

Evoenergy Vegetation Management cost pass through application

Effective Date: 7 December 2018

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1. Introduction

Evoenergy submits this application to the Australian Energy Regulator (AER) for approval of pass through costs for 2018/19 from the recent changes to Evoenergy's technical regulatory obligations in the Australian Capital Territory (ACT) for the management of vegetation and inspection of electrical infrastructure outside the network boundary.

The new obligations arise from amendments to the Utilities (Technical Regulation) Act 2014 (the Act) which took effect from 1 July 2018¹.

There are two new areas of responsibility transferred to Evoenergy by the amendments to the Act. These are responsibility for the:

- clearance of vegetation near aerial lines on unleased territory land, rural leased land, and national land²; and
- inspection of electrical infrastructure on rural leased land outside the network boundary, issue of written notices to owners to repair and restore the electrical infrastructure to a safe state and, if the owner does not comply with a notice, conduct of repairs and restoration of the electrical infrastructure to a safe state, with the debt due by the owner.³

Compliance with these additional technical obligations under the Act will result in Evoenergy incurring material incremental costs in 2018/19 that were not accounted for in the AER's final decision on Evoenergy's remade distribution determination for the 2014-19 regulatory control period.

The costs of complying with the new responsibilities in future years were considered by the AER during its review of Evoenergy's proposed revenue requirement for the 2019-2024 regulatory control period. Evoenergy adopts the AER's draft decision (DD) amount of \$2.40m (2018/19 dollars) per annum to undertake the new responsibilities for vegetation management.

The pass through provisions in the National Electricity Rules (the Rules) provide that material and efficiently incurred incremental costs resulting from new regulatory obligations or requirements that come into effect within a regulatory control period may be

¹ The amendment includes the insertion of a new Part, Part 5A, to the Act that details new obligations for Evoenergy as the "responsible utility".

² Part 5A.2, section 41D of the Act imposes a new obligation on Evoenergy, as a "responsible utility", to clear vegetation near aerial lines on "unleased territory land", "rural leased land" and "national land". The Act provides examples of each of:

- "unleased territory land", being "park, nature strip, nature reserve and national park"; and
- "rural leased land", being a "farm".

Functions exercisable by a "responsible utility" under Part 5A are exercisable in relation to "national land" "only by agreement with the Commonwealth" (Section 41B).

³ Part 5A.3, section 41I. Note that Part 5A.3, section 41G does not impose a new obligation on Evoenergy. Maintaining electrical infrastructure within the network boundary was a pre-existing responsibility of Evoenergy. The new provisions of the Act, however, provide Evoenergy with power to do anything reasonably necessary to discharge this responsibility, including in particular rights to enter land, and introduce an offence provision and prescribe criminal penalties in respect of a failure to discharge this responsibility.

approved by the AER and passed on to distribution network users. In progressing the amendments to the Act, the ACT Government contemplated the pass through provisions of the Rules would allow Evoenergy to pass on the costs of complying with the changes to its technical regulatory obligations to customers.⁴

In this pass through application, Evoenergy sets out details of the costs it will incur in complying with the changes to its technical regulatory obligations. These material and unforeseen costs were not included in the AER's determination of Evoenergy's revenue allowance for the 2014-19 regulatory period.⁵ Evoenergy is seeking approval for a positive pass through amount of \$2.40 million (2018/19 dollars) to cover the estimated costs to be incurred in the 2018/19 financial year.

An allowance of \$12.02m (2018/19 dollars) per annum over five years is provided for vegetation management in the AER's DD for the 2019-24 regulatory control period, for the new operational expenditure (opex) required to comply with the new obligations in the Act.⁶ Accordingly, the positive pass through amount proposed in this application does not include any costs of complying with the new obligations in the 2019-24 period.⁷

1.1. Scope

- Section 2 describes the pass through mechanism in the Rules.
- Section 3 provides details of the positive change event and discusses its impact on the provision of direct control services.
- Section 4 provides details of the eligible and proposed positive pass through amounts and demonstrates satisfaction of the AER's assessment criteria.

2. Regulatory framework

The pass through mechanism in the Rules provides for the Distribution Network Service Provider (DNSP) to pass through material costs for providing direct control services to customers, which were not part of the distribution determination. A pass through event occurs if the requirements of one of the four pass through events defined in the Rules, or a nominated pass through event approved in a distribution determination, are satisfied.⁸ In the AER's view:⁹

⁴ Introductory speech for the Utilities (Technical Regulation) Amendment Bill 2017 (Amendment Bill): *Legislative Assembly for the ACT: 2017 Week 11 Hansard (21 September)*, p. 4070.

