



Request for Jurisdictional Scheme Determination for the NSW Electricity Infrastructure Investment Act 2020

October 2021



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Introduction

The purpose of this submission is to request that the Australian Energy Regulator (**AER**) determine that specified amounts payable by the NSW Distribution Network Service Providers (being Ausgrid, Endeavour Energy and Essential Energy) (each a **NSW DNSP**, and together the **NSW DNSPs**) to the Electricity Infrastructure Fund (the **Fund**) established under the *Electricity Infrastructure Investment Act 2020* (NSW) (**EII Act**) in accordance with a contribution order served by the Scheme Financial Vehicle on the NSW DNSPs under the EII Act (**Scheme**) is a jurisdictional scheme in accordance with rule 6.18.7A of the National Electricity Rules (**NER**).

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

- (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 provisions governing the recovery of jurisdictional scheme amounts were introduced in 2010 and were 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, distributors can recover costs of approved jurisdictional schemes through the annual pricing proposal.

The AER is required to determine that a scheme is a jurisdictional scheme under rule 6.18.7A(l) if it considers that the scheme meets the jurisdictional scheme eligibility criteria set out in rule 6.18.7A(o). The NER do not provide the AER with any residual discretion to determine that a scheme is not a jurisdictional scheme if the criteria are satisfied.

As illustrated in this submission, the eligibility criteria are satisfied by the Scheme. Accordingly, the AER should determine the Scheme to be a jurisdictional scheme for the purposes of rule 6.18.7A(l).

The Department requests that the AER:

- make a determination as to whether the Scheme is a jurisdictional scheme within the 20 business day period provided for by rule 6.18.7A(l); and
- make a decision on how the NSW DNSPs are to report to the AER on the recovery of the jurisdictional scheme amounts for each regulatory year, as well as the adjustments for over or under recovery as part of their regulatory determinations.

The Department considers the assessment of whether the Scheme is a jurisdictional scheme is straight-forward and does not give rise to issues of any complexity. In addition, each of the NSW DNSPs are supportive of this jurisdictional scheme application as evidenced by the letter of acknowledgement at Attachment 1.

Should the AER determine that the Scheme is a jurisdictional scheme, the NSW DNSPs will incorporate the jurisdictional scheme amounts into their annual pricing proposals commencing with that for the 2023-24 regulatory year in accordance with rules 6.18.2(b)(6A) and 6.18.7A of the NER.

Person making the request

Rule 6.18.7A(g)(1) of the NER requires the name and address of the persons requesting the AER to determine that a scheme is a jurisdictional scheme. These details are provided as follows:

Contain Details	
Persons making the request	The NSW Department of Planning, Industry and Environment
Contact person	Kate Norris (Director Strategic Energy Projects)
Address	4 Parramatta Square 12 Darcy Street Parramatta NSW 2150
Postal address	Department of Planning, Industry and Environment Locked Bag 5022 Parramatta NSW 2124
Telephone	██████████ [This is confidential information]
Email	████████████████████ [This is confidential information]

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 must 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 Electricity Infrastructure Roadmap (the **Roadmap**) is the NSW Government's plan to transform the NSW electricity sector into one that is cheap, clean and reliable. It is enabled by the EII Act which passed into law in December 2020. The Roadmap will facilitate the declaration of Renewable Energy Zones, authorise new network infrastructure, and encourage private investment in new generation, long duration storage and firming infrastructure.

Under Part 7 of the EII Act, the Scheme Financial Vehicle (a company limited by shares under the *Corporations Act*) will establish and maintain the Fund. The purpose of the Fund is to manage costs associated with the:

- network investment required to support infrastructure projects under the Roadmap;
- establishment of Long-Term Energy Service Agreements negotiated between large-scale renewable generation, long duration storage and firming proponents and the Consumer Trustee and entered into with the Scheme Financial Vehicle; and
- administration of the EII Act by the Consumer Trustee, the Infrastructure Planner, the NSW Regulator appointed under the EII Act, the Financial Trustee and the Scheme Financial Vehicle.

One of the ongoing payments into the Fund will be made by the NSW DNSPs and recovered from NSW electricity consumers. Under section 56 of the EII Act, the NSW Regulator will determine the total contribution from each NSW DNSP through an annual contribution determination. A contribution determination made by the NSW Regulator must be published in the NSW Government Gazette by 28 February before the beginning of the financial year to which the contribution determination applies, unless the Minister approves a later date.

