

Final determination

Ergon Energy jurisdictional scheme request

April 2016

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Shortened forms

|  |  |
| --- | --- |
| Shortened form | Full title |
| AEMC | Australian Energy Market Commission |
| AER | Australian Energy Regulator |
| distribution authority | means authority no. D01/99 held by Ergon Energy |
| DNSP | Distribution network service provider |
| Ergon Energy | Ergon Energy Corporation Limited |
| NEL | National Electricity Law |
| NER | National Electricity Rules |

Overview

On 23 March 2016 we received a jurisdictional scheme request from Ergon Energy.

Ergon Energy is the distribution network service provider (DNSP) in regional Queensland. Ergon Energy operates under a distribution authority, akin to an operating licence, issued by the Queensland Government. The distribution authority sets out a number of conditions which Ergon Energy must adhere to.

The jurisdictional scheme request submitted by Ergon Energy indicated that the distribution authority under which it operates was amended on 22 March 2016 to require Ergon Energy pay a levy to fund part of Queensland's commitments for the Australian Energy Market Commission (AEMC).[[1]](#footnote-2)

The National Electricity Rules (NER) allow any person to request the AER to determine whether a scheme is a jurisdictional scheme.[[2]](#footnote-3) Approval as a jurisdictional scheme reduces the steps for a DNSP to recover costs associated with the 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 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. A jurisdictional scheme determination aims to reduce administrative burden for the DNSP and us.

We are required to determine whether or not a scheme is a jurisdictional scheme within 20 business days of receiving a request.[[3]](#footnote-4) We must determine that a scheme is a jurisdictional scheme if we consider that it meets the jurisdictional scheme eligibility criteria set out in the NER.[[4]](#footnote-5)

We have determined that the AEMC levy described in Ergon Energy 's application satisfies the requirements of the jurisdictional scheme eligibility criteria.

# Determination

We have determined under clause 6.18.7A(n) of the NER that the Queensland AEMC energy industry levy is a jurisdictional scheme. The levy meets the jurisdictional scheme eligibility criteria set out in clause 6.18.7A(x).

# Ergon Energy's request

On 24 March 2016 we received Ergon Energy's request for the Queensland AEMC levy to be determined a jurisdictional scheme. As required under clause 6.18.7A(g) of the NER, Ergon Energy 's request contained the following:

(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

(4) an explanation of how the relevant scheme meets the jurisdictional scheme eligibility criteria.

**Name and address of the person making the request**

The name of the person making the request is Ergon Energy Corporation Limited. The address is:

825 Ann Street

Fortitude Valley Qld 4006

**Details of the law under which the scheme is established**

Ergon Energy's request includes details of the law under which the Queensland AEMC levy is established. Under the Queensland Electricity Act 1994, Ergon Energy must hold a distribution authority to operate its supply network. Ergon Energy's distribution authority was amended on 22 March 2016 to establish a new condition in respect of the Queensland AEMC levy.

Ergon Energy's request stated that the levy has been established by the Queensland Government to help meet its funding commitments to the AEMC for the work it performs under the National Energy Retail Law.

As the distribution authority is established under the Queensland Electricity Act 1994 and Ergon Energy is required to comply with its distribution authority, then the Queensland AEMC levy has been established under the Queensland Electricity Act 1994.

**Commencement date of the relevant scheme**

Ergon Energy's request stated that the Queensland AEMC levy commenced on 22 March 2016. Under Ergon Energy's amended distribution authority the liability accrues from 1 July of the relevant year.

**Explanation of how the scheme meets the jurisdictional scheme eligibility criteria**

Ergon Energy's request included an explanation of how the Queensland AEMC levy meets the NER jurisdictional scheme eligibility criteria:[[5]](#footnote-6)

