



**FINAL DECISION**  
**Endeavour Energy distribution**  
**determination**  
**2015–16 to 2018–19**

**Attachment 15 – Pass through**  
**events**

April 2015

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## Note

This attachment forms part of the AER's final decision on Endeavour Energy's revenue proposal 2015–19. It should be read with other parts of the final decision.

The final decision includes the following documents:

Overview

Attachment 1 - Annual revenue requirement

Attachment 2 - Regulatory asset base

Attachment 3 - Rate of return

Attachment 4 - Value of imputation credits

Attachment 5 - Regulatory depreciation

Attachment 6 - Capital expenditure

Attachment 7 - Operating expenditure

Attachment 8 - Corporate income tax

Attachment 9 - Efficiency benefit sharing scheme

Attachment 10 - Capital expenditure sharing scheme

Attachment 11 - Service target performance incentive scheme

Attachment 12 - Demand management incentive scheme

Attachment 13 - Classification of services

Attachment 14 - Control mechanism

Attachment 15 - Pass through events

Attachment 16 - Alternative control services

Attachment 17 - Negotiated services framework and criteria

Attachment 18 - Connection policy

Attachment 19 - Analysis of financial viability

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## Shortened forms

Shortened form	Extended form
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
augex	augmentation expenditure
capex	capital expenditure
CCP	Consumer Challenge Panel
CESS	capital expenditure sharing scheme
CPI	consumer price index
DRP	debt risk premium
DMIA	demand management innovation allowance
DMIS	demand management incentive scheme
distributor	distribution network service provider
DUoS	distribution use of system
EBSS	efficiency benefit sharing scheme
ERP	equity risk premium
Expenditure Assessment Guideline	expenditure forecast assessment Guideline for electricity distribution
F&A	framework and approach
MRP	market risk premium
NEL	national electricity law
NEM	national electricity market
NEO	national electricity objective
NER	national electricity rules
NSP	network service provider
opex	operating expenditure
PPI	partial performance indicators
PTRM	post-tax revenue model
RAB	regulatory asset base
RBA	Reserve Bank of Australia
repex	replacement expenditure
RFM	roll forward model

Shortened form	Extended form
RIN	regulatory information notice
RPP	revenue and pricing principles
SAIDI	system average interruption duration index
SAIFI	system average interruption frequency index
SLCAPM	Sharpe-Lintner capital asset pricing model
STPIS	service target performance incentive scheme
WACC	weighted average cost of capital

# 15 Pass through events

The pass through mechanism of the National Electricity Rules (NER) 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).<sup>1</sup>

This attachment sets out our final decision on the additional pass through events that will apply to Endeavour Energy for the 2015–19 regulatory control period.

## 15.1 Final decision

Our final decision is that the following nominated pass through events will apply to Endeavour Energy for the 2015–19 regulatory control period:

- insurance cap event
- terrorism event
- natural disaster event
- insurer's credit risk event.

These events have the definitions listed in Table 15.1 below.

**Table 15.1 Accepted event definitions**

Event	Definition
<b>Insurance cap event</b>	An insurance cap event occurs if: <ol style="list-style-type: none"><li>1. Endeavour Energy makes a claim or claims and receives the benefit of a payment or payments under a relevant insurance policy,</li><li>2. Endeavour Energy incurs costs beyond the relevant policy limit, and</li></ol>

<sup>1</sup> NER, clause 6.5.10.

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3. the costs beyond the relevant policy limit materially increase the costs to Endeavour Energy in providing direct control services.

For this insurance cap event:

4. the relevant policy limit is the greater of:

- a. Endeavour Energy's actual policy limit at the time of the event that gives, or would have given rise to a claim, and
- b. the policy limit that is explicitly or implicitly commensurate with the allowance for insurance premiums that is included in the forecast operating expenditure allowance approved in the AER's final decision for the regulatory control period in which the insurance policy is issued.

5. A relevant insurance policy is an insurance policy held during the 2015–19 regulatory control period or a previous regulatory control period in which Endeavour Energy was regulated.

Note for the avoidance of doubt, in assessing an insurance cap event cost pass through application under rule 6.6.1(j), the AER will have regard to:

- i. the relevant insurance policy for the event, and
- ii. the level of insurance that an efficient and prudent NSP would obtain in respect of the event.

**Insurer's credit risk event**

An insurer's credit risk event occurs if:

A nominated insurer of Endeavour Energy becomes insolvent, and as a result, in respect of an existing or potential insurance claim for a risk that was insured by the insolvent insurer, Endeavour Energy:

- is subject to a higher or lower claim limit or a higher or lower deductible than would have otherwise applied under the insolvent insurer's policy; or
- incurs additional costs associated with funding an insurance claim, which would otherwise have been covered by the insolvent insurer.

