsequent regulatory control period.²⁴

However, for ActewAGL, the AEMC's definition of the 'variation amount' does not operate to account in the subsequent regulatory control period for the revenue differential attributable to the difference between the remade, affirmed or varied 2015 determination (as applicable) and pricing for ActewAGL's distribution standard control services applicable in the current regulatory control period. This is because, as described above, ActewAGL operates under an average revenue cap, rather than a revenue cap.

The AEMC's definition of 'variation amount' presumes that the true-up for the 2015/16 to 2017/18 regulatory years will be reflected in the allowed revenue amount for the final year (2018/19) in the applicable distribution determination. However, the NER and ActewAGL's control mechanism do not provide for the AER to reflect the necessary true-up for the 2015/16 to 2017/18 regulatory years in any final year revenue amount for 2018/19 or otherwise in the control mechanism in that year. Unlike the NSW DNSPs there is no overs or unders account in ActewAGL's control mechanism. Further, in circumstances where the AER remakes its 2015 determination after pricing for 2018/19 has been set, there is no NER requirement for the AER to determine a smoothed revenue amount for 2018/19 in that determination that reflects a true-up for the

²⁴ AEMC, Draft Determination, pages 11, 28 and 30.

2015/16 to 2017/18 regulatory years. In any event, in determining smoothed revenue for 2018/19, the AER would not take account of the revenue adjustments to smooth revenue that occur under ActewAGL's control mechanism (i.e. the adjustments for STPIS rewards/penalties (St), approved pass through amounts (Bt), the change in the X factor as a consequence of the annual update of the return on debt and the change in CPI).

Accordingly, it is necessary for the variation amount for ActewAGL's distribution standard control services to be defined in terms that aggregate a true-up amount for each year of the 2015/16 to 2018/19 period.

In addition, having regard to ActewAGL's average revenue cap form of control, it is unclear from the AEMC's definition of variation amount:

- what is meant by the reference to the total annual revenue that ActewAGL may earn for the final regulatory year in accordance with the annual revenue requirement and control mechanism given neither ActewAGL's total actual revenue nor its average actual revenue is dictated by its control mechanism;
- what is meant by the total annual revenue that ActewAGL is entitled to earn under the section 59A undertakings given the undertakings only specify pricing or provide for the determination of pricing and do not dictate revenues recovered nor is the pricing in all of the undertakings derived by a reference to a revenue amount; and
- whether the AEMC's definition provides for the application of STPIS rewards/penalties and approved pass through amounts. This is because it contemplates a true-up of total annual revenues to which ActewAGL is entitled. Under ActewAGL's control mechanism the adjustments for STPIS and approved pass through amounts are made to average annual smoothed revenue in deriving ActewAGL's $AARC_t$, rather than the revenue allowance and ActewAGL's $AARC_t$ does not operate to cap/set the revenue that ActewAGL is entitled to earn.

Further, the AEMC's definition of 'variation amount' does not appear to operate so as to leave the demand risk with ActewAGL. As discussed above, ActewAGL's average revenue cap form of control is intended to operate so that any demand forecasting risk remains with ActewAGL and is not transferred to customers.

In its Revised Rule, ActewAGL proposes a 'distribution variation amount' which will better reflect the revenue differential arising from the difference between the remade, affirmed or varied 2015 distribution determination (as applicable), and the 2015 determination (for 2015/16) and pricing applicable under the section 59A undertakings (for 2016/17, 2017/18 and 2018/19). ActewAGL has formulated the definition of this amount having regard to ActewAGL's control mechanism for distribution standard control services under the 2015 determination.²⁵ As such, it accounts for revenue adjustments in ActewAGL's control mechanism (i.e. the adjustments for STPIS rewards/penalties (St), approved pass through amounts (Bt), the X factor annually revised for the updated return on debt and the change in CPI). Further, by providing for the components of the 'distribution variation amount' to be calculated on the basis of forecast energy throughput in the 2015 determination, the definition is consistent with ActewAGL's form of control pursuant to which ActewAGL, and not customers, bears the demand risk.

²⁵ AER, 2015 determination, Attachment 14, Figure 14.1, page 14-13.

ActewAGL notes that during its meeting with the AEMC on 18 May 2017, the AEMC suggested an approach substantively identical to ActewAGL's proposed definition because it avoids the need to expressly specify the matters not reflected in ActewAGL's smoothed annual revenues that need to be reflected in the true-up (for example, STPIS rewards/penalties (St), approved pass through amounts (Bt), the X factor annually revised for the updated return on debt and the change in CPI).

ActewAGL has also revised clauses 8A.15.5(c) and 8A.15.6(c) of the AEMC's Draft Rule so that the distribution variation amount is included as a revenue increment or decrement (as applicable) to ActewAGL's distribution standard control service revenue in the subsequent regulatory control period, rather than its annual revenue requirement. This amendment is consistent with the fact that ActewAGL has dual function assets and that in making its 2015 determination the AER determined annual revenue requirements for each of ActewAGL's distribution standard control services and its transmission standard control services under rule 26. The AER is likely to do the same in any remade determination and the subsequent distribution determination. Against this background, the amendment operates to ensure the distribution variation amount is recovered from (and only from) ActewAGL's distribution customers (and not from beneficiaries from its transmission services).

5.2 Transmission standard control services and annual metering services

Having regard to the Tribunal's decision in respect of ActewAGL,²⁶ a remade or varied 2015 determination could also result in different revenue allowances in respect of transmission standard control services and type 5 and 6 metering services (being the type 5 and 6 metering services classified as alternative control services and in respect of which annual metering service charges were specified in the 2015 determination)²⁷ than those under the 2015 determination.²⁸ Accordingly, in its initial proposed derogation ActewAGL made provision for the recovery of revenue differential arising from the difference between allowed revenues under the 2015 determination and the remade 2015 determination in respect of both transmission standard control services and type 5 and 6 metering services in the subsequent regulatory control period in circumstances where the AER remakes its 2015 determination on or after 1 March 2018.²⁹

It appears that the AEMC may have sought to provide in its Draft Rule for the recovery of the difference between ActewAGL's allowed revenue under the remade, affirmed or varied 2015 determination (as applicable) and its revenues for transmission standard control services and pricing for type 5 and 6 metering services in the current regulatory control period under scenarios 2 and 3. This is because the Draft Rule defines the 'variation amount' that is the subject of the true-up in the subsequent regulatory control period under scenarios 2 and 3 by reference to 'total annual revenue', which is in turn defined to include the revenue ActewAGL is entitled to earn from transmission standard control services and type 5 and 6 metering services.

However, the Draft Rule is not effective to provide for such recovery. This is because:

²⁶ *Application by ActewAGL Distribution* [2016] ACompT 4.

²⁷ AER, 2015 determination, Attachment 16, pages 16-21 to 16-55 and 16-61.

²⁸ ActewAGL's request for a participant derogation, at [7] and [90].

²⁹ ActewAGL's request for a participant derogation, at [90] to [94].

- the definition of 'variation amount' qualifies the reference to 'total annual revenue' by reference to:
 - the 'annual revenue requirement' under the remade, affirmed or varied 2015 determination, which necessarily excludes revenues for type 5 and 6 metering services, given that the term 'annual revenue requirement' is defined by reference to Part C of Chapter 6, Part C of Chapter 6 is particular to standard control services and type 5 and 6 metering services are alternative control services (not standard control services) ; and
 - the undertaking that applies in the final year, which does not make any explicit provision for the recovery of ActewAGL's revenues for transmission standard control services (which are instead allocated to, and recovered from, both ACT and NSW customers);
- the definition of 'variation amount' qualifies the reference to 'total annual revenue' by reference to the 'control mechanism' under the remade, affirmed or varied 2015 determination in the singular, whereas the control mechanisms for each of transmission standard control services and type 5 and 6 metering services are separate and discrete to that for distribution standard control services; and
- the mechanism for recovery of the 'variation amount' in the subsequent regulatory control period is the 'annual revenue requirement'. This is not an effective mechanism for the recovery of revenues for type 5 and 6 metering services as this would result in the true-up amount for type 5 and 6 metering services being smeared across ActewAGL's distribution standard control services customers, rather than recovered from its type 5 and 6 metering services customers. Further, it does not operate to require that revenues for distribution standard control services are recovered from (and only from) ActewAGL's distribution customers or that revenues for transmission standard control services are properly allocated to all users of the NSW/ACT transmission network instead of recovered only or disproportionately from ActewAGL's distribution customers.

In its Revised Rule, ActewAGL proposes new definitions of 'transmission variation amount' and 'metering variation amount' in clause 8A.15.1 and makes changes to clauses 8A.15.5 and 8A.15.6 to provide for the recovery of any higher or lower revenues from transmission standard control services or type 5 and 6 metering services arising from the difference between the applicable distribution determination and revenues and pricing for the current regulatory control period from the customers that benefit from those services.

ActewAGL's definition of 'transmission variation amount' provides for the true-up of ActewAGL's allowed revenue for transmission standard control services under the remade, affirmed or varied 2015 determination (as applicable) and its actual revenue from transmission standard control services in the 2015/16 to 2018/19 regulatory years. It is formulated having regard to the control mechanism for transmission standard control services in the 2015 determination³⁰ and the manner in which ActewAGL's revenue from transmission standard control services is determined.

³⁰ Under the 2015 determination, ActewAGL has a revenue cap control mechanism for its transmission standard control services: 2015 determination, Attachment 14, page 14-15.

Similarly, ActewAGL's definition of 'metering variation amount' provides for the true-up of ActewAGL's allowed revenue for type 5 and 6 metering services under the remade, affirmed or varied 2015 determination (as applicable) and its revenue from type 5 and 6 metering services (respectively) in the 2015/16 to 2018/19 regulatory years. It is formulated having regard to the control mechanism for type 5 and 6 metering services in the 2015 determination and the manner in which ActewAGL's revenue from metering charges is determined. Under the 2015 determination, ActewAGL has a price cap control mechanism for type 5 and 6 metering services.³¹ ActewAGL's definition of 'metering variation amount' is designed to leave demand risk with ActewAGL as it provides for the components of the 'metering variation amount' to be calculated on the basis of forecast sales quantities in the 2015 determination.

ActewAGL's changes to clauses 8A.15.5 and 8A.15.6 are designed to ensure that the true-up amounts are recovered from, or returned to, the customers that benefit from those services. As such, clauses 8A.15.5(d) and 8A.15.6 (c)(3) of ActewAGL's Revised Rule provide that the transmission variation amount is included as a revenue increment or decrement (as applicable) to ActewAGL's transmission standard control revenue. Further, clauses 8A.15.5(d) and 8A.15.6 (c)(3) of ActewAGL's Revised Rule provide that the metering variation amount is included as a revenue increment or decrement (as applicable) to ActewAGL's building block revenue requirement for type 5 and 6 metering services.

