



Determination

Request for the ESV Levy Scheme to be determined a jurisdictional scheme

March 2021

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Shortened forms

Shortened Form	Extended Form
AER	Australian Energy Regulator
CPU	CitiPower, Powercor and United Energy
DNSP	Distribution Network Service Provider
ESA	Electricity Safety Act 1998 (Vic)
ESV	Energy Safe Victoria
NEL	National Electricity Law
NER	National Electricity Rules

Overview

On 25 February 2021, CitiPower Pty Ltd, Powercor Australia Ltd and United Energy Distribution Pty Ltd (CPU) requested that the AER determine that the scheme established by section 8 of the Electricity Safety Act 1998 (Vic) (ESA) is a jurisdictional scheme pursuant to clause 6.18.7A of the National Electricity Rules (NER).¹ Under this scheme, known as the Energy Safe Victoria (ESV) Levy Scheme, Victorian electricity distribution network service providers (DNSPs) must make payments to ESV in respect of its reasonable costs and expenses, as determined by the Victorian Minister.²

CPU are Victorian DNSPs. They, along with Jemena and AusNet Services, currently recover costs associated with the ESV Levy Scheme via the expenditure allowances approved for the 2016-21 distribution determinations.

The Victorian DNSPs may also apply to us to pass through to their network users the difference between the actual amounts incurred under each scheme and the approved allowance. We determine whether or not to pass through the costs by assessing the respective application against the cost pass through requirements in the NER.

The NER allows any person to request the AER to determine whether a scheme is a jurisdictional scheme.³ Approval of a scheme as a jurisdictional scheme reduces the steps a DNSP needs to undergo to recover the actual costs associated with the jurisdictional scheme obligations. The DNSP can recover both the scheme's costs and any under/over cost recovery through the annual pricing review, rather than seeking an allowance for the scheme's costs at each regulatory determination and applying to us to pass through any under/over recovery of costs. The scheme's allowance will be determined according to a cost methodology to be determined by us.

We are required to determine whether or not a scheme is a jurisdictional scheme within 20 business days of receiving CPU's request.⁴ We may only determine that a scheme is a jurisdictional scheme if we consider that the scheme meets the jurisdictional scheme eligibility criteria set out in the NER.⁵ We may consult with the relevant DNSP and other such persons we consider appropriate, on any matters arising out of the request or the assessment that we consider appropriate.⁶ A summary of our consultation is provided in section 4 of this determination.

¹ CPU's request is available on the AER website: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/citipower-powercor-united-energy-determination-on-whether-a-scheme-is-a-jurisdictional-scheme>.

² Electricity Safety Act 1998 (Vic), Section 8 - Funding.

³ Clause 6.18.7A(f) of the NER.

⁴ Clause 6.18.7A(l) of the NER.

⁵ Clauses 6.18.7A(n) and 6.18.7A(x) of the NER.

⁶ Clause 6.18.7A(k) of the NER.

1 Determination

The AER has determined under sub-clause 6.18.7A(n) of the NER that the scheme established under section 8 of the ESA is a jurisdictional scheme. This scheme meets the jurisdictional scheme eligibility criteria set out in sub-clause 6.18.7A(x) of the NER.

This determination will apply the jurisdictional scheme to all the Victorian DNSPs.

The AER's final decision for the Victorian electricity distribution determinations for the 2021-26 regulatory control period will set out the process for the recovery of costs associated with the ESV Levy scheme (Attachment 14 - Control mechanisms). As a result, there will be no ESV Levy related costs included in the Victorian DNSPs' allowed revenues for the 2021-26 regulatory control period.

2 CPU's request

On 25 February 2021, CPU requested that the AER determine that the scheme established by section 8 of the ESA is a jurisdictional scheme pursuant to clause 6.18.7A of the NER. That scheme requires CPU and each other Victorian distribution company (that is, a person who is the holder of a licence to distribute electricity) to make payments to ESV in respect of ESV's reasonable costs and expenses, as determined by the Victorian Minister, and at such time or times as the Minister determines.

