Final Decision

Evoenergy* 2014–19 electricity distribution determination

November 2018

* Formerly known as ActewAGL Distribution

AUSTRALIAN ENERGY REGULATOR

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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 ACT electricity distributor, Evoenergy (formerly known as ActewAGL Distribution), for the 2014-19 regulatory control period, commencing 1 July 2014 to 30 June 2019. Our remade final decision is in essence unchanged from our remade draft decision, with minor differences (totalling $0.1 million more than our remade draft decision) attributable to rounding in our models.[2]

Our remade final decision is to accept Evoenergy's proposal to recover total revenues of $815.7 million ($, 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.[4] This provides consumers with stability over what they predicted they would have to pay; it keeps distribution network charges in line with current levels.[5]

We have remade our decision in response to directions from the Australian Competition Tribunal (Tribunal). In January 2015, Evoenergy was seeking $1,036.2 million in revenue for the 2014-19 regulatory control period, but we approved a revenue allowance of $764.1 million in our April 2015 final decision (or $272.1 million less than Evoenergy's proposal). In response, Evoenergy sought limited merits review of our decision by the

1 NEL, s. 7.

2 AER, *Draft Decision Evoenergy 2014-19 distribution determination*, September 2018.

3 Evoenergy, *Proposal for the remittal of Evoenergy's 2014-19 determination*, 24 July 2018.

4 AER, *Final decision, ActewAGL distribution determination 2015−16 to 2018−19*, April 2015.

5 In May 2016, we accepted undertakings given by Evoenergy (formerly ActewAGL) under section 59A of the NEL that set out how network revenues and tariffs will be determined in 2016–17. Evoenergy's Network Use of System (NUoS) tariffs in 2016–17 were set at their 2015–16 approved tariffs adjusted for changes in the CPI. As of May 2017, the Full Federal Court had not yet handed down its decision, so we accepted further undertakings given by Evoenergy 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 Evoenergy for 2018-19. See *Open letter to stakeholders: Electricity network charges in the ACT and NSW from 1 July 2018*, 21 March 2018.

Tribunal. The Tribunal remitted our decision to us, specifically requiring that we remake our decision in relation to Evoenergy's operating expenditure (opex) forecast, the rate of return with respect to the trailing average approach and how the service target performance incentive scheme (STPIS) is to apply, and otherwise vary the distribution determination as set out in our 2015 final decision as we consider appropriate.[6] This remade final decision for Evoenergy brings this long-running 2014-19 revenue determination process to a close.

On 24 July 2018, and following a series of consultations with its stakeholders, Evoenergy submitted a new proposal to us to resolve all outstanding issues relating to the decision we need to remake.[7] Evoenergy proposed total revenue of $815.6 million ($, nominal) for the five-year 2014-19 regulatory control period based on:[8]

- our 2015 final decision, including the constituent decision we made on the rate of return (including the cost of debt) and the constituent decisions we made on opex and STPIS with relevant amendments
- the revenue that Evoenergy has recovered thus far for the 2014-19 regulatory control period, up to $26 million above our 2015 final decision (of which $20.9 million has been attributed to labour redundancy costs)

Our remade final decision for the 2014-19 regulatory control period will result in a revenue allowance of $26 million[9] above the revenue we approved in our 2015 final decision that was set aside by the Tribunal.[10] This will lead to an estimated $0.9 million being returned to consumers in the next (2019-24) regulatory control period.[11] We discuss how we will ensure Evoenergy does not earn revenues above that allowed in this decision in sections 2 and 5.4.1.

This document sets out our reasons for accepting Evoenergy'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.

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6 Australian Competition Tribunal, *Application by ActewAGL Distribution [2016] ACompT 4*, 26 February 2016. On 24 May 2017, the Full Federal Court dismissed our appeal and upheld the Tribunal's decision in relation to opex and cost of debt. It upheld the AER's appeal in relation to gamma.

7 Evoenergy, *Proposal for the remittal of Evoenergy's 2014-19 determination*, 24 July 2018.

8 Ibid. Our remade final decision of $815.7 million is $0.1 million higher than our remade draft decision and Evoenergy's proposal of $815.6 million due to rounding in our models.

9 This difference is based on the revenue under this remade final decision compared with our 2015 final decision, excluding the revenue impact of the difference in forecast and out-turn demand.

10 Before adjusting for the impact of actual demand being greater than what was forecast for Evoenergy for the 2014-19 regulatory control period, we estimated Evoenergy's revenue recovery over the 2014-19 regulatory control period at approximately $52.5 million above our 2015 final decision. This remade final decision determines that $26 million will be retained by Evoenergy for 2014-19 and approximately $0.9 million will be returned to customers in the 2019-24 period. The residual revenue of $25.6 million is accounted for by the impact of actual demand being greater than what was forecast under its price control.

11 The estimated $0.9 million that is expected to be returned to customers in the 2019-24 regulatory control period is our best estimate at this point in time as we will not know the exact amount until after the 2014-19 regulatory control period.

Energy Consumers Australia (ECA), the AER Consumer Challenge Panel (CCP10) and Evoenergy made submissions that our remade draft decision is in the long-term interests of Evoenergy's consumers.[12] In addition, the ACT Energy Consumers Policy Consortium (ECPC)[13] and the Evoenergy Energy Consumer Reference Council (ECRC)[14] support Evoenergy's proposal.[15]

This 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.[16]

1.1 Structure of this document

This document is structured as follows:

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

12 AER, *Draft Decision Evoenergy 2014-19 distribution determination*, September 2018.

13 The ACT Energy Consumers Policy Consortium (ECPC) includes the ACT Council of Social Service, Care Financial Counselling Service, Conservation Council ACT Region, SEE-Change and the Small Business Taskforce of the Canberra Business Chamber.

14 The Evoenergy Energy Consumer Reference Council (ECRC) includes the Tuggeranong Community Council, Australian National University, Engineers Australia, Canberra Business Council, Master Builders Association, SEE-Change, Gungahlin Community Council, Council of the Ageing, Property Council of Australia, ACT Council of Social Services, ACT Youth Advisory Council, Canberra Urban and Regional Futures.

15 ACT Energy Consumers Policy Consortium, *Response from ACT ECPC to Evoenergy proposal regarding resolution of 2014-2019 regulatory determination*, 29 June 2018; Evoenergy Energy Consumer Reference Council, Evoenergy 2014-2019 determination: remittal proposal, 27 June 2018.

16 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.

2 Our remade final decision

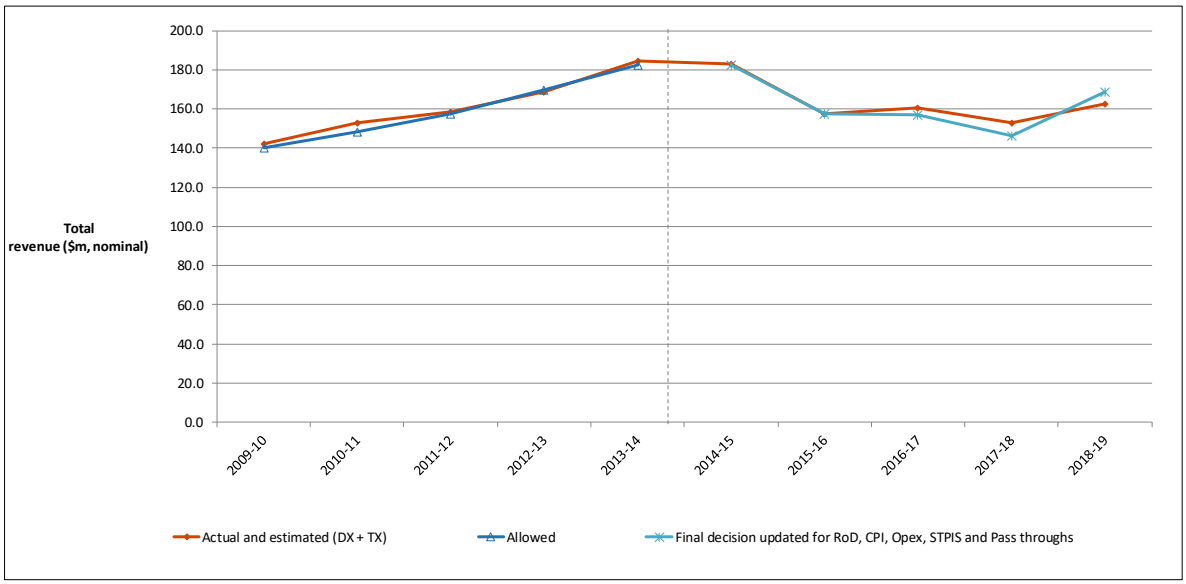
Our remade final decision after remaking the constituent decisions for opex, rate of return and STPIS, as well as correcting some other minor aspects relating to our 2015 final decision in accordance with the Tribunal's directions, is to accept Evoenergy's proposal.[17]

