



Draft National Electricity Amendment (Participant derogation - NSW DNSPs Revenue Smoothing) Rule 2017

under the National Electricity Law to the extent applied by:

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

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

John Pierce
Chairman
Australian Energy Market Commission

Draft National Electricity Amendment (Participant derogation - NSW DNSPs Revenue Smoothing) Rule 2017

1 Title of Rule

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

2 Commencement

This Rule commences operation on [COMMENCEMENT_DATE].

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 14

In Chapter 8A, after Part 13, insert:

Part 14 Derogations granted to Ausgrid, Endeavour Energy and Essential Energy

8A.14 Derogations from Chapter 6 for the current regulatory control period and subsequent regulatory control period

8A.14.1 Definitions

In this *participant derogation*, rule 8A.14:

2015 determination, in respect of each NSW DNSP, means the following applicable distribution determination:

- (a) 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 Ausgrid;
- (b) 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 Endeavour Energy; and
- (c) 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 Essential Energy.

adjustment amount in respect of a NSW DNSP, means an amount that operates as if it were:

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

to the total annual revenue that may be earned by that NSW DNSP for the final regulatory year of the current regulatory control period in accordance with the *annual revenue requirement* and control mechanism that apply under:

- (c) if clause 8A.14.4(a)(1) applies, the remade 2015 determination; or

- (d) if clause 8A.14.4(a)(2) applies, the affirmed or varied 2015 determination.

adjustment determination means the *AER's* determination:

- (a) under clause 8A.14.4, of any, and the relevant amounts of the, adjustment amount and subsequent adjustment amount; and
- (b) under clauses 8A.14.5 and 8A.14.6, the relevant amounts of the 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 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.

Ausgrid means Ausgrid, the energy services corporation of that name (formerly known as EnergyAustralia), which is constituted under section 7 of the *Energy Services Corporations Act 1995* (NSW) and specified in Part 2 of Schedule 1 of that Act, or any successor to its business (including any 'authorised distributor' of Ausgrid's 'network infrastructure assets' (as those terms are defined in the *Electricity Network Assets (Authorised Transactions) Act 2015* (NSW)) following the transfer of the whole, or part, of those network infrastructure assets to the private sector).

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

Endeavour Energy means Endeavour Energy, the energy services corporation of that name (formerly known as Integral Energy), which is constituted under section 7 of the *Energy Services Corporations Act 1995* (NSW) and specified in Part 2 of Schedule 1 to that Act, or any successor to its business (including any 'authorised distributor' of Endeavour Energy's 'network infrastructure assets' (as those terms are defined in the *Electricity Network Assets (Authorised Transactions) Act 2015* (NSW)) following the transfer of the whole, or part, of those network infrastructure assets to the private sector).

Essential Energy means Essential Energy, the energy services corporation of that name (formerly known as Country Energy), which is constituted under section 7 of the *Energy Services Corporations Act 1995* (NSW) and specified in Part 2 of Schedule 1 of that Act, or any successor to its business.

NSW DNSP means each of the following *Distribution Network Service Providers*:

- (a) Ausgrid;
- (b) Endeavour Energy; and
- (c) Essential Energy.

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, in respect of each NSW DNSP, means the 2015 determination of that NSW DNSP as remade by the *AER* following the Tribunal's decision.

subsequent adjustment amount, in respect of a NSW DNSP, means:

- (a) if clause 8A.14.4 applies, an amount that:
 - (1) is equivalent in net present value terms to the adjustment amount; and
 - (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 the *annual revenue requirement* of the first regulatory year of the subsequent regulatory control period; or
- (b) if clause 8A.14.5 applies, an amount that is equivalent in net present value terms to the variation amount; or
- (c) if clause 8A.14.6 applies, an amount that is equivalent in net present value terms to the variation amount.

subsequent distribution determination, in respect of each NSW DNSP, means the distribution determination of that NSW DNSP made by the *AER* for the subsequent regulatory control period.

subsequent regulatory control period, in respect of a NSW DNSP, means the *regulatory control period* for that NSW DNSP that immediately follows the current regulatory control period.

substituted total annual revenue amount has the meaning given in clause 8A.14.4(d).

total annual revenue, in respect of a NSW DNSP, means the total revenue that the NSW DNSP is entitled to earn from the provision of *standard control services* for the relevant regulatory year.

