

Draft decision

Jemena electricity distribution determination

1 July 2026 – 30 June 2031

Attachment 4 – Pass through events

September 2025

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4 Pass through events

During the regulatory control period Jemena can apply to pass through to its customers, in the form of higher or lower network charges, certain material changes in its costs caused by pre-defined exogenous events. These events are called cost pass through events. 'Positive' pass throughs allow Jemena to recover the efficient costs incurred as a result of events that could not be forecast as part of its proposal that otherwise would have a significant financial effect on its ability to invest in and operate its network.¹

The National Electricity Rules (NER) prescribe the following pass through events for all distribution determinations:²

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

In addition to these prescribed events, other pass through events may be 'nominated' by a service provider for a regulatory control period.³ This attachment sets out our draft decision on the nominated pass through events to apply.

4.1 Draft decision

Our draft decision is to accept the natural disaster, insurer's credit risk, insurance coverage, terrorism, and retailer insolvency events proposed by Jemena.⁴ Our reasons are set out in section 4.5 and our definitions for this draft decision are set out in Table 4.2.

4.2 Jemena's proposal

Jemena's proposed nominated pass through events are set out in Table 4.1.

Table 4.1 Jemena's nominated pass through events

| Proposed event | Jemena's proposed definition |
|------------------------|--|
| 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 2026-31 regulatory control period that changes the costs to Jemena 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> |

¹ AEMC 2012, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, p. 2.

² NER, cl. 6.6.1(a1)(1)–(4). Each of these prescribed events is defined in Chapter 10 (Glossary) of the NER.

³ NER, cl. 6.6.1(a1)(5).

⁴ This is one of the constituent decisions we must make under NER, cl 6.12.1(n).

| Proposed event | Jemena’s proposed definition |
|----------------------------------|--|
| | <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> <ul style="list-style-type: none"> i) whether Jemena has insurance against the event <p>the level of insurance that an efficient and prudent network service provider would obtain in respect of the event.</p> |
| <p>Insurer credit risk event</p> | <p>An insurer credit risk event occurs if an insurer of Jemena becomes insolvent, and as a result, in respect of an existing or potential claim for a risk that was insured by the insolvent insurer, Jemena:</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> <ul style="list-style-type: none"> i) Jemena attempts to mitigate and prevent the event from occurring by reviewing and considering the insurer’s track record, size, credit rating and reputation, and ii) in the event that a claim would have been covered by the insolvent insurer's policy, whether Jemena had reasonable opportunity to insure the risk with a different provider. |
| <p>Insurance coverage event</p> | <p>An insurance coverage event occurs if:</p> <ul style="list-style-type: none"> 1) Jemena: <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) Jemena 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 Jemena in providing direct control services. |

| Proposed event | Jemena’s proposed definition |
|-----------------|---|
| | <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 Jemena, where those movements mean that it is no longer possible for Jemena 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 referred to in paragraph 2 above within the scope of that insurance policy or set of insurance policies • '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 • an 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 Jemena was regulated; and • Jemena 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 Jemena in relation to any aspect of Jemena’s network or business; and • Jemena 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 Jemena in relation to any aspect of Jemena’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> <ol 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 Jemena to the AER about Jemena's actions and processes, and <p>any guidance published by the AER on matters the AER will likely have regard to in assessing any insurance coverage event that occurs.</p> |
| Terrorism event | 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: |

| Proposed event | Jemena’s proposed definition |
|---------------------------|---|
| | <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 Jemena 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> <ul style="list-style-type: none"> ii) whether Jemena has insurance against the event ii) the level of insurance that an efficient and prudent network service provider would obtain in respect of the event, and <p>whether a declaration has been made by a relevant government authority that a terrorism event has occurred.</p> |
| Retailer insolvency event | <p>Until such time as the National Energy Retail Law set out in the Schedule to the National Energy Retail Law (South Australia) Act 2011 of South Australia is applied as a law of Victoria, retailer insolvency event has the meaning set out in the NER as in force from time to time, except that:</p> <ul style="list-style-type: none"> (a) where used in the definition of 'retailer insolvency event' in the NER, the term 'retailer' means the holder of a licence to sell electricity under the Electricity Industry Act 2000 (Vic); and (b) other terms used in the definition of retailer insolvency event in the Rules as a consequence of amendments made to that definition from time to time, which would otherwise take their meaning by reference to provisions of the NER or National Energy Retail Law not in force in Victoria, take their ordinary meaning and natural meaning, or their technical meaning (as the case may be). <p>For the purposes of this definition, the terms 'eligible pass through amount' and 'positive change event' where they appear in the NER (as well as any subordinate terms including, without limitation, 'retailer insolvency costs', 'failed retailer' and 'billed but unpaid charges') are modified in respect of this retailer insolvency event in the same manner as those terms are modified in respect of the retailer insolvency event prescribed in the NER from time to time</p> <p>Note: This retailer insolvency event will cease to apply as a nominated pass through event on commencement of the National Energy Customer Framework in Victoria.</p> |