Note: In assessing an insurer's credit risk event pass through application, the AER will have regard to, amongst other things,

- Endeavour Energy's attempts to mitigate and prevent the event from occurring by reviewing and considering the insurer's track record, size, credit rating and reputation.
- In the event that a claim would have been made after the insurance provider became insolvent, whether Endeavour Energy had reasonable opportunity to insure the risk with a different provider.

**Natural disaster**

A natural disaster event occurs if:

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**event**

Any major fire, flood, earthquake or other natural disaster occurs during the 2015–19 regulatory control period and materially increases the costs to Endeavour Energy in providing direct control services, provided the fire, flood or other event was not a consequence of the acts or omissions of the service provider.

The term 'major' in the above paragraph means an event that is serious and significant. It does not mean material as that term is defined in the Rules (that is 1 per cent of the DNSP's annual revenue requirement for that regulatory year).

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

- i. whether Endeavour Energy has insurance against the event,
- ii. the level of insurance that an efficient and prudent NSP would obtain in respect of the event,
- iii. whether a relevant government authority has made a declaration that a natural disaster has occurred.

**Terrorism event**

A terrorism event occurs if:

An act (including, but not limited to, the use of force or violence or the threat of force or violence) of any person or group of persons (whether acting alone or on behalf of or in connection with any organisation or government), which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons (including the intention to influence or intimidate any government and/or put the public, or any section of the public, in fear) and which materially increases the costs to Endeavour Energy in providing direct control services.

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

- i. whether Endeavour Energy has insurance against the event,
- ii. the level of insurance that an efficient and prudent NSP would obtain in respect of the event, and
- iii. whether a declaration has been made by a relevant government authority that a terrorism event has occurred.

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Source: AER analysis.

## 15.2 Endeavour Energy's revised proposal

In our draft decision we did not accept all of the nominated pass through events proposed by Endeavour Energy. Instead we substituted our own definitions of insurance cap event, terrorism event and natural disaster event which we considered satisfied the requirements of the NER. We did not accept Endeavour Energy's proposal for an insurer's credit risk event.<sup>2</sup>

In its revised proposal, Endeavour Energy adopted some elements of the draft decision but challenged others. In particular, Endeavour Energy:<sup>3</sup>

- challenged our inclusion, in the definitions of the insurance cap, terrorism and natural disaster events, of information on how we would apply those definitions.
- did not accept our draft decision to reject its proposed insurer's credit risk event, and responded to our concerns that this event was not consistent with the NER.

These are discussed further in section 15.4 below.

## 15.3 AER's assessment approach

Our approach to assessing cost pass through events was described in detail in attachment 15 of our draft decision for Endeavour Energy.<sup>4</sup>

Our approach has been guided by the NEO and the RPP. It provides the NSP with a reasonable opportunity to recover at least the efficient costs<sup>5</sup> the operator incurs<sup>6</sup>, while also providing effective incentives to promote economic efficiency.<sup>7</sup> It promotes a balance between the economic costs and risks for promoting efficient investment.<sup>8</sup>

We have maintained the same approach in this final decision.

## 15.4 Reasons for final decision

This section sets out our reasons for the final decision on each pass through event.

We discuss the arguments in Endeavour Energy's revised proposal and how we have addressed them in this final decision. In addition, we received submissions on pass through events from the following stakeholders:

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<sup>2</sup> AER, *Draft decision, Endeavour Energy, Attachment 15*, p. 7.

<sup>3</sup> Endeavour Energy, *Revised regulatory proposal*, p. 82.

<sup>4</sup> AER, *Draft decision, Endeavour Energy, Attachment 15*, pp. 9–10.

<sup>5</sup> Under clauses 6.6.1(d), (g) and (j) of the NER, we are to make a decision on the costs of providing direct control services as a result of a pass through event occurring. Direct control services include alternative control services and standard control services.

<sup>6</sup> NEL, s. 7A(2).

<sup>7</sup> NEL, s. 7A(3).

<sup>8</sup> NEL, s. 7A(6).

- AusNet Services proposed further amendments to the definition of the insurance cap event (discussed in section 15.4.2 below).
- Jemena Limited proposed that we initiate a market consultation on pass through events. We note that such a review is beyond the scope of this final decision, but that our approach has been informed by the AEMC's recent consultation on pass through events.<sup>9</sup>

### 15.4.1 Interrelationships

As we discussed in the draft decision, the nominated pass through events are interrelated with other parts of this determination, in particular with Endeavour Energy's proposed opex and capex allowances and the rate of return. These interrelationships require that we balance our decision to accept nominated pass through events with the need to maintain appropriate incentives in other parts of our decision.

