

Determination on jurisdictional scheme application

Electricity Infrastructure Investment Act
2020 (NSW)

August 2022

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Shortened forms

Shortened Form	Extended Form
AER	Australian Energy Regulator
DNSP	Distribution Network Service Provider
EII Act	<i>Electricity Infrastructure Investment Act 2020 (NSW)</i>
EII Regulations	<i>Electricity Infrastructure Investment Regulation 2021 (NSW)</i>
NER	National Electricity Rules
OECC	NSW Office of Energy and Climate Change

1 Background

On 29 July 2022, the NSW Office of Energy and Climate Change (OECC) submitted a request to the Australian Energy Regulator (AER) to determine that the scheme established under clause 37 of the *Electricity Infrastructure Investment Regulation 2021* (EII Regulation) is a jurisdictional scheme¹ pursuant to clause 6.18.7A of the National Electricity Rules (NER).

The NER require us to publish a request for a jurisdictional scheme determination as soon as practicable after its receipt.² We published the OECC's application on our website on 2 August 2022.

2 Determination

We have determined that the scheme established under clause 37 of the Regulation (the Scheme) is a jurisdictional scheme,³ as it meets the jurisdictional scheme eligibility criteria under the NER.⁴ The jurisdictional scheme applies to all NSW distribution network service providers (DNSPs).

3 Reasons for determination

We are satisfied that the OECC's request was made in accordance with NER requirements. Specifically, it included:⁵

- the name and address of the person making the request.
- details of the law of a participating jurisdiction under which the scheme is established.
- the commencement date of the scheme. The EII Act commenced on 1 July 2021. However, the first contribution order to be made by the Scheme Financial Vehicle under the EII Act will apply to the NSW DNSPs on 1 July 2023.⁶
- an explanation of how the Scheme meets the jurisdictional scheme eligibility criteria as set out in the NER.

The following table sets out our assessment of how the Scheme meets the relevant eligibility criteria.

¹ Clause 37 of the EII Regulation was enacted under a regulation-making power in section 58(6) of the EII Act.

² NER, cl. 6.18.7A(h).

³ NER, cl. 6.18.7A(d) defines a jurisdictional scheme as

(d) A scheme is a jurisdictional scheme if:

(1) the scheme is specified in paragraph (e); or

(2) the AER has determined under 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.

⁴ The eligibility criteria are set out in sub-clause 6.18.7A(x) of the NER.

⁵ NER, cl. 6.18.7A(g).

⁶ Clause 37 the EII Regulation commenced on 8 July 2022. The first contribution determination will be made by the AER by 28 February 2023, with the Scheme Financial Vehicle's first contribution order issued on 1 May for DNSPs to apply from 1 July 2023. See EII Act, s. 38.

Table 1: Assessment of the Scheme against jurisdictional scheme eligibility criteria in clause 6.18.7A(x) of the NER

Jurisdictional scheme 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 obligations;</p>	<p>We are satisfied this criterion is met.</p> <p>The jurisdictional scheme obligation imposed on NSW DNSP's is contained in clause 37 of the EII Regulation.⁸</p> <p>The scheme requires NSW DNSPs to credit exempt customers for charges owing due to the Roadmap against charges owing under contribution orders i.e., is captured by sub-clause (1)(iii) of the NER eligibility criteria.</p>
<p>(2) the jurisdictional scheme obligations are imposed on a DNSP in its capacity as a DNSP;</p>	<p>We are satisfied this criterion is met.</p> <p>The scheme under clause 37 of the EII Regulation applies to NSW DNSPs.</p>
<p>(3) the amount referred to in subparagraph (1) is not in the nature of a fine, penalty or incentive payment for the DNSP; and</p>	<p>We are satisfied this criterion is met.</p> <p>The amount is to provide emissions-intensive trade-exposed entities and green hydrogen producers (exempt customers) with a credit against charges payable. This amount is therefore not in the nature of a fine, penalty or incentive payment for NSW DNSPs.</p>
<p>(4) except as provided in the NER, the DNSP has no right to recover the amount referred to in subparagraph (1) from any person.</p>	<p>We are satisfied this criterion is met.</p> <p>There are no alternate legal avenues for the NSW DNSPs to credit the amounts, except pursuant to clause 37 of the EII Regulation.</p>

⁷ These are defined in Chapter 10 of the NER 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 the Rules); or (b) a condition of a distribution licence or authority held by a Distribution Network Service Provider in a participating jurisdiction.'

⁸ Clause 37 of the EII Regulation was enacted under a regulation making power in section 58(6) of the EII Act.