



FINAL DECISION SA Power Networks Ring-fencing Waiver Variation

Temporary Generation

May 2020

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Shortened forms

Shortened Form	Extended Form
AER	Australian Energy Regulator
NEM	National Electricity Market
NEO	National Electricity Objective
NER	National Electricity Rules
SA Government	South Australian Government
TGN	Temporary Generation North (at Edinburgh/Elizabeth)
TGS	Temporary Generation South (at Lonsdale)

1 Summary

The AER has decided to grant a ring-fencing waiver, effective on 1 June 2020, to allow SA Power Networks to continue to operate and maintain two temporary generation sites, Temporary Generation North (TGN) at Edinburgh/Elizabeth and Temporary Generation South (TGS) at Lonsdale. The waiver is subject to the following conditions:

- that the generation capacity is only utilised for the purpose of avoiding load shedding for NEM operational purposes when there is no alternative generation available; and
- is only utilised at the direction of AEMO or the South Australian Energy Minister; and
- is fully funded by the SA Government, who also receives all revenues from the project; and
- SA Power Networks cannot (and will not) advertise or promote other merchant generation services.

On 18 March 2020, SA Power Networks applied to vary an existing ring-fencing waiver that would allow it to continue operation and maintenance of its temporary generation site at TGN. The waiver application seeks to extend the existing waiver from 1 June 2020 to 30 June 2021. On 3 April 2020, SA Power Networks submitted an addendum to the waiver seeking to extend the expiry date for its temporary generation site at TGS from 1 June 2020 to 1 December 2020. The existing waiver is due to expire on 30 June 2020.

We consider there is little or no harm to customers or contestable markets for electricity services resulting from SA Power Networks continuing to provide these services to the SA Government. Our reasons are set out in this Final Decision.

The temporary generation sites were established as part of the SA Government's Energy Plan 2017 in response to the System Black Event. SA Power Networks states that without waiver extensions, these generators may not be available for the 2020/21 summer period, which would increase the risk of load shedding in South Australia in that period.¹ The SA Government has agreements with third parties to transfer operation and maintenance of TGN and TGS under long-term leases.² We consider that varying the original waiver by extending the expiry date will facilitate transitioning these generation units to the new providers. We also consider there would be costs to consumers were we to refuse SA Power Networks' application to extend the existing waiver.

As per the conditions of the existing waiver, SA Power Networks and the SA Government have put in place arrangements to ensure that potential harms to customers or contestable markets for electricity services are appropriately controlled.

¹ SA Power Networks, *Application for extension of the waiver from AER Ring-fencing Guideline - Electricity Distribution: Operation of temporary generation*, 18 March 2020, p. 4; SA Power Networks, *Addendum to SA Power Networks 18 March ring-fencing waiver application: temporary generation services*, 3 April 2020, p. 3.

² SA Government Department of Energy and Mining, *Letter to SA Power Networks - Proposed extension to STCC and STCSC for operation of TGN*, 25 February 2020; SA Government Department of Energy and Mining, *Letter to SA Power Networks - Proposed extension to STCC and STCSC for operation of TGN and TGS*, 2 April 2020.

2 About ring-fencing

Ring-fencing separates the regulated and contestable parts of a DNSP's network business via legal separation and functional separation obligations. Ring-fencing facilitates competition in contestable markets and makes regulation more effective in markets that are not contestable. It aims to provide a level playing field for third party providers in new and existing markets for contestable services.³ Without ring-fencing, there is a risk that a DNSP might cross-subsidise unregulated electricity services with revenue earned from provision of distribution services. There is also a risk that a DNSP might discriminate in favour of an affiliate that provides unregulated electricity services, potentially harming competition in contestable markets. Such outcomes could lead to less efficient prices for operation and use of both regulated and contestable electricity services and restrict the development of competition in contestable markets.

The Ring-fencing Guideline recognises that strict adherence to the ring-fencing obligations might, in some circumstances, result in outcomes that are not in the interests of consumers. This is why the Guideline makes provision for ring-fencing waivers. Waivers provide the ring-fencing framework with flexibility by allowing DNSPs exemptions, subject to AER approval. We consider that waivers are not to form part of a business as usual approach but may be considered where alternatives are inappropriate. DNSPs will normally be expected to achieve compliance with the Guideline's obligations.⁴

Clause 5.3.2 of the Guideline states that, in assessing a waiver application and deciding whether to grant a waiver (subject to any conditions) or refuse to grant a waiver, we must have regard to:

- i. the National Electricity Objective (NEO)
- ii. the potential for cross-subsidisation and discrimination if the waiver is granted or refused and
- iii. whether the benefit, or likely benefit, to electricity consumers of the DNSP complying with the obligation (including any benefit or likely benefit from increased competition) would be outweighed by the cost to the DNSP of complying with that obligation.