As required under sub-clause 6.18.7A(g) of the NER, CPU's request contained the following information:

- (1) the name and address of the person making the request;
- (2) details of the law of a 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 information provided by CPU is summarised below.

2.1 The name and address of the person making the request

The person who made the request is CitiPower Pty Ltd, Powercor Australia Ltd and United Energy Distribution Pty Ltd. The address of this person is provided in CPU's request document. Schedule 2, Part 3 (Terms and references) of the National Electricity Act 1996 (South Australia) defines a "person" to include a body politic or body corporate as well as an individual.⁷

2.2 Details of the law establishing the scheme

Section 8 of the ESA provides the following:

8 Funding

A distribution company must pay to Energy Safe Victoria at such time or times as the Minister determines such annual amount (if any) as the Minister determines to be payable by that distribution company in respect of the reasonable costs and expenses.

Victoria is a participating jurisdiction as defined in the NEL and the NER, and so the ESA is an Act of a participating jurisdiction. Therefore, the obligation imposed on Victorian DNSPs

⁷ National Electricity Act 1996 (South Australia), accessed online on 11 March 2021 at: [https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ELECTRICITY%20\(SOUTH%20AUSTRALIA\)%20ACT%201996/CURRENT/1996.44.AUTH.PDF](https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ELECTRICITY%20(SOUTH%20AUSTRALIA)%20ACT%201996/CURRENT/1996.44.AUTH.PDF).

by section 8 of this Act is an obligation imposed on a Victorian distribution company under an Act of a participating jurisdiction.

2.3 Commencement date of the scheme

Section 8 of the ESA was introduced by section 45 of the Energy Safe Victoria Act 2005 (Vic) as made, which commenced on 10 August 2005.

2.4 How the scheme meets the eligibility criteria

CPU submitted that the ESV Levy Scheme satisfies each of the jurisdictional scheme eligibility criteria for the reasons summarised in Table 1.

Table 1: CPU's justification that the scheme meets the jurisdictional criteria

Criterion	CPU justification
A DNSP is required to pay a person an amount specified in, or determined in accordance with, the jurisdictional scheme obligations ⁸	<p>The obligation on Victorian DNSPs to pay the ESV Levy is a 'jurisdictional scheme obligation'.</p> <p>The jurisdictional scheme obligation imposed by section 8 of the ESA requires DNSPs to 'pay a person', since the ESV falls within the definition of 'person'.</p> <p>The obligation is to pay the amounts determined by the Minister responsible for the ESV in respect of the reasonable costs and expenses of the ESV.</p> <p>Therefore, the 'jurisdictional scheme obligation' imposed by section 8 of the ESA is one to pay a person, being ESV, 'an amount specified in, or determined in accordance with, the jurisdictional scheme obligations'.</p>
The jurisdictional scheme obligations are imposed on a DNSP in its capacity as a DNSP ⁹	<p>Each of the Businesses is a DNSP for the purposes of this rule. The obligation in section 8 of the ESA expressly applies to a 'distribution company', which is defined to have the same meaning as in the Electricity Industry Act 2000 (Vic). This Act defines 'distribution company' to mean 'a person who is the holder of a licence to distribute electricity'. Each of the Businesses is the holder of such a licence to distribute electricity.</p>
The payments required are not in the nature of a fine, penalty or incentive payment ¹⁰	<p>The amount to be paid to ESV in accordance with section 8 of the ESA is the amount the Minister determines to be payable in respect of the reasonable costs and expenses of ESV. Levy income is based on cost recovery principles informed by</p>

⁸ Requirement in sub-clause 6.18.7A(x)(1) of the NER.

⁹ Requirement in sub-clause 6.18.7A(x)(2) of the NER.

¹⁰ Requirement in sub-clause 6.18.7A(x)(3) of the NER.

