

# Final Decision

## Endeavour Energy Electricity Distribution Determination 2024 to 2029 (1 July 2024 to 30 June 2029)

### Attachment 15 Pass through events

April 2024

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#### **Amendment record**

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# List of attachments

This attachment forms part of the AER's final decision on the distribution determination that will apply to Endeavour Energy for the 2024–29 period. It should be read with all other parts of the draft decision.

The final decision includes the following documents:

Overview

Attachment 1 – Annual revenue requirement

Attachment 2 – Regulatory asset base

Attachment 4 – Regulatory depreciation

Attachment 7 – Corporate income tax

Attachment 13 – Classification of services

Attachment 14 – Control mechanisms

Attachment 15 – Pass through events

Attachment 16 – Alternative control services

Attachment 18 – Connection policy

Attachment 19 – Tariff structure statement

Attachment 20 – Metering services

# Contents

- List of attachments .....iii**
- 15 Pass through events .....1**
  - 15.1 Final decision..... 1
  - 15.2 Endeavour Energy’s proposal ..... 4
  - 15.3 Assessment approach ..... 4
  - 15.4 Reasons for final decision..... 4
- Shortened forms.....8**

## 15 Pass through events

During the regulatory control period Endeavour Energy can apply to pass through to its customers, in the form of higher or lower network charges, certain material changes in its efficient costs caused by pre-defined exogenous events. These events are called cost pass through events. Such events are limited to circumstances where the business can recover potential costs of defined yet unpredictable high-cost events that are outside the control of the business.

The National Electricity Rules (NER) prescribe the following pass through events for all distribution determinations:<sup>1</sup>

- a regulatory change event
- a service standard event
- a tax change event
- a retailer solvency event.

In addition to these prescribed events, other pass through events may be 'nominated' by a service provider for a regulatory control period.<sup>2</sup> This attachment sets out our final decision on the nominated pass through events to apply to Endeavour Energy's distribution network for the 2024–29 regulatory control period

### 15.1 Final decision

Our final decision pursuant to clause 6.12.1(14) of the NER is to accept the four nominated pass through events proposed by Endeavour Energy (being the terrorism, natural disaster, insurance coverage and insurer's credit risk events) as defined in Table 15.1. This is consistent with our draft decision.<sup>3</sup>

For the reasons set out in section 15.4, we consider that our definition of the terrorism pass through event remains suitable in an evolving geopolitical environment.<sup>4</sup> Endeavour Energy requested we clarify our position if we consider this is the case.

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<sup>1</sup> NER, cl. 6.6.1(a1)(1)–(4). Each of these prescribed events is defined in Chapter 10 (Glossary) of the NER.

<sup>2</sup> NER, cl. 6.6.1(a1)(5).

<sup>3</sup> AER, Draft decision, *Endeavour Energy distribution determination 2024–29, Attachment 15, Pass through events*, September 2023, p. 1 and Table 15.2 on pp. 10-12.

<sup>4</sup> In its initial proposal, Endeavour Energy noted that other network service providers have previously proposed additional pass through events for other malicious acts such as cyberattacks and war in a changing geopolitical environment. See, Endeavour Energy, *Regulatory Proposal 2024-29*, January 2023, p. 94.

**Table 15.1: AER pass through event definitions**

Pass through event	Final decision definition
Insurance coverage event	<p>An insurance coverage event occurs if:</p> <ol style="list-style-type: none"> <li>1. Endeavour: <ol style="list-style-type: none"> <li>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</li> <li>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</li> </ol> </li> <li>2. Endeavour incurs costs: <ol style="list-style-type: none"> <li>a) beyond a relevant policy limit for that policy or set of insurance policies; or</li> <li>b) that are unrecoverable under that policy or set of insurance policies due to changed circumstances; and</li> </ol> </li> <li>3. The costs referred to in paragraph 2 above materially increase the costs to Endeavour in providing direct control services.</li> </ol> <p>For the purposes of this insurance coverage event:</p> <ul style="list-style-type: none"> <li>• 'changed circumstances' means movements in the relevant insurance liability market that are beyond the control of Endeavour, where those movements mean that it is no longer possible for Endeavour 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.</li> <li>• 'costs' means the costs that would have been recovered under the insurance policy or set of insurance policies had: <ul style="list-style-type: none"> <li>– the limit not been exhausted; or</li> <li>– those costs not been unrecoverable due to changed circumstances.</li> </ul> </li> <li>• 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 Endeavour was regulated; and</li> <li>• Endeavour 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 Endeavour in relation to any aspect of Endeavour's network or business; and</li> <li>• Endeavour 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 Endeavour in relation to any aspect of Endeavour's network or business.</li> </ul> <p>Note for the avoidance of doubt, in assessing an insurance coverage event pass through application under rule 6.6.1(j), the AER will have regard to:</p> <ol style="list-style-type: none"> <li>i) the relevant insurance policy or set of insurance policies for the event;</li> </ol>