Rather than having discrete subsequent adjustment amount definitions for the distribution, transmission and metering amounts, ActewAGL has incorporated the requirement for the relevant amount to be the net present value equivalent amount into the definitions of 'distribution variation amount', 'transmission variation amount' and 'metering variation amount' in order to streamline the drafting.

5.3 Jurisdictional scheme and designated pricing proposal charges

ActewAGL has not provided in its Revised Rule for a true-up for any over or under recovery of designated pricing proposal charges or jurisdictional amounts having regard to the 2015 determination, the section 59A undertakings and any remade 2015 determination. This is because as part of the pricing proposal process under Part I of Chapter 6 of the NER those charges can be trued-up in accordance with the NER provisions providing for recovery of those charges (clauses 6.18.7 and 6.18.7A).

Clauses 6.18.7(b) and 6.18.7A(b) of the NER require the amounts of a DNSP's designated pricing proposal charges (including TUOS charges) and jurisdictional scheme amounts that are passed on to retail customers to be adjusted for over or under recovery.

The over/under recovery amounts must be calculated in a way that:

- ensures a DNSP is able to recover from retail customers no more and no less than the designated pricing proposal charges and jurisdictional scheme amounts it incurs (clauses 6.18.7(c)(2) and 6.18.7A(c)(2));
- adjusts for the appropriate cost of capital that is consistent with the allowed rate of return used in the relevant distribution determination for the regulatory year (clauses 6.18.7(c)(3) and 6.18.7A(c)(3)); and

³¹ AER, 2015 determination, Attachment 16, page 16-26.

- subject to the above, is consistent with the method determined by the AER under the relevant distribution determination (clauses 6.18.7(c)(1) and 6.18.7A(c)(1)).

The 2015 determination requires ActewAGL to maintain an unders and overs account for designated pricing proposal charges and jurisdictional scheme amounts for the most recently completed regulatory year (t-2), the current regulatory year (t-1) and the next regulatory year (t) and to achieve a zero expected balance on that account at the end of each of the forecast years in its annual pricing proposals in the 2015/16 to 2018/19 regulatory control period.³²

The 2015 determination only provides for adjustments going back two years from year t and it is possible that any remade 2015 determination will not provide for adjustments going back in time beyond t-2. Nonetheless, the requirements in clause 6.18.7(c)(2) and 6.18.7A(c)(2) of the NER that the over/under recovery amount must be calculated in a way that ensures a DNSP is able to recover from retail customers no more and no less than the designated pricing proposal charges it incurs (to which the requirements for consistency with the AER's method under the distribution determination under clauses 6.18.7(c)(1) and 6.18.7A(c)(1) are subject) would operate to require the AER to determine the opening balance of the overs and unders account in year t-2 by looking back in time beyond t-2 in order to ensure ActewAGL has not over or under recovered for those charges in the current regulatory control period.

5.4 Substituted distribution determination in scenario 3

The AEMC's Draft Rule (clause 8A.15.6(d)) does not permit the substituted distribution determination for the subsequent regulatory control period under scenario 3 to vary from the revoked determination except to allow for the revenue differential between the applicable 2015 distribution determination and the undertaking to be included in the annual revenue requirement(s) for the subsequent regulatory control period.³³

As a result, the AEMC's Draft Rule does not enable the substituted distribution determination to vary the revoked distribution determination to provide for revenue increments or decrements for the subsequent regulatory control period arising from any variation in the application of any efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme or demand management and embedded generation connection incentive scheme in the current regulatory control period by the remade 2015 determination (or varied 2015 determination), in accordance with clauses 6.4.3(a)(5) and (b)(5) of the NER. Where the revenue increments or decrements for the subsequent regulatory control period attributable to the application of those schemes in the current regulatory control period varied as between the remade 2015 determination (or varied 2015 determination) and the 2015 determination, the AEMC's Draft Rule would not permit the substituted distribution determination to account for such differentials in accordance with clauses 6.4.3(a)(5) and (b)(5).

Accordingly, ActewAGL has amended clause 8A.15.6(d)(1) to enable the AER, in making the substituted distribution determination under scenario 3, to vary the revoked distribution determination to provide for revenue increments or decrements arising from the application of any efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme or demand management and embedded generation connection incentive scheme in accordance with the applicable distribution determination (ActewAGL

³² AER, 2015 determination, Attachment 14, pages 14-17 to 14-20.

³³ See row 10 of the Explanatory Table in Attachment 3.

Revised Rule, clause 8A.15.6(d)(1)(ii)). These proposed changes operate to confer on the AER flexibility to address these interrelationships between the distribution determination for the 2015/16 to 2018/19 period and that for the subsequent regulatory control period.

ATTACHMENT 1

ACTEWAGL DISTRIBUTION'S REVISED RULE (MARK-UP)

Draft National Electricity Amendment (Participant derogation -ACT DNSP Revenue Smoothing) Rule 2017

1 Title of Rule

This Rule is the *Draft National Electricity Amendment (Participant derogation - ACT DNSP Revenue Smoothing) Rule 2017*.

2 Commencement

This Rule commences operation on [COMMENCEMENT_DATE], immediately following Schedule 1 of the *National Electricity Amendment (Participant derogation — NSW DNSPs Revenue Smoothing) Rule 2017*.

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 ~~(as corrected in accordance with the *AER's* letter dated 20 May 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, ~~providing distribution services in~~ 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 electricity 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 increment; or
- (b) a revenue decrement,

to the ~~total~~ annual smoothed revenue that is used in deriving the average annual smoothed revenue ~~may be earned by~~ for ActewAGL for the final regulatory year of the current regulatory control period in accordance with the ~~annual revenue requirement and control mechanism~~ for distribution standard control services that applies under:

- (c) if clause 8A.15.4(a)(1) applies, the remade 2015 determination; or
- (d) if clause 8A.15.4(a)(2) applies, the affirmed or varied 2015 determination.

adjustment determination means the *AER's* determination:

- (a) under clause 8A.15.4, ~~of any,~~ and the relevant amounts of the, adjustment amount and subsequent adjustment amount; and
- (b) under clauses 8A.15.5 and 8A.15.6, the relevant amounts of the distribution variation amount, transmission variation amount and metering variation amount and ~~subsequent adjustment amount.~~

affirms or varies the 2015 determination means the Tribunal affirms or varies the 2015 determination under section 71P(2)(a) or (b) of the *National Electricity Law*, respectively, or under any other relevant power of the Tribunal, and makes no concurrent order to set aside and remit the matter back to the *AER* under section 71P(2)(c) of the *National Electricity Law* or under any other relevant power of the Tribunal.

average adjustment amount means the adjustment amount divided by:

- (a) if clause 8A.15.4(a)(1) applies, the forecast total energy throughput for the final regulatory year of the current regulatory control period in the remade 2015 determination; or
- (b) if clause 8A.15.4(a)(2) applies, the forecast total energy throughput for the final regulatory year of the current regulatory control period in the affirmed or varied 2015 determination.

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 other than transmission standard control services.

distribution variation amount means an amount that is the net present value equivalent to:

- (a) if clause 8A.15.5(a)(1) or 8A.15.6(a)(1) applies:

(1) the sum of:

- (i) the value of the average annual revenue cap (AARC) for ActewAGL calculated in accordance with the remade 2015 determination; multiplied by
- (ii) the forecast total energy throughput as set out in the 2015 determination,

for each regulatory year of the current regulatory control period (excluding the transitional regulatory control period); less

(2) the sum of:

- (i) for 2015/16, the value of the average annual revenue cap (AARC) for ActewAGL calculated in accordance with the 2015 determination multiplied by the forecast total energy throughput for that year as set out in the 2015 determination; and
- (ii) for each other regulatory year of the current regulatory control period (excluding the transitional regulatory control period), pricing for distribution standard control services provided by ActewAGL applicable under the undertaking for the relevant year multiplied by the forecast total energy throughput for that year as set out in the 2015 determination; or

(b) if clause 8A.15.5(a)(2) or 8A.15.6(a)(2) applies:

(1) the sum of:

- (i) the value of the average annual revenue cap (AARC) for ActewAGL calculated in accordance with the affirmed or varied 2015 determination; multiplied by
- (ii) the forecast total energy throughput as set out in the 2015 determination,

for each regulatory year of the current regulatory control period (excluding the transitional regulatory control period); less

(2) the sum of:

- (i) for 2015/16, the value of the average annual revenue cap (AARC) for ActewAGL calculated in accordance with the 2015 determination multiplied by the forecast total energy throughput for that year as set out in the 2015 determination; and
- (ii) for each other regulatory year of the current regulatory control period (excluding the transitional regulatory control period), pricing for distribution standard control services provided by ActewAGL applicable under the undertaking for the relevant year multiplied by the forecast total energy throughput for that year as set out in the 2015 determination.

metering variation amount means an amount that is the net present value equivalent to:

(a) if clause 8A.15.5(a)(1) or 8A.15.6(a)(1) applies:

(1) the sum of the building block revenue requirements for annual metering services for each regulatory year of the current regulatory

control period (excluding the transitional regulatory control period) set out in or derived for the purpose of the remade 2015 determination; less

(2) the sum of:

(i) for 2015/16, the annual metering charges for annual metering services provided by ActewAGL set out in the 2015 determination multiplied by the forecast total sales quantities for that year as set out in the 2015 determination; and

(ii) for each other regulatory year of the current regulatory control period (excluding the transitional regulatory control period), pricing for annual metering services applicable under the undertaking for the relevant year, multiplied by the forecast total sales quantities for that year as set out in the 2015 determination; or

(b) if clause 8A.15.5(a)(2) or 8A.15.6(a)(2) applies:

(1) the sum of the building block revenue requirements for annual metering services for each regulatory year of the current regulatory control period (excluding the transitional regulatory control period) set out in or derived for the purpose of the affirmed or varied 2015 determination; less

(2) the sum of:

(i) for 2015/16, the annual metering charges for annual metering services provided by ActewAGL set out in the 2015 determination multiplied by the forecast total sales quantities for that year as set out in the 2015 determination; and

(ii) for each other regulatory year of the current regulatory control period (excluding the transitional regulatory control period), pricing for annual metering services applicable under the undertaking for the relevant year, multiplied by the forecast total sales quantities for that year as set out in the 2015 determination.

net present value equivalent means an amount that is equivalent in net present value terms to the applicable amount where the discount rate for the net present value calculation is the relevant weighted average cost of capital in the applicable distribution determination.

