



Final Decision

Endeavour Energy 2014–19 electricity distribution determination

September 2018

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1 Executive Summary

The Australian Energy Regulator (AER) regulates energy markets and networks under national energy market legislation and rules. Our network regulatory functions, which relate to energy networks in all Australian states and territories, except Western Australia, include setting the amount of revenue that monopoly network businesses can recover from customers for using networks (electricity poles and wires and gas pipelines) that transport energy.

The National Electricity Law (NEL) and Rules (NER) provide the regulatory framework governing electricity networks. Our work under this framework is guided by the national electricity objective (NEO):¹

“... to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, safety, reliability and security of supply of electricity and the reliability, safety and security of the national electricity system.”

This is our remade final decision on the distribution determination for NSW electricity distributor, Endeavour Energy, for the 2014-19 regulatory control period, commencing 1 July 2014 to 30 June 2019. Our final decision is unchanged from our draft decision.²

Our remade final decision is to accept Endeavour Energy's proposal to recover total revenues of \$4143.4 million (\$, nominal) from consumers over the five-year 2014-19 regulatory control period.³ The decision provides for a 2014-19 revenue that is largely in line with that which we determined was efficient in April 2015. This provides consumers with stability over what they predicted they would have to pay; it keeps distribution network charges in line with current levels.⁴

We have remade our decision in response to directions from the Australian Competition Tribunal (Tribunal). Our April 2015 revenue decision allowed Endeavour Energy to recover \$1258.5 million (\$, nominal) less than what it proposed at the time. In response, Endeavour Energy sought limited merits review of our decision by the Tribunal. The Tribunal remitted our decision to us, specifically requiring that we remake our decision in relation to Endeavour Energy's operating expenditure (opex) forecast and the rate of return with respect to the trailing average approach, and otherwise vary our decision as we consider

¹ NEL, s. 7.

² AER, *Draft Decision Endeavour Energy distribution determination 2014-19*, July 2018.

³ Endeavour Energy, *Proposal for the Remittal of the Endeavour Energy 2014-19 Determination*, 5 April 2018.

⁴ In May 2016, we accepted undertakings given by Endeavour Energy under section 59A of the NEL that set out how network revenues and tariffs will be determined in 2016-17. Endeavour Energy's Network Use of System (NUoS) tariffs in 2016-17 were set as their 2015-16 approved tariffs, adjusted for changes in the consumer price index (CPI). As of May 2017, the Full Federal Court had not yet handed down its decision, so we accepted further undertakings given by Endeavour Energy to establish new interim arrangements to govern the setting of network tariffs in 2017-18. As of March 2018, as the remittal process was not yet settled, we accepted further undertakings from Endeavour Energy for 2018-19. See: *Open letter to stakeholders: Electricity network charges in ACT and NSW from 1 July 2018*, 21 March 2018.

appropriate.^{5, 6} This remade decision for Endeavour Energy brings this long-running 2014-19 revenue determination process to a close.

On 5 April 2018, and following a series of consultations with its stakeholders, Endeavour Energy submitted a new proposal to us to resolve all outstanding issues relating to the decision we need to remake.⁷ Endeavour Energy proposed total revenue of \$4143.4 million (\$, nominal) for the five-year 2014-19 regulatory control period based on:⁸

- our 2015 final decision, including the constituent decisions we made on opex and the rate of return (including the cost of debt)
- the revenue that Endeavour Energy has recovered thus far for the 2014-19 regulatory control period, up to a maximum limit of \$110 million above our 2015 final decision

Our remade final decision for Endeavour Energy for the 2014-19 regulatory control period will result in a maximum revenue allowance of \$110 million above the revenue we approved in our 2015 final decision that was set aside by the Tribunal and will lead to an estimated \$227.1 million being returned to consumers in the next regulatory control period.⁹

This document sets out our reasons for accepting Endeavour Energy's proposal. We have remade our decision in accordance with the NEL and NER. Among other things, this means we have taken into account the revenue and pricing principles (RPP) and the NEO. We are satisfied our remade final decision is likely to contribute to the achievement of the NEO to the greatest degree. The reasons for our decisions are outlined in section 5.

Our remade final decision has been informed by our analysis and stakeholder engagement and submissions.

Energy Consumers Australia (ECA), Public Interest Advocacy Centre (PIAC), AER Consumer Challenge Panel (CCP10) and Endeavour Energy have made submissions that our remade draft decision is in the long-term interests of Endeavour Energy's consumers. In addition, Energy Users Association of Australia (EUAA) and Western Sydney Regional Organisation of Councils (WSROC) have previously stated their support for the Endeavour Energy proposal.

The remade final decision has been made under novel circumstances as set out in section 5.1.1. The novel circumstances we find ourselves in heighten the importance of us remaking our decision in a timely manner. Timely decision-making is a tenet of best regulatory practice and, in our view, is a principle that is in the long-term interests of consumers.¹⁰

⁵ *Applications by Public Interest Advocacy Centre Ltd and Endeavour Energy* [2016] ACompT 3, direction 1.

⁶ We have remade the constituent decisions for operating expenditure and rate of return, as well as the other matters referenced in section 5.4 of this document. Please refer to our 30 April 2015 final decision for Endeavour Energy for all other constituent decisions which are unamended.

⁷ Endeavour Energy, *Proposal for the Remittal of the Endeavour Energy 2014-19 Determination*, 5 April 2018.

⁸ Ibid.

⁹ The estimated \$227.1 million that is expected to be returned to customers in the next (2019-24) regulatory control period is our best estimate at this point in time. We will reconcile to an exact amount once the current (2014-19) regulatory control period completes.

¹⁰ Regulatory best practice is also the way in which we have committed to act in undertaking our functions and powers: AER,

1.1 Structure of this document

This document is structured as follows:

- Section 2 presents our remade final decision for Endeavour Energy
- Section 3 presents Endeavour Energy's proposal
- Section 4 presents stakeholders' submissions on our remade draft decision
- Section 5 presents the reasons for our remade final decision