Pass through event	Final decision definition
	<p>ii) the level of insurance that an efficient and prudent DNSP would obtain, or would have sought to obtain, in respect of the event;</p> <p>iii) any information provided by Endeavour to the AER about Endeavour's actions and processes; and</p> <p>iv) any guidance published by the AER on matters the AER will likely have regard to in assessing any insurance coverage event that occurs.</p>
Insurer's credit risk event	<p>An insurer's credit risk event occurs if an insurer of Endeavour becomes insolvent, and as a result, in respect of an existing or potential claim for a risk that was insured by the insolvent insurer, Endeavour:</p> <p>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</p> <p>b) incurs additional costs associated with funding an insurance claim, which would otherwise have been covered by the insolvent insurer.</p> <p>Note: in assessing an insurer credit risk event pass through application, the AER will have regard to, amongst other things:</p> <p>i) Endeavour attempts to mitigate and prevent the event from occurring by reviewing and considering the insurer's track record, size, credit rating and reputation, and</p> <p>ii) in the event that a claim would have been covered by the insolvent insurer's policy, whether Endeavour had reasonable opportunity to insure the risk with a different provider.</p>
Natural disaster event	<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 Endeavour in providing direct control services, provided the cyclone, fire, flood, earthquake or other event was:</p> <p>(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</p> <p>(b) not a consequence of any other act or omission of the service provider.</p> <p>Note: In assessing a natural disaster event pass through application, the AER will have regard to, amongst other things:</p> <p>i) whether Endeavour has insurance against the event;</p> <p>ii) the level of insurance that an efficient and prudent NSP would obtain in respect of the event.</p>
Terrorism event	<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> <p>1. from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons (including the</p>

Pass through event	Final decision definition
	<p>intention to influence or intimidate any government and/or put the public, or any section of the public, in fear); and</p> <p>2. changes the costs to Endeavour 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> <p>i) whether Endeavour has insurance against the event;</p> <p>ii) the level of insurance that an efficient and prudent NSP would obtain in respect of the event; and</p> <p>iii) whether a declaration has been made by a relevant government authority that a terrorism event has occurred.</p>

Source: AER analysis

## 15.2 Endeavour Energy’s proposal

Endeavour Energy accepted all the aspects of our draft decision on nominated pass through events. However, it submitted that while the ‘terrorism’ event remains a valid and enduring threat, it also risks becoming antiquated and narrow in its language and focus.<sup>5</sup>

Endeavour Energy considered that the current definition of terrorism event, which refers to acts done for, or in connection with, political, religious, ideological or similar motivations, could be applied in a limited way to exclude other acts of aggression or malice (e.g., cyber-attacks done for ransom or for the sake of causing disruption alone rather than to stoke fear in the community to achieve an ideological end).<sup>6</sup>

Endeavour Energy requested we clarify whether our definition of terrorism pass through event remains suitable in an evolving geopolitical environment.<sup>7</sup>

We did not receive any submissions on the proposed cost pass through events.

## 15.3 Assessment approach

We have applied the same assessment approach as in the draft decision.<sup>8</sup>

## 15.4 Reasons for final decision

We maintain our current definition of terrorism pass through event because we consider it remains suitable in an evolving geopolitical environment at this time.

In its initial proposal, Endeavour Energy adopted our current definition of terrorism event. However, it submitted that there may be merit in changing the ‘terrorism’ event name itself to

<sup>5</sup> Endeavour Energy, *Revised regulatory proposal 2024-29*, November 2023, pp. 43.

<sup>6</sup> Endeavour Energy, *Revised regulatory proposal 2024-29*, November 2023, pp. 43.

<sup>7</sup> Endeavour Energy, *Revised regulatory proposal 2024-29*, November 2023, pp. 43–44.

<sup>8</sup> AER, Draft decision, *Endeavor Energy distribution 2024–29, Attachment 15, Pass through events*, September 2023, pp. 4-6.



