



30 November 2023

Ausgrid's 2024-29 Revised Proposal

Attachment 10.2: Nominated cost pass through events

Empowering communities for a resilient,
affordable and net-zero future.



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1. Our Revised Proposal

The National Electricity Rules (NER) lists four defined pass through events in section 6.6.1(a1) and provides scope under section 6.5.10 for Ausgrid to propose additional 'nominated' pass through events in a Regulatory Proposal.

The purpose of this document is to put forward the nominated pass through events that Ausgrid considers should apply during our 2024-29 Regulatory Period. Section 2 sets out our proposed definition for all nominated pass through events.

1.1 AER's Draft Decision

We proposed four nominated events in our Initial Proposal. The AER accepted that each of these events are consistent with the nominated pass through event considerations in the NER. However, the AER's Draft Decision did not accept the wording of our proposed natural disaster event definition. Our response below focuses on the wording of that definition.

1.1.1 Natural disaster pass through event definition

Our Initial Proposal sought to provide a more objective framework for defining the temporal and geographic boundaries of a natural disaster event. We sought to do this by elevating the weight placed on how a government authority, acting on expert advice, defines the time period and impacted area of a natural disaster. In response, the AER's Draft Decision deleted reference to such declarations, indicating an intention that a government declaration will be of less relevance in our 2024-29 period compared to today, in direct contrast to what we had proposed.

For ease of reference, we step through our current 2019-24 definition (**Figure 1**), our proposed definition in our Initial Proposal (**Figure 2**) and the AER's Draft Decision definition (**Figure 3**).

Figure 1 Current 2019-24 definition

Natural disaster event	Notes
<p>A natural disaster event occurs if:</p> <ul style="list-style-type: none">Any major fire, flood, earthquake or other natural disaster occurs during the 2019-24 regulatory control period and materially increases the costs to Ausgrid in providing direct control services, provided the fire, flood or other event was not a consequence of the acts or omissions of the service provider.The term 'major' in the above paragraph means an event that is serious and significant. It does not mean material as that term is defined in the Rules (that is 1 per cent of the DNSP's annual revenue requirement for that regulatory year). <p>Note: in assessing a natural disaster event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none">Whether Ausgrid has insurance against the event,	<p>We consider the geographic and temporal boundaries of a natural disaster to be best defined in reference to a government authority declaration. Our 2019-24 definition for the current period (see red emphasis on next page) expressly refers to these declarations.</p>

Natural disaster event	Notes
<ul style="list-style-type: none"> The level of insurance that an efficient and prudent NSP would obtain in respect of the event, <u>Whether a relevant government authority has made a declaration that a natural disaster has occurred.</u> 	

Figure 2 Our proposed 2024-29 definition

Natural disaster event	Notes
<p>Natural disaster events will include, but may not be limited to, natural disasters declared by a relevant government authority. Where a government authority has made a declaration that a natural disaster has occurred, the temporal and geographic scope of the natural disaster event will be defined by reference to the terms of that declaration.</p>	<p>We consider a government declaration, where made, provides the most objective basis to define the temporal and geographic boundaries of a natural disaster event</p>

Figure 3 AER’s 2024-29 Draft Decision definition

Natural disaster event	Notes
<p>Natural disaster event means any natural disaster including but not limited to cyclone, fire, flood or earthquake that occurs during the 2024–29 regulatory control period that changes the costs to Ausgrid in providing direct control services, provided the cyclone, fire, flood, earthquake or other event was:</p> <ul style="list-style-type: none"> a) a consequence of an act or omission that was necessary for the service provider to comply with a regulatory obligation or requirement or with an applicable regulatory instrument; or b) not a consequence of any other act or omission of the service provider. <p>Note: In assessing a natural disaster event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> i) whether Ausgrid has insurance against the event; ii) the level of insurance that an efficient and prudent NSP would obtain in respect of the event. 	<p>The AER’s Draft decision removed all reference to a government declaration as an express consideration it will consider when defining the temporal and geographic boundaries of a natural disaster event.</p>

1.2 Our response to the AER’s Draft Decision

We have concerns with the AER’s Draft Decision definition for a natural disaster pass through event. Each element is broken down in **Figure 4** below followed by our analysis against component clauses 1 to 7.

