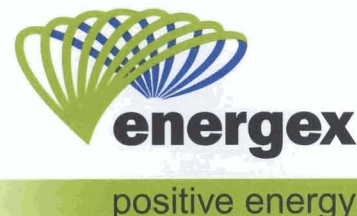


3 February 2011



Ms Michelle Groves
Chief Executive Officer
Australian Energy Regulator
GPO Box 520
Melbourne Vic 3001



Michelle
Dear Ms Groves

Office of the
Chief Executive Officer

Request to determine a scheme is a jurisdictional scheme

ENERGEX formally requests the Australian Energy Regulator (AER) determine the Queensland (Qld) Retailer of Last Resort (RoLR) scheme, as detailed in *Electricity Regulation 2006 Part 3*, to be a jurisdictional scheme. This application is made under the provisions in the National Electricity Rules (NER) clause 6.18.7A (f).

Electricity Regulation Amendment No.2 2010 relates to the Qld RoLR scheme and was passed on 3 December 2010 under the *Queensland Electricity Act 1994*. As a Qld Distribution Network Service Provider (DNSP), ENERGEX is subject to the Qld RoLR scheme.

Prior to the passing of this legislation the Department of Employment, Economic Development and Innovation (DEEDI) corresponded with the AER on the proposed amendments to the Qld RoLR scheme and the likelihood of the scheme qualifying as a 'jurisdictional scheme' for the purposes of cost recovery. The amended Qld RoLR scheme requires DNSPs to pay approved RoLR recovery amounts to the relevant RoLR. The AER indicated that it was likely these costs would qualify for cost recovery under a jurisdictional scheme in their letter dated 24 September 2010.

ENERGEX is seeking regulatory approval, as a DNSP, to recover payments made to RoLRs under this scheme. Approval of the Qld RoLR scheme as a jurisdictional scheme will provide ENERGEX with regulatory certainty to recover the costs paid to the relevant RoLR under this scheme.

Relevant information as required under clauses 6.18.7A (g) and 6.18.7(x) of the NER, to support this application is provided in Attachment A.

Should the AER require any further information in regard to this matter please contact Kevin Kehl, Executive General Manager - Strategy and Regulation on (07) 3664 4006.

Yours Sincerely

TJ Effeney
Terry Effeney
Chief Executive Officer

FILE No:
DOC: D11/13225
MARS/PRISM:



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ENERGEX JURISTICTIONAL SCHEME APPLICATION

Per Clause 6.18.7A (f) of the NER, ENERGEX requests the AER approve the Qld RoLR scheme as a jurisdictional scheme. Relevant information in relation to the application under Clause 6.18.7A (f) of the NER is provided below, including reference to the associated NER Clause.

NER Clause 6.18.7A (g):***(1) the name and address of the person making the request;***

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26 Reddacliff Place,
Newstead Qld 4006

(2) details of the law of a participating jurisdiction under which the relevant scheme is established;

- The Electricity Act 2004:
 - i. S131A provides for a Retailer of Last Resort scheme
- Electricity Regulations 2006
 - i. Part 3 Retailer of Last Resort scheme
- Electricity Regulation Amendment No. 2 2010
 - i. S87FA (6) and S87FA (8) apply a legal requirement on ENERGEX to pay the QCA approved RoLR recovery amounts to the relevant RoLR

Relevant extracts from the applicable legislation are provided in Appendix A.

(3) the commencement date of the relevant scheme; and

Electricity Regulation 2006, Electricity Amendment Regulation (No.2) 2010 was passed on 3 December 2010 (see Appendix A).

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

The eligibility criteria for a scheme to be deemed a 'jurisdictional scheme' are set out in Clause 6.18.7 (x). Information to demonstrate the Qld RoLR scheme satisfies the eligibility criteria for a 'jurisdictional scheme' are detailed below with the relevant NER clause.

NER Clause 6.18.7(x):

(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;**

Subsection 87FA (8) of the Electricity Regulations 2006, requires a DNSP to make payment to a RoLR within 30 business days of receiving notice from the Queensland Competition Authority (QCA).

(2) the jurisdictional scheme obligations are imposed on a Distribution Network Service Provider in its capacity as a Distribution Network Service Provider;

As provided above, a DNSP is obligated to make payment to a RoLR following notification from the QCA. Subsection 87FA (8) of the Electricity Regulations 2006, places an obligation on the 'relevant distribution entity'. Subsection 76A (2) (a) of the Electricity Regulations 2006 defines a 'relevant distribution entity' as the distributor who was supplying electricity to the affected customer prior to the RoLR event. The obligation is clearly imposed on the distributor in its capacity as a DNSP.

