

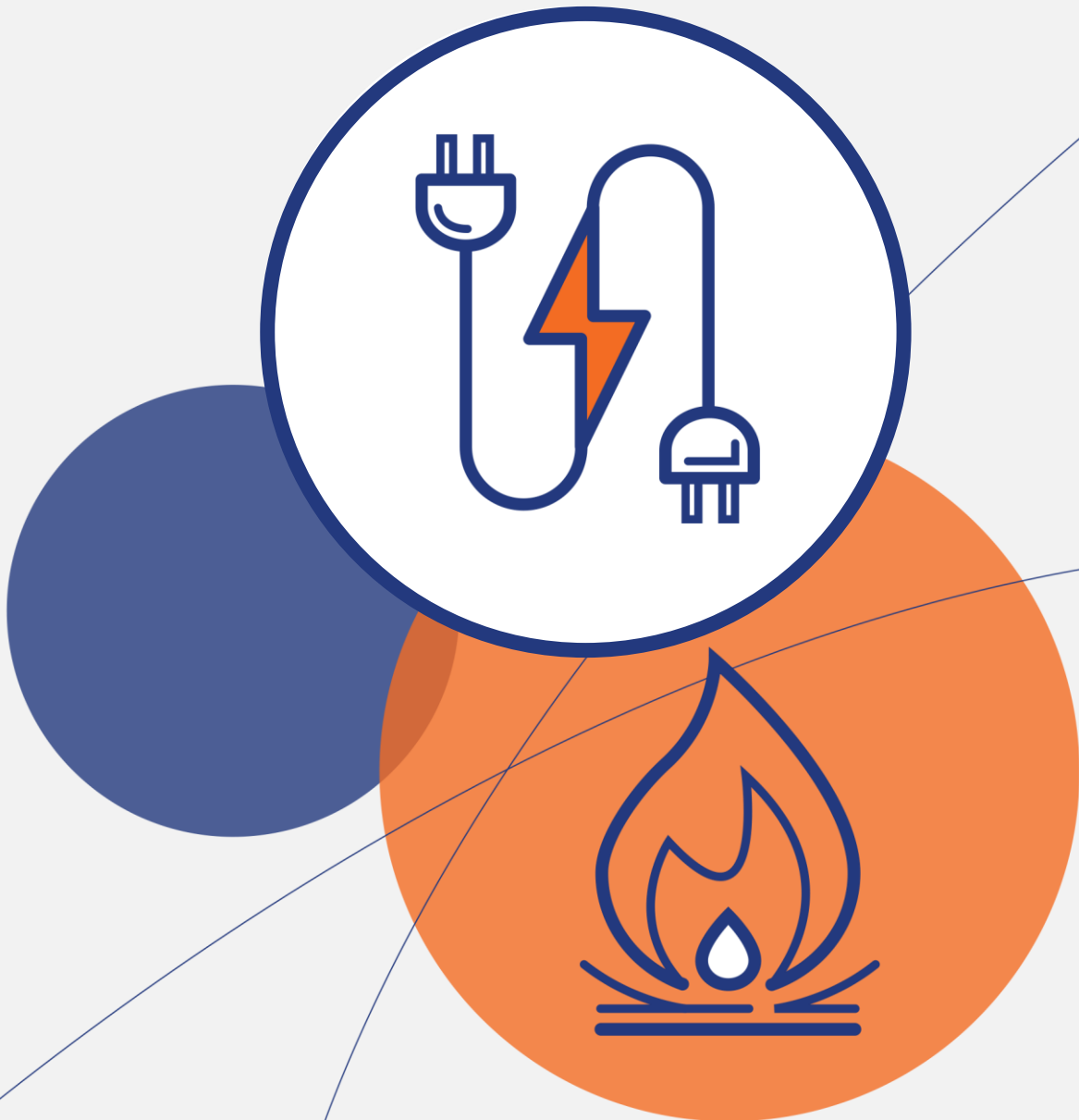


ICRC
independent competition and regulatory commission

GUIDANCE NOTE

Energy Industry Levy

Version 2.3
July 2021



The Independent Competition and Regulatory Commission is a Territory Authority established under the *Independent Competition and Regulatory Commission Act 1997* (the ICRC Act). We are constituted under the ICRC Act by one or more standing commissioners and any associated commissioners appointed for particular purposes. Commissioners are statutory appointments. Joe Dimasi is the current Senior Commissioner who constitutes the commission and takes direct responsibility for delivery of our outcomes.

We have responsibility for a broad range of regulatory and utility administrative matters. We are responsible under the ICRC Act for regulating and advising government about pricing and other matters for monopoly, near-monopoly and ministerially declared regulated industries, and providing advice on competitive neutrality complaints and government-regulated activities. We also have responsibility for arbitrating infrastructure access disputes under the ICRC Act

We are responsible for managing the utility licence framework in the ACT, established under the *Utilities Act 2000* (Utilities Act). We are responsible for the licensing determination process, monitoring licensees' compliance with their legislative and licence obligations and determination of utility industry codes.