"The insertion of clause 41D makes the utility responsible for vegetation management near powerlines on unleased land in the urban area. This includes street trees and trees in parks and reserves. Amending the act will create a regulatory change event for the utility, allowing them to apply to the Australian Energy Regulator to pass the cost of urban area tree management through to customers."

⁵ As required by Rule 6.6.1(j)(7)

⁶ AER, 2018, Attachment 6: Operating expenditure | Draft decision – Evoenergy distribution determination 2019-24, p.6-33

⁷ As required by Rule 6.6.1(j)(7)

⁸ Rules, clause 6.6.1(a1)(1)-(5).

⁹ AER 2010, *South Australia distribution determination 2010-11 to 2014-15*, May 2010, p. 223.

The pass through mechanism recognises that an efficient revenue allowance cannot be established with complete certainty and that it may not be efficient to require DNSPs to manage all situations or circumstances through their revenue allowance.

The costs that a DNSP has incurred must be material in order for the AER to consider an application.

A pass through is a mechanism which allows the approved revenue of a DNSP to be adjusted during a regulatory control period. The event can be either positive or negative for a DNSP's costs but needs to be of such significance that the approved revenue allowance is no longer appropriate.¹⁰

A cost pass through application is required within 90 business days of the pass through event but the AER may extend this time limit (if satisfied that the difficulty of assessing or quantifying the effect of the relevant pass through event justifies the extension).¹¹

The pass through clauses in the Rules set out the contents required for an application from a DNSP and the approach that the AER must take in assessing an application.

In assessing Evoenergy's application, the AER must take into account the following relevant factors:¹²

- 1) The matters and proposals set out in any statement given to the AER by Evoenergy;
- 2) The increase in costs in the provision of direct control services;
- 3) The efficiency of Evoenergy's decisions and actions, including whether Evoenergy failed to take any action to reduce the magnitude of the eligible pass through amount or took any action that increased the magnitude of the amount;
- 4) The time cost of money based on the allowed rate of return;
- 5) The need to ensure that Evoenergy only recovers any actual or likely incremental costs that are solely as a consequence of the pass through event;
- 6) Whether the costs have already been or will be factored into the calculation of Evoenergy's annual revenue requirement in an existing or future distribution determination;
- 7) The extent to which costs are the subject of a previous pass through determination made by the AER; and
- 8) Any other factors the AER considers relevant.

¹⁰ AER, Final Decision: *Queensland distribution determination 2010–11 to 2014–15*, May 2010, p. 295.

¹¹ Rules, clause 6.6.1(k).

¹² Rules, clause 6.6.1(j).

If the AER determines that a positive pass through event has occurred the AER must:

- 1) Determine the approved pass through amount;¹³ and
- 2) Determine the amount of that approved pass through amount that should be passed through to users in the regulatory year in which, and each regulatory year after, the positive change event occurred.¹⁴

3. Occurrence of positive change event

Clause 6.6.1(c)(1) requires Evoenergy to specify the details of the positive change event. A positive change event is defined in the Rules as a pass through event that entails Evoenergy incurring materially higher costs in providing direct control services than it would have incurred but for that event.

On 1 July 2018, new obligations were imposed on Evoenergy for clearance of vegetation near aerial lines on unleased territory land, rural leased land, and national land, and inspection of electrical infrastructure on rural leased land outside the network boundary.

The imposition of these new obligations on Evoenergy constitutes a positive change event, which is a 'service standard event' as defined in the Rules for the reasons discussed in section 3.2 below or, in the alternative, a 'regulatory change event' for the reasons discussed in section 3.3 below.¹⁵ This event results in Evoenergy incurring materially higher costs in 2018/19 in providing direct control services for the reasons discussed in section 3.4 below.

Clause 6.6.1(c)(2) requires Evoenergy to specify the date on which the positive change event occurred. The positive change event occurred on 1 July 2018 with the imposition of the new obligations on Evoenergy.¹⁶ The AER extended the time limit to submit a cost pass through application regarding the vegetation management costs associated with amendment of the Act to 90 business days after publication of the AER's remade final decision on Evoenergy's distribution determination for the 2014-19 regulatory control period.¹⁷ That decision was subsequently published by the AER on 15 November 2018.

3.1. Description of the new regulatory obligations

The Utilities Act 2000 (ACT), the Act and the subordinate regulations and codes under those Acts provide a legal framework that prescribes safety and reliability standards for utilities' network infrastructure. The two key instruments containing the new responsibilities for Evoenergy are the Act and Electricity Powerline Vegetation Management Code 2018 (the Code).

¹³ Rules, clause 6.6.1(d)(1).

¹⁴ Rules, clause 6.6.1(d)(2).

¹⁵ Rules, clause 6.6.1(a1)(1) and (2).