2 Our remade final decision

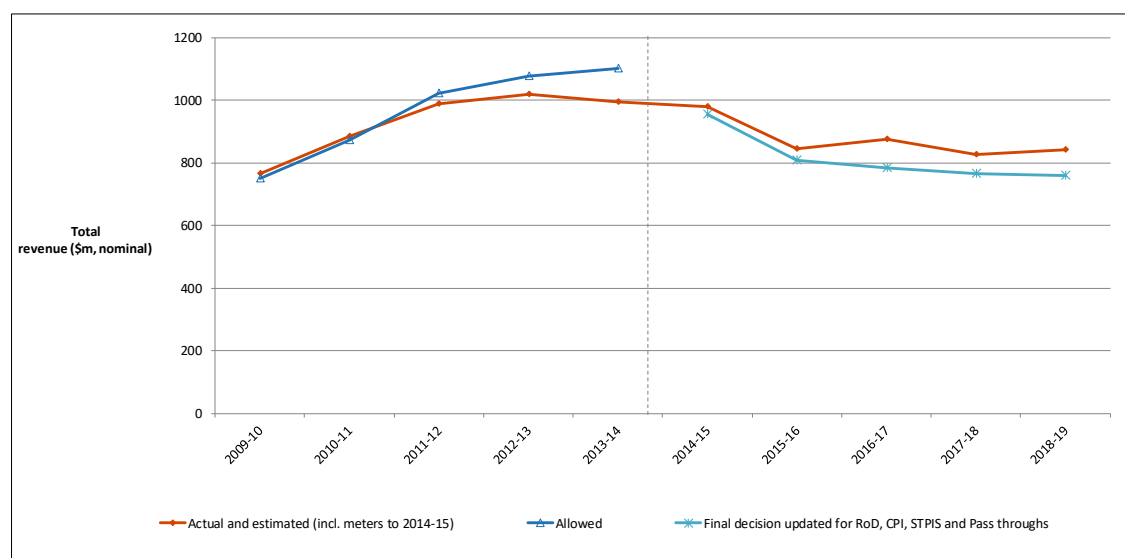
Our remade final decision, after remaking the constituent decisions for opex and the rate of return, as well as correcting some other minor aspects relating to our April 2015 final decision in accordance with the Tribunal's directions, is to accept Endeavour Energy's proposal.¹¹

This means Endeavour Energy can recover total revenues of \$4143.4 million (\$, nominal) from consumers over the 2014-19 regulatory control period.¹² This outcome is unchanged from our July 2018 draft decision.¹³

The remade final decision is \$110 million above the revenue allowance we set in our 2015 final decision for Endeavour Energy. Any additional revenues in excess of this \$110 million limit will be returned to its customers in subsequent regulatory years from 2019-20. The estimated \$227.1 million that is expected to be returned to customers in the next (2019-24) regulatory control period is our best estimate at this point in time. We will reconcile to an exact amount once the current (2014-19) regulatory control period completes.

We are satisfied that this remade final decision, taking into account the RPP, is likely to contribute to the achievement of the NEO to the greatest degree.¹⁴ Figure 2-1 illustrates our overall decision.

Figure 2-1 Endeavour Energy's past total revenue and AER final decision total revenue allowance (\$million, nominal)



Source: AER analysis.

¹¹ Endeavour Energy, *Proposal for the Remittal of the Endeavour Energy 2014-19 Determination*, 5 April 2018.

¹² Ibid.

¹³ AER, *Draft Decision Endeavour Energy distribution determination 2014-19*, July 2018.

¹⁴ NEL, ss. 16(1)(d)(i) and 16(2).

Customers' bills were set by our 2015 final decision and following the Tribunal's decision, by interim pricing measures in 2016–17, 2017–18 and 2018–19.

In the 2014-15 transitional year, distribution network charges reduced, on average, by 1.7 per cent.¹⁵

In 2015-16, distribution network charges fell significantly, reflecting a reduction in Endeavour Energy's real revenues resulting from our 2015 final decision. At the time of our decision, this impact was estimated as a \$106 (5.3 per cent) reduction in the average bill for a residential customer and a \$152 (5.3 per cent) reduction in the bill for a small business customer.¹⁶

During 2016-17, 2017-18 and 2018-19, distribution network charges increased by changes in the consumer price index (CPI) in accordance with enforceable undertakings we accepted. The undertakings from Endeavour Energy addressed pricing uncertainties arising from the limited merits and judicial review processes.

¹⁵ AER, *Transitional Decisions: NSW/ACT 2014–15 Factsheet*, April 2014.

¹⁶ AER, *Final Decision Endeavour Energy distribution determination - Fact Sheet*, April 2015. The analysis assumed distribution network charges made up 39 per cent of customers' bills on average.

3 Endeavour Energy's proposal

On 5 April 2018, we received Endeavour Energy's proposal for the remaking of its revenue determination for the 2014–19 regulatory control period.¹⁷

It is a total revenue proposal — that is, it is not directly presented in terms of the building block components as was the case in its initial and revised regulatory proposals which preceded our April 2015 final decision (and the associated constituent decisions).

Endeavour Energy engaged with consumer groups prior to submitting its final proposal to us.

In its proposal, Endeavour Energy submitted:¹⁸

“We are proposing to adopt the April 2015 Determination as published by the AER, and updating for actual data, where appropriate, for the cost of debt and CPI on the basis that we retain no more than \$110m of revenues... during this regulatory period.

...Specifically, the key aspects of Endeavour Energy's proposal for the remittal:

- Adopt the April 2015 Determination opex and application of the EBSS for the 2014-19 regulatory control period;
- Commit to the application of the revealed cost opex forecasting methodology so that the opex for the 2019-24 regulatory control period will be determined using the AER's opex forecasting model based on our 2017/18 actual opex. The reported actual opex for 2017/18 will be at or below the forecast included in the AER's April 2015 Determination;
- Continued application of the EBSS for the 2019-24 regulatory control period;
- Continued adoption of the capex allowances contained in the April 2015 Determination and continued support for the application of the CESS for the 2014-19 and 2019-24 regulatory control periods;
- Adoption of the AER's 2013 Rate of Return Guideline, including the application of a transition to the trailing average for the 2014-19 and 2019-24 regulatory control periods;
- Retain no more than \$110m of revenues...under the undertakings in 2018/19 dollar terms;
- Return the balance of revenues...under the undertakings; forecast to be \$239.6m in financial year 2018/19 dollar terms on the basis that Endeavour Energy enters into an enforceable undertaking with the AER to set prices for 2018/19 based on the 2017/18 revenues, escalated for CPI. This amount also includes adjustments to reflect an updated CPI forecast as per corrections provided by the AER and in accordance with the findings of the Australian Competition Tribunal of \$12.2m; and
- The amount above to be returned to customers has not considered the outcomes of the STPIS over the current regulatory period. Once the revenue target has been determined by the AER, the outcomes will be incorporated into the balance to be returned in the regulatory proposal for the 2019-24 regulatory control period.”

¹⁷ Endeavour Energy, *Proposal for the Remittal of the Endeavour Energy 2014-19 Determination*, 5 April 2018.

¹⁸ *Ibid.*

4 Stakeholder submissions on our remade draft decision

We received four stakeholder submissions on our remade draft decision:¹⁹

- Endeavour Energy
- Energy Consumers Australia (ECA)
- Public Interest Advocacy Centre (PIAC)
- AER Consumer Challenge Panel, Sub-panel 10 (CCP10)

All stakeholders supported our remade draft decision as being in the long-term interest of Endeavour Energy's customers. Key points raised in submissions are summarised below.

We also note that our remade draft decision included a summary of supporting comments received from stakeholders following Endeavour Energy's pre-lodgement engagement on its proposal.²⁰ Comments were received from CCP10, ECA, Energy Users Association of Australia (EUAA), PIAC and Western Sydney Regional Organisation of Councils (WSROC).

All of the above stakeholders' submissions are available on our website.²¹

4.1 Endeavour Energy

In its response to our remade draft decision, Endeavour Energy submitted:²²

"We support the AER's draft decision to approve the remittal proposal put to it by Endeavour Energy. The remittal proposal was the product of extensive and robust engagement with stakeholders over a number of months and we believe is in the long term interests of consumers, as evidenced by the letters of support provided to the AER."