Source: Jemena, Attachment 08-03 Managing risk and uncertainty, January 2025, pp. 7-9.

Assessment approach

The NER set out how we must assess nominated pass through events, and how we must assess an application from a service provider to pass through changes in costs where an event occurs.⁵

Our assessment approach is guided by the National Electricity Objective (NEO)⁶ and the Revenue and Pricing Principles (RPPs).⁷ The RPPs include that the service provider should have a reasonable opportunity to recover at least the efficient costs of providing services and complying with regulatory obligations.⁸ The NEO and the RPPs also reflect the importance of incentives to promote economic efficiency, and balance the risks of under and over investment.

In determining whether we accept a nominated pass through event, we must take into account the 'nominated pass through event considerations' as defined,⁹ which are as follows:¹⁰

- a) whether the event proposed is an event covered by a category of *pass through event* specified in clause 6.6.1(a1)(1) to (4) (in the case of a distribution determination) or clause 6A.7.3(a1)(1) to (4) (in the case of a *transmission determination*);
- b) whether the nature or type of event can be clearly identified at the time the determination is made for the service provider;
- c) whether a prudent service provider could reasonably prevent an event of that nature or type from occurring or substantially mitigate the cost impact of such an event;
- d) whether the relevant service provider could insure against the event, having regard to:
 - 1) the availability (including the extent of availability in terms of liability limits) of insurance against the event on reasonable commercial terms; or
 - 2) whether the event can be self-insured on the basis that:
 - i) it is possible to calculate the self-insurance premium; and
 - ii) the potential cost to the relevant service provider would not have a significant impact on the service provider's ability to provide *network services*; and
- e) any other matter the *AER* considers relevant and which the *AER* has notified *Network Service Providers* is a nominated pass through event consideration.

The AEMC described the purpose of the nominated pass through event considerations as:

⁵ NER, cl. 6.5.10(b), 6.6.1.

⁶ The NEO is defined in s. 7 of the NEL.

⁷ The revenue and pricing principles are set out in s. 7A of the NEL.

⁸ NEL, s. 7A(2).

⁹ NER, cl. 6.5.10(b).

¹⁰ NER, Chapter 10, definition of 'nominated pass through event considerations'.

... to incorporate and reflect the essential components of a cost pass through regime in the NER. It was intended that in order for appropriate incentives to be maintained, any nominated pass through event should only be accepted when event avoidance, mitigation, commercial insurance and self-insurance are unavailable.¹¹

...that a pass through event should only be accepted when it is the least inefficient option and event avoidance, mitigation, commercial insurance and self-insurance are found to be inappropriate. That is, it is included after ascertaining the most efficient allocation of risks between a network service provider (NSP) and end consumers.¹²

This protects the incentive regime under the NER by limiting erosion of a service provider's incentives to use market-based mechanisms to mitigate the cost impacts that would arise. This also promotes the efficient investment in, and efficient operation and use of, network services for the long-term interests of consumers with respect to price.¹³

As a matter of good regulatory practice, we also take into account the desirability of consistency in our approach to assessing nominated pass through events across our electricity determinations and gas access arrangements.¹⁴

4.3 Interrelationships

The pass through mechanism is not the only way service providers can manage their risks under a distribution or transmission determination. It is interrelated with other parts of this decision, in particular with the forecast operating and capital expenditure (opex and capex) and rate of return included in our revenue determination. We must specify and take account of these interrelationships.¹⁵ This requires us to balance the incentives in the various parts of our decision.

For systemic risks, service providers are compensated through the allowed rate of return. Service providers also face business-specific, or residual, risks. Service providers are compensated for the prudent and efficient management of these risks through the forecast opex and capex we include in our revenue determination for strategies such as:

- prevention (avoiding the risk)
- mitigation (reducing the probability and impact of the risk)
- insurance (transferring the risk to another party)

¹¹ AEMC, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, p. 19.