¹⁶ Commencement notice CN2018, (26 April 2018), which provides that the Utilities (Technical Regulation) Amendment Act 2017 (Amendment Act) (which makes the relevant amendments to the Act) commences on 1 July 2018.

¹⁷ AER published letter to Evoenergy Re: Request for extension - vegetation management cost pass through application dated 18 June 2018.

From 1 July 2018, the Act was amended to transfer the responsibility for vegetation clearing on unleased land in urban areas of the ACT from the ACT Government's Transport Canberra and City Services (TCCS) to Evoenergy (section 41D of the Act). In addition, Evoenergy became responsible for the inspection of electrical infrastructure on rural leased land outside the network boundary (section 41I).

Evoenergy's new vegetation management responsibilities

Clause 41D of the Act provides that Evoenergy is responsible for clearing vegetation near an aerial line on unleased territory land, rural leased land, and national land.

The transfer involves the management of vegetation in the following areas:

- Designated urban area (or built-up areas);
- Bushfire risk urban areas including Canberra's urban green belts (which are currently managed under the existing ACT Strategic Bushfire Management Plan 2014-2019); and
- Parkland and Nature Reserves that fall under the definition of 'urban fringe' as areas considered to be of high bushfire risk (e.g. Mount Majura, Redhill).¹⁸

Clause 41I of the Act provides that for electrical infrastructure on rural leased land outside the network boundary:

- Evoenergy must inspect the electrical infrastructure at least every 3 years;
- if on inspection Evoenergy considers the electrical infrastructure is not being maintained adequately and is in an unsafe state, issue written notices to land owners to take whatever action is necessary to repair and restore the electrical infrastructure to a safe state and state the repairs needed within a stated period; and
- if the owner does not comply with the notice in that stated period, take whatever action is necessary to repair and restore the electrical infrastructure to a safe state, with the reasonable expenses incurred being a debt due to Evoenergy by the owner.

On 25 June 2018, the Minister for Climate Change and Sustainability approved the Code under section 14 of the Act,¹⁹ which authorises the Minister to approve a technical code as recommended by the technical regulator. The purpose of the Code is to outline technical requirements for a responsible utility under section 41D of the Act when managing the clearance of vegetation near powerlines.

The Utilities (Technical Regulation) (Electricity Powerline Vegetation Management Code) Approval 2018 describes the purpose of the Code as follows:

"The Code provides technical requirements for a responsible utility under section 41D of the Act when managing the clearance of vegetation near powerlines.

The primary purpose of vegetation management near aerial lines is to reduce the risk of fire and outages caused by trees and other vegetation coming into contact

¹⁸ Evoenergy, *Regulatory Proposal 2019-24, Appendix 6.1 Vegetation and private electrical infrastructure – operating expenditure step change 2019-24 (PUBLIC)*, January 2018, p. 11.

¹⁹ Utilities (Technical Regulation) (Electricity Powerline Vegetation Management Code) Approval 2018.

with the lines or associated infrastructure. This includes electric cables and poles, service lines, powerpoles which may have streetlights connected, conductors, any apparatus connected in conjunction with the conductor for the purpose of transmitting, distributing or supplying electricity.”²⁰

The Code requires Evoenergy to:

- establish a Vegetation Management (Bushfire and Environmental) Works Plan (Works Plan) for nonurban land to protect the environment and the public from fires originating from electricity assets;
- reduce the visual impact of trimming of trees; and
- promote the healthy growth of trees around aerial lines and support structures through appropriate planning.

Pruning in urban areas must comply with Australian standards for amenity trees.

Evoenergy must comply with the legislative framework for maintaining electricity infrastructure and vegetation clearance that includes the Act and the Code. In particular, Evoenergy is required by the Act to comply with sections 41D and 41I, and the Code.

Failure to comply with these obligations would see Evoenergy in breach of its licencing conditions and subject to penalties. A failure to comply with section 41D or the Code constitutes an offence (sections 16 and 41D(7)).

Compliance with the legislative framework for vegetation inspection and clearance around aerial lines reduces the risk of un-safe public areas, fire hazards, damage to property and instances of electricity supply outages from overgrown vegetation.

Evoenergy’s previous vegetation management responsibilities

Prior to amendments to the Act, Evoenergy had two key areas of responsibility for vegetation management which remain the same. They are:

1. Management of vegetation near electricity network infrastructure within defined rural land and Bushfire Abatement Zones (BAZ) under past agreement with the Commonwealth and ACT governments.²¹
 - Evoenergy is currently responsible for vegetation management for 21,090 active spans in these areas. This is managed over a three year cycle.²²
2. Vegetation management on urban leased land (urban backyards) as provided in section 25 of the Utility Networks (Public Safety) Regulation 2001.
 - Evoenergy, as the utility provider, is responsible for ensuring compliance with backyard clearances.