4.2 Energy Consumers Australia

In its response to our remade draft decision, ECA submitted:²³

"We supported Endeavour Energy's remittal proposal (in our letter to the AER of 16 April 2018), which was the result of our engagement with them to satisfactorily bring this matter to a close.

Energy Consumers Australia considers that the AER draft decision to accept Endeavour Energy's proposal to recover total revenues of \$4143.4 million (\$, nominal) from consumers over the five-year 2014-19 regulatory control period is in the long-term interests of consumers.

¹⁹ AER, *Draft Decision Endeavour Energy distribution determination 2014-19*, July 2018.

²⁰ Refer to our remade draft decision for a summary of stakeholders' comments on Endeavour Energy's proposal for the 2014-19 regulatory control period. ECA, EUAA, PIAC, WSROC and CCP10 considered the proposal to be in the long-term interest of Endeavour Energy's customers: AER, *Draft Decision Endeavour Energy distribution determination 2014-19*, July 2018, pp. 15-18.

²¹ AER: <https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/endeavour-energy-determination-2014-19-remittal/proposal>

²² Endeavour Energy, *Draft Decision – Endeavour Energy 2014-19 Electricity Distribution Determination*, 17 August 2018.

²³ Energy Consumers Australia, *Remade draft decision Endeavour Energy 2014-19*, 15 August 2018.

As a result of the AER's draft decision an estimated \$227.1 million will be returned to consumers in the period 2019-24.

In the 2019-24 period we are engaging productively with Endeavour Energy to ensure consumers receive real reductions in the prices for network services.”

4.3 Public Interest Advocacy Centre

In its response to our remade draft decision, PIAC submitted:²⁴

“PIAC supports Endeavour Energy's proposal to accept the AER's 2015 final determination and retain...a limit of \$110 million across the period. Therefore, we support the AER's draft determination to accept this proposal.

...Endeavour Energy has engaged effectively with the AER, Consumer Challenge Panel and consumer advocates in making its remittal proposal.

...PIAC contends that the AER's draft determination promotes the long-term interests of consumers.”

4.4 Consumer Challenge Panel

In its response to our remade draft decision, CCP10 submitted:²⁵

“CCP10 is supportive of the AER's Draft Decision regarding the remitted 2014-19 revenue decision for Endeavour Energy (Endeavour) which is 'to accept Endeavour Energy's proposal to recover total revenues of \$4143.4 million (\$, nominal) from consumers over the five-year 2014-19 regulatory control period'.

Endeavour's proposal for resolving its regulatory allowance for 2014-19, following the remittal of that determination to the AER by the Federal Court, is supported by CCP10. We commend Endeavour on its consumer engagement on its proposal and on the way it has listened to that feedback and reflected it in its revised proposal. CCP10 believes that the Endeavour proposal is in the long-term interests of Endeavour's customers. We understand that this involves Endeavour retaining up to \$110m in revenue that would otherwise be returned to consumers, but this needs to be considered in the context of the overall proposal.

...It is our opinion that the benefits from this proposal outweigh the costs, in aggregate, for consumers.

We commend Endeavour and its new shareholders for taking this opportunity to resolve the 2014-19 revenue determinations.”

²⁴ Public Interest Advocacy Centre, *Endeavour Energy Remittal – Draft Determination*, 14 August 2018.

²⁵ Consumer Challenge Panel, *Endeavour Energy 2014-19 revenue allowance remittal proposal*, 19 August 2018.

5 Reasons for our remade final decision

Our remade final decision is unchanged from our July 2018 draft decision.²⁶ Similarly, our reasons for arriving at our final position are unchanged.

5.1 Our approach

As is the case with making any distribution determination, there may be several possible overall decisions that we could potentially make that will, or are likely to, contribute to the achievement of the NEO. In these circumstances, the NEL directs us to make the decision that we are satisfied will, or is likely to, contribute to the achievement of the NEO to the greatest degree.²⁷

Determining whether any particular decision will, or is likely to, contribute to achieving the NEO is a matter of regulatory judgment which involves assessing the decision as a whole, taking into account the RPP and complying with the specific requirements of the NER. Implicit in this task is recognising that a distribution determination is more than just the sum of its constituent decisions or component parts as determined in accordance with Chapter 6 of the NER.

5.1.1 The novel circumstances we face

The approach we have applied in remaking this final decision has necessarily been influenced by the novel circumstances that we face now. These are novel circumstances because they materially differ from those we faced when we made our April 2015 final decision, and what we would generally face in making a distribution determination.

Specifically, we are remaking this decision at a time:

- that is four years into the applicable five-year 2014-19 regulatory control period
- when we have applied interim pricing measures for the 2016-17, 2017-18 and 2018-19 regulatory years by accepting enforceable undertakings to address pricing uncertainties arising from the limited merits and judicial review processes
- when we have had a number of Tribunal and Federal Court (Court) processes, since the Tribunal's decision on Endeavour Energy, that have considered and clarified the law in relation to 'efficient financing costs' and the determination of the cost of debt
- when we have information on Endeavour Energy's actual performance for the first three years of the five-year 2014–19 regulatory control period and updated forecasts for the remaining two years
- when our decision has the potential to create significant retail price fluctuations if it differs materially from our 2015 final decision²⁸

²⁶ AER, *Draft Decision Endeavour Energy distribution determination 2014-19*, July 2018.

²⁷ NEL, ss. 16(1)(d)(i) and 16(2).

²⁸ Recognising that this prospect is to some extent alleviated by the rule made by the AEMC on 1 August 2017 that allows us to let Endeavour Energy recover any additional revenues that result from our decision across both 2014-19 and 2019-24

- when we have received Endeavour Energy’s revenue proposal for the forthcoming 2019-24 regulatory control period
- when there is support from a range of stakeholders, including consumer groups, that our remade draft decision and Endeavour Energy’s proposal is in the long-term interests of Endeavour Energy’s consumers

5.1.2 Assessing the overall decision

Ultimately, assessing whether this remade final decision achieves the NEO to the greatest degree involves us exercising our judgment to determine whether the overall decision will promote efficiencies in relation to investment, and the operation and use of Endeavour Energy’s network that is in the long-term interests of consumers. This involves us balancing the various, and at times competing, factors referred to in the NEO. We must also take into account the RPP in determining how the NEO may be achieved to the greatest degree.²⁹

This is the same approach we applied in our July 2018 remade draft decision³⁰ and April 2015 final decision.³¹ This approach was also affirmed by the Tribunal in its reasons of 26 February 2016.³²

In considering whether this remade final decision is likely to contribute to the achievement of the NEO to the greatest degree, in respect of our assessment of Endeavour Energy’s proposal, we note that there are potentially a range of possible outcomes that may meet the Tribunal’s directions.

5.2 Assessment of Endeavour Energy’s proposal

In light of the novel circumstances we are faced with, and the information before us, we are satisfied that accepting Endeavour Energy’s proposal will result in an outcome that is likely to contribute to the achievement of the NEO to the greatest degree and is in the long-term interests of consumers.

