



# Jemena Electricity Networks (Vic) Ltd

## Request for jurisdictional scheme determination



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**An appropriate citation for this paper is:**

Request for jurisdictional scheme determination

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# 1. Introduction

Jemena Electricity Networks (Vic) Ltd. (**JEN**) (**the Licensee**) is required to pay a licence fee (**Licence Scheme**) to the Essential Service Commission Victoria (**Commission**) in accordance with section 21(a) of the *Electricity Industry Act 2000* (Vic) (**Act**) as determined by the Minister in section 22.

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

This submission sets out the following information as required in clause 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 the costs of approved jurisdictional schemes through the annual pricing proposal.

As acknowledged by the AER in its previous decisions,<sup>1</sup> the AER is required to determine that a scheme is a jurisdictional scheme under clauses 6.18.7A(l) and 6.18.7(n) if it considers that the scheme meets the jurisdictional scheme eligibility criteria set out in clause 6.18.7A(x). The NER does not provide the AER with any residual discretion to determine that a scheme is not a jurisdictional scheme if the criteria are satisfied.

Clauses 6.2.5c(3) and 6.2.5c(4) require that in deciding on a control mechanism for standard control services, the AER must have regard to the regulatory arrangements (if any) applicable to the relevant service immediately before the commencement of the distribution determination and consistency between the regulatory arrangements for similar services (both within and beyond the relevant jurisdiction).<sup>2</sup>

JEN notes that the Licence Scheme is directly equivalent to the energy industry levy payable by ActewAGL in accordance with the Utilities Act 2000 (ACT) and Victorian distributors in accordance with the Energy Safe Victoria Act 2005 (Vic) which the AER recognised as a jurisdictional scheme in 2014 and 2021 respectively. Accordingly, there is no reasonable basis for the AER to extend the time for making its determination in accordance with clause 6.18.7A(m).

Should the AER determine that the Licence Scheme is a jurisdictional scheme, JEN will incorporate the jurisdictional scheme amounts into our 2025/26 annual pricing proposal in accordance with clauses 6.18.2(b)(6A) and 6.18.7A of the NER. JEN will not double recover the ESC licence fee through the B-factor adjustment in the standard control services price control formula. The licence fee will be instead recovered under the recovery of a jurisdictional scheme amount provision, starting from 1 July 2025.

<sup>1</sup> See AER, Determination on CPU jurisdictional scheme request, March 2021, p.7 (available here <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/citipower-powercor-united-energy-determination-on-whether-a-scheme-is-a-jurisdictional-scheme/decision>)

<sup>2</sup> AER, Determination on ActewAGL Distribution's jurisdictional schemes request, January 2014, p. 6 (available here <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/actewagl-determination-on-whether-a-scheme-is-a-jurisdictional-scheme/proposal>) AER, Determination on Ergon Energy's jurisdictional schemes request, March 2016, p. 7 (available here <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/ergon-energy-determination-on-whether-a-scheme-is-a-jurisdictional-scheme/final-decision>)

## 2. Person making the request

Clause 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. The details are as follows:

**Table 2–1: Name and contact details of the person making the request**

Name and contact details	
Person making the request	Jemena Electricity Networks (Vic) Ltd
Contact Person	Matthew Serpell
Address	Level 16, 567 Collins Street Melbourne VIC 3000
Postal Address	PO Box 16182 Melbourne VIC 3000
Telephone	
Email	

### 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 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*' includes obligations imposed on a DNSP under an Act of a participating jurisdiction (other than the National Electricity Law (NEL) and the NER).

The Essential Services Commission (**Commission**) is a corporate body established under Part 2 Clause 7(1) of the *Essential Services Commission Act 2001* (Vic) (**ESC Act**). The purpose of the ESC Act is to enable the Commission to perform the regulatory and advisory functions that are conferred on the Commission in a manner that provides incentives for dynamic, productive and allocative efficiency and promotes the long-term interests of Victorian consumers. Its functions and the achievement of its objectives in relation to the electricity industry include the issuing of licences and monitoring and enforcing compliance with licence obligations.

Section 21(a) of the *Electricity Industry Act 2000* (Vic) (**Act**) provides that the holder of a licence issued under Part 2; Jemena Electricity Networks (Vic) Ltd. (**JEN**) (**the Licensee**) must pay a licence fee (**Licence Scheme**) to the Commission as determined by the Minister in section 22 of the Act. The Minister for Energy, Environment and Climate Change administers the Act, the Hon. Lily D'Ambrosio.