### 15.4.2 Insurance cap, natural disaster and terrorism events

In our draft decision we rejected Endeavour Energy's proposed definitions for insurance cap, terrorism and natural disaster events, and substituted alternative definitions that we considered satisfied the requirements of the NER. In its revised proposal Endeavour Energy accepted part of our definitions in the draft decision but proposed amended definitions.

In relation to all three of these events, Endeavour Energy argues that:

- the definitions of pass through events should not include factors that go to the assessment of a pass through application, because these are already set out in the NER.<sup>10</sup> Endeavour Energy also considered that there was some overlap between the definitions of some of the elements of the nominated pass through event definitions and various provisions of the NER, in particular clauses 6.6.1(j)(3), (5) and (7).
- including these factors would be inconsistent with the definitions of prescribed pass through events in the NER, which do not include this detail.<sup>11</sup>

Similarly, in its submission, AusNet Services suggests the following refinements to the definitions in our draft decision, which it submits will achieve greater clarity and consistency with existing definitions and Rules:

- The reference in paragraph 5(i) of the AER's definition of an insurance cap event should be to a 'relevant insurance policy'<sup>12</sup>

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<sup>9</sup> Jemena, Submission, pp. 1–2.

<sup>10</sup> NER, clauses 6.6.1(c)(6); 6.6.1(j)(3),(5) and (7).

<sup>11</sup> Endeavour Energy, *Revised regulatory proposal*, pp. 85–86.

<sup>12</sup> AusNet Services, *Submission*, p. 9.

- Paragraph 5(iii) should be deleted as it duplicates clause 6.6.1(j)(3) of the NER and potentially introduces confusion.<sup>13</sup>

The NER do not include this additional information in defining the prescribed pass through events. However, we do not consider including this additional information in definitions of nominated events is inconsistent with, or contrary to, the NER.

The NER include, at a high level, matters that we are to have regard to in assessing pass through applications.<sup>14</sup> To more clearly identify when a pass through event would be taken to have occurred, the alternative definitions in our draft decision included specific factors which we will have regard to. These provide greater certainty and transparency in the operation of nominated pass through events given the 'significant cost impact'<sup>15</sup> that our decision on a pass through application can have on the NSP or its customers. This approach supports the nominated pass through event considerations in the NER, which specifically state that nominated pass through events should be clearly identified at the time the determination is made.<sup>16</sup> In the case of the insurance cap event, the natural disaster event and the terrorism event, this includes whether the NSP has insurance against the event as well as the level of insurance that it has acquired.

We do accept that paragraph 5(iii) of our definition is not required in addition to clauses 6.6.1(j)(3),(5) and (7) of the NER. Specifically, in assessing a pass through application clause 6.6.1(j)(3) states we are to consider the efficiency of the NSP's decisions and actions in relation to the risk of the event.

We also agree that as 'relevant insurance policy' is defined within our definition of the insurance cap event, consistent use of that term throughout the definition is preferable. We have therefore amended the definition to use this term at paragraph 5(i).

Endeavour Energy also challenged aspects of our proposed definitions of the natural disaster and terrorism events. It argued that we should not include, in the definition of the natural disaster event and terrorism event that we would have regard to whether a 'declaration' has been made by a relevant government authority that such an event has occurred.

Whether a relevant government authority has made a relevant declaration in respect of these pass through events is a factor that we would have regard to in considering whether to approve such a pass through event. We consider that this adds clarity around the purpose of this nominated pass through event and when it is likely to be considered to have occurred. We therefore maintain this element of the definition.

Endeavour Energy also challenged the addition of the following consideration in our proposed definition of the natural disaster event:

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<sup>13</sup> AusNet Services, *Submission*, pp. 9–10.

<sup>14</sup> NER, clause 6.6.1(j).

<sup>15</sup> AER, *Draft decision, Endeavour Energy, Attachment 15*, p. 10.

<sup>16</sup> NER, Chapter 10 (Glossary), Definition of 'Nominated pass through event considerations', paragraph (b).

Provided the fire, flood or other event was not a consequence of the acts or omissions of the service provider.

Our assessment approach for determining which nominated pass through events to include in our final decision includes consideration of who is best placed to bear the risks of events occurring. Adopting a definition which notes that we will not allow NSPs to pass through costs where the event has been caused by the NSP is consistent with the regulatory regime. We have sought to maintain the incentive properties of the regime by excluding events that businesses have control over. We therefore maintain this element of the definition.