Key reasons for our decision to accept Endeavour Energy’s proposal are outlined below.

First, remaking the opex and cost of debt constituent decisions reveals a result that is unchanged from our remade draft decision and consistent with the overall level of total revenues that we arrived at in our 2015 final decision. This is discussed in sections 5.3.1 and 5.3.2, respectively. This result also aligns with Endeavour Energy’s proposal that is in part premised on the revenue allowance set in our 2015 final decision.

Second, the novel circumstances we find ourselves in heightens the importance of us remaking our decision in a timely manner. Timely decision-making is a tenet of best

regulatory control periods. See AEMC, *Rule Determination: National Electricity Amendment (Participant derogation - NSW DNSPs revenue smoothing) Rule 2017*, 1 August 2017; AEMC, *National Electricity Amendment (Participant derogation - NSW DNSPs Revenue Smoothing) Rule 2017 No. 6*, commencing 15 August 2017.

²⁹ See NEL, s. 16(2). As affirmed by the Federal Court in *Australian Energy Regulator v Australian Competition Tribunal (No 2)* [2017] FCAFC 79, [36].

³⁰ AER, *Draft Decision Endeavour Energy distribution determination 2014-19*, July 2018.

³¹ AER, *Final Decision, Endeavour Energy distribution determination 2015-16 to 2018-19, Overview*, April 2015, pp. 46-47.

³² *Applications by Public Interest Advocacy Centre Ltd and Ausgrid* [2016] ACompT 1, [77] and [78].

regulatory practice and, in our view, is a principle that is in the long-term interests of consumers.³³ Resolving the uncertainty created by the limited merits and judicial review processes in a timely manner, by expediting this remittal process where possible compared to an extended timeframe of potentially up to 18 months for a regular determination process, is supported by several consumer groups and Endeavour Energy (particularly in light of its 2019-24 regulatory proposal which is currently under review).³⁴ This remade final decision resolves this uncertainty and addresses the crucial issue of price stability, which informs consumers of their budgetary and investment decisions on the use of electricity services. Price stability, or minimising price volatility, is also in the long-term interests of consumers and is one of the primary reasons we accepted the enforceable undertakings that Endeavour Energy gave to us to govern prices for the 2016-17, 2017-18 and 2018-19 regulatory years.³⁵

Third, we consider that Endeavour Energy's overall revenue proposal represents an efficient level of expenditure necessary for it to provide safe and reliable electricity services to its consumers. As we discussed at section 5.1.2, the approach we have applied in this remade final decision involves us exercising our judgment to determine whether the overall decision will promote efficiencies in relation to investment, and the operation and use of Endeavour Energy's network that is in the long-term interests of consumers. In other words, the long-term interests of consumers are served by us identifying how the level of electricity supply services delivered by Endeavour Energy so far during the 2014-19 regulatory control period may be done at least cost to the consumer. The following observations are relevant. Endeavour Energy's proposal:

- is effectively \$381 million less than its January 2015 revised regulatory proposal on the issues of opex and the cost of debt
- represents a reduction in its opex of around 18 per cent relative to its January 2015 revised regulatory proposal (we note that Endeavour Energy has incurred significant redundancy costs in the first three years of the 2014-19 regulatory period to downsize its workforce and achieve this lower level of opex)

We note that Endeavour Energy's actual opex for 2017-18 (which will be at or below our 2015 final decision) has been used as the base year for its opex forecast for the 2019-24 regulatory control period.³⁶

We also note that, under a revenue cap form of price control, any difference between what a network service provider actually recovers in comparison to a revenue allowance set out in a distribution determination, as a result of differences between forecast and actual consumption in any given regulatory year, is reconciled through the annual pricing or

³³ Regulatory best practice is also the way in which we have committed to act in undertaking our functions and powers: AER, *Statement of Intent 2017-18*, p. 5.

³⁴ For example, several participants expressed support to expedite this remittal process at the NSW and ACT remittal roundtable we held on 16 August 2017: AER, *NSW and ACT remittal roundtable summary note*, p. 4. Also, section 4 of this decision summarises the views of consumer groups on the Endeavour Energy remittal proposal and they have expressed similar views on this matter.

³⁵ See AER, *Open letter to stakeholders: Electricity network charges in the ACT and NSW from 1 July 2017*, 19 April 2017; and *Open letter to stakeholders: Electricity network charges in the ACT and NSW from 1 July 2018*, 21 March 2018.

³⁶ Endeavour Energy, *Proposal for the Remittal of the Endeavour Energy 2014-19 Determination*, 5 April 2018.

revenue determination process. The \$110 million cap that Endeavour Energy has proposed is not subject to this reconciliation.

In coming to this maximum revenue allowance, we have considered the following factors:

- It represents an outcome that quantifies and appropriately balances the risk and uncertainty of a protracted decision process faced by affected stakeholders, including consumers. This is in the context where stakeholders have stated a clear preference for us to remake the decision in a timely manner and to resolve uncertainty in light of the novel circumstances described above.
- It provides for a 2014-19 revenue that is largely in line with that which we determined was efficient in April 2015. This provides consumers with stability over what they predicted they would have to pay; it keeps distribution network charges in line with current levels.

We have given weight to the expressions of support from ECA, EUAA, PIAC, WSROC and CCP10 in respect of our remade draft decision and Endeavour Energy's proposal. Notably, given the circumstances, each of these stakeholders considers that this maximum revenue allowance results in an outcome that is in the long-term interests of Endeavour Energy's customers.³⁷

In response to our remade draft decision, the CCP10 stated:³⁸

"Endeavour's proposal for resolving its regulatory allowance for 2014-19, following the remittal of that determination to the AER by the Federal Court, is supported by CCP10. We commend Endeavour on its consumer engagement on its proposal and on the way it has listened to that feedback and reflected it in its revised proposal. CCP10 believes that the Endeavour proposal is in the long-term interests of Endeavour's customers."

The variations to our control mechanism constituent decision that we have made in order to give effect to the maximum revenue allowance is discussed in section 5.4.1.

5.3 Remaking the operating expenditure and return on debt constituent decisions

As noted in section 1, following the Court's decision, the Tribunal's directions that we are to comply with in remaking our decision for Endeavour Energy are as follows:³⁹

- "(a) the AER is to make the constituent decision on opex under r 6.12.1(4) of the National Electricity Rules in accordance with these reasons for decision including assessing whether the forecast opex proposed by the applicant reasonably reflects each of the operating expenditure criteria in r 6.5.6(c) of the National Electricity Rules including using

³⁷ Energy Consumers Australia, *Support for Endeavour Energy's 2014-19 Remittal Proposal*, 16 April 2018; Energy Users Association of Australia, *Re: Endeavour Energy - Determination 2014-19 – Remittal*, 16 April 2018; Public Interest Advocacy Centre, *Endeavour Energy Remittal Proposal*, 12 April 2018; Western Sydney Regional Organisation of Councils, *Proposal For The Remittal Of The Endeavour Energy 2014–2019 Determination*, 17 April 2018; Consumer Challenge Panel, *Endeavour Energy 2014–19 revenue allowance remittal proposal*, 10 April 2018.

