



V10/371

Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235


Dear Dr Tamblyn

Re: Submission to the Australian Energy Market Commission re: National Electricity Amendment (Payments under Feed-in Tariff Schemes and Climate Change Funds) Rule 2010, Project Reference ERC0097

The NSW Government supports the overall principle of cost recovery contained in ETSA's rule change request as it would provide certainty of cost recovery for distributors for payments under feed-in tariff schemes and climate change funds such as the NSW Solar Bonus Scheme (the Scheme) and the NSW Climate Change Fund (the Fund).

The NSW Government submission (see attachment) proposes a framework for cost recovery for direct and administrative costs associated with any Government mandated scheme, such as the Scheme and the Fund. The submission also clarifies the framework for the Scheme and the existing cost recovery approach for the Fund.

The submission also notes that a consequential amendment to the transitional arrangements applying to Chapter 6 of the Rules (set out in Chapter 11 of the Rules) will be required to ensure that the proposed cost recovery mechanism applies to NSW DNSPs for the 2009-2014 regulatory period.

Should you have any further enquiries about this matter, I have arranged for Ms Ellen Kelly, Project Officer, Energy Strategy and Reform, to assist you. Ms Kelly may be contacted at the Department's Sydney Office on telephone number (02) 8281 7411.

Yours sincerely


Mark Duffy
Deputy Director-General
Minerals and Energy Division

Encl.

12 FEB 2010

NSW Government Submission to the ETSA Rule Change Proposal

NSW Solar Bonus Scheme operation

The NSW Government's Solar Bonus Scheme (the Scheme) commenced on 1 January 2010. The Scheme's regulatory framework is set out in the *Electricity Supply Amendment (Solar Bonus Scheme) Act 2009* and the *Electricity Supply (General) Amendment (Solar Bonus Scheme) Regulation 2009*.

The key features of the Scheme include:

- It will operate for 7 years from the commencement date;
- It credits eligible customers with a 'gross' feed-in tariff rate of 60 cents per kilowatt hour for all the electricity that their eligible solar photovoltaic (PV) system or wind turbine generates subject to the transitional arrangements;
- Small electricity customers (those with an annual electricity consumption of up to 160 megawatt hours) are eligible to participate in the Scheme;
- Only customers with solar photovoltaic (PV) panels and wind turbines (up to 10 kilowatts in capacity) that connect to the electricity network through an inverter (up to 10 kilowatts in capacity) are eligible to participate in the Scheme;
- Solar PV systems installed and connected after 1 January 2010 must be installed by a person, who at the time of the installation had a Grid-connect Design & Install accreditation from the Clean Energy Council to be eligible for the Scheme;
- Each eligible small electricity customer is entitled to receive the Scheme credit for one eligible renewable energy generator only;
- The feed-in tariff rate of 60 cents per kilowatt hour will be fixed for the life of the Scheme, meaning it will not vary according to the time of the day or during the life of the Scheme;
- It will be reviewed in 2012 by the Minister for Energy, or when the installed capacity of renewable energy generators participating in the Scheme reaches 50 megawatts, whichever occurs first.

The NSW Government supports the Scheme's direct costs (payment of the feed-in tariff credit) being paid by distribution network service providers (DNSPs) and recovered from all NSW electricity customers.

NSW Current Distribution Determination and Cost Recovery Arrangements

The Australian Energy Regulator (AER) has issued a distribution determination that applies to each of the NSW DNSPs from 1 July 2009 to 30 June 2014. This determination regulates the network charges that can be imposed by the DNSPs on customers connected to their network. The determination was undertaken under the transitional arrangements applying to Chapter 6 in Clause 11.15 and Appendix 1 of the National Electricity Rules (the Rules).

As the current AER determination was made prior to the commencement of the Scheme, it does not make allowance for the recovery of the costs associated with the Scheme. The Scheme only commenced on 1 January 2010 and NSW DNSPs have not yet sought to recover costs associated with the Scheme.

The pass through provisions of the transitional arrangements applying to Chapter 6 of the Rules allow *material* changes in the costs of providing 'direct control services' to be passed through to distribution network customers. In order for costs to be passed through to electricity customers via distribution network charges, a "pass through event" must occur.

DNSPs can make a "pass through" application to the AER to recover their costs, however there is a degree of uncertainty as to what criteria, including materiality or level of costs, need to be met before the AER will allow these costs to be passed through. This uncertainty is heightened by the difficulty for DNSPs in forecasting costs under the Scheme which are dependent on rates of uptake of small-scale generation by customers which are outside of DNSPs' control.

NSW Climate Change Fund operation and cost recovery

As discussed below, DNSPs are required to make payments into the Fund for a range of greenhouse gas reduction and energy and water saving activities. The DNSPs recover these costs from customers.