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

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.

subsequent adjustment amount means an amount that:

(a) if clause 8A.15.4 applies, an amount that:

(1) is equivalent in the net present value terms equivalent to the adjustment amount; and

(b) ~~(2)~~ represents a revenue increment (where the adjustment amount is a negative amount) or a revenue decrement (where the adjustment amount is a positive amount) to ActewAGL's ~~annual~~ distribution standard control service revenue requirement for the first regulatory year of the subsequent regulatory control period; ~~or~~

~~(b)~~ if clause 8A.15.5 applies, an amount that is equivalent in net present value terms to the variation amount; ~~or~~

~~(c)~~ if clause 8A.15.6 applies, an amount that is equivalent in net present value terms to the variation amount.

subsequent distribution determination means the distribution determination for ActewAGL 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 average annual revenue amount cap has the meaning given in clause 8A.15.4 ~~(d)~~ 8A.15.4(f).

total annual revenue means the total revenue that ActewAGL is entitled to earn from:

(a) the provision of *standard control services*;

(b) the provision of *transmission standard control services*; and

(c) type 5 and 6 metering services classified as *alternative control services* and in respect of which annual metering service charges were specified in the 2015 determination,

~~for the relevant regulatory year.~~

transitional regulatory control period has the meaning in clause 11.55.1 of the *Rules* being a period of one year that commences on 1 July 2014 and ends on 30 June 2015.

transmission variation amount means an amount that is the net present value equivalent to:

(a) if clause 8A.15.5(a)(1) or 8A.15.6(a)(1) applies:

- (1) the sum of the total revenue ActewAGL is entitled to earn from the provision of *transmission standard control services* for each regulatory year of the current regulatory control period (excluding the transitional regulatory control period) under the remade 2015 determination; less
- (2) the actual revenue earned by ActewAGL for the provision of *transmission standard control services* for each regulatory year of the current regulatory control period (excluding the transitional regulatory control period), or where actual revenue is not available for a regulatory year the value of the total revenue ActewAGL is entitled to earn for *transmission standard control services* that is provided to TransGrid in its capacity as the *Co-ordinating Network Service Provider* under clause 6A.29.1(e); or

(b) if clause 8A.15.5(a)(2) or 8A.15.6(a)(2) applies:

- (1) the sum of the total revenue ActewAGL was entitled to earn from the provision of *transmission standard control services* for each regulatory year of the current regulatory control period (excluding the transitional regulatory control period) under the affirmed or varied 2015 determination; less
- (2) the actual revenue earned by ActewAGL for the provision of *transmission standard control services* for each regulatory year of the current regulatory control period (excluding the transitional regulatory control period), or where actual revenue is not available for a regulatory year the value of the total revenue ActewAGL is entitled to earn for *transmission standard control services* that is provided to TransGrid in its capacity as the *Co-ordinating Network Service Provider* under clause 6A.29.1(e).

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, as varied or remade as a consequence of the outcome of judicial review of that decision.

undertaking means an undertaking given to, and approved 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.

~~**variation amount** means:~~

- ~~(a) if clause 8A.15.5 applies, an amount equivalent to the difference between the total annual revenue for ActewAGL for the final regulatory year of the current regulatory control period under:~~

- ~~(1) if clause 8A.15.5(a)(1) applies:~~

 - ~~(i) the *annual revenue requirement* and control mechanism under the remade 2015 determination; and~~
 - ~~(ii) any undertaking that applies for that regulatory year, provided that if the total annual revenue under the undertaking is greater than the total annual revenue under the remade 2015 determination, the variation amount will be a negative amount; or~~
- ~~(2) if clause 8A.15.5(a)(2) applies:~~

 - ~~(i) the *annual revenue requirement* and control mechanism under the affirmed or varied 2015 determination (as applicable); and~~
 - ~~(ii) any undertaking that applies for that regulatory year, provided that if the total annual revenue under the undertaking is greater than the total annual revenue under the varied or affirmed 2015 determination (as applicable), the variation amount will be a negative amount; or~~
- ~~(b) if clause 8A.15.6 applies, an amount equivalent to the difference between the total annual revenue for ActewAGL for the final regulatory year of the current regulatory control period under:~~

 - ~~(1) if clause 8A.15.6(a)(1) applies:~~

 - ~~(i) the *annual revenue requirement* and control mechanism under the remade 2015 determination; and~~
 - ~~(ii) any undertaking that applies for that regulatory year, provided that if the total annual revenue under the undertaking is greater than the total annual revenue under the remade 2015 determination, the variation amount will be a negative amount; or~~
 - ~~(2) if clause 8A.15.6(a)(2) applies:~~

 - ~~(i) the *annual revenue requirement* and control mechanism under the affirmed or varied 2015 determination (as applicable); and~~
 - ~~(ii) any undertaking that applies for that regulatory year, provided that if the total annual revenue under the undertaking is greater than the total annual revenue under the varied or affirmed~~

~~2015 determination (as applicable), the variation amount will be a negative amount.~~

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, or 2015 determination affirmed or varied by the Tribunal.
- (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.
- ~~(c) To the extent of any inconsistency between this *participant derogation* and a:~~
- ~~(1) remade 2015 determination; or~~
 - ~~(2) 2015 determination affirmed or varied by the Tribunal;~~
- ~~this *participant derogation* prevails.~~

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:
- (1) a remade 2015 determination is made by the *AER* prior to 1 March 2018; or
 - (2) the Tribunal affirms or varies the 2015 determination prior to 1 December 2017.

Adjustment determination

- (b) The *AER* ~~may~~must:

- (1) if subparagraph (a)(1) applies, determine at the time of making the remade 2015 determination; or
 - (2) if subparagraph (a)(2) applies, determine by 28 February 2018,
- for ActewAGL:
- (3) an adjustment amount; and
 - (4) a subsequent adjustment amount;

~~(c)~~ The AER is satisfied that the application of the adjustment amount and subsequent adjustment amount that it is satisfied will under paragraphs (d) and (e), respectively, would be reasonably likely to minimise variations in use-of-system-NUOS charges:

- ~~(5)~~ (1) between the penultimate and final regulatory years of the current regulatory control period; and
- ~~(6)~~ (2) between the final regulatory year of the current regulatory control period and the first regulatory year of the subsequent regulatory control period,

for 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).

~~(d)~~ The AER may determine the adjustment amount and the subsequent adjustment amount to be zero.

~~(e)~~ (e) Paragraphs ~~(d)~~ (f) and ~~(e)~~ (g) do not apply in respect of ActewAGL if the AER has ~~not~~ determined an zero adjustment amount and, consequently, a zero subsequent adjustment amount under paragraph (b).

Recovery in current regulatory control period

~~(d)~~ (f) A pricing proposal submitted by ActewAGL, and approved by the AER, for the final regulatory year of the current regulatory control period must ~~only~~ provide for the recovery of volume weighted average prices for distribution standard control services calculated in accordance with ActewAGL's control mechanism formula in the remade 2015 determination or the affirmed or varied 2015 determination (as applicable) that are less than or equal to:

- (1) where the applicable adjustment amount operates as if it were a revenue increment:
 - (i) the value of ActewAGL's total annual revenue average annual revenue cap (AARC) in accordance with the ~~annual revenue requirement~~ and control mechanism for distribution

standard control services under the distribution determination in force for the final regulatory year of the current regulatory control period; plus

- (ii) the average adjustment amount; or
- (2) where the applicable adjustment amount operates as if it were a revenue decrement:
 - (i) the value of ActewAGL's total annual revenue average annual revenue cap (AARC_t) in accordance with the annual revenue requirement and control mechanism for distribution standard control services under the distribution determination in force for the final regulatory year of the current regulatory control period; minus
 - (ii) the average adjustment amount,

(such amount being the ~~substituted total~~ average annual revenue amount cap).

Recovery in subsequent regulatory control period

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

- (1) if subparagraph ~~(d)(1)~~(f)(1) applies, a revenue decrement; or
- (2) if subparagraph ~~(d)(1)~~(f)(2) applies, a revenue increment,

to ActewAGL's ~~annual~~distribution standard control service revenue requirement determined under rule 6.426 for the first regulatory year 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:
 - (1) a remade 2015 determination is made by the *AER* on or after 1 March 2018, but prior to 1 February 2019; or
 - (2) the Tribunal affirms or varies the 2015 determination on or after 1 December 2017, but prior to 1 February 2019.

Adjustment determination

- (b) The *AER* must:

- (1) if subparagraph (a)(1) applies, determine at the time of making the remade 2015 determination; or
- (2) if subparagraph (a)(2) applies, determine by 31 March 2019, the distribution variation amount, transmission variation amount and metering variation amount and ~~subsequent adjustment amount~~ for ActewAGL.

Recovery in subsequent regulatory control period

- (c) The AER must include the ~~subsequent adjustment~~ distribution variation amount determined under paragraph (b) as:

- (1) if the applicable variation amount is a positive amount, a revenue increment; or
- (2) if the applicable variation amount is a negative amount, a revenue decrement,

to ActewAGL's ~~annual~~ distribution standard control service revenue requirement determined under rule 6.426 for the first regulatory year of the subsequent regulatory control period.

- (d) The AER must include the transmission variation amount determined under paragraph (b) as:

- (1) if the applicable variation amount is a positive amount, a revenue increment; or
- (2) if the applicable variation amount is a negative amount, a revenue decrement.

to ActewAGL's transmission standard control service revenue determined under rule 6.26 for the first regulatory year of the subsequent regulatory control period.

- (e) The AER must include the metering variation amount determined under paragraph (b) as:

- (1) if the applicable variation amount is a positive amount, a revenue increment; or
- (2) if the applicable variation amount is a negative amount, a revenue decrement.

to ActewAGL's building block revenue requirement for annual metering services for the first regulatory year 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:
- (1) a remade 2015 determination is made by the *AER*; or
 - (2) the Tribunal affirms or varies the 2015 determination,
- on or after 1 February 2019, but prior to 1 December of the fourth last regulatory year of the subsequent regulatory control period.

Adjustment determination

- (b) The *AER* must:
- (1) if subparagraph (a)(1) applies, determine at the time of making the remade 2015 determination; or
 - (2) if subparagraph (a)(2) applies, determine by 28 February of the fourth last regulatory year of the subsequent regulatory control period,

the distribution variation amount, transmission variation amount and metering variation amount and subsequent adjustment 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 remainder of the subsequent regulatory control period; ~~and~~
 - (2) includes the ~~subsequent adjustment~~ distribution variation amount as:
 - (i) if the applicable variation amount is a positive amount, a revenue increment; or
 - (ii) if the applicable variation amount is a negative amount, a revenue decrement,

to the ~~annual~~ distribution standard control service revenue requirement of one or more of the regulatory years for the remainder of ActewAGL's subsequent regulatory control period, subject to the aggregate of all such increases or decreases for the relevant

regulatory years being the net present value equivalent ~~in net present value terms to the subsequent adjustment~~ distribution variation amount;

(3) includes the transmission variation amount as:

- (i) if the applicable variation amount is a positive amount, a revenue increment; or
- (ii) if the applicable variation amount is a negative amount, a revenue decrement.

to the transmission standard control service revenue of one or more of the regulatory years for the remainder of ActewAGL's subsequent regulatory control period, subject to the aggregate of all such increases or decreases for the relevant regulatory years being the net present value equivalent to the transmission variation amount; and

(4) includes the metering variation amount as:

- (i) if the applicable variation amount is a positive amount, a revenue increment; or
- (ii) if the applicable variation amount is a negative amount, a revenue decrement.

to the building block revenue requirement for annual metering services of one or more of the regulatory years for the remainder of ActewAGL's subsequent regulatory control period, subject to the aggregate of all such increases or decreases for the relevant regulatory years being the net present value equivalent to the metering variation amount.

