

Final decision

ElectraNet transmission determination
1 July 2023 to 30 June 2028

Attachment 13 – Cost pass through events

April 2023

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13 Cost pass through events

During the regulatory control period, a service provider can apply to us to pass material changes in its costs arising from pre-defined exogenous events through to customers, in the form of higher or lower network charges. These events are called cost pass through events. Positive pass throughs exist in the rules as a mechanism to allow service providers to recover their efficient costs incurred as a result of events that could not be forecast as part of their proposal that otherwise would have a significant financial effect on the ability of networks to invest in and operate their networks.¹

The National Electricity Rules (NER) include the following pass through events for all transmission determinations:²

- a regulatory change event,
- a service standard event,
- a tax change event,
- an insurance event, and
- an inertia shortfall event.³

In addition to these prescribed events, other (nominated) pass through events may be specified in a determination for a regulatory control period.⁴

Our final decision must include a decision on the nominated pass through events that are to apply for the regulatory control period.⁵

This attachment sets out our final decision on the nominated pass through events that will apply to ElectraNet for the 2023–28 regulatory control period.

13.1 Final decision

Our final decision pursuant to clause 6A.14.1(9) of the NER is to accept four of ElectraNet's proposed nominated pass through events (being the terrorism, natural disaster, insurance coverage and insurer's credit risk events) as defined in Table 13-1. This is consistent with our draft decision.⁶

¹ AEMC 2012, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, p. 2.

² NER, cl. 6A.7.3(a1)(1)–(4) and (6). Each of these prescribed events is defined in Chapter 10 (Glossary) of the NER.

³ This type of event does not apply in Victoria (see NER, cl 5.20B.4(a)). Relative to our draft decision, we have deleted reference to 'fault level shortfall event' because this event has been removed from chapter 6A following the *Managing system strength* rule change. See: <https://www.aemc.gov.au/rule-changes/efficient-management-system-strength-power-system> (p. 117 [here](#)).

⁴ NER, cl. 6A.7.3(a1)(5).

⁵ NER, cl. 6A.14.1(9).

⁶ AER, Draft decision, *ElectraNet transmission 2023–28, Attachment 13, Pass through events*, September 2022, p. 1.

We do not accept ElectraNet’s proposal to reflect ‘cyber costs’ explicitly in the definition of ‘insurance coverage’ event. We consider that the ‘insurance coverage’ event already allows for recovery of cyber attack costs where the other elements of the definition are satisfied. Our reasons are set out in section 13.4.

Table 13-1 AER’s final decision nominated pass through events

Proposed event	Draft decision definition
Insurance coverage event	<p>An insurance coverage event occurs if:</p> <ol style="list-style-type: none"> 1. ElectraNet: <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. ElectraNet 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 ElectraNet in providing prescribed transmission services. <p>For the purposes of this insurance coverage event:</p> <p>'changed circumstances' means movements in the relevant insurance market, including liability insurance, that are beyond the control of ElectraNet, where those movements mean that it is no longer possible for ElectraNet 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 ii. those costs not been unrecoverable due to changed circumstances. <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 ElectraNet was regulated; and</p> <p>ElectraNet 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 ElectraNet in relation to any aspect of ElectraNet’s network or business; and</p>

Proposed event	Draft decision definition
	<p>ElectraNet 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 ElectraNet in relation to any aspect of ElectraNet's network or business.</p> <p>Note: For the avoidance of doubt, in assessing an insurance coverage event through application under rule 6A.7.3(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 TNSP would obtain, or would have sought to obtain, in respect of the event; iii. any information provided by ElectraNet to the AER about ElectraNet's actions and processes; and 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>	<p>An insurer credit risk event occurs if an insurer of ElectraNet becomes insolvent, and as a result, in respect of an existing or potential claim for a risk that was insured by the insolvent insurer, ElectraNet:</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 would otherwise have been covered by the insolvent insurer. <p>Note: In assessing an insurer credit risk event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> i. ElectraNet's attempts to mitigate and prevent the event from occurring by reviewing and considering the insurer's track record, size, credit rating and reputation; and ii. in the event that a claim would have been covered by the insolvent insurer's policy, whether ElectraNet had reasonable opportunity to insure the risk with a different provider.
<p>Natural disaster event</p>	<p>Natural disaster event means any natural disaster including but not limited to cyclone, fire, flood or earthquake that occurs during the 2023–24 to 2027–28 regulatory control period that changes the costs to ElectraNet in providing prescribed transmission services, provided the cyclone, fire, flood, earthquake or other event was:</p>

Proposed event	Draft decision definition
	<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> <ol style="list-style-type: none"> i. whether ElectraNet has insurance against the event; ii. the level of insurance that an efficient and prudent NSP would obtain in respect of the event.
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> <ol style="list-style-type: none"> 1. 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 2. changes the costs to ElectraNet in providing prescribed transmission services. <p>Note: In assessing a terrorism event pass through application, the AER will have regard to, amongst other things:</p> <ol style="list-style-type: none"> i. whether ElectraNet has insurance against the event; ii. the level of insurance that an efficient and prudent NSP would obtain in respect of the event; and iii. whether a declaration has been made by a relevant government authority that a terrorism event has occurred.

13.2 ElectraNet’s revised proposal

ElectraNet accepted all the aspects of our draft decision on cost pass through events except the definition of ‘insurance coverage’ event.⁷

ElectraNet proposed an amendment to the ‘insurance coverage’ event definition to explicitly reflect costs related to cyber attack in the definition of ‘costs’ for this event as set out below (emphasis added).

⁷ AER, Draft decision, *ElectraNet transmission 2023–28, Attachment 13, Pass through events*, September 2022, p. 51

'costs' means the costs, including the **costs of cyber attacks**, that would have been recovered under the insurance policy or set of insurance policies had:

- iii. the limit not been exhausted;
- iv. those costs not been unrecoverable due to changed circumstances.⁸

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

13.3 Assessment approach

We have applied the same assessment approach as in the draft decision.⁹

13.4 Reasons for final decision

We do not accept ElectraNet's proposal to reflect 'cyber costs' explicitly in the definition of 'insurance coverage' event. In our view, the insurance coverage event already allows for recovery of cyber attack costs where the other elements of the definition are satisfied. We consider that:

- there is no reason to explicitly mention the cost of cyber attacks in the definition, as opposed to other categories of insurable costs. This may have the effect of changing the emphasis of the definition and is unnecessary.
- to the extent this change gives greater assurance that all cyber-attack costs will be recoverable under the insurance coverage event, the proposed change may disincentivise ElectraNet to maintain appropriate cyber insurance coverage into the future, and manage cyber security risks.
- the proposed change would create an inconsistency in the definition of the insurance coverage event for ElectraNet compared to other network service providers.

We have therefore maintained our draft decision on the definition of the insurance coverage nominated pass through event for the 2023–28 regulatory control period.

⁸ ElectraNet, *Attachment 12 – Pass through events Revenue Proposal 2023–24 to 2027–28*, 31 January 2022, p. 8.

⁹ AER, Draft decision, *ElectraNet transmission 2023–28, Attachment 13, Pass through events*, September 2022, pp. 5-7.

Glossary

Term	Definition
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
NER	National Electricity Rules
NSP	Network Service Provider