Criterion	CPU justification
	<p>aggregate resourcing levels determined in the ESV's corporate plan and approved by the Minister. The amount payable under section 8 is not in the nature of a fine, penalty or incentive payment.</p>
<p>Except as provided for in the NER, the DNSP has no right to recover the amounts from any person¹¹</p>	<p>The Businesses have no right to recover the ESV levies except as provided in the NER.</p> <p>Whether the AER allows for ESV levies in determining the Businesses' opex allowances for their distribution determinations for the 2021-26 regulatory control period is not relevant to whether this jurisdictional scheme eligibility criterion is satisfied (as this criterion is met when there is no right to recover under instruments other than the NER). Nonetheless, the Businesses observe, for completeness, that the proposed opex for the 2021-26 regulatory control period in their revised regulatory proposals made no allowance for the recovery of the ESV levies expected to be incurred in the period (as an adjustment was made to their base opex to exclude the amount of the ESV levy incurred in the base year and the Businesses did not press their step change for the increase in ESV levies in those revised proposals) and, if the AER determines that the Levy Scheme is a jurisdictional scheme, the Businesses not press its proposal for recovery of the ESV levies through the B-factor adjustment in the standard control services price control formula.</p>

¹¹ Requirement in sub-clause 6.18.7A(x)(4) of the NER.

3 Regulatory requirements

This section sets out the applicable regulatory requirements that must be met in order for the AER to determine a scheme to be a jurisdictional scheme.

Sub-clause 6.18.7A(d) of the NER defines a jurisdictional scheme as follows.

A scheme is a jurisdictional scheme if:

- (1) the scheme is specified in paragraph (e); or
 - (2) the AER has determined under paragraph (l) that the scheme is a jurisdictional scheme,
- and the AER has not determined under paragraph (u) that the scheme has ceased to be a jurisdictional scheme.

We must only determine that a scheme is a jurisdictional scheme if we consider that the scheme meets the jurisdictional scheme eligibility criteria.¹²

The jurisdictional scheme eligibility criteria are set out in sub-clause 6.18.7A(x) of the NER:

Jurisdictional scheme eligibility criteria

(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 not right to recover the amount referred to in subparagraph (1) from any person.

Chapter 10 of the NER defines jurisdictional scheme obligations as follows:

Obligations imposed on a Distribution Network Service Provider under:

¹² Sub-clause 6.18.7A(n) of the NER.

(a) an Act of a participating jurisdiction or an instrument, direction or order made under an Act of a participating jurisdiction (other than the National Electricity Law and these Rules); or

(b) a condition of a distribution licence or authority held by a Distribution Network Service Provider in a participating jurisdiction.

4 Reasons for determination

Following our assessment, we determined that the scheme listed in CPU's request is a jurisdictional scheme. The AER's determination has been made in accordance with sub-clause 6.18.7A(n) of the NER. Our reasons for this determination are set out below.

4.1 Matters in clause 6.18.7A(g) of the NER

CPU's request has been summarised in section 2 of this determination. It contains the information required to be provided under sub-clause 6.18.7A(g) of the NER. Therefore, we consider that CPU's request meets the requirements of the rule.

4.2 Assessment against the eligibility criteria

We have verified that the ESV Levy Scheme satisfies each of the jurisdictional scheme eligibility criteria. In summary:

- the jurisdictional scheme obligation imposed by section 8 of the ESA is one to pay a person, being ESV, an amount specified in, or determined in accordance with, the jurisdictional scheme obligations;
- the jurisdictional scheme obligation to pay the ESV Levy is imposed on the Victorian DNSPs in their capacity as a DNSP;
- the payments required are not in the nature of a fine, penalty or incentive payment; and
- the Victorian DNSPs have no right to recover the ESV levies except as provided in the NER.

The AER does not have the discretion to determine that a scheme is not a jurisdictional scheme if the jurisdictional scheme eligibility criteria are satisfied.

4.3 Consultation

We consulted with key stakeholders on CPU's request, including the other Victorian DNSPs (Jemena and AusNet Services) and ESV. Stakeholders were broadly supportive of CPU's request, and noted the importance of consistent treatment of the ESV Levy Scheme across the Victorian DNSPs.