(1) It is a requirement of Ergon Energy’s distribution authority that Ergon Energy must pay the regulator [Note: "the regulator" means the Qld Government] the annual energy industry levy. The AER has previously accepted that a person would include body politic such as the regulator. The amount payable by Ergon Energy will be determined by the regulator each financial year. Ergon Energy is advised by the regulator that the calculation of the levy for Queensland’s distribution authority holders will be set at five percent of Queensland’s total annual funding requirement for the Australian Energy Market Commission (AEMC). The regulator proposes to apportion the levy between distribution authority holders according to the relative customer numbers reported to the Queensland Government each October for the preceding financial year. It is estimated that Ergon Energy will be required to make the following payments under the Scheme during the 2015-2020 regulatory control period as follows:

|  |  |
| --- | --- |
| Financial year | Estimate |
| 2015/16 | $77,041 |
| 2016/17 | $83,936 |
| 2017/18 | TBA |
| 2018/19 | TBA |
| 2019/20 | TBA |

(2) This obligation is imposed on Ergon Energy in its capacity as a Distribution Network Service Provider, as evidenced by the Scheme being established via the distribution authority.

(3) The Scheme has been established by the Queensland Government to meet its funding commitments in respect of the AEMC. It is imposed on Ergon Energy as a cost recovery mechanism and therefore is not in the nature of a fine, penalty or incentive payment.

(4) Ergon Energy does not have any right to recover the Scheme amount from any person, other than through the recovery of jurisdictional scheme amounts per rule 6.18.7A of the NER. Ergon Energy’s AER approved regulatory revenue allowance for the 2015-2020 regulatory control period does not provide for the recovery of the Scheme.

# Regulatory requirements

This section sets out the applicable regulatory requirements that must be met for us 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.[[6]](#footnote-7)

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.

# Reasons for determination

Following our assessment, we determined that the Queensland AEMC levy is a jurisdictional scheme for Ergon Energy. Our determination has been made in accordance with clause 6.18.7A(n) of the NER. Our reasons for this determination are set out below.

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

Ergon Energy's request has been summarised in section 2 of this determination. As set out in section 2, Ergon Energy's request contains the information required to be provided under sub-clause 6.18.7A(g) of the NER. Therefore, we consider that Ergon Energy's request meets the requirements of this rule.

## Assessment against the jurisdictional scheme eligibility criteria

|  |  |
| --- | --- |
| Criterion  | AER Assessment  |
| A DNSP is required to pay a person an amount specified in, or determined in accordance with, the jurisdictional scheme obligations[[7]](#footnote-8) | We have verified that Ergon Energy's distribution authority requires that it pay an annual levy to part fund Queensland's commitments to the AEMC. Therefore, this requirement is met. |
| The jurisdictional scheme obligations are imposed on a DNSP in its capacity as a DNSP[[8]](#footnote-9) | Ergon Energy's distribution authority relates to its role as a DNSP Therefore, this requirement is met. |
| The payments required are not in the nature of a fine, penalty or incentive payment[[9]](#footnote-10) | The payments Ergon Energy is required to make are 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[[10]](#footnote-11) | Ergon Energy 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. |

1. As rule maker and market developer for Australian energy markets, the Australian Energy Market Commission (AEMC) makes and amends the detailed rules for the operation of the National Electricity Market and elements of the natural gas markets in accordance with the National Electricity Law and the National Gas Law. An AEMC Funding Agreement apportions costs between the participating jurisdictions based on population. The Queensland Government has decided that Queensland’s AEMC contributions should be partly funded by an industry cost recovery mechanism, reflecting the fact that the benefits of the AEMC’s work flow to energy consumers. [↑](#footnote-ref-2)
2. NER, cl. 6.18.7A(f). [↑](#footnote-ref-3)
3. NER, cl. 6.18.7A(i). [↑](#footnote-ref-4)
4. NER, cl. 6.18.7A(x). [↑](#footnote-ref-5)
5. Ergon Energy, Jurisdictional scheme determination request, March 2016, p. 6-7. [↑](#footnote-ref-6)
6. Sub-clause 6.18.7A(n) of the NER. [↑](#footnote-ref-7)
7. Requirement in sub-clause 6.18.7A(x)(1) of the NER. [↑](#footnote-ref-8)
8. Requirement in sub-clause 6.18.7A(x)(2) of the NER. [↑](#footnote-ref-9)
9. Requirement in sub-clause 6.18.7A(x)(3) of the NER. [↑](#footnote-ref-10)
10. Requirement in sub-clause 6.18.7A(x)(4) of the NER. [↑](#footnote-ref-11)