Figure 4 AER’s Draft Decision for natural disaster pass through event

Component clause	Definitional element (emphasis added)
1	Natural disaster event means any natural disaster including but not limited to cyclone, fire, flood or earthquake that occurs during the 2024–29 regulatory control period that changes the costs to Ausgrid in providing direct control services...
2	... provided the cyclone, fire, flood, earthquake or other event was:
3	a) a consequence of an act or omission that was necessary for the service provider to comply with a regulatory obligation or requirement or with an applicable regulatory instrument
4	b) not a consequence of any other act or omission of the service provider.
5	Note: In assessing a natural disaster event pass through application, the AER will have regard to, amongst other things:
6	i) whether Ausgrid has insurance against the event;
7	ii) the level of insurance that an efficient and prudent NSP would obtain in respect of the event.

From a clarity perspective, we wish to highlight a potential issue in how component clause (2) above reads in conjunction with (3). Together they establish that, for a natural disaster event to have occurred, the ‘cyclone, fire, flood, earthquake or other event’ must have been ‘a consequence of an act or omission that was necessary... to comply with a regulatory obligation’. Though this would not be the AER’s intent, a literal reading of these clauses would require that a **natural disaster** is the **consequence** of a **regulatory obligation**.

We consider clauses (2) and (3) above should be reworked for clarity. This is to require the **costs** incurred in responding to a natural disaster event to be consistent with an established role or regulatory obligation of an electricity network provider. Our suggested edits to achieve this outcome are set out in **Figure 5** below.

Figure 5 Recommended changes to component clauses (2) and (3)

Component clause	Definitional element (emphasis added)
2	...provided the costs incurred in responding to a cyclone, fire, flood, earthquake or other event were incurred was:
3	a) a consequence of in relation to an act or omission that is consistent with that was necessary for the service provider to comply with a regulatory obligation, or requirement or with an applicable regulatory instrument

We are furthermore concerned that the AER’s Draft Decision removes any reference to a government declaration. Reference to a government declaration is included in our current 2019-

24 definition, which we consider to offer the most objective basis for defining the boundaries of a natural disaster. Our Revised Proposal definition and reasoning is outlined below.

1.3 Our proposed ‘natural disaster’ event definition

We propose the following definition for a natural disaster event in our 2024-29 Regulatory Period:

Natural disaster events will include, but may not be limited to, natural disasters declared by a relevant government authority. Where a government authority has made a declaration that a natural disaster has occurred, the temporal and geographic scope of the natural disaster event will be defined by reference to the terms of that declaration (emphasis added).

Our proposal builds on the reference in the current definition to a declaration by a government authority (see **Figure 2** above). However, we consider these declarations can take on a more central position given that they:

- confirm whether a natural disaster event has occurred; and
- are accompanied by information regarding the time of the event and the impacted locations.

We outline our reasoning in greater detail in **1.3.1** and **1.3.2** below. The NSW Government website which sets out disaster declarations can be accessed here:

<https://www.nsw.gov.au/disaster-recovery/natural-disaster-declarations#toc-financial-year-2022-23>.

1.3.1 Clear mechanism to define the scope and boundaries of natural disasters

Natural disaster declarations from a government authority provide a clear mechanism for identifying the temporal and geographic scope of the event in question.

The clarity of the mechanism stems from its specificity. NSW government declarations state the timing of the event and the impacted Local Government Areas.¹ Using this information, the AER can clearly define the temporal and geographic boundaries of a natural disaster event, without having to investigate meteorological data or other scientific information.

1.3.2 Use of objective expertise to define the scope and boundaries of natural disaster

Government authorities tasked with making natural disaster declarations are an objective source of the expertise needed to identify the scope and boundaries of these events. This expertise is likely to become increasingly important as climate change leads to compounding storm and other natural disaster activity occurring over large geographical areas and potentially longer timespans.

Our proposed definition of a natural disaster event provides a mechanism for the AER to leverage this expertise to define the scope and boundaries of a natural disaster.

¹ <https://www.nsw.gov.au/disaster-recovery/natural-disaster-declarations#toc-financial-year-2022-23>.

2. Proposed definitions

We accept the AER's Draft Decision for all nominated pass through definitions except for natural disaster pass through event.