Tribunal means the Australian Competition Tribunal.

Tribunal's decision means the decision of the Tribunal in relation to the 2015 determination of each NSW DNSP delivered on 26 February 2016, as varied or remade as a consequence of the outcome of judicial review of that decision.

undertaking, in respect of a NSW DNSP, 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 that NSW DNSP for the relevant regulatory year.

variation amount, in respect of a NSW DNSP, means:

(a) if clause 8A.14.5 applies, an amount equivalent to the difference between the total annual revenue for the NSW DNSP for the final regulatory year of the current regulatory control period under:

(1) if clause 8A.14.5(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.14.5(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.14.6 applies, an amount equivalent to the difference between the total annual revenue for the NSW DNSP for the final regulatory year of the current regulatory control period under:

- (1) if clause 8A.14.6(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.14.6(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.14.2 Expiry date

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

8A.14.3 Application of Rule 8A.14

- (a) This *participant derogation* prevails to the extent of any inconsistency with any other provision of the *Rules*.
- (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.14.4 Recovery of revenue across the current regulatory control period and subsequent regulatory control period

General

- (a) This clause 8A.14.4 applies in respect of a NSW DNSP if:
- (1) a remade 2015 determination is made by the *AER* in respect of that NSW DNSP prior to 1 March 2018; or
 - (2) the Tribunal affirms or varies the 2015 determination in respect of that NSW DNSP prior to 1 December 2017.

Adjustment determination

- (b) The *AER* may:
- (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 the relevant NSW DNSP:

- (3) an adjustment amount; and
- (4) a subsequent adjustment amount,

if the *AER* is satisfied that the application of the adjustment amount and subsequent adjustment amount under paragraphs (d) and (e), respectively, would be reasonably likely to minimise variations in *use of system* charges:

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

for the relevant NSW DNSP.

Note:

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

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

Recovery in current regulatory control period

- (d) A *pricing proposal* submitted by a NSW DNSP, and approved by the *AER*, for the final regulatory year of the current regulatory control period must only provide for the recovery of:
- (1) where the applicable adjustment amount operates as if it were a revenue increment:
 - (i) the NSW DNSP's total annual revenue in accordance with the *annual revenue requirement* and control mechanism under the distribution determination in force for the final regulatory year of the current regulatory control period; plus
 - (ii) the adjustment amount; or
 - (2) where the applicable adjustment amount operates as if it were a revenue decrement:
 - (i) the NSW DNSP's total annual revenue in accordance with the *annual revenue requirement* and control mechanism under the distribution determination in force for the final regulatory year of the current regulatory control period; minus
 - (ii) the adjustment amount,
- (such amount being the **substituted total annual revenue amount**).

Recovery in subsequent regulatory control period

- (e) The *AER* must include the subsequent adjustment amount determined for a NSW DNSP under paragraph (b) as:
- (1) if subparagraph (d)(1) applies, a revenue decrement; or
 - (2) if subparagraph (d)(2) applies, a revenue increment,
- to the *annual revenue requirement* determined under rule 6.4 for the first regulatory year of that NSW DNSP's subsequent regulatory control period.

8A.14.5 Recovery of revenue in subsequent regulatory control period only and no reopening of subsequent distribution determination required

General

- (a) This clause 8A.14.5 applies in respect of a NSW DNSP if:

- (1) a remade 2015 determination is made by the *AER* in respect of that NSW DNSP on or after 1 March 2018, but prior to 1 February 2019; or
- (2) the Tribunal affirms or varies the 2015 determination in respect of that NSW DNSP 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 variation amount and subsequent adjustment amount for the relevant NSW DNSP.

Recovery in subsequent regulatory control period

- (c) The *AER* must include the subsequent adjustment amount determined for a NSW DNSP 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 the *annual revenue requirement* determined under rule 6.4 for the first regulatory year of that NSW DNSP's subsequent regulatory control period.

8A.14.6 Recovery of revenue in subsequent regulatory control period only and reopening of distribution determination is required

General

- (a) This clause 8A.14.6 applies in respect of a NSW DNSP if:
- (1) a remade 2015 determination is made by the *AER* in respect of that NSW DNSP; or
 - (2) the Tribunal affirms or varies the 2015 determination in respect of that NSW DNSP,

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 variation amount and subsequent adjustment amount for the relevant NSW DNSP.