³⁸ Consumer Challenge Panel, *Endeavour Energy 2014-19 revenue allowance remittal proposal*, 19 August 2018.

³⁹ *Applications by Public Interest Advocacy Centre Ltd and Endeavour Energy* [2016] ACompT 3, direction 1. Note direction (c) is omitted following the Court's decision in relation to gamma: *Australian Energy Regulator v Australian Competition Tribunal (No 2)* [2017] FCAFC 79, [738]-[784].

- a broader range of modelling, and benchmarking against Australian businesses, and including a 'bottom up' review of Endeavour's forecast operating expenditure;
- (b) the AER is to make the constituent decision on return on debt in relation to the introduction of the trailing average approach in accordance with these reasons for decision;
- ...
- (d) the AER is to consider, and to the extent to which it considers appropriate to vary the Final Decision in such other respects as the AER considers appropriate having regard to s 16(1)(d) of the National Electricity Law in the light of such variations as are made to the Final Decision by reason of (a)-(c) hereof."

The rules in the NER and provisions in the NEL that govern our assessment of operating expenditure (opex) and debt remain unchanged on remittal.

In the following sections, we set out our remade constituent decisions for opex and the cost of debt, as well as the variations to our control mechanism constituent decision.

5.3.1 Operating expenditure constituent decision

In this remade final decision, our remade operating expenditure (opex) constituent decision has not changed from our July 2018 draft decision.⁴⁰

Opex refers to operating, maintenance and other non-capital expenses. Forecast opex for prescribed distribution services is one of the building blocks that typically make up a service provider's total revenue requirement.

As noted in section 3, Endeavour Energy's proposal implicitly retains the efficient opex forecast we provided for in our April 2015 final decision. We have re-examined our 2015 opex forecast in light of the Tribunal's directions and updated information, where available, since our original decision. For the reasons set out in this section, we are satisfied that this opex forecast is consistent with the opex criteria. Table 5-1 sets out this opex forecast.⁴¹

Table 5-1 AER final decision opex forecast (\$million, 2013–14)

2014-15	2015–16	2016–17	2017–18	2018–19	Total
235.8	239.5	243.3	247.5	252.3	1218.3

Source: AER analysis.

Note: Excludes debt raising costs.

5.3.1.1 Reasons for our decision

As the Tribunal refers to in its directions, we must remake our opex decision under clause 6.12.1(4) of the NER. This means we must either accept a distributor's proposed opex forecast, or reject it and set out our own substitute estimate. The Tribunal found that

⁴⁰ See section 5.3.1 of: AER, *Draft Decision Endeavour Energy distribution determination 2014-19*, July 2018.

⁴¹ These opex amounts exclude debt raising costs.

our decision to reject Endeavour Energy's opex forecast was not in error. However, the Tribunal determined that we erred in our approach to using benchmarking in arriving at our substitute estimate. Our task here is to reconsider our substitute estimate in accordance with the Tribunal's order and reasoning (as clarified by the Federal Court).

Clause 6.5.6 of the NER sets out the opex objectives, opex criteria and opex factors, under which we must make our constituent decision on opex. In summary, we must identify a level of forecast opex that is efficient and prudent and at a level that sustainably maintains the safety and reliability of the network in the long-term interests of consumers.

Setting an opex forecast is part of the incentive-based regulatory regime established in Chapter 6 of the NER. Incentive regulation is designed to encourage network businesses to improve their efficiency over time. Where a distributor is responsive to the financial incentives under the regulatory framework, the actual level of opex it incurs should provide a good estimate of the efficient costs required for it to operate a safe and reliable network and meet its relevant regulatory obligations. This is because opex is largely recurrent and stable at a total level between years and regulatory periods. This is known as the 'revealed cost approach'. So long as we do not identify any material inefficiency in a distributor's revealed costs, or a change in the costs associated with the business' operating environment,⁴² our preference is to rely on these costs in assessing the distributor's proposed opex forecast, and if necessary, in determining a substitute estimate.⁴³

In remaking our opex decision, we have primarily relied on Endeavour Energy's actual costs over the first three years of the 2014-19 regulatory control period, and its cost estimates for the remainder of the period. This information was not available to us at the time of our original decision or the Tribunal and Court decisions.

Given that our 2015 final decision found Endeavour Energy's 2012-13 base year was a reasonable starting point for forecasting opex for the 2014-19 regulatory period, for the remittal we have compared Endeavour Energy's actual and target opex over 2014-19 to its 2012-13 opex.

Endeavour Energy's opex in the first three years of the regulatory control period was greater than its level of opex in 2012-13, and greater than our 2015 final decision opex forecast. This was driven primarily by an increase in vegetation management costs to achieve compliance with existing regulatory standards, and an increase in redundancy costs associated with a restructuring program to downsize its workforce.⁴⁴

Since 2015-16, Endeavour Energy's opex has declined and is forecast to decrease significantly more in 2017-18 and 2018-19. Endeavour Energy's opex targets for these two years are below its 2012-13 opex level and are consistent with our 2015 final decision opex forecast. Endeavour Energy has noted that it will be able to sustain the opex level achieved by 2017-18 into the 2019-24 regulatory period, and has proposed its 2017-18 opex level (based on our 2017-18 forecast) as the base year for its 2019-24 opex forecast.⁴⁵

⁴² Step-changes provide for increases where this is not the case.

⁴³ AER, *Better Regulation, Expenditure Forecast Assessment Guideline for Electricity Distribution*, November 2013, p.22.

⁴⁴ AER data requests. Endeavour Energy, *Regulatory Proposal 1 July 2019 to 30 June 2024*, p.163-164.

⁴⁵ Endeavour Energy, *Proposal for the remittal of the Endeavour Energy 2014-19 Determination*, 5 April 2018, p. 3.

Endeavour Energy appears to have responded to the strong incentives imposed by the regulatory regime, including the use of economic benchmarking. The revealed costs and opex target data indicate that our 2015 final decision opex forecast, which forms the basis of Endeavour Energy's overall proposal, represents an efficient and sustainable level of opex that reasonably reflects the opex criteria.

Having regard to the Tribunal's directions, and to cross-check our revealed costs and opex targets analysis, we have tested the efficiency of Endeavour Energy's 2017-18 and 2018-19 opex targets with two supplementary tools:

- Additional economic benchmarking modelling of Endeavour Energy's actual opex for 2016-17 and its opex targets for 2017-18 and 2018-19. This shows that Endeavour Energy's opex targets represent an improvement in opex productivity relative to 2012-13 and to that of other networks' productivity levels as measured in 2016.
- Category level cost analysis that examines the underlying reasons for the forecast reduction in Endeavour Energy's opex relative to 2012-13. This shows that Endeavour Energy is forecast to offset higher costs in vegetation management and redundancies with decreases in other cost areas (i.e. emergency services costs, maintenance costs and other total overhead costs), such that it will be able to fund improved regulatory compliance with vegetation management standards and reforms to lower labour costs while decreasing its opex over the period.

Taken together, we are satisfied that Endeavour Energy's proposed opex forecast reasonably reflects the opex criteria.