(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;

Payments made by a distributor to a RoLR under Subsection 87FA of the Electricity Regulations 2006, represent the QCA approved recovery amount for the relevant RoLR. **Recovery amount** is defined in subsection 87FA (5) of the Electricity Regulations 2006 as the amount approved by QCA under subsection 87FA (3)(a) or (c).

(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.

At present there are no provisions for ENERGEX to recover payments made under the Qld RoLR scheme. ENERGEX's current revenue determination does not provide for these payments in relation to a RoLR event or scheme. To enable the recovery of payments made to a retailer in their capacity as a RoLR, ENERGEX requires the AER to declare the scheme a jurisdictional scheme under Clause 6.18.7A of the NER. If the AER declares the Qld RoLR scheme to be a jurisdictional scheme then Subdivision 2 Sections 87FC and 87FD of the Electricity Regulations 2006 apply which will provide for ENERGEX to recover payments made to a RoLR under this scheme.

- (a) an electricity entity is solvent if the entity is able to pay all of the entity's debts, as and when they become due and payable; and
- (b) an electricity entity that is not solvent is insolvent.

Part 3A Retailer of last resort

131A Retailer of last resort scheme

- (1) A regulation may provide for—
 - (a) the establishment of a scheme to be known as the retailer of last resort scheme; and
 - (b) the compulsory participation by electricity entities in the scheme.
- (2) The primary objects of the scheme are to provide for—
 - (a) the management of the effects of a retail entity not being able to provide customer retail services to its customers (*defaulting retailer*); and
 - (b) the protection of customers of a defaulting retailer from interruption in the supply and sale of electricity to them.
- (3) Without limiting subsections (1) and (2), a regulation may make provision about any of the following matters—
 - (a) other objects of the scheme;
 - (b) the circumstances in which the scheme will operate;
 - (c) the electricity entities required to participate in the scheme;
 - (d) the customers or class of customers to benefit from the scheme;

[s 131A]

- (e) establishing a regulated default retail contract (which may include different terms for different classes of customer);
- (f) providing for the effects of a declaration that the scheme applies to a defaulting retailer and its affected customers, including, for example, the following—
 - (i) the charter of the scheme (including the duration of the scheme and other matters concerning its administration);
 - (ii) ending the defaulting retailer's retail contracts with its affected customers;
 - (iii) a regulated default retail contract taken to be entered into between each of the affected customers and the retailer of last resort;
- (g) the functions and the powers of QCA concerning the scheme, including—
 - (i) establishing the charter of the scheme for a particular defaulting retailer and its affected customers;
 - (ii) declaring the scheme applies to a particular defaulting retail entity and to particular customers or class of customers;
 - (iii) appointing the electricity entity or entities who is or are to be the retailer of last resort (including procedures to be followed in making the appointment);
 - (iv) supervising and giving directions to the retailer of last resort concerning the administration of a scheme;
- (h) imposing conditions in relevant authorities to give effect to the matters in this section;
- (i) the recovery of a distribution entity's costs incurred relating to the happening of the circumstances in which the scheme operates;

- (j) anything necessary or convenient to help or give effect to the provisions of this part.

Part 4 Disciplinary action against electricity entities

132 Grounds for disciplinary action

- (1) Each of the following is a ground for taking disciplinary action against an electricity entity—
 - (a) the entity's authority was obtained by incorrect or misleading information;
 - (b) the entity has contravened this Act or the Electrical Safety Act;
 - (c) the entity has contravened a condition of its authority;
 - (d) the entity is not, or is no longer, a suitable person to be the holder of an authority of the relevant type;
 - (e) for a generation entity, transmission entity or distribution entity—the owner of the generating plant, transmission grid or supply network is not, or is no longer, a suitable person to be the owner;
 - (f) for a retail entity—the entity has been suspended from trading under the National Electricity Rules.
- (2) The question whether a person is, or continues to be, a suitable person is decided in the same way as the question whether the person would be a suitable person for the issue of an authority of the relevant type.