#### 21 Specific licence conditions

*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.*

#### 22 Determination of fees and charges

- (1) *For the purposes of section 21(a), 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.*

#### Participating jurisdiction

As Victoria is a participating jurisdiction, the *Electricity Industry Act 2000* (Vic) is an Act of a participating jurisdiction. The obligation imposed on Victorian DNSPs by section 21(a) of the Act is an obligation imposed on a DNSP under an Act of a *participating jurisdiction*.

## 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.

Section 21(a) of the Act was introduced in the Essential Services Commission Act 2001 (Vic) (**ESC Act**), which commenced on 1 January 2002.

Accordingly, the Licence Scheme commenced on 1 January 2002.

## 5. Eligibility criteria

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

Clause 6.18.7(x) of the NER states that:

(x) The following are the *jurisdictional scheme legibility 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 *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; and
- 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 Licence Scheme satisfies each of the jurisdictional scheme eligibility criteria for the reasons set out in Table 5-1 below. Accordingly, the AER must determine whether the Licence Scheme is a jurisdictional scheme for the purposes of the NER.



Table 5–1: Eligibility Criteria

Criteria	Why the Licence Scheme satisfies the jurisdictional scheme criteria
<p>1) The jurisdictional scheme obligations require a Distribution Network Service Provider to:</p> <ul style="list-style-type: none"> <li>i) pay a person;</li> <li>ii) pay into a fund established under an Act of <i>participating jurisdiction</i>;</li> <li>iii) credit against charges payable by a person; or</li> <li>iv) reimburse a person,</li> </ul> <p>an amount specified in, or determined in accordance with the jurisdictional scheme obligations</p>	<p>As noted in section 3, the obligation on Victorian Distribution Network Service Providers (DNSPs) to pay the Commission a licence fee is an obligation imposed under an Act of a participating jurisdiction, therefore making it a '<i>jurisdictional scheme obligation</i>'.</p> <p>Part 3 (Terms and references) of the National Electricity Act 1996 (South Australia)(NEL) defines a 'person' to include a body corporate as well as an individual. The ESC is defined as a 'body corporate' in Part 2 Section 7(1) of the ESC Act and therefore consistent with the definition of 'a person'. Consequently, the '<i>jurisdictional scheme obligation</i>' imposed by section 21(a) of the Act requires DNSPs to 'pay a person' for the purposes of clause 6.18.7A(x)(1)(i).</p> <p>This obligation imposed by section 21(a) of the Act is one to pay the amounts determined by the Minister responsible for the Commission in regard to the total amount of the costs and expenses of the Commission that are incurred or are likely to be incurred by the Commission in the exercise of its powers for or in connection with the performance of its functions and the achievement of its objectives in relation to the electricity industry. The '<i>jurisdictional scheme obligation</i>' imposed by section 21(a) of the Act is, therefore, one to pay a person, being Commission, 'an amount specified in, or determined in accordance with, the jurisdictional scheme obligations'.</p>
<p>2) The jurisdictional scheme obligations are imposed on a Distribution Network Service Provider in its capacity as a Distribution Network Service Provider</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'. JEN is a person and is, therefore, a 'Distribution Network Service Provider' for the purposes of clause 6.18.7A(x)(2).</p> <p>The obligation in section 21(a) of the Act refers to a 'licensee', which is defined in part 1 of the Act. Part 1 of the Act also defines 'distribution company' to mean 'a person who is the holder of a licence to distribute electricity'.</p> <p>Under section 16 of the Act, a person must not engage in the distribution of electricity unless they hold a licence authorising that activity or an exemption from the requirement to hold a licence in respect of that activity. JEN is the holder of such a licence to distribute electricity. The '<i>jurisdictional scheme obligation</i>' imposed by section 21(a) of the Act is therefore imposed on a DNSP, being JEN, in its capacity as a DNSP.</p>

Criteria	Why the Licence Scheme satisfies the jurisdictional scheme criteria
<p>3) The amount is not in the nature of a fine, penalty or incentive payment for the Distribution Network Service Provider</p>	<p>The fees and charges to be specified in respect of a licence for the purposes of section 21(a) in the Act are the total amount of the Commission's costs and expenses that are incurred or are likely to be incurred in the exercise of its powers to promote the long-term interests of Victorian consumers.</p> <p>The amount payable under section 21(a) is, therefore, not in the nature of a fine, penalty or incentive payment.</p>
<p>4) Except as provided in the NER, the Distribution Network Service Provider has no right to recover the amount from any person</p>	<p>JEN does not have the right to recover the ESC licence fee except as provided in the NER.</p> <p>If the AER determines that the Licence Scheme is a jurisdictional scheme, JEN will not double-recover the ESC licence fee through the B-factor term in the price control mechanism; instead, it will be recovered under the recovery of a jurisdictional scheme amount provision.</p>