Further information on our analytical approach and the data we used to inform our analysis is outlined in our remade draft decision.⁴⁶ We note that submissions received in response to that decision did not raise any new issues or provide any additional information that necessitates a change to our opex decision as outlined in the remade draft decision.

5.3.2 Return on debt constituent decision

In this remade final decision, our remade debt constituent decision has not changed from our July 2018 draft decision.⁴⁷

The allowed rate of return provides a network service provider a return on capital that a benchmark efficient entity would require to finance (through debt and equity) investment in its network.⁴⁸ The return on capital building block is calculated as a product of the rate of return and the value of the regulatory asset base (RAB).

Endeavour Energy's revenue proposal has implicitly adopted our return on capital allowance that we set in our April 2015 final decision (with minor updates for updated return on debt data). This was based on a transition to a trailing average methodology for calculating the return on debt.

⁴⁶ See section 5.3.1 of: AER, *Draft Decision Endeavour Energy distribution determination 2014-19*, July 2018.

⁴⁷ See section 5.3.2 of: AER, *Draft Decision Endeavour Energy distribution determination 2014-19*, July 2018.

⁴⁸ The term 'network service provider' relates to service providers that provide gas and electricity transmission and distribution services.

Since our 2015 final decision, having regard to the decisions of the Tribunal and Court, we have revised our general approach to determining the return on debt. We now apply a revenue neutral transition when moving from the on-the-day methodology for estimating the cost of debt to a trailing average methodology. While our approach, and the reasoning to support it, has changed since the 2015 final decision, the revenue outcome of our new approach is approximately the same as in that decision.⁴⁹ Endeavour Energy's proposal is consistent with our new approach to determining the return on debt.

The revised rate of return allowance is set out in Table 5-2. These numbers reflect our 2015 final decision with respect to the return on equity and the gearing ratio and a revenue neutral transition calculated using partially updated debt yield data from the Reserve Bank of Australia (RBA)⁵⁰ and fully updated data from Bloomberg. They also reflect the debt averaging periods we determined to use in our 2015 final decision.

The RBA data has been updated for the pre 5 June 2018 RBA revisions only. The approach we have applied in remaking this final decision has necessarily been influenced by the novel circumstances that we face now. They are materially different from those that we faced when we made our 2015 final decision and what we would generally face in making a distribution determination. Given the novel circumstances, the late timing of the 5 June 2018 RBA data update⁵¹, the good faith in which parties have sought resolution of the remittal, and the broad stakeholder support for Endeavour Energy's proposal, on balance, we consider that not applying the most up to date RBA data (as updated on 5 June 2018) to this remade final decision is the outcome that contributes to the NEO to the greatest degree.⁵²

Table 5-2 Endeavour Energy final decision return on debt and return on capital (\$million, 2013-14) and percentage debt portfolio rate of return⁵³

	2014-15	2015-16	2016-17	2017-18	2018-19	Total
Final decision debt portfolio rate of return	6.51%	6.41%	6.26%	6.10%	5.93%	
Final decision return on debt	212.9	217.9	217.7	214.7	210.4	1073.7
Final decision return on capital	367.7	378.9	382.3	381.2	378.5	1888.7

⁴⁹ We note a very small change in revenue occurs due to the use of the most recent debt yield data available.

⁵⁰ Reserve Bank of Australia, Letter to AER, *Revisions to statistical table F3*, 4 July 2018.

⁵¹ Ibid.

⁵² See section 5.3.2.5 of: AER, *Draft Decision Endeavour Energy distribution determination 2014-19*, July 2018.

⁵³ These numbers reflect the final decision including annual debt updates using data prior to the 5 June 2018 RBA update.

5.3.2.1 The NER requirements

We must determine a rate of return such that it achieves the allowed rate of return objective (ARORO).⁵⁴ The ARORO is that the rate of return is to be commensurate with the efficient financing costs of a benchmark efficient entity with a similar degree of risk as that which applies to the service provider in respect of its regulated services (its standard control service in the case of electricity distributors).⁵⁵ Therefore, each remade debt decision must contribute to achieving the ARORO.

Other legislative requirements relevant to remaking our debt decision include the NEO, the RPP and any interrelationships with other related components of a distribution determination.^{56, 57, 58}

5.3.2.2 The Tribunal's decision

On 26 February 2016, the Tribunal handed down its decisions.⁵⁹ The Tribunal instructed us to remake the constituent decision on the return on debt in relation to the introduction of the trailing average in accordance with the Tribunal's reasons for its decisions without giving a clear clarification of the directions for the remittal.⁶⁰ The Tribunal found us in error in our definition of a benchmark efficient entity as a 'regulated' entity. The Tribunal also found us in error in our construction of NER rule 6.5.2(k)(4), based on the information available to the Tribunal at that time.

5.3.2.3 Judicial Review

On 24 March 2016, we applied to the Federal Court for judicial review of the Tribunal's decisions. On 24 May 2017, the Court dismissed our appeals on the return on debt and opex and upheld the Tribunal's decisions in relation to these issues. It upheld the AER's appeal in relation to the value of imputation credits (gamma).⁶¹

We have carefully considered the full reasoning of the Court in considering what to do to achieve the ARORO, NEO and RPP in this decision. Of relevance, in relation to the Court's decision:

- the Court clarified that a benchmark efficient entity is not necessarily either regulated or unregulated

⁵⁴ NER ss. 6.5.2(b), 6A.6.2(b).

⁵⁵ NER ss. 6.5.2(c), 6A.6.2(c).

⁵⁶ NEL, ss. 7 and 16(1)(d).

⁵⁷ The RPP that are directly relevant to remaking our debt decision are set out at NEL, ss. 7A(2), 7A(3), 7A(5), 7A(6) and 16(2).

⁵⁸ NEL, s. 16(1)(c).

⁵⁹ *Applications by Public Interest Advocacy Centre Ltd and Ausgrid* [2016] ACompT 1; *Applications by Public Interest Advocacy Centre Ltd and Endeavour Energy* [2016] ACompT 2; *Applications by Public Interest Advocacy Centre Ltd and Endeavour Energy* [2016] ACompT 3; *Application by ActewAGL Distribution* [2016] ACompT 4.

⁶⁰ *Applications by Public Interest Advocacy Centre Ltd and Ausgrid* [2016] ACompT 1, direction 1(b); *Applications by Public Interest Advocacy Centre Ltd and Endeavour Energy* [2016] ACompT 2, direction 1(b); *Applications by Public Interest Advocacy Centre Ltd and Endeavour Energy* [2016] ACompT 3, direction 1(b); *Application by ActewAGL Distribution* [2016] ACompT 4, direction 1(b); *Application by Jemena Gas Networks (NSW) Ltd* [2016] ACompT 5, direction 1(a).

⁶¹ *Australian Energy Regulator v Australian Competition Tribunal (No 3)* [2017] FCAFC 80.

