ActewAGL
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16 February 2009

Mr Mike Buckley
General Manager
Network Regulation North Branch
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Dear Mr Buckley

ActewAGL Distribution submission responding to the AER draft decision on the ACT distribution determination 2009-14

ActewAGL Distribution is pleased to provide the attached submission responding to the Australian Energy Regulator's draft decision on the ACT distribution determination 2009-14.

This submission provides further detail in support of the ActewAGL Distribution revised regulatory proposal to include a mechanism to adjust the actual direct tariff costs incurred under the new ACT Renewable Energy Feed-in Tariff Scheme. It also includes further details of possible pass through mechanisms raised by ActewAGL Distribution in its revised proposal.

ActewAGL Distribution has also taken this opportunity to provide the AER with further detail on Stage 1 of the operation and scope of the Feed-in Tariff Scheme released by the ACT Minister for Energy, Mr Simon Corbell MLA, on 10 February 2009. This confirms the need for an adjustment mechanism to apply to the actual direct tariff costs incurred by ActewAGL Distribution under the Feed-in Tariff Scheme.

Please note that Attachment 1 to the submission is confidential.

Please contact Mr David Graham, Director Regulatory Affairs and Pricing, on 02 6248 3605 to discuss any aspects of this submission.

Yours sincerely

Michael Costello
Chief Executive Officer

ActewAGL Distribution

Determination 2009–14

Submission to the
Australian Energy Regulator

16 February 2009

ActewAGL Distribution partners are
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Contents

Overview

This submission provides additional information in support of ActewAGL Distribution's proposal for an adjustment mechanism in relation to the ACT renewable energy Feed-in Tariff Scheme, as set out in ActewAGL Distribution's Revised Regulatory Proposal, submitted to the Australian Energy Regulator (AER) on 16 January 2009. ActewAGL Distribution makes this submission in accordance with the requirements set out in Appendix 11 of the National Electricity Amendment Rules (the transitional *Rules*).

Background on feed-in tariff scheme

In its original regulatory proposal, ActewAGL Distribution noted the likelihood of a new renewable energy feed-in tariff scheme being introduced in the ACT during the 2009-14 regulatory period.

In the period between submission of the original regulatory proposal and the revised proposal, the ACT Government passed legislation establishing a feed-in tariff scheme, which is to come into effect on 1 March 2009.

Under the feed-in tariff scheme, ActewAGL Distribution will facilitate the recovery of the costs of the scheme across the ACT customer base. Specifically, ActewAGL Distribution is required to rebate each retailer supplying eligible customers the difference between the feed-in tariff rate and the "normal cost of electricity" rate declared by the ACT Government for the output of those customers' generators. These costs will then be recovered from the network customer base through network charges. As a result, ActewAGL Distribution will be faced with a new cost item: 'direct tariff costs'. In addition, ActewAGL Distribution will face increased costs in relation to IT systems, metering, inspections and managing connections.

ActewAGL Distribution subsequently included a forecast of the costs associated with the feed-in tariff scheme in its revised regulatory proposal, as well as a proposal for an adjustment mechanism to adjust for the actual direct tariff costs incurred by ActewAGL Distribution as a result of the new scheme.

The ACT Government has since released further details of Stage 1 of the scheme, and has introduced amending legislation to the *Electricity Feed-in (Renewable Energy Premium) Act 2008* (Feed-in tariff Act) into the ACT Legislative Assembly. Further details on the scheme also included an expected second stage to the implementation of the scheme for larger commercial renewable generators, though no further details on this aspect of the scheme are yet available. The ACT Government has indicated that this second stage will be announced in June 2009. Uncertainty over the scope and application of stage 2 of the scheme strengthens the case for an adjustment mechanism to be included in ActewAGL Distribution's electricity determination.

