



## Participant derogation – NSW DNSPs Revenue Smoothing

### Stakeholder submissions invited on draft rule determination

**The Australian Energy Market Commission (AEMC) has made a draft rule to allow Ausgrid, Endeavour Energy and Essential Energy (NSW DNSPs) to recover any changes in revenue as a result of the outcome of the current judicial review proceedings over two regulatory periods in order to reduce price volatility for consumers. Submissions are due by 20 June 2017.**

#### Background

In May 2015, the NSW DNSPs applied to the Australian Competition Tribunal (Tribunal) for merits review of their 2014-19 distribution determinations. On 26 February 2016, the Tribunal set aside the determinations and remitted them to the Australian Energy Regulator (AER). The AER subsequently sought judicial review in the Full Federal Court of the Tribunal's decision. The Full Federal Court has yet to decide on the matter.

While judicial review proceedings are on-going, the AER and the NSW DNSPs have entered into enforceable undertakings to set prices for 2015/16. The AER is currently in discussions with the NSW DNSPs regarding undertakings for 2017/18.

At the conclusion of the judicial review proceedings, there may be a need to adjust the NSW DNSPs' revenue entitlements as they could differ from the revenue they have collected. This adjustment could cause significant fluctuation in network prices between the remaining years of the 2014-19 regulatory period (2017/18 and 2018/19) and start of the next regulatory period (2019/20).

The NSW DNSPs therefore submitted a rule change request to provide a mechanism to minimise price volatility for New South Wales customers that may occur at the end of the judicial review proceedings.

#### Draft rule

The draft rule provides a process that allows for any changes in revenue as a result of the outcome of the judicial review proceedings to be recovered over the current regulatory period and the subsequent regulatory period.

#### Objectives of the draft rule

The objectives of draft rule are to:

- minimise price volatility for customers that may occur as a result of the outcome of the judicial review proceedings
- allow the NSW DNSPs to recover the revenue that they are entitled to for the current regulatory control period such that they do not derive any windfall gains or losses from the application of the rule.

#### Key features of the rule

The draft rule incorporates elements of the NSW DNSPs' proposed rule, and is designed to achieve the same outcome of minimising price volatility for NSW DNSP customers. However, it differs from the proposed rule in the approach used, and provides more discretion to the AER. The key features of the draft rule are:

- The draft rule provides the AER with the discretion to determine any revenue adjustments that would smooth revenue across the current regulatory period and the subsequent regulatory period.

**The draft rule is in the long term interest of consumers, because it provides stable prices for consumers, outlines a mechanism that best minimises price volatility and enables NSW DNSPs to recover the efficient costs of providing network services.**

- The draft rule allows the NSW DNSPs to recover any increased or decreased revenue as a result of the outcome of the judicial review proceedings over the current regulatory period and subsequent regulatory period.
- The draft rule requires the AER to make a separate decision on revenue smoothing. The draft rule is designed so that it does not interfere with the AER’s process in remaking the distribution determinations for the current regulatory period (if the AER is required to do so), or the terms of the distribution determinations (if the AER is not required to remake them).

The draft rule also sets out a process to be followed if the AER is required to reopen the distribution determinations for the subsequent regulatory control period to incorporate revenue adjustments.

### Reasons for the draft rule

The Commission’s reasons for making the draft rule are summarised in the table below.

Reasons for the draft rule	Summary explanation
<b>Providing stable prices</b>	A process that smooths any revenue increase or decrease as a result of the outcome of the judicial review proceedings is likely to lead to more stable prices, which would allow consumers to make better informed decisions.
<b>Providing a mechanism that best minimises price volatility</b>	The AER, in consultation with the NSW DNSPs and other relevant stakeholders, is in the best position to decide how to smooth revenue across two regulatory control periods to minimise price volatility. The draft rule provides the AER with the discretion to make these decisions in accordance with a set of requirements and in consultation with the NSW DNSPs and relevant stakeholders.
<b>Enabling NSW DNSPs to recover the efficient costs of providing network services</b>	As the outcome of the judicial review proceedings may not be known until after the current regulatory period ends, the draft rule provides a reasonable opportunity for the NSW DNSPs to recover the efficient costs of providing network services during the current regulatory period and subsequent regulatory period. Importantly, the NSW DNSPs will not derive any windfall gains or losses through the smoothing of revenue across two regulatory control periods.

### Consultation

Stakeholders are invited to make submissions in response to the draft rule and draft rule determination by Tuesday 20 June 2017.

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