



## **National Electricity Amendment (Participant derogation - NSW DNSPs Revenue Smoothing) Rule 2017 No. 6**

under the National Electricity Law to the extent applied by:

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

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

John Pierce  
Chairman  
Australian Energy Market Commission

## **National Electricity Amendment (Participant derogation - NSW DNSPs Revenue Smoothing) Rule 2017 No. 6**

### **1 Title of Rule**

This Rule is the *National Electricity Amendment (Participant derogation - NSW  
DNSPs Revenue Smoothing) Rule 2017 No.6.*

### **2 Commencement**

This Rule commences operation on 15 August 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 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 in respect of Ausgrid;
- (b) the distribution determination for the current regulatory control period published by the *AER* on 30 April 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 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 increase; or
- (b) a revenue decrease,

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

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

under the remade 2015 determination.

**adjustment determination**, in respect of a NSW DNSP, means the *AER's* determination:

- (a) if clause 8A.14.4 applies, of whether there is, and the relevant amounts of, an adjustment amount (including any adjustments made under clause 8A.14.4(d)(1)(ii) or 8A.14.4(d)(2)(ii)) and a subsequent adjustment amount; or
- (b) if clause 8A.14.5 or 8A.14.6 applies, of the relevant amounts of the distribution variation amount and transmission variation amount.

**Ausgrid** means the Ausgrid Operator Partnership (ABN 78 508 211 731), which comprises of:

- (a) Blue Op Partner Pty Ltd (ACN 615 217 500) as trustee for the Blue Op Partner Trust;
- (b) ERIC Alpha Operator Corporation 1 Pty Ltd (ACN 612 975 096) as trustee for ERIC Alpha Operator Trust 1;
- (c) ERIC Alpha Operator Corporation 2 Pty Ltd (ACN 612 975 121) as trustee for ERIC Alpha Operator Trust 2;
- (d) ERIC Alpha Operator Corporation 3 Pty Ltd (ACN 612 975 185) as trustee for ERIC Alpha Operator Trust 3; and
- (e) ERIC Alpha Operator Corporation 4 Pty Ltd (ACN 612 975 210) as trustee for ERIC Alpha Operator Trust 4.

**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.

**distribution standard control services**, in respect of a NSW DNSP, means *standard control services* provided by that NSW DNSP other than *transmission standard control services*.

**distribution variation amount**, in respect of a NSW DNSP, means an amount equal to:

- (a) the sum of the total annual revenue for distribution standard control services for that NSW DNSP for each regulatory year of the current regulatory control period in accordance with:
  - (1) the formulae that give effect to the applicable control mechanism; and
  - (2) the applicable *annual revenue requirement*,

under the remade 2015 determination; minus

- (b) the sum of:
- (1) the total annual revenue for distribution standard control services for that NSW DNSP for the first and second regulatory years of the current regulatory control period in accordance with:
    - (i) the formulae that give effect to the applicable control mechanism; and
    - (ii) the applicable *annual revenue requirement*,under the 2015 determination; plus
  - (2) the total annual revenue for distribution standard control services for that NSW DNSP for the third, fourth and final regulatory years of the current regulatory control period under the undertakings that apply for those regulatory years,

provided that such amount includes any adjustments necessary for the *AER* to be satisfied that the amount achieves the revenue recovery principle under clause 8A.14.5(d) or 8A.14.6(d) (as the case may be).

**Endeavour Energy** means the Endeavour Energy Network Operator Partnership (ABN 11 247 365 823), which comprises of:

- (a) Edwards O Pty Limited (ACN 618 643 486) as trustee for the Edwards O Trust;
- (b) ERIC Epsilon Operator Corporation 1 Pty Ltd (ACN 617 221 735) as trustee for ERIC Epsilon Operator Trust 1;
- (c) ERIC Epsilon Operator Corporation 2 Pty Ltd (ACN 617 221 744) as trustee for ERIC Epsilon Operator Trust 2;
- (d) ERIC Epsilon Operator Corporation 3 Pty Ltd (ACN 617 221 753) as trustee for ERIC Epsilon Operator Trust 3; and
- (e) ERIC Epsilon Operator Corporation 4 Pty Ltd (ACN 617 221 771) as trustee for ERIC Epsilon Operator Trust 4.