Further evidence and considerations in support of an adjustment mechanism

ActewAGL Distribution provides further detail in this submission in support of its proposal for an adjustment mechanism for actual direct tariff costs incurred by ActewAGL Distribution under the new feed-in tariff scheme. Without an adjustment mechanism, there is significant risk that ActewAGL Distribution will not be able to recover its efficient costs of complying with its regulatory obligations. Further analysis included in this submission suggests that the AER's reasoning in rejecting ActewAGL Distribution's proposal for a similar adjustment mechanism for the Utility (Network Facilities) Tax, based on a previous electricity transmission decision for SP AusNet, does not consider the specific circumstances surrounding that decision, and should not be used as a precedent in rejecting ActewAGL Distribution's proposal for an adjustment mechanism under the Transitional *Rules*. In contrast, subsequent changes to the *National Electricity Rules* to support SP AusNet's cost recovery position provide a clear precedent in support of ActewAGL Distribution's proposal.

ActewAGL Distribution also provides further detail with respect to an alternative cost pass through mechanism that the AER could adopt should it not approve ActewAGL Distribution's preferred proposal for an adjustment mechanism.

1. Introduction

1.1 Background

On 2 June 2008, ActewAGL Distribution submitted its regulatory proposal for the 2009-14 distribution determination to the Australian Energy Regulator (AER). On 28 November 2008 the AER released the *Australian Capital Territory Distribution Determination 2009/10 to 2013/14: Draft Decision* (the draft decision).

Following the release of the draft decision, ActewAGL Distribution submitted a revised regulatory proposal to the AER on 16 January 2009. The revised regulatory proposal addressed matters arising out of the draft decision, including revised energy and expenditure forecasts made necessary by issues raised by the AER in its draft decision and changed circumstances leading to the need to revise original forecasts. One of the changed circumstances included the impending introduction in the ACT of a new renewable energy feed-in tariff scheme.

1.2 AER draft decision consultation process

Appendix 1 of Chapter 11 of the *National Electricity Amendment Rules* (the transitional *Rules*) provides an opportunity for any party, including the relevant distribution network service provider (DNSP), to make a submission to the AER in response to the AER's draft distribution determination or the AER's reasons for it.[1] The AER draft decision for the ACT electricity network sets the due date for submissions as 16 February 2009.

1.3 Scope of ActewAGL Distribution's submission

This submission provides further information in support of ActewAGL Distribution's revised regulatory proposal in respect of cost recovery for the ACT feed-in tariff scheme.

Chapter 2 of this submission outlines proposals and decisions to date with respect to the recovery of forecast costs arising from the feed-in tariff scheme. It also provides further details of the scheme that have recently been announced by the ACT Government.

ActewAGL Distribution's revised proposal included a proposal for an adjustment mechanism to correct for under or over recovery of direct tariff costs under the feed-in tariff scheme. Chapter 3 of this submission provides further information in support of the inclusion of an adjustment mechanism, and some further detail on a possible alternative cost recovery mechanism should the AER not approve the preferred inclusion of an adjustment mechanism in ActewAGL Distribution's final electricity determination.

[1] Transitional *Rules*, clause 6.10.2(c)

2. ACT Feed-in tariff scheme

2.1 ActewAGL Regulatory proposal and AER draft decision

ActewAGL Distribution's 2009-14 regulatory proposal identified the likelihood that the ACT Government would establish a feed-in tariff rebate scheme in the ACT in the near future. Following submission of ActewAGL Distribution's regulatory proposal on 2 June 2008, the ACT Legislative Assembly passed the *Electricity Feed-in (Renewable Energy Premium) Act 2008* (Feed-in tariff Act), establishing a feed-in tariff rebate scheme in the ACT.

ActewAGL Distribution's original regulatory proposal was submitted to the AER before sufficient information was known of the pending ACT Feed-in tariff scheme, in both the details of the scheme and the commencement date, to allow the development of a forecast of costs expected to be incurred under the scheme. In response to this uncertainty, ActewAGL Distribution proposed that, should the expected scheme come into effect in the "transitional period" between submission of the ActewAGL Distribution Regulatory Proposal and the commencement of the 2009-14 regulatory period, that costs associated with the scheme could be addressed through a proposed "transitional period" pass through event.