133 Types of disciplinary action

- (1) The regulator may take the following disciplinary action against an electricity entity—

- (b) The amount to be passed on to customers for a particular *regulatory year* must not exceed the estimated amount of the *transmission use of system charges* for the relevant *regulatory year* adjusted for over or under recovery in the previous *regulatory year*.
- (c) The extent of the over or under recovery is the difference between:
 - (1) the amount actually paid by the *Distribution Network Service Provider* by way of *transmission use of system charges* in the previous *regulatory year*; and
 - (2) the amount passed on to customers by way of *transmission use of system charges* by the *Distribution Network Service Provider* in the previous *regulatory year*.

6.18.7A Recovery of jurisdictional scheme amounts

Pricing Proposal

- (a) A *pricing proposal* must provide for tariffs designed to pass on to customers a *Distribution Network Service Provider's jurisdictional scheme amounts* for approved *jurisdictional schemes*.
- (b) The amount to be passed on to customers for a particular *regulatory year* (year *t*) must not exceed the estimated amount of *jurisdictional scheme amounts* for a *Distribution Network Service Provider's approved jurisdictional schemes* for year *t* adjusted for over or under recovery in accordance with paragraph (c).
- (c) The extent of the over or under recovery is the sum of:
 - (1) the difference between:
 - (i) the *Distribution Network Service Provider's* estimate of its *jurisdictional scheme amounts* in year *t – 1*, and
 - (ii) the *Distribution Network Service Provider's* estimate of the amount passed on to customers in respect of *jurisdictional scheme amounts* by the *Distribution Network Service Provider* in year *t – 1*, and
 - (2) the difference between:
 - (i) the actual amount of the *Distribution Network Service Provider's jurisdictional scheme amounts* in year *t – 2*, and
 - (ii) the estimate of the *Distribution Network Service Provider's jurisdictional scheme amounts* in year *t – 2* that was used for the purposes of paragraph (c)(1)(i) when preparing the *Distribution Network Service Provider's pricing proposal* for year *t – 1*, and
 - (3) the difference between:

- (i) the actual amount passed on to customers in respect of *jurisdictional scheme amounts* by the *Distribution Network Service Provider* in year $t - 2$; and
- (ii) the estimate of the amount passed on to customers in respect of *jurisdictional scheme amounts* by the *Distribution Network Service Provider* in year $t - 2$ that was used for the purposes of paragraph (c)(1)(ii) when preparing the *Distribution Network Service Provider's pricing proposal* for year $t - 1$.

(c1) For the purposes of paragraph (c):

"year $t - 1$ " means the *regulatory year* immediately prior to year t or, where year t is the first year of a *regulatory control period*, the last *regulatory year* of the previous *regulatory control period*.

"year $t - 2$ " means the *regulatory year* immediately prior to year $t - 1$ or, where year t is the:

- (1) first year of a *regulatory control period*, the penultimate *regulatory year* of the previous *regulatory control period*;
- (2) second year of a *regulatory control period*, the last *regulatory year* of the previous *regulatory control period*.

Jurisdictional schemes

(d) A scheme is a *jurisdictional scheme* if:

- (1) the scheme is specified in paragraph (e); or
- (2) the *AER* has determined under clause paragraph (1) 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*.

(e) For the purposes of paragraph (d)(1), the following schemes are *jurisdictional schemes*:

- (1) schemes established under the following laws of participating jurisdictions:
 - (i) Electricity Feed-in (Renewable Energy Premium) Act 2008 (ACT);
 - (ii) Division 3AB of the Electricity Act 1996 (SA);
 - (iii) Section 44A of the Electricity Act 1994 (Qld);
 - (iv) Electricity Industry Amendment (Premium Solar Feed-in Tariff) Act 2009 (Vic);

- (2) the Solar Bonus Scheme established under the Electricity Supply Act 1995 (NSW); and
- (3) the Climate Change Fund established under the Energy and Utilities Administration Act 1987 (NSW).

AER Requested to determine that scheme is a jurisdictional scheme

- (f) Any person may request the *AER* to determine whether a scheme is a *jurisdictional scheme*.
- (g) A request made under paragraph (f) must contain the following information:
 - (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*.
- (h) The *AER* must as soon as practicable after receiving the request under paragraph (f) *publish* the request.

AER may assess whether a scheme is a jurisdictional scheme

- (i) The *AER* may at any time initiate an assessment of whether a scheme is a *jurisdictional scheme*.
- (j) If the *AER* decides to initiate an assessment under paragraph (i) it must *publish* details of the scheme it is considering and the reasons for initiating the assessment.