(d) The substituted distribution determination made under paragraph (c) must only:

(1) vary from the revoked distribution determination to the extent necessary to:

- (i) reflect the increase or decrease (as the case may be) to the ~~annual distribution standard control service revenue requirements,~~ transmission standard control service revenue and the building block revenue requirement for annual metering services of one or more of the regulatory years for the subsequent regulatory control period under paragraph (c); and
- ~~(1)~~(ii) provide for revenue increments or decrements arising from the application of any efficiency benefit sharing scheme, capital expenditure sharing scheme, service target

[performance incentive scheme or demand management and embedded generation connection incentive scheme in accordance with the remade 2015 determination or the affirmed or varied 2015 determination \(as the case may be\);](#)
and

- (2) be made after the *AER* has first consulted with ActewAGL and such other persons as the *AER* considers appropriate.
- (e) 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.

8A.15.7 Requirements for adjustment determination

The *AER* must:

- (a) make the adjustment determination after consulting with ActewAGL and any other persons as the *AER* considers appropriate;
- (b) *publish* its adjustment determination:
 - (1) if clause 8A.15.4(a)(1), 8A.15.5(a)(1) or 8A.15.6(a)(1) applies, at the time of publication of the remade 2015 determination;
 - (2) if clause 8A.15.4(a)(2) applies, by 28 February 2018;
 - (3) if clause 8A.15.5(a)(2) applies, by 31 March 2019; or
 - (4) if clause 8A.15.6(a)(2) applies, by 28 February of the fourth last regulatory year of the subsequent regulatory control period; 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 and subsequent adjustment amount ~~or, where the *AER* has not determined an adjustment amount and subsequent adjustment, 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](#) ~~and subsequent adjustment 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 a subsequent distribution determination,

in respect of ActewAGL.

- (b) 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 is amended for the remainder of the current regulatory control period and the subsequent regulatory control period as follows:

(1) to the extent that ActewAGL's tariff structure statement for the subsequent regulatory control period departs from 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);

~~(2)~~ (2) the requirement for pricing for direct control services in a pricing proposal to comply with the tariff structure statement under clauses 6.18.1A(c), 6.18.2(b)(7), 6.18.8(a)(1) and 6.18.8(c) does not apply to the extent necessary to allow for the submission of a pricing proposal by a NSW DNSP ActewAGL, and subsequent approval of such pricing proposal by the AER, in accordance with clause 8A.15.4(d) in accordance with the requirements of this participant derogation;

~~(2)~~ (3) if clause 8A.15.4 applies, if any variation in proposed tariffs occurs as a result of:

(i) if:-

- clause 8A.15.4(a)(1), 8A.15.5(a)(1) or 8A.15.6(a)(1) applies, the remade 2015 determination; or
- ~~if~~ clause 8A.15.4(a)(2), 8A.15.5(a)(2) or 8A.15.6(a)(2) applies, the affirmed or varied 2015 determination; and

~~(i)~~ (ii) incorporation of the substituted total average annual revenue amount cap in the pricing proposal under clause 8A.15.4(d) ~~8A.15.4(f)~~, or the application of this participant derogation under clauses 8A.15.5 or 8A.15.6 (as applicable),

such variations will be taken to be explained by ActewAGL for the purposes of clause 6.18.2(b)(7A) and 6.18.8(a)(2);

~~(3)~~ (4) 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)~~ 8A.15.4(f);

~~(4)~~ (5) 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);

~~(5)~~(6) 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*; and

~~(6)~~(7) if clause 8A.15.4 applies and 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) if clause 8A.15.4(a)(1) applies, any variation in proposed tariffs as a result of the remade 2015 determination;
- (ii) if clause 8A.15.4(a)(2) applies, any variation in proposed tariffs as a result of the affirmed or varied 2015 determination (as the case may be); and
- (iii) if the AER determines an non-zero adjustment amount and subsequent adjustment amount under clause 8A.15.4(b), any variations in proposed tariffs as a result of the application of the substituted ~~total~~average annual revenue ~~amount~~cap under clause ~~8A.15.4(d)~~8A.15.4(f).

(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 is amended for the subsequent regulatory control period as follows:

- (1) if clause 8A.15.6 applies, clause 6.5.9(b)(2) does not apply to the extent necessary to include the ~~subsequent adjustment~~distribution variation amount and transmission variation amount as a revenue increments or revenue decrements (as the case may be) to the ~~annual~~distribution standard control service revenue requirement or transmission standard control service revenue (as applicable) of one or more regulatory years for the subsequent regulatory control period for ActewAGL under clause 8A.15.6(c); ~~and~~
- (2) the reference to 'the other revenue increments or decrements' ~~referred to in clauses 6.4.3(a)(6) and 6.4.3(b)(6)~~ does not include the subsequent adjustment amount, the distribution variation amount or the transmission variation amount (as applicable) as any such amounts are to be recovered in accordance with clauses 8A.15.4(g), 8A.15.5(c) and (d), or 8A.15.6(c) (as applicable) ~~is taken to include such increments or decrements as adjusted to the extent necessary to take into account the application of the substituted total annual revenue amount under clause 8A.15.4(d); and~~
- (3) if clause 8A.15.5 or 8A.15.6 applies, clause 6A.23.3(e)(5), (f) and (g) does not apply to the transmission variation amount.

ATTACHMENT 2

ACTEWAGL DISTRIBUTION'S REVISED RULE

Draft National Electricity Amendment (Participant derogation -ACT DNSP Revenue Smoothing) Rule 2017

1 Title of Rule

This Rule is the *Draft National Electricity Amendment (Participant derogation - ACT DNSP Revenue Smoothing) Rule 2017*.

2 Commencement

This Rule commences operation on [COMMENCEMENT_DATE], immediately following Schedule 1 of the *National Electricity Amendment (Participant derogation — NSW DNSPs Revenue Smoothing) Rule 2017*.

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 electricity 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 increment; or
- (b) a revenue decrement,

to the annual smoothed revenue that is used in deriving the average annual smoothed revenue for ActewAGL for the final regulatory year of the current regulatory control period in accordance with the control mechanism for distribution standard control services that applies under:

- (c) if clause 8A.15.4(a)(1) applies, the remade 2015 determination; or
- (d) if clause 8A.15.4(a)(2) applies, the affirmed or varied 2015 determination.

adjustment determination means the *AER's* determination:

- (a) under clause 8A.15.4, and the relevant amounts of the adjustment amount and subsequent adjustment amount; and
- (b) under clauses 8A.15.5 and 8A.15.6, the relevant amounts of the distribution variation amount, transmission variation amount and metering variation amount.

affirms or varies the 2015 determination means the Tribunal affirms or varies the 2015 determination under section 71P(2)(a) or (b) of the *National Electricity Law*, respectively, or under any other relevant power of the Tribunal, and makes no concurrent order to set aside and remit the matter back to the AER under section 71P(2)(c) of the *National Electricity Law* or under any other relevant power of the Tribunal.

average adjustment amount means the adjustment amount divided by:

- (a) if clause 8A.15.4(a)(1) applies, the forecast total energy throughput for the final regulatory year of the current regulatory control period in the remade 2015 determination; or
- (b) if clause 8A.15.4(a)(2) applies, the forecast total energy throughput for the final regulatory year of the current regulatory control period in the affirmed or varied 2015 determination.

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* other than *transmission standard control services*.

distribution variation amount means an amount that is the net present value equivalent to:

- (a) if clause 8A.15.5(a)(1) or 8A.15.6(a)(1) applies:
 - (1) the sum of:
 - (i) the value of the average annual revenue cap (AARC_t) for ActewAGL calculated in accordance with the remade 2015 determination; multiplied by
 - (ii) the forecast total energy throughput as set out in the 2015 determination,for each regulatory year of the current regulatory control period (excluding the transitional regulatory control period); less
 - (2) the sum of:
 - (i) for 2015/16, the value of the average annual revenue cap (AARC_t) for ActewAGL calculated in accordance with the 2015 determination multiplied by the forecast total energy throughput for that year as set out in the 2015 determination; and
 - (ii) for each other regulatory year of the current regulatory control period (excluding the transitional regulatory control period), pricing for distribution standard control services provided by ActewAGL applicable under the undertaking for

the relevant year multiplied by the forecast total energy throughput for that year as set out in the 2015 determination;
or

- (b) if clause 8A.15.5(a)(2) or 8A.15.6(a)(2) applies:
- (1) the sum of:
- (i) the value of the average annual revenue cap (AARC_t) for ActewAGL calculated in accordance with the affirmed or varied 2015 determination; multiplied by
 - (ii) the forecast total energy throughput as set out in the 2015 determination,
- for each regulatory year of the current regulatory control period (excluding the transitional regulatory control period); less
- (2) the sum of:
- (i) for 2015/16, the value of the average annual revenue cap (AARC_t) for ActewAGL calculated in accordance with the 2015 determination multiplied by the forecast total energy throughput for that year as set out in the 2015 determination; and
 - (ii) for each other regulatory year of the current regulatory control period (excluding the transitional regulatory control period), pricing for distribution standard control services provided by ActewAGL applicable under the undertaking for the relevant year multiplied by the forecast total energy throughput for that year as set out in the 2015 determination.

metering variation amount means an amount that is the net present value equivalent to:

- (a) if clause 8A.15.5(a)(1) or 8A.15.6(a)(1) applies:
- (1) the sum of the building block revenue requirements for annual metering services for each regulatory year of the current regulatory control period (excluding the transitional regulatory control period) set out in or derived for the purpose of the remade 2015 determination; less
- (2) the sum of:
- (i) for 2015/16, the annual metering charges for annual metering services provided by ActewAGL set out in the 2015 determination multiplied by the forecast total sales quantities for that year as set out in the 2015 determination; and
 - (ii) for each other regulatory year of the current regulatory control period (excluding the transitional regulatory control period), pricing for annual metering services applicable

under the undertaking for the relevant year, multiplied by the forecast total sales quantities for that year as set out in the 2015 determination; or

- (b) if clause 8A.15.5(a)(2) or 8A.15.6(a)(2) applies:
- (1) the sum of the building block revenue requirements for annual metering services for each regulatory year of the current regulatory control period (excluding the transitional regulatory control period) set out in or derived for the purpose of the affirmed or varied 2015 determination; less
 - (2) the sum of:
 - (i) for 2015/16, the annual metering charges for annual metering services provided by ActewAGL set out in the 2015 determination multiplied by the forecast total sales quantities for that year as set out in the 2015 determination; and
 - (ii) for each other regulatory year of the current regulatory control period (excluding the transitional regulatory control period), pricing for annual metering services applicable under the undertaking for the relevant year, multiplied by the forecast total sales quantities for that year as set out in the 2015 determination.

net present value equivalent means an amount that is equivalent in net present value terms to the applicable amount where the discount rate for the net present value calculation is the relevant weighted average cost of capital in the applicable distribution determination.