In its draft decision, the AER did not accept ActewAGL Distribution's proposed transitional period pass through event. The AER considered that such an event was not supported by the transitional *Rules* provisions.

2.2 ActewAGL revised regulatory proposal

In light of updated information available on the feed-in tariff scheme following the ACT Legislative Assembly election in October 2009, including an announcement that the scheme would commence by 1 March 2009, and the AER's decision to reject its proposed transitional period pass through event, ActewAGL Distribution included a forecast of costs associated with the introduction of the feed-in tariff scheme in its 16 January 2009 revised regulatory proposal. These costs included forecast direct tariff costs associated with the scheme and other capital and operating costs relating to IT systems, metering, inspections and managing connections.

ActewAGL Distribution also proposed that an annual adjustment mechanism apply to the direct tariff costs incurred under the scheme to ensure that ActewAGL Distribution would be able to recover its *actual* direct tariff costs incurred under the scheme. The inclusion of an adjustment mechanism would ensure that ActewAGL Distribution did not under or over recover the direct tariff costs of the feed-in tariff scheme. The revised proposal noted that, in the absence of an adjustment mechanism, both of these potential outcomes would be contrary to the public interest. It is also consistent with the ACT Government intention that the cost of the scheme be recovered from the ACT community.[2]

ActewAGL Distribution's revised regulatory proposal also noted that the ACT Government would announce further details of the scheme closer to its introduction.

2.3 Further details on ACT feed-in tariff scheme

On 10 February 2009, the ACT Government held a preview session on the feed-in tariff scheme, where further details on the proposed amendments for the Feed-in tariff Act were announced. Details of this announcement, including amendments to legislation introduced in the ACT Legislative Assembly on 12 February 2009, are outlined below. The legislation is due to be debated during the sitting week commencing 24 February 2009.

2.3.1 Staging of the implementation of the feed-in tariff scheme

The ACT Government has announced that it will implement the feed-in tariff scheme in two stages, with Stage 1 coming into effect on 1 March 2009.

Stage 1 will apply to micro-renewable generation units up to 30kW in capacity, installed by households and small businesses with an electricity account in the ACT. This will also cover installations up to 30kW capacity on commercial and office buildings. The premium tariff rate determined for the year of connection will apply to the gross output of the installed generation system for a period of 20 years.

Details of Stage 2 of the scheme are yet to be determined. ActewAGL Distribution understands that Stage 2 will apply to larger-scale generation, however the ACT Government has announced that further analysis of the impact of including these larger installations under the feed-in tariff scheme needs to be undertaken before details are finalised. Details of Stage 2 are expected to be announced in June 2009, with the stage to commence shortly afterwards.

2.3.2 ACT Government determination of applicable tariff rates

The ACT Government has announced the feed-in tariff rate and the "normal cost of electricity" rate to apply under the scheme. These rates will be confirmed through a ministerial determination shortly before the commencement of the scheme, following the passage of the Feed-in tariff Act amendments in the ACT Legislative Assembly. The relevant rates to apply up to 30 June 2010 are:

- Feed-in tariff rate paid to customers - $0.5005 per kWh
- Normal cost of electricity rate - $0.06 cents per kWh

[2] ACT Government, *ACT Electricity Feed-in Scheme: Presentation to Electricity Retailers slide pack*, 18 December, slides 4 and 9 (provided to the AER as an attachment to the ActewAGL Distribution revised regulatory proposal)

These rates are based on the formula set out in the feed-in tariff scheme legislation and the ACT Government's previous indicators of the derivation of the normal cost of electricity rate. Rates for the remaining period of the price determination to 2014 have not been determined.