Under the current allocation of administration of acts the Minister for Climate Change and the Environment is responsible for administering the provisions relating to the Climate Change Fund in the *Energy and Utilities Administration Act 1987* (the Act). In accordance with section 34G of the Act, payments into the Fund are made through various means, one of which is money received from contributions required to be made to the Fund under Division 3 of the Act. The Minister may direct a DNSP to make an annual contribution to the Fund by way of an Order published in the *NSW Government Gazette* (section 34J of the Act). This Order may only be made with the concurrence of the Treasurer and the Minister for Energy (section 34M of the Act).

The transitional arrangements applying to Chapter 6 of the Rules (set out in Chapter 11 of the Rules) recognise that NSW DNSPs are required to make payments to the Fund and that this amount is recoverable in the following regulatory year.

The Fund's existing cost recovery mechanism is similar to that applied to transmission use of system (TUOS) charges where both costs and proposed network charges are included in annual pricing proposals for review by the AER. However, it does not have an "unders and overs" component as provided for in the TUOS mechanism to allow for differences between the costs incurred by DNSPs and the costs recovered via network charges from customers (as agreed by the AER) to be reconciled in the following year. ETSA's rule change request to adopt a TUOS like mechanism for cost recovery would allow for DNSPs revenue not to be affected by their compliance with Government mandated schemes.

NSW Government's Proposal

The NSW Government supports ETSA's rule change request in which the direct costs of feed-in tariff schemes and climate change funds (such as the direct payments under such schemes) should be recovered from all electricity customers. The NSW Government proposes that a consistent set of principles should be established for cost recovery of Government mandated schemes, for example the Scheme and the Fund. Costs should be recovered as follows:

Direct Costs

DNSPs' direct costs (for example, the Scheme's 60 cent per kilowatt hour tariff credited by DNSPs) should be recovered using the precedent for cost recovery of TUOS charges as proposed by ETSA Utilities.

System and Administrative Costs

In meeting their obligations to pay the Fund and Scheme credit, DNSPs may also incur additional administrative costs such as costs to establish billing and reporting systems and the ongoing cost of meeting these requirements. These costs should be recovered through normal regulatory determination processes. These system and administrative costs can be influenced by efficiency incentives and as such the review of these costs and incorporation into revenue determinations should remain part of the AER's current processes in considering DNSPs' regulatory revenue determinations and cost pass through applications.

Timing

Whilst the NSW Government supports the intent of ETSA's proposed rule change, ETSA's rule change request does not propose the necessary consequential changes to the transitional arrangements applying to Chapter 6 of the Rules which apply to NSW DNSPs until June 2014. To best facilitate cost recovery by NSW DNSPs and given that both the Scheme and the Fund are already in operation, the NSW Government requests that transitional arrangements provide for the date of effect for the rule change to apply to NSW DNSPs with immediate effect. Such arrangements could be provided for in the savings and transitional provisions in Chapter 11 of the Rules.

Rationale

If the direct costs of these schemes are passed on to customers on an annual basis and reconciled each year through the unders and overs mechanism, network charges for customers associated with these costs are likely to be passed on closer to the time that the costs were incurred by DNSPs. This approach means that a DNSP is no better or worse off due to the application of the scheme.

It is important that DNSPs are able to recover legitimate costs imposed on them either from Government or transmission businesses (as with TUOS), particularly where these costs are not able to be influenced by the behaviour of DNSPs, even where more efficient operating procedures are implemented. In its submission, ETSA accurately describes DNSPs' role as a billing agent in payments under feed-in tariff schemes and climate change funds as is the case in NSW.

ETSA's rule change request is consistent with the National Electricity Objective to encourage efficient investment, operation and use of electricity services. It is also consistent with the objectives and principles of the regulatory framework under the Chapter 6 of the Rules (Economic Regulation of Distribution Services) and the transitional arrangements applying to Chapter 6 (at clause 11.15 and Appendix 1 which apply specific transitional provisions to NSW). The rule change request provides greater certainty to DNSPs in recovering legitimate costs which DNSPs are not able to control through increases in efficiency. The rule request also reduces the administrative burden on the AER and DNSPs in pursuing cost pass through applications for feed-in tariff payments and recovery of shortfalls in network charges to cover costs under the Fund.

The NSW Government's request for transitional arrangements to enable the rule change to take effect immediately would provide greater certainty of cost recovery for NSW DNSPs, particularly given the next regulatory control period does not commence until mid 2014.

The proposed rule change uses the pricing rules for TUOS recovery as a mechanism and applies the same methodology to Government mandated scheme costs such as feed-in tariff and climate change fund payments which are fixed costs outside of DNSPs' control. It is reasonable that these costs be considered recoverable in-principle and be reviewed by the AER's in DNSPs' annual pricing proposals.

The AER is best placed as the national economic regulator to assess the pricing proposals of DNSPs so far as they relate to TUOS, climate change fund payments and feed-in tariff payments. The proposed cost recovery mechanism allows for the AER to maintain oversight of these pricing proposals to ensure that customers are only charged for costs legitimately incurred by DNSPs. It also acknowledges that there is no efficiency component to the provision of payments under either feed-in tariff payments or climate change funds.