



# **Determination**

## **Ausgrid cost pass through application**

### **April 2015 Storms**

December 2015

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## Shortened forms

Shortened form	Extended form
AER	Australian Energy Regulator
capex	capital expenditure
CPI	consumer price index
distributor	distribution network service provider
NEL	national electricity law
NEO	national electricity objective
NER	national electricity rules
opex	operating expenditure
PTRM	post-tax revenue model
RAB	regulatory asset base
repex	replacement expenditure
RFM	roll forward model
WACC	weighted average cost of capital

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# 1 Overview

On 21 August 2015, we received a cost pass through application from Ausgrid for additional expenditure associated with restoring supply to the network from severe weather storm conditions in April 2015 (hereafter referred as the April storm event).

The April storm event damaged numerous assets and required a 10 day rectification effort by Ausgrid to restore supply to affected consumers and repair or replace damaged infrastructure.

The role of the AER as economic regulator of distribution network service providers in the National Electricity Market, is to assess Ausgrid's application against the cost pass through requirements in chapter 6 of the National Electricity Rules.

Cost pass throughs permit distributors to recover additional costs incurred in dealing with an event by increasing customers' tariffs (or decreasing them in the case of a negative pass through).

Specifically, if a qualifying *positive change event* occurs, we must determine the required pass through amount and how much of that amount should be passed through to network users in each regulatory year. This decision addresses those requirements, which are set out in clause 6.6.1 of the NER. An extract of the relevant clauses is at attachment A.

On 26 August 2015, we published Ausgrid's pass through application for consultation. No submissions were received.

We have determined that Ausgrid's pass through application satisfies the requirements of a general nominated pass through event. In particular, the operating expenditure and capital expenditure associated with restoring supply to the distribution network does materially increase the uncontrollable costs to Ausgrid of providing direct control services.

We first establish if a general nominated pass through event has occurred. We then consider whether the proposed variations to capital and operating expenditures are prudent and efficient, and material. If so, we determine a positive pass through amount to be recovered from customers.

For the reasons discussed in Section 5, and based on our assessment of the relevant factors listed in clause 6.6.1(j) of the NER, we determine the total approved pass through amount for Ausgrid is \$43.2 million (\$' nominal).

We consider the pass through amount should be recovered through the remaining years of current regulatory control period, from 2016–17 to 2018–19. We consider this preferable to providing for recovery in a single year, as it will smooth the price effects for customers. We set out the revenue in the 2014–19 decision for Ausgrid and the incremental amount of the approved positive pass through in Table 1. While the pass through amount is material, the impact on customers' bills is negligible.

**Table 1 Approved Ausgrid positive pass through amounts (\$m' nominal)**

	2014–15	2015–16	2016–17	2017–18	2018–19	Total
Revenue from final decision (smoothed)	2208.8	1693.2	1637.1	1627.7	1618.4	8785.2
Pass through amounts			14.49	14.39	14.29	43.20
Total to be recovered from customers	2208.8	1693.2	1651.6	1642.1	1632.7	8828.4

Source: AER Analysis. Numbers may not add due to rounding.

We have undertaken extensive consultation with Ausgrid where necessary to seek clarification on the information provided in its application and our additional information requests as part of our assessment. This includes:

- On 21 September 2015, we requested additional information from Ausgrid, to seek further clarification on any supporting information that provides the assumptions and methodology used to determine the annual pass through amounts.
- On 16 October, Ausgrid submitted additional information to support its pass through application, including a detailed breakdown of proposed costs.
- On 27 October and 4 November, we sought further clarification and requested additional information in relation to the proposed capital and operating expenditures from that provided in Ausgrid's 16 October response.
- On 6 and 12 November Ausgrid submitted additional information to support its pass through application.

## Structure of determination

This determination is structured as follows:

- Chapter 2 sets out our determination on Ausgrid's pass through application
- Chapter 3 sets out Ausgrid's pass through application
- Chapter 4 sets out relevant regulatory requirements and our assessment approach
- Chapter 5 sets out our reasons for determination.

