

17 November 2023

Ms Clare Savage  
Chair, Australian Energy Regulator  
GPO Box 520  
Melbourne, VIC, 3001

By email: [REDACTED]

Dear Ms Savage,

**Request for Jurisdictional Scheme Determination – ACT Large-scale Feed-in Tariff Scheme**

Evoenergy wishes to request the Australian Energy Regulator (AER) to determine that the ACT Large-scale Feed-in Tariff (LFIT) Scheme should cease to be a jurisdictional scheme, pursuant to clause 6.18.7A(o) of the National Electricity Rules (NER).

The LFIT Scheme is established under the ACT *Electricity Feed-in (Large-scale Renewable Generation) Act 2011* (LFIT Act). In January 2014, the AER published its determination that the LFIT Scheme is a jurisdictional scheme for the purposes of the National Electricity Rules. Evoenergy considers that, as a result of legislative changes, the LFIT Scheme no longer meets the jurisdictional scheme eligibility criteria in the NER.

The attached application sets out the basis for Evoenergy's request and other matters as required in accordance with clause 6.18.7A(p) of the NER.

Should the AER approve Evoenergy's request, Evoenergy will pass-on future LFIT Scheme amounts to electricity retailers in accordance with the provisions of the LFIT Act, and outside of the jurisdictional scheme component of Evoenergy's regulated network charges. Evoenergy will consult with the ACT Government, the AER, and the ACT Independent Competition and Regulatory Commission (ICRC) on a set of principles that would govern tariff adjustments to pass-through LFIT Scheme amounts in future years. Evoenergy intends that LFIT Scheme amounts would be passed through to electricity retailers in way that provides transparency and ensures consistent and accurate communications to retailers, customers, and regulators.

Should you like to discuss this request, please call me on [REDACTED]. Alternatively, Lev Yulin (Group Manager Regulatory Pricing) can be contacted on [REDACTED] if your representatives would like to discuss this request.

Yours sincerely,

[REDACTED]

evoenergy

# Request for jurisdictional scheme determination

ACT Large-scale Feed-in Tariff (LFiT) Scheme

17 November 2023

# Contents

- 1. Introduction..... 3
- 2. Name and address of the person making the request ..... 4
- 3. Details of the law establishing the scheme..... 4
- 4. The commencement date of the relevant scheme..... 5
- 5. Why the scheme no longer meets the jurisdictional scheme eligibility criteria ..... 5
- 6. Observations on implementation of requested determination ..... 6

## 1. Introduction

In January 2014, the Australian Energy Regulator (AER) published its determination (AER Determination), upon ActewAGL Distribution's (AAD's) request, that the Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011 (LFIT Act) established a scheme (LFIT Scheme) that is a jurisdictional scheme for the purposes of the National Electricity Rules (NER).

Evoenergy considers that, as a result of legislative changes, the LFIT Scheme no longer meets the jurisdictional scheme eligibility criteria as set out in clause 6.18.7A(x) of the NER. Evoenergy accordingly requests that the AER determine that the LFIT Scheme should cease to be a jurisdictional scheme pursuant to clause 6.18.7A(u) of the NER.

In brief, Evoenergy's reasons for this request are:

1. A key jurisdictional scheme criterion is that, except as provided in the NER, the relevant distribution network service provider (DNSP) has no right to recover the costs associated with the jurisdictional scheme from any person (clause 6.18.7A(x)(4)).
2. At the time of AAD's January 2014 application, the LFIT Act did not provide AAD with a right to recover costs associated with the scheme, as noted by the AER Determination at 4.2.3.
3. The LFIT Act was amended in 2017, with the insertion of new sections 20A to 20D. These sections provide a mechanism for Evoenergy to pass costs associated with the LFIT Scheme on to electricity retailers.
4. Evoenergy considers that, as a result of these amendments, the LFIT Scheme no longer meets the jurisdictional scheme criterion set out at clause 6.18.7A(x)(4) of the NER.

These reasons are discussed further in the body of this application.

In accordance with clause 6.18.7A(p) of the NER, this application provides:

1. The name and address of the person making the request;
2. 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 why the scheme no longer meets the jurisdictional scheme eligibility criteria.

## 2. Name and address of the person making the request

Rule 6.18.7A(p)(1) of the NER requires the name and address of the persons requesting the AER to determine that a scheme should cease to be a jurisdictional scheme. These details are provided in the table below.

Name and contact details	
Person making the request	Evoenergy
Contact person	Lev Yulin Group Manager Regulatory Pricing
Physical address	ActewAGL House 40 Bunda Street Canberra ACT 2601
Postal Address	ActewAGL House GPO Box 366 Canberra ACT 2601
Telephone	██████████
Email	████████████████████

## 3. Details of the law establishing the scheme

Rule 6.18.7A(p)(2) of the NER requires details of the law establishing the scheme to be included in an application for a determination that a scheme should cease to be a jurisdictional scheme.

The LFiT Scheme is established by the LFiT Act, being an Act of the Australian Capital Territory participating jurisdiction. The LFiT Scheme is intended to support the development of large-scale renewable energy generation capacity for the Australian Capital Territory.

The LFiT Act provides for the Minister for Water, Energy and Emissions Reduction to grant Feed-in Tariff (FiT) entitlements to eligible renewable energy generators.<sup>1</sup> Evoenergy is required to pay any FiT entitlement holder a 'FiT support payment' for the holder's eligible electricity.<sup>2</sup> The FiT support payment is an amount that is worked out by either:<sup>3</sup>

- a. calculating the amount of the Feed-in Tariff less the spot price, multiplied by the quantity of eligible electricity; or
- b. calculating the amount through an assessment method approved by the Minister.