²⁰ Utilities (Technical Regulation) (Electricity Powerline Vegetation Management Code) Approval 2018, p. 2.

²¹ BAZ areas are defined by the ACT emergency services Commissioner annually and are subject to the ACT Bushfire strategy.

²² Evoenergy response to AER Information request 14 of 9 April 2018, p. 2.

TCCS was, however, previously responsible for clearing vegetation near aerial lines on unleased land within defined urban areas. On the transfer of this responsibility to Evoenergy by the amendments to the Act, Evoenergy became responsible for these new urban areas which cover an additional 16,918 vegetation spans and represent an 80.2 per cent increase in the number of vegetation management spans Evoenergy is responsible for in designated rural and bushfire areas.

3.2. Service standard event

A service standard event is defined as:²³

A legislative or administrative act or decision that:

- (a) has the effect of:
 - (i) substantially varying, during the course of a regulatory control period, the manner in which ... a Distribution Network Service Provider is required to provide a direct control service; or
 - (ii) imposing, removing or varying, during the course of a regulatory control period, minimum service standards applicable to ... direct control services; or
 - (iii) altering, during the course of a regulatory control period, the nature or scope of the ... direct control services, provided by the service provider; and
- (b) materially increases or materially decreases the costs to the service provider of providing ... direct control services.

3.2.1. Legislative or administrative act or decision

The Act, which imposes on Evoenergy the new regulatory obligations detailed in section 3.1 above, is a legislative act for the purposes of the service standard event definition in the Rules.

3.2.2. Effect of the Act or decision

The imposition of the new obligations on Evoenergy described above has the effect of substantially varying the manner in which Evoenergy is required to provide a direct control service in satisfaction of paragraph (a)(i) of the service standard event definition.

As the AER has recognised in previous decisions, the requirement for a variation in the manner in which a DNSP is required to provide direct control services necessitates a practical change in the way in which, or mode of action by which, the DNSP is required to provide direct control services.²⁴ It does not necessitate changed activities that are new or dissimilar in nature to the DNSP's existing activities but something more than a legal change to the DNSP's regulatory obligations is required.

²³ Rules, Chapter 10.

²⁴ AER 2012, *Final Decision Powercor cost pass through application of 13 December 2011 for Costs arising from the Victorian Bushfire Royal Commission*, March 2012, p. 20.

Further, this change must be 'substantial' - that is, essential, material, important or of ample or considerable size.²⁵

Evoenergy's new responsibilities result in an important or material variation in the manner in which, or mode by which, it is required to provide direct control services. Following the imposition of its new obligations, in providing direct control services, Evoenergy is required to manage vegetation for aerial lines in unleased territory land, rural leased land and national land. To this end, it is required to develop and introduce a large-scale vegetation clearance and inspection programme of work, in providing direct control services.

As discussed in Evoenergy's regulatory proposal for the 2019-2024 regulatory control period extracted below, the transfer of responsibility to Evoenergy by the amendments to the Act was informed by the significant scale of the practical task involved in managing vegetation in the relevant areas:

“The ACT government has deemed the transfer of responsibility from TCCS appropriate for the long-term benefit of the Canberra community where TCCS previously had insufficient resources to administer the task.”; and

“The scope of transfer of responsibility pertains to network facilities on unleased territory land. Table 4 [Table 1 below] demonstrates the scope of additional responsibility to be assumed by Evoenergy under the new legislation.”²⁶

Table 1 Scope of TCCS transfer

Number of vegetation spans	16,918
Circuit distance High Voltage (m)	467,677
Circuit distance Low Voltage (m)	608,416

Prior to 1 July 2018, Evoenergy was responsible for the management of 21,090 spans of vegetation near electricity infrastructure within defined rural areas and BAZ, under an agreement with the Commonwealth and ACT governments. Therefore, the additional urban areas covering 16,918 spans represents an 80.2 per cent increase to the existing number of vegetation spans.

The major business activities that are required to be undertaken by Evoenergy in providing direct control services as a result of the new obligations are as follows:

- **Tree clearing** - removing vegetation that is near an aerial line within defined clearances as set out in the amended Act by felling or lopping trees; trimming of roots or trees or other plants; or the clearing or removal of vegetation. Clearing must comply with legislation for heritage areas, protected trees, nature conservation and emergencies.
- **Outage and switching** - planning, preparing and implementing outages and switching for low and high voltage networks.

²⁵ Macquarie Online Dictionary definition of 'substantial'.

²⁶ Evoenergy, Regulatory Proposal 2019-24, Appendix 6.1 Vegetation and private electrical infrastructure – operating expenditure step change 2019-24 (PUBLIC), January 2018, p. 11.