This means Evoenergy can recover total revenues of $815.7 million ($, nominal) from consumers over the 2014-19 regulatory control period.[18] Our remade final decision is in essence unchanged from our remade draft decision, with minor differences (totalling $0.1 million more than our remade draft decision) attributable to rounding in our models.[19]

The remade final decision is $26 million above the revenue allowance we set in our 2015 final decision for Evoenergy. Any additional revenues in excess of this amount, currently estimated at $0.9 million, will be returned to customers in subsequent regulatory years from 2019-20. The estimated $0.9 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 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.[20] Figure 2-1 illustrates our overall decision.

Figure 2-1 Evoenergy's past total revenue and AER 2014-19 remade final decision total revenue allowance ($million, nominal)



Source: AER analysis.

17 Evoenergy, *Proposal for the remittal of Evoenergy's 2014-19 determination*, 24 July 2018.
18 Ibid.
19 AER, *Draft Decision Evoenergy 2014-19 distribution determination*, September 2018.
20 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 1.0 per cent.[21]

In 2015-16, distribution network charges fell significantly, reflecting a reduction in Evoenergy's real revenues resulting from our 2015 final decision. At the time of our decision, this impact was estimated as a $112 (5.8 per cent) reduction in the average bill for a residential customer and a $168 (5.8 per cent) reduction in the bill for a small business customer.[22]

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 Evoenergy addressed pricing uncertainties arising from the limited merits and judicial review processes.

As this remade final decision will lead to an estimated $0.9 million being returned to consumers in the next (2019-24) regulatory period, holding everything else constant, we would expect this to put downward pressure on the tariffs faced by Evoenergy's customers.

At the same time as releasing this remade final decision, we have also released a separate final decision adjustment determination for Evoenergy that has relevance to revenues recovered for both 2014-19 and 2019–24 regulatory control periods.[23] This relates to the revenues that Evoenergy earn from the provision of distribution and transmission standard control services and from metering services (alternative control services).

Under the NER, we are required to make an adjustment determination in order to ensure Evoenergy recovers only the revenue to which it is entitled and should not receive any windfall gains or losses as a result of the appeals process.[24]

As we discuss in section 5.4.1, we have accounted for Evoenergy's feedback on our remade draft decision to more explicitly account for the true-up of standard control services revenues from the 2014-19 regulatory control period.[25] This has entailed including a distribution variation amount and a transmission variation amount in our final decision adjustment determination.[26] These amounts jointly comprise the estimated $0.9 million in revenues that Evoenergy will recover above our remade final decision, and which Evoenergy will return to customers in the next (2019-24) regulatory control period.

The other component of our adjustment determination for Evoenergy is the additional revenue it can recover from customers for the provision of metering services in the 2019–24 regulatory control period. In the adjustment determination, we determine that the metering

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

22 AER, *Final decision ActewAGL distribution determination - Fact Sheet*, April 2015. The analysis assumed distribution network charges made up 35 per cent of customers' bills on average.

23 AER, *Final decision Evoenergy adjustment determination*, November 2018.

24 NER, cl 8A.15.5(d).

25 Evoenergy, *Response to AER draft decision on Evoenergy 2014-19 electricity distribution determination*, 5 October 2018.

26 Our draft decision adjustment determination for Evoenergy did not include these amounts.

variation amount is $3.7 million ($2018–19) which Evoenergy is to recover in the 2019–24 regulatory control period.

We will incorporate the distribution, transmission and metering variation amounts in our final decision on the 2019–24 distribution determination for Evoenergy.[27] As the distribution and transmission variation amounts are based on Evoenergy's estimates for the 2014-19 regulatory control period, a true-up will be required in the 2019-24 regulatory control period.

27 NER, cl 8A.15.5(c)(3) and (5). We incorporated this amount in our draft decision on the 2019–24 distribution determination for Evoenergy.

3 Evoenergy's proposal

On 24 July 2018, we received Evoenergy's proposal for the remaking of its revenue determination for the 2014–19 regulatory control period.[28]

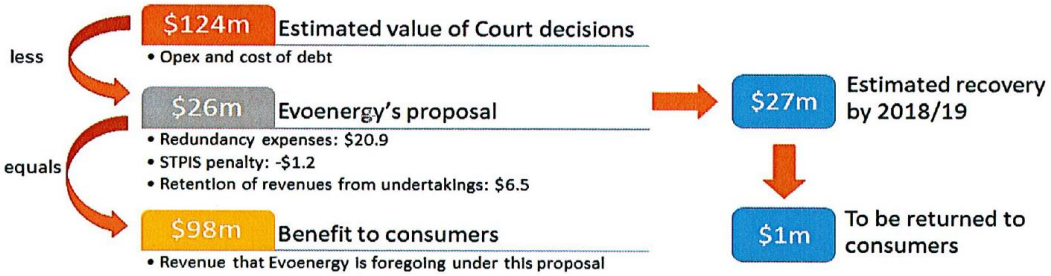
It is a total revenue proposal. That is, it is not directly presented in terms of the building block components as was the case in its initial and revised regulatory proposals which preceded our 2015 final decision (and the associated constituent decisions).

Evoenergy engaged with consumer groups prior to submitting a final proposal to us.

Key aspects of Evoenergy's proposal are summarised below:[29]

> "This proposal is aimed at achieving an expedited resolution to the remade determination that is in the long-term interests of consumers by providing price stability and certainty and enabling Evoenergy to continue to maintain a safe, reliable and secure supply of electricity for ACT consumers...
>
> This proposal, if accepted, would allow the AER to remake its 2015 determination without a need to increase prices for standard control services (SCS) in the 2019-24 regulatory control period...
>
> The Tribunal and Federal Court directed the AER to remake its decision for (among other things) SCS operating expenditure (opex) and the cost of debt. Evoenergy estimates that the value of these matters…would be approximately $124 million...
>
> Evoenergy's proposal does not seek to recover $124 million, but instead limits the revenue recovered under the remade determination as compared to the 2015 determination to $26 million. This includes redundancy expenses of $20.9 million, service target performance incentive scheme (STPIS) penalties of -$1.2 million and the retention of $6.5 million in revenues as part of the overall resolution of the remittal proposal. Limiting the additional revenue recovered by Evoenergy to $26 million provides consumers with a benefit of $98 million…
>
> Significantly, Evoenergy's SCS revenues for the 2014-19 regulatory proposal under the undertakings are expected to exceed the revenue allowance in this proposal…[by]…$1 million, [which] would be returned to consumers in the 2019-24 regulatory period. That is, Evoenergy's proposal will ensure that there is no increase in prices for SCS in the 2019-24 regulatory period as a consequence of remaking of the 2015 determination. Evoenergy's proposal is summarised in Figure 1 below."

