



# Request for jurisdictional scheme determination

January 2023

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## 1. Introduction

SA Power Networks is the distribution network service provider (**DNSP**) in respect of the South Australian distribution system. SA Power Networks operates that distribution system pursuant to a distribution licence issued under the *Electricity Act 1996 (SA)* (**EESA**) by the Essential Services Commission of South Australia (**ESCoSA**).

On 24 November 2022, the *Electricity (General) Regulations 2012* (**Electricity General Regulations**) made under the EESA were amended by the *Electricity (General) (Prescribed Conditions) Amendment Regulations 2022* (**Amendment Regulations**). The Amendment Regulations required (amongst other things) ESCoSA to impose a new condition on SA Power Networks' distribution licence.

On 15 December 2022, ESCoSA varied SA Power Networks' distribution licence as required by the Amendment Regulations by adding a new condition numbered 23 (**New Licence Condition**).

The requirements imposed on SA Power Networks by the New Licence Condition are to:

- procure 'designated services' from AGL SA Generation Pty Ltd (**AGLSA**) during the period from 1 September 2023 to 30 June 2026, where 'designated services' are defined as services to maintain Torrens Island Power Station Unit B2 as an available and functioning electricity generating plant; and
- pay to AGLSA the amount of \$19.5 million on account of the provision of these services in three installments as follows:
  - \$6.5 million on or before 30 June 2023;
  - \$6.5 million on or before 30 June 2024; and
  - \$6.5 million on or before 30 June 2025,

(the **Designated Services Scheme**)<sup>1</sup>.

The purpose of this submission is to request the Australian Energy Regulator (**AER**) to determine that the Designated Services Scheme constitutes a jurisdictional scheme in accordance with clause 6.18.7A of the National Electricity Rules (**NER**).

The AER is required to determine that a scheme is a jurisdictional scheme under clauses 6.18.7A(l) and 6.18.7A(n) of the NER if it considers that the scheme meets the jurisdictional scheme eligibility criteria set out in clause 6.18.7A(x). The NER do not provide the AER with any residual discretion to determine that a scheme is not a jurisdictional scheme if the jurisdictional scheme eligibility criteria are satisfied.

This submission sets out the following information as required by clause 6.18.7A(g) of the NER:

- (1) the name and address of the person making the request;
- (2) details of the law of the participating jurisdiction under which the Designated Services Scheme is established;
- (3) the commencement date of the Designated Services Scheme; and
- (4) an explanation of how the Designated Services Scheme meets the jurisdictional scheme eligibility criteria.

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<sup>1</sup> The Amendment Regulations also required ESCoSA to impose a new condition on the generation licence issued under the EESA to AGLSA in respect of Torrens Island Power Station Unit B2. That condition was that AGLSA provide 'designated services' to SA Power Networks during the period from 1 September 2023 to 30 June 2026. ESCoSA varied the generation licence on 15 December 2022.

If the AER determines that the Designated Services Scheme is a jurisdictional scheme, SA Power Networks will incorporate jurisdictional scheme amounts into its annual pricing proposals for the 2023-2024, 2024-2025 and 2025-2026 regulatory years in accordance with clauses 6.18.2(b)(6A) and 6.18.7A of the NER.

## 2. Person making the request

Clause 6.18.7A(g)(1) of the NER requires the name and address of the person requesting the AER to determine that a scheme is a jurisdictional scheme. Those details are as follows:

Name and contact details	
<b>Person making the request</b>	SA Power Networks
<b>Contact person</b>	Richard Sibly Head of Regulation
<b>Address</b>	1 Anzac Highway, Keswick SA 5035
<b>Postal address</b>	GPO Box 77 Adelaide SA 5001
<b>Telephone</b>	0467 725 428
<b>Email</b>	richard.sibly@sapowernetworks.com.au

### 3. Details of the law establishing the scheme

Clause 6.18.7A(g)(2) of the NER requires that a request for the AER to determine whether a scheme is a jurisdictional scheme must include details of the law of the participating jurisdiction under which the relevant scheme is established.

#### Participating jurisdiction

South Australia is a participating jurisdiction by virtue of section 5(1)(a) of the National Electricity Law (**NEL**).

