



# **Determination**

## **Easements tax change event pass-through for 2017-18 regulatory year**

### **AusNet Services**

May 2017

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## Overview

AusNet Services operates the majority portion of the Victorian electricity transmission network. Their network is built on a series of easements, which are subject to the Victorian Government's easements land tax. The National Energy Rules (the rules) provides a specific allowance for AusNet Services to pass-through to its consumers costs related to the payment of land tax on its easements.

An easements tax change event occurs when the actual easements land tax paid by AusNet Services to the Victorian Government differs from the regulatory allowance made for those purposes in AusNet Services' revenue determination.<sup>1</sup> This pass-through provision provides assurance that neither AusNet Services, nor its customers, will receive a windfall gain (or loss) due to the actual land tax payments required of AusNet Services being lower (or higher) than forecast in its revenue determination.

On 18 April 2017 AusNet Services submitted an application to the AER for a pass-through of costs related to a change in easements tax payable to the Victorian Government being lower than the amount forecast in the revenue determination. Its application submits that the amount it will refund (negative pass-through) to electricity users through reduction in transmission prices in 2017–18 will be \$1,894,731.

The AER must make a determination on AusNet Services' pass-through application. We must consider, with reference to the factors specified in the rules<sup>2</sup>, whether the pass-through is justified and whether the relevant amounts have been correctly calculated.<sup>3</sup>

We have assessed AusNet Services' application under the framework provided by the rules. In particular, we have considered:

- the provisions of NER cl 6A.7.3 and cl 11.6.21
- the material provided in AusNet Services' application
- AusNet Services' 2017–22 revenue determination.

We determine that AusNet Services has correctly identified the negative pass-through (refund) amount. AusNet Services can adjust its maximum allowed revenue in 2017–18 by this amount in accordance with the revenue determination.

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<sup>1</sup> NER, cl 11.6.21.

<sup>2</sup> NER cl 6A.7.3(j).

<sup>3</sup> NER cl 6A.7.3(d).

# 1 Determination

We consider that AusNet Services has established that a negative change event has occurred. The negative change event is an easements tax change event, and is a result of the actual land tax payments required to be made by AusNet Services to the Victorian Government being lower than the allowance made for such payments in its revenue determination.

The rules require us to determine the amount that should be passed through to customers.<sup>4</sup> We base our decision on an assessment of the factors set out in cl 6A.7.3(j) of the rules. We consider that AusNet Services has accurately calculated the effect of the negative change event on its business. Further, the pass-through amount that it proposes to pass on to customers is appropriate and meets the rule requirements. This pass-through amount is -\$1,894,731, and will be passed through in the 2017–18 regulatory year in accordance with the procedures set out in AusNet Services' 2017-22 revenue determination.<sup>5</sup>

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<sup>4</sup> NER cl 6A.7.3(d)(2).

<sup>5</sup> The revenue determination sets out that AusNet Services' maximum allowed revenue is arrived at by adding to or deducting from the allowed revenue the service target performance incentive scheme revenue increment (or decrement) and approved pass through amounts, AER, *Final Decision: AusNet Services Transmission Determination 2017–18 to 2021–22*, April 2017, Attachment 7, pp7-44.

## 2 AusNet Services' application

AusNet Services' application was submitted on 18 April 2017. The application and its attachments are available on our website.<sup>6</sup>

### 2.1 Background

Rule 6A.7.3(b) requires that, if a negative change event occurs, the AER may require the Transmission Network Service Provider to pass through to Transmission Network Users a negative pass through amount as determined by the AER under subparagraph (g).

Due to the delay in releasing our final revenue determination for 2017–22 for AusNet Services, we now have the latest land tax information, which was used in making AusNet Services' maximum allowable revenue allowance determination.

The actual land tax payable is substantially higher than AusNet Services' initial forecast in its initial regulatory proposal. Hence, in the final determination for 2017–22, we modified the annual provision for land tax for 2017–22 to closely match the projected land tax in future years, to increase the transparency and accuracy of the decision.

However, the approved land tax amount for 2017–18 represents an over-recovery of about \$1.9 million in AusNet Services' revenue requirement for that year. We informed AusNet Services about this effect, because we prefer that any negative pass through should be processed as quickly as possible, to be reflected in transmission tariffs for 2017–18.