Figure 6 Our Revised Proposal definitions

Event	Revised proposed definition
<p>Natural disaster event</p>	<p>Natural disaster events will include, but may not be limited to, natural disasters declared by a relevant government authority. Where a government authority has made a declaration that a natural disaster has occurred, the temporal and geographic scope of the natural disaster event will be defined by reference to the terms of that declaration.</p>
<p>Insurance coverage event</p>	<p>An insurance coverage event occurs if:</p> <ol style="list-style-type: none"> 1. Ausgrid: <ol style="list-style-type: none"> a) makes a claim or claims and receives the benefit of a payment or payments under a relevant insurance policy or set of insurance policies; or b) would have been able to make a claim or claims under a relevant insurance policy or set of insurance policies but for changed circumstances; and 2. Ausgrid incurs costs: <ol style="list-style-type: none"> a) beyond a relevant policy limit for that policy or set of insurance policies; or b) that are unrecoverable under that policy or set of insurance policies due to changed circumstances; and 3. The costs referred to in paragraph 2 above materially increase the costs to Ausgrid in providing direct control services. <p>For the purposes of this insurance coverage event:</p> <p>'changed circumstances' means movements in the relevant insurance liability market that are beyond the control of Ausgrid, where those movements mean that it is no longer possible for Ausgrid to take out an insurance policy or set of insurance policies at all or on reasonable commercial terms that include some or all of the costs referred to in paragraph 2 above within the scope of that insurance policy or set of insurance policies.</p> <p>'costs' means the costs that would have been recovered under the insurance policy or set of insurance policies had:</p> <ol style="list-style-type: none"> i. the limit not been exhausted; or

Event	Revised proposed definition
	<p>ii. those costs not been unrecoverable due to changed circumstances.</p> <p>A relevant insurance policy or set of insurance policies is an insurance policy or set of insurance policies held during the regulatory control period or a previous regulatory control period in which Ausgrid was regulated; and</p> <p>Ausgrid will be deemed to have made a claim on a relevant insurance policy or set of insurance policies if the claim is made by a related party of Ausgrid in relation to any aspect of Ausgrid’s network or business; and</p> <p>Ausgrid will be deemed to have been able to make a claim on a relevant insurance policy or set of insurance policies if, but for changed circumstances, the claim could have been made by a related party of Ausgrid in relation to any aspect of Ausgrid's network or business.</p> <p>Note for the avoidance of doubt, in assessing an insurance coverage event through application under rule 6.6.1(j), the AER will have regard to:</p> <ul style="list-style-type: none"> i. the relevant insurance policy or set of insurance policies for the event ii. the level of insurance that an efficient and prudent DNSP would obtain, or would have sought to obtain, in respect of the event; iii. any information provided by Ausgrid to the AER about Ausgrid's actions and processes; and <p>any guidance published by the AER on matters the AER will likely have regard to in assessing any insurance coverage event that occurs.</p>
<p>Insurance credit risk event</p>	<p>An insurer's credit risk event occurs if an insurer of Ausgrid becomes insolvent, and as a result, in respect of an existing or potential claim for a risk that was insured by the insolvent insurer, Ausgrid:</p> <ul style="list-style-type: none"> a) Is subject to a higher or lower claim limit or a higher or lower deductible than would have otherwise applied under the insolvent insurer's policy; or b) Incurs additional costs associated with funding an insurance claim, which otherwise have been covered by the insolvent insurer. <p>Note: In assessing an insurer's credit risk event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> i. Ausgrid's attempts to mitigate and prevent the event from occurring by reviewing and considering the insurers track record, size, credit rating and reputation. <p>In the event that a claim would have been made after the insurance provider became insolvent, whether Ausgrid had reasonable opportunity to insure the risk with a different provider.</p>
	<p>Terrorism event means an act (including, but not limited to, the use of force or violence or the threat of force or violence) of any person or group of persons (whether acting alone or on behalf of or in connection with any organisation or government), which:</p>

Event	Revised proposed definition
	<p>a) from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons (including the intention to influence or intimidate any government and/or put the public, or any section of the public, in fear); and</p> <p>b) changes the costs to Ausgrid in providing direct control services.</p> <p>Note: In assessing a terrorism event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> i. whether Ausgrid has insurance against the event; ii. the level of insurance that an efficient and prudent NSP would obtain in respect of the event; and <p>whether a declaration has been made by a relevant government authority that a terrorism event has occurred.</p>