**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.

**NUOS charges**, in respect of a NSW DNSP, means charges comprising that NSW DNSP's prices for distribution standard control services, *designated pricing proposal charges* and *jurisdictional scheme amounts*.

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

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

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

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

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

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

- (a) is equivalent in net present value terms to the adjustment amount, incorporating any adjustments made under clause 8A.14.4(d)(1)(ii) or 8A.14.4(d)(2)(ii) (as the case may be); and
- (b) represents a revenue increase (where the adjustment amount is a negative amount) or a revenue decrease (where the adjustment

amount is a positive amount) to the *annual revenue requirement* of the first regulatory year of the subsequent regulatory control period.

**subsequent distribution determination**, in respect of each NSW DNSP, means the distribution determination for that NSW DNSP that is 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 distribution standard control services or *transmission standard control services* (as the case may be) for the relevant regulatory year.

**transmission variation amount**, in respect of a NSW DNSP, means an amount equal to:

- (a) the sum of the total annual revenue for *transmission standard control services* for that NSW DNSP for each regulatory year of the current regulatory control period in accordance with:
  - (1) the formulae that give effect to the applicable control mechanism; and
  - (2) the applicable *annual revenue requirement*,  
under the remade 2015 determination; minus
- (b) the sum of:
  - (1) the total annual revenue for *transmission standard control services* for that NSW DNSP for the first, second and third regulatory years of the current regulatory control period in accordance with:
    - (i) the formulae that give effect to the applicable control mechanism; and
    - (ii) the applicable *annual revenue requirement*,  
under the 2015 determination; plus
  - (2) the total annual revenue for *transmission standard control services* for that NSW DNSP for the fourth and final regulatory years of the current regulatory control period under the undertakings that apply for those regulatory years,

provided that such amount includes any adjustments necessary for the *AER* to be satisfied that the amount achieves the revenue recovery principle under clause 8A.14.5(d) or 8A.14.6(d) (as the case may be).

**Tribunal** means the Australian Competition Tribunal.

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

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

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

#### **8A.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 a remade 2015 determination is made by the *AER* in respect of that NSW DNSP prior to 1 March 2018.



### **Adjustment determination**

- (b) The *AER* may determine at the time of making the remade 2015 determination for the relevant NSW DNSP:
- (1) an adjustment amount; and
  - (2) a subsequent adjustment amount,
- if the *AER* is satisfied that the application of the adjustment amount and subsequent adjustment amount under paragraphs (d) and (e), respectively, would:
- (3) be reasonably likely to minimise variations in NUOS charges:
    - (i) between the fourth and final regulatory years of the current regulatory control period; and
    - (ii) between the final regulatory year of the current regulatory control period and the first regulatory year of the subsequent regulatory control period,for the relevant NSW DNSP; and
  - (4) achieve the revenue recovery principle in respect of 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, in respect of revenue for distribution standard control services, only provide for the recovery of:
- (1) where the applicable adjustment amount operates as if it were a revenue increase:
    - (i) the NSW DNSP's total annual revenue for distribution standard control services in accordance with the formulae that give effect to the applicable control mechanism, and the applicable *annual revenue requirement*, under the remade 2015 determination; plus