## 2 Determination

The pass through mechanism of the National Electricity Rules recognises that a distributor can be exposed to risks beyond its control, which may have a material impact on its costs. A cost pass through enables a distributor to recover (or pass through) the costs of defined unpredictable, high cost events that are not built into our distribution determination. The NER includes the following prescribed pass through events for all distributors:

- a regulatory change event
- a service standard event
- a tax change event
- a retailer insolvency event
- any other event specified in a determination as a pass through event (nominated pass through event).

This decision relates to a general nominated pass through event specified in Ausgrid's 2014–15 transitional distribution determination.

Our discretion in assessing pass through events is limited in the NER under clause 6.6.1 (j) which is replicated in section 4.1 of this decision.

We are satisfied that a general nominated pass through event as specified in Ausgrid's 2014–15 transitional distribution determination had occurred.

We are satisfied that the total capital expenditure and operating expenditure determined in Table 3 are the prudent and efficient amounts that have been incurred by Ausgrid for restoring supply to its distribution network. This amount has been used to derive the approved pass through amounts using the post-tax revenue model for Ausgrid, as set out in our Final Decision.<sup>1</sup>

We are satisfied that these costs represent a material increase, incurred in the 2014–15 regulatory year. In making this determination, we have considered the factors set out in clause 6.6.1(j) of the NER.

Finally, we have determined the approved positive pass through amount to be \$43.2 million (\$' nominal). This is the amount that Ausgrid will recover from customers over the three years commencing 1 July 2016. This is different from the building block amount of \$37.9 million (\$' nominal) proposed by Ausgrid. We identified some errors in Ausgrid's financial modelling which we have corrected. This results in a higher amount being approved than was proposed.

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<sup>1</sup> AER, Final Decision - Ausgrid distribution determination - Ausgrid 2015 - PTRM - Distribution, April 2015.

### 3 Ausgrid's pass through application

On 21 August 2015, we received a cost pass through application from Ausgrid for additional capital expenditure and operating expenditure in the current regulatory control period associated with supply restoration in response to the April 2015 storms.

The expenditure results from providing distribution services to remedy the damage done to Ausgrid's distribution network from the severe weather conditions caused by the East Coast Low in April 2015 (the April storm event).

Ausgrid stated that the damage sustained from the April storm event was unprecedented and resulted in a total of 22 local government areas being declared natural disaster zones; 16 of these were within Ausgrid's network area. The restoration took more than 10 days to complete and affected around 20 per cent (300,000) of Ausgrid's customers.<sup>2</sup>

Ausgrid submitted that:

- the April storm event met the relevant requirements to qualify as a general nominated pass through event<sup>3</sup>
- the costs incurred amounted to 1.6 per cent of Ausgrid's annual revenue requirement for the 2014–15 regulatory year thereby satisfying the materiality requirement<sup>4</sup>
- the application was submitted within the 90 business days timeframe for making a pass through request<sup>5</sup>
- it should be permitted to recover a positive pass through amount of \$37.9 million (\$' nominal)<sup>6</sup> in the regulatory year 2016–17.<sup>7</sup>

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<sup>2</sup> Ausgrid, Cost pass through application - April 2015 storms, August 2015, p. 1.

<sup>3</sup> Ausgrid, Cost pass through application - April 2015 storms, August 2015, p. 1.

<sup>4</sup> Ausgrid, Cost pass through application - April 2015 storms, August 2015, p. 1.

<sup>5</sup> Ausgrid, Cost pass through application - April 2015 storms, August 2015, p. 1.

<sup>6</sup> Ausgrid, Cost pass through application - April 2015 storms, August 2015, p. 3. The AER identified some errors in Ausgrid's financial modelling. After remodelling, the pass through amount claimed as a result of the event is \$43.2 million (\$' nominal).

<sup>7</sup> Ausgrid, Cost pass through application - April 2015 storms, August 2015, p. 1. This amount means the building block revenue components resulting from the application of the capex and opex in the PTRM.



## 4 Relevant regulatory requirements

The NER sets out the regulatory requirements for this pass through determination (see appendix A). In particular, we took into account clause 6.6.1(j) of the NER as set out below.