AusNet Services must provide its revenue requirements for 2017–18 to the Australian Energy Market Operator (AEMO) by the end of April 2017, in order to enable AEMO to publish transmission network charges for 2017–18 by mid-May 2017.

While the final determination for the 2017–22 period is due to be released at the end of April 2017, we advised AusNet Services on 18 April 2017 of our provisional land tax provision for the 2017–22 period. The reason for doing this was because the decision would result in a negative pass through event occurring for the 2017–18 regulatory year. Based on our advice, AusNet Services made a negative pass-through application on 18 April 2017. This would enable us to make a timely decision on the amount of the pass through.<sup>7</sup> In turn, this enables AusNet Services to advise AEMO of its revenue requirement and have AEMO reflect this in transmission tariffs for 2017–18.

#### Easement land tax

AusNet Services' application relates to the payment of land tax on its easements in Victoria. An easement is a section of land over which AusNet Services has certain usage rights for its transmission network. This cost is a significant part of its operating expenditure.<sup>8</sup> An

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<sup>6</sup> <https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/cost-pass-throughs/ausnet-services-cost-pass-through-easement-land-tax-2017-18>.

<sup>7</sup> The amount is the subject of this determination.

<sup>8</sup> It comprises of approximately 50 per cent of AusNet Services' forecast operating expenditure.

allowance for it is made in the 2017–22 revenue determination. The rules contains a transitional provision that allows AusNet Services to recover any change between the actual amount of land tax payable and the forecast of land tax payable made in the determination to be recovered from consumers.<sup>9</sup> This is known as an easements tax change event.<sup>10</sup> This is either a positive change event or negative change event for the purposes of the pass-through provisions in the rules.<sup>11</sup> The transitional rules provide that the materiality threshold does not apply when considering an easements tax change event.<sup>12</sup>

## 2.2 Calculation of the pass-through amount

AusNet Services provided the assessment notice from the State Revenue Office which shows tax payable of \$136,365,015 (\$ nominal) between May 2017 and April 2018.<sup>13</sup> Our 2017–22 revenue determination for AusNet Services made an allowance for forecast land tax costs of \$135,019,541 for the 2017–18 regulatory year (in real 2016–17 dollars). The forecast for land tax made in the determination is escalated from real 2016–17 dollars to nominal terms in order to be comparable. The escalator for forecast inflation in the 2017–22 revenue determination is 2.399804305 per cent (rounded to 2.4 per cent as published).<sup>14</sup>

To calculate the equivalent nominal amount in current dollars AusNet Services escalates the \$135,019,541 real 2016–17 dollars as approved in the revenue determination forecast by the 2.4 per cent<sup>15</sup> forecast inflation rate for the regulatory period to arrive at the relevant 2017–18 dollars. The difference between the actual land tax payable and the forecast amount allowed for land tax in our determination, escalated to nominal dollars, is the appropriate pass-through amount. The calculation is as follows:

- (a) Verify the actual land tax payable: \$136,365,015 (in 2017-18 dollars, as per the 2017 Land Tax Assessment Notice)
- (b) Escalate the forecast allowance for land tax into comparable 2017–18 dollars (\$135,019,541 multiplied by  $1 + 2.399804305$  per cent<sup>16</sup>): \$138,259,746
- (c) Determine the difference ((a) subtract (b)): negative \$1,894,731.

AusNet Services submitted that the approved pass-through amount will represent a reduction of its allowable revenue requirements for pricing purposes. This is a continuation of established practice for truing-up the difference between the actual tax paid and the forecasted amount in the revenue determination.

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<sup>9</sup> NER cl 11.6.21.

<sup>10</sup> NER cl 11.6.21(a).

<sup>11</sup> NER cl 6A.7.3. See also, NER ch 10 (definition of 'positive change event' and 'negative change event').

<sup>12</sup> NER cl 11.6.21(d).

<sup>13</sup> SP AusNet, Application for pass-through of easement tax change event, Appendix A, 18 April 2017.

<sup>14</sup> AER, *Final Decision, SP AusNet 2017–22*, Attachment 3.

<sup>15</sup> The actual value is 2.399804305 per cent, rounded to 2.4 per cent in for presentation in the final determination.

<sup>16</sup> See footnote 15.