- **Customer notifications and inquiries** - preparing the content of notifications, determining the customers affected for each outage and handling customer calls.
- **Reactive clearing** - additional trimming to meet clearances, and clearing the site after reactive tree cutting is conducted, outside the planned schedule of vegetation clearance.
- **Work planning** - identifying the number of affected overhead feeders, preparing work packages for contractors, creating work orders in Cityworks, and liaison with ACT Parks and Conservation for nature reserve entry.
- **Other material activities** - analysing and updating systems, preparing the annual program of work, storms/major event clean up, public safety announcements/media campaigns, tendering/contract management.

The additional new responsibility imposed on Evoenergy by section 41I of the amended Act to inspect electrical infrastructure in rural leased land and outside the network boundary, and to manage the process for landowners to repair unsafe infrastructure also has a material practical effect on the way Evoenergy provides direct control services. This is evident from the fact that the new obligation applies to approximately 221 private poles and associated lines across approximately 70 landholdings.²⁷

3.2.3. Materially increases costs of providing direct control services

The event materially increases Evoenergy's costs of providing direct control services, in satisfaction of paragraph (b) of the service standard event definition, for the reasons discussed in section 3.4 below.

3.3. Regulatory change event

If the AER disagrees with Evoenergy's position in section 3.2 above that the imposition of the new obligations on Evoenergy described above constitutes a service standard event, Evoenergy considers it would then constitute a regulatory change event.

The definition of a regulatory change event in the Rules provides for a change in regulatory obligations or requirements that substantially affects the manner in which direct control services are provided, and occurs during the course of the regulatory control period. A regulatory change event is defined as:²⁸

A change in a regulatory obligation or requirement that:

- (a) falls within no other category of pass through event; and*
- (b) occurs during the course of a regulatory control period; and*
- (c) substantially affects the manner in which the DNSP provides direct control services; and*
- (d) materially increases or materially decreases the costs of providing those services.*

²⁷ Evoenergy, Regulatory Proposal 2019-24, Appendix 6.1 Vegetation and private electrical infrastructure – operating expenditure step change 2019-24 (PUBLIC), January 2018, p. 14.

²⁸ Rules, Chapter 10.

Evoenergy considers that, in the event that the imposition of the new obligations on Evoenergy does not constitute a service standard event, the event satisfies each of the limbs of the regulatory change event definition for the reasons set out below.

3.3.1. Change in regulatory obligation or requirement

The term 'regulatory obligation or requirement' is defined in section 2D of the National Electricity Law (NEL) to relevantly include:

- a 'distribution system safety duty', being a duty or requirement under an Act of a participating jurisdiction relating to:
 - the safe distribution of electricity in that jurisdiction; or
 - the safe operation of a distribution system in that jurisdiction;
- an obligation or requirement under an Act of a participating jurisdiction that relates to the protection of the environment;
- an obligation or requirement under an Act of a participating jurisdiction (other than national electricity legislation or an Act of a participating jurisdiction referred to in section 2D(1)(b)(ii) to (iv) of the NEL) that materially affects the provision, by a DNSP, of electricity network services that are the subject of a distribution determination.²⁹

It is sufficient for the purposes of the regulatory change event definition if the AER is satisfied that the imposition of the new obligations on Evoenergy constitutes any one of these regulatory obligations or requirements described in section 2D of the NEL.

The imposition of the new obligations on Evoenergy constitutes a change in both:

- a 'distribution system safety duty'; and
- an obligation or requirement under an Act of a participating jurisdiction that relates to the protection of the environment or, in the alternative, an obligation or requirement under an Act of a participating jurisdiction that materially affects the provision, by Evoenergy, of electricity network services that are the subject of its distribution determinations.³⁰

The Act is an Act of a participating jurisdiction, being the ACT.

The new obligations imposed by the Act relate to both the safe distribution of electricity, and safe operation of the distribution system, in the ACT, and the protection of the environment.

The objects of the Act relevantly include to:³¹

- ensure the safe, reliable and efficient delivery of regulated utility services; and

²⁹ NEL, section 2D(1)(a)(1) and (b)(iv) and (v), and section 2(1) definition of 'distribution system safety duty'.

³⁰ Due to the text in parentheses in section 2D(1)(b)(v) of the NEL, the new obligations cannot constitute *both* an obligation or requirement under an Act of a participating jurisdiction that relates to the protection of the environment under section 2D(1)(b)(iv) and an obligation or requirement under such an Act that materially affects the provision of electricity network services under section 2D(1)(b)(v).

³¹ Section 6(a) and (d) of the Act.