Clause 5.3.2 of the Guideline also states that we may have regard to any other matter we consider relevant. Some of the factors we have considered in granting past waivers are detailed in our Explanatory Statement to the Guideline, and our Decision on DNSP Applications for Waivers from the Electricity Distribution Ring-fencing Guideline.⁵

³ AER, *Electricity Distribution Ring-fencing Guideline Explanatory Statement*, November 2016, p. 1.

⁴ AER, *Electricity Distribution Ring-fencing Guideline Explanatory Statement*, November 2016, p. 6.

⁵ AER, *Decision: DNSP Applications for Waivers from the Electricity Distribution Ring-fencing Guideline*, December 2017, p. 15-17.

3 SA Power Networks' waiver application

3.1 SA Power Networks' original waiver

In June 2017 we granted a ring-fencing waiver to SA Power Networks under clause 5.2 of the Guideline (our original waiver decision). The waiver was for SA Power Networks to provide temporary services from 21 June 2017 until 1 June 2020. The temporary generation is solely used for the purpose of avoiding load shedding for NEM operations. It is only operated at the direction of AEMO and/or the South Australian Energy Minister.

We granted SA Power Networks a waiver of clauses 3.1, 4.2 and 4.4.1(a) of the Guideline subject to the following conditions:

- that the generation capacity is only utilised for the purpose of avoiding load shedding for NEM operational purposes when there is no alternative generation available; and
- is only utilised at the direction of AEMO or the South Australian Energy Minister; and
- is fully funded by the SA Government, who also receives all revenues from the project; and
- SA Power Networks cannot (and will not) advertise or promote other merchant generation services.

3.2 SA Power Networks' new waiver application

SA Power Networks submitted an application to the AER to extend the existing waiver on 18 March 2020. SA Power Networks subsequently submitted an addendum to the waiver application to the AER on 3 April 2020.

SA Power Networks has applied to vary the waiver expiry date, but has not sought to vary any other parts of the waiver, including waiver conditions. SA Power Networks has applied to extend the waiver expiry date in respect of TGN from 1 June 2020 to 30 June 2021 to allow the SA Government to transfer the lease of TGN to a third party, Nexif, on 1 May 2021. The 30 June 2021 end date allows for some flexibility as the generators at TGN will be transferred to a new location.⁶

In its 3 April 2020 addendum to the waiver application, SA Power Networks applied to extend the waiver expiry date in respect of TGS from 1 June 2020 to 1 December 2020. SA Power Networks and the SA Government have stated that this extension is necessary as the third party that was due to take over lease of the TGS site (Infigen) has had to delay commencement of operations due to the COVID-19 pandemic.⁷

⁶ SA Power Networks, *Application for extension of the waiver from AER Ring-fencing Guideline - Electricity Distribution: Operation of temporary generation*, 18 March 2020, p. 3.

⁷ SA Power Networks, *Addendum to SA Power Networks 18 March ring-fencing waiver application: temporary generation services*, 3 April 2020, p. 3; SA Government Department of Energy and Mining, *Letter to SA Power Networks - Proposed extension to STCC and STCSC for operation of TGN and TGS*, 2 April 2020.

4 Assessment

In assessing SA Power Networks' original waiver application and its request to extend the waiver expiry deadline, we have considered the factors outlined in Clause 5.3.2 of the Ring-fencing Guideline. In addition to this, we have also considered:

- the likely cost of compliance to SA Power Networks customers and/or the business
- potential harms to contestable markets from allowing SA Power Networks to continue to operate the temporary generation site.

4.1 Scope of the Waiver

SA Power Networks has sought a waiver from all of the:

- legal separation obligations listed in clause 3.1 of the Guideline, and
- functional separation obligations listed in clause 4 of the Guideline.

However, a waiver is only available in relation to clauses:

- 3.1 - Legal separation
- 4.2 - Physical separation, staff separation, branding and cross-promotion, and office and staff registers
- 4.4.1(a) - Ensuring that any new or varied agreement between the DNSP and a service provider requires that service provider to comply with the relevant clauses of the Guideline.

Therefore, we will conduct our assessment in relation to these clauses only.