Our objectives are set out in section 7 and 19L of the ICRC Act and section 3 of the Utilities Act. In discharging our objectives and functions, we provide independent robust analysis and advice.

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We can be contacted at the above address, or by telephone on (02) 6205 0799. Our website is www.icrc.act.gov.au and our email address is icrc@act.gov.au

Document History

Revisions to this guideline are as follows:

Version	Date released	Amendment
v 1.0	April 2013	Included the levy model information.
v 2.0	September 2018	Guidance note updated with the new levy computation.
v 2.1	September 2019	Updated to include changes in utilities obligations in relation to section 54M
V 2.2	July 2020	Updated drafting and formatting
V. 2.3	July 2021	Updated position on embedded networks. Clarification of calculation method for volumes sold figures.

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1. What is the energy industry levy?

The energy industry levy is a levy collected from energy sector utilities that provide an energy utility service in the Australian Capital Territory at any time during the levy year (1 July to 30 June).

The requirement for energy utilities to pay a levy is set out under Part 3A of the *Utilities Act 2000*.

1.1 What is the purpose of the energy industry levy?

The purpose of the levy is to recover the cost to the ACT Government (the Territory) of regulating each energy industry sector. The levy recovers costs incurred and expected to be incurred by regulators and national bodies as they undertake their regulatory functions for each energy industry sector.

1.2 Who is required to pay the levy?

Energy utilities operating in the following energy industry sectors are required to pay the levy: electricity distribution, electricity supply, gas distribution, and gas supply. This includes National Energy Retail Law (NERL) retailers supplying electricity to embedded networks.

1.3 Who is not required to pay the levy?

The following utilities are not subject to the levy:

- NERL exempt sellers, which have an exemption granted by the Australian Energy Regulator (AER)
- electricity transmission and generation utilities, because electricity transmission and generation are not energy industry sectors for the purpose of the levy¹
- gas transmission utilities, because gas transmission is not an energy industry sector for the purpose of the levy²
- unlicensed regulated utilities under Part 6 of the *Utilities (Technical Regulation) Act 2014*.

The utility licence fees determined by the commission recover the costs of regulating electricity and gas transmission services.³

¹ Section 54D of the Utilities Act

² Section 54D of the Utilities Act

³ Division 3.4 of the Utilities Act

2. Your obligations under the Utilities Act

Utilities Act reference	Requirement	By when
54L	<p>Registration with ACT Revenue</p> <p>An energy utility must register with the Commissioner for Revenue (ACT Revenue Office).</p> <p>To register, please visit https://www.revenue.act.gov.au/levies/energy-industry-levy</p> <p>Note: Failure to register may attract a penalty of up to 50 penalty units for a corporation.⁴</p>	Within 90 days of commencing energy supply or distribution in the ACT
54I	<p>Production of distribution & sales information</p> <p>If an energy utility provided an energy utility service at any time before 30 August in the levy year, or the previous levy year, the utility must lodge a statement with the levy administrator detailing:</p> <ol style="list-style-type: none"> (1) its actual gross distribution or supply volume information in respect of the previous levy year (2) the way the energy utility calculated its total supply figure. <p>Note comments under 54M below, where under DI2019-76, a utility, in submitting information under 54I, will be taken to have submitted its return figure under 54M.</p>	By 30 August
54M	<p>Returns under Taxation Administration Act</p> <p>Under 54M of the Utilities Act, an energy utility must lodge a return by 31 October of the levy year if the utility provided an energy utility service in the ACT at any time before 1 October of the levy year or the previous year.</p> <p>To minimise the requirement for a utility to report twice (to the levy administrator in August (s54I) and ACT Revenue Office in October (s54M)), the Commissioner for ACT Revenue passed a special arrangement instrument in 2018–19 relating to processing of energy industry levy returns (DI2019-76). The instrument sets out that a utility will be taken to have complied with the requirement in section 54M if the energy utility has already lodged a statement for</p>	By 31 October

⁴ A penalty unit for an offence committed by an individual is \$160 or \$810 for an offence committed by a corporation - section 133, *Legislation Act 2001* (ACT).