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

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.

subsequent adjustment amount means an amount that:

- (a) is the net present value equivalent to the adjustment amount; and
- (b) represents a revenue increment (where the adjustment amount is a negative amount) or a revenue decrement (where the adjustment amount is a positive amount) to ActewAGL's *distribution standard control service revenue* for the first regulatory year of the subsequent regulatory control period.

subsequent distribution determination means the distribution determination for ActewAGL 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 average annual revenue cap has the meaning given in clause 8A.15.4(f).

transitional regulatory control period has the meaning in clause 11.55.1 of the *Rules* being a period of one year that commences on 1 July 2014 and ends on 30 June 2015.

transmission variation amount means an amount that is the net present value equivalent to:

- (a) if clause 8A.15.5(a)(1) or 8A.15.6(a)(1) applies:
 - (1) the sum of the total revenue ActewAGL is entitled to earn from the provision of *transmission standard control services* for each regulatory year of the current regulatory control period (excluding the transitional regulatory control period) under the remade 2015 determination; less
 - (2) the actual revenue earned by ActewAGL for the provision of *transmission standard control services* for each regulatory year of the current regulatory control period (excluding the transitional regulatory control period), or where actual revenue is not available for a regulatory year the value of the total revenue ActewAGL is entitled to earn for *transmission standard control services* that is provided to TransGrid in its capacity as the *Co-ordinating Network Service Provider* under clause 6A.29.1(e); or
- (b) if clause 8A.15.5(a)(2) or 8A.15.6(a)(2) applies:
 - (1) the sum of the total revenue ActewAGL was entitled to earn from the provision of *transmission standard control services* for each regulatory year of the current regulatory control period (excluding the transitional regulatory control period) under the affirmed or varied 2015 determination; less
 - (2) the actual revenue earned by ActewAGL for the provision of *transmission standard control services* for each regulatory year of the current regulatory control period (excluding the transitional regulatory control period), or where actual revenue is not available for a regulatory year the value of the total revenue ActewAGL is entitled to earn for *transmission standard control services* that is provided to TransGrid in its capacity as the *Co-ordinating Network Service Provider* under clause 6A.29.1(e).

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, as varied or remade as a consequence of the outcome of judicial review of that decision.

undertaking means an undertaking given to, and approved 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, or 2015 determination affirmed or varied by the Tribunal.
- (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:
- (1) a remade 2015 determination is made by the *AER* prior to 1 March 2018; or
 - (2) the Tribunal affirms or varies the 2015 determination prior to 1 December 2017.

Adjustment determination

- (b) The *AER* must:
- (1) if subparagraph (a)(1) applies, determine at the time of making the remade 2015 determination; or
 - (2) if subparagraph (a)(2) applies, determine by 28 February 2018,

for ActewAGL:

- (3) an adjustment amount; and
 - (4) a subsequent adjustment amount.
- (c) The *AER* may only determine an adjustment amount and subsequent adjustment amount that it is satisfied will be reasonably likely to minimise variations in NUOS charges:
- (1) between the penultimate and final regulatory years of the current regulatory control period; and
 - (2) between the final regulatory year of the current regulatory control period and the first regulatory year of the subsequent regulatory control period,

for 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).

- (d) The *AER* may determine the adjustment amount and the subsequent adjustment amount to be zero.
- (e) Paragraphs (f) and (g) do not apply in respect of ActewAGL if the *AER* has determined a zero adjustment amount and, consequently, a zero subsequent adjustment amount under paragraph (b).

Recovery in current regulatory control period

- (f) A *pricing proposal* submitted by ActewAGL, and approved by the *AER*, for the final regulatory year of the current regulatory control period must provide for volume weighted average prices for distribution standard control services calculated in accordance with ActewAGL's control mechanism formula in the remade 2015 determination or the affirmed or varied 2015 determination (as applicable) that are less than or equal to:
- (1) where the applicable adjustment amount operates as if it were a revenue increment:
 - (i) the value of ActewAGL's average annual revenue cap (AARC_t) in accordance with the control mechanism for distribution standard control services under the distribution determination in force for the final regulatory year of the current regulatory control period; plus
 - (ii) the average adjustment amount; or
 - (2) where the applicable adjustment amount operates as if it were a revenue decrement:

- (i) the value of ActewAGL's average annual revenue cap (AARC_i) in accordance with the control mechanism for distribution standard control services under the distribution determination in force for the final regulatory year of the current regulatory control period; minus
- (ii) the average adjustment amount,

(such amount being the **substituted average annual revenue cap**).

Recovery in subsequent regulatory control period

- (g) The *AER* must include the subsequent adjustment amount determined under paragraph (b) as:
 - (1) if subparagraph (f)(1) applies, a revenue decrement; or
 - (2) if subparagraph (f)(2) applies, a revenue increment,to ActewAGL's *distribution standard control service revenue* determined under rule 6.26 for the first regulatory year 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:
 - (1) a remade 2015 determination is made by the *AER* on or after 1 March 2018, but prior to 1 February 2019; or
 - (2) the Tribunal affirms or varies the 2015 determination on or after 1 December 2017, but prior to 1 February 2019.

Adjustment determination

- (b) The *AER* must:
 - (1) if subparagraph (a)(1) applies, determine at the time of making the remade 2015 determination; or
 - (2) if subparagraph (a)(2) applies, determine by 31 March 2019,the distribution variation amount, transmission variation amount and metering variation amount for ActewAGL.

Recovery in subsequent regulatory control period

- (c) The *AER* must include the distribution variation amount determined under paragraph (b) as:

- (1) if the applicable variation amount is a positive amount, a revenue increment; or
- (2) if the applicable variation amount is a negative amount, a revenue decrement,

to ActewAGL's *distribution standard control service revenue* determined under rule 6.26 for the first regulatory year of the subsequent regulatory control period.

- (d) The AER must include the transmission variation amount determined under paragraph (b) as:

- (1) if the applicable variation amount is a positive amount, a revenue increment; or
- (2) if the applicable variation amount is a negative amount, a revenue decrement,

to ActewAGL's *transmission standard control service revenue* determined under rule 6.26 for the first regulatory year of the subsequent regulatory control period.

- (e) The AER must include the metering variation amount determined under paragraph (b) as:

- (1) if the applicable variation amount is a positive amount, a revenue increment; or
- (2) if the applicable variation amount is a negative amount, a revenue decrement,

to ActewAGL's building block revenue requirement for annual metering services for the first regulatory year 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:

- (1) a remade 2015 determination is made by the AER; or
- (2) the Tribunal affirms or varies the 2015 determination,

on or after 1 February 2019, but prior to 1 December of the fourth last regulatory year of the subsequent regulatory control period.

Adjustment determination

- (b) The *AER* must:
- (1) if subparagraph (a)(1) applies, determine at the time of making the remade 2015 determination; or
 - (2) if subparagraph (a)(2) applies, determine by 28 February of the fourth last regulatory year of the subsequent regulatory control period,
- the distribution variation amount, transmission variation amount and 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 remainder of the subsequent regulatory control period;
 - (2) includes the distribution variation amount as:
 - (i) if the applicable variation amount is a positive amount, a revenue increment; or
 - (ii) if the applicable variation amount is a negative amount, a revenue decrement,to the *distribution standard control service revenue* of one or more of the regulatory years for the remainder of ActewAGL's subsequent regulatory control period, subject to the aggregate of all such increases or decreases for the relevant regulatory years being the net present value equivalent to the distribution variation amount;
 - (3) includes the transmission variation amount as:
 - (i) if the applicable variation amount is a positive amount, a revenue increment; or
 - (ii) if the applicable variation amount is a negative amount, a revenue decrement,to the *transmission standard control service revenue* of one or more of the regulatory years for the remainder of ActewAGL's subsequent regulatory control period, subject to the aggregate of all such increases or decreases for the relevant regulatory years being the net present value equivalent to the transmission variation amount; and
 - (4) includes the metering variation amount as:
 - (i) if the applicable variation amount is a positive amount, a revenue increment; or

- (ii) if the applicable variation amount is a negative amount, a revenue decrement,

to the building block revenue requirement for annual metering services of one or more of the regulatory years for the remainder of ActewAGL's subsequent regulatory control period, subject to the aggregate of all such increases or decreases for the relevant regulatory years being the net present value equivalent to the metering variation amount.

- (d) The substituted distribution determination made under paragraph (c) must only:
 - (1) vary from the revoked distribution determination to the extent necessary to:
 - (i) reflect the increase or decrease (as the case may be) to the *distribution standard control service revenue*, *transmission standard control service revenue* and the building block revenue requirement for annual metering services of one or more of the regulatory years for the subsequent regulatory control period under paragraph (c); and
 - (ii) provide for revenue increments or decrements arising from the application of any *efficiency benefit sharing scheme*, *capital expenditure sharing scheme*, *service target performance incentive scheme* or *demand management and embedded generation connection incentive scheme* in accordance with the remade 2015 determination or the affirmed or varied 2015 determination (as the case may be); and
 - (2) be made after the *AER* has first consulted with ActewAGL and such other persons as the *AER* considers appropriate.
- (e) 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.