#### Jurisdictional scheme obligations - definition

The jurisdictional scheme eligibility criteria are defined in clause 6.18.7A(x) of the NER by reference to the 'jurisdictional scheme obligations'.

The term 'jurisdictional scheme obligations' is defined in Chapter 10 of the NER as:

*'Obligations imposed on a [DNSP] 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 NER]); or*
- (b) a condition of a distribution licence or authority held by a [DNSP] in a participating jurisdiction.'*

#### Amended regulations under the EESA

In November 2022, the Amendment Regulations were made by the Governor of South Australia. A copy of the Amendment Regulations is provided in Attachment 1 to this application.

The Amendment Regulations inserted a new regulation 17B into the General Regulations.

Regulation 17B(1)(a) required the 'Commission' to impose a new licence condition on the 'relevant distribution licence' to procure 'designated services' for an amount, and in instalments, specified in subregulation (2)<sup>2</sup>.

The 'Commission' is the Essential Services Commission of South Australia as defined in the EESA and established under the *Essential Services Commission Act 2002* (SA). The principal functions and powers of ESCoSA in relation to the electricity supply industry include administering the licensing regime for electricity entities (generation, transmission, distribution, system control and off-grid suppliers) in South Australia, including the issuing of licences and monitoring and enforcing compliance with licence obligations.

The 'relevant distribution licence' is defined as the licence under the EESA authorising the operation of a distribution network held by an electricity entity that is a network service provider (within the meaning of the *National Electricity (South Australia) Law*) that owns, controls or operates a distribution system. SA Power Networks is the entity that holds the distribution licence.

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<sup>2</sup> In addition, regulation 17B(1)(b) required the 'Commission' to impose a new licence condition on the 'relevant generation licence' to provide the 'designated services' to the holder of the 'relevant distribution licence'. The 'relevant generation licence' is defined as the licence under the EESA authorising the generation of electricity and under which Torrens Island Power Station Unit B2 is operated. That generation licence is held by AGLSA.

‘Designated services’ are defined as services to maintain Torrens Island Power Station Unit B2 as an available and functioning electricity generating plant during the ‘prescribed period’ which is defined as 1 September 2023 to 30 June 2026 (inclusive).

Regulation 17B(2) then specifies that the amount to be paid by the distribution licence holder (SA Power Networks) is \$19.5 million, which amount is to be paid in three instalments as follows:

- one third (\$6.5 million) on or before 30 June 2023;
- one third (\$6.5 million) on or before 30 June 2024; and
- one third (\$6.5 million) on or before 30 June 2025.

#### Varied distribution licence

ESCoSA varied SA Power Networks’ distribution licence in accordance with the above requirements by inserting the New Licence Condition, on 15 December 2022<sup>3</sup>.

The varied distribution licence may be viewed on the ESCoSA licence register [here](#)<sup>4</sup>.

#### Jurisdictional scheme obligations - satisfaction

As:

- SA Power Networks’ distribution licence was issued under the EESA and varied by ESCoSA in accordance with the Amendment Regulations;
- the EESA is an Act of South Australia and the Amendment Regulations were made under that Act; and
- South Australia is a ‘participating jurisdiction’,

the New Licence Condition imposing obligations on SA Power Networks to make the three specified payments for ‘designated services’ described in the Amendment Regulations, clearly meets the requirements of paragraph (b) of the definition of ‘jurisdictional scheme obligations’. The making of the Amendment Regulations requiring ESCoSA to impose this new licence condition on SA Power Networks would also meet the requirements of paragraph (a) of the definition of ‘jurisdictional scheme obligations’.

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<sup>3</sup> On the same date, the generation licence of AGLSA was also varied as required by the Amendment Regulations.

<sup>4</sup> The varied licence of AGLSA can also be viewed at the same location.

## 4. Commencement date

Clause 6.18.7A(g)(3) of the NER requires that a request for the AER to determine whether a scheme is a jurisdictional scheme must specify the commencement date of the relevant scheme.

ESCoSA varied SA Power Networks' distribution licence on 15 December 2022<sup>5</sup> by inserting the New Licence Condition.

