



Energex and Ergon Energy Network

Request for jurisdictional scheme
determination

6 March 2023



Part of Energy Queensland

Request for jurisdictional scheme determination

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1. INTRODUCTION

Energex Limited (Energex) and Ergon Energy Corporation Limited (Ergon Energy) are obligated under Part 14A of the *Electrical Safety Act 2002* (Qld) (the *Electrical Safety Act*) to pay the Queensland Electrical Safety Office (ESO) an annual electrical safety contribution (levy) to fund the ESO compliance and electrical safety activities.

The purpose of this submission is to request that the Australian Energy Regulator (AER) determine that the annual levy payable to the ESO (Levy Scheme) is a jurisdictional scheme in accordance with clause 6.18.7A of the National Electricity Rules (NER).

The recovery of jurisdictional scheme amount provisions is intended to improve efficiency by removing the requirements for scheme payments to be considered under the distribution determination process and cost pass through provisions. Instead, distribution network service providers (DNSPs) can recover costs of approved jurisdictional schemes through the annual pricing proposal.

This submission sets out the following information as required by clause 6.18.7A(g) of the NER:

- (1) the name and address of the person making the request;
- (2) details of the law of the 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.

The AER is required to determine that a scheme is a jurisdictional scheme under clause 6.18.7A(l) of the NER if it considers that the scheme meets the jurisdictional scheme eligibility criteria set out in clause 6.18.7A(x). Energex and Ergon Energy consider that the eligibility criteria are satisfied by the Levy Scheme and provide our assessment against the criteria in this submission. In addition, the Queensland Government supports our jurisdictional scheme application to the AER.

We request that the AER determine whether the Levy Scheme is a jurisdictional scheme pursuant to clause 6.18.7A of the NER.

Should the AER determine that the Levy Scheme is a jurisdictional scheme, Energex and Ergon Energy will incorporate the jurisdictional scheme amounts into their respective annual pricing proposals commencing 2025-26 in accordance with clauses 6.18.2(b)(6A) and 6.18.7A of the NER.

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2. PERSON MAKING THE REQUEST

Clause 6.18.7A(g)(1) of the NER requires the name and address of the person requesting the AER to determine that a scheme is a jurisdictional scheme. These details are set out in Table 1.

Table 1: Person Making the Request

Name	Energex Limited and Ergon Energy Corporation Limited
Contact Person	Ms Nicola Roscoe GM Strategy & Regulation
Address	Level 5, 26 Reddacliff Street Newstead Qld 4006
Postal Address	GPO Box 1461 Brisbane Qld 4001
Telephone	[REDACTED]
Email	Nicola.roscoe@energyq.com.au

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3. DETAILS OF THE LAW ESTABLISHING THE SCHEME

Clause 6.18.7A(g)(2) of the NER requires that a request for the AER to determine whether a scheme is a jurisdictional scheme include details of the law of the participating jurisdiction under which the relevant scheme is established. Under Chapter 10 of the NER, the term 'jurisdictional scheme obligations' is defined to include obligations imposed on a DNSP under an Act of a participating jurisdiction (other than the *National Electricity Law* (NEL) and the NER).

The ESO is Queensland's electrical safety regulator. A key responsibility of the regulator is to monitor and enforce compliance with the *Electrical Safety Act*.¹ They do this by making sure electrical safety laws and standards are followed; managing workers' and contractors' electrical licenses; registering, accrediting and certifying electrical equipment; and providing electrical safety information, education and training including electrical product recalls and safety alerts.²

The ESO is funded through a provision in the *Electrical Safety Act* which provides that each distribution entity must pay to the regulator an electrical safety contribution for each financial year.³ A distribution entity means a distribution entity under the *Electricity Act 1994* (Qld) (*Electricity Act*).⁴ Energex and Ergon Energy hold distribution authorities in Queensland and are therefore considered distribution entities under the *Electricity Act*⁵ and are therefore required by the *Electrical Safety Act* (i.e. an Act of a participating jurisdiction) to pay the ESO an annual levy to fund the regulator's compliance and safety activities (i.e. the jurisdictional scheme obligation).

¹ s 122(1).

² Queensland Government, 2020, Electrical Safety Office, viewed 27 September 2022, <www.worksafe.qld.gov.au/about/who-we-are/electrical-safety-office>.

³ s 201.

⁴ *Electrical Safety Act 2002* (Qld), Schedule 2.

⁵ *Ibid*, s 37.

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4. COMMENCEMENT DATE

Clause 6.18.7A(g)(3) of the NER requires that a request that the AER determine whether a scheme is a jurisdictional scheme must specify the commencement date of the relevant scheme.