Figure 1: Summary of Evoenergy's remittal proposal



28 Evoenergy, *Proposal for the remittal of Evoenergy's 2014-19 determination*, 24 July 2018.

29 Ibid.

4 Stakeholder submissions on our remade draft decision

On 6 September 2018, we released our remade draft decision for Evoenergy for the 2014-19 regulatory control period for public consultation.[30] Our remade draft decision accepted Evoenergy's proposal to recover total revenues of $815.6 million ($, nominal) from consumers over the five-year 2014-19 regulatory control period. We noted that if our remade draft decision became our final decision for Evoenergy, it would result in a revenue allowance of $26 million above the revenue we set in our 2015 final decision, after adjusting for data updates over time including the impact of actual demand being greater than was forecast under its price control. We also noted that an estimated $1 million in revenue would be returned to Evoenergy's consumers in the 2019-24 regulatory control period.

We received three stakeholder submissions on our remade draft decision:[31]

- Evoenergy
- Energy Consumers Australia (ECA)
- AER Consumer Challenge Panel, Sub-panel 10 (CCP10)

All stakeholders supported our remade draft decision as being in the long-term interest of Evoenergy'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 Evoenergy's pre-lodgement engagement on its proposal.[32] Comments were received from ECA, CCP10, the ACT Energy Consumers Policy Consortium (ECPC)[33] and the Evoenergy Energy Consumer Reference Council (ECRC)[34].

All of the above stakeholders' submissions are available on our website.[35]

30 AER, *Draft Decision Evoenergy 2014-19 distribution determination*, September 2018.

31 Ibid.

32 Refer to our remade draft decision for a summary of stakeholders' comments on Evoenergy's proposal for the 2014-19 regulatory control period. ECA, ECPC, ECRC and CCP10 considered the proposal to be in the long-term interest of Evoenergy's customers: AER, *Draft Decision Evoenergy 2014-19 distribution determination*, September 2018, pp. 16-18.

33 The ACT Energy Consumers Policy Consortium (ECPC) includes the ACT Council of Social Service, Care Financial Counselling Service, Conservation Council ACT Region, SEE-Change and the Small Business Taskforce of the Canberra Business Chamber.

34 The Evoenergy Energy Consumer Reference Council (ECRC) includes the Tuggeranong Community Council, Australian National University, Engineers Australia, Canberra Business Council, Master Builders Association, SEE-Change, Gungahlin Community Council, Council of the Ageing, Property Council of Australia, ACT Council of Social Services, ACT Youth Advisory Council, Canberra Urban and Regional Futures.

35 https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/evoenergy-actewagl-distribution-determination-2014-19-remittal

4.1 Evoenergy

In its response to our remade draft decision, Evoenergy submitted:[36]

> "Evoenergy welcomes the Australian Energy Regulator's (AER's) draft decision to accept Evoenergy's proposal for the remittal of its 2014-19 electricity distribution determination…
>
> The AER's draft decision will lead to an estimated $1 million being returned to consumers in the 2019-24 regulatory control period so as to ensure Evoenergy does not recover additional revenue in excess of $26 million. This is comprised of an estimated $4.7 million over-recovery of distribution SCS [standard control services] revenues and an estimated $3.8 million under-recovery of transmission SCS revenues.
>
> While the AER's draft decision appears to contemplate that these amounts will be returned to distribution users and recovered from transmission users respectively, the mechanics of how this will be achieved are unclear.
>
> In particular, the estimated under-recovery of transmission SCS revenues associated with the 2014-19 remittal decision is unclear. This under-recovery of transmission SCS revenues could be provided for by establishing a control mechanism for the determination of Evoenergy's transmission SCS revenue cap in the 2019-24 determination and including in the formulae for this control mechanism a term or terms that operate to include the estimated under-recovery of 2014-19 transmission SCS revenues in the revenue cap for 2019/20, and a true-up of the difference between the estimated and actual transmission SCS under-recovery in the revenue cap for 2020/21.
>
> Evoenergy invites the AER to consider this proposal. Evoenergy requests that the AER include details of how it proposes to return the estimated $1 million to consumers in the 2019-24 regulatory control period in its final remittal decision, and provide Evoenergy with an opportunity to comment on the AER's proposed approach before the final determination for 2019-24 is made."

We have engaged with Evoenergy in response to the matters raised in its submission and have provided additional clarification in section 5.4.1.

4.2 Energy Consumers Australia

In its response to our remade draft decision, ECA submitted:[37]

> "We supported Evoenergy's remittal proposal in our letter of 25 June 2018…with the view that the benefits of the proposal outweighed the costs…
>
> The AER's draft decision is to accept Evoenergy's proposal…
>
> We support this decision for the reasons outlined in our 25 June 2018 letter…which is that consumers stand to benefit from:
>
> - The resolution of the proposed price path, with Evoenergy forgoing to re-open the contentious issues arising from the Federal Court decision
> - The significant reduction in real operating expenditure, which is reflected appropriately in Evoenergy retaining $26 million to meet costs associated with achieving this reduction, in particular redundancy costs

36 Evoenergy, *Response to AER draft decision on Evoenergy 2014-19 electricity distribution determination*, 5 October 2018.

37 Energy Consumers Australia, *Draft decision: Evoenergy (ActewAGL) 2014-19 electricity distribution determination remittal*, 18 October 2018.

- No real increase in prices (for standard control services) over the period 2019-24 as a result of the proposal."

4.3 Consumer Challenge Panel

In its response to our remade draft decision, CCP10 submitted:[38]

> "The Consumer Challenge Panel, sub-panel 10 (CCP10) endorses this decision as being in the best, long term interests of consumers and an appropriate resolution for the remitted decision and in the 'novel' circumstances associated with making the remitted decision…
>
> The Draft Decision involves Evoenergy retaining up to $26 million in revenue that could notionally otherwise be returned to consumers, but this needs to be considered in the context of the overall proposal. Consumers will benefit from:
>
> - the certainty provided by the resolution of the proposed price path;
> - the removal of the risk for consumers from the re-opening of the contentious issues from the Federal Court decision, particularly in regard to debt costs;
> - the reductions in operating expenditure that Evoenergy has achieved on an ongoing basis;
> - the return of approximately $1m to consumers over the 2019-24 regulatory period;
> - Evoenergy's commitment that there will be no real increase in prices for standard control services during 2019-24 as a result of this proposal; and
> - enhanced focus on ongoing consumer engagement.
>
> A feature of the Evoenergy remittal proposal is that the revenue effects will be smoothed over the 2019-24 period, contributing to price stability for Evoenergy's consumers. In order to achieve this proposal, Evoenergy has chosen not to re-open contentious matters following the Federal Court decision.
>
> It is our opinion that the benefits outweigh the costs, in aggregate, for consumers from this proposal…
>
> CCP10 commends Evoenergy for taking this opportunity to resolve the 2014-19 revenue determinations. Consumers were not well served by the regulatory impasse between the AER and the NSW/ACT businesses around the 2014-19 determinations.
>
> We also commend the consumer groups on their willingness to engage with Evoenergy for this remittal process and the 'good' faith' that they have demonstrated, and which has been responded to very constructively by Evoenergy."

38 Consumer Challenge Panel, *Evoenergy 2014-19 revenue allowance remittal Draft Decision*, 5 October 2018.

5 Reasons for our remade final decision

Our remade final decision is in essence unchanged from our remade draft decision, with minor differences (totalling $0.1 million more than our remade draft decision) attributable to rounding in our models.[39] 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.[40]

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, having regard to stakeholder views, 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 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 from the limited merits and judicial review processes
- when we have had a number of Tribunal and Federal Court processes, since the Tribunal's decision on Evoenergy, 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 Evoenergy'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

39 AER, *Draft Decision Evoenergy 2014-19 distribution determination*, September 2018.
40 NEL, ss. 16(1)(d)(i) and 16(2).