4.2 Letter from SA Government

SA Power Network's new waiver variation application and addendum included letters from the SA Government Department for Energy and Mining, dated 25 February 2020 and 2 April 2020. The SA Government supports the waiver application, as it is concerned about potential load shedding over the summer of 2020/21.⁸ The SA Government has requested SA Power Networks operate and maintain the sites as part of the original waiver and the variation to the waiver.⁹

The operating conditions for the temporary generation site will remain the same while it is operated by SA Power Networks. This includes monthly maintenance firing of the turbines, and to operate, under AEMO or Ministerial direction, for the emergency power generation to avoid rotational load shedding.¹⁰

⁸ SA Government, *SA Power Networks' Application for variation to waiver from AER Ring-fencing Guideline - Temporary Generation*, 25 February 2020.

⁹ SA Government, *SA Power Networks' Application for variation to waiver from AER Ring-fencing Guideline - Temporary Generation*, 25 February 2020; SA Government, *SA Power Networks' Application for waiver from AER Ring-fencing Guideline - Temporary Generation*, 28 March 2017.

¹⁰ SA Government, *SA Power Networks' Application for variation to waiver from AER Ring-fencing Guideline - Temporary Generation*, 25 February 2020.

TGN is to be relocated by the new lessee, Nexif. Nexif chose to defer the relocation of equipment and the operation of the temporary generators until May 2021. The deferral was due to the difficult timeline to gain approvals for and connection to the site prior to the summer of 2020/21. The SA Government's concern over the continued operation of the temporary generation over this summer has meant that May 2021 is considered the most likely transfer of responsibilities away from SA Power Networks. Nexif has signed an agreement with the Treasurer of the SA Government for a 25-year lease, and the deferred start of operations is part of the agreement.¹¹

TGS is also to be transferred to a new lessee, Infigen. Infigen was due to commence operation of TGS on 1 May 2020. However, business and travel restrictions associated with the COVID-19 pandemic have adversely impacted the transition of the site to Infigen. The SA Government states that the continuing evolution of restrictions relating to the virus has caused some uncertainty over when the transfer of TGS to Infigen can take place.¹²

4.3 The National Electricity Objective, and the potential for cross-subsidisation and discrimination.

For the same reasons as those set out in our original waiver decision in relation to the operation of these generators by SA Power Networks, we consider that SA Power Networks' continued provision of this temporary generation, for the further limited periods sought in its 18 March 2020 application:

- is likely to be consistent with the National Electricity Objective; and
- is unlikely to give rise to the potential for cross-subsidisation and discrimination,

as long as SA Power Networks continues to comply with the conditions set out in section 3.1 above.

SA Power Networks' original waiver was the subject of consultation as part of our Draft Decision in May 2017. We received three submissions, including one from the SA Government. The other two submissions, from AGL and the Australian Energy Council (AEC), opposed the provision of a waiver of SA Power Networks' branding and cross-promotion obligations under clause 4.2.3 of the Guideline. In response to those concerns we included a condition on the original waiver, that SA Power Networks cannot (and will not) advertise or promote other merchant generation services. This condition will remain the same for the waiver variation.

SA Power Networks has also addressed this in their application to vary the waiver expiry date, by committing to uphold this condition.¹³ We consider there is a low possibility of cross-subsidy by SA Power Networks as the project is fully funded by the SA Government. It is a condition of the waiver variation, and of the original waiver, that the project remains fully

¹¹ SA Government, *SA Power Networks' Application for variation to waiver from AER Ring-fencing Guideline - Temporary Generation*, 25 February 2020.

¹² SA Government Department of Energy and Mining, *Letter to SA Power Networks - Proposed extension to STCC and STCSC for operation of TGN and TGS*, 2 April 2020.

¹³ SA Power Networks, *Application for extension of the waiver from AER Ring-fencing Guideline - Electricity Distribution: Operation of temporary generation*, 18 March 2020, p. 4; SA Power Networks, *Addendum to SA Power Networks 18 March ring-fencing waiver application: temporary generation services*, 3 April 2020, p. 3.

funded by the SA Government and an appropriate system for allocating these costs is implemented.

4.4 Balance of benefits and detriments from complying

As long as SA Power Networks continues to comply with the conditions set out in section 3.1 above, we consider that there will be no appreciable benefits from rejecting the waiver extension application and requiring SA Power Networks to comply with its ring-fencing obligations. If the waiver is refused, the SA Government would be unlikely to find another party to operate the temporary generation site until Nexif and Infigen could commence operation of the generation units. In those circumstances, it is likely that the temporary generation would cease. In the absence of the temporary generation, load shedding would be more likely to occur. Thus, complying with the Guideline would result in detriment to electricity customers.