2.3.3 Proportional application of the feed-in tariff rate to units covered under stage 1

The feed-in tariff rate will apply to generation units under Stage 1 of the scheme according to the size of the unit. For units of less than 10kW capacity, 100 per cent of the feed-in tariff rate will be paid to generators. For units of between 10 and 30 kW in capacity, a per kilowatt-hour rate equivalent to 80 per cent of the maximum feed-in tariff rate will be paid ($0.4004 per kWh).

2.3.4 Eligibility to access the scheme

The scheme will be available to all ACT electricity customers with the exception of non-educational government agencies and corporations. This means that Commonwealth and ACT Government agencies will not be able to access the tariff. Government and non-government schools and educational facilities with renewable generation facilities of no greater capacity than 30kW will be eligible for the relevant feed-in scheme tariff.

2.3.5 Implications for ActewAGL Distribution's revised regulatory proposal

Many details announced by the ACT Government were part of the original design of the scheme set out in the Feed-in tariff Act and these components formed the basis of ActewAGL Distribution's forecast of direct feed-in tariff costs in its revised proposal. ActewAGL Distribution also anticipated some changes to the scheme as a result of the ACT Government briefing session on 18 December 2008, which were factored into its forecast direct tariff costs.

Some elements of the scheme are not reflected in the forecast direct feed-in tariff costs in ActewAGL Distribution's revised proposal. These elements are:

- the staging of the scheme, including the potential for the scheme to apply to units greater than 30kW, now announced as part of the ACT Government's consideration for Stage 2 of the scheme.
- the applicability of the scheme to educational facilities. ActewAGL Distribution had assumed in its forecast direct tariff costs that the application of the scheme would exclude educational facilities in light of the availability of funding for these bodies under the Federal Government's *National Solar Schools Program*[3].

There is also a variation in the feed-in tariff rate paid to generators for the period to July 2010, and therefore the rebate rate forecast by ActewAGL Distribution, reflected in direct tariff costs.

These elements impact the forecast provided to the AER in January 2009, which is discussed further in confidential Attachment 1.

[3] Australian Government National Solar Schools Program http://www.environment.gov.au/settlements/renewable/nationalsolarschools/index.html

These developments further demonstrate the need for an adjustment mechanism to apply to the actual direct tariff costs incurred by ActewAGL Distribution under the scheme. The scheme details recently announced by the ACT Government add to the uncertainty in ActewAGL Distribution’s forecast of direct tariff costs included in its revised proposal, mainly in relation to forecast uptake rates and the expected size of generation units.

The premium tariff rates recently announced by the ACT Government have not been set beyond 30 June 2010. The uncertainty over future rates compounds with the uncertainty created by the proposed second stage of the scheme, including its possible scope and terms, and potential uptake rates. As a result, ActewAGL Distribution is unable to reasonably anticipate the potential costs of this scheme in its forecasts with an acceptable level of precision such as to manage the risks involved. In the absence of an adjustment mechanism, there is a significant risk that ActewAGL Distribution would not be afforded a reasonable opportunity to recover the efficient costs of complying with its regulatory obligations. Such an outcome would be contrary to the ACT Government’s intention. These issues are discussed further in chapter 3 of this submission.

3. Recovery of ActewAGL Distribution’s direct feed-in tariff costs

3.1 Application of an annual adjustment mechanism to direct feed-in tariff costs

ActewAGL Distribution’s revised regulatory proposal included a proposal for an annual adjustment mechanism to correct for under or over recovery of direct tariff costs incurred by ActewAGL Distribution under the feed-in tariff scheme.

ActewAGL Distribution considers that an adjustment mechanism is appropriate as the introduction of the feed-in tariff, and decisions on its ongoing application, are ACT Government policy decisions driven by factors outside the control of ActewAGL Distribution. .ActewAGL Distribution has no control over the direct tariff costs it will incur under the scheme, which depend on both the uptake of the scheme, and the tariff premium and related rates to apply from year to year.