### 4.1 Relevant factors

(j) In making a determination under paragraph (d) or (g) in respect of a Distribution Network Service Provider, the AER must take into account:

(1) the matters and proposals set out in any statement given to the AER by the provider under paragraph (c) or (f); and

(2) in the case of a positive change event, the increase in costs in the provision of direct control services that, as a result of the positive change event, the provider has incurred and is likely to incur until:

(i) unless subparagraph (ii) applies – the end of the regulatory control period in which the positive change event occurred; or

(ii) if the distribution determination for the regulatory control period following that in which the positive change event occurred does not make any allowance for the recovery of that increase in costs – the end of the regulatory control period following that in which the positive change event occurred; and

...

(3) in the case of a positive change event, the efficiency of the provider's decisions and actions in relation to the risk of the positive change event, including whether the provider has failed to take any action that could reasonably be taken to reduce the magnitude of the eligible pass through amount in respect of that positive change event and whether the provider has taken or omitted to take any action where such action or omission has increased the magnitude of the amount in respect of that positive change event; and

(4) the time cost of money based on the weighted average cost of capital for the provider for the regulatory control period in which the pass through event occurred; and

(5) the need to ensure that the provider only recovers any actual or likely increment in costs under this paragraph (j) to the extent that such increment is solely as a consequence of a pass through event; and

...

(7) whether the costs of the pass through event have already been factored into the calculation of the provider's annual revenue requirement for the regulatory control period in which the pass through event occurred or will be

factored into the calculation of the provider's annual revenue requirement for a subsequent regulatory control period; and

(7A) the extent to which the costs that the provider has incurred and is likely to incur are the subject of a previous determination made by the AER under this clause 6.6.1; and

(8) any other factors that the AER considers relevant.

## 4.2 Assessment approach

When assessing Ausgrid's pass through application, we must first determine whether a 'positive change event' occurred.

This assessment is done with reference to the NER and the 2014–15 transitional distribution determination for Ausgrid (which defines the general pass through events Ausgrid can utilise during the 2014–15 regulatory control period). We also determine the materiality of the proposed pass through amount as part of this process.

Under the NER a positive change event for a distributor is defined as:

....a pass through event that materially increases the costs of providing direct control services.

Once we determine a positive change event occurred we must then determine:

- the approved pass through amount
- the amount of that approved pass through amount that should be passed through to Distribution Network Users in each regulatory year during the regulatory control period.<sup>8</sup>

We make this determination taking into account those factors set out in clause 6.6.1(j) of the NER (quoted above).

## 4.3 What we considered in making this determination

In making our determination on the eligible pass through amount in clause 6.6.1, we have:

- considered the application and supporting information we received from Ausgrid
- undertaken our own analysis to verify the information Ausgrid provided
- where the material Ausgrid submitted was unclear or incomplete, we sought clarification from Ausgrid and had regard to its responses. In some instances this involved asking further follow-up queries and a consideration of Ausgrid's responses.

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<sup>8</sup> NER, clause 6.6.1(d).

## 5 Reasons for determination

We are satisfied that Ausgrid's pass through application establishes that a general nominated pass through event has occurred.

We consider the additional capital expenditure and operating expenditure incurred by Ausgrid in 2014–15 materially increased Ausgrid's costs in providing direct control services in the regulatory control period.<sup>9</sup> This section details the reasons that have led us to these conclusions.

### 5.1 Occurrence of a general nominated pass through event

We are satisfied that a general nominated pass through event has occurred.<sup>10</sup> All the necessary circumstances have been met, being:

- an uncontrollable and unforeseeable event has occurred during the course of the regulatory control period, the effect of which could not have been prevented or mitigated by prudent operational risk management
- the change in costs of providing distribution services as a result of the event is material
- the event does not fall within the definition of any of the pass through events defined in clause 6.6.1, or any other pass through event specified in Ausgrid's 2014–15 transitional distribution determination.

In addition, the application meets the other requirements for a pass through set out in the NER. Our considerations are discussed in the following section.

#### 5.1.1 Uncontrollable and unforeseeable event

Ausgrid described the East Coast Low of 20–22 April 2015, which generated severe weather conditions throughout NSW, as an uncontrollable and unforeseeable event.<sup>11</sup> Ausgrid provided a detailed account of the circumstances relating to the April storms, particularly the characteristics of East Coast Lows.<sup>12</sup>

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<sup>9</sup> NER, clause 6.6.1(j)(2).