- (ii) the adjustment amount, incorporating any adjustments that the *AER* considers necessary to achieve the revenue recovery principle in accordance with subparagraph (b)(4); or
  - (2) where the applicable adjustment amount operates as if it were a revenue decrease:
    - (i) the NSW DNSP's total annual revenue for distribution standard control services in accordance with the formulae that give effect to the applicable control mechanism, and the applicable *annual revenue requirement*, under the remade 2015 determination; minus
    - (ii) the adjustment amount, incorporating any adjustments that the *AER* considers necessary to achieve the revenue recovery principle in accordance with subparagraph (b)(4),
- (such amount being the **substituted total 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 decrease; or
  - (2) if subparagraph (d)(2) applies, a revenue increase,to the *annual revenue requirement* determined under rule 6.4 for the first regulatory year of that NSW DNSP's subsequent regulatory control period.
- (f) Any subsequent adjustment amount included as a revenue increase or revenue decrease under paragraph (e) must not be considered by the *AER* when determining whether any amount is payable or recoverable by the relevant NSW DNSP under any scheme that applies to that NSW DNSP in respect of the 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 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 May 2019.

**Adjustment determination**

- (b) If paragraph (a) applies, the *AER* must determine at the time of making the remade 2015 determination:
- (1) the distribution variation amount; and
  - (2) the transmission variation amount,
- for the relevant NSW DNSP.

**Recovery in subsequent regulatory control period**

- (c) The *AER* must include an amount equivalent in net present value terms to:
- (1) the distribution variation amount; and
  - (2) the transmission variation amount,
- determined for a NSW DNSP under paragraph (b) as:
- (3) if the applicable distribution variation amount or transmission variation amount (as the case may be) is a positive amount, a revenue increase; or
  - (4) if the applicable distribution variation amount or transmission variation amount (as the case may be) is a negative amount, a revenue decrease; or
  - (5) if the applicable distribution variation amount or transmission variation amount is zero, no adjustment,
- to the *annual revenue requirement* determined under rule 6.4 for the first regulatory year of that NSW DNSP's subsequent regulatory control period.
- (d) When making an adjustment determination under this clause 8A.14.5 in respect of a NSW DNSP, the *AER* must be satisfied that the application of the distribution variation amount and transmission variation amount under paragraph (c) achieves the revenue recovery principle in respect of that NSW DNSP.
- (e) A distribution variation amount or transmission variation amount included as a revenue increase or revenue decrease under paragraph (c), must not be considered by the *AER* when determining whether any amount is payable or recoverable by the relevant NSW DNSP under any scheme that applies to that NSW DNSP in respect of the 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 a remade 2015 determination is made by the *AER* in respect of that NSW DNSP on or after 1 May 2019, but prior to 1 December of the fourth last regulatory year of the subsequent regulatory control period.

#### **Adjustment determination**

- (b) If paragraph (a) applies, the *AER* must determine at the time of making the remade 2015 determination:
- (1) the distribution variation amount; and
  - (2) the transmission variation 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 remaining regulatory years of the subsequent regulatory control period; and
  - (2) includes an amount equivalent in net present value terms to:
    - (i) the distribution variation amount; and
    - (ii) the transmission variation amount,determined for that NSW DNSP as:
    - (iii) if the applicable distribution variation amount or transmission variation amount (as the case may be) is a positive amount, a revenue increase; or
    - (iv) if the applicable distribution variation amount or transmission variation amount (as the case may be) is a negative amount, a revenue decrease; or
    - (v) if the applicable distribution variation amount or transmission variation amount (as the case may be) is zero, no adjustment,

to the *annual revenue requirement* of one or more of the regulatory years in the remainder of the subsequent regulatory control period, subject to the sum of all such increases or decreases for the relevant regulatory years being equivalent in net present value terms to the sum of the distribution variation amount and transmission variation amount.