- when our decision has the potential to create significant retail price fluctuations if it differs materially from our 2015 final decision[41]
- when we have received Evoenergy's revenue proposal for the forthcoming 2019-24 regulatory control period and we have published our draft decision on that proposal
- when there is support from a range of stakeholders, including consumer groups, that our remade draft decision and Evoenergy's proposal is in the long-term interests of Evoenergy'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 Evoenergy'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.[42]

This is the same approach we applied in our remade draft decision[43] and 2015 final decision.[44] This approach was also affirmed by the Tribunal in its reasons of 26 February 2016.[45]

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 Evoenergy's proposal, we note that there are potentially a range of possible outcomes that may meet the Tribunal's directions.

5.2 Assessment of Evoenergy's proposal

In light of the novel circumstances we are faced with, and the information before us, we are satisfied that accepting Evoenergy'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 Evoenergy's proposal are outlined below.

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41 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 Evoenergy recover any additional revenues that result from our decision across both 2014–19 and 2019–24 regulatory control periods. See AEMC, AEMC, *Rule determination: National Electricity Amendment (Participant derogation - ACT DNSP revenue smoothing) Rule 2017, 1 August 2017;* AEMC, *National Electricity Amendment (Participant derogation - ACT DNSP revenue smoothing) Rule 2017 No. 7, commencing 15 August 2017;* 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.

42 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].

43 AER, *Draft Decision Evoenergy 2014-19 distribution determination*, September 2018.

44 AER, *Final decision, ActewAGL distribution determination 2015−16 to 2018−19, Overview*, April 2015, pp. 53-54.

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

First, remaking the cost of debt constituent decision reveals a result that is unchanged from our remade draft decision and consistent with the revenue that we arrived at in our 2015 final decision. Similarly, our remade opex decision is unchanged from our remade draft decision and based on our 2015 final decision with the addition of redundancy costs that Evoenergy has incurred in meeting these forecast levels. This is discussed in sections 5.3.1 and 5.3.2, respectively. This result also aligns with Evoenergy'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 practice and, in our view, is a principle that is in the long-term interests of consumers.[46] 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 Evoenergy (particularly in light of its 2019-24 regulatory proposal which is currently under review).[47] 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 Evoenergy gave to us to govern prices for the 2016-17, 2017-18 and 2018-19 regulatory years.[48]

Third, we consider that Evoenergy's revenue proposal represents an efficient level of expenditure necessary for it to provide safe and reliable electricity services to its consumers. As we discuss 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 Evoenergy'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 Evoenergy so far during the 2014-19 regulatory control period may be done at least cost to the customer.

The following observations are relevant. Evoenergy's proposal:

- is effectively $124 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 31 per cent relative to its January 2015 revised regulatory proposal (n.b. Evoenergy 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.)

46 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.

47 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 Evoenergy remittal proposal and they have expressed similar views on this matter.

48 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.

We note that Evoenergy'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.[49]

In coming to a revenue allowance of $26 million above our 2015 final decision, 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 our 2015 decision. 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, CCP10, ECPC and ECRC in respect of our remade draft decision and Evoenergy's proposal. Notably, given the circumstances, each of these stakeholders considers that this revenue allowance results in an outcome that is in the long-term interests of Evoenergy's customers.[50]

The implications for our control mechanism constituent decisions for the 2014-19 and 2019-24 regulatory control periods are discussed in section 5.4.1.

5.3 Remaking the constituent decisions for operating expenditure, return on debt and service target performance incentive scheme

The Tribunal's directions that we are to comply with in remaking our decision for Evoenergy are as follows:[51]

> "(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 a broader range of modelling, and benchmarking against Australian businesses, and including a 'bottom up' review of ActewAGL's forecast operating expenditure;

49 Evoenergy, *Proposal for the remittal of Evoenergy's 2014-19 determination*, 24 July 2018.

50 Energy Consumers Australia, *Draft decision: Evoenergy (ActewAGL) 2014-19 electricity distribution determination remittal*, 18 October 2018; Energy Consumers Australia, *Proposal for the remittal of Evoenergy's 2014-19 determination*, 25 June 2018; Energy Consumers Policy Consortium, *Response from ACT ECPC to Evoenergy proposal regarding resolution of 2014-2019 regulatory determination*, 29 June 2018; Evoenergy Energy Consumer Reference Council, Evoenergy 2014-2019 determination: remittal proposal, 27 June 2018; Consumer Challenge Panel, *Evoenergy 2014-19 revenue allowance remittal Draft Decision*, 5 October 2018; Consumer Challenge Panel, *Evoenergy 2014–19 revenue allowance remittal proposal*, 21 June 2018.

51 Australian Competition Tribunal, *Application by ActewAGL Distribution [2016] ACompT 4*, 26 February 2016. Note direction (d) 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].

(b) the AER is to make the constituent decision on the service target performance incentive scheme in the light of such variations as are made to the Final Decision by reason of (a) hereof;

(c) 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;

...

(e) 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 opex, the cost of debt and STPIS remain unchanged on remittal.

In the following sections, we set out our remade constituent decisions for opex, the cost of debt and STPIS, as well as the implications for our control mechanism constituent decisions for the 2014-19 and 2019-24 regulatory control periods.[52]

5.3.1 Operating expenditure constituent decision

In this remade final decision, our remade operating expenditure (opex) constituent decision has not changed from our remade draft decision.[53]

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.

In making our 2015 final decision, we found that the actual opex incurred by Evoenergy in its proposed base year of 2012-13 was materially greater than what a prudent and efficient network service provider would incur in delivering safe and reliable network services to customers. As a result, Evoenergy's actual opex for this year could not be used as a basis to forecast opex for the 2014-19 regulatory control period.

Consistent with the NER, we substituted a lower base opex amount as the starting point of our substitute estimate for the 2014-19 regulatory control period.[54] We relied on one of our economic benchmarking models (the Cobb Douglas Stochastic Frontier Analysis (SFA) model), with appropriate adjustments to estimate our substitute base opex amount. We also noted that, based on the information available to us at the time, any costs incurred by Evoenergy in transitioning from its actual higher level of opex to a lower level could not be included as part of an opex forecast that reasonably reflected the opex criteria.

52 At the same time as releasing this remade final decision, we have released a separate final decision adjustment determination for Evoenergy that has relevance to both 2014-19 and 2019-24 regulatory control periods. See AER, *Final Decision Evoenergy adjustment determination*, November 2018.

53 See section 5.3.1 of: AER, *Draft Decision Evoenergy 2014-19 distribution determination*, September 2018.

54 NER, cl. 6.5.6(d) and 6.12.1(4)(ii).

The Tribunal found that our decision to reject Evoenergy's opex forecast was not in error. However, the Tribunal did determine that we erred in the emphasis we placed on the Cobb Douglas SFA benchmarking model in arriving at our substitute estimate. This decision was subsequently upheld by the Federal Court.

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 determine our own substitute estimate. 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.

In its proposal, Evoenergy accepts our 2015 final decision opex forecast with the addition of the labour redundancy costs it has actually incurred in reducing its opex.[55] It states that the inclusion of redundancy expenses will result in an increase to our 2015 final decision opex forecast of $20.9 million ($2018-19), or 6 per cent, over the 2014-19 period.

Our assessment has been informed by the Tribunal's directions to us, and the new and updated information available to us since our 2015 final decision (in particular, Evoenergy's actual and estimated opex for the current regulatory control period). We have also been informed by our extensive consultation with Evoenergy and consumer representatives.

In the context of all the information available to us, our remade opex forecast consists of two components:

- an estimate of a prudent and efficient level of recurrent (or underlying) opex that Evoenergy would need for the safe and reliable provision of electricity services[56]
- an estimate of the non-recurrent costs (including transition costs), if any, above this level of underlying opex that can be considered efficient and prudent costs consistent with the opex criteria[57]

For the reasons set out in this section, we are satisfied that Evoenergy's proposed opex forecast is consistent with the opex criteria. Table 5-1 sets out this opex forecast.