<sup>10</sup> The term 'general nominated pass through event' is defined at pp.295-296 of the 'New South Wales Distribution Determination 2009–10 to 2013–14'. This pass through event continued to apply as a transitional measure in the regulatory year 2014–15 because of clause 11.56.3(a)(8) of the NER and item 1.7 of the 'Ausgrid Placeholder determination for the transitional regulatory control period 2014–15'.

<sup>11</sup> Ausgrid, Cost pass through application - April 2015 storms, August 2015, pp. 7–10.

<sup>12</sup> Ausgrid, Cost pass through application - April 2015 storms, Appendix A, August 2015.

The storms' development and the severity highlight how this event was an extreme weather event (subsequently labelled a natural disaster by the NSW Government).<sup>13</sup> The event was outside of Ausgrid's control and unforeseeable.<sup>14</sup>

## 5.1.2 Effect of the event could not be prevented or mitigated

We consider the decisions and actions of Ausgrid in response to the event were efficient<sup>15</sup> and that the event could not have been prevented or mitigated through prudent risk operational management.<sup>16</sup> Although Ausgrid has measures in place to deal with inclement weather more generally, severe storms can and do have impacts on the network that cannot readily be mitigated beforehand.

The NSW government has declared the effects of the April storm event as a natural disaster, as discussed in section 5.1.1. We accept that prudent operational risk management may not prevent or mitigate an event of this nature from occurring.

Ausgrid submitted that it has a Risk Management Framework to prudently and efficiently manage its exposure to risks that it faces as an owner and operator of a distribution network.<sup>17</sup>

In particular, Ausgrid submitted it has in place preventative and mitigation controls aimed at reducing the consequences of storm events, mainly through:<sup>18</sup>

- Asset and vegetation management
- An incident management system
- Storm response plan.

The above measures formed the response framework by which Ausgrid coordinated and prioritised activities across its network to restore customer supply in response to the April storm event.<sup>19</sup>

We are satisfied that these actions, decisions and measures were efficient to mitigate the cost impact from the April storm event.<sup>20</sup>

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<sup>13</sup> Emergency NSW, Natural Disaster Declarations 2014-2015, <https://www.emergency.nsw.gov.au/publications/natural-disaster-declarations/2014-2015.html>.

<sup>14</sup> In the context of the general nominated pass through event that applies in Ausgrid's distribution determination, the AER considers an event to be 'unforeseeable' if, at the time the distributor lodged its regulatory proposal, despite the occurrence of the event being a possibility there was no reason to consider that the event was more likely to occur than not to occur during the regulatory control period.

<sup>15</sup> This is a factor we must take into account when assessing the application under NER, cl 6.6.1(j)(3).

<sup>16</sup> This is a requirement in the definition of 'general nominated pass through event' (see pp.295-6 of the 'New South Wales Distribution Determination 2009-10 to 2013-14' which continues to apply in the regulatory year 2014-15 because of clause 11.56.3(a)(8) of the NER and item 1.7 of the 'Ausgrid Placeholder determination for the transitional regulatory control period 2014-15').

<sup>17</sup> Ausgrid, Cost pass through application - April 2015 storms, August 2015, pp. 9-10.

<sup>18</sup> Ausgrid, Cost pass through application - April 2015 storms, August 2015, pp. 9-11.

<sup>19</sup> Ausgrid, Cost pass through application - April 2015 storms, August 2015, pp. 10-11.

<sup>20</sup> NER, clause 6.6.1(j)(3).

### 5.1.3 Material change in costs

All pass through events must pass a materiality test.<sup>21</sup> That is, the costs incurred as a result of the event must exceed 1 per cent of the annual revenue requirement in the regulatory year in which the event occurs.

In addition, the definition of general nominated pass through event imposes an additional materiality requirement for this particular type of pass through event (in relation to the smoothed forecast revenue). In that definition 'material' means:

the costs associated with the event would exceed 1 per cent of the smoothed forecast revenue specified in the final decision in the years of the regulatory control period that the costs are incurred.<sup>22</sup>

Table 2 shows Ausgrid's annual revenue requirement and smoothed revenue for 2014–15 to 2018–19, our determined pass through amount and each of the relevant materiality percentages.

