

Final Decision

Ausgrid Electricity Distribution Determination 2024 to 2029 (1 July 2024 to 30 June 2029)

Attachment 15 Pass through events

April 2024

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1	30 April 2024	11

List of attachments

This attachment forms part of the AER's final decision on the distribution determination that will apply to Ausgrid for the 2024–29 period. It should be read with all other parts of the draft decision.

The final decision includes the following documents:

Overview

Attachment 1 – Annual revenue requirement

Attachment 2 – Regulatory asset base

Attachment 4 – Regulatory depreciation

Attachment 5 – Capital expenditure

Attachment 6 – Operating expenditure

Attachment 7 – Corporate income tax

Attachment 12 – Customer service incentive scheme

Attachment 13 – Classification of services

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Attachment 15 – Pass through events

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15 Pass through events

During the regulatory control period Ausgrid can apply to pass through to its customers, in the form of higher or lower network charges, certain material changes in its efficient costs caused by pre-defined exogenous events. These events are called cost pass through events. Such events are limited to circumstances where the business can recover potential costs of defined yet unpredictable high-cost events that are outside the control of the business.

The National Electricity Rules (NER) prescribe the following pass through events for all distribution determinations:¹

- a regulatory change event
- a service standard event
- a tax change event
- a retailer solvency event.

In addition to these prescribed events, other pass through events may be 'nominated' by a service provider for a regulatory control period.² This attachment sets out our final decision on the nominated pass through events to apply to Ausgrid's distribution network for the 2024–29 regulatory control period.

15.1 Final decision

Our final decision pursuant to clause 6.12.1(14) of the NER is to accept all the four pass through events nominated by Ausgrid (being the terrorism, natural disaster, insurance coverage and insurer's credit risk events) as defined in Table 15.1. This is consistent with our draft decision.³

We maintain our draft decision definition for each of these events,⁴ and do not accept Ausgrid's proposed changes to the definition of the natural disaster event. Ausgrid reiterated its initial proposal relating to the natural disaster event definition but did not directly engage with our draft decision reasoning.

The reasons for our final decision are set out in section 15.4.

15.2 Ausgrid's revised proposal

Ausgrid accepted all the aspects of our draft decision on cost pass through events, except the definition of the 'natural disaster' event.⁵

¹ NER, cl. 6.6.1(a1)(1)–(4). Each of these prescribed events is defined in Chapter 10 (Glossary) of the NER.

² NER, cl. 6.6.1(a1)(5).

³ AER, *Draft decision Ausgrid distribution determination 2024–29 - Attachment 14: Pass through events*, September 2023, p. 1.

⁴ AER, *Draft decision Ausgrid distribution determination 2024–29 - Attachment 14: Pass through events*, September 2023, pp. 9-11.

⁵ Ausgrid, *2024-29 Revised Proposal, Att. 10.2 – Nominated pass through events*, 30 November 2023, p. 7.

Ausgrid proposed the following definition of natural disaster event.

Natural disaster events will include, but may not be limited to, natural disasters declared by a relevant government authority. Where a government authority has made a declaration that a natural disaster has occurred, the temporal and geographic scope of the natural disaster event will be defined by reference to the terms of that declaration.⁶

Ausgrid considered this definition provides a clear mechanism for defining a natural disaster event by elevating how we currently consider natural disaster declarations made by a government authority as set out below.

We did not receive any submissions on proposed cost pass through events.

15.3 Assessment approach

We have applied the same assessment approach as in the draft decision.⁷

15.4 Reasons for final decision

We do not accept Ausgrid's proposed definition for the natural disaster event for the reasons set out below.

Our preferred definition of the natural disaster event for Ausgrid is as follows.

Natural disaster event means any natural disaster including but not limited to cyclone, fire, flood or earthquake that occurs during the 2024–29 regulatory control period that changes the costs to Ausgrid in providing direct control services, *provided the cyclone, fire, flood, earthquake or other event was:*

(a) a consequence of an act or omission that was necessary for the service provider to comply with a regulatory obligation or requirement or with an applicable regulatory instrument; [emphasis added] or

(b) not a consequence of any other act or omission of the service provider.

Note: In assessing a natural disaster event pass through application, the AER will have regard to, amongst other things:

(1) whether Ausgrid has insurance against the event

(2) the level of insurance that an efficient and prudent NSP would obtain in respect of the event.

This definition is consistent with that provided for (and accepted by) the other NSW distribution businesses for the 2024–29 period.

⁶ Ausgrid, *2024-29 Revised Proposal, Att. 10.2 – Nominated pass through events*, 30 November 2023, p. 7.