‘acts of aggression’ and/or adjusting the definition to focus on intentional and malicious acts of aggression rather than a subset of them (terrorist attacks).<sup>9</sup> In this context, it noted that other network service providers have previously proposed additional pass through events for other malicious acts such as cyber-attacks and war.<sup>10</sup>

In our draft decision, while we accepted Endeavour Energy’s proposed definition because it was the same as ours, we did not directly engage with Endeavour Energy’s commentary around the definition and scope of the terrorism pass through event.

In its revised proposal, Endeavour Energy adopted all the aspects of our draft decision but reiterated the comments it made in its initial proposal and requested a response from us. Specifically, Endeavour Energy requested we confirm that our current definition of terrorism pass through event remains suitable in an evolving geopolitical environment.<sup>11</sup>

We have reviewed the revised proposal and we understand that Endeavour Energy is seeking clarification as to whether our current definition of terrorism event is likely to capture events such as cyber-attacks.

We agree with Endeavour Energy that the ‘terrorism’ event remains a valid and enduring threat and note Endeavour Energy’s view that, the event as defined, risks becoming antiquated and narrow in its language and focus. However, over the years we have considered the definition of the terrorism event in light of various changes proposed by network service providers to broaden the scope of the event to capture a range of specific elements such as cyber-attacks or to include additional terms, along the lines commented by Endeavour Energy.<sup>12</sup> For example:

- In its 2015–20 regulatory proposal, CitiPower proposed that attacks against, and the deliberate introduction of harmful code of viruses to, computer systems and networks and communication systems be also captured as acts of terrorism.<sup>13</sup>
- In its 2021–26 regulatory proposal, CitiPower proposed to expand the definition of terrorism beyond ‘the use of force and violence’, to include attacks or other disruptive activities against critical infrastructure or underlying technology, or the threat of such attacks or disruptive activities, or the deliberate introduction of malware.<sup>14</sup>

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<sup>9</sup> Endeavour Energy, *Regulatory Proposal 2024-29*, January 2023, p. 95.

<sup>10</sup> Endeavour Energy, *Regulatory Proposal 2024-29*, January 2023, p. 94.

<sup>11</sup> Endeavour Energy, *Revised Regulatory Proposal 2024-29*, November 2023, p. 43. In its initial proposal, Endeavour Energy noted that other network service providers have previously proposed additional pass through events for other malicious acts such as cyberattacks and war in a changing geopolitical environment. See, Endeavour Energy, *Regulatory Proposal 2024-29*, January 2023, p. 94.

<sup>12</sup> AER, *Preliminary decision CitiPower distribution determination - Attachment 15 - Pass through events*, October 2015, pp. 19-20; AER, *Final decision CitiPower distribution determination - Attachment 15 - Pass through events*, May 2016, pp. 18-20; AER, *Draft decision ElectraNet transmission determination 2023-28 - Attachment 13 - Pass through events*, September 2022, p. 8; AER, *Draft decision - Power and Water Corporation distribution determination 2024–29 - Attachment 15 - Pass through events*, September 2023, pp.9-10.

<sup>13</sup> CitiPower, *2016-2020 Price Reset, Appendix L Managing Uncertainty*, April 2015, p. 16.

<sup>14</sup> CitiPower, *2021–26 Regulatory proposal – Supporting document CP APP04 – Managing uncertainty – Appendix*, January 2020, p 8.

- Similarly, Power and Water Corporation 2024–29 proposed to broaden the terrorism event to include cyber-attacks.
- In its 2023–28 revenue proposal, ElectraNet proposed to broaden the scope of the definition of terrorism event by adding additional terms to capture intentions behind acts of terrorism.<sup>15</sup>

The above examples demonstrate that network service providers have been considering the evolving geopolitical environment in their proposals. We have addressed the issues raised by the networks service providers in relevant determinations.<sup>16</sup>

In our previous determinations we have not accepted the proposals by network service providers, to broaden the scope of terrorism event to explicitly include reference to cyber-attacks or related terms. We consider it important that a service provider retain the incentives to invest efficiently in its system to guard against cyber-security threats, as well as to explore all available market-based mechanisms such as insurance and risk mitigation strategies. We have expressed our concern in our recent determinations that broadening the definition of terrorism event in the manner proposed by network service providers and along the lines commented by Endeavour Energy, may erode incentives on network service providers to seek alternative mechanisms to mitigate the cost impacts that may arise.<sup>17</sup>