If SA Power Networks is forced to comply with the Guideline, it will not be able to deliver the temporary generation. Whilst this would mean it would not incur any additional costs to comply with the Guideline, consumers would not receive any benefits from that compliance.

In these circumstances, the benefits for consumers of SA Power Networks complying with clauses 3.1, 4.2 and 4.4.1(a) of the Guideline would not outweigh the costs to SA Power Networks of doing so.

4.5 Cost of compliance to SA Power Networks

It is a condition of this waiver variation, and the original waiver, that the project is fully funded by the SA Government. We therefore consider that there is no cost to SA Power Networks if the waiver is approved or rejected.

4.6 Cost of compliance to customers

In the event that a waiver was not granted and SA Power Networks could not continue to operate the generation units, the units would likely be unavailable over the 2020-21 summer period, and that this would increase the risk of load shedding.¹⁴ As such, the cost to customers would be increased risk of load-shedding for South Australian electricity customers. The SA government has therefore requested that SA Power Networks apply to vary the expiry date of the existing waiver to ensure the generation units are available over the summer of 2020-21.¹⁵

4.7 Duration

¹⁴ SA Power Networks, *Application for extension of the waiver from AER Ring-fencing Guideline - Electricity Distribution: Operation of temporary generation*, 18 March 2020, p. 4; SA Power Networks, *Addendum to SA Power Networks 18 March ring-fencing waiver application: temporary generation services*, 3 April 2020, p. 3.

¹⁵ SA Government, *SA Power Networks' Application for variation to waiver from AER Ring-fencing Guideline - Temporary Generation*, 25 February 2020; SA Government Department of Energy and Mining, *Letter to SA Power Networks - Proposed extension to STCC and STCSC for operation of TGN and TGS*, 2 April 2020.

SA Power Networks has applied to extend the waiver expiry date to:

- 1 December 2020 in respect of Temporary Generation South, and
- 30 June 2021 in respect of Temporary Generation North.

4.8 Public Consultation

Under clause 5.3.2(b)(iii) of the Guideline the AER may invite public submissions on a waiver application, but it is not required to do so in all cases.

SA Power Networks' original waiver application and the AER's draft decision was subject to public consultation in May 2017. We received submissions from three stakeholders in regard to the original waiver from the SA Government, the AEC and AGL. As discussed in section 4.3, we responded to concerns raised by AGL and the AEC by including a waiver condition restricting SA Power Networks from cross-promoting generation services.

We have decided to grant SA Power Networks' application to vary the waiver expiry dates without further public consultation. Since granting the waiver, no stakeholders have raised concerns with us about the operation of the waiver and SA Power Networks has complied with the terms of the waiver. The waiver variation temporarily extends the waiver expiry date in order to facilitate a transition to long-term compliance with the Guideline by SA Power Networks (see section 4.2). SA Power Networks and the SA Government have indicated that a waiver extension will assist in ensuring generation capacity is available for the 2020-21 summer period (see section 4.2). For these reasons, we consider this to be an administrative waiver extension, and do not consider further public consultation is required. This is consistent with the approach set out in the AER Statement of Expectations of energy businesses, which is to protect consumers and the energy market during the COVID-19 pandemic.

4.9 Conclusion

We consider that the cost (to customers) of compliance by SA Power Networks with the Guideline substantially outweighs the benefits that customers may receive from the waiver being granted. We also consider that there is low possibility for cross subsidisation and discrimination if the waiver is granted. For these reasons we consider that varying the waiver to extend its expiry date will promote the NEO. Our decision is to vary the waiver by extending it to 1 December 2020 for TGS and 30 June 2021 for TGN, subject to various conditions.

5 Decision

We have decided to vary a waiver from SA Power Networks' obligation to comply with clauses 3.1, 4.2 and 4.4.1(a) of the Guideline by extending the expiry date of the waiver to 1 December 2020 in respect of operations and maintenance of the Temporary Generation South unit, and to 30 June 2021 in respect of the 30 Temporary Generation North unit.

The waiver remains subject to the following conditions:

- that the generation capacity is only utilised for the purpose of avoiding load shedding for NEM operational purposes when there is no alternative generation available; and
- is only utilised at the direction of AEMO or the South Australian Energy Minister; and
- is fully funded by the SA Government, who also receives all revenues from the project; and
- SA Power Networks cannot (and will not) advertise or promote other merchant generation services.