



# Jurisdictional Scheme Determination Request

23 March 2016



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## Australian Energy Regulator

23 March 2016

This application is made by:

Ergon Energy Corporation Limited

PO Box 264

FORTITUDE VALLEY QLD 4006

Enquiries or further communications should be directed to:

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# Introduction

On 22 March 2016, the Queensland distribution authorities of Ergon Energy Corporation Limited (Ergon Energy) and Energex Limited (Energex) were amended by the regulator<sup>1</sup> to enable the Queensland Government to recover a proportion of the State's funding commitments in respect of the Australian Energy Market Commission (AEMC) through the an energy industry levy (Scheme).

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

The recovery of jurisdictional scheme amount provisions were introduced in 2010 and were intended to improve efficiency by removing the requirements for scheme payments, such as those made under feed-in tariff schemes and climate change funds, to be considered under the distribution determination process and cost pass through provisions<sup>2</sup>. Instead, DNSPs can recover costs of approved jurisdictional schemes through the annual pricing proposal.

In accordance with rule 6.18.7A(g) of the NER, this submission contains the following information:

- (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 eligibility criteria;
- (3) the commencement date of the relevant scheme; and
- (4) an explanation of how the relevant scheme meets the jurisdictional scheme eligibility criteria.

Should the AER determine that the Scheme is a jurisdictional scheme in time, Ergon Energy will incorporate the jurisdictional scheme amounts into its annual pricing proposal commencing 2016-17 in accordance with rules 6.18.2(b)(6A) and 6.18.7A of the NER.

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<sup>1</sup> Under the *Electricity Act 1994* (s62) the regulator is the chief executive of the Department of Energy and Water. The Regulator may delegate a power of the regulator under s64 of the *Electricity Act 1994*.

<sup>2</sup> AEMC 2010, *National Electricity Amendment (Payments under Feed-in Schemes and Climate Change Funds) Rule*, Rule Determination

## Name and address of person making the request

Rule 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 provided as follows:

**Name:** Ergon Energy Corporation Limited

**Contact Person:** Jenny Doyle  
Group Manager Regulatory Affairs

**Address:** 825 Ann Street  
FORTITUDE VALLEY QLD 4006

**Postal Address:** PO Box 264  
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## Details of the law establishing the scheme

Rule 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, jurisdictional scheme obligations are defined as including obligations imposed on a DNSP under a condition of a distribution authority.

The *Electricity Act 1994 (Qld)* (Act) is a law of Queensland. Under the Act a distribution entity must hold a distribution authority in order to supply electricity using a supply network within its distribution area<sup>3</sup> and it is an offence to operate a supply network without a distribution authority<sup>4</sup>. Distribution entities are statutorily obliged to comply with certain conditions, including those stated in the authority<sup>5</sup>. In the event that a distribution entity does not comply with the conditions of its authority, or other conditions set out in the regulations or Act, then the regulator can undertake disciplinary action against the distribution authority<sup>6</sup>. Penalties for failure to comply with the conditions of a distribution authority range from monetary penalties to cancellation of the authority<sup>7</sup>.

A distribution authority was issued by the regulator to Ergon Energy on 25 June 1999 in respect of regional Queensland.

On 22 March 2016, Ergon Energy's distribution authority (attached as Appendix A) was amended by the regulator (representing the Queensland Government) to establish a new condition in respect of the Scheme as follows:

**“16. Australian Energy Market Commission Levy**

- (a) Each financial year, the distribution entity must pay to the Regulator an energy industry levy of an amount determined by the Regulator under paragraph (b).
- (b) The Regulator will calculate the levy based on the cost of the State of Queensland's funding commitments to national energy market regulation cost for each financial year. Each financial year, the Regulator will determine what proportion of these costs should be paid by the distribution entity and invoice the distribution entity for this amount.
- (c) For the avoidance of doubt, the liability to pay the annual levy accrues on and from 1 July in the relevant financial year regardless of the date the levy is actually paid to the State of Queensland.”

The Scheme 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 (NERL).

Therefore, as the distribution authority establishes the Scheme, and the distribution authority is issued pursuant to the Act, and the Act also requires the distribution entity to comply with its distribution authority, then the Scheme has been established under a law (being the Act).

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<sup>3</sup> Section 37 and 38 of the *Electricity Act 1994 (Qld)*

<sup>4</sup> Section 88A of the *Electricity Act 1994 (Qld)*

<sup>5</sup> Section 42 of the *Electricity Act 1994 (Qld)* (in particular s42(a)(iv))

<sup>6</sup> Section 132(1)(c) of the *Electricity Act 1994 (Qld)*

<sup>7</sup> Section 133 of the *Electricity Act 1994 (Qld)*

## Commencement date of the scheme

Rule 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 Scheme commenced on 22 March 2016. The liability accrues from 1 July of the relevant year including for 2015-16.

# Jurisdictional scheme eligibility criteria

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

The Scheme meets the above jurisdictional scheme eligibility criteria because:

1. It is a requirement of Ergon Energy’s distribution authority that Ergon Energy must pay the regulator 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 per cent of Queensland’s total annual funding requirement for the 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 2015-20 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 in accordance with rule 6.18.7A of the NER. Ergon Energy's AER approved regulatory revenue allowance for the 2015-20 regulatory control period does not provide for the recovery of the Scheme.