We have also considered the use of the terms, 'material' and 'materially', in our pass through definitions. The use of these terms is not inconsistent with the definition of the term in the NER. The definitions of the prescribed pass through events also use these terms. We have therefore maintained the use of these terms in our pass through definitions.

Our final decision therefore includes insurance cap, terrorism and natural disaster events, but makes the following amendments to the definitions:

- Removes references which replicate clause 6.6.1(j)(3) of the NER
- Consistent use of the term, 'relevant insurance policy'.

### 15.4.3 Insurer's credit risk event

The insurer's credit risk event is intended to provide for circumstances in which an insurance claim is successful, but Endeavour Energy is unable to recover against its insurance policy as a result of the insolvency of an insurance provider. In our draft decision, we rejected this event and stated that Endeavour Energy may be able to prevent this event occurring by purchasing insurance from reputable providers who have the capacity to satisfy any claims.<sup>17</sup> We further stated, 'NSPs can assess the viability of an insurer by reviewing its track record, size credit rating and reputation.'<sup>18</sup> We also had regard to the incentives on Endeavour Energy to acquire insurance prudently.

In its revised regulatory proposal, Endeavour Energy argued that:

- the collapse of HIH Insurance was not foreseen by the market and that in the weeks prior to its collapse HIH still had an investment-grade rating<sup>19</sup>
- it only obtains insurance from an insurer with a minimum A- credit rating, and it monitors S&P ratings movements<sup>20</sup>

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<sup>17</sup> AER, *Draft decision, Endeavour Energy, Attachment 15*, p. 13.

<sup>18</sup> AER, *Draft decision, Endeavour Energy, Attachment 15*, p. 13.

<sup>19</sup> Endeavour Energy, *Revised regulatory proposal*, p. 84.

<sup>20</sup> Endeavour Energy, *Revised regulatory proposal*, p. 84; *Attachment 4.13, Endeavour Energy's nominated pass through events (public)*, p. 15.

- it insures its risks with multiple insurers to diversify the risks.<sup>21</sup>

We have considered the example of HIH and how a similar event would impact NSPs. If a similar event were to occur in the 2015–19 regulatory control period, an NSP that had adopted the risk management measures contemplated in our draft decision could nonetheless incur significant costs. The NSP may therefore still potentially suffer a significant loss as a consequence of an insurer becoming insolvent and thereby unable to satisfy all insurance claims. NSPs are also limited in the extent to which they can avoid such losses, short of taking out multiple insurance policies to cover the same risks. We accept that the options available to NSPs to manage these risks are limited and, given the rarity of such events, may in fact result in greater expenditure on insurance than is prudent or efficient.

Endeavour Energy has also responded to our concerns around the incentives a pass through option may create to reduce insurance costs by shifting this risk entirely to customers. In its revised proposal it has demonstrated a robust and prudent approach to assessing risk and obtaining insurance.<sup>22</sup> Endeavour Energy's explanation of its approach to insurance demonstrates that the regulatory regime already provides incentives to take prudent actions in relation to insurance, which are not weakened by accepting this proposed pass through event. We also note clause 6.6.1(j)(3) of the NER acts as an appropriate balance to any incentive an insurer's credit risk event may create to transfer the risk of insurer failure entirely to customers.

We therefore accept that an insurer's credit risk event can be consistent with the nominated pass through considerations, if appropriately defined. We have added to Endeavour Energy's proposed definition of this pass through event the matters that we will have regard to in assessing an event.

In its definition for this event, Endeavour Energy also sought to pass through the costs associated with significant changes to insurance premiums as a result of an insurer becoming insolvent. Insurance premiums are a typical business expense. They are subject to ordinary market factors of the economy. We consider this is a risk that businesses, and not their customers, are best placed to bear. We therefore do not consider it appropriate to allow this element of the nominated pass through event.

We consulted with Endeavour Energy and others on an appropriate definition for this event.<sup>23</sup> As a result of this consultation, we have clarified that we may allow NSPs to pass through claims that would have been made immediately after the insurer became insolvent and before the NSP had a reasonable opportunity to acquire new insurance for those risks. This amendment maintains an incentive on NSPs to acquire new insurance as soon as reasonably possible after an insurance provider becomes insolvent.

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<sup>21</sup> Endeavour Energy, *Attachment 4.13, Endeavour Energy's nominated pass through events (public)*, p. 15.

<sup>22</sup> Endeavour Energy, *Revised regulatory proposal*, p. 84.

<sup>23</sup> Information request and response 052, 27 March 2015.