- ensure the safe and reliable operation and maintenance of regulated utility networks and regulated utility services to protect the following: (i) the public; (ii) people working on regulated utility networks and regulated utility services; (iii) property near regulated utility networks and regulated utility services; (iv) the environment.

The new obligations imposed on Evoenergy by the Act concern the management of vegetation near powerlines. Consistent with the objects of the Act, the purpose of these obligations is to reduce the risk of bushfires caused by trees and other vegetation coming into contact with powerlines and associated infrastructure, and thus protect the public, public and private property and the local environment, while at the same time limiting the environmental impact of any work done to prune trees.³²

Evoenergy considers it should be uncontroversial, therefore, that the imposition of the new obligations constitutes a change in a 'distribution system safety duty' and in a regulatory obligation or requirement under an Act of a participating jurisdiction that relates to the protection of the environment.

If, however, the AER does not accept this, Evoenergy contends, in the alternative, that the imposition of the new obligations constitutes an obligation or requirement under an Act of a participating jurisdiction that materially affects the provision, by Evoenergy, of electricity network services that are the subject of its distribution determinations.

In order for the new obligations to constitute such a regulatory obligation or requirement, the Act must materially affect the provision of electricity network services (Application by SA Power Networks [2016] ACompT 11, at [520]). This, in turn, requires a direct connection between the Act and the provision of electricity network services and that the new obligations are of a 'regulatory' character (Application by SA Power Networks [2016] ACompT 11, at [522]; *Applications by CitiPower Pty Ltd and Powercor Australia Ltd* [2017] ACompT 4, at [123]).

As noted above, the Act imposing the new obligations is an Act of a participating jurisdiction, being the ACT. As the Act establishes technical regulatory requirements for regulated utility networks - that is, regulated energy, water and sewerage networks including in particular Evoenergy's electricity distribution network - to ensure the safe, reliable and efficient delivery of their services, there is plainly a direct connection between the Act and the provision of electricity network services. Further, the new obligations imposed by the Act are technical regulatory requirements and, thus, equally plainly of a 'regulatory' character.

Further, the new obligations 'materially' affect Evoenergy's provision of electricity network services, as they have a significant impact on the manner in which Evoenergy provides electricity network services for the reasons outlined in section 3.2.2 above and will result in Evoenergy incurring material additional expenditure for the reasons outlined in that section and section 3.4 below.

³² See, for example, the Explanatory Statement for the Amendment Bill and the introductory speech for the Amendment Bill: *Legislative Assembly for the ACT: 2017 Week 11 Hansard (21 September)*, p. 4070.

3.3.2. Falls within no other category of pass through event

The imposition of the new obligations falls within no other category of pass through event. The remaining categories of pass through events are: a tax change event; a retailer insolvency event; and any other event specified in a distribution determination as a pass through event for the determination.

3.3.3. Occurred during the course of the 2014-19 regulatory control period

The event occurred on 1 July 2018, and thus during the course of the 2014-19 regulatory control period.

3.3.4. Substantially affects the manner in which Evoenergy provides direct control services

The event substantially affects the manner in which Evoenergy provides direct control services. While this limb of the regulatory change event definition is differently worded to the effect element in paragraph (a)(i) of the service standard event definition, these differences are largely differences of form, not substance, and are not of any present significance. A number of new opex business activities are required to be undertaken by Evoenergy as described in section 3.2.2 above to comply with the new obligations and, for the reasons outlined in that section in relation to paragraph (a)(i) of the service standard event definition, the new obligations substantially affect the manner in which Evoenergy provides direct control services.

3.3.5. Materially increases costs of providing direct control services

The event materially increases Evoenergy's costs of providing direct control services, in satisfaction of paragraph (d) of the regulatory change event definition, for the reasons discussed in section 3.4 below.

3.4. Materiality

The pass through provisions in the Rules are triggered by events which have a 'material' impact on the costs of providing direct control services.³³

Chapter 10 of the Rules defines 'materially' such that an event results in materially higher costs if a change in costs (as opposed to the revenue impact) that a DNSP has incurred, and is likely to incur, in any year of a regulatory control period, as a result of the event, exceeds 1 per cent of the annual revenue requirement for the DNSP for that regulatory year.

Evoenergy is expected to incur materially higher opex per annum to comply with the additional technical regulatory obligations imposed on Evoenergy by the Act.

3.4.1. Details of the costs incurred in complying with the new obligations

The annual cost of \$2,404,928 (\$2018/19) is the amount that the AER allows in its DD for each year of the next regulatory control period for Evoenergy to manage the new vegetation management and pole inspection responsibilities imposed on it by the Act.

³³ NER, clause 6.6.1(j)(2) and Chapter 10 definitions of 'positive change event' and 'materially'.