AER to determine whether a scheme is a jurisdictional scheme

- (k) Before making a determination under paragraph (l), the *AER* may consult with the relevant *Distribution Network Service Provider* and such other persons as the *AER* considers appropriate, on any matters arising out of the request or the assessment the *AER* considers appropriate.
- (l) The *AER* must within 20 *business days* of:
 - (1) receiving a request under paragraph (f); and
 - (2) *publishing* details of an assessment under paragraph (j),determine in accordance with paragraph (n) if the relevant scheme is a *jurisdictional scheme* and *publish* its decision (including the reasons).
- (m) The *AER* may extend the time limit fixed in paragraph (l) if it considers that the difficulty of assessing whether a scheme is a *jurisdictional scheme*, or

the complexity of the issues raised during any consultation under paragraph (k), justifies the extension.

- (n) The *AER* must only determine that a scheme is a *jurisdictional scheme* under paragraph (l) if it considers that the scheme meets the *jurisdictional scheme eligibility criteria*.

AER requested to determine that scheme should cease to be a jurisdictional scheme

- (o) Any person may request the *AER* to determine that a scheme is no longer a *jurisdictional scheme*.
- (p) A request made under paragraph (o) must contain the following information:
 - (1) the name and address of the person making the request;
 - (2) 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 why the scheme no longer meets the *jurisdictional scheme eligibility criteria*.
- (q) The *AER* must as soon as practicable after receiving the request under paragraph (o) *publish* the request.

AER may assess whether a scheme should cease to be a jurisdictional scheme

- (r) The *AER* may at any time consider whether a scheme should cease to be a *jurisdictional scheme*.
- (s) If the *AER* decides to initiate an assessment of whether a scheme should cease to be *jurisdictional scheme* under paragraph (r) it must *publish* details of the scheme it is considering and the reasons for initiating the assessment.

AER to determine whether a scheme should cease to be a jurisdictional scheme

- (t) Before making a determination under paragraph (u), the *AER* may consult with the relevant *Distribution Network Service Provider* and such other persons as the *AER* considers appropriate, on any matters arising out of the request or the assessment the *AER* considers appropriate.
- (u) The *AER* must within 20 *business days* of:
 - (i) receiving a request under paragraph (o); or
 - (ii) *publishing* details of an assessment under paragraph (s).

determine in accordance with paragraph (w) if the relevant scheme should cease to be a *jurisdictional scheme* and *publish* its decision (including the reasons).

- (v) The *AER* may extend the time limit fixed in paragraph (u) if it considers that the difficulty of assessing whether a scheme should cease to be a *jurisdictional scheme*, or the complexity of the issues raised during any consultation under paragraph (t), justifies the extension.
- (w) The *AER* must only determine that a scheme has ceased to be a *jurisdictional scheme* under paragraph (u) if it considers that the scheme no longer meets the *jurisdictional scheme eligibility criteria*.

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.

6.18.8 Approval of pricing proposal

- (a) The *AER* must approve a *pricing proposal* if the *AER* is satisfied that:
 - (1) the proposal complies with this Part and any applicable distribution determination; and
 - (2) all forecasts associated with the proposal are reasonable.

[s 76A]

Country Energy's area means —

- (a) Country Energy's supply area described in Country Energy's special approval no. SA21/98; or

Editor's note

A copy of a map of the area may be inspected at the department's office at 61 Mary Street, Brisbane.

- (b) the distribution area under any distribution authority issued to Country Energy.

Energex area retailer means the retail entity whose retail area includes all or most of the distribution area of Energex.

76A Who is a relevant distribution entity

- (1) A ***relevant distribution entity*** is a distribution entity who, immediately before the happening of a ROLR event, supplied electricity to an affected customer.

- (2) In this section

distribution entity means any of the following —

- (a) Energex;
- (b) Ergon Energy;
- (c) Country Energy, to the extent that it supplies electricity in —
 - (i) the supply area described in Country Energy's special approval no. SA21/98; or

Editor's note

A copy of a map of the supply area may be inspected at the department's office at 61 Mary Street, Brisbane.

- (ii) the distribution area under any distribution authority issued to Country Energy.

[s 87F]

made must comply with the requirement.

Maximum penalty – 20 penalty units.

87F Use of information

If, under section 87D, the ROLR is given information about an affected customer, the ROLR

- (a) may use the information only for
 - (i) a purpose of this division; or
 - (ii) the provision of customer connection services or customer retail services; and
- (b) must not disclose the information to someone else other than for a purpose of this division, unless
 - (i) the customer consents to the disclosure; or
 - (ii) the ROLR is otherwise required or permitted by law to make the disclosure.