Accordingly, the Designated Services Scheme commenced on 15 December 2022.

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<sup>5</sup> The generation licence of AGLSA was varied on the same date.



## 5. Eligibility criteria

Clause 6.18.7A(g)(4) of the NER requires that an explanation be provided in relation to how the Designated Services Scheme meets the jurisdictional scheme eligibility criteria.

The jurisdictional scheme eligibility criteria are set out in clause 6.18.7A(x) of the NER as follows:

- ' (x) *The following are the jurisdictional scheme eligibility criteria:*
- (1) *the jurisdictional scheme obligations require a Distribution Network Service Provider to:*
    - (i) *pay a person;*
    - (ii) *pay into a fund established under an Act of a participating jurisdiction;*
    - (iii) *credit against charges payable by a person; or*
    - (iv) *reimburse a person, an amount specified in, or determined in accordance with, the jurisdictional scheme obligations*
  - (2) *the jurisdictional scheme obligations are imposed on a Distribution Network Service Provider in its capacity as a Distribution Network Service Provider;*
  - (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*
  - (4) *except as provided in these Rules, the Distribution Network Service Provider has no right to recover the amount referred to in subparagraph (1) from any person.'*

The table below sets out how the Designated Services Scheme satisfies all of the jurisdictional scheme eligibility criteria. Accordingly, the AER must determine that the Designated Services Scheme is a jurisdictional scheme for the purposes of the NER.

Eligibility criteria	How the criteria are met by the Designated Services Scheme
<p>The jurisdictional scheme obligations require a distribution network service provider to:</p> <ol style="list-style-type: none"> <li>(i) <b>pay a person;</b></li> <li>(ii) <b>pay into a fund established under an Act of a participating jurisdiction;</b></li> <li>(iii) <b>credit against charges payable by a person; or</b></li> <li>(iv) <b>reimburse a person,</b></li> </ol> <p><b>an amount specified in, or determined in accordance with, the jurisdictional scheme obligations.</b></p>	<p>As explained in section 3 above, the obligation imposed on SA Power Networks by the New Licence Condition to pay amounts to AGLSA, is a 'jurisdictional scheme obligation'.</p> <p>The expression 'person' is defined in the NEL to mean a body politic or body corporate as well as an individual<sup>6</sup>. AGLSA is a company incorporated under the <i>Corporations Act 2001</i> (Cth), and is therefore a 'body corporate'. Accordingly, AGLSA is a 'person'.</p> <p>As AGLSA is a 'person', the 'jurisdictional scheme obligation' imposed by the New Licence Condition requires SA Power Networks, a DNSP, to 'pay a person' for the purposes of clause 6.18.7A(x)(1)(i) of the NER.</p> <p>As the New Licence Condition specifies that an amount of \$19.5 million is to be paid by SA Power Networks in three equal instalments of \$6.5 million, that satisfies the requirement in clause 6.18.7A(x)(1) of the NER that the jurisdictional scheme obligation</p>

<sup>6</sup> Clause 10 of Schedule 2 of the NEL. That definition applies to the NER by reason of section 3 of the NEL.

	<p>requires a DNSP to pay 'an amount specified in ... the jurisdictional scheme obligations'.</p>
<p>The jurisdictional scheme obligations are imposed on a distribution network service provider in its capacity as a distribution network service provider.</p>	<p>Chapter 10 of the NER defines 'Distribution Network Service Provider' as 'a person who engages in the activity of owning, controlling, or operating a distribution system'. 'Distribution system' is defined (in part) as a distribution network, together with the connection assets associated with the distribution network, which is connected to another transmission or distribution system'. The South Australian distribution network and its associated connection assets are a distribution system as defined. Accordingly, SA Power Networks as the owner, controller and operator of the South Australian distribution system is a distribution network service provider.</p> <p>Under the Designated Services Scheme, the obligation to pay the prescribed amount of \$19.5 million to AGLSA is imposed on the 'relevant distribution licence'. The 'relevant distribution licence' is defined as the licence under the EESA authorising the operation of a distribution network held by an electricity entity that is a network service provider (within the meaning of the <i>National Electricity (South Australia) Law</i>) that owns, controls or operates a distribution system. SA Power Networks is the only entity that holds such a distribution licence in South Australia.</p> <p>The jurisdictional scheme obligations are therefore clearly imposed on SA Power Networks in its capacity as a DNSP, and not in any other capacity.</p>
<p>The amounts are not in the nature of a fine, penalty or incentive payment for the distribution network service provider.</p>	<p>The amounts payable by SA Power Networks under the Designated Services Scheme relate solely to the provision of 'designated services' by AGLSA. The amounts are therefore clearly not in the nature of a fine, penalty or incentive payment for SA Power Networks.</p>
<p>Except as provided in the NER, the distribution network service provider has no right to recover the amounts from any person.</p>	<p>SA Power Networks has no right to recover the amounts payable by it under the Designated Services Scheme from any person, except as provided in the NER.</p>