¹² AEMC, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, p. 20.

¹³ AEMC, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, p. 8.

¹⁴ AEMC, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, p. 18.

¹⁵ NEL, s. 16(1)(c).

- self-insurance (putting aside funds to manage the likely costs associated with a risk event).

An efficient business will manage its risk by employing the most cost-effective combination of these strategies. In order to maintain appropriate incentives under our determinations, we only accept nominated pass through events where we are satisfied that event avoidance, mitigation, commercial insurance and self-insurance under approved forecasts of prudent and efficient opex and capex are either unavailable or inappropriate.¹⁶

In general, in respect of unforeseen costs that are relatively minor, a service provider should manage them by using up its existing expenditure allowance, or reprioritising or substituting its projects, to avoid seeking cost recovery through the pass through mechanisms.¹⁷ This is reflected in the materiality threshold that applies to cost pass through applications.¹⁸

Cost pass through amounts approved in a regulatory control period are added to (or in the case of a negative pass through deducted from) forecast opex and capex for the purpose of calculating efficiency carryover amounts under the Efficiency Benefit Sharing Scheme and Capital Expenditure Sharing Scheme.¹⁹

Any capex that has already been recovered in a regulatory control period by way of a cost pass through cannot be recovered again in the roll-forward of the regulatory asset base for the next regulatory control period.²⁰

4.4 Reasons for draft decision

4.4.1 Natural disaster, insurer's credit risk, insurance coverage, terrorism, and retailer insolvency events

We consider that Jemena's proposed natural disaster, insurer's credit risk, insurance coverage, terrorism, and retailer insolvency events meet the nominated pass through event considerations set out in the NER:²¹

- the proposed events are not covered by an existing category of pass through event
- the nature of the events are clearly identifiable at this time
- a prudent service provider could not reasonably prevent an event of that nature or type from occurring or substantially mitigate its cost impact and could not insure (or self-insure) against the events on reasonable commercial terms.

With regard to the latter point, while Jemena could take steps to reduce its risk exposure to these events, expenditure beyond a certain level aimed at completely eliminating the risk is

¹⁶ AEMC, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, pp. 19–20.

¹⁷ AEMC, *Economic Regulation of Network Service Providers, and Price and Revenue Regulation of Gas Services, Final Rule Determination*, 29 November 2012, p. 186.

¹⁸ NER, *Chapter 10, definition of 'materially'*.

¹⁹ AER, *Efficiency Benefit Sharing Scheme for Electricity Network Service Providers*, November 2013, p. 7; AER, *Capital Expenditure Incentive Guideline for Electricity Network Service Providers*, April 2023, p. 3.

²⁰ NER, cl. S6.2.1(e)(1)(ii).

²¹ NER, cl. 6.5.10(b); *Chapter 10: Glossary, definition of 'nominated pass through event considerations'*.

likely to be imprudent or inefficient. In that context, sharing the risk between Jemena and its customers is appropriate and more likely to be in the long-term interests of consumers with respect to price.

The cost pass through events proposed by Jemena are the same as those included in its 2021–26 determination,²² and also consistent with our recent determinations for other network providers.

We accept the definitions proposed by Jemena for natural disaster, insurer’s credit risk, insurance coverage, and terrorism pass through events, as these are consistent with our recent determinations for other network service providers.²³

Table 4.2 sets out the nominated pass through events for the draft decision.

Table 4.2 AER pass through event definitions for the draft decision

| Proposed event | Jemena’s proposed definition |
|---------------------------|--|
| 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 2026-31 regulatory control period that changes the costs to Jemena in providing direct control services, provided the cyclone, fire, flood, earthquake or other event was:</p> <ul style="list-style-type: none"> 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 b) not a consequence of any other act or omission of the service provider. <p>Note: In assessing a natural disaster event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> iii) whether Jemena has insurance against the event <p>the level of insurance that an efficient and prudent network service provider would obtain in respect of the event.</p> |
| Insurer credit risk event | <p>An insurer credit risk event occurs if an insurer of Jemena becomes insolvent, and as a result, in respect of an existing or potential claim for a risk that was insured by the insolvent insurer, Jemena:</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. |

²² AER - *Final decision - Jemena distribution determination 2021–26 - Attachment 15 - Pass through events* - April 2021, pp. 15.11–15.15.

