

# Jurisdictional scheme determination

Licence fees under Electricity Industry Act  
2000 (Vic)

July 2024

© Commonwealth of Australia 2024

This work is copyright. In addition to any use permitted under the *Copyright Act 1968* all material contained within this work is provided under a Creative Commons Attributions 4.0 Australia licence with the exception of:

- the Commonwealth Coat of Arms
- the ACCC and AER logos
- any illustration diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright but which may be part of or contained within this publication.

The details of the relevant licence conditions are available on the Creative Commons website as is the full legal code for the CC BY 4.0 AU licence.

### **Important notice**

The information in this publication is for general guidance only. It does not constitute legal or other professional advice. You should seek legal advice or other professional advice in relation to your particular circumstances.

The AER has made every reasonable effort to provide current and accurate information, but it does not warrant or make any guarantees about the accuracy, currency or completeness of information in this publication.

Parties who wish to re-publish or otherwise use the information in this publication should check the information for currency and accuracy prior to publication.

Inquiries about this publication should be addressed to:

Australian Energy Regulator  
GPO Box 3131  
Canberra ACT 2601  
Email: [aer inquiry@ aer.gov.au](mailto:aer inquiry@ aer.gov.au)  
Tel: 1300 585 165

AER reference: AER23008248

### **Amendment record**

<b>Version</b>	<b>Date</b>	<b>Pages</b>
1	19 July 2024	8

## Contents

<b>1</b>	<b>Determination</b> .....	<b>1</b>
1.1	Background .....	1
<b>2</b>	<b>Assessment</b> .....	<b>2</b>
2.1	Application compliance .....	2
2.2	Jurisdictional scheme criteria .....	2
	<b>Glossary</b> .....	<b>5</b>

# 1 Determination

The AER has determined that the licence fee scheme established under section 21(a) of the *Electricity Industry Act 2000* (Vic) is a jurisdictional scheme and meets the jurisdictional scheme eligibility criteria set out in clause 6.18.7A of the National Electricity Rules (NER).

This determination will apply the jurisdictional scheme to all Victorian electricity Distribution Network Service Providers (DNSPs).

## 1.1 Background

Jemena Electricity Networks (Jemena) has submitted a request for the AER to determine that the requirement that Jemena pay a licence fee to the Essential Services Commission (ESC) in accordance with section 21(a) of the *Electricity Industry Act 2000* (Vic) (the Act) is a jurisdictional scheme in accordance with clause 6.18.7A of the National Electricity Rules (NER).

The ESC granted Jemena an electricity distribution licence pursuant to section 19 of the Act on 3 October 1994 (which was subsequently varied on 3 August 2022 with effect from 1 October 2022).<sup>1</sup>

Section 21(a) of the Act provides that conditions of holding a licence may include that the licensee pay, specified fees and charges in respect of the licence to the Commission. ‘Commission’ is defined in section 3 of the Act as “means the Essential Services Commission established under the *Essential Services Commission Act 2001*.”

Section 22(1) of the Act provides that for the purposes of section 21(a) of the Act, the Minister after consultation with the Minister administering the Essential Services Commission Act 2001, may determine, by notice published in the Government Gazette, the fees and charges specified in respect of a licence. We understand that on 24 May 2022, a notice was published in the Government Gazette setting out the Minister’s a determination under section 22 of the Act, for fees and charges payable by the holder of different types of licences including a distribution licence.<sup>2</sup> This determination has effect until 30 June 2027.

Clause 8 of the Jemena’s distribution licence provides “The Licensee must pay a licence fee as determined by the Minister in accordance with the provisions of section 22 of the Act.”

Under Jemena’s current distribution determination, licence fees are recovered through the B-factor which includes a ‘true-up’ adjustments for DUoS revenue for under or over recovery and adjustments relating to the ESC licence fees.<sup>3</sup>

---

<sup>1</sup> Essential Services Commission (ESC), [‘Jemena Electricity Networks \(Vic\) Ltd – Electricity Distribution Licence’](#), accessed 24 June 2024.

<sup>2</sup> The Hon. Lily D’Ambrosio, Victoria Government Gazette No s 245, 24 May 2022, page 1-2.

<sup>3</sup> AER, Final Decision, AusNet Services, CitiPower, Jemena, Powercor, and United Energy Distribution Determination 2021 to 2026, Attachment 14 Control mechanisms, April 2021, page 3.

## 2 Assessment

### 2.1 Application compliance

Clause 6.18.7A(g) of the NER provides that a request under 6.18.7A(f) (person may request the AER to determine whether a scheme is a jurisdictional scheme), must contain the following information:

**(1) the name and address of the person making the request**

Section 2 of Jemena's jurisdictional scheme application<sup>4</sup> provides the name and address of the person making the request and satisfies criteria 1.

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

Section 3 of Jemena's application<sup>5</sup> provides of the details of the law establishing the license fee scheme and satisfies criteria 2.

**(3) the commencement date of the relevant scheme**

Section 4 of Jemena's application<sup>6</sup> provides the commencement date of the scheme, being the date, the *Essential Services Commission Act 2001* commenced, being 1 January 2002, satisfying criteria 3.

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

Section 5 of Jemena's application provides an explanation of how the scheme meets the jurisdictional scheme eligibility criteria under clause 6.17.7A(d) of the Rules<sup>7</sup>. Our assessment of the application against those criteria is set out in the section below.

### 2.2 Jurisdictional scheme criteria

For a scheme to be considered a jurisdictional under the NER it must meet the requirements set out in clause 6.17.7A(d) of the NER:

A scheme is a jurisdictional scheme if:

- 1) The scheme is one of the feed-in or climate schemes specified in clause 6.18.7A(e) (none of which are relevant for present purposes); or
- 2) The AER has determined under clause 6.18.7A(l) that the scheme is a jurisdictional scheme.

