

## **Jurisdictional Scheme Determination Request**

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

January 2014

## Introduction

ActewAGL Distribution (ActewAGL) requests that the Australian Energy Regulator (AER) determine that the Energy Industry Levy, the Utilities Network Facilities Tax and the Feed-in Tariff (Large-scale) are jurisdictional schemes, in accordance with the *recovery of jurisdictional scheme amounts* clauses in the *National Electricity Rules*.

The jurisdictional scheme cost recovery provisions, introduced in 2010, are designed to improve efficiency by removing the requirements for scheme payments to be considered under the distribution determination and cost pass through provisions. The Australian Energy Market Commission (AEMC) noted in its 2010 Final Determination that the process of forecasting scheme payments for 5 years, and using the cost pass through mechanism to adjust for differences between actual and forecast amounts, involves administrative burden for the AER and the distribution network service providers<sup>1</sup>.

This submission addresses the first step in the process – the need for the AER to determine that the Energy Industry Levy, Utilities Network Facilities Tax and Feed-in Tariff (Large-scale) meet the jurisdictional scheme eligibility criteria. A fourth scheme, the Feed-in Tariff for small generation, is already specified to be a jurisdictional scheme in clause 6.18.7A(e)(1)(i) of the *National Electricity Rules* (NER).

In accordance with clause 6.18.7A(g) of the NER, this submission provides 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; and
- (4) an explanation of how the relevant scheme meets the jurisdictional scheme eligibility criteria.

Consistent with clause 11.35.2 of the National Electricity Rules, ActewAGL will incorporate jurisdictional scheme amounts, for schemes determined to be jurisdictional schemes, in its 2014/15 Network Pricing Proposal.

---

<sup>1</sup> AEMC 2010, *National Electricity Amendment (Payments under Feed-in Schemes and Climate Change Funds) Rule*, Rule Determination, p. 24

## Name and address of person making the request

ActewAGL Distribution is the person requesting that the AER determine whether a scheme is a jurisdictional scheme.

ActewAGL's addresses are as follows:

### Physical address

ActewAGL House  
40 Bunda Street  
Canberra ACT 2600

### Postal address

ActewAGL House  
GPO Box 366  
Canberra ACT 2601

## Details of the law establishing the schemes

### 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.<sup>2</sup>

Each financial year the ACT Government's levy administrator must, before 1 October of that levy year (a financial year), determine the estimated national and local regulatory cost to be applied for the year and the national and local regulatory cost to be applied for the preceding year.<sup>3</sup> Together the national and local regulatory costs are referred to as the "total regulatory cost". The administrator also determines the cost to be applied to each energy industry sector, including the electricity distribution sector.

Subsequent to the administrator's determination ActewAGL submits an Energy Industry Levy Annual Return, due by 31 October of the same financial year. The form is created by the ACT Government and is based on the determined total regulatory costs.<sup>4</sup> ActewAGL pays the estimate for the current year total regulatory costs plus the total regulatory costs for the previous year minus the amount paid in the previous year.

For the 2009-14 regulatory period, an AER approved forecast of ActewAGL's Energy Industry Levy payments are included in the revenue allowance, and recovered through

---

<sup>2</sup> Utilities ACT 2000 (ACT), Section 54B

<sup>3</sup> Utilities ACT 2000 (ACT), Section 54E(3) & 54F(2)

<sup>4</sup> ACT Revenue Office 2012, *Energy industry levy*, viewed 3 March 2013, <[http://www.revenue.act.gov.au/other\\_levies\\_and\\_taxes/energy\\_industry\\_levy](http://www.revenue.act.gov.au/other_levies_and_taxes/energy_industry_levy)>

network tariffs. Differences between forecast and actual payments may be recovered or returned through the cost pass through mechanism, subject to the materiality threshold.

### 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. Network facilities mean any part of the infrastructure of a utility network. Section 8 states that

The owner of a network facility on land in the ACT is liable to pay tax in relation to the facility at the rate worked out as follows:

determined rate X route length

The determined rate is contained within a disallowable instrument<sup>5</sup> and is varied from time to time. The ACT Government announced its intention to index the tax rate with growth in the Wage Price Index.<sup>6</sup> The tax is payable for the year ending 31 March year and payment must be made by 30 May.<sup>7</sup> The annual return separately identifies payments for ActewAGL's gas and electricity networks.

For the 2009-14 regulatory period, an AER approved forecast of ActewAGL's Utilities Network Facilities Tax payments are included in the revenue allowance, and recovered through network tariffs. Per annum differences between forecast and actual payments may be recovered or returned through the cost pass through mechanism, subject to the materiality threshold.

### Feed-in Tariff Large-scale

The *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011* (ACT)<sup>8</sup> is a scheme to support the development of up to 210 MW of large-scale renewable energy generation capacity for the ACT.<sup>9</sup>

The Minister may grant a person a feed-in tariff (FiT) entitlement. Each entitlement is made under a notifiable instrument and specifies the amount of the FiT per megawatt-hour.