²³ For example, AER, *Final Decision Attachment 15 – Pass through events – Ausgrid – 2024-29 Distribution revenue proposal*, April 2024, pp. 4–6; AER, *Final Decision Attachment 15 – Pass through events – Endeavour Energy – 2024-29 Distribution revenue proposal*, April 2024, pp. 2–4.

| Proposed event | Jemena’s proposed definition |
|--------------------------|--|
| | <p>Note: in assessing an insurer credit risk event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> iii) Jemena attempts to mitigate and prevent the event from occurring by reviewing and considering the insurer’s track record, size, credit rating and reputation, and iv) in the event that a claim would have been covered by the insolvent insurer's policy, whether Jemena had reasonable opportunity to insure the risk with a different provider. |
| Insurance coverage event | <p>An insurance coverage event occurs if:</p> <ul style="list-style-type: none"> 3) Jemena: <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 4) Jemena 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 5) The costs referred to in paragraph 2 above materially increase the costs to Jemena 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 Jemena, where those movements mean that it is no longer possible for Jemena 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 referred to in paragraph 2 above within the scope of that insurance policy or set of insurance policies • '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 • an insurance policy or set of insurance policies is an insurance policy or set of insurance policies held during the |

| Proposed event | Jemena’s proposed definition |
|-----------------|--|
| | <p>regulatory control period or a previous regulatory control period in which Jemena was regulated; and</p> <ul style="list-style-type: none"> • Jemena 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 Jemena in relation to any aspect of Jemena’s network or business; and • Jemena 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 Jemena in relation to any aspect of Jemena’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"> iv) the relevant insurance policy or set of insurance policies for the event v) the level of insurance that an efficient and prudent DNSP would obtain, or would have sought to obtain, in respect of the event vi) any information provided by Jemena to the AER about Jemena's actions and processes, and <p>any guidance published by the AER on matters the AER will likely have regard to in assessing any insurance coverage event that occurs.</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> <ul style="list-style-type: none"> 6) 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 7) changes the costs to Jemena in providing direct control services. <p>Note: In assessing a terrorism event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> iv) whether Jemena has insurance against the event ii) the level of insurance that an efficient and prudent network service provider would obtain in respect of the event, and <p>whether a declaration has been made by a relevant government authority that a terrorism event has occurred.</p> |

| Proposed event | Jemena’s proposed definition |
|---------------------------|---|
| Retailer insolvency event | <p>Until such time as the National Energy Retail Law set out in the Schedule to the National Energy Retail Law (South Australia) Act 2011 of South Australia is applied as a law of Victoria, retailer insolvency event has the meaning set out in the NER as in force from time to time, except that:</p> <ul style="list-style-type: none"> (c) where used in the definition of 'retailer insolvency event' in the NER, the term 'retailer' means the holder of a licence to sell electricity under the Electricity Industry Act 2000 (Vic); an (d) (b) other terms used in the definition of retailer insolvency event in the Rules as a consequence of amendments made to that definition from time to time, which would otherwise take their meaning by reference to provisions of the NER or National Energy Retail Law not in force in Victoria, take their ordinary meaning and natural meaning, or their technical meaning (as the case may be). <p>For the purposes of this definition, the terms 'eligible pass through amount' and 'positive change event' where they appear in the NER (as well as any subordinate terms including, without limitation, 'retailer insolvency costs', 'failed retailer' and 'billed but unpaid charges') are modified in respect of this retailer insolvency event in the same manner as those terms are modified in respect of the retailer insolvency event prescribed in the NER from time to time</p> <p>Note: This retailer insolvency event will cease to apply as a nominated pass through event on commencement of the National Energy Customer Framework in Vict</p> |

Source: Jemena - Attachment 08-03 Managing risk and uncertainty, pp. 7-9.

Shortened forms

| Term | Definition |
|-------|---------------------------------------|
| AER | Australian Energy Regulator |
| Capex | Capital expenditure |
| DNSP | Distribution network service provider |
| NEL | National electricity law |
| NEM | National electricity market |
| NEO | National electricity objective |
| NER | National electricity rules |
| NSP | Network service provider |
| Opex | Operating expenditure |
| RPP | Revenue and pricing principles |
| AER | Australian Energy Regulator |