The cost impact of the April storm event is 1.95 per cent of its annual revenue requirement and 1.53 per cent of the smoothed revenue in 2014–15 and therefore exceeds both the materiality hurdles contained in the NER and the definition of general nominated pass through event.<sup>23</sup>

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<sup>21</sup> NER chapter 10, definitions of 'positive change event' and 'materially'.

<sup>22</sup> AER, AER statement on updates for NSW DNSPs distribution determination, 25 November 2009, p.14.

<sup>23</sup> NER, chapter 10 definition of 'positive pass through event' and definition of 'materially'.

**Table 2**      **Materiality of pass through costs (\$m' nominal)**

	2014–15	2015–16	2016–17	2017–18	2018–19
Annual revenue requirement	1738.8	1738.2	1808.7	1796.7	1797.0
Smoothed revenue requirement	2208.8	1693.2	1637.1	1627.7	1618.4
Pass through amount	33.90	0.88	0.35	0.36	0.36
Materiality against annual revenue requirement (per cent)	1.95	0.05	0.02	0.02	0.02
Materiality against smoothed revenue requirement (per cent)	1.53	0.05	0.02	0.02	0.02

Source: AER analysis. Numbers may not add due to rounding.

We are satisfied that the costs associated with the April storm event (i.e. the change in costs directly attributable to this act of nature) are therefore material within the meaning given to the term by our 2014–15 transitional distribution determination and the NER.

#### **5.1.4**      **Timing of Ausgrid's application**

Clause 6.6.1 of the NER requires distributors to submit a pass through application to us within 90 business days of the positive change event occurring. We consider that the effective date of the positive change event was 20 April 2015. We received the application on 21 August 2015. This requirement has been met.

### **5.2**      **Assessment of costs likely to be incurred**

The AER has determined in Table 3 the approved incremental capital and operating expenditure for the April storm event.

**Table 3 Approved incremental expenditure (\$' nominal)**

	2014-15	2015-16	Total
Capital expenditure	5.34	-	5.34
Operating expenditure	33.90	0.52	34.42
Total	39.24	0.52	39.76

Source: AER analysis. Numbers may not add due to rounding.

### 5.2.1 Replacement capital expenditure

Ausgrid proposed \$5.34 million for capital expenditure, to replace network assets damaged by the storm, including the poles, pole top transformers and kiosks, conductors and ABC service wires.<sup>24</sup> Ausgrid advised that it does not insure against damage to its poles and wires, noting that external insurance is unavailable on commercial terms.<sup>25</sup> This means no insurance premium is being funded by customers. We are satisfied this is efficient and reasonable.

Ausgrid provided supporting evidence that this replacement amount is an incremental cost incurred solely due to the April storm event.<sup>26</sup> These costs have not been included in either the 2014–15 (transitional period) or 2015–19 distribution determinations given that these assets were not part of the planned replacement program for those periods. On the basis of the information before us, we are satisfied that these costs have been incurred in relation to repairing the damage caused by the April storm event.

When we roll forward Ausgrid's regulatory asset base (RAB) to 1 July 2019 at the next regulatory determination, we will take account of this pass through capex as required by the NER.<sup>27</sup>

### 5.2.2 Operating expenditure

Ausgrid proposed \$34.4 million for operating expenditure for storm restoration activities including internal costs and external costs, the latter from third party assistance from Endeavour Energy, Essential Energy and Energex.<sup>28</sup>

As the operating expenditure for the third party assistance is directly attributable to the April storm event, was corroborated by invoices and was not provided for in the 2014–

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<sup>24</sup> Ausgrid, Cost pass through application - April 2015 storms, August 2015, p. 17.

<sup>25</sup> Ausgrid, Cost pass through application - April 2015 storms, August 2015, p. 11.

<sup>26</sup> Ausgrid, response to the AER's information request of 27 October 2015, 6 November 2015, pp.14–15.

<sup>27</sup> NER, Clause S6.2.1(e)(1)(ii).

<sup>28</sup> Ausgrid, Cost pass through application - April 2015 storms, August 2015, pp. 17–19.

15 and 2015–19 distribution determinations, we are satisfied that it should be approved.

As part of our assessment we have considered Ausgrid's internal labour costs. In particular we have considered the proposed expenditure for normal labour hours as to whether these costs meet the pass through requirements in the NER for costs to be prudent and efficient.