## 3 AER Assessment

### 3.1 Relevant dates

The rules provide that, for a negative change event, an application to us for a negative pass-through amount must be made within 90 business days of the relevant event occurring.<sup>17</sup> We must make a determination on the event within 40 business days of the business providing details of the event and supporting evidence to us.<sup>18</sup>

Based on our advice on 18 April 2017, as discussed in the paragraph 2.1 of the previous chapter of this paper, AusNet Services made its pass-through application on the same day, which is within the set timeframe. This is because AusNet Services became aware of the fact that the actual land tax payable was less than the provision included in our revenue determination for AusNet Services for 2017–18 on 18 April 2017. We consider that was the date on which the relevant negative change event occurred.

### 3.2 Negative change event

In order to approve an amount of money to be passed back to energy consumers, we must determine that a negative change event has occurred. The rules define a negative change event as<sup>19</sup>:

*... a pass through event which entails the Transmission Network Service Provider incurring materially lower costs in providing prescribed transmission services than it would have incurred but for that event.*

Further to this, transitional rule 11.6.21 provides that an easements tax change event is a negative change event, regardless of whether it meets the materiality threshold that would ordinarily form part of the consideration. An easements tax change event is defined as follows<sup>20</sup>:

*... a change in the amount of land tax that is payable by SPI PowerNet in respect of the easements which are used for the purposes of SPI PowerNet's transmission network. For the purposes of this definition, the change in the amount of land tax that is payable by SPI PowerNet must be calculated as the difference between:*

- (1) the amount of land tax that is payable in each regulatory year by SPI PowerNet, as advised by the Commissioner of State Revenue, Victoria; and*
- (2) the amount of land tax which is forecast for the purposes of and included in the revenue determination for each regulatory year of the regulatory control period.*

SPI PowerNet is the licensed transmission entity of AusNet Services.

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<sup>17</sup> NER cl 6A.7.3(f).

<sup>18</sup> NER cl 6A.7.3(e).

<sup>19</sup> NER, chapter 10 (definition of negative change event').

<sup>20</sup> NER, cl 11.6.21(a)



AusNet Services has provided the assessment notice from the State Revenue Office showing the land tax payable. This amount differs from the amount forecast for this purpose in the 2017–22 revenue determination, as per the calculation in the section above. Thus, we are satisfied that an easements tax change event has occurred and that it is a negative change event.

### 3.3 Calculation of the pass-through amount

The details of the calculation are provided in section 2.2 above.

We consider that AusNet Services has correctly calculated the negative pass-through amount, that is, it has incurred a lower than the forecast easements tax cost in providing transmission services.

We consider that the entire negative pass-through amount (saving) should be credited to the network users. This adjustment should occur in the 2017–18 regulatory year, which is the year this saving amount will incur. For this to happen, AusNet Services needs to advise AEMO of its 2017-18 revenue requirement by end April, for AEMO to publish transmission charges by mid May 2017.

### 3.4 Other considerations

Clause 6A.7.3(j) of the rules sets out a number of matters that we are required to take into account when determining:

- whether a positive or negative change event has occurred
- the approved pass-through amount
- the amount of the approved pass-through amount that should be passed through to transmission network users.

Sections 3.1, 3.2 and 3.3 above set out our considerations of those matters relevant to cl 6A.7.3(j)(1) and (2A). We consider the remainder of the matters listed by cl 6A.7.3(j) below<sup>21</sup>:

- We consider that AusNet Services has behaved efficiently in its decisions and actions relating to the risk of the negative change event occurring. As the land tax amount payable is a decision of the Victorian Government, we consider that AusNet Services has not taken (or omitted) any action that would be likely to increase (or decrease) the magnitude of the negative change event.
- We consider that the time cost of money does not need to be taken into account by this decision, as the costs are passed through to users in the regulatory year in which those costs occur.
- We consider that the costs to be recovered by AusNet Services due to this pass-through event are solely attributable to the easements tax change event.

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<sup>21</sup> NER cl 6A.7.3(j)(3)-(7).

- We do not consider there to be any changes in the way other taxes are calculated, or any other taxes that have been removed or imposed which are complementary to this easements tax change event.
- We consider that the costs of the pass-through event are established by cl 11.6.21, and are defined as the difference between certain costs for which an allowance is made under the revenue determination, and the actual costs incurred. As such, the costs of the pass-through event are, by definition, not factored into AusNet Services' maximum allowed revenue for the 2017–22 regulatory control period.
- We consider that the costs incurred relating to the pass-through event under consideration are not the subject of any previous determination by us under cl 6A.7.3.
- We do not consider any other matters to be relevant.