The role of ActewAGL Distribution with respect to the feed-in tariff scheme is limited to facilitating the implementation and running of the scheme by way of recovery of the costs of the scheme across the ACT electricity customer base. This is different to the other forecast costs under the scheme associated mainly with managing applications and undertaking inspections, where ActewAGL Distribution can exercise some control over costs.

ActewAGL Distribution therefore considers that the AER should approve ActewAGL Distribution’s proposal to incorporate an adjustment mechanism for direct tariff costs in the annual pricing proposal approval process. The adjustment mechanism could work similarly to that for transmission use of system charges, with indexation of any amount over or under recovered, so ActewAGL Distribution bears no net financial impact of the scheme.

ActewAGL Distribution considers that an adjustment mechanism is the most efficient approach to managing these costs as it ensures that ActewAGL Distribution does not over or under recover the direct tariff costs of the scheme from customers over the regulatory period. ActewAGL Distribution considers that this approach is in the long-term interests of consumers and reflects the intent of the ACT Government.

As set out in the revised proposal, ActewAGL Distribution proposes that the adjustment mechanism be restricted to direct tariff payments and not apply to other forecast costs associated with the scheme.

3.1.1 Impact of recent changes to the feed-in tariff scheme

As noted above, there is inherent uncertainty over the direct tariff costs that will be incurred by ActewAGL Distribution as a result of the feed-in tariff scheme arising from uncertain take-up rates and future tariff rates. The need for, and important role of, an adjustment mechanism has been further confirmed by the ACT Government's recent announcement that it will be implementing the feed-in tariff scheme in two stages, with the second stage applying to larger generation facilities. ActewAGL Distribution's forecast of direct tariff costs included in its revised proposal effectively related to units covered by Stage 1 of the scheme.[4]

There is a high likelihood that Stage 2 of the scheme will result in significant additional direct feed-in tariff costs not currently included in ActewAGL Distribution's direct tariff cost forecast. It is also not possible to forecast these costs at this stage due to the limited information available on the ACT Government's policy approach to these installations and the significant uncertainty around the potential size of these installations.

In the absence of an adjustment mechanism correcting for the actual incurred direct tariff costs under the feed-in tariff scheme, ActewAGL Distribution would need to seek to recover additional costs related to Stage 2 of the feed-in tariff scheme through a pass through application. This is in addition to pass through applications that may be required as a result of changes to the feed-in tariff and "normal cost of electricity" rates each year, and other changes in policy, both jurisdictional and national, that may change the scope or level of funding for installation of units, or the value of electricity generated by installed units. There remains some uncertainty, however, as to ActewAGL Distribution's scope to recover these costs as a regulatory change event, as discussed in section 3.2 below. The cost pass-through approach would also not address the uncertainty in relation to direct tariff costs arising from differences between actual and forecast take-up rates.

ActewAGL Distribution considers that an adjustment mechanism, applied as part of the annual pricing proposal, is the most efficient and accurate way to manage this uncertainty, while ensuring that compliance and administrative costs are kept to a minimum.

3.1.2 AER's draft decision on scope for an adjustment mechanism under the transitional *Rules*

ActewAGL Distribution has further considered the position expressed in the AER's draft decision in relation to ActewAGL Distribution's proposal for a similar adjustment mechanism to be applied in the case of the *Utility (Network Facilities) Tax* (UNFT). ActewAGL Distribution anticipates that the AER's consideration of the use of an adjustment mechanism in relation to feed-in tariffs may reflect its earlier consideration of a similar mechanism in relation to UNFT.

ActewAGL Distribution's original regulatory proposal included a proposal to adjust for differences between forecast and actual UNFT liability during the regulatory control period, given that the level of the tax is determined each year by the ACT Government, and is therefore outside the control of ActewAGL Distribution. ActewAGL Distribution therefore argued that it, and its customer base, should not be subject to forecasting risk on this tax, and an adjustment mechanism should apply through the annual pricing proposal.