We asked Ausgrid to explain why internal labour costs that it included as part of its pass through application should be considered incremental costs. This is because only incremental labour costs and not business as usual labour costs should be passed through to customers in a positive pass through event. We also requested the methodology including the assumptions and modelling of the proposed pass through costs.<sup>29</sup>

In response, Ausgrid provided supporting evidence to demonstrate that:<sup>30</sup>

- The proposed internal labour costs are expenditures associated with responding to and repairing the damage cause by the April storm event and therefore are actual increases in the costs of providing direct control services, and these increases were the sole consequence of the event.
- Costs of responding to the April storm event were not included in the 2014–15 or 2015–19 distribution determinations of the AER
- Ausgrid incurred significantly higher emergency response costs in 2014–15, largely attributable to the April storm event, compared to a much lower historical average annual expenditure for emergency response, which was included in its base opex.

On the basis of the information before us, we are satisfied that these costs have been incurred in relation to repairing the damage caused by the April storm event.

### **5.3 Time cost of money**

Clause 6.6.1(j)(4) of the NER requires us to take into account the time cost of money based on the rate of return for the provider. In calculating the total pass through amount, we have made an allowance for this. The time cost of money has been based on the most recent rate of return for Ausgrid, as set out in our 2014–19 Final Decision.<sup>31</sup>

After incorporating this time cost of money factor, we determine the total approved pass through amount for Ausgrid is \$43.2 million (\$' nominal).

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<sup>29</sup> AER made multiple information requests on 21 September, 27 October and 4 November 2015.

<sup>30</sup> Ausgrid provided information response on 16 October, 6 November and 12 November 2015.

<sup>31</sup> AER, Final Decision - Ausgrid distribution determination - Attachment 3 - Rate of Return, April 2015.



# A Excerpts from the NER

## Excerpt from version 71 of the NER – clause 6.6.1:

### 6.6.1 Cost pass through

(a1) Any of the following is a pass through event for a distribution determination:

(1) a regulatory change event;

(2) a service standard event;

(3) a tax change event;

(4) a retailer insolvency event; and

(5) any other event specified in a distribution determination as a pass through event for the determination.

(a) If a positive change event occurs, a Distribution Network Service Provider may seek the approval of the AER to pass through to Distribution Network Users a positive pass through amount.

(b) If a negative change event occurs, the AER may require the Distribution Network Service Provider to pass through to Distribution Network Users a negative pass through amount as determined by the AER under paragraph (g).

#### Positive pass through

(c) To seek the approval of the AER to pass through a positive pass through amount, a Distribution Network Service Provider must submit to the AER, within 90 business days of the relevant positive change event occurring, a written statement which specifies:

(1) the details of the positive change event;

(2) the date on which the positive change event occurred;

(3) the eligible pass through amount in respect of that positive change event;

(4) the positive pass through amount the Distribution Network Service Provider proposes in relation to the positive change event;

(5) the amount of the positive pass through amount that the Distribution Network Service Provider proposes should be passed through to Distribution Network Users in the regulatory year in which, and each regulatory year after that in which, the positive change event occurred;

(6) evidence:

(i) of the actual and likely increase in costs referred to in subparagraph (3);

(ii) that such costs occur solely as a consequence of the positive change event;  
and

(iii) in relation to a retailer insolvency event, of :

(A) the amount to which the Distribution Network Service Provider is entitled under any relevant credit support;

(B) the maximum amount of credit support (if any) that the Distribution Network Service Provider was entitled to request the retailer to provide under the credit support rules; and

(C) any amount that the Distribution Network Service Provider is likely to receive on a winding-up of the retailer; and

(7) such other information as may be required under any relevant regulatory information instrument.

(d) If the AER determines that a positive change event has occurred in respect of a statement under paragraph (c), the AER must determine:

(1) the approved pass through amount; and

(2) the amount of that approved pass through amount that should be passed through to Distribution Network Users in the regulatory year in which, and each regulatory year after that in which, the positive change event occurred,

taking into account the matters referred to in paragraph (j).