<sup>5</sup> Taxation Administration Act 1999 (ACT) Section 139(2)

<sup>6</sup> ACT Government 2013, *ACT Tax Reform Fact Sheet: The Utilities Network Facilities Tax*, viewed 14 November,

<[http://apps.treasury.act.gov.au/\\_data/assets/pdf\\_file/0006/399822/factsheet\\_UtilityNetworkTax.pdf](http://apps.treasury.act.gov.au/_data/assets/pdf_file/0006/399822/factsheet_UtilityNetworkTax.pdf)>

<sup>7</sup> ACT Revenue Office 2013, *Utilities (network facilities) tax*, viewed 14 November 2013, <[http://www.revenue.act.gov.au/other\\_levies\\_and\\_taxes/utilities\\_network\\_facilities\\_tax](http://www.revenue.act.gov.au/other_levies_and_taxes/utilities_network_facilities_tax)>

<sup>8</sup> ACT Government 2013, *ACT Legislation Register: Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011*, viewed 14 November 2013, <<http://www.legislation.act.gov.au/a/2011-56/default.asp>>

<sup>9</sup> Legislative Assembly for the Australian Capital Territory 2011, *Electricity Feed-in (Large-scale Renewable Energy Generation) Bill 2011, Explanatory Statement*, p.2

ActewAGL is required to pay a FiT support payment to the holder of a FiT entitlement for the holder's eligible electricity.<sup>10</sup> The FiT support payment is the amount of the FiT less the spot price value<sup>11</sup> for the eligible electricity generated in the period.

No allowance has been included for the Feed-in Tariff (Large-scale) support payments in the current regulatory period as the legislation was introduced after the AER's 2009 Distribution Determination. ActewAGL has not yet made any Feed-in Tariff (Large-scale) support payments. The term of the first Feed-in Tariff (Large-scale) entitlement commences on 31 March 2014.

The Feed-in Tariff (Large-scale) is separate to the Feed-in Tariff for small generation which is already specified as a Jurisdictional Scheme under the NER.

## Commencement date of the schemes

### Energy Industry Levy

The *Utilities (Energy Industry Levy) Amendment Bill 2007* (ACT), which established the Energy Industry Levy<sup>12</sup>, was passed by the ACT Legislative Assembly on 29 May 2007 and was notified on 13 June 2007.<sup>13</sup>

The first payment was made by ActewAGL for the 2008/09 year.

### Utilities Network Facilities Tax

The *Utilities (Network Facilities Tax) Bill 2006* (ACT) passed the ACT Legislative Assembly on 14 December 2006 and was notified on 20 December 2006.<sup>14</sup>

The first payment was made by ActewAGL for the 2006/07 year.

### Feed-in Tariff Large-scale

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.<sup>15</sup>

---

<sup>10</sup> Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011 (ACT) Section 18(2) <<http://www.legislation.act.gov.au/a/2011-56/default.asp>>

<sup>11</sup> The "spot price value" means the amount that would have been paid to the holder for the electricity by the AEMO if the electricity had been sold on the spot market. See: Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011 (ACT) Section 19(3)

<sup>12</sup> Legislative Assembly for the Australian Capital Territory 2007, *Utilities (Energy Industry Levy) Amendment Bill 2007, Explanatory Statement*, p.2

<sup>13</sup> ACT Government 2013, *ACT legislation Register: Utilities (Energy Industry Levy) Amendment Bill 2007*, viewed 14 November 2013, <[http://www.legislation.act.gov.au/b/db\\_28593/default.asp](http://www.legislation.act.gov.au/b/db_28593/default.asp)>

<sup>14</sup> ACT Government 2013, *ACT legislation Register: Utilities (Network Facilities Tax) Bill 2006*, viewed 14 November 2013, <[http://www.legislation.act.gov.au/b/db\\_27834/default.asp](http://www.legislation.act.gov.au/b/db_27834/default.asp)>

<sup>15</sup> ACT Government 2013, *ACT legislation Register: Electricity Feed-in (Large-scale Renewable Energy Generation) Bill 2011*, viewed 19 November 2013, <[http://www.legislation.act.gov.au/b/db\\_43469/default.asp](http://www.legislation.act.gov.au/b/db_43469/default.asp)>

ActewAGL has not yet made a Feed-in Tariff (Large-scale) payment.

## Jurisdictional scheme eligibility criteria

Clause 6.18.7A(x) of the National Electricity Rules states that

- (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,
  - (2) an amount specified in, or determined in accordance with, the *jurisdictional scheme obligations*;
  - (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.

The Energy Industry Levy, Utilities Network Facilities Tax and Feed-in Tariff (Large-scale) all meet the eligibility criteria above. This is because:

- (1) The jurisdictional scheme obligations, as set out in the *Utilities Act 2000 (ACT)*, *Utilities (Network Facilities Tax) Act 2006 (ACT)* and *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011 (ACT)*, require ActewAGL to pay a person. 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.
- (2) The amounts payable are determined in accordance with the jurisdictional scheme obligations in the *Utilities Act 2000 (ACT)*, *Utilities (Network Facilities Tax) Act 2006 (ACT)* and *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011 (ACT)*.
- (3) The amounts are not in the nature of a fine, penalty or incentive payment for ActewAGL: the Energy Industry Levy recovers the ACT Government’s national and local regulatory costs; the Utilities Network Facilities Tax is a tax on network infrastructure on ACT land; and the Feed-in Tariff (Large-scale) is a payment to support the development of large-scale renewable energy generation.
- (4) ActewAGL will have no right to recover any amount paid from any person, other than through the *recovery of jurisdictional scheme amounts* provisions in clause 6.18.7A of the National Electricity Rules. For the 2009-14 regulatory period the AER’s regulatory allowance includes forecast payments for the Energy Industry Levy and the Utilities Network Facilities Tax, and these amounts are recovered in network tariffs. However, if the AER determines that the Energy Industry Levy, Utilities Network Facilities Tax and Feed-in Tariff (Large-scale) are jurisdictional schemes, the amounts will instead be recovered under the recovery of

jurisdictional scheme amounts provisions, starting from 1 July 2014, the commencement of the next regulatory period.