- the important characteristic of a benchmark efficient entity is that it has a similar degree of risk to the service provider with respect to the provision of its regulated services
- a change in debt estimation methodology does not necessarily result in any impacts for a benchmark efficient entity

In relation to both the decisions of the Tribunal and Court, we also make the following observations:

- The decisions of the Tribunal and Court were not focussed on the interpretation of 'efficient financing costs' in the ARORO. We consider this to be an important factor.
- Neither decision removes the requirement to apply a debt methodology that we consider will achieve the relevant legislative objectives for each of the respective service providers affected by the remittals.
- Neither decision requires the use of a trailing average methodology for determining the cost of debt in this remittal.

In subsequent decisions involving other parties, the Tribunal and Full Federal Court have made various findings and comments which are also relevant to these matters. In particular, both the Tribunal and Federal Court have made comments about our new approach to estimating the return on debt that help to clarify how the Tribunal's decision for Endeavour Energy should be interpreted.⁶² This is discussed in more detail below.

5.3.2.4 Other relevant legal processes

Other legal decisions that we have had regard to in our remade final decision are:

- the decision of the Australian Competition Tribunal for SA Power Networks and the subsequent decision of the Full Federal Court on the appeal of this decision⁶³
- the decisions of the Australian Competition Tribunal for ActewAGL (Gas) Distribution and Jemena Electricity Networks Ltd⁶⁴

The decisions of the Tribunal for ActewAGL (Gas) Distribution and Jemena Electricity Networks Ltd are particularly important as they are directly concerned with the application of our new approach to estimating the return on debt.

After the Tribunal handed down its decisions for Endeavour Energy, we reconsidered our approach to debt estimation methodology. The new approach, which we adopted in our decisions for ActewAGL (Gas) Distribution and Jemena Electricity Networks, does not rely upon a conceptualisation of a benchmark efficient entity as a regulated entity. It recognises that different service providers may have a different benchmark efficient entity. The new approach also does not rely on a change in methodology impacting a benchmark efficient entity to justify our revenue neutral transition. Our new approach does not rely upon an assessment of historical financing practices. Instead, it considers the efficient financing costs

⁶² See for example, *SA Power Networks v Australian Competition Tribunal (No 2)* [2018] FCAFC 3 at [295].

⁶³ *Application by SA Power Networks* [2016] ACompT 11; *SA Power Networks v Australian Competition Tribunal (No 2)* [2018] FCAFC 3.

⁶⁴ *Application by ActewAGL Distribution* [2017] ACompT 2.

(being the costs of equity and debt) in a forward looking manner. Our new approach was subject to review by the Tribunal.

The Tribunal upheld our new approach. It explained more clearly how each of the Tribunal's and Court's decisions should be read together consistently. It provided clarification for the earlier Tribunal's decision on the directions of the Tribunal for the remittal that were previously unclear to us. We consider these decisions support a revenue neutral transition when moving to a trailing average methodology based on our new approach, or the continuance of an on-the-day methodology for determining the cost of debt, to achieve the NEO.

An important aspect of the decisions for ActewAGL (Gas) Distribution and Jemena Electricity Networks Ltd is the consideration in those decisions of the interpretation of the 'allowed rate of return objective' (or ARORO) and the meaning of 'efficient financing costs'.⁶⁵ We consider these decisions support our ex ante interpretation of efficient financing costs. These decisions and our view on them are covered in further detail in our debt Position Paper on our remitted debt decisions.⁶⁶

On 18 January 2018, the Full Federal Court handed down its decision on SA Power Networks v Australian Competition Tribunal.⁶⁷ This was a review brought by SA Power Networks from a decision of the Tribunal.⁶⁸

The Full Federal Court noted that the Court had not had the benefit of hearing a number of issues in relation to Endeavour Energy's review that had been subsequently put to it in SA Power Networks vs Australian Competition Tribunal. We consider this Full Federal Court decision also supports our new revenue neutral debt transition approach which we have applied in this remitted debt decision.

5.3.2.5 Reasons for our decision

For the reasons set out in our debt Position Paper⁶⁹ on our remitted debt decisions and in our APA VTS final decision, we consider a revenue neutral transition to a trailing average debt estimation methodology will lead to an allowed rate of return that will achieve the ARORO and contribute to the achievement of the NEO to the greatest degree. This rate of return will both reflect ex ante efficient financing costs and result in an approximately zero NPV investment outcome which is important to achieving efficient investment incentives. A revenue neutral transition will also substantially eliminate any wealth impact on Endeavour Energy from changing the debt estimation methodology.

We rely on the reasoning in our APA VTS decision in making this final decision for Endeavour Energy, as set out in Attachment 3 of our APA VTS determination.⁷⁰ This

⁶⁵ Ibid.

⁶⁶ AER, *Position paper– Remitted debt decisions for NSW/ACT 2014–19 electricity distribution determinations and Jemena Gas Networks 2015-20 (NSW) Access Arrangement*, December 2017.

⁶⁷ *SA Power Networks v Australian Competition Tribunal (No 2)* [2018] FCAFC 3.

⁶⁸ *Application by SA Power Networks* [2016] ACompT 11.

⁶⁹ AER, *Position paper– Remitted debt decisions for NSW/ACT 2014–19 electricity distribution determinations and Jemena Gas Networks 2015-20 (NSW) Access Arrangement*, December 2017.

⁷⁰ AER, *Final Decision APA VTS gas access arrangement 2018 to 2022, Attachment 3 - Rate of return*, November 2017.

includes an explanation of how our approach has changed in response to relevant legal decisions. We also rely on our explanation and reasoning as set out in the debt Position Paper on our remitted debt decisions in making this final decision.⁷¹

In relation to the timing of the initial debt averaging period (for the commencement of the trailing average), we have used the initial averaging period set out in our 2015 final decision for the introduction of the trailing average. We also have used the debt averaging periods for the later years of the regulatory control period, as set out in our 2015 final decision, because we consider these will lead to a rate of return that achieves the ARORO and contribute to the achievement of the NEO. All averaging periods were chosen in advance of their commencement and we consider their use should result in an ex ante efficient return on debt allowance. We consider choosing averaging periods after the periods have finished (or post commencement) is generally inappropriate due to the potential incentive on various stakeholders to advocate for averaging periods that give particular results.

We also consider our overall approach will lead to an overall allowed rate of return that will achieve the ARORO and contribute to achieving the NEO because:

- the return on equity we determined in our 2015 final decision was upheld on appeal as was the gearing ratio and we consider these values remain appropriate
- our combination of the yield from two debt series we used to estimate the return on debt in the 2015 final decision, a simple average of yields estimated from the Bloomberg and RBA yield curves, was upheld on appeal in the Tribunal and we consider remains appropriate
- we consider the overall allowed rate of return estimated using our return on debt, return on equity and gearing estimates will result in an allowed rate of return that will achieve the ARORO and contribute to achieving the NEO

Our remade return on debt constituent decision has been informed by our examination of submissions received on our debt Position Paper⁷² and remade draft decision.⁷³ Further information on our analytical approach and the data we used to inform our analysis is outlined in our remade draft decision. We note that submissions received in response to that decision did not raise any new issues or any additional information that necessitates a change to our return on debt decision as outlined in the remade draft decision.⁷⁴

This decision discusses and applies substantively identical provisions for rate of return as those applicable to electricity distribution.