Section 58 of the EII Act provides for the Scheme Financial Vehicle to require the NSW DNSPs to pay a specified amount into the Fund. This is through a contribution order issued by the Scheme Financial Vehicle to the NSW DNSPs. The amount specified in the contribution order is to be the amount specified in the NSW Regulator's contribution determination.

If the NSW Regulator does not publish its contribution determination in time, section 58(3) of the EII Act permits the Scheme Financial Vehicle to determine the amount specified in the contribution order.

The NSW DNSPs are not intended to carry any of the financing risk of the Scheme and will be no worse off due to their role in administering contributions from consumers. Rather, their role is to manage the application of the cost pass through to consumers.

Instead of duplicating the cost-pass through mechanisms in the NER, the intent is that the NSW DNSPs will be able to recover the amounts in contribution orders through the AER's determination of the Scheme as a jurisdictional scheme.

As NSW is a participating jurisdiction, the EII Act is an Act of a participating jurisdiction. The obligation imposed on the NSW DNSPs under section 58(1) of the EII Act is an obligation imposed on a DNSP under an Act of a participating jurisdiction.

Commencement date

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.

While the majority of the provisions of the EII Act commenced on 10 December 2020,

Part 7 of the EII Act commenced on 1 July 2021. However, operationally the first contribution order to be made by the Scheme Financial Vehicle under the EII Act is currently scheduled to apply to the NSW DNSPs on 1 July 2023.

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 and are 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 satisfies each of the jurisdictional scheme eligibility criteria for the reasons set out in Table 1. Accordingly, the AER must determine the Scheme to be a jurisdictional scheme for the purposes of the NER.

Table 1: Assessment of Roadmap as a jurisdictional scheme

Criteria	Why the Roadmap satisfies the criteria
<p>The jurisdictional scheme obligations require a DNSP 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.</p>	<p>For the reasons explained in section 3 above, section 58(1) of the EII Act requires the NSW DNSPs to pay into the Fund established under the EII Act a specified amount in accordance with a contribution order served by the Scheme Financial and is accordingly a 'jurisdictional scheme obligation'.</p>
<p>The jurisdictional scheme obligations are imposed on a DNSP in its capacity as a DNSP.</p>	<p>Part 10 of the NER defines 'Distribution Network Service Provider' as 'a person who engages in the activity of owning, controlling, or operating a distribution system'.</p> <p>Each of the NSW DNSPs is such a person and is therefore a 'Distribution Network Service Provider' for the purposes of rule 6.18.7A(x)(2).</p> <p>The obligation in Section 58 of the EII Act expressly applies to a 'distribution network service provider'.</p> <p>Under the definitions of the EII Act a distribution network service provider <i>has the same meaning as in the National Electricity Rules</i>".</p> <p>The 'jurisdictional scheme obligation' imposed by section 58 of the EII Act is therefore imposed on each of the NSW DNSPs in their capacity as a DNSP.</p>

<p>The amounts are not in the nature of a fine, penalty or incentive payment for the DNSP.</p>	<p>Each year the NSW Regulator will make a contribution determination for the amount that is required for the Scheme Financial Vehicle to be able to make the payments from the Fund that are required under the EII Act, including for:</p> <ul style="list-style-type: none"> • costs arising from the network investment required to support infrastructure projects under the Roadmap (as set out under Part 5 of the EII Act) • costs arising from the establishment and operation of Long-Term Energy Service Agreements negotiated between large-scale renewable generation, long duration storage and firming proponents and the Consumer Trustee and entered into with the Scheme Financial Vehicle (as set out under Part 6 of the EII Act) • administration costs incurred under the EII Act by the Consumer Trustee, the Infrastructure Planner, the NSW Regulator, the Financial Trustee and the Scheme Financial Vehicle. <p>The Scheme Financial Vehicle then serves a contribution order on the NSW DNSPs requiring the NSW DNSPs to pay a specified amount into the Fund. The amount set out in a contribution order is the amount specified in the NSW Regulator's contribution determination for each NSW DNSP.</p> <p>Accordingly, the amounts to be paid into the Fund by the NSW DNSPs in accordance with Section 58 of the EII Act are not in the nature of a fine, penalty or incentive payment.</p>
<p>Except as provided in the NER, the DNSP has no right to recover the amounts from any person.</p>	<p>The NSW DNSPs have no right to recover the specified amounts in a contribution order under section 58 of the EII Act except as provided in the NER.</p>