Evoenergy's regulatory proposal for the 2019-2024 regulatory period and subsequent responses to information requests submitted to the AER included confidential information detailing the costs to be incurred in complying with the new obligations. Evoenergy worked closely with the AER during the review and revised down the initial estimated cost. The AER describes the process undertaken to review the cost information submitted by Evoenergy in the DD.

"In evaluating Evoenergy's step-change, we examined the underlying inputs and assumptions behind its cost build up. Throughout our assessment process, we have engaged closely with Evoenergy to understand its proposal and to test its assumptions. This included four information requests and a teleconference with Evoenergy's asset management and regulatory staff.

We have provided Evoenergy with our preliminary assessment of our step-change forecast, which gave Evoenergy an opportunity to comment on our alternative assumptions and conclusions. In response, Evoenergy has provided us with:

- *further supporting information*
- *revised volume and cost estimates.*

We constructed an alternative estimate of \$2,404,928 (\$2018–19) per annum or \$12,024,640 across the 2019–24 regulatory control period. This is 36 per cent lower than Evoenergy's original proposal. In reaching this alternative estimate, we have primarily relied upon the information provided by Evoenergy in its proposal, information requests, and its revised information.

Specifically, these are:

- *Unit costs based on revealed cost information from Evoenergy's recent urban tree clearance activities.*
- *Proposed volumes as forecast by Evoenergy (e.g. the number of vegetation encroachments and Evoenergy's reported span length).*
- *Evoenergy's revised estimates of several smaller cost components.*

This differs from Evoenergy's original proposal in two key respects:

- *Evoenergy's original proposal relied upon outdated or unrealistic volume forecasts of tree encroachments and power line outages. Evoenergy has since provided more accurate volumes in response to our information requests.*
- *Evoenergy has constructed its own unit costs based on assumptions about hours per work activity. Where applicable, we have relied upon Evoenergy's actual cost data rather than assumptions when deriving our unit costs.*

Evoenergy's step change includes confidential information about the costs of specific activities that make up its total cost forecast. We have examined these costs in confidential Appendix A."³⁴

Evoenergy adopts the AER's alternative estimate of \$2,404,928 (\$2018/19) per annum in its DD for the purposes of this application.

³⁴ AER (27 Sept 2018) Attachment 6: Operating expenditure | Draft Decision - Evoenergy distribution determination 2019–24, pp. 34-35.

3.4.2. Materially higher costs

Evoenergy has assessed that the compliance costs associated with the new obligations are material in the 2018/19 regulatory year.

Evoenergy has used the AER's remade final decision Post Tax Revenue Models (PTRMs) to obtain the sum of the unsmoothed revenues for distribution and dual function assets from the AER's 2014-19 remade decision for 2018/19.

The vegetation management costs Evoenergy will incur to comply with the new obligations are material when compared to the AER's remade unsmoothed annual revenue requirement for the 2018/19 regulatory year as set out in Table 2. The incremental increase in Evoenergy's vegetation management costs represents 1.46 per cent of Evoenergy's unsmoothed annual revenue requirement in 2018/19, which exceeds the materiality threshold of 1 per cent.

Table 2 Materiality of cost of compliance with new technical regulatory obligations

\$million, nominal	2018/19
Annual Revenue Requirement (ARR) (unsmoothed)	\$164.38
Pass through amount	\$2.40
Materiality of pass through event against ARR (per cent)	1.46

4. Eligible and proposed positive pass through amounts

4.1. Eligible pass through amount

Clause 6.6.1(c)(3) of the Rules requires Evoenergy to specify the eligible pass through amount.

The 'eligible pass through amount' is relevantly defined in Chapter 10 of the Rules to mean 'the increase in costs in the provision of *direct control services* that, as a result of that *positive change event*, the [DNSP] has incurred and is likely to incur (as opposed to the revenue impact of that event)' until the end of the regulatory control period in which the positive change event occurred.

The eligible pass through amount refers to the increase in costs in the provision of direct control services as a result of the pass through event. It covers all expenditure including the capex and opex incurred.

In determining the eligible pass through amount, Evoenergy incorporates only incremental costs consistent with the Rules. Allocated overheads are not included in the eligible pass through amount.

Table 3 shows the eligible pass through amount, which reflects the fact that there were no eligible costs arising from the new responsibilities for vegetation management and pole inspection prior to the 2018/19 year as the new obligations took effect on 1 July 2018.

Table 3 Costs for compliance with the new technical regulatory obligations

\$, nominal	2018/19	Total
Total	2,404,928	2,404,928

4.2. Evidence of the costs included in the eligible pass through amount

Clause 6.6.1(c)(6)(i) of the Rules requires Evoenergy to provide evidence of the actual and likely increase in costs included in the eligible pass through amount.