Table 5-1 Evoenergy 2014-19 remade final decision – opex forecast ($million, 2013–14)

	2014-15	2015–16	2016–17	2017–18	2018–19	Total
Opex forecast	61.52	46.60	48.41	48.90	50.30	255.72

55 Evoenergy, *Proposal for remittal of Evoenergy's 2014-19 determination*, 24 July 2018, pp. 4-5
56 See section 5.3.1.1 of: AER, *Draft Decision Evoenergy 2014-19 distribution determination*, September 2018.
57 See section 5.3.1.2 of: AER, *Draft Decision Evoenergy 2014-19 distribution determination*, September 2018.

Further information on our analytical approach and the data we used to inform our analysis is outlined in our remade draft decision.[58] 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.

5.3.1.1 Reasons for our decision

Our assessment of recurrent opex

This section provides our view on the prudent and efficient level of recurrent (or underlying) opex that Evoenergy would need for the safe and reliable provision of electricity services over the 2014-19 period. In reaching our view, we have primarily relied on Evoenergy's actual costs over the first three years of the 2014-19 regulatory control period and its opex estimates for the last two years. This information was not available to us at the time of our 2015 final decision or the Tribunal and Federal Court decisions.[59]

The revealed data shows that Evoenergy achieved significant reductions in opex between 2012-13 and 2016-17, driven primarily by a restructuring program that saw Evoenergy decrease its workforce by 133 full-time equivalent staff. Evoenergy's opex between 2015-16 and 2018-19 is consistent with (or below) our opex forecast set in our 2015 final decision, and Evoenergy expects that it will be able to sustain these savings into the next (2019-24) regulatory control period.[60] To this effect, Evoenergy proposed its 2017-18 opex estimate as the base year for its 2019-24 revenue forecast, which we accepted in our draft decision on its 2019-24 distribution determination.[61]

Evoenergy appears to have responded to the strong incentives imposed by the regulatory regime and use of economic benchmarking. Having regard to the Tribunal's directions, and to cross-check our revealed costs and opex targets analysis, we have tested the efficiency of Evoenergy's revealed opex and opex targets with two supplementary tools:

- benchmark modelling of Evoenergy's actual opex for 2016-17 and opex forecast for 2017-18 shows that its opex up until 2017-18 represents a significant 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 some of the underlying reasons for Evoenergy's reductions in opex since 2012-13 shows that it has made significant reductions in various cost categories, namely labour costs, vegetation expenditure, maintenance costs and overheads

Taken together, this supplementary analysis shows that Evoenergy's revealed opex is not materially inefficient when compared to its peers, and we are satisfied that its opex forecast reasonably reflects the opex criteria.

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58 See section 5.3.1 of: AER, *Draft Decision Evoenergy 2014-19 distribution determination*, September 2018.

59 In 2015, we found that Evoenergy's 2012-13 opex (proposed as its base year for the 2014-19 period) was materially inefficient and the Tribunal found this decision was not in error in its 2016 decision.

60 Evoenergy, *Regulatory proposal 2019-24, Attachment 6: Operating Expenditure*, January 2018, p.6-2 and p.6-9.

61 AER, *Draft decision Evoenergy distribution determination 2019 to 2024*, September 2018.

Our assessment of non-recurrent efficient costs

In remaking our opex decision, we must also consider what costs, if any, above our forecast level of underlying opex can be considered efficient and prudent costs consistent with the opex criteria. We will include these costs in our overall opex forecast.

In its proposal, Evoenergy accepts our 2015 final decision on opex with additional revenues of $20.9 million ($2018-19) to account for redundancy expenses.[62] In this remade final decision, we are satisfied that a forecast opex allowance for the 2014-19 regulatory control period which includes Evoenergy's proposed $20.9 million ($2018-19) for labour redundancy costs reasonably reflects the opex criteria. In coming to this position, we have taken into account the opex factors and the RPP, the Tribunal's directions and reasons, and the new information about Evoenergy's costs that are now available to us.[63]

In undertaking our assessment, we have considered two things:

- first, whether these redundancy costs are of the kind that a prudent operator would incur and could be included in a forecast opex allowance – our position is that, in the circumstances, this is the case
- second, whether the quantum of redundancy costs is efficient and prudent such that they reasonably reflect the opex criteria – on the basis of the information available to us, these amounts incurred by Evoenergy appear to be efficient

We recognise that our position in this remade final decision appears to be a departure from our 2015 final decision. The facts before us at the time of our 2015 decision did not support a conclusion that not providing a transition would deprive a distributor of recovering at least its efficient costs or would put at risk the operation of the network and give rise to safety and reliability concerns. However, two intervening events have since occurred:

- first, the Tribunal's direction to reconsider these costs, the subsequent Full Federal Court case and the merits and judicial review cases concerning SAPN Power
- second, we now have information on Evoenergy's actual performance for the first three of the five regulatory years of the 2014-19 regulatory control period

The Tribunal did not accept our position on transition in the 2015 final decision.[64] The Tribunal's position, which was subsequently upheld by the Full Federal Court and read in light of the recent merits and judicial review cases concerning SAPN Power, identified three findings that are now relevant to remaking our opex decision and the consideration of non-recurrent transition costs.

- First, whether a decision (such as agreeing to an enterprise bargaining agreement (EBA or EA)) is an endogenous managerial decision of a distributor, or exogenous and not within the control of the distributor, does not itself determine whether a transition path allowance should be provided to allow a distributor to recover a particular kind of cost. It is simply one consideration that must be taken into account in light of all the available

62 Evoenergy, *Proposal for remittal of Evoenergy's 2014-19 determination*, 24 July 2018, p.5.
63 NER, cl 6.5.6(c) and 6.5.6(e); NEL, ss 7A(2)(a) and 7A(3).
64 *Applications by Public Interest Advocacy Centre Ltd and Ausgrid* [2016] ACompT 1, [494].

before us.[65] The Tribunal's position was subsequently confirmed by the Full Federal Court and the Tribunal again in the merits review case concerning SAPN Power.[66]

- Second, an EBA agreed to under the *Fair Work Act 2009 (Cth)* is not an instrument that constitutes a "regulatory obligation or requirement" under the NEL. It follows that recovery of wage increases and redundancy payments, solely by complying with the terms of an EBA, is not a sufficient reason for those costs to form part of an opex allowance. Recent merits and judicial review cases involving SAPN Power have confirmed that an EBA, for the reason that it does not materially affect the provision of standard control services, is not a regulatory obligation or requirement under the NEL.[67]
- Third, we note the finding of the Tribunal and the Full Federal Court[68] in the merits and judicial review cases concerning SAPN Power that compliance with an EBA is not necessary to "maintain the safety of the distribution system through the supply of standard control services" in accordance with clause 6.5.6(a)(2) of the NER.

We must now decide the transition cost question in light of all the information available to us.[69] Since our 2015 final decision, a range of new and updated information on the actual operation of Evoenergy's redundancy and restructuring program is available. This includes the types and quantity of transition costs incurred over the first three years of the 2014-19 regulatory control period. It also includes information on how Evoenergy has actually managed voluntary and involuntary redundancies. In addition, we have the Tribunal and Full Federal Court decisions and associated reasoning and commentary that will guide us in reconsidering and remaking our opex decision. Finally, we also have recent submissions from consumer representative groups on the issue of transition costs and redundancies.

The approach we have applied in considering transition costs and in remaking this final decision has also been influenced by the novel circumstances that we face now. Ultimately, whether we include transition costs remains a matter for us to determine against the opex criteria, taking into account the RPP and in a way that forms part of an overall decision that we are satisfied will, or is likely to, contribute to the achievement of the NEO to the greatest degree.[70] We have assessed Evoenergy's proposal against the opex criteria in response to the Tribunal's directions, including the three findings and reasoning identified above and the information now available to us.