- (d) When making an adjustment determination under this clause 8A.14.6 in respect of a NSW DNSP, the *AER* must be satisfied that the application of the distribution variation amount and transmission variation amount under paragraph (c) achieves the revenue recovery principle in respect of that NSW DNSP.
- (e) The substituted distribution determination made under paragraph (c) must only:
  - (1) vary from the revoked distribution determination to the extent necessary to reflect the increase or decrease (as the case may be) to the *annual revenue requirement* of one or more of the regulatory years of the subsequent regulatory control period under paragraph (c); and
  - (2) be made after the *AER* has first consulted with the relevant NSW DNSP and such other persons as the *AER* considers appropriate.
- (f) If the *AER* revokes and substitutes the subsequent distribution determination under paragraph (c), that revocation and substitution must take effect from the commencement of the next regulatory year.
- (g) A distribution variation amount or transmission variation amount included as a revenue increase or revenue decrease under paragraph (c), must not be considered by the *AER* when determining whether any amount is payable or recoverable by the relevant NSW DNSP under any scheme that applies to that NSW DNSP in respect of the subsequent regulatory control period.

#### **8A.14.7 Requirements for adjustment determination**

The *AER* must in respect of an adjustment determination made for a NSW DNSP:

- (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 at the time of publication of the remade 2015 determination; and

- (c) include in its adjustment determination, the reasons for the *AER*'s determination of:
  - (1) if clause 8A.14.4 applies, the adjustment amount (including any adjustment made under clause 8A.14.4(d)(1)(ii) or 8A.14.4(d)(2)(ii)) and subsequent adjustment amount or, where the *AER* has not determined an adjustment amount and subsequent adjustment amount, the reasons for that decision; or
  - (2) if clause 8A.14.5 or 8A.14.6 applies, the distribution variation amount and transmission variation 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 the subsequent distribution determination,in respect of each NSW DNSP.
- (b) If clause 8A.14.4 applies in respect of a NSW DNSP, 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).
- (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 and 6A are amended for the remainder of the current regulatory control period and the subsequent regulatory control period as follows:
  - (1) the requirement under the *Rules* for pricing for *direct control services* in a *pricing proposal* to comply with the *tariff structure statement* does not apply to the extent necessary to allow for the submission of a *pricing proposal* by a NSW DNSP, and subsequent approval of such *pricing proposal* by the *AER*, in accordance with this *participant derogation*;
  - (2) if any variation in proposed tariffs occurs as a result of:
    - (i) the remade 2015 determination; or
    - (ii) the application of this *participant derogation*,

such variations will be taken to be explained by the relevant NSW DNSP for the purposes of clauses 6.18.2(b)(7A) and 6.18.8(a)(2);

- (3) 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);
- (4) to the extent that a NSW DNSP's *tariff structure statement* varies from a *tariff structure statement* which would result from complying with the *pricing principles for direct control services* due to the application of this *participant derogation*, such variation is permitted under the *Rules*;
- (5) clause 6.18.6 does not apply to the extent that 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*;
- (6) if the *AER* amends a *pricing proposal* under clause 6.18.8(b)(2) or 6.18.8(c), then in addition to the requirements in clause 6.18.8(c1), the *AER* must also have regard to:
  - (i) any variation in proposed tariffs that result from the remade 2015 determination; and
  - (ii) any variation in proposed tariffs that result from the application of this *participant derogation*;
- (7) if clause 8A.14.6 applies, clause 6.5.9(b)(2) does not apply to the extent necessary to include a revenue increase or revenue decrease (as the case may be) to the *annual revenue requirement* of one or more regulatory years for the subsequent regulatory control period for the relevant NSW DNSP under clause 8A.14.6(c);
- (8) if clause 8A.14.4 applies, the reference to 'the other revenue increments or decrements' in clauses 6.4.3(a)(6) and 6.4.3(b)(6) is taken to include such increments or decrements as adjusted to the extent necessary to take into account the application of the substituted total annual revenue amount under clause 8A.14.4(d); and
- (9) if clause 8A.14.5 or 8A.14.6 applies, clauses 6A.23.3(e)(5), (f) and (g) do not apply in respect of any transmission variation amount.

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[END OF RULE AS MADE]