Utilities Act reference	Requirement	By when
	<p>that same levy year with the levy administrator in accordance with the requirements of section 54I of the Act.⁵</p> <p>The levy administrator, as a tax officer under the <i>Tax Administration Act 1999</i>, provides the supply figure to the ACT Revenue Office for the purpose of processing the relevant levy figure and invoice to the energy utility. This process means that energy utilities that are required to lodge a return under section 54M of the Utilities Act will have complied with that requirement by lodging a statement for the relevant levy year with the levy administrator.</p>	
	<p>Payment of levy</p> <p>Upon completion of the levy administration process, the energy utility is liable to pay its levy as notified by the ACT Revenue Office. Typically, notification of the levy payable by each energy utility is provided around October/ November in the levy year.</p>	As notified on the return

For more detailed information, refer to Part 3A of the [Utilities Act](#).

⁵ Explanatory statement. Taxation Administration (Special Arrangements—Energy Industry Levy Returns and Payment) Approval 2019 Disallowable Instrument DI2019–79.

3. How is the energy industry levy calculated?

Section 54C of the Utilities Act sets out the formula for calculating the energy industry levy:

$$B + EV + (AV - EV_{-1})$$

Where:

AV means the actual variable amount for the energy utility for the previous levy year

B is the base amount for the levy year determined under section 54GA (2)

EV means the estimated variable amount for the energy utility for the levy year

EV₋₁ means the estimated variable amount for the energy utility for the previous year

The total annual levy amount is calculated by determining the total and anticipated cost of regulation in each energy industry sector each year. The formula includes both historical (actual) and future (estimated) regulatory costs. The formula includes a 'true-up' mechanism, which assesses the estimated costs determined in the previous levy year against the actual costs, with an adjustment made in the next year's levy amount for any over- or under-recovery. This ensures the levy only recovers the actual costs of regulation.

Regulatory costs consist of both local and national regulatory costs to the Territory. Local regulatory costs currently include functions performed under the *Utilities Act and Utilities (Technical Regulation) Act 2014* of:

- the ACT Civil and Administrative Tribunal (ACAT)
- the Independent Competition and Regulatory Commission (Commission)
- the Utilities Technical Regulator (UTR).

The national regulatory cost is the cost to the Territory of meeting its national regulatory obligations under the Australian Energy Market Agreement (AEMA) in relation to the Australian Energy Market Commission (AEMC) and the Council of Australian Governments Energy Council (COAG EC) on responsibilities under the AEMA.

Individual energy utilities are required to pay a levy based upon their market share of energy sold or distributed in the energy sector. The ACT Revenue Office allocates the total annual levy amount to individual energy utilities—see section 5 of this guidance note.

4. The levy administrator's administrative practices

The Minister has appointed the commission's Chief Executive Officer as the levy administrator under s. 54N of the Utilities Act. The levy administrator is responsible for determining the levy amount each year.

Under s. 54N of the Utilities Act, the levy administrator must publish certain information. This guidance note meets the levy administrator's obligations to publish the following information:

- an explanation of the purpose of the energy industry levy (s. 54N(a)) is in section 1.1 of this guidance note
- an explanation of how the energy industry levy is calculated (s. 54N(b)) is in section 3
- an outline of the administrative practices adopted by the administrator in administering the energy industry levy (s. 54N(d)) is in this section
- an explanation of the obligations of energy utilities in relation to the energy industry levy under the Act (s. 54N(e))—is in section 2.

In making energy industry determinations, the levy administrator has adopted the following administrative practices.

4.1 Data used to make the levy determination

The levy administrator gathers data from several sources each levy year to make the required determinations.

Each year, the levy administrator publishes an annual statement about the data relied on to determine: (i) national regulatory costs under s. 54E; (ii) local regulatory costs under s. 54F; (iii) net regulatory costs under s. 54G; and (iv) base amounts under s. 54G of the Act. Publishing this information meets the levy administrator's obligations under s. 54(c) of the Act. The annual data statement is published on the commission's website at: <https://www.icrc.act.gov.au/utilities-licensing/licence-fees-and-the-energy-industry-levy>

4.2 Information collected from utilities

The levy administrator has adopted a proactive approach to seeking the required information from energy industry utilities. The levy administrator:

- seeks market participant information from the Australian Energy Regulator
- contacts new market entrants (when known) to ensure they are aware of the energy industry levy requirements under the Utilities Act
- sends a letter in early July to energy industry utilities requesting the required information and outlining obligations under Part 3A of the Utilities Act
- sends reminder notices before figures are due.

Once information is received, the levy administrator compares the supply figures to previous years' figures and seeks confirmation or clarification if required.

The information energy utilities are required to give the levy administrator includes the total (or gross) number of megawatt hours of electricity or megajoules of gas distributed or sold in the ACT by all energy utilities in each energy sector in the previous year:

- For an electricity distributor, this means the total number of megawatt hours of electricity sold by the retailer in the ACT.
- For an NERL retailer that supplies electricity, this means the total number of megawatt hours of electricity sold by the retailer in the ACT.
- For a gas distributor, this means the total number of megajoules of gas distributed by the distributor in the ACT in the previous year.
- For an NERL retailer that supplies gas, this means the total number of megajoules of gas sold by the retailer in the ACT in the previous year.