The evidence for the eligible pass through amount is already before the AER, as the eligible pass through amount reflects the AER's determination of the annual incremental costs arising from the new obligations in its DD on the basis of the evidence and data provided by Evoenergy in the regulatory proposal and the review process for the 2019-2024 regulatory control period described in section 3.4.1 above. Evoenergy assumes therefore that it is unnecessary for it to re-submit that evidence and data with this application. It would, of course, be happy to do so on request by the AER.

4.3. Costs included in eligible pass through amount are solely as a consequence of the positive change event

Clause 6.6.1(c)(6)(ii) of the Rules requires Evoenergy to provide evidence that the actual and likely increase in costs included in the eligible pass through amount occurred solely as a consequence of the positive change event. Similarly, clause 6.6.1(j)(5) of the Rules requires the AER, in determining the approved pass through amount and the amount to be passed through to users in each regulatory year, to take into account the need to ensure the DNSP only recovers any actual or likely increment in costs that is solely as a consequence of the positive change event.

As noted above, the increase in costs included in the eligible pass through amount reflects the AER's assessment of the annual incremental costs arising solely as a consequence of the new obligations in the context of its 2019-24 distribution determination process. The eligible pass through amount, therefore, includes only the incremental costs likely to be incurred solely as a consequence of the positive change event.

4.4. Efficiency of eligible pass through amount

Clause 6.6.1(j)(3) of the Rules requires the AER, in determining the approved pass through amount and the amount to be passed through to users in each regulatory year, to take into account the efficiency of Evoenergy's decisions and actions in relation to the risk of the positive change event. This includes whether Evoenergy's actions have minimised the magnitude of the eligible pass through amount.

The AER DD for the regulatory control period 2019-2024 accepts that managing the new responsibilities for vegetation and inspections represents a material change in Evoenergy's operating requirements, and that an increase in its costs is unavoidable.

We accept Evoenergy's submission and consider that a step increase to its forecast base opex would be required over the 2019-24 regulatory control period. This is because the

*increase in vegetation management requirements reflects a material change in Evoenergy's operating requirements environment, and that an increase in costs is unavoidable.*³⁵

Further, the increase in costs included in the eligible pass through amount reflects the AER's assessment of the efficient and prudent annual incremental costs required to meet the new obligations. In its DD, the AER observes that it 'must be satisfied that the quantum of the proposed step change reflects the costs an efficient and prudent network service provider would incur under the circumstances'.³⁶ It goes on to determine that the level of expenditure required to meet Evoenergy's new obligations is \$2,404,928 (\$2018/19) per annum.³⁷

As this is the amount that Evoenergy has included in the eligible pass through amount, Evoenergy considers the AER should be satisfied that the eligible pass through amount is efficient and Evoenergy has minimised the magnitude of the eligible pass through amount.

4.5. Positive pass through amount

Clause 6.6.1(c)(4) of the Rules requires Evoenergy to specify the positive pass through amount that Evoenergy proposes in relation to the positive change event. The positive pass through amount is defined as an amount not exceeding the eligible pass through amount. Evoenergy proposes a positive pass through amount of \$2.40 million (\$2018/19) in relation to the positive change event during the 2018/19 regulatory year.

4.6. Annual pass through amount

Clause 6.6.1(c)(5) of the Rules requires Evoenergy to specify the annual amount that it proposes to pass through to customers in the year and each regulatory year after that in which the positive change event occurred.

Evoenergy proposes to recover the entirety of the proposed positive pass through amount of \$2.40 million (2018/19 dollars) in the 2019-24 regulatory control period. Evoenergy proposes that, as the positive pass through amount reflects costs incurred in the 2014-19 regulatory period, the annual amount passed through to customers in each regulatory year of the 2019-24 period should be determined so as to provide for Evoenergy to recover the positive pass through amount as early in that period as practicable having regard to the impact of the annual pass through amount on network charges in the relevant regulatory year. Evoenergy does not propose specific dollar amounts for each regulatory year of the period in this application, as it expects better information to support an assessment of the impact of the annual pass through amount on network charges in the relevant regulatory year of the 2019-24 period will become available as the decision-making process on this application progresses.

³⁵ AER (27 Sept 2018) Attachment 6: Operating expenditure | Draft Decision - Evoenergy distribution determination 2019–24, p. 34.

³⁶ AER (27 Sept 2018) Attachment 6: Operating expenditure | Draft Decision - Evoenergy distribution determination 2019–24, p. 34.

³⁷ AER (27 Sept 2018) Attachment 6: Operating expenditure | Draft Decision - Evoenergy distribution determination 2019–24, p. 35.