



Determination

ActewAGL Distribution's request for schemes to be determined as jurisdictional schemes

January 2014

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Shortened forms

Shortened form	Full title
AER	Australian Energy Regulator
ACT	Australian Capital Territory
ActewAGL Distribution	ActewAGL Distribution (ABN: 76 670 568 688)
DNSP	distribution network service provider
FiT	feed-in tariff
NEL	National Electricity Law
NER	National Electricity Rules

Overview

On 6 January 2014, ActewAGL Distribution (ABN: 76 670 568 688) requested the Australian Energy Regulator (AER) to determine the following schemes to be jurisdictional schemes (ActewAGL Distribution's request).¹

- ACT Energy Industry Levy
- Utilities Network Facilities Tax
- Feed-in Tariff (Large-scale).

ActewAGL Distribution is the service provider for the electricity distribution network in the Australian Capital Territory (ACT).² ActewAGL Distribution currently recovers costs associated with the ACT Energy Industry Levy and Utilities Network Facilities Tax via the expenditure allowances approved for the 2009–14 distribution determination.

ActewAGL Distribution may also apply to us to pass through to their network users the difference between the actual amounts incurred under each scheme and the approved allowance. We determine whether or not to pass through the costs by assessing ActewAGL Distribution's application against the cost pass through requirements in the National Electricity Rules (NER).

In our 2009 distribution determination for ActewAGL Distribution we did not determine an allowance for costs associated with obligations under the FiT (Large-scale) scheme because the scheme had not been implemented. Under the FiT (Large-scale) scheme, the Minister may grant a person a FiT entitlement. The scheme requires ActewAGL Distribution to pay a FiT support payment to each FiT entitlement holder for the holder's eligible electricity. The term of the first FiT (Large-scale) entitlement commences on 31 March 2014. Therefore, ActewAGL Distribution has not yet made any FiT (Large-scale) payments.

The NER allows any person to request the AER to determine whether a scheme is a jurisdictional scheme.³ Approval of a scheme as a jurisdictional scheme reduces the steps a Distribution Network Service Provider (DNSP) needs to undergo to recover the actual costs associated with the jurisdictional scheme obligations. This is because instead of giving the DNSP an allowance for the scheme's costs at each regulatory determination and having them apply to us to pass through any under/over recovery of costs, the DNSP can now recover both the scheme's allowance and under/over cost recovery through the annual pricing review. The scheme's allowance will be determined according to a cost methodology to be determined by us. Overall, this jurisdictional scheme determination aims to reduce administrative burden for ActewAGL Distribution and the AER.

We are required to determine whether or not a scheme is a jurisdictional scheme within 20 business days of receiving ActewAGL Distribution's request.⁴ We must determine that a scheme is a

¹ We published the request on our website in accordance with the requirement of sub-clause 6.18.8A(h) of the NER: <http://www.aer.gov.au/node/23256>

² ActewAGL Distribution's annual report 2010–11, p. 3. Accessed online on 9 January 2014 at: <http://www.actewagl.com.au/~media/ActewAGL/ActewAGL-Files/About-us/Publications/Corporate%20and%20legal%20PDFs/Annual-Report-2010-11.ashx>

³ Clause 6.18.7A(f) of the NER.

⁴ Clause 6.18.7A(l) of the NER.

jurisdictional scheme if we consider that the scheme meets the jurisdictional scheme eligibility criteria set out in the NER.⁵

We have determined that the following schemes listed in ActewAGL Distribution's request satisfy the requirements of the jurisdictional scheme eligibility criteria. Therefore we determine that the schemes listed below are jurisdictional schemes:

- ACT Energy Industry Levy
- Utilities Network Facilities Tax
- Feed-in Tariff (Large-scale).

⁵ Clause 6.18.7A(x) of the NER.

1 Determination

The AER has determined under sub-clause 6.18.7A(n) of the NER that the following schemes are jurisdictional schemes:

- Utilities Network Facilities Tax
- Energy Industry Levy
- Feed-in Tariff (large-scale).

Each of these schemes meets the jurisdictional scheme eligibility criteria set out in sub-clause 6.18.7A(x) of the NER.

2 ActewAGL Distribution's request

On 6 January 2014, we received ActewAGL Distribution's request for three schemes to be determined as jurisdictional schemes. As required under sub-clause 6.18.7A(g) of the NER, ActewAGL Distribution's request contained the following information:⁶

- (1) the name and address of the person making the request;
- (2) details of the law of a participating jurisdiction under which the relevant scheme is established;
- (3) the commencement date of the relevant scheme; and
- (4) an explanation of how the relevant scheme meets the jurisdictional scheme eligibility criteria.

2.1 The name and address of the person making the request

The person who made the request is ActewAGL Distribution. The addresses of this person are provided in ActewAGL Distribution's request document. Part 3 (Terms and references) of the National Electricity Act 1996 (South Australia) defines a "person" to include a body politic or body corporate as well as an individual.⁷

2.2 Information provided on each scheme

Information provided on each scheme is summarised in table 2.1 below.