Endeavour Energy operates national critical infrastructure and is subject to stringent cyber security compliance requirements. We consider Endeavour Energy as other network service providers should have appropriate safeguards and contingency plans in place to substantially mitigate the risks and cost impacts of major cyber-attacks. To support this, our determinations have generally included in our capex and/or opex forecasts additional expenditure proposed by network service providers, to further enhance their capability to proactively identify, protect, detect, respond to, and recover from cyber security threats. For example, our draft decision for Endeavour Energy included expenditure for ICT cybersecurity.<sup>18</sup> This expenditure is intended for Endeavour Energy to strengthen its capability to proactively identify, protect, detect, respond to, and recover from cyber security threats. Our approach demonstrates that while we have not allowed the terrorism event to be broadened in scope as proposed by various network service providers over the past years, we

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<sup>15</sup> ElectraNet, *2023-28 Revenue proposal - ENET014 - ElectraNet - Attachment 12 - Pass Through Events*, 31 January 2022, pp. 10-11.

<sup>16</sup> AER, *Preliminary decision CitiPower distribution determination - Attachment 15 - Pass through events*, October 2015, pp. 19-20; AER, *Final decision CitiPower distribution determination - Attachment 15 - Pass through events*, May 2016, pp. 18-20; AER, *Draft decision ElectraNet transmission determination 2023-28 - Attachment 13 - Pass through events*, September 2022, p. 8; AER, *Draft decision - Power and Water Corporation distribution determination 2024–29 - Attachment 15 - Pass through events*, September 2023, pp.9-10.

<sup>17</sup> AER, *Preliminary decision CitiPower distribution determination - Attachment 15 - Pass through events*, October 2015, pp. 19-20; AER, *Final decision CitiPower distribution determination - Attachment 15 - Pass through events*, May 2016, pp. 18-20; AER, *Draft decision ElectraNet transmission determination 2023-28 - Attachment 13 - Pass through events*, September 2022, p. 8; AER, *Draft decision - Power and Water Corporation distribution determination 2024–29 - Attachment 15 - Pass through events*, September 2023, pp.9-10.

<sup>18</sup> AER, *Draft Decision – Endeavour Energy distribution determination 2024–29 | Attachment 5 – Capital expenditure*, September 2023, pp. 13-14 ([here](#)).

have incorporated elements flowing from the evolving geopolitical environment in aspects of our determinations to that effect.

Furthermore, cyber security risk is one of the key business risks an energy network service provider faces and we consider this business risk should be largely borne by the network service provider, who is best placed to manage it, rather than the consumers. We consider it is appropriate network service providers be incentivised to mitigate the risk of major cyber events occurring, and also to mitigate the extent of damage that may be caused by them and any impact on the provision of direct control services. If we were to accept the proposed changes to the terrorism event (e.g., to incorporate cyber-attack), the incentive on Endeavour Energy and other network service providers to proactively manage cyber security risks and adopt best practices would be reduced.

Although network service providers and Endeavour Energy have no control on what third parties do, they control the cyber security and protection of their information and communications technology systems and assets, which affects their susceptibility to cyber-attacks. Network service providers and Endeavour Energy have a regulatory obligation to maintain the security of supply of electricity. They also have an incentive to ensure the security of their network system is sufficiently robust and resilient to withstand cyber-threats such that a major interruption to them can substantially mitigate the risk and cost impact of this type of event in a forward-looking manner by:

- ensuring appropriate cybersecurity protections are in place, and
- having appropriate contingency precautions, and insurance coverage.

Nonetheless, the above considerations do not preclude a cost pass through application by Endeavour Energy under a terrorism event where the event in question could properly be characterised as a cyber-attack that has the characteristics of an act of terrorism.<sup>19</sup> As we also noted in our 2023–28 determination for ElectraNet, the insurance coverage event may also allow for recovery of cyber-attack costs where the other elements of the definition are satisfied.<sup>20</sup> We would consider the specific circumstances surrounding any given event, and reasonably apply the existing flexibility in our event definitions,<sup>21</sup> in considering whether a pass through event has occurred.

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<sup>19</sup> AER, *Final decision CitiPower distribution determination - Attachment 15 - Pass through events*, May 2016, p. 15.

<sup>20</sup> AER, *Final Decision – ElectraNet transmission determination 2023–28 | Attachment 13 – Cost pass through events*, April 2023, p. 8 ([here](#)).

<sup>21</sup> For example, the terrorism event definition is not exhaustive in listing the factors we will have regard to, and can cover acts “including, but not limited to, the use of force or violence or the threat of force or violence”.

## Shortened forms

Term	Definition
AER	Australian Energy Regulator
capex	capital expenditure
NER	National Electricity Rules
opex	operating expenditure