The AER rejected this proposal stating that it did not have scope under the transitional *Rules* to approve an adjustment mechanism. ActewAGL Distribution has responded in its revised

[4] With the exception noted earlier of educational facilities, which were not included in ActewAGL Distribution's forecast direct tariff costs, and the tariff rates which have varied from those originally assumed.

proposal, demonstrating its understanding that the AER does have scope to approve an adjustment mechanism under the transitional *Rules*.[5] In particular, ActewAGL Distribution emphasised the AER's obligation to ensure that its decision complied with the *National Electricity Law* (NEL) *Objective* and *Revenue and Pricing Principles*.[6]

The AER stated in its draft decision with respect to the proposed adjustment mechanism that its approach was consistent with the treatment of the Victorian Easement Land Tax, discussed in the SP AusNet transmission determination 2008-09 to 2013-14.[7] ActewAGL Distribution has reviewed this AER decision, and considers that it does not represent a relevent precedent on which to base the AER's decision to not allow ActewAGL Distribution to implement its proposal.

The AER's decision in relation to SP AusNet related to limitations faced by SP AusNet under Part 6A of the *NER* in recovering its actual costs incurred as a result of the Victorian Easement Land Tax. These limitations related to *NER* pass through event provisions. The AER noted in its final decision for SP AusNet that it did not have discretion under the *NER* to tailor pass through provisions to incorporate specific circumstances for Transmission Network Service Providers (TNSPs).[8]

ActewAGL Distribution does not consider that this decision is relevant to the AER's consideration of ActewAGL Distribution's proposal for an adjustment mechanism to apply to actual costs incurred under the UNFT. It would also not be relevant in the context of considering an adjustment mechanism in relation to the direct tariff costs associated with the feed-in tariff scheme. ActewAGL Distribution considers that the AER decision is relevant only to the consideration of the scope of pass through events for TNSPs, given that it relates to the precise rules applying to TNSPs, and the reasoning should not be applied to consideration of a proposed adjustment mechanism for distribution businesses. In any case, ActewAGL Distribution notes that the AER does not face the same constraints under the transitional *Rules* in respect to approving additional pass through events for distribution businesses, or in the specific design of those events, as it did for SP AusNet.

In addition, ActewAGL Distribution notes that the reasoning adopted by the Australian Energy Market Commission (AEMC) in approving recent changes to the *NER* to accommodate SP AusNet's recovery of actual tax payments would warrant a review of the AER's position on this issue, and provide additional support for ActewAGL Distribution's arguments that it should be able to recover the actual costs incurred for similar external events, such as the UNFT and the feed-in tariff.

The AEMC published a *Rule* Change Determination on 28 November 2008 that amended the *NER* to allow SP AusNet to recover, through the operation of a specific pass through

[5] ActewAGL Distribution, *ActewAGL Distribution Determination 2009-14: Revised Regulatory Proposal to the Australian Energy Regulator*, January 2009, pp 29-30
[6] ActewAGL Distribution, *Revised Regulatory Proposal to the AER*, 2009, pp 30-31
[7] Australian Energy Regulator, *Australian Capital Territory distribution determination 2009-10 to 2013-14: Draft Decision*, 7 November 2008, p 118
[8] Australian Energy Regulator, *SP AusNet Transmission determination 2008-09 to 2013-14: Final Decision*, January 2008, p 161

mechanism, the actual Easement Land Tax payments made by SP AusNet.[9] The amended *NER* clarifies that SP AusNet can recover through the operation of a pass through mechanism the difference between the forecast tax amount and the amount actually paid. The AEMC further amended the *NER* to ensure that no materiality threshold applied to these recoveries.[10]