8A.15.7 Requirements for adjustment determination

The *AER* must:

- (a) make the adjustment determination after consulting with ActewAGL and any other persons as the *AER* considers appropriate;
- (b) *publish* its adjustment determination:
 - (1) if clause 8A.15.4(a)(1), 8A.15.5(a)(1) or 8A.15.6(a)(1) applies, at the time of publication of the remade 2015 determination;
 - (2) if clause 8A.15.4(a)(2) applies, by 28 February 2018;
 - (3) if clause 8A.15.5(a)(2) applies, by 31 March 2019; or

- (4) if clause 8A.15.6(a)(2) applies, by 28 February of the fourth last regulatory year of the subsequent regulatory control period; 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 and subsequent adjustment amount; 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 a subsequent distribution determination,in respect of ActewAGL.
- (b) 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 is amended for the remainder of the current regulatory control period and the subsequent regulatory control period as follows:
 - (1) to the extent that ActewAGL's *tariff structure statement* for the subsequent regulatory control period departs from 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);
 - (2) the requirement for pricing for *direct control services* in a pricing proposal to comply with the tariff structure statement under clauses 6.18.1A(c), 6.18.2(b)(7), 6.18.8(a)(1) and 6.18.8(c) 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 the requirements of this *participant derogation*;
 - (3) if any variation in proposed tariffs occurs as a result of:
 - (i) if:
 - clause 8A.15.4(a)(1), 8A.15.5(a)(1) or 8A.15.6(a)(1) applies, the remade 2015 determination; or
 - clause 8A.15.4(a)(2), 8A.15.5(a)(2) or 8A.15.6(a)(2) applies, the affirmed or varied 2015 determination; and

- (ii) incorporation of the substituted average annual revenue cap in the *pricing proposal* under clause 8A.15.4(f), or the application of this *participant derogation* under clauses 8A.15.5 or 8A.15.6 (as applicable),

such variations will be taken to be explained by ActewAGL for the purposes of clause 6.18.2(b)(7A) and 6.18.8(a)(2);

- (4) 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(f);
 - (5) 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);
 - (6) 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*; and
 - (7) if clause 8A.15.4 applies and 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) if clause 8A.15.4(a)(1) applies, any variation in proposed tariffs as a result of the remade 2015 determination;
 - (ii) if clause 8A.15.4(a)(2) applies, any variation in proposed tariffs as a result of the affirmed or varied 2015 determination (as the case may be); and
 - (iii) if the *AER* determines a non-zero adjustment amount and subsequent adjustment amount under clause 8A.15.4(b), any variations in proposed tariffs as a result of the application of the substituted average annual revenue cap under clause 8A.15.4(f).
- (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 is amended for the subsequent regulatory control period as follows:
- (1) if clause 8A.15.6 applies, clause 6.5.9(b)(2) does not apply to the extent necessary to include the distribution variation amount and transmission variation amount as revenue increments or revenue decrements (as the case may be) to the *distribution standard control service revenue* or *transmission standard control service revenue* (as applicable) of one or more regulatory years for the subsequent regulatory control period for ActewAGL under clause 8A.15.6(c);

- (2) the reference to 'the other revenue increments or decrements' in clauses 6.4.3(a)(6) and 6.4.3(b)(6) does not include the subsequent adjustment amount, the distribution variation amount or the transmission variation amount (as applicable) as any such amounts are to be recovered in accordance with clauses 8A.15.4(g), 8A.15.5(c) and (d), or 8A.15.6(c) (as applicable); and
- (3) if clause 8A.15.5 or 8A.15.6 applies, clause 6A.23.3(e)(5), (f) and (g) does not apply to the transmission variation amount.

ATTACHMENT 3

ACTEWAGL DISTRIBUTION

TABLE EXPLAINING KEY AMENDMENTS TO AEMC'S DRAFT RULE

The following table describes the key amendments ActewAGL has made to the AEMC's Draft Rule in its Revised Rule at Attachments 1 and 2 to its submission in response to the AEMC's Draft Determination.

Clause AEMC Draft Rule	Amendment	Explanation
1	8A.15.1 definition of '2015 determination'	<p>Removed reference to '(as corrected in accordance with the AER's letter dated 20 May 2015)'.</p> <p>The AER's letter of 20 May 2015 concerned an error in the AER's metering classification decision in the 2015 determination. Appendix A to the Overview to the 2015 determination contains a list of the constituent decisions comprising the distribution determination. Among other decisions, these decisions include a decision on service classification, in particular to classify type 5 and 6 unrecovered meter costs as standard control services. This reflects the AER's draft decision, which proposed that unrecovered meter costs for type 5 and 6 meters would, following customer churn associated with the introduction of metering contestability, be smeared across distribution standard control services customers. However, it is irreconcilable with the AER's reasons in Attachment 16 to the final 2015 determination, in which the AER determined to abandon this approach, classify type 5 and 6 metering services as alternative control services and establish an annual metering capital charge that would continue to be paid by existing customers following churn so as to recover any remaining meter costs.</p> <p>The AER acknowledged that there was an error in the classification of type 5 and 6 metering services in the Overview to the 2015 determination. However, AER's letter did not correct the 2015 determination. Rather, the AER decided not to correct the error until after the conclusion of any appeal process. As a result, the correction of the 2015 determination in accordance with the AER's letter will occur only in the remaking, or following upon the affirming or varying of the 2015 determination.</p> <p>The reference to the 20 May 2015 letter may potentially cause confusion because its inclusion in the definition of '2015 determination' means that the terms 'remade 2015 determination' and 'affirms or varies the 2015 determination' in the derogation are defined by reference to a determination (comprising the 2015 determination as corrected by the 20 May 2015 letter), which the AER will not, in practice, remake and the Tribunal is, in practice, incapable of affirming or varying.</p> <p>The error in the Overview to the 2015 determination should not create any difficulties for the operation of the derogation because it is likely to be viewed as a manifest error such that the AER's approach in Attachment 16</p>

	Clause AEMC Draft Rule	Amendment	Explanation
			to that determination will be given effect. In any event, as noted above, the AER has indicated that it will correct this error in its remade determination. ¹
2	8A.15.1 definition of 'ActewAGL'	Revised definition of ActewAGL to be consistent with the definition in ActewAGL's rule change request.	The AEMC's definition focuses on the distribution services ActewAGL provides. However, ActewAGL also provides transmission services because it has dual function assets, being high voltage transmission assets within its distribution network. Accordingly, ActewAGL's proposed definition focuses on its electricity distribution system (inclusive of its dual function assets).
3	8A.15.1 definition of 'net present value equivalent'	Defined 'net present value equivalent' to make clear that the discount rate for net present value calculations performed in accordance with the derogation is the relevant weighted average cost of capital in the applicable distribution determination.	When calculating net present value figures, it has been the practice of the AER that the discount rate used in the net present value calculation is the rate of return set by the AER for the relevant regulatory year. This rate of return reflects both the time value of money as well as the opportunity cost. There are no reasons to depart from this regulatory practice in calculating the net present value of the various revenue adjustments under the derogation. ActewAGL considers that to provide certainty and ensure the derogation operates effectively this should be specifically stated in the derogation. ActewAGL understands this method of calculating the net present value to be uncontroversial (see summary of stakeholder comments at page 33 of the AEMC's Draft Rule Determination).
4	8A.15.3(a) and (c)	Reordered paragraphs to combine paragraphs (a) and (c).	ActewAGL has sought to streamline the drafting by combining paragraphs (a) and (c) of clause 8A.15.3 as both of those paragraphs deal with circumstances where the derogation prevails to the extent of any inconsistency.
5	8A.15.4; 8A.15.7(c)(1)	Revisions to make clear that the AER is required to make an adjustment determination under scenario 1 even if it decides not to smooth revenue across the current and subsequent regulatory control period - in which case the adjustment	Requiring the AER to make an adjustment determination under scenario 1 even if it decides not to smooth revenue across the current and subsequent regulatory periods is consistent with the AEMC's intent as stated in its Draft Rule Determination and evident from clause 8A.15.7(c)(1) of the AEMC's Draft Rule. In its Draft Rule Determination, the AEMC states (page 26): 'For the avoidance of doubt, the AER is required to publish an adjustment determination even if it decides not to smooth revenue across the current and subsequent regulatory control periods.'

¹ As explained in ActewAGL's submission, subject to any High Court appeal from the Federal Court's decision in *Australian Energy Regulator v Australian Competition Tribunal (No 2)* [2017] FCAFC 79, it is likely that the AER will be required to remake its 2015 determination.

	Clause AEMC Draft Rule	Amendment	Explanation
		amount and subsequent adjustment amount will be zero.	<p>This intent is also evident from clause 8A.15.7(c)(1) of the AEMC's Draft Rule which requires that where the AER has not determined an adjustment amount and subsequent adjustment amount, the AER should include the reasons for that decision in its adjustment determination.</p> <p>However, the current drafting of clause 8A.15.4(b) does not reflect that intent in that the language used is permissive (i.e. 'The AER may..'). Accordingly, ActewAGL has proposed changes to that clause to reflect what it understands to be the AEMC's intent. ActewAGL has make a consequential change to clause 8A.15.7(c)(1) because the AER will still determine an adjustment amount and subsequent adjustment amount where it decides not to smooth revenue across the current and subsequent regulatory control period - in which case those amounts will be zero. ActewAGL's proposed amendments also ensure that the requirement to have regard to the profile of NUOS charges will apply to the determination not to smooth revenue.</p>
6	8A.15.4(b) and definition of 'NUOS charges' in 8A.15.1	Replacing the reference to 'use of system charges' with 'NUOS charges' (AEMC Draft Rule, clause 8A.15.4(b); ActewAGL Revised Rule, clause 8A.15.4(c)).	<p>The term 'use of system' defined in Chapter 10 of the NER does not appear to necessarily capture the kind of charges that are the subject of clause 8A.15.4. As the AEMC notes in its Draft Rule Determination (at footnote 74), 'use of system' is defined in Chapter 10 of the NER to include distribution use of system and transmission use of system. 'Distribution use of system' is in turn defined as a service provided to a DNSP for the use of the distribution network for the conveyance of electricity that can be reasonably allocated on a locational and/or voltage basis. Not all NUOS charges and not all distribution standard control service charges relate to the use of the distribution network for conveyance of electricity, let alone the use of that kind that can be reasonably allocated on a locational and/or voltage basis.</p> <p>The AEMC notes (at footnote 74) that the intention of the Draft Rule is to provide a mechanism to minimise the variation in the network component of the final consumers' prices. In order to ensure that the derogation operates as intended, ActewAGL considers that it is preferable to refer to NUOS charges in clause 8A.15.4(c) of the derogation and to define those charges in clause 8A.15.1 as the charges comprising ActewAGL's prices for distribution standard control services, designated pricing proposal charges, jurisdictional scheme amounts and annual metering capital charges. This is consistent with how ActewAGL refers to its charges for its network services in its pricing proposals and with the bundled NUOS charge faced by the customer.</p>
7	8A.15.4(d) and definitions of 'adjustment amount', 'average adjustment amount' and 'substituted average annual revenue cap'	ActewAGL has amended clause 8A.15.4(d) and 8A.15.4(e) of the AEMC's Draft Rule (clause 8A.15.4(f) and 8A.15.4(g) of ActewAGL's Revised Rule); and revised the definition of the 'adjustment amount' and	<p>ActewAGL proposes these changes in order to ensure the derogation operates as intended having regard to ActewAGL's form of control.</p> <p>Under the 2015 determination, ActewAGL operates under a different form of control (an average revenue control) to the NSW DNSPs (a revenue control) for its distribution standard control services. Under the control mechanism applicable to ActewAGL, ActewAGL is not entitled to recover its annual revenue requirement for the relevant regulatory year, but rather is entitled to impose prices set such that volume</p>