Table 2.1 Summary of ActewAGL Distribution's request

	Details of the law establishing the schemes	Commencement date of the scheme	How the scheme meets the jurisdictional scheme criteria
Energy Industry Levy	Part 3A of the Utilities Act 2000 (ACT) imposes a levy on energy utilities to recover the amount of the ACT's national regulatory costs, and local regulations costs, in relation to the energy industry sectors.	The Utilities (Energy Industry Levy) Amendment Bill 2007 (ACT), which established the Energy Industry Levy ¹² , was passed by the ACT Legislative Assembly on 29 May 2007 and was notified on 13 June 2007.	The jurisdictional scheme obligations under each scheme require ActewAGL Distribution to pay a person. The amounts payable are determined in accordance with the jurisdictional scheme obligations.
Utilities Network Facilities Tax	The Utilities (Network Facilities Tax) Act 2006 (ACT) imposes a tax on owners of utility network facilities on land in the ACT.	The Utilities (Network Facilities Tax) Bill 2006 (ACT) passed the ACT Legislative Assembly on 14 December 2006 and was notified on 20 December 2006.	The amounts are not in the nature of a fine, penalty or incentive payment. ActewAGL Distribution currently recovers amounts for the Energy Industry Levy and the Utilities Network Facilities Tax through revenue allowance determined by the AER in its 2009 distribution determination. ActewAGL Distribution has not yet made a Feed-in Tariff (Large-scale) payment.
Feed-in tariff large-scale	Under the Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011 (ACT), ActewAGL Distribution is required to pay a FiT support payment to the holder of a FiT entitlement for the holder's eligible electricity.	The Electricity Feed-in (Large-scale Renewable Energy Generation) Bill 2011 (ACT) passed the ACT Legislative Assembly on 8 December 2011 and was notified on 14 December 2011.	

⁶ Email from ActewAGL Distribution to the AER, 6 January 2014, ActewAGL Distribution's Jurisdictional Scheme Determination Request, p. 3-8.

⁷ National Electricity Act 1996 (South Australia), accessed online on 10 January 2014 at: [http://www.legislation.sa.gov.au/lz/c/a/national%20electricity%20\(south%20australia\)%20act%201996/current/1996.44.un.pdf](http://www.legislation.sa.gov.au/lz/c/a/national%20electricity%20(south%20australia)%20act%201996/current/1996.44.un.pdf)

3 Regulatory requirements

This section sets out the applicable regulatory requirements that must be met in order for the AER to determine a scheme to be a jurisdictional scheme.

Sub-clause 6.18.7A(d) of the NER defines a jurisdictional scheme as follows.

A scheme is a jurisdictional scheme if:

- (1) the scheme is specified in paragraph (e); or
- (2) the AER has determined under clause paragraph (l) that the scheme is a jurisdictional scheme, and the AER has not determined under paragraph (u) that the scheme has ceased to be a jurisdictional scheme.

We must only determine that a scheme is a jurisdictional scheme if we consider that the scheme meets the jurisdictional scheme eligibility criteria.⁸

The jurisdictional scheme eligibility criteria are set out in sub-clause 6.18.7A(x) of the NER:

Jurisdictional scheme eligibility criteria

(x) The following are the jurisdictional scheme eligibility criteria:

- (1) the jurisdictional scheme obligations require a Distribution Network Service Provider to:
 - (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, an amount specified in, or determined in accordance with, the jurisdictional scheme obligations;
- (2) the jurisdictional scheme obligations are imposed on a Distribution Network Service Provider in its capacity as a Distribution Network Service Provider;
- (3) the amount referred to in subparagraph (1) is not in the nature of a fine, penalty or incentive payment for the Distribution Network Service Provider; and
- (4) except as provided in these Rules, the Distribution Network Service Provider has no right to recover the amount referred to in subparagraph (1) from any person.

Chapter 10 of the NER defines jurisdictional scheme obligations as follows.

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 National Electricity Law and these Rules); or
- (b) a condition of a distribution licence or authority held by a Distribution Network Service Provider in a participating jurisdiction.

⁸ Sub-clause 6.18.7A(n) of the NER.

4 Reasons for determination

Following our assessment, we determined that schemes listed in ActewAGL Distribution's request are jurisdictional schemes. The AER's determination has been made in accordance with sub-clause 6.18.7A(n) of the NER. Our reasons for this determination are set out below.

4.1 Matters in clause 6.18.7A(g) of the NER

ActewAGL Distribution's request has been summarised in section 2.2 of this determination. It contains the information required to be provided under sub-clause 6.18.7A(g) of the NER. Therefore, we consider that ActewAGL Distribution's request meets the requirements of this rule.