ActewAGL Distribution observes that this approach has an identical effect to its proposed adjustment mechanism for both the UNFT and direct feed-in tariff costs. While the AER rejected the proposed adjustment mechanism as inconsistent with the transitional *Rules*, the AEMC specifically stated that its pass through approach, with adjustment for actual outcomes, was consistent with the *NEL Objective* and *Revenue and Pricing Principles*. In particular and importantly, the AEMC stated that the *Rule* change to allow the recovery of actual tax payments incurred was necessary to ensure that SP AusNet had reasonable opportunity to recover the efficient costs of providing direct control services, as required under the *NEL Revenue and Pricing Principles*.[11]

ActewAGL Distribution previously argued in its revised proposal that the AER was not constrained by the transitional *Rules* in approving an adjustment mechanism, as the *NEL* allowed it to "do all things necessary or convenient to be done for or in connection with the performance of its functions"[12]. Further, in the absence of a specific limitation in the transitional *Rules*, the AER must ensure that in exercising its functions it is consistent with the *NEL Objective* and *Revenue and Pricing Principles*.[13] ActewAGL Distribution observes that the AEMC, in applying these same tests, has concluded it is appropriate that SP AusNet be able to recover the actual costs of a tax that is outside its control. ActewAGL Distribution considers that the same reasoning should allow the AER to conclude that ActewAGL Distribution's intended approach is consistent with the *NEL*, in particular the *Revenue and Pricing Principles*, and to approve ActewAGL Distribution's proposal for an adjustment mechanism in relation to the UNFT and the direct feed-in tariff costs.

3.2 Alternative cost recovery approaches

ActewAGL Distribution has further considered the scope for alternative mechanisms to provide for adjustment of direct tariff costs associated with the feed-in tariff scheme, in the event that the AER does not approve in its final decision the proposed annual pricing adjustment mechanism. ActewAGL Distribution, however, remains of the view that an annual pricing adjustment mechanism is the most appropriate mechanism to achieve efficient cost recovery.

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[9] Australian Energy Market Commission, *National Electricity Amendment (Easement Land Tax Pass Through) Rule 2008: Rule Determination*, 28 November 2008. ActewAGL Distribution also notes that the rule change was only necessary as the NER constrained the ability of the AER to approve or change pass through events for TNSPs. The AER is not similarly constrained by the transitional *Rules*.

[10] AEMC *Easement Land Tax Pass Through Rule determination*, p 4

[11] AEMC *Easement Land Tax Pass Through Rule determination*, p 4

[12] *National Electricity Law*, section 15 (2)

[13] *National Electricity Law*, sections 16(1)(a) and 16(2)

3.2.1 Scope for use of the regulatory change pass through event

There may be some uncertainty as to whether changes in the applicable feed-in tariff rates (the premium and normal cost of electricity rates), as well as policy changes that lead to different uptake levels of the feed-in tariff, would be considered pass through events under the *NER*.

Under the *NER*, a regulatory change event is defined as a change in a regulatory obligation that, amongst other things, substantially affects the manner in which the DNSP provides direct control services.[14] While ActewAGL Distribution considers that a change in regulatory obligation that significantly changes the ability of a distribution business to recover the efficient costs associated with complying with that obligation would constitute a regulatory change event, this remains a matter for assessment.

ActewAGL Distribution does not consider that reliance on the existing regulatory change event provisions under the transitional *Rules* provides sufficient certainty of cost recovery of this regulatory obligation, and, for this reason, remains an inferior option compared to an annual pricing adjustment mechanism operating through the annual pricing approval process. ActewAGL Distribution's review suggests that no other defined pass through events under the transitional *Rules* appear to address this risk.

Uncertainty around the application of a materiality threshold to pass through events also creates an unacceptable level of uncertainty surrounding the recovery of actual feed-in tariff costs through current NER cost pass through mechanisms. ActewAGL Distribution is acting as a facilitator for recovering the direct tariff costs of the scheme through network tariffs, and therefore should not be exposed to potential variations in those costs arising from changes in policies supporting renewable generation, or changes in technology costs, that influence uptake rates. A materiality threshold would undermine ActewAGL Distribution's ability to recover changes in uptake rates.

