



## Participant derogation – NSW DNSPs Revenue Smoothing

### Publication of final rule determination and final rule

**The Australian Energy Market Commission has made a rule that will allow Ausgrid, Endeavour Energy and Essential Energy (NSW DNSPs) to recover any changes in revenue in the 2014-19 regulatory control period that result from the Australian Energy Regulator's remaking of the 2015 determinations over two regulatory periods in order to reduce price volatility for consumers.**

#### 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.

On 24 May 2017, the Federal Court handed down its decision, dismissing the AER's application on operating expenditure and return on debt, but upholding their application on the value of imputation credits (gamma). The consequence of the Federal Court orders made on 4 July 2017 is that the AER will be required to remake the 2015 determinations.

While judicial review proceedings have been on-going, the NSW DNSPs have entered into enforceable undertakings to set prices for 2016-17 and 2017-18.

Once the AER has remade the 2015 determinations, there is likely to be a need to adjust the NSW DNSPs' revenue entitlements for the current regulatory period as the revenue they have collected through undertakings could differ from the revenue they are entitled to under the remade determinations. 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 as a result of the judicial review proceedings.

#### The final rule

The final 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 in a way that minimises price volatility.

#### Objective of the final rule

The objectives of the final rule are to:

- minimise price volatility for customers that may occur as a result of the AER's remaking of the 2015 determinations
- allow the NSW DNSPs the opportunity to recover revenues they are entitled to for the current regulatory control period in the subsequent regulatory control period should circumstances prevent them from doing so in the current regulatory period.

**The final rule is in the long term interest of consumers, because it provides more stable prices for consumers.**

### **Key features of the rule**

The final 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 final rule are:

- The final rule provides the AER with the discretion to determine whether any revenue adjustments should be made across the current regulatory control period and the subsequent regulatory control period, including the allocation of amounts between the two periods.
- The final rule incorporates a "revenue recovery principle" to clarify that the AER should provide the NSW DNSPs with the ability to recover the same revenue (in net present value equivalent terms), but no more than they would have, had the remade 2015 determination been in place from the commencement of the current regulatory period, and had all the control mechanisms specified in the remade 2015 determination been implemented in each relevant regulatory year.
- The final rule requires the AER's to make a decision in relation to revenue adjustment that is separate from its decisions on any distribution determination. The final rule is designed so that it does not interfere with the AER's process in remaking the distribution determinations for the current regulatory period.

The final 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.

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