As noted above, Evoenergy's actual opex over the 2014-19 regulatory control period has reached a level that is consistent with the forecast opex allowance made in our 2015 final decision. We have considered whether it was necessary for Evoenergy to incur the kinds of redundancy costs it incurred to arrive at this level of opex.

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65 Ibid. [434] and [436].

66 *Australian Energy Regulator v Australian Competition Tribunal (No 2)* [2017] FCAFC 79, [370]; *Application by SA Power Networks* [2016] ACompT 11, [541] and [542].

67 *Application by SA Power Networks* [2016] ACompT 11, [521]-[529]; and *SA Power Networks v Australian Competition Tribunal (No 2)* [2018] FCAFC 3, [385].

68 *Application by SA Power Networks* [2016] ACompT 11, [545]; and *SA Power Networks v Australian Competition Tribunal (No 2)* [2018] FCAFC 3, [397]-[399].

69 NER 6.12.1(4)

70 NER, cl 6.5.6(c) and 6.5.6(e); NEL, ss 7, 7A(2)(a), 7A(3) and 16.

Evoenergy states that its redundancy program was critical to achieving the lowest possible opex for the 2014-19 regulatory control period while achieving the opex objectives.[71] Evoenergy also submits that the quantum of the expenses incurred in implementing its redundancy program was dictated by Evoenergy's legal obligations under its EA and the *Fair Work Act 2009 (Cth)*.[72] Evoenergy has confirmed that all redundancies within Evoenergy during the 2014-19 regulatory control period were implemented in accordance with its obligations as outlined in the relevant provisions of the EA and the *Fair Work Act 2009 (Cth)*.[73] Furthermore, it states that because its redundancy costs were incurred in compliance with these obligations, the costs should be considered prudent and efficient in the context of the Tribunal and Federal Court decisions.[74]

Evoenergy has demonstrated that it has implemented its redundancy program consistent with the obligations it faced under the EA that applied at the time. We have no information in front of us that would suggest otherwise.

In the context of Evoenergy's actions since our 2015 final decision, the Tribunal's directions to us, and submissions from consumer representatives[75], we consider that Evoenergy's redundancy costs are of a kind, in the circumstances, that can be characterised as costs required by a prudent operator to achieve the opex objectives.[76] Our reasons here do not rely on the instrument in which these costs have been incurred as being characterised as a regulatory obligation or requirement under the NEL.

At the time of our 2015 final decision, we did not have available to us information on Evoenergy's revealed costs or details on how the redundancy program has operated. Due to the novel circumstances before us, we have available to us information on Evoenergy's revealed costs and details on how the redundancy program has operated. The Tribunal directed us to have regard to these costs. We have formed the view that, had Evoenergy not incurred these kind of transformation costs, it is likely it would not have arrived at the level of opex that it has to date and is forecasting that it will achieve in the 2014-19 regulatory control period. It has therefore been necessary for Evoenergy to incur these costs in order for it to arrive at a level of opex consistent with the forecast opex allowance in our 2015 final decision that we were satisfied reasonably reflects the opex criteria. Allowing Evoenergy to recover these kinds of costs is therefore also consistent with providing it with a reasonable opportunity to recover at least the efficient costs it incurs in providing direct control network services.

Having determined that the kind of redundancy costs that Evoenergy has incurred have been necessary for it to achieve the opex objectives, we now consider whether the quantum

71 Evoenergy response to AER information request, 13 July 2018, p. 3.
72 Ibid, p. 3.
73 Ibid, p. 3.
74 Ibid, p. 4.
75 Consumer Challenge Panel, *CCP10 Response to AER Issues Paper: Remitted decisions for NSW/ACT 2014-19 electricity distribution determinations operating expenditure*, 30 November 2017, p. 4 and p. 19; Energy Consumers Australia, Letter to AER on Evoenergy 2014-19 proposal, July 2018, p. 1.
76 NER, cl 6.5.6(c)(2) and 6.5.6(c)(3).

of $20.9 million ($2018-19) is efficient and that which a prudent operator would incur for the purposes of the opex criteria. This is consistent with CCP10's views.[77]

For the reasons set out in this section, Evoenergy has justified that its actual redundancy costs are efficient and are those which a prudent operator would incur for the purposes of the opex criteria, in these circumstances.

Evoenergy submitted that the quantum of its redundancy program is efficient.[78] In examining whether Evoenergy's redundancy costs are efficient, we have considered the incentives it faced in incurring these costs over the current period. In Evoenergy's circumstances over the 2014-19 regulatory control period, we consider it faced a strong incentive to minimise its redundancy costs within the confines of its legal obligations. To date, Evoenergy has faced uncertainty around its final revenue allowance and the final outcome of the appeals process. Faced with this uncertainty, Evoenergy implemented a reform program to reduce its own costs. This uncertainty was noted in its 2019-24 regulatory proposal.[79]

Evoenergy notes it has been necessary to incur additional (redundancy) costs to minimise its total opex within the 2014-19 period. If it were to incur more redundancy costs than necessary to reduce it opex, this may have undermined an objective to minimise total costs given the uncertainty surrounding its revenue allowance and the outcome of the appeals process. All else equal, we consider that this would have placed a strong incentive on Evoenergy to minimise costs generally, including its redundancy costs. CCP10 also submitted that Evoenergy faced strong incentives to improve its efficiency.[80]

To test these assumptions, we requested information from Evoenergy about its process and strategy for implementing its redundancy program and reducing total opex.[81] We also received details about the options Evoenergy considered.[82] Evoenergy also submitted that its redundancy costs were dictated or constrained by the terms of the EA and *Fair Work Act 2009 (Cth)*.[83]

Consistent with the statements made by the Tribunal, we have had regard to the obligations under Evoenergy's EA that was in place at the time of its redundancy program.[84] We have also reviewed other relevant supporting documentation that it originally provided within its January 2015 revised proposal (some of which was provided on a confidential basis).[85] Our review confirmed that the key redundancy provisions of Evoenergy's EA are consistent with

77 Consumer Challenge Panel, *CCP10 Response to AER Issues Paper: Remitted decisions for NSW/ACT 2014-19 electricity distribution determinations operating expenditure*, 30 November 2017, p. 4

78 Evoenergy response to AER information request, 13 July 2018, p. 4

79 Evoenergy, *Regulatory proposal for the ACT electricity distribution network 2019–24, Attachment 6: Operating Expenditure*, January 2018, p. 6-2

80 Consumer Challenge Panel, *CCP10 Response to AER Issues Paper: Remitted decisions for NSW/ACT 2014-19 electricity distribution determinations operating expenditure*, 30 November 2017, p. 34.

81 Evoenergy response to AER information request, 13 July 2018, p. 3.

82 Ibid, pp. 2-3.

83 Ibid, p. 3.

84 ActewAGL and Combined Unions Enterprise Agreement 2014, Section L

85 ABLA, Review of ActewAGL's Enterprise Bargaining Provisions Against Other Electricity Network Service Providers, 31 January 2015 (Confidential)

most other distribution network service providers (DNSPs) in the National Electricity Market. In particular, for voluntary redundancy payments, the amount of leave paid for each year of service and the maximum payments allowed per staff (each measured in weeks) are similar between Evoenergy and most other DNSPs. There is no evidence to suggest that costs incurred in compliance with Evoenergy's EA would be inconsistent with that incurred by a prudent operator acting efficiently. This is also supported by CCP10.[86]

5.3.2 Return on debt constituent decision

In this remade final decision, our remade debt constituent decision has not changed from our remade draft decision.[87]

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.[88] 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).

Evoenergy's revenue proposal has implicitly adopted our return on capital allowance that we set in our 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.

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.[89] Evoenergy's proposal is consistent with our new approach to determining the return on debt.