4.2 Assessment against the jurisdictional scheme eligibility criteria

4.2.1 Energy Industry Levy

Criterion	AER Assessment
A DNSP is required to pay a person an amount specified in, or determined in accordance with, the jurisdictional scheme obligations ⁹	We have verified that section 54B, part 3A of the Utilities Act 2000 requires ActewAGL Distribution to pay a levy to recover the amount of the ACT's national regulatory costs and local regulations costs, in relation to the energy industry sectors. Therefore, this requirement is met.
The jurisdictional scheme obligations are imposed on a DNSP in its capacity as a DNSP ¹⁰	Sections 54E(3) and F(2) of the Utilities ACT 2000 (ACT) requires the ACT Government's levy administrator to determine the national and local regulatory costs for ActewAGL Distribution each year. Section 54M of the Utilities ACT 2000 (ACT) requires ActewAGL Distribution to lodge a return (with the ACT Revenue Office) by 31 October each year. Therefore, this requirement is met.
The payments required are not in the nature of a fine, penalty or incentive payment ¹¹	The amount ActewAGL Distribution is required to pay under the Utilities ACT 2000 (ACT) is a sum of the ACT Government's national and local regulatory costs and is not in the nature of a fine, penalty or incentive payment. Therefore, this requirement is met.
Except as provided for in the NER, the DNSP has no right to recover the amounts from any person ¹²	ActewAGL Distribution does not have the right to recover costs associated with the Energy Industry Levy from any person, other than arising through provisions of the NER. Therefore, this requirement is met.

⁹ Requirement in sub-clause 6.18.7A(x)(1) of the NER.

¹⁰ Requirement in sub-clause 6.18.7A(x)(2) of the NER.

¹¹ Requirement in sub-clause 6.18.7A(x)(3) of the NER.

¹² Requirement in sub-clause 6.18.7A(x)(4) of the NER.

4.2.2 Utilities Network facilities Tax

Criterion	AER Assessment
A DNSP is required to pay a person an amount specified in, or determined in accordance with, the jurisdictional scheme obligations ¹³	We have verified that section 8 of the Utilities Network Facilities Tax ACT 2006 (ACT) requires ActewAGL Distribution to pay the ACT Tax Commissioner a tax on its ownership of utility network facilities in the ACT. Therefore, this requirement is met.
The jurisdictional scheme obligations are imposed on a DNSP in its capacity as a DNSP ¹⁴	Section 8 of the Utilities Network Facilities Tax ACT 2006 (ACT) determines the amount of tax payable by ActewAGL Distribution for being an owner of electricity network facility land in the ACT. Therefore, this requirement is met.
The payments required are not in the nature of a fine, penalty or incentive payment ¹⁵	The Utilities Network Facilities Tax is a tax on network infrastructure on ACT land and is not in the nature of a fine, penalty or incentive payment. Therefore, this requirement is met.
Except as provided for in the NER, the DNSP has no right to recover the amounts from any person ¹⁶	ActewAGL Distribution does not have the right to recover costs associated with the Utilities Network Facilities Tax from any person, other than arising through provisions of the NER. Therefore, this requirement is met.

4.2.3 Feed-in Tariff (Large-scale)

Criterion	AER Assessment
A DNSP is required to pay a person an amount specified in, or determined in accordance with, the jurisdictional scheme obligations ¹⁷	We have verified that the Electricity Feed-in (large-scale renewable energy generation) Act 2011 (ACT), requires ActewAGL Distribution to make a FiT support payment to a FiT entitlement holder for their electricity. Therefore, this requirement is met.
The jurisdictional scheme obligations are imposed on a DNSP in its capacity as a DNSP ¹⁸	Section 18 of the Electricity Feed-in (large-scale renewable energy generation) Act 2011 (ACT) sets out ActewAGL Distribution's obligations, as an electricity distributor, to make a FiT support payment. Therefore, this requirement is met.
The payments required are not in the nature of a fine, penalty or incentive payment ¹⁹	The amount ActewAGL Distribution is required to pay under the Electricity Feed-in (large-scale renewable energy generation) Act 2011 (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. Therefore, this requirement is met.
Except as provided for in the NER, the DNSP has no right to recover the amounts from any person ²⁰	ActewAGL Distribution does not have the right to recover costs associated with the FiT (Large-Scale) payment from any person, other than arising through provisions of the NER. Therefore, this requirement is met.

¹³ Requirement in sub-clause 6.18.7A(x)(1) of the NER.

¹⁴ Requirement in sub-clause 6.18.7A(x)(2) of the NER.

¹⁵ Requirement in sub-clause 6.18.7A(x)(3) of the NER.

¹⁶ Requirement in sub-clause 6.18.7A(x)(4) of the NER.

¹⁷ Requirement in sub-clause 6.18.7A(x)(1) of the NER.

¹⁸ Requirement in sub-clause 6.18.7A(x)(2) of the NER.

¹⁹ Requirement in sub-clause 6.18.7A(x)(3) of the NER.

²⁰ Requirement in sub-clause 6.18.7A(x)(4) of the NER.