For calculating the total number of megawatt hours of electricity or megajoules of gas distributed or sold in the ACT each year, the total is the gross number, not a net number. For example, the number of megawatt hours of electricity fed in from rooftop solar generation should not be netted off the gross amount of electricity sold by a retailer in calculating the total.

4.3 Information collected from regulatory bodies

The levy administrator seeks information from regulatory bodies on the costs incurred and expected to be incurred by each regulator for each energy sector. The information includes:

- the actual and estimated workload against each energy industry sector
- information on costs associated with recoverable regulatory activities
- explanations for any variations in the costs estimated and actual costs incurred.

In assessing and determining local and national costs, the levy administrator apportions the costs between the energy industry sectors having regard to the costs attributable to each sector.

4.4 Determinations made by the levy administrator

The levy administrator must make the following determinations under the Utilities Act:

- the estimated national regulatory cost to be applied to each energy industry sector for the current levy year, and the actual national regulatory cost to be applied to each energy industry sector for the previous levy year (section 54E)
- the estimated local regulatory cost to be applied to each energy industry sector for the current levy year, and the actual local regulatory cost to be applied to each energy industry sector for the previous levy year (section 54F)
- the estimated net regulatory cost to be applied to each energy sector for the levy year, and the actual net regulatory cost to be applied to each energy sector for the previous levy year. The net regulatory cost is the total combined national and local regulatory cost, less any annual licence fees determined in the energy sector (section 54GA)
- for the levy year, the number of energy utilities that provided an energy utility service in each energy utility sector at any time before 30 August (section 54H)

- for the previous levy year, the number of energy utilities that provided an energy utility service in each energy utility sector at any time during the year
- for the previous levy year, the total (or gross) number of megawatt hours of electricity or megajoules of gas distributed or sold in the ACT by all energy utilities in each energy sector in the year (section 54H) :
- the base amount, or minimum cost of regulating 1 energy utility for the period of a year. This determination is made every 5 years (section 54GA).

Annual determinations are on the ACT Legislation website. Links are also on the commission's website.

5. Determination and collection of individual energy utility levies

Energy utilities are required by s. 54M of the Utilities Act to submit an annual return to the ACT Revenue Office before 31 October. In 2018–19, the Commissioner for ACT Revenue passed a special arrangement relating to processing of energy industry levy returns (DI2019-76). The instrument sets out that a utility will be taken to have complied with the requirement to lodge a return for the levy year with the Commissioner for Revenue if the energy utility has already lodged a statement for that same levy year with the levy administrator in accordance with the requirements of section 54I of the Act.

Under the disallowable instrument DI2019–76, from the 2019–20 levy year, the levy administrator provides the ACT Revenue Office with the total levy and individual energy utility levies that the levy administrator has determined. The levy administrator also gives the ACT Revenue Office relevant data used in the determination, which includes the supply figures reported by each utility before 30 August of the reporting year.

Energy utility levy invoices are issued by the ACT Revenue Office. The ACT Revenue Office will notify each utility of its required levy payment for the determination year. The levy provisions are subject to ACT tax law under the *Taxation Administration Act 1999* (ACT) and levy payments are made to the ACT Revenue Office.

Details about the energy industry levy as it relates to the ACT Revenue Office are at <https://www.revenue.act.gov.au/levies/energy-industry-levy>.

6. Key dates for the energy industry levy

Date	Action	Acted by
By 30 August	A utility must have lodged a statement with the levy administrator detailing its actual gross ⁶ distribution or sales information in respect of the previous levy year.	Energy utilities
By 30 August	The Utilities Technical Regulator, the ACAT and the commission give their estimated costs for the levy year and actual costs for the previous year to the levy administrator.	Regulatory bodies
By 1 October	The levy administrator determines local and national regulatory costs to be applied to each energy sector across all agencies in the ACT and further information as set out under section 54H.	Levy administrator
On or about 1 October	The levy administrator gives the levy amounts to the ACT Revenue Office and the determinations are notified on the ACT Legislation website	Levy administrator
By October to November	Administration of payments and invoices to energy utilities. Typically, energy utilities will be notified in October or November of the levy payable.	ACT Revenue Office

6.1 Contact information

If you have questions about the energy industry levy after reading this guidance note, contact the commission secretariat on:

Telephone: 02 6205 0799

Email: icrc@act.gov.au

If you have any questions about levy invoices or payments, contact the ACT Revenue Office on:

Telephone: 02 6207 0028

Or send your queries through the ACT Revenue Office website at

<https://www.revenue.act.gov.au/contact-us>

⁶ See section 4.2 of this guidance note for an explanation of how to calculate the gross amount.



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