⁷ AER, *Draft Decision, Ausgrid distribution determination 2024–29 – Attachment 15 – Pass through events*, September 2023, pp. 4-7.

Ausgrid disagreed with our definition and submitted that parts of our definition (*italicised* section above) should be reworked for clarity because in Ausgrid’s view, together they:

... establish that, for a natural disaster event to have occurred, the ‘cyclone, fire, flood, earthquake or other event’ must have been ‘a consequence of an act or omission that was necessary... to comply with a regulatory obligation’.⁸

Ausgrid’s revised proposal also reiterated that its proposed definition brings a reference to ‘a declaration by a government authority’ to a more central position. Ausgrid considered these declarations confirm whether a natural disaster event has occurred and are accompanied by information regarding the time of the event and the impacted locations.⁹ Ausgrid added that our definition, which we maintained in our draft decision, removed all reference to a government declaration as an express consideration it will consider when defining the temporal and geographic boundaries of a natural disaster event.¹⁰

We do not agree with Ausgrid for the following reasons.

- Regarding the *italicised* section of our definition above, we consider that Ausgrid has misinterpreted the purpose of this section.
 - We included this wording in our standard natural disaster event definition following consultation as part of our 2020-25 final determination for SA Power Networks 2020-25.¹¹ At the time, SA Power Networks submitted that there may be situations where a natural disaster (such as a fire) arises as a consequence of it acting (or not being able to act) in accordance with the regulatory requirements governing its actions and omissions. In turn, SA Power Networks’ compliance with these regulations could prevent it from meeting pass through requirements. SA Power Networks, therefore, submitted that it is both reasonable and necessary that the ‘acts or omissions’ of SA Power Networks, that are excluded from triggering the pass through event, be qualified so that such lawful acts (and omissions) do not unfairly disadvantage SA Power Networks. It provided an example, in the context of vegetation clearance, to illustrate that there may be circumstances in which SA Power Networks is prohibited from clearing vegetation, even though contact between that vegetation and the distribution infrastructure could provide a source of ignition for a bushfire start.¹²
- Regarding a reference to ‘a declaration by a government authority’, Ausgrid’s revised proposal did not engage with our draft decision reasoning.¹³
 - We agree with Ausgrid that such declarations can usefully assist in defining the scope and boundaries (temporal and geographic) of such events. However, we

⁸ Ausgrid, *2024-29 Revised Proposal, Att. 10.2 – Nominated pass through events*, 30 November 2023, pp. 4-5.

⁹ Ausgrid, *2024-29 Revised Proposal, Att. 10.2 – Nominated pass through events*, 30 November 2023, p. 6.

¹⁰ Ausgrid, *2024-29 Revised Proposal, Att. 10.2 – Nominated pass through events*, 30 November 2023, p. 4.

¹¹ AER, *Final decision SA Power Networks distribution determination 2020–25 - Attachment 14: Pass through events*, June 2020, pp. 14-15.

¹² SA Power Networks, *2020-25 Revised proposal - Attachment 13 Pass through events*, December 2019, pp. 19-21.

¹³ AER, *Draft decision Ausgrid distribution determination 2024–29 - Attachment 14: Pass through events*, September 2023, pp. 8-9.

maintain that while a government declaration may assist in determining whether a natural disaster has occurred, and inform the scope of such a disaster, it is only one of the factors we will have regard to in assessing a cost pass through application.

- Importantly, these declarations are made for a purpose that is different to that of the cost pass through provisions in the NER, and therefore, should not be used deterministically in defining the scope of a natural disaster event. Ausgrid’s revised proposal definition captures any event declared by a government authority to be a natural disaster event, regardless of whether the event has any relationship to or impact upon Ausgrid’s network or the provision of direct control services.
- In addition, we consider our current definition for the natural disaster event is already sufficiently broad to allow us to consider other factors, such as natural disaster declarations made by a government authority. For example, we extensively discussed our assessment of relevant ‘government declarations’ in our recent determinations for natural disaster cost pass through applications relating to bushfires.¹⁴

Table 15.1 sets out our definitions of nominated pass through events.

Table 15.1 AER pass through event definitions

Pass through event	Final decision definition
Insurance coverage event	<p>An insurance coverage event occurs if:</p> <ol style="list-style-type: none"> 1. Ausgrid: <ul style="list-style-type: none"> a) makes a claim or claims and receives the benefit of a payment or payments under a relevant insurance policy or set of insurance policies; or b) would have been able to make a claim or claims under a relevant insurance policy or set of insurance policies but for changed circumstances; and 2. Ausgrid incurs costs: <ul style="list-style-type: none"> a) beyond a relevant policy limit for that policy or set of insurance policies; or b) that are unrecoverable under that policy or set of insurance policies due to changed circumstances; and 3. The costs referred to in paragraph 2 above materially increase the costs to Ausgrid in providing direct control services. <p>For the purposes of this insurance coverage event:</p> <ul style="list-style-type: none"> • 'changed circumstances' means movements in the relevant insurance liability market that are beyond the control of Ausgrid, where those movements mean that it is no longer possible for Ausgrid to take out an insurance policy or set of insurance policies at all or on reasonable commercial terms that include some or all of the costs

¹⁴ AER, *AER Determination - Essential Energy 2019–20 bushfire cost pass through*, 21 March 2022, p. 9.