The *Electrical Safety Act* commenced on 1 October 2002,⁶ which provided for the establishment of an independent electrical safety regulator and the funding mechanism.

Accordingly, the Levy Scheme commenced on 1 October 2002.

⁶ Ss 1-2 of the *Electrical Safety Act 2002* (Qld) commenced on date of assent 12 September 2002, with remaining provisions commenced on 1 October 2002.

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5. JURISDICTIONAL SCHEME ELIGIBILITY CRITERIA

Clause 6.18.7A(g)(4) of the NER requires that an explanation be provided in relation to how the Scheme meets the jurisdictional scheme eligibility criteria.

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

(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 the *Rules*, the *Distribution Network Service Provider* has no right to recover the amount referred to in subparagraph (1) from any person.

The Levy Scheme satisfies each of the jurisdictional scheme eligibility criteria for the reasons as set out in Table 2 below. For these reasons, the AER should determine that the Levy Scheme is a jurisdictional scheme under the NER.

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Table 2: Assessment against the Jurisdictional Scheme Eligibility Criteria

Clause 6.18.7A(x)(1)
<p>The jurisdictional scheme obligations</p> <p>For the reasons explained in section 3 above, the obligation on Queensland DNSPs to pay the ESO levy is an obligation imposed under an Act of a participating jurisdiction and thus, a 'jurisdictional scheme obligation'.</p> <p>require a Distribution Network Service Provider 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>The obligation on the Queensland DNSPs is to pay the ESO levy to the regulator⁷, which is defined by the <i>Electrical Safety Act</i> as the regulator under the <i>Work Health and Safety Act 2011 (Qld) (Work Health and Safety Act)</i>.⁸ The <i>Work Health and Safety Act</i> provides that the regulator is a public service officer appointed under the <i>Public Service Act 2008 (Qld)</i>.⁹</p> <p>Schedule 2 of the NEL defines 'person' to include a body politic or body corporate as well as an individual, noting that schedule 2 of the NEL applies to the NER in accordance with section 3, NEL. Consequently, the regulator under the <i>Electrical Safety Act</i> is a public service officer (i.e., an individual) and falls within the definition of 'person' under the NEL.</p> <p>an amount specified in, or determined in accordance with, the jurisdictional scheme obligations</p> <p>Sections 202 to 204 of the <i>Electrical Safety Act</i> provide for how the amount payable by each Queensland DNSP is determined.</p>
Clause 6.18.7A(x)(2)
<p>The jurisdictional scheme obligations are imposed on a Distribution Network Service Provider</p> <p>Chapter 10 of the NER defines a Distribution Network Service Provider as a person who engages in the activity of owning, controlling, or operating a distribution system. Energex and Ergon Energy are each such a person.</p> <p>in its capacity as a Distribution Network Service Provider</p> <p>The obligation in section 201 of the <i>Electrical Safety Act</i> applies to a 'distribution entity', which in accordance with Schedule 2 of the <i>Electrical Safety Act</i>, means a distribution entity under the <i>Electricity Act</i>. Energex and Ergon Energy hold distribution authorities in Queensland and are therefore considered distribution entities under the <i>Electricity Act</i>.¹⁰</p> <p>The 'jurisdictional scheme obligation' imposed by section 201 of the <i>Electrical Safety Act</i> is therefore imposed on a DNSP (i.e., Energex and Ergon Energy), in its capacity as a DNSP.</p>

⁷ *Electrical Safety Act 2002 (Qld)*, s 201.

⁸ *Ibid*, Schedule 2.

⁹ Schedule 2, part 1.

¹⁰ s 37.

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Clause 6.18.7A(x)(3)

The amount is not in the nature of a fine, penalty or incentive payment for the Distribution Network Service Provider

The amount to be paid to the regulator is for the purpose of funding activities of the ESO in ensuring compliance with the *Electrical Safety Act* and promoting electrical safety in the community.¹¹ The amount payable is not in the nature of a fine, penalty or incentive payment.

Clause 6.18.7A(x)(4)

Except as provided in the NER, the DNSP has no right to recover the amounts from any person

The Queensland DNSPs have no right to recover the ESO levy except as provided for in the NER.

For the 2020-25 regulatory period, the AER's regulatory allowances for Energex's and Ergon Energy's operating expenditure includes forecast payments for the ESO levy.

If the Levy Scheme is determined to be a jurisdictional scheme by the AER, these costs would be excluded from the operating expenditure forecasts for the next regulatory control period (2025-30) and instead managed via the annual pricing process.

¹¹ *Electrical Safety Act 2002 (Qld)*, s 200.