# Attachment 1 – Electricity (General) (Prescribed Conditions) Amendment Regulations 2022

No. 81 p. 6704

THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

24 November 2022

South Australia

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

under the *Electricity Act 1996*

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#### Part 1—Preliminary

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### Part 1—Preliminary

#### 1—Short title

These regulations may be cited as the *Electricity (General) (Prescribed Conditions) Amendment Regulations 2022*.

#### 2—Commencement

These regulations come into operation on the day on which they are made.

### Part 2—Amendment of *Electricity (General) Regulations 2012*

#### 3—Insertion of regulation 17B

After regulation 17A insert:

##### 17B—Prescribed conditions—designated services

- (1) In accordance with section 21(2) of the Act, the Commission is required to impose the following conditions on the following licences:
  - (a) on the relevant distribution licence—the condition that the holder of the licence procure, for the amount and in the instalments set out in subregulation (2), designated services from the holder of the relevant generation licence;
  - (b) on the relevant generation licence—the condition that the holder of the licence provide designated services to the holder of the distribution licence.

- (2) The amount for which designated services are to be procured in accordance with the condition that the Commission is required to impose under subregulation (1)(a) is \$19.5 million paid in the following instalments:
- (a) one-third of the amount is to be paid on or before 30 June 2023;
  - (b) one-third of the amount is to be paid on or before 30 June 2024;
  - (c) one-third of the amount is to be paid on or before 30 June 2025.
- (3) If the holder of the relevant generation licence fails at any time during the prescribed period to provide designated services as required by that licence—
- (a) the holder of the relevant distribution licence will not be taken to breach the condition that is required to be imposed by the Commission under subregulation (1)(a) on account of the failure; and
  - (b) no liability attaches to the holder of the relevant distribution licence on account of the failure.
- (4) This regulation applies in relation to the relevant distribution licence and the relevant generation licence despite the fact that each licence was issued before the commencement of this regulation.
- (5) In this regulation—

*designated services* means services to maintain Torrens Island Power Station Unit B2 as an available and functioning electricity generating plant during the prescribed period;

**Note—**

The continued operation of Torrens Island Power Station Unit B2 during the prescribed period contributes to the secure and reliable operation of the State's power system.

*prescribed period* means 1 September 2023 to 30 June 2026 (inclusive);

*relevant distribution licence* means the licence under the Act authorising the operation of a distribution network held by an electricity entity that is a network service provider (within the meaning of the *National Electricity (South Australia) Law*) that owns, controls or operates a distribution system;

*relevant generation licence* means the licence under the Act authorising the generation of electricity and under which Torrens Island Power Station Unit B2 is operated.

#### **4—Amendment of regulation 21A—Variation of licences by Commission**

Regulation 21A—delete "regulation 17A(1)" and substitute:

regulations 17A(1) or 17B(1)

## **5—Insertion of regulation 21B**

After regulation 21A insert:

### **21B—Exemption from consultation with consumer bodies**

In accordance with section 98(2)(e) of the Act, the Commission is, in varying the conditions of a licence for the purpose of complying with regulation 17B(1), exempt from the application of section 28A of the Act.

#### **Editorial note—**

As required by section 10AA(2) of the *Legislative Instruments Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

### **Made by the Governor's Deputy**

with the advice and consent of the Executive Council  
on 24 November 2022

No 106 of 2022