The combined effect of policy and regulatory changes can impact uptake rates and the sizing of generation units connected to the network, which in turn impacts direct feed-in tariff costs incurred by ActewAGL Distribution. None of these policy and regulatory changes may themselves be material, and be directly traceable to observed changes in micro-renewable generation uptake, but they may cumulatively and materially change the direct tariff costs incurred by ActewAGL Distribution. All of these changes are outside the control of ActewAGL Distribution, and are not able to be forecast with any degree of certainty.

3.2.2 Scope for pass through event related to costs incurred

Should the AER not approve its proposed adjustment mechanism, ActewAGL Distribution considers that there is scope under the transitional *Rules* for the AER to approve an additional specific pass through event that will allow ActewAGL Distribution to adjust its revenue as part of the annual pricing process to reflect its actual direct tariff costs incurred under the feed-in tariff scheme. This approach would address many of the issues outlined above, and is consistent with that adopted for SP AusNet with respect to the recovery of the Easement Land

[14] *National Electricity Rules*, Chapter 10, Glossary, definition of *regulatory change event*

Tax. ActewAGL Distribution considers that an analogous approach may be appropriate for the recovery of direct feed-in tariff costs incurred by ActewAGL Distribution as these costs are similarly outside the control of ActewAGL Distribution.

ActewAGL Distribution therefore proposes that the following pass through event be approved by the AER (if the proposed adjustment mechanism is not accepted)[15]:

> **Feed-in tariff change event** means a change in the total amount of direct feed-in tariff rebates paid by ActewAGL Distribution in respect of the ACT Feed-in tariff scheme. For the purpose of this definition, the change in the amount of direct feed-in tariff rebates paid by ActewAGL Distribution must be calculated as the difference between:
>
> (1) the amount of scheme direct feed-in tariff costs paid each regulatory year by ActewAGL Distribution, derived from the metered output of generators subject to the scheme; and
>
> (2) the amount of scheme direct feed-in tariff costs which are forecast for the purpose of and included in the Australian Capital Territory distribution determination for each regulatory year of the regulatory control period.
>
> Relevant feed-in rebates under this pass through mechanism are those paid through the operation of the *Electricity Feed-in (Renewable Energy Premium) Act 2008*, and any amendments to this Act, or through the operation of a new Act implementing the expected second stage of the scheme applying to larger generators.

An application for a pass through amount under this event would be made within 90 days of the end of the regulatory year, to be reflected in subsequent tariff changes. Approved pass through amounts would also need to recognise the time value of money.

In addition, ActewAGL Distribution considers that a pass through event of this kind should not be subject to any materiality threshold. This approach accords with that in place for SP AusNet, and is based on consistency with the *NEL Revenue and Pricing Principles* that a DNSP should have reasonable opportunity to recover the efficient costs of provided direct control services.

As part its consideration of the application of a materiality threshold to the SP AusNet proposed easement tax change event, the AEMC also considered the policy intent of the Victorian Government that SP AusNet should not suffer any negative effect from the introduction of the tax. ActewAGL Distribution considers that the ACT Government has conveyed to ActewAGL Distribution a similar intent, and has publicly announced that it expects that the full costs of the scheme will be funded by the wider ACT community through network prices.[16] This outcome would not be assured if a pass through event of the kind outlined above were to operate in conjunction with a materiality threshold.

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[15] This proposed definition is based on the drafting of the easements tax change event at clause 11.6.21(a) of the NER

[16] ACT Government, *ACT Electricity Feed-in Scheme: Presentation to Electricity Retailers slide pack*, 18 December, slides 4 and 9

ActewAGL Distribution further notes that other pass through amounts enabled through Part 6A of the *NER* are not subject a materiality threshold. In particular, network support payments are enabled through a network support pass through mechanism under clause 6A.7.2 of the *NER*, and these payments are not subject to materiality considerations.

Attachment 1— Forecast direct tariff costs (Confidential)

Provided as a separate document.