---

<sup>4</sup> Jemena Electricity Networks (Jemena), [Request for jurisdictional scheme determination](#), June 2024, page 2.

<sup>5</sup> Jemena, [Request for jurisdictional scheme determination](#), page 3.

<sup>6</sup> Jemena, [Request for jurisdictional scheme determination](#), page 4.

<sup>7</sup> Jemena, [Request for jurisdictional scheme determination](#), page 5-7.

Clause 6.18.7A(n) provides that the AER must only determine that a scheme is a jurisdictional scheme under clause 6.18.7A(l) if it considers that the scheme meets the jurisdictional scheme eligibility criteria.

The eligibility criteria and our assessment of the licence scheme against each are set out in Table 1.

**Table 1: Jemena’s Jurisdictional Scheme Assessment against NER Criteria**

Eligibility criteria	AER Assessment
<p><b>Criterion 6.18.7A(x)(1)</b></p> <p><b>(1)</b> The jurisdictional scheme obligations<sup>8</sup> require a DNSP to:</p> <ul style="list-style-type: none"> <li><b>(i).</b> Pay a person;</li> <li><b>(ii).</b> Pay into a fund established under an Act of a participating jurisdiction;</li> <li><b>(iii).</b> Credit against charges payable by a person; or</li> <li><b>(iv).</b> Reimburse a person, an amount specified in, or determined in accordance with, the jurisdictional scheme obligations;</li> </ul>	<p>We are satisfied this criterion is met.</p> <p>The relevant jurisdictional scheme obligations are found in section 21(a) of the Act.</p> <ul style="list-style-type: none"> <li>• Section 21(a) of the Act provides that “Without limiting the generality of section 20 the conditions on a licence may include provisions (a) requiring the licensee to pay specified fees and charges in respect of the licence to the Commission.”</li> <li>• The licence condition specified in section 21(a) applies to a ‘licensee’ which is defined in section 3 of the Act as “means the holder of a licence issued under Part 2.”</li> <li>• Sections 18-22 of the Act are contained within Division 3 of Part 2 of the Act and deal with licences. Section 18 of the Act provides that a person may apply to the ESC for the issue of a licence authorising one or more activities, one of which is to distribute or supply electricity (section 18(1)(c)).</li> <li>• Section 19 of the Act deals with the granting or refusing of an application (presumably referring to an application for the issue of a licence made under section 18(1)).</li> </ul> <p>Reading these sections together it can be said that a ‘licensee’ in section 21(a) can include a person who has been granted a licence under section 19, authorising them to distribute or supply electricity. As stated above, Jemena holds a distribution licence which was issued pursuant to section 19 of the Act. A person who holds a distribution licence would be captured under the NER definition of distribution network</p>

<sup>8</sup> These are defined in Chapter 10 of the NER as: ‘Obligations imposed on a Distribution Network Service Provider under: (a) an Act of a participating jurisdiction or an instrument, direction or order made under an Act of a participating jurisdiction (other than the NEL and the Rules); or (b) a condition of a distribution license or authority held by a Distribution Network Service Provider in a participating jurisdiction.’

Eligibility criteria	AER Assessment
	<p>service provider which is, “A person who engages in the activity of owning, controlling, or operating a distribution system.”</p> <p>In determining the amount that the <i>jurisdictional scheme obligations</i> require a DNSP to pay the ESC, section 22(1) of the Act provides that for the purposes of section 21(a), the Minister after consultation with the Minister administering the <i>Essential Services Commission Act 2001</i> may determine the fees and charges specified in respect of a licence.</p> <p>Therefore, the <i>jurisdictional scheme obligations</i> require a DNSP to pay a person (which is the ESC), fees and charges determined in accordance with the <i>jurisdictional scheme obligations</i>.</p>
<p><b>Criterion 6.18.7A(x)(2)</b></p> <p>The jurisdictional scheme obligations are imposed on a DNSP in its capacity as a DNSP;</p>	<p>We are satisfied this criterion is met.</p> <p>Under the National Electricity Rules glossary, a DNSP is categorised as a person who engages in the activity of owning, controlling, or operating a distribution system.</p> <p>Under Part 1 (preliminary) of the Act, a distribution company means a person who is the holder of a licence to distribute electricity.</p> <p>Having regard to the reasons set out respect of criterion 6.18.7A(x)(1) above, the jurisdictional scheme obligations contained in sections 21(a) of the Act can be imposed on a DNSP in its capacity as a DNSP.</p>
<p><b>Criterion 6.18.7A(x)(3)</b></p> <p>The amount referred to in subparagraph (1) is not in the nature of a fine, penalty or incentive payment for the DNSP; and</p>	<p>We are satisfied this criterion is met.</p> <p>Section 22(2) of the Act specifically provides the determination of fees and charges that may be applied. The described fees and charges are not in the nature of a fine, penalty or incentive payment for the DNSP.</p>
<p><b>Criterion 6.18.7A(x)(4)</b></p> <p>Except as provided in the NER, the DNSP has no right to recover the amount referred to in subparagraph (1) from any person.</p>	<p>We are satisfied this criterion is met</p> <p>Having reviewed the Act, the <i>Essential Services Commission Act 2001</i>, the <i>National Electricity (Victoria) Act 2005</i>, it appears there is otherwise no right to recover the licence fee amounts under other relevant jurisdictional legislation except as provided in the NER.</p>

# Glossary

Term	Definition
AER	Australian Energy Regulator
DNSP	Distribution Network Service Provider
DUoS	Distribution Use of Service
ESC	Essential Service Commission (Vic)
NEL	National Electricity Laws
NER	National Electricity Rules

---