The revised rate of return allowance for this final decision 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)[90] and fully updated data from Bloomberg. The RBA data has been updated for the pre 5 June 2018 RBA revisions only, due to the unique circumstances described in section 5.3.2.5. 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

86 Consumer Challenge Panel, *CCP10 Response to AER Issues Paper: Remitted decisions for NSW/ACT 2014-19 electricity distribution determinations operating expenditure*, 30 November 2017, p.29.

87 See section 5.3.2 of: AER, *Draft Decision Evoenergy 2014-19 distribution determination*, September 2018.

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

89 We note a very small change in revenue occurs due to the use of updated debt yield data (pre 5 June 2018 updates).

90 Reserve Bank of Australia, Letter to AER, *Revisions to statistical table F3,* 4 July 2018. https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/review-of-rate-of-return-guideline/draft-decision

distribution determination. Given the novel circumstances, the late timing of the 5 June 2018 RBA data update[91], the good faith in which parties have sought resolution of the remittal, and the broad stakeholder support for Evoenergy'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.[92]

Table 5-2 Evoenergy 2014-19 remade final decision – return on debt and return on capital ($million, 2013-14) and percentage debt portfolio rate of return[93]

	2014-15	2015-16	2016-17	2017-18	2018-19	Total
Final decision debt portfolio rate of return	6.12%	5.95%	5.89%	5.78%	5.62%	
Final decision return on debt	30.4	30.3	30.2	30.0	29.2	150.2
Final decision return on capital	53.9	54.5	54.6	54.6	53.9	271.4

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).[94] 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).[95] 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.[96, 97, 98]

91 Ibid.
92 See section 5.3.2.5 of: AER, *Draft Decision Evoenergy 2014-19 distribution determination*, September 2018.
93 These numbers reflect the final decision including annual debt updates using data prior to the 5 June 2018 RBA update.
94 NER ss. 6.5.2(b), 6A.6.2(b).
95 NER ss. 6.5.2(c), 6A.6.2(c).
96 NEL, ss. 7 and 16(1)(d).
97 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).
98 NEL, s. 16(1)(c).

5.3.2.2 The Tribunal's decision

On 26 February 2016, the Tribunal handed down its decisions.[99] 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.[100] 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).[101]

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
- 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.

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99 *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.

100 *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).

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

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 Evoenergy should be interpreted.[102] 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 decision[103]
- the decisions of the Australian Competition Tribunal for ActewAGL (Gas) Distribution and Jemena Electricity Networks Ltd[104]

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 Evoenergy, 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 (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'.[105] We consider these decisions support our ex ante interpretation of efficient financing costs.

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

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

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

105 Ibid.

These decisions and our view on them are covered in further detail in our debt Position Paper on our remitted debt decisions.[106]

On 18 January 2018, the Full Federal Court handed down its decision on SA Power Networks v Australian Competition Tribunal.[107] This was a review brought by SA Power Networks from a decision of the Tribunal.[108]

The Full Federal Court noted that the Court had not had the benefit of hearing a number of issues in relation to Evoenergy'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 Paper[109] 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 Evoenergy from changing the debt estimation methodology.

We rely on the reasoning in our APA VTS decision in making this final decision for Evoenergy, as set out in Attachment 3 of our APA VTS determination.[110] This 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.[111]

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

106 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.

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

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

109 Ibid.

110 AER, *Final Decision APA VTS gas access arrangement 2018 to 2022, Attachment 3 - Rate of return*, November 2017; This decision discusses and applies substantively identical provisions for rate of return as those applicable to electricity distribution.

111 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.

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 Paper[112] and remade draft decision.[113] 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.[114]

5.3.3 Service target performance incentive scheme

In this remade final decision, our remade service target performance incentive scheme (STPIS) constituent decision has not changed from our remade draft decision.[115]

The STPIS is intended to balance incentives to reduce expenditure with the need to maintain or improve service quality. It achieves this by providing financial incentives to distributors to maintain and improve service performance where customers are willing to pay for these improvements. Under clauses 6.3.2 and 6.12.1(9) of the NER, our regulatory determination must specify how any applicable STPIS is to apply in the regulatory control period.

In our 2015 final decision, we considered that our allowed expenditure reasonably reflected the sufficient amount that Evoenergy would need to maintain reliability at the current level. Therefore, in that decision, we were of the view that Evoenergy's reliability of supply performance targets should be based on its average performance over the previous five regulatory years without adjustment.[116]

112 Ibid.
113 See section 5.3.2 of: AER, *Draft Decision Evoenergy 2014-19 distribution determination*, September 2018.
114 Ibid.
115 See section 5.3.3 of: AER, *Draft Decision Evoenergy 2014-19 distribution determination*, September 2018.
116 AER, *ActewAGL distribution determination 2015−16 to 2018−19*, Attachment 11, April 2015.

In the course of its review of our 2015 final decision, the Tribunal set aside our STPIS decision, noting the interrelatedness between opex and the form of the STPIS, and remitted it to us to be remade.[117]

In its proposal, Evoenergy submitted:[118]

> "…Evoenergy has been unable to meet its STPIS targets in 2015/16 and 2016/17 while reducing its opex in line with the opex allowance in the 2015 determination. In Evoenergy's view, it is unreasonable to expect no change in historical reliability performance given a 26 per cent reduction in the opex allowance in the 2015 determination (compared with actual opex in the 2009-14 regulatory control period) with no corresponding increase in capex."

In its proposal, Evoenergy estimated that the level of impact on the STPIS outcomes could be represented by a simplified adjustment equal to an approximately 5 per cent change in all of the STPIS targets for 2015-16 and 2016-17.[119] This proposed change to Evoenergy's STPIS targets results in a STPIS penalty for the current regulatory period of approximately $1.2 million for the 2015-16 and 2016-17 regulatory years.

We consider that Evoenergy's proposal is reasonable because of the significant reduction in opex in our 2015 final decision and the fact that our remade final decision for opex is above those opex targets set out in our 2015 final decision. In addition, Evoenergy has underspent on its actual opex allowance for 2015-16 and 2016-17, which may be indicative of the impact uncertainty has had on its actual expenditure as a result of the Tribunal process.

CCP10 and ECA supported our remade draft decision on STPIS.[120]

Accordingly, our remade final decision is to accept Evoenergy's proposed changes to its STPIS performance targets. For the intended STPIS outcome of a $1.2 million STPIS penalty, we have applied a 5.25 per cent adjustment to all of Evoenergy's STPIS performance targets for 2015-16 and 2016-17 only, but have maintained the STPIS performance targets for 2017-18 and 2018-19 as determined in our 2015 final decision. Table 5-3 presents Evoenergy's STPIS performance targets for the reliability of supply component.

117 Australian Competition Tribunal, *Application by ActewAGL Distribution [2016] ACompT 4*, 26 February 2016.
118 Evoenergy, *Proposal for the remittal of Evoenergy's 2014-19 determination*, 24 July 2018.
119 Ibid.
120 Consumer Challenge Panel, *Evoenergy 2014-19 revenue allowance remittal Draft Decision*, 5 October 2018, p. 8. Energy Consumers Australia, *Draft decision: Evoenergy (ActewAGL) 2014-19 electricity distribution determination remittal*, 18 October 2018. p. 1.

Table 5-3 Evoenergy 2014-19 remade final decision – STPIS reliability targets for the 2014-19 regulatory control period

Year	2015/16	2016/17	2017/18	2018/19
Unplanned SAIDI				
Urban	31.912	31.912	30.320	30.320
Short rural	49.320	49.320	46.860	46.860
Unplanned SAIFI				
Urban	0.616	0.616	0.585	0.585
Short rural	0.942	0.942	0.895	0.895
Percentage of calls will be answered within 30 seconds	74.853	74.853	79.000	79.000

Source: AER analysis.