Maximum penalty – 20 penalty units.

Division 3A Recovery of amounts paid under the scheme

Subdivision 1 Retailer of last resort

87FA ROLR may recover costs of ROLR event

- (1) This section applies if a ROLR for affected customers incurs costs because a ROLR event has happened.
- (2) The ROLR may ask QCA to approve an amount (the *requested amount*) to compensate the ROLR for the costs incurred.
- (3) If the ROLR asks QCA to approve the requested amount, QCA must promptly decide whether

- (a) to approve the requested amount; or
 - (b) to refuse to approve the requested amount; or
 - (c) to approve another amount.
- (4) In making the decision, QCA must consider—
- (a) the ROLR's incremental administration costs; and
 - (b) for affected customers who are small customers— the ROLR's incremental energy costs incurred by providing customer retail services to the small customers, to the extent those costs are not included in notified prices.

Example of incremental energy costs—

additional hedging costs relating to the load for which the ROLR becomes the financially responsible retail entity

- (5) An amount approved by QCA under subsection (3)(a) or (c) is called the *recovery amount*.
- (6) If QCA decides to approve the recovery amount, QCA must—
- (a) if there is more than 1 relevant distribution entity for the affected customers— work out under section 87FB the proportion of the recovery amount each distribution entity must pay to the ROLR (the *apportioned amount*); and
 - (b) notify the ROLR and each relevant distribution entity of its decision.
- (7) The notice under subsection (6)(b) must state—
- (a) the recovery amount; and
 - (b) the name of the ROLR; and
 - (c) if there is more than 1 relevant distribution entity for the affected customers— the apportioned amount payable to the ROLR by each relevant distribution entity; and
 - (d) that the relevant distribution entity must, within 30 days after receiving the notice, pay the ROLR the recovery amount or the apportioned amount.

[s 87FB]

- (8) The relevant distribution entity must, within 30 days after receiving the notice, pay the ROLR the recovery amount or, if the notice states the entity must pay an apportioned amount, the apportioned amount.
- (9) If QCA refuses to approve the requested amount, QCA must promptly notify the ROLR of its decision and give the ROLR an information notice for the decision.

87FB Working out apportioned amount

- (1) This section applies if
 - (a) QCA has approved a recovery amount for a ROLR under section 87FA(5); and
 - (b) there is more than 1 relevant distribution entity for the affected customers transferred to the ROLR.
- (2) QCA must work out the apportioned amount for each relevant distribution entity using the following formula

$$A = \frac{C}{T} \times R$$

where—

A means the apportioned amount for the relevant distribution entity.

C means the number of affected customers connected to the relevant distribution entity's supply network that are transferred to the ROLR.

T means the total number of affected customers for a ROLR event that are transferred to the ROLR.

R means the recovery amount.

Example

A ROLR event happens and there are 5000 affected customers transferred to the ROLR. The affected customers are connected to the supply networks of 2 relevant distribution entities.

There are 3700 affected customers connected to EnergeX's supply network and 1300 affected customers connected to Ergon Energy's supply network.

The ROLR for the affected customers asks QCA to approve a recovery amount. QCA decides to approve a recovery amount of \$100000.

The apportioned amount for EnergeX, worked out using the formula under subsection (2), is \$74000.

The apportioned amount for Ergon Energy, worked out using the formula under subsection (2), is \$26000.

Subdivision 2 Relevant distribution entities

87FC Application of sdiv 2

- (1) This subdivision applies if the AER decides the retailer of last resort scheme under this part is a jurisdictional scheme under the National Electricity Rules, clause 6.18.7A.

Note

Under the National Electricity Rules, clause 6.18.7A (Recovery of jurisdictional scheme amounts), any person may request the AER to decide a scheme is a jurisdictional scheme.

- (2) In this section—
decide includes determine.

87FD Recovery of costs of ROLR event by relevant distribution entity

- (1) This section applies to a relevant distribution entity that has paid a ROLR for affected customers a recovery amount or an apportioned amount.
- (2) The relevant distribution entity may include the amount in a pricing proposal the entity gives the AER for approval under the National Electricity Rules, chapter 6.
- (3) If the relevant distribution entity includes the amount in its pricing proposal, the pricing proposal must also provide for