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8 September 2021

Patrick Makinson
General Manager Governance and Regulation
SA Power Networks
GPO Box 77
ADELAIDE, SA, 5001

Dear Mr Makinson

Re: Final Decision - SA Power Networks ring-fencing waiver variation – August 2021

Thank you for your letter dated 13 August 2021, requesting the AER's approval of a variation to an [existing waiver](#) from the electricity distribution ring-fencing guideline (**the guideline**). The existing waiver expires on 30 June 2023. Your letter asks the AER to allow SA Power Networks (**SAPN**) to continue to provide maintenance and construction services to a single customer for telecommunication construction and maintenance services under an existing contract under varied terms.

We understand from your letter that the contract, which is the subject of this waiver, is being varied to include a clarified scope of the type of telecommunication services provided by SAPN. It also includes other minor amendments to align the contract with current legislation such as the Privacy Act, Modern Slavery Act and obligations regarding storage of personal information and data breach reporting instruments. As a result of these amendments to the contract, a waiver variation is required.

Related waivers

In December 2017, we granted a ring-fencing waiver to SAPN exempting it from clause 3.1 of the guideline (legal separation) in relation to 21 construction and maintenance contracts. This allowed SAPN to perform construction of transmission and telecommunications infrastructure, such as pylons or towers required by the contracts without being in breach of the guideline.

On 3 September 2018, SAPN submitted a further request to vary this waiver. SAPN sought to include four new contracts that were not previously included in the 2017 waiver. We granted the waiver, without stakeholder consultation.

On 13 May 2021, SAPN submitted another request to vary the existing waiver. This waiver application related to one contract out of the original 21 for a single customer. This contract was to expire on 30 June 2021. However, the contract provided the customer with an automatic right to extend the contract term. The customer exercised this option, resulting in a new conclusion date of 30 June 2023. We granted this waiver on 3 June 2021 without consultation.

AER assessment and decision

The guideline specifies that, in assessing a waiver application, we will consider the benefits to consumers of the DNSP being required to comply with the obligation, relative to the cost to the business of complying with the obligation. We have considered the factors outlined in clause 5.3.2 of the guideline. In addition we have considered the potential harms to contestable markets from allowing SAPN to continue providing transmission asset maintenance services for telecommunication assets only for the customer.

We consider there will be minimal to no harm to consumers by varying the waiver scope of telecommunication services provided to the customer. In addition, the costs and revenue from this contract will continue to be allocated according to SAPN's Cost Allocation Methodology and regulated revenue will not subsidise these activities.

In this case, we consider that the costs to SAPN of complying with the obligation are genuine and could be significant. For example, if we were to refuse the waiver application, SAPN may elect to novate the contract. This means that an alternate service provider may need to be sourced to provide these services which could cause disruption in the performance of the contract and would impose an administrative burden and cost on SAPN.

On balance, we consider that the potential cost to SAPN if we did not grant this request outweighs any harm to consumers and is in the long-term interests of consumers. We also consider that there is very little scope for cross subsidisation or discrimination as it merely allows the continuation of an existing contract with a minor clarification of the scope.

Therefore, we have decided to grant a waiver from SAPN's obligation to comply with clause 3.1 of the guideline, with the updated terms of the contract as of 13 August 2021. The waiver will allow SAPN to continue to provide maintenance and construction services to the customer for certain telecommunication services under the existing contract. The expiry of the waiver remains as 30 June 2023.

Consultation

Under clause 5.3.2(b)(iii) of the guideline we may invite submissions on a waiver application, but are not required to do so in all cases.

SAPN's original waiver in 2017 was open to consultation as part of our Draft Decision on Ring-fencing Waiver Applications. We received no submissions. Since granting the waiver in 2017, no stakeholders have raised concerns with us about the operation of the waiver, and SAPN has complied with the terms of the waiver. On that basis, we do not consider that consultation is required in this instance.

Thank you for bringing this matter to our attention. If you have any questions please contact Rachel Thomas on (02) 9102 4059 or email AERringfencing@aer.gov.au

Yours sincerely



Clare Savage
AER Chair
On behalf of the AER Board