Due to the change in the average smoothed annual revenue requirement, the incentive rates applicable to Evoenergy for the reliability of supply performance parameters of the STPIS have been recalculated.[121] Table 5-4 presents Evoenergy's STPIS incentive rates.

Table 5-4 Evoenergy 2014-19 remade final decision – STPIS incentive rates for Evoenergy for the 2014-19 regulatory control period

Year	Urban	Short rural
Unplanned SAIDI	0.0723	0.0086
Unplanned SAIFI	3.8619	0.4879

Source: AER analysis.

5.4 Other aspects of the 2015 final decision to be varied

5.4.1 Control mechanism

The control mechanisms for standard control services and alternative control services were not a subject of Evoenergy's appeal of our 2015 final decision.[122] This remade final decision has implications for the operation of the control mechanism for standard control services for the 2019-24 regulatory control period.

121 In accordance with clause 3.2.2 of the STPIS and using the formulae provided in Appendix B of the national STPIS: see AER, *Service target performance incentive scheme*, November 2009, clause 3.2.2 and Appendix B.

122 The control mechanism for Evoenergy's distribution standard control services is the average revenue cap. A revenue cap and price caps apply to Evoenergy's transmission standard control services and alternative control services, respectively.

The Tribunal's directions that we are to comply with in remaking our decision include:

> "(e) 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."

Our remade final decision for the 2014-19 regulatory control period will result in a revenue allowance of $26 million above the revenue we approved for standard control services in our 2015 final decision that was set aside by the Tribunal. This $26 million figure comprises both distribution standard control services and transmission standard control services. At present, we estimate $0.9 million will be returned to consumers in the next (2019-24) regulatory control period, this amount representing the estimated net difference in revenue balances between distribution and transmission standard control services over the 2014-19 regulatory control period.

In order to effect the additional $26 million (and only that amount) for the 2014-19 regulatory control period, we have accounted for Evoenergy's feedback in the final decision adjustment determination that accompanies this remade final decision.[123] As a result, we will utilise the X-factors for transmission and distribution standard control services in the 2019-24 regulatory control period to effect the required outcome for the 2014-19 regulatory control period.[124]

We will require a true-up in the 2019-24 regulatory control period to ensure Evoenergy does not recover any additional revenue above the $26 million for the 2014-19 regulatory control period. This is because we will not know what Evoenergy's actual standard control services revenue for the 2014-19 regulatory control period will be until after this regulatory control period expires.[125] We will ensure Evoenergy earns no more than this amount through the design of the control mechanism for standard control services for the 2019-24 regulatory control period. We consider there are several options for enforcing the 2014-19 remade final decision through the control mechanisms for the 2019-24 regulatory control period. Any amounts recovered above that allowed in this decision will be returned to customers in the 2019-24 regulatory control period and determined as part of Evoenergy's 2019-24 distribution determination.[126]

A revenue cap will continue to apply to transmission standard control services in the 2019-24 regulatory control period. A revenue cap will also apply to Evoenergy's distribution standard control services in the 2019–24 regulatory control period. We proposed to adopt for Evoenergy the general properties of the control mechanism adopted for the NSW distribution businesses, including the 'unders and overs' accounts. With this in mind, we consider there are several options to ensure Evoenergy recovers no more than the $26 million set out in this remade final decision. For example, we could include an adjustment factor in the 'unders

123 AER, *Final Decision: Evoenergy adjustment determination*, November 2018.

124 The X-factors provide the revenue and/or price path for a distributor over a regulatory control period.

125 The $0.9 million to be returned by Evoenergy to customers in the 2019-24 regulatory control period is based on estimates, rather than actual revenue.

126 In performing the true-up, we will have regard to this remade final decision, our final decision adjustment determination, and Evoenergy's out-turn revenues for the 2014-19 regulatory control period (and any other relevant considerations).

and overs' accounts for distribution standard control services and for designated pricing proposal charges to correct for any estimates that have not been finalised at the time of this remade final decision.

In any case, any amounts recovered above that allowed in this remade final decision will be returned to customers in the 2019–24 regulatory control period and determined as part of Evoenergy'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.[127] The Tribunal made note of the error in its decision and left it to the AER to determine how best to address the error.[128] The error affected not only the decisions under that review, but the 2015 final decisions for the NSW and ACT distributors. The error had not been picked up during the review of the 2015 NSW and ACT 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 $921,430 ($2013-14, nominal) compared to our 2015 final decision.

On 15 December 2017, we notified Evoenergy (and other affected distribution businesses) in writing, stating that we were considering whether it is appropriate to correct the affected determinations when remaking our decisions.[129]

Evoenergy addressed this matter in its proposal, submitting:[130]

> "Evoenergy's proposal includes the correction of…errors in the 2015 determination:
>
> 1. The correction of an error in relation to the estimation of forecast inflation, which increases forecast inflation from 2.38 per cent in the original decision to 2.42 per cent in the remade decision."

5.4.3 Alternative control services metering opex error adjustment

There were two issues identified with respect to the AER's 2014-19 metering determination for Evoenergy which the AER will correct in this remade final decision. The first of these was the incorrect application of a forecast inflation rate of 2.38 per cent when a rate of 2.42 per cent should have been used (as described in section 5.4.2 above). The second was that the metering opex allowance was understated by $3.11 million ($2013-14). The result was that Evoenergy's metering revenue allowance was understated in the 2014-19 regulatory control period as compared to what it would have been, had these errors not occurred.

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

128 For example, see ACT, Application by ActewAGL Distribution [2017] ACompT 2, 17 October 2017, p i-iii.

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

130 Evoenergy, *Proposal for the remittal of Evoenergy's 2014-19 determination*, 24 July 2018.

Evoenergy has proposed to recover the foregone revenue through alternative control services charges in the 2019-24 regulatory control period.[131] This recovered revenue would be reflected in the net present value of Evoenergy's metering building block revenue for the 2019-24 regulatory control period being $3.7 million ($2018-19) higher than it would have been had this remade final decision not been made.

As noted in section 2, at the same time as releasing this remade final decision, we have released a separate final decision adjustment determination for Evoenergy that corrects the previously made error in the calculation of Evoenergy's metering opex allowance.[132] In the adjustment determination, we determined that the metering variation amount is $3.7 million ($2018-19) which Evoenergy is to recover in the 2019-24 regulatory control period.[133] We have incorporated this amount in our recent draft decision on the 2019-24 distribution determination for Evoenergy.[134] In particular, we incorporated this amount as an increase to Evoenergy's metering building block revenue requirement in net present value terms.[135]

To avoid doubt, the metering adjustment amount set out in our adjustment determination does not apply to standard control services.

5.4.4 Minor correction to our 2015 final decisions

On 20 May 2015, we published an open letter notifying our intention to correct an error in our 2015 final decision once any appeal to that decision is resolved.[136] As per the approach we took in our remade draft decision[137], and as part of this remade final decision for Evoenergy, we now refer and give effect to that open letter which sets out our proposed correction for the following error in our 2015 final decision:

1. Inaccurate description of metering in Appendix A to the Overview

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 Evoenergy's 2014-19 determination and supersede the error we had identified in our 2015 final decision.

131 Ibid. p.5-6
132 AER, *Final decision Evoenergy adjustment determination*, November 2018.
133 We note that Evoenergy, in its 2014-19 remittal proposal, estimated the value of this error as approximately $3.8 million. We have since confirmed the metering variation amount to equal $3.7 million ($2018–19).
134 AER, *Draft decision Evoenergy distribution determination 2019 to 2024*, September 2018.
135 NER, cl 8A.15.5(c)(3), cl 8A.15.5(c)(5) and cl 8A.15.5(c)(8).
136 AER, *AER letter to ActewAGL about correcting errors in ActewAGL distribution determination 2015−16 to 2018−19*, 20 May 2015.
137 See section 5.4.4 of: AER, *Draft decision Evoenergy 2014-19 distribution determination*, September 2018.