

# Determination on jurisdictional scheme application

Electricity (General) (Prescribed Conditions)  
Amendment Regulations 2022 (SA)

January 2023

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#### **Amendment record**

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# 1 Background

The Essential Services Commission of South Australia (ESCoSA) administers the licensing regime for electricity entities in South Australia, under the *Electricity (General) Regulations 2012* (the Regulations).

In November 2022, an amendment was made to the Regulations through the *Electricity (General) (Prescribed conditions) Amendment Regulations 2022* (the Amendments). The Amendments, specifically clause 17B, imposed a new condition on SA Power Networks, as a holder of a distribution license.

The license conditions for SA Power Networks were varied by ESCoSA on 15 December 2022, as required by the Amendments. These new conditions require SA Power Networks to:

- Procure 'designated services' from AGL SA Generation Pty Ltd (AGLSA) between 1 September 2023 to 30 June 2026; and
- Pay AGLSA \$19.5 million for these services across three equal instalments of \$6.5 million.

The designated services<sup>1</sup> are defined as services to maintain Torrens Island Power Station Unit B2 as an available and functioning electricity generating plant.

On 3 January 2023, SA Power Networks submitted a request to the Australian Energy Regulator (AER) to determine that the scheme established under clause 17B of the *Electricity (General) (Prescribed Conditions) Amendment Regulations 2022* is a jurisdictional scheme<sup>2</sup> pursuant to clause 6.18.7A of the National Electricity Rules (NER).

The NER requires the AER to publish a request for a jurisdictional scheme determination as soon as practicable after its receipt<sup>3</sup>. We published the application from SA Power Networks on our website on 5 January 2023.

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<sup>1</sup> *Electricity (General) (Prescribed Conditions) Amendment Regulations 2022*, cl. 17B(5).

<sup>2</sup> The *Electricity (General) (Prescribed Conditions) Amendment Regulations 2022* was enacted on 15 December 2022.

<sup>3</sup> NER, cl. 6.18.7A(h).

## 2 Determination

We have determined that the scheme established under clause 17B of the *Electricity (General) (Prescribed Conditions) Amendment Regulations 2022* is a jurisdictional scheme,<sup>4</sup> as it meets the jurisdictional scheme eligibility criteria under the NER<sup>5</sup>. The jurisdictional scheme applies to SA Power Networks.

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<sup>4</sup> NER, cl. 8.18.7A(d) defines a jurisdictional scheme as

(d) A scheme is a jurisdictional scheme is:

(1) the scheme is specific 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.

<sup>5</sup> The eligibility criteria are set out in sub-clause 6.18.7A(x) of the NER.

### 3 Reasons for Determination

We are satisfied that SA Power Networks' request was made in accordance with NER requirements. Specifically, it included<sup>6</sup>:

- The name and address of the person making the request.
- Details of the law of the participating jurisdiction under which the scheme is established.
- The commencement date of the scheme. The amendment was enacted on 15 December 2022, with the regulations coming into operation on the same day.
- An explanation of how the scheme meets the jurisdictional scheme eligibility criteria as set out in the NER.

Table 1 sets out the eligibility criteria for jurisdictional schemes as described in the NER and our assessment of the scheme against the criteria.

**Table 1 Jurisdictional scheme eligibility criteria<sup>7</sup> and AER assessment**

Eligibility Requirements	AER Assessment
<p>(1) The jurisdictional scheme obligations<sup>8</sup> 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 a participating jurisdiction;</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>We are satisfied this criterion is met.</p> <p>The jurisdictional scheme obligation imposed on SA Power Networks is contained in regulation 17B of the <i>Electricity (General) (Prescribed Conditions) Amendment Regulations 2022</i>.</p> <p>The scheme requires SA Power Networks to pay the holder of a generation license (AGLSA) \$19.5 million in three equal instalments of \$6.5 million, over the prescribed period (1 September 2023 to 30 June 2026 (inclusive)).</p> <p>A 'person' is defined in the National Electricity Laws (NEL) to mean a body politic or body corporate, as well as an individual.<sup>9</sup></p>

<sup>6</sup> NER, cl. 6.18.7A(g).

<sup>7</sup> NER, cl. 6.187A(x).

<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.'

<sup>9</sup> NEL, cl. 10 of schedule 2, which applies to the NER by reason of NEL, section 3.

<b>Eligibility Requirements</b>	<b>AER Assessment</b>
<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>We are satisfied this criterion is met.</p> <p>The scheme under regulation 17B of the <i>Electricity (General) (Prescribed Conditions) Amendment 2022</i> applied to SA distribution network service providers.</p> <p>The obligations are imposed on SA Power Networks as a condition of its distribution license.</p>
<p>(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</p>	<p>We are satisfied this criterion is met.</p> <p>The amount payable by SA Power Networks relates solely to the provision of designated services by AGLSA, and is 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 referred to in subparagraph (1) from any person.</p>	<p>We are satisfied this criterion is met.</p> <p>There are no alternate legal avenues for SA Power Networks to recover the amounts payable from any person, except as provided in the NER.</p>