(e) Subject to paragraph (k1), if the AER does not make the determinations referred to in paragraph (d) within 40 business days from the later of the date it receives the Distribution Network Service Provider's statement and accompanying evidence under paragraph (c), and the date it receives any additional information required under paragraph (e1), then, on the expiry of that period, the AER is taken to have determined that:

(1) the positive pass through amount as proposed in the Distribution Network Service Provider's statement under paragraph (c) is the approved pass through amount in respect of that positive change event; and

(2) the amount of that positive pass through amount that the Distribution Network Service Provider proposes in its statement under paragraph(c) should be passed through to Distribution Network Users in the regulatory year in which, and each regulatory year after that in which, the positive change event occurred, is the amount that should be so passed through in each such regulatory year.

(e1) A Distribution Network Service Provider must provide the AER with such additional information as the AER requires for the purpose of making a determination under paragraph (d) within the time specified by the AER in a notice provided to the Distribution Network Service Provider by the AER for that purpose.

Negative pass through

(f) A Distribution Network Service Provider must submit to the AER, within 90 business days of becoming aware of the occurrence of a negative change event for the Distribution Network Service Provider, a written statement which specifies:

(1) the details of the negative change event concerned;

(2) the date the negative change event occurred;

(3) the costs in the provision of direct control services that the Distribution Network Service Provider has saved and is likely to save as a result of the negative change event until:

(i) unless subparagraph (ii) applies – the end of the regulatory control period in which the negative change event occurred; or

(ii) if the distribution determination for the regulatory control period following that in which the negative change event occurred does not make any allowance for the pass through of those cost savings - the end of the regulatory control period following that in which the negative change event occurred;

(4) the aggregate amount of those saved costs that the Distribution Network Service Provider proposes should be passed through to Distribution Network Users;

(5) the amount of the costs referred to in subparagraph (4) the Distribution Network Service Provider proposes should be passed through to Distribution Network Users in the regulatory year in which, and each regulatory year after that in which, the negative change event occurred; and

(6) such other information as may be required under any relevant regulatory information instrument.

(f1) If the occurrence of the negative change event is not notified by the Distribution Network Service Provider to the AER under paragraph (f) then, as soon as is reasonably practicable and before making a determination referred to in paragraph (g), the AER must notify the Distribution Network Service Provider of the occurrence of that negative change event.

(g) If a negative change event occurs (whether or not the occurrence of that negative change event is notified by the Distribution Network Service Provider to the AER under paragraph (f)) and the AER determines to impose a requirement on the provider in relation to that negative change event as described in paragraph (b), the AER must determine:

(1) the required pass through amount; and

(2) taking into account the matters referred to in paragraph (j):

(i) how much of that required pass through amount should be passed through to Distribution Network Users (the "negative pass through amount"); and

(ii) the amount of that negative pass through amount that should be passed through to Distribution Network Users in the regulatory year in which, and each regulatory year after that in which, the negative change event occurred.

(g1) Subject to paragraph (k1), if the AER does not make the determinations referred to in paragraph (g) within 40 business days from:

(1) where the Distribution Network Service Provider notifies the AER of the occurrence of the negative change event under paragraph (f) - the later of the date the AER receives the Distribution Network Service Provider's statement under paragraph (f) and the date the AER receives any information required by the AER under paragraph (h); or

(2) where the Distribution Network Service Provider does not notify the AER of the occurrence of the negative change event under paragraph (f) – the later of the date the AER notifies the Distribution Network Service Provider under paragraph (g1) and the date the AER receives any information required by the AER under paragraph (h),

then the AER is taken to have determined that the required pass through amount is zero.

(h) A Distribution Network Service Provider must provide the AER with such information as the AER requires for the purpose of making a determination under paragraph (g) within the time specified by the AER in a notice provided to the Distribution Network Service Provider by the AER for that purpose.

#### Consultation

(i) Before making a determination under paragraph (d) or (g), the AER may consult with the relevant Distribution Network Service Provider and such other persons as the AER considers appropriate, on any matters arising out of the relevant pass through event the AER considers appropriate.