Pass through event	Final decision definition
	<p>referred to in paragraph 2 above within the scope of that insurance policy or set of insurance policies.</p> <ul style="list-style-type: none"> • 'costs' means the costs that would have been recovered under the insurance policy or set of insurance policies had: <ul style="list-style-type: none"> – the limit not been exhausted; or – those costs not been unrecoverable due to changed circumstances. • a relevant insurance policy or set of insurance policies is an insurance policy or set of insurance policies held during the regulatory control period or a previous regulatory control period in which Ausgrid was regulated; and • Ausgrid will be deemed to have made a claim on a relevant insurance policy or set of insurance policies if the claim is made by a related party of Ausgrid in relation to any aspect of Ausgrid's network or business; and • Ausgrid will be deemed to have been able to make a claim on a relevant insurance policy or set of insurance policies if, but for changed circumstances, the claim could have been made by a related party of Ausgrid in relation to any aspect of Ausgrid's network or business. <p>Note for the avoidance of doubt, in assessing an insurance coverage event through application under rule 6.6.1(j), the AER will have regard to:</p> <ul style="list-style-type: none"> i) the relevant insurance policy or set of insurance policies for the event ii) the level of insurance that an efficient and prudent DNSP would obtain, or would have sought to obtain, in respect of the event iii) any information provided by Ausgrid to the AER about Ausgrid's actions and processes; and iv) any guidance published by the AER on matters the AER will likely have regard to in assessing any insurance coverage event that occurs.
Insurer's credit risk event	<p>An insurer credit risk event occurs if an insurer of Ausgrid becomes insolvent, and as a result, in respect of an existing or potential claim for a risk that was insured by the insolvent insurer, Ausgrid:</p> <ul style="list-style-type: none"> a) is subject to a higher or lower claim limit or a higher or lower deductible than would have otherwise applied under the insolvent insurer's policy; or b) incurs additional costs associated with funding an insurance claim, which would otherwise have been covered by the insolvent insurer. <p>Note: in assessing an insurer credit risk event pass through application, the AER will have regard to, amongst other things:</p>

Pass through event	Final decision definition
	<p>i) Ausgrid's attempts to mitigate and prevent the event from occurring by reviewing and considering the insurer's track record, size, credit rating and reputation, and</p> <p>ii) in the event that a claim would have been covered by the insolvent insurer's policy, whether Ausgrid had reasonable opportunity to insure the risk with a different provider.</p>
Natural disaster event	<p>Natural disaster event means any natural disaster including but not limited to cyclone, fire, flood or earthquake that occurs during the 2024–29 regulatory control period that changes the costs to Ausgrid in providing direct control services, provided the cyclone, fire, flood, earthquake or other event was:</p> <p>a) a consequence of an act or omission that was necessary for the service provider to comply with a regulatory obligation or requirement or with an applicable regulatory instrument; or</p> <p>b) not a consequence of any other act or omission of the service provider.</p> <p>Note: In assessing a natural disaster event pass through application, the AER will have regard to, amongst other things:</p> <p>i) whether Ausgrid has insurance against the event;</p> <p>ii) the level of insurance that an efficient and prudent NSP would obtain in respect of the event.</p>
Terrorism event	<p>Terrorism event means an act (including, but not limited to, the use of force or violence or the threat of force or violence) of any person or group of persons (whether acting alone or on behalf of or in connection with any organisation or government), which:</p> <p>1. from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons (including the intention to influence or intimidate any government and/or put the public, or any section of the public, in fear); and</p> <p>2. changes the costs to Ausgrid in providing direct control services.</p> <p>Note: In assessing a terrorism event pass through application, the AER will have regard to, amongst other things:</p> <p>i) whether Ausgrid has insurance against the event</p> <p>ii) the level of insurance that an efficient and prudent NSP would obtain in respect of the event; and</p> <p>iii) whether a declaration has been made by a relevant government authority that a terrorism event has occurred.</p>

Source: AER analysis.

Shortened forms

Term	Definition
AER	Australian Energy Regulator
NER	National Electricity Rules