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Contact Officer: Sean Mullins
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11 December 2023

Mr John Knox
Chief Executive Officer
Evoenergy
ActewAGL House
40 Bunda Street
CANBERRA ACT 2601

By email: [REDACTED]

Dear John

Re: Request for jurisdictional scheme determination – ACT Large-scale Feed-in Tariff Scheme

I refer to your request of 17 November 2023, that the AER determine that the ACT Large-scale Feed-in Tariff Scheme, should cease to be a jurisdictional scheme.

Our assessment of your request, our determination and reasons are set out below.

Background

On 14 December 2011, the ACT Government passed the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011* (LFiT Act). The LFiT Act established a feed-in tariff (FiT) to support the development of large-scale renewable energy generation in the ACT. The scheme requires the ACT electricity distributor (ActewAGL at the time), to pay FiT support payments to approved large renewable energy generators (the scheme).¹

On 6 January 2014, ActewAGL submitted a request to the AER that the scheme be determined a jurisdictional scheme. We assessed the scheme against the jurisdictional scheme eligibility criteria in clause 6.18.7A(x) of the National Electricity Rules (NER) and on 29 January 2014 we determined the scheme to be a jurisdictional scheme.²

On 8 November 2017, the LFiT Act was amended. The amendment gave the ACT Government greater oversight of the costs of the scheme by allowing the ACT Minister for Water, Energy and Emissions Reduction to determine the reasonable costs of the scheme.

¹ Section 18 of the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011* (LFiT Act).

² <https://www.aer.gov.au/industry/registers/resources/schemes/actewaql-determination-whether-scheme-jurisdictional-scheme>

The amendment also allow the ACT electricity distributor to pass on its reasonable costs in making FiT support payments and administering the scheme to electricity retailers.³

On 17 November 2023, Evoenergy submitted a request to the AER to determine that the scheme should cease to be a jurisdictional scheme.⁴ We are satisfied that the request contains the required information set out in clause 6.18.7A(p) of the NER.

We must determine that the scheme should cease to be a jurisdictional scheme within 20 business days of receiving the request and publish our decision (including the reasons).⁵

We must only determine that the scheme ceases to be a jurisdictional scheme if we consider that the scheme no longer meets the jurisdictional scheme eligibility criteria.⁶

Determination

The AER has determined that under clause 6.18.7A(u) of the NER that the scheme should cease to be a jurisdictional scheme, as the scheme no longer meets the jurisdictional scheme eligibility criteria.

Reasons for Determination

Our assessment of the scheme against the jurisdictional scheme eligibility criteria in clause 6.18.7A(x) of the NER is outlined in Table 1 below.

Table 1. Jurisdictional scheme eligibility criteria and AER assessment

Eligibility Criteria	AER Assessment
<p>(1) The jurisdictional scheme obligations⁷ require a DNSP to:</p> <ul style="list-style-type: none"> (i). pay a person; (ii). pay into a fund established under an Act of a participating jurisdiction; (iii). credit against charges payable by a person; or (iv). reimburse a person <p>an amount specified in, or determined in accordance with, the jurisdictional scheme obligations⁸</p>	<p>We are satisfied this requirement is met.</p> <p>The jurisdictional scheme obligation imposed on Evoenergy is contained in section 18 of the LFiT Act. It requires Evoenergy to make a FiT support payment to a FiT entitlements holder for their electricity.</p> <p>The amount to be paid is determined in accordance with the formula described in section 17A(4) of the LFiT Act.</p>
The jurisdictional scheme obligations are imposed on a DNSP in its capacity as a DNSP ⁹	We are satisfied this requirement is met.

³ Section 20A of the LFiT Act.

⁴ Under clause 6.18.7A(o) of the National Electricity Rules (NER) any person may request the AER to determine that a scheme is no longer a jurisdictional scheme. We published the request on our website in accordance with the requirement in clause 6.18.7A(q) of the NER on 1 December 2023 <https://statics.teams.cdn.office.net/evergreen-assets/safelinks/1/atp-safelinks.html>

⁵ Clause 6.18.7A(u) of the NER.

⁶ Clause 6.18.7A(w) of the NER.

⁷ Chapter 10 of the NER defines jurisdictional scheme obligations as 'Obligations imposed on a Distribution Network Service Provider under: (a) an Act of a participating jurisdiction or an instrument, direction or order made under an Act of a participating jurisdiction (other than the NEL and these Rules); or (b) a condition of a distribution license or authority held by a Distribution Network Service Provider in a participating jurisdiction.'

⁸ Clause 6.18.7A(x)(1) of the NER.

⁹ Clause 6.18.7A(x)(2) of the NER.

	Section 18 of the LFiT Act sets out Evoenergy's obligations as an ACT electricity distributor, to make a FiT support payment.
The payments required are not in the nature of a fine, penalty or incentive payment for the DNSP ¹⁰	We are satisfied this requirement is met. The amount payable under the LFiT Act is a payment to support the development of large-scale renewable energy generation and is not in the nature of a fine, penalty or incentive payment.
Except as provided in the NER, the DNSP has no right to recover the amounts from any person. ¹¹	We are <u>not</u> satisfied this requirement is met. The 2017 amendments to the LFiT Act, allow Evoenergy to pass on its reasonable costs in making FiT support payments to electricity retailers.

The 2017 amendment to LFiT Act, introduced the right for Evoenergy to pass on the reasonable costs of the scheme to electricity retailers. As a result, Evoenergy has the right to recover the reasonable costs associated with the scheme from another person, namely electricity retailers and the requirement in clause 6.18.7A(x)(4) of the NER is no longer met. As this requirement is no longer met, we consider that the scheme no longer meets the jurisdictional scheme eligibility criteria and should cease to be a jurisdictional scheme.

In making this determination, we have consulted with Evoenergy and the ACT Directorate of Environment, Planning and Sustainable Development.¹²

What this determination means for Evoenergy

The reasonable costs of the scheme established under the LFiT Act, will be passed on to electricity retailers outside our regulatory oversight or pricing process. For 2023-24, Evoenergy did this by making ex-post adjustments to the AER's approved network charges. Evoenergy proposes to develop a set of principles to govern these tariff adjustments in consultation with the ACT Government, the AER and the ACT Independent Competition and Regulatory Commission.

This determination will take effect from 12 December 2023.

Should you wish to discuss any of the above, please contact Sean Mullins on [REDACTED] or [REDACTED].

Yours sincerely

[REDACTED]

Lynne Gallagher
Board Member
Australian Energy Regulator
Sent by email on: 11.12.2023

¹⁰ Clause 6.18.7A(x)(3) of the NER.

¹¹ Clause 6.18.7A(x)(4) of the NER.

¹² Under clause 6.18.7A(t) of the NER, before making a determination the AER may consult with the relevant DNSP and such other persons as the AER consider appropriate on matters arising out of the request.