Recovery in subsequent regulatory control period

- (c) If paragraph (a) applies in respect of a NSW DNSP, the *AER* must revoke the subsequent distribution determination of that NSW DNSP 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 amount for that NSW DNSP 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 revenue requirement* of one or more of the regulatory years for the remainder of the subsequent regulatory control period, subject to the aggregate of all such increases or decreases for the relevant regulatory years being equivalent in net present value terms to the subsequent adjustment amount.

- (d) The substituted distribution determination made under paragraph (c) must only:
- (1) vary from the revoked distribution determination to the extent necessary to reflect the increase or decrease (as the case may be) to the *annual revenue requirement* of one or more of the regulatory years for the subsequent regulatory control period under paragraph (c); and
 - (2) be made after the *AER* has first consulted with the relevant NSW DNSP 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.14.7 Requirements for adjustment determination

The *AER* must:

- (a) make the adjustment determination after consulting with the relevant NSW DNSP and any other persons as the *AER* considers appropriate;
- (b) *publish* its adjustment determination:
 - (1) if clause 8A.14.4(a)(1), 8A.14.5(a)(1) or 8A.14.6(a)(1) applies, at the time of publication of the remade 2015 determination;
 - (2) if clause 8A.14.4(a)(2) applies, by 28 February 2018;
 - (3) if clause 8A.14.5(a)(2) applies, by 31 March 2019; or
 - (4) if clause 8A.14.6(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.14.4 applies, the adjustment amount and subsequent adjustment amount or, where the *AER* has not determined an adjustment amount and subsequent adjustment amount, the reasons for that decision; or
 - (2) if clause 8A.14.5 or 8A.14.6 applies, the variation amount and subsequent adjustment amount.

8A.14.8 Application of Chapter 6 under participant derogation

- (a) Except as otherwise specified in this rule 8A.14 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 each NSW DNSP.
- (b) For the purposes of the application of clauses 8A.14.4, 8A.14.5 and 8A.14.6 (as applicable) in respect of a NSW DNSP, Chapter 6 is

amended for the remainder of the current regulatory control period as follows:

- (1) clause 6.18.1A(c) does not apply to the extent necessary to allow for the submission of a *pricing proposal* by a NSW DNSP, and subsequent approval of such *pricing proposal* by the *AER*, in accordance with clause 8A.14.4(d);
- (2) if clause 8A.14.4 applies, if any variation in proposed tariffs occurs as a result of:
 - (i) if clause 8A.14.4(a)(1) applies, the remade 2015 determination; or
 - (ii) if clause 8A.14.4(a)(2) applies, the affirmed or varied 2015 determination; and
 - (iii) incorporation of the substituted total annual revenue amount in the *pricing proposal* under clause 8A.14.4(d),such variations will be taken to be explained by the relevant NSW DNSP for the purposes of clause 6.18.8(a)(2);
- (3) if clause 8A.14.4 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 the NSW DNSP's *pricing proposal* under clause 8A.14.4(d);
- (4) to the extent that a NSW DNSP'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) clause 6.18.6 does not apply to the extent that a NSW DNSP'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) 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.14.4(a)(1) applies, any variation in proposed tariffs as a result of the remade 2015 determination;

- (ii) if clause 8A.14.4(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 adjustment amount and subsequent adjustment under clause 8A.14.4(b), any variations in proposed tariffs as a result of the application of the substituted total annual revenue amount under clause 8A.14.4(d).
 - (c) For the purposes of the application of clauses 8A.14.4, 8A.14.5 and 8A.14.6 (as applicable) in respect of a NSW DNSP, Chapter 6 is amended for the subsequent regulatory control period as follows:
 - (1) if clause 8A.14.6 applies, clause 6.5.9(b)(2) does not apply to the extent necessary to include the subsequent adjustment amount as a revenue increment or revenue decrement (as the case may be) to the *annual revenue requirement* of one or more regulatory years for the subsequent regulatory control period for the relevant NSW DNSP under clause 8A.14.6(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) 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.14.4(d).
-