	Clause Draft Rule	AEMC Amendment	Explanation
	in 8A.15.1	replaced the definition of 'substituted total annual revenue amount' with a new definition for 'substituted average annual revenue cap' in clause 8A.15.1 and included a new 'average adjustment amount' definition because it operates under an average revenue cap form of control rather than a revenue cap control.	<p>weighted average prices are less than or equal to its average annual revenue cap for the year (AARC_t).</p> <p>In circumstances where ActewAGL operates under an average revenue cap, it is unclear what is meant by the reference to the 'total annual revenue' that ActewAGL may earn for the final regulatory year in accordance with the annual revenue requirement and control mechanism in the AEMC's 'adjustment amount' definition in its Draft Rule. ActewAGL's control mechanism contemplates that ActewAGL may be entitled to earn an amount that differs from smoothed revenues (even where smoothed revenues are adjusted in accordance with its control mechanism for STPIS rewards/penalties (S_t), approved pass through amounts (B_t), the X factor annually revised for the updated return on debt and the change in CPI) and that, indeed, may differ from the AARC_t multiplied by actual/forecast energy throughput. This is due to volume weighted average pricing being less than or equal to the AARC_t under the control mechanism, the use of time lagged quantities in the control mechanism and the resultant potential for ActewAGL to engage in tariff rebalancing.</p> <p>In addition to the issue with the 'adjustment amount' definition, clause 8A.15.4 in the AEMC's Draft Rule operates to impose a revenue cap on ActewAGL in determining prices for the 2018/19 year rather than providing for an adjustment to be made to ActewAGL's average revenue cap.</p> <p>As a result, the AEMC has imported into its Draft Rule a presumption as to the form of control that does not reflect the requirements of the NER. Under the NER a DNSP's control mechanism is determined by the AER as a constituent decision in its distribution determination (clause 6.12.1(11)) and must be in accordance with the AER's framework and approach paper (see also clause 6.12.3(c)). By treating ActewAGL as having a revenue cap, it appears that the AEMC has imported into the derogation a presumption as to the form of ActewAGL's distribution determination, specifically the form of control mechanism it establishes, which does not reflect the control mechanism under the 2015 determination (which will likely be retained in any remade 2015 determination).</p> <p>On the basis that the adjustment to ActewAGL's control mechanism to provide for the annual distribution adjustment amount would be made by making an adjustment to the average annual revenue cap in year t (AARC_t), it is necessary to average the annual distribution adjustment amount across forecast energy throughput for the relevant regulatory year in providing for the adjustment mechanism in the pricing proposal so as not to impose a revenue cap on ActewAGL.</p> <p>Accordingly, ActewAGL has made revisions to clause 8A.15.4(d) of the AEMC's Draft Rule (clause 8A.15.4(f) of ActewAGL's Revised Rule) and the definition of the 'adjustment amount', replaced the definition of 'substituted total annual revenue amount' with a new definition of 'substituted average annual revenue cap' and</p>

	Clause AEMC Draft Rule	Amendment	Explanation
			included a new 'average adjustment amount' definition with the aim of ensuring the adjustment mechanism in the pricing proposal will operate effectively having regard to ActewAGL's average revenue cap form of control.
8	8A.15.4(e)	Replacing reference to 'annual revenue requirement' with reference to ' <i>distribution standard control service revenue</i> ' (AEMC Draft Rule, clause 8A.15.4(e); ActewAGL Revised Rule, clause 8A.15.4(g)).	ActewAGL has revised clause 8A.15.4(e) of the AEMC's Draft Rule (clause 8A.15.4(g) of ActewAGL's Revised Rule) to provide that the subsequent adjustment amount is included as a revenue decrement or increment (as applicable) to ActewAGL's distribution standard control service revenue determined under rule 6.26 for the first regulatory year of the subsequent regulatory control period. This amendment is consistent with the fact that ActewAGL has dual function assets and that in making its 2015 determination, in accordance with rule 6.26 the AER divided the revenue calculated under Part C of Chapter 6 into a portion relevant to ActewAGL's distribution standard control services and a portion relevant to its transmission standard control services. As such, the AER determined annual revenue requirements for each of ActewAGL's distribution standard control services and its transmission standard control services. The AER is likely to do the same in any remade 2015 determination.
9	8A.15.5; 8A.15.6; 8A.15.7; removal of definitions of 'subsequent adjustment amount', 'total annual revenue' and 'variation amount' and inclusion of new definitions of 'distribution standard control services', 'distribution variation amount', 'metering variation amount' and 'transmission variation amount' in 8A.15.1	ActewAGL has amended clauses 8A.15.5 and 8A.15.6 and proposed new definitions of 'distribution variation amount', 'metering variation amount' and 'transmission variation amount' in clause 8A.15.1 in place of the definitions of 'total annual revenue', 'variation amount' and 'subsequent adjustment amount' in the AEMC's Draft Rule. ActewAGL has also amended clause 8A.15.7(c)(2) to reflect that where clause 8A.15.5 or 8A.15.6 applies, the AER will determine the distribution variation amount, transmission variation amount and metering	Distribution variation amount As the AEMC recognises in its Draft Determination (pages 11, 28 and 30), under scenarios 2 and 3 the derogation should operate to allow ActewAGL to recover any increased or decreased revenue as a result of the outcome of the judicial review proceedings over the subsequent regulatory control period. However, for ActewAGL, the AEMC's definition of the 'variation amount' does not operate to account in the subsequent regulatory control period for the revenue differential between the applicable 2015 determination and the pricing proposals/undertakings for the current regulatory control period. This is because ActewAGL operates under an average revenue cap, rather than a revenue cap. Whereas the AEMC's definition of 'variation amount' presumes that the true-up will be reflected in the final year revenue amount, the NER and ActewAGL's control mechanism do not provide for the AER to reflect the necessary true-up for the 2015/16 to 2017/18 regulatory years in any final year revenue amount for 2018/19 or otherwise in the control mechanism in that year. Unlike the NSW DNSPs there is no overs or unders account in ActewAGL's control mechanism. Further, in circumstances where the AER remakes its 2015 determination after pricing for 2018/19 has been set, there is no NER requirement for the AER to determine a smoothed revenue amount for 2018/19 in that determination that reflects a true-up for the 2015/16 to 2017/18 regulatory years. In any event, in determining smoothed revenue for 2018/19, the AER would not take account of the revenue adjustments in ActewAGL's control mechanism (i.e. the adjustments for STPIS rewards/penalties (S_t),

	Clause Draft Rule	AEMC Amendment	Explanation
		variation amount in its adjustment determination.	<p>approved pass through amounts (B_t), the X factor annually revised for the updated return on debt and the change in CPI).</p> <p>Accordingly, it will be necessary for the variation amount for distribution standard control services to be defined in terms that aggregate a true-up amount for each year of the 2015/16 to 2018/19 period.</p> <p>In addition, having regard to ActewAGL's average revenue cap form of control, it is unclear from the AEMC's definition of variation amount:</p> <ul style="list-style-type: none"> • what is meant by the reference to the total annual revenue that ActewAGL may earn for the final regulatory year in accordance with the annual revenue requirement and control mechanism (for the reasons discussed in the row above); • what is meant by the total annual revenue that ActewAGL is entitled to earn under the undertakings given the undertakings only specify pricing or provide for the determination of pricing and do not dictate revenues recovered; and • whether the AEMC's definition provides for the application of STPIS rewards/penalties and approved pass through amounts. This is because it contemplates a true-up of total annual revenues to which ActewAGL is entitled. Under ActewAGL's control mechanism the adjustments for STPIS and approved pass through amounts are made to average annual smoothed revenue, rather than the revenue allowance and ActewAGL's $AARC_t$ does not operate to cap/set the revenue that ActewAGL is entitled to earn. <p>Further, the AEMC's definition of 'variation amount' does not appear to operate so as to leave the demand risk with ActewAGL. ActewAGL's average revenue cap form of control is intended to operate so that any demand forecasting risk remains with ActewAGL and is not transferred to customers.</p> <p>In its Revised Rule, ActewAGL proposes a 'distribution variation amount' which will better reflect the revenue differential between the applicable distribution determination and the pricing proposals/undertakings for the current regulatory control period. ActewAGL has formulated the definition of this amount having regard to ActewAGL's control mechanism for distribution standard control services at Figure 14.1 (page 14-13) of the 2015 determination and it is consistent with ActewAGL's form of control pursuant to which ActewAGL, and not consumers, bears the demand risk.</p>

	Clause Draft Rule	AEMC Amendment	Explanation
			<p>ActewAGL notes that during its meeting with the AEMC on 18 May 2017, the AEMC suggested an approach substantively identical to ActewAGL's proposed definition because it avoids the need to specify the matters not reflected in ActewAGL's smoothed annual revenues that need to be reflected in the true-up (for example, STPIS rewards/penalties (S_t), approved pass through amounts (B_t), the X factor annually revised for the updated return on debt and the change in CPI).</p> <p>Transmission and metering variation amounts</p> <p>Having regard to the Tribunal's decision in respect of ActewAGL, a remade or varied 2015 determination could also result in different revenue allowances in respect of transmission standard control services and annual metering services than those under the 2015 determination. Accordingly, in its initial proposed derogation ActewAGL made provision for the recovery of the difference between allowed revenues under the 2015 determination and the remade 2015 determination in respect of both transmission standard control services and annual metering services in the subsequent regulatory control period in circumstances where the AER remakes its 2015 determination on or after 1 March 2018.</p> <p>It appears that the AEMC may have sought to provide for the recovery of revenue differentials in respect of transmission standard control services and annual metering services under scenarios 2 and 3. This is because the Draft Rule defines the 'variation amount' that is the subject of the true-up in the subsequent regulatory control period under scenarios 2 and 3 by reference to 'total annual revenue', which is in turn defined to include the revenue ActewAGL is entitled to earn from transmission standard control services and annual metering services.</p> <p>However, the Draft Rule is not effective to provide for such recovery. This is because:</p> <ul style="list-style-type: none"> • the definition of 'variation amount' qualifies the reference to 'total annual revenue' by reference to: <ul style="list-style-type: none"> • the 'annual revenue requirement' under the remade, affirmed or varied 2015 determination, which necessarily excludes revenues for annual metering services; and • the undertaking that applies in the final year, which does not make any explicit provision for the recovery of ActewAGL's revenues for transmission standard control services (which are instead allocated to, and recovered from, both ACT and NSW customers); • the definition of 'variation amount' qualifies the reference to 'total annual revenue' by reference to the