⁷¹ AER, *Position paper – Remitted debt decisions for NSW/ACT 2014–19 electricity distribution determinations and Jemena Gas Networks 2015-20 (NSW) Access Arrangement*, December 2017.

⁷² Ibid.

⁷³ See section 5.3.2.5 of: AER, *Draft Decision Endeavour Energy distribution determination 2014-19*, July 2018.

⁷⁴ See section 5.3.2 of: AER, *Draft Decision Endeavour Energy distribution determination 2014-19*, July 2018.

5.4 Other aspects of the 2015 final decision to be varied

5.4.1 Control mechanism

The control mechanism was not a subject of Endeavour Energy's appeal of our April 2015 final decision. However, this remade final decision has implications for the operation of the control mechanism for the 2014-19 and 2019-24 regulatory control periods. The Tribunal's directions that we are to comply with in remaking our decision includes:

- “(d) the AER is to consider, and to the extent to which it considers appropriate to vary the Final Decision in such other respects as the AER considers appropriate having regard to s 16(1)(d) of the National Electricity Law in the light of such variations as are made to the Final Decision by reason of (a)-(c) hereof.”

This remade final decision is \$110 million above our 2015 final decision. In order to effect the additional \$110 million in our control mechanism formula, we must vary the control mechanism as set out in our Framework and Approach paper for Endeavour Energy's 2014-19 revenue determination and adopted in our 2015 final decision.⁷⁵

As per the approach we took in our remade draft decision⁷⁶, this remade final decision removes the following requirement from our 2015 final decision on the form of control mechanism:⁷⁷

“In proposing variations to the amount and structure of DUoS charges, Endeavour Energy is to achieve an expected zero balance on their DUoS unders and overs accounts in each forecast year in its annual pricing proposals in the 2015-19 regulatory control period.”

In making this variation, we note that clause 6.12.3 of the NER states:

- “(c) The form of the control mechanisms must be as set out in the relevant framework and approach paper.
- (c1) The formulae that give effect to the control mechanisms referred to in paragraph (c) must be as set out in the relevant framework and approach paper unless the AER considers that unforeseen circumstances justify departing from the formulae as set out in that paper.”

We consider this variation to the control mechanism formula is necessary given the material and unforeseen (novel) change in circumstances since our 2015 final decision.⁷⁸ The variation will allow us to track Endeavour Energy's revenue relative to our 2015 final decision through the DUoS 'unders' and 'overs' accounts. This will enable us to implement the remade final decision while maintaining the operation of the unders and overs accounts

⁷⁵ AER, *Stage 1 Framework and approach paper – Ausgrid, Endeavour Energy and Endeavour Energy, Attachment 2 Control mechanisms*, March 2013, p.43. Available at: <https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/Endeavour-energy-determination-2014-19/aer-position>

⁷⁶ See section 5.4.1 of: AER, *Draft Decision Endeavour Energy distribution determination 2014-19*, July 2018.

⁷⁷ AER, *Final decision Endeavour Energy distribution determination: 2015–16 to 2018–19, Attachment 14 - Control mechanism*, April 2015, p.18.

⁷⁸ NER, cl. 6.12.3(c)(1).

across the 2014-19 and 2019-24 regulatory control periods. This is consistent with the requirements of the NER as it would minimise administrative costs and reduce uncertainty.⁷⁹

We will ensure Endeavour Energy earns no more than the amount set out in the remade final decision through the design of the control mechanism for standard control services for the 2019-24 regulatory control period. This is because we will not know what Endeavour Energy's actual revenue for the 2014-19 regulatory control period will be until after this regulatory control period completes.

A revenue cap will continue to apply to Endeavour Energy's standard control services in the 2019-24 regulatory control period.⁸⁰ At this stage, we are likely to maintain the general properties of the control mechanism from our 2015 final decision, including the unders and overs accounts. With this in mind, we consider there are several options for enforcing the remade final decision through the control mechanism for the 2019-24 regulatory control period. Any amounts recovered above that allowed in the remade final decision will be returned to customers in the next (2019-24) regulatory control period and determined as part of Endeavour Energy's 2019-24 distribution determination.

5.4.2 Inflation error adjustment

In the course of its review of our decisions of the Victorian electricity distributors and ActewAGL's gas decision, the Tribunal identified an error in how inflation was estimated.⁸¹ The Tribunal made note of the error in its decision and left it to the AER to determine how best to address the error.⁸² The error affected not only the decisions under that review, but the 2015 final decisions for the NSW distributors. The error had not been picked up during the review of the 2015 NSW decisions.

The error results from an incorrect geometric average calculation undertaken on the annual inflation rates; resulting in an incorrect (lower) inflation rate of 2.38 per cent instead of 2.42 per cent. Correcting the error would result in a downward revenue adjustment of approximately \$8.85 million (\$2013-14, nominal) compared to our 2015 final decision.

On 15 December 2017, we notified Endeavour Energy (and other NSW and ACT distribution businesses) in writing, stating that we were considering whether it is appropriate to correct the affected determinations when remaking our decisions.⁸³ In its proposal, Endeavour Energy accepted the application of the downward revenue adjustment, which it estimated to be \$12.2 million (\$2018-19, nominal).⁸⁴

⁷⁹ NER, cl. 6.2.5(c)(2) and (3).

⁸⁰ AER, *Framework and approach Ausgrid, Endeavour Energy and Endeavour Energy: Regulatory control period commencing 1 July 2019*, July 2017, pp. 41 and 52–54.

⁸¹ File Nos: ACT 3, 4, 5, 6, 7, 8 of 2016: <http://www.competitiontribunal.gov.au/current-matters/tribunal-documents>

⁸² See for example, ACT, Application by ActewAGL Distribution [2017] ACompT 2, 17 October 2017, p i-iii.

⁸³ AER, *Proposed correction to an inflation calculation error impacting Endeavour Energy distribution determination 2014-19*, 15 December 2017.

⁸⁴ Endeavour Energy, *Proposal for the Remittal of the Endeavour Energy 2014-19 Determination*, 5 April 2018, p.3.

5.4.3 Minor corrections to our 2015 final decisions

On 20 May 2015, we published an open letter notifying our intention to correct several errors in our April 2015 final decision once any appeal to that decision is resolved.⁸⁵ As per the approach we took in our remade draft decision⁸⁶, and as part of this remade final decision for Endeavour Energy, we now refer and give effect to that open letter which sets out our proposed correction for the following errors:

1. Inaccurate description of metering in Appendix A to the Overview
2. Inaccurate public lighting prices
3. Parameter missing for control mechanism

To ensure the relevant legal documents accurately reflect our decisions, the correction set out in the open letter shall form part of our remade final decision for Endeavour Energy's remitted determination and supersede the errors we had identified in our 2015 final decision.

⁸⁵ AER, *AER letter to Endeavour Energy about correcting errors in Endeavour Energy distribution determination 2015–16 to 2018–19*, 20 May 2015.

⁸⁶ See section 5.4.3 of: AER, *Draft Decision Endeavour Energy distribution determination 2014–19*, July 2018.