The LFiT Act confers on Evoenergy a statutory right to pass on to electricity retailers its reasonable costs in making FiT support payments and administering the LFiT Scheme.<sup>4</sup> Evoenergy must apply to

<sup>1</sup> LFiT Act, section 11.

<sup>2</sup> LFiT Act, section 18(2).

<sup>3</sup> LFiT Act, section 17A.

<sup>4</sup> LFiT Act, section 20A.

the Minister each financial year for a determination of the reasonable costs for the next financial year.<sup>5</sup> Importantly, these provisions, which allow Evoenergy to pass costs on to retailers, were only inserted into the LFiT Act in November 2017 (by the Electricity Feed-in (Large-scale Renewable Energy Generation) Amendment Act 2017), after the AER had determined that the LFiT Scheme was a jurisdictional scheme.

## 4. The commencement date of the relevant scheme

Rule 6.18.7A(p)(3) of the NER requires that the commencement date of the relevant scheme be included in any application for a determination that the scheme should cease to be a jurisdictional scheme.

Evoenergy considers there are two relevant commencement dates for purposes of this application:

1. The date on which the LFiT Scheme was established, being 14 December 2011; and
2. The date on which sections 20A and 20B were included in the Act, permitting Evoenergy to pass on the reasonable costs of the LFiT Scheme to energy retailers, being 8 November 2017.

## 5. Why the scheme no longer meets the jurisdictional scheme eligibility criteria

Rule 6.18.7A(p)(4) of the NER requires that an application for a determination that a scheme should cease to be a jurisdictional scheme include an explanation as to why the scheme no longer meets the jurisdictional scheme 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.*

---

<sup>5</sup> LFiT Act, section 20B.

In the AER Determination, the AER set out, at paragraph 4.2.3, its assessment of whether the LFiT Scheme met the jurisdictional scheme criteria. The AER's assessment is contained in the table below (copied directly from the AER Determination).

Criterion	AER Assessment
<b>A DNSP is required to pay a person an amount specified in, or determined in accordance with, the jurisdictional scheme obligations</b>	We have verified that the Electricity Feed-in (large-scale renewable energy generation) Act 2011 (ACT), requires ActewAGL Distribution to make a FiT support payment to a FiT entitlement holder for their electricity. Therefore, this requirement is met.
<b>The jurisdictional scheme obligations are imposed on a DNSP in its capacity as a DNSP</b>	Section 18 of the Electricity Feed-in (large-scale renewable energy generation) Act 2011 (ACT) sets out ActewAGL Distribution's obligations, as an electricity distributor, to make a FiT support payment. Therefore, this requirement is met.
<b>The payments required are not in the nature of a fine, penalty or incentive payment</b>	The amount ActewAGL Distribution is required to pay under the Electricity Feed-in (large-scale renewable energy generation) Act 2011 (ACT) is a payment to support the development of large-scale renewable energy generation and is not in the nature of a fine, penalty or incentive payment. Therefore, this requirement is met.
<b>Except as provided for in the NER, the DNSP has no right to recover the amounts from any person<sup>6</sup></b>	ActewAGL Distribution does not have the right to recover costs associated with the FiT (Large-Scale) payment from any person, other than arising through provisions of the NER. Therefore, this requirement is met.

Relevantly, in 2014, the LFiT Act did not provide a right for AAD to recover costs associated with the LFiT Scheme (as the AER noted in row 4 of its table above). As noted previously, the LFiT Act was amended in 2017 to confer a statutory right on Evoenergy to pass on the reasonable costs of the LFiT Scheme to energy retailers.

As a result of this amendment, Evoenergy considers that the reasons in the AER Determination no longer stand, and the LFiT Scheme no longer meets the requirement in clause 6.18.7A(x)(4) of the NER. Evoenergy now has a right to recover costs associated with the scheme in a mechanism external to the provisions of the NER.

Accordingly, Evoenergy considers that the AER should determine, pursuant to clause 6.18.7A(u), that the LFiT Scheme should cease to be a jurisdictional scheme.

## 6. Observations on implementation of requested determination

Evoenergy will continue to pass on LFiT amounts to electricity retailers in accordance with the provisions in the LFiT Act, which provide for the making of a Ministerial determination on Evoenergy's reasonable costs of meeting its obligations under the Act for an upcoming financial year and preclude Evoenergy from passing on to electricity retailers any more than the amount determined by that Ministerial determination.

<sup>6</sup> Requirement in sub-clause 6.18.7A(x)(4) of the NER.

In addition, Evoenergy intends that the tariff adjustments proposed by it for the pass through of LFiT amounts (whether positive or negative) for a financial year will be subject to an independent review process, so as to ensure that they are correctly calculated and compliant with the Ministerial reasonable costs determination for the relevant financial year.

A set of principles would be developed to govern the calculation of tariff adjustments to pass through LFiT amounts, which would also be applied by the independent reviewer in verifying those tariff adjustments. These principles could provide, for example, for the form of the tariff adjustments (e.g. adjustments to consumption charges) and for that the adjustments not result in negative tariffs or distortions to price signals. The principles would be developed in consultation with ACT Government, AER, and the ACT Independent Competition and Regulatory Commission (ICRC).

Essentially, Evoenergy will continue to operate as it has for regulatory year 2023/2024, passing on all LFiT amounts in accordance with the mechanisms provided for in the LFiT Act. Determining that the LFiT Scheme is no longer a jurisdictional scheme will not change the outcome for consumers, rather, it will simply allow stakeholders to avoid the complications that arise from having two different statutory regimes governing the pass through of LFiT amounts.