	Clause Draft Rule	AEMC Amendment	Explanation
			<p>'control mechanism' under the remade, affirmed or varied 2015 determination in the singular, whereas the control mechanisms for each of transmission standard control services and annual metering services are separate and discrete to that for distribution standard control services; and</p> <ul style="list-style-type: none"> the mechanism for recovery of the 'variation amount' in the subsequent regulatory control period is the 'annual revenue requirement', which is not an effective mechanism for the recovery of revenues for annual metering services (as this would see the true-up amount for annual metering services smeared across ActewAGL's distribution standard control services customers, rather than recovered from its annual metering services customers), and does not operate to require that revenues for transmission standard control services are properly allocated to all users of the NSW/ACT transmission network instead of recovered only from ActewAGL's distribution standard control service customers. <p>In its Revised Rule, ActewAGL proposes new definitions of 'transmission variation amount' and 'metering variation amount' and makes changes to clauses 8A.15.5 and 8A.15.6 to provide for the recovery of any higher or lower revenues from transmission standard control services or annual metering services arising from the difference between the applicable distribution determination and pricing for the current regulatory control period from the customers that benefit from those services.</p> <p>Rather than having discrete subsequent adjustment amount definitions for the distribution, transmission and metering amounts, ActewAGL has incorporated the requirement for the relevant amount to be the net present value equivalent amount into the definitions of 'distribution variation amount', 'transmission variation amount' and 'metering variation amount' in order to streamline the drafting.</p> <p>Jurisdictional scheme and designated pricing proposal charges</p> <p>ActewAGL has not provided in its Revised Rule for a true-up for any over or under recovery of designated pricing proposal charges or jurisdictional amounts having regard to the 2015 determination, the section 59A undertakings and any remade 2015 determination. This is because as part of the pricing proposal process under Part I of Chapter 6 of the NER those charges can be true-up in accordance with the NER provisions providing for recovery of those charges (clauses 6.18.7 and 6.18.7A).</p> <p>Clauses 6.18.7(b) and 6.18.7A(b) of the NER require the amounts of a DNSP's designated pricing proposal charges (including TUOS charges) and jurisdictional scheme amounts that are passed on to retail customers to be adjusted for over or under recovery.</p>

	Clause Draft Rule	AEMC Amendment	Explanation
			<p>The over/under recovery amounts must be calculated in a way that:</p> <ul style="list-style-type: none"> • ensures a DNSP is able to recover from retail customers no more and no less than the designated pricing proposal charges and jurisdictional scheme amounts it incurs (clauses 6.18.7(c)(2) and 6.18.7A(c)(2)); • adjusts for the appropriate cost of capital that is consistent with the allowed rate of return used in the relevant distribution determination for the regulatory year (clauses 6.18.7(c)(3) and 6.18.7A(c)(3)); and • subject to the above, is consistent with the method determined by the AER under the relevant distribution determination (clauses 6.18.7(c)(1) and 6.18.7A(c)(1)). <p>The 2015 determination requires ActewAGL to maintain an unders and overs account for designated pricing proposal charges and jurisdictional scheme amounts for the most recently completed regulatory year (t-2), the current regulatory year (t-1) and the next regulatory year (t) and to achieve a zero expected balance on that account at the end of each of the forecast years in its annual pricing proposals in the 2015/16 to 2018/19 regulatory control period (pp. 14-17 to 14-20).</p> <p>The 2015 determination only provides for adjustments going back two years from year t and it is possible that any remade 2015 determination will not provide for adjustments going back in time beyond t-2. Nonetheless, the requirement in clauses 6.18.7(c)(2) and 6.18.7A(c)(2)) of the NER that the over/under recovery amount must be calculated in a way that ensures a DNSP is able to recover from retail customers no more and no less than the designated pricing proposal charges it incurs (to which the requirements for consistency with the AER's method under the distribution determination in clauses 6.18.7(c)(1) and 6.18.7A(c)(1) are subject) would operate to require the AER to determine the opening balance of the overs and unders account in year t-2 by looking back in time beyond t-2 in order to ensure ActewAGL has not over or under recovered for those charges in the current regulatory control period.</p>
10	8A.15.6(d)(1)	ActewAGL has amended clause 8A.15.6(d)(1) to enable the AER, in making the substituted distribution determination under scenario 3, to vary the revoked distribution	The AEMC's Draft Rule does not permit the substituted distribution determination for the subsequent regulatory control period under scenario 3 to vary from the revoked determination except to allow for the revenue differential between the applicable 2015 distribution determination and the undertaking to be included in the annual revenue requirement(s) for the subsequent regulatory control period. ActewAGL's proposed changes operate to confer on the AER flexibility to address other interrelationships between the distribution

	Clause Draft Rule	AEMC Amendment	Explanation
		determination to provide for revenue increments or decrements arising from the application of any efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme or demand management and embedded generation connection incentive scheme in accordance with the applicable distribution determination (ActewAGL Revised Rule, clause 8A.15.6(d)(1)(ii)).	<p>determination for the 2015/16 to 2018/19 period and that for the next regulatory control period.</p> <p>The AEMC's Draft Rule does not enable the substituted distribution determination to vary the revoked distribution determination to provide for revenue increments or decrements arising from the application of any efficiency benefit sharing scheme, capital expenditure sharing scheme, service target performance incentive scheme or demand management and embedded generation connection incentive scheme in accordance with clauses 6.4.3(a)(5) and (b)(5) of the NER and the remade 2015 determination or varied 2015 determination (as the case may be). Where the revenue increments or decrements attributable to those schemes varied as between the remade 2015 determination (or varied 2015 determination) and the 2015 determination, the AEMC's Draft Rule would not permit the substituted distribution determination to account for such differentials in accordance with clauses 6.4.3(a)(5) and (b)(5).</p> <p>Accordingly, ActewAGL has amended clause 8A.15.6(d)(1) to enable the AER, in making the substituted distribution determination under scenario 3, to vary the revoked distribution determination to provide for revenue increments or decrements arising from the application of those schemes in accordance with the NER and applicable distribution determination for the current regulatory control period.</p>
11	8A.15.8(b)	Amendments to extend the modifications to clause 6.18 of the NER to pricing proposals submitted in the subsequent regulatory control period in circumstances where the derogation applies, and to modify the application of the pricing principles in clause 6.18.5 of the NER to ActewAGL's tariff structure statement.	<p>While clause 8A.15.8(b) of the AEMC's Draft Rule purports to apply in circumstances where clause 8A.15.5 or clause 8A.15.6 applies, the references to 'the remainder of the current regulatory control period' and clause 8A.15.4 throughout that provision appear to limit its application to scenario 1. It is also necessary to modify the application of certain of the pricing provisions in Part I of Chapter 6 of the NER due to the application of the derogation in scenarios 2 or 3. Accordingly, ActewAGL has made amendments to clause 8A.15.8(b) of the Draft Rule to extend the modifications to clause 6.18 of the NER to apply with respect to pricing proposals made in circumstances where scenarios 2 or 3 of the derogation apply.</p> <p>ActewAGL has also made the following changes to clause 8A.15.8(b) of the Draft Rule with the aim of ensuring the derogation operates as intended:</p> <ul style="list-style-type: none"> inserting a new clause 8A.15.8(b)(1) in ActewAGL's Revised Rule to provide that to the extent that ActewAGL's tariff structure statement for the subsequent regulatory control period departs from the pricing principles in clause 6.18.5(e) to (g) due to the application of the derogation, such variation is taken to be a variation from the pricing principles permitted under clause 6.18.5(c). There are a number of provisions in Chapter 6 of the NER which require ActewAGL's tariff structure statement to comply with the pricing principles for direct control services in clause 6.18.5 of the NER (see, for example clause 6.18.1A(b)). In circumstances where ActewAGL's revenue for the subsequent

	Clause Draft Rule	AEMC Amendment	Explanation
			<p>regulatory control period includes revenue increments or decrements as a result of the application of the derogation, there is the potential that ActewAGL's tariff structure statement for that period may not comply with the pricing principles;</p> <ul style="list-style-type: none"> amending clause 8A.15.8(b)(1) of the AEMC's Draft Rule (clause 8A.15.8(b)(2) of ActewAGL's Revised Rule), which modified the requirement in clause 6.18.1A(c) for a DNSP to comply with the tariff structure statement in setting prices for direct control services. This requirement is also reflected in clauses 6.18.2(b)(7), 6.18.8(a)(1) and 6.18.8(c) of the NER. Accordingly, ActewAGL has proposed changes to specifically refer to the requirement for pricing for direct control services in a pricing proposal to comply with the tariff structure statement and to modify the operation of that requirement in 6.18.2(b)(7), 6.18.8(a)(1) and 6.18.8(c) of the NER, in addition to clause 6.18.1A(c); and amending clause 8A.15.8(b)(6)(iii) of the AEMC's Draft Rule (clause 8A.15.8(b)(7)(iii) of ActewAGL's Revised Rule), to clarify that it operates where the AER determines a non-zero adjustment amount and subsequent adjustment amount and to revise the reference to the 'substituted total annual revenue amount' to refer to the 'substituted average annual revenue cap' consistently with ActewAGL's definition of that term in clause 8A.15.4(f).
12	8A.15.8(c)(2)	Revisions to this clause to provide that the reference to 'the other revenue increments or decrements' in clauses 6.4.3(a)(6) and 6.4.3(b)(6) does not include the subsequent adjustment amount, the distribution variation amount or the transmission variation amount (as applicable) as any such amounts are to be recovered in accordance with clauses 8A.15.4(g), 8A.15.5(c) and (d), or 8A.15.6(c) (as applicable).	<p>ActewAGL understands from its discussion with the AEMC on 18 May 2017 that the intent of clause 8A.15.8(c)(2) is to ensure that there is no double recovery of the revenue adjustments made under scenarios 1, 2 or 3 (as applicable) in the distribution determination for the subsequent regulatory control period as a result of the application of clauses 6.4.3(a)(6) and 6.4.3(b)(6) of the NER. This is because the AEMC interprets those clauses as ensuring that any amount not recovered under the control mechanism for the current regulatory control period is then recovered under the control mechanism established in the subsequent determination. While ActewAGL does not consider that clauses 6.4.3(a)(6) and 6.4.3(b)(6) of the NER would operate to effect recovery of the revenue adjustments made under scenarios 1, 2 or 3 (as applicable), ActewAGL has no objection to the inclusion of a clause in the derogation that seeks to address the AEMC's concern with certainty. Accordingly, ActewAGL has proposed an amendment to clause 8A.15.8(c)(2) with the aim of clarifying that provision having regard to the AEMC's intent.</p> <p>ActewAGL has also included a new clause 8A.15.8(c)(3) to prevent double recovery of the transmission variation amount by providing that if clause 8A.15.5 or 8A.15.6 applies, clause 6A.23.3(e)(5), (f) and (g) does not apply to the transmission variation amount.</p>

	Clause Draft Rule	AEMC Amendment	Explanation
		<p>Also included a new clause to provide that if clause 8A.15.5 or 8A.15.6 applies, clause 6A.23.3(e)(5), (f) and (g) does not apply to the transmission variation amount (ActewAGL's Revised Rule, clause 8A.15.8(c)(3)).</p>	