#### Relevant factors

(j) In making a determination under paragraph (d) or (g) in respect of a Distribution Network Service Provider, the AER must take into account:

(1) the matters and proposals set out in any statement given to the AER by the Distribution Network Service Provider under paragraph (c) or (f); and

(2) in the case of a positive change event, the increase in costs in the provision of direct control services that, as a result of the positive change event, the Distribution Network Service Provider has incurred and is likely to incur until:

(i) unless subparagraph(ii) applies – the end of the regulatory control period in which the positive change event occurred; or

(ii) if the distribution determination for the regulatory control period following that in which the positive change event occurred does not make any allowance for the recovery of that increase in costs – the end of the regulatory control period following that in which the positive change event occurred;

(2A) in the case of a negative change event, the costs in the provision of direct control services that, as a result of the negative change event, the Distribution Network Service Provider has saved and is likely to save until:

(i) unless subparagraph(ii) applies – the end of the regulatory control period in which the negative change event occurred; or

(ii) if the distribution determination for the regulatory control period following that in which the negative change event occurred does not make any allowance for the pass through of those cost savings to Distribution Network Users – the end of the regulatory control period following that in which the negative change event occurred;

(3) in the case of a positive change event, the efficiency of the Distribution Network Service Provider's decisions and actions in relation to the risk of the positive change event, including whether the Distribution Network Service Provider has failed to take any action that could reasonably be taken to reduce the magnitude of the eligible pass through amount in respect of that positive change event and whether the Distribution Network Service Provider has taken or omitted to take any action where such action or omission has increased the magnitude of the amount in respect of that positive change event;

(4) the time cost of money based on the allowed rate of return for the Distribution Network Service Provider for the regulatory control period in which the pass through event occurred;

(5) the need to ensure that the Distribution Network Service Provider only recovers any actual or likely increment in costs under this paragraph (j) to the extent that such increment is solely as a consequence of a pass through event;

(6) in the case of a tax change event, any change in the way another tax is calculated, or the removal or imposition of another tax, which, in the AER's opinion, is complementary to the tax change event concerned;

(7) whether the costs of the pass through event have already been factored into the calculation of the Distribution Network Service Provider's annual revenue requirement for the regulatory control period in which the pass through event occurred or will be factored into the calculation of the Distribution Network Service Provider's annual revenue requirement for a subsequent regulatory control period;

(7A) the extent to which the costs that the Distribution Network Service Provider has incurred and is likely to incur are the subject of a previous determination made by the AER under this clause 6.6.1; and

(8) any other factors that the AER considers relevant.

Extension of time limits

(k) The AER must, by written notice to a Distribution Network Service Provider, extend a time limit fixed in paragraph (c) or (f) if the AER is satisfied that the difficulty of assessing or quantifying the effect of the relevant pass through event justifies the extension.

(k1) If the AER is satisfied that the making of a determination under paragraph (d) or (g) involves issues of such complexity or difficulty that the time limit fixed in paragraph (e) or (g1) should be extended, the AER may extend that time limit by a further period of up to 60 business days, provided that it gives written notice to the Distribution Network Service Provider of that extension not later than 10 business days before the expiry of that time limit.

(k2) If the AER extends a time limit under paragraph (k1), it must make available on its website a notice of that extension as soon as is reasonably practicable.

(k3) Subject to paragraph (k6), if the AER gives a written notice to the Distribution Network Service Provider stating that it requires information from an Authority in order to make a determination under paragraph (d) or (g) then, for the purpose of calculating elapsed time, the period between when the AER gives that notice to the Distribution Network Service Provider and when the AER receives that information from that Authority is to be disregarded.

(k4) Subject to paragraph (k6), if the AER gives a written notice to the Distribution Network Service Provider stating that, in order to make a determination under paragraph (d) or (g), it requires information that it anticipates will be made publicly available by a judicial body or royal commission then, for the purpose of calculating elapsed time, the period between when the AER gives that notice to the Distribution Network Service Provider and when that information is made publicly available is to be disregarded.

(k5) Where the AER gives a notice to the Distribution Network Service Provider under paragraph (k3) or (k4), it must:

(1) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (k3) or (k4), as the case may be, has commenced;

(2) as soon as is reasonably practicable make available on its website a notice stating when the period referred to in paragraph (k3) or (k4), as the case may be, has ended; and

(3) if the information specified in that notice is required from an Authority, promptly request that information from the relevant Authority.

(k6) Paragraphs (k3) and (k4) do not apply if the AER gives the notice specified in those paragraphs to the Distribution Network Service Provider later than 10 business days before the expiry of the time limit fixed in paragraphs (e) or (g1).