

15 June 2016

Mr Chris Pattas  
General Manager Networks  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

By email: [ringfencing@aer.gov.au](mailto:ringfencing@aer.gov.au)

Dear Mr Pattas

## SA Power Networks waiver application—SA Government temporary generation project

This letter responds to matters raised by the Australian Energy Council (AEC) in its submission to the AER's draft decision on our waiver application of 27 April 2017, pertaining to the temporary generation project that the SA Government requested SA Power Networks (**us** and **we**) deliver.<sup>1</sup> The AER's draft decision proposed to approve our application to waiver from the legal and functional separation requirements of the Ring-Fencing Guideline. However, the AEC disagrees with allowing a waiver from a subset of the functional separation requirements: those pertaining to branding and cross-promotion (set out in clause 4.2.3 of the Guideline).<sup>2</sup>

### *AEC concerns*

The AEC is of the view that we should be required to comply with clause 4.2.3 to avoid confusion on our role in the merchant energy market. However, the submission does not explain:

- the nature of potential harm that might result from us not having to comply with 4.2.3 in delivering this particular project requested by the SA Government; or
- if the AEC's concern relates to specific aspects of clause 4.2.3. Clause 4.2.3 covers a range of issues including requirements for separate and independent brands, and requirements to not cross-promote or advertise certain services and any services provided by an affiliate.

### *Cross-promotion and advertising*

If the AEC's concern pertains to sub-clauses 4.2.3(a)(ii) - (iii) which impose requirements on SA Power Networks to not advertise or promote direct control services and contestable services together, nor advertise services of an affiliate, we point out the following:

- The activities covered by our waiver application only pertain to delivery of the temporary generation project requested by the SA Government, and in the manner and for the timeframe set out in our waiver application. SA Power Networks will not deliver other generation services into

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<sup>1</sup> This project covers the design, construction, commissioning, connection and operation of 200MW of temporary generation from 1 December 2017. SAPN, *Waiver application—200MW temporary generation*, 27 April 2017. Accessible on the AER website [<http://www.aer.gov.au>]

<sup>2</sup> The AEC submission was provided to us by AER staff (Tanja Warre) in an email of 13 June. A subsequent phone discussion (14 June) was held, in which AER staff requested SA Power Networks provide further information in response to the AEC's concerns.

the wholesale market. Our website will not advertise wholesale market generation services more broadly as these would not be direct control services nor in fact 'distribution services'.<sup>3</sup>

- If we receive media or other enquiries in relation to the SA Government's temporary generation project, we will provide factual responses advising that this is a project being delivered by SA Power Networks. Further, we observe that the SA Government has already made public the fact that it has requested SA Power Networks to deliver this temporary generation project.<sup>4</sup>
- As SA Power Networks is seeking tenders from other service providers to provide some aspects of the SA Government's temporary generation project, it is efficient to use the SA Power Networks website to inform potential tender applicants of the process and requirements. Use of the web site in this way does not constitute cross-promotion or advertising.

### *Branding*

If the AEC's concern pertains to clause 4.2.3(a)(i) which requires independent and separate branding for direct control services and the services of an affiliate, we consider that an ability to waive this requirement is imperative to enable us to deliver the project in the time frame requested by the SA Government. It would be unreasonable and impractical to require SA Power Networks to use separate branding in delivering this project, noting the following:

- As covered in our waiver application, while we are in the process of establishing new legal entities that will have their own brands, these entities will be unable to trade before 1 January 2018. The work required to ensure that the SA Government's temporary generation is ready by December 2017 can only be undertaken by SA Power Networks. It is not feasible for the project to be delivered by an affiliate, nor is there a separate brand available for this project. The AER's draft decision supported the SA Government's position that SA Power Networks was best placed to deliver the temporary generation project<sup>5</sup>;
- The project will be delivered by SA Power Networks staff, utilising uniforms, vehicles, documentation (letterheads, contracts etc) and other potential materials which carry the SA Power Networks brand; and
- Allowing SA Power Networks' brand to be visible in delivering the SA Government's temporary generation project will not place SA Power Networks in a privileged position compared to any competing firms:
  - The temporary generation will be used by the SA Government and is not part of an open competitive market. The generation in question is only intended to operate in exceptional circumstances, when called upon by the SA Government or AEMO to prevent load shedding. Therefore, as acknowledged by the AER in its draft decision, these are unlikely to be contestable services and SA Power Networks will not gain any competitive advantage by way of brand visibility.<sup>6</sup>
  - Outside of this specific project, SA Power Networks will not be allowed to provide wholesale market generation services and therefore there are no future service opportunities resulting from brand visibility in this circumstance.

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<sup>3</sup> There is one exception to this. The National Electricity Rules do not prevent SA Power Networks from owning and operating generators for the purpose of providing a network support / demand management related input to our core network services. In this case, the generation activities in question would not be services in themselves but an input to network services. This differs from the case where a generator is used to sell energy into the wholesale market, this would not be considered to be a network or distribution service.

<sup>4</sup> See for example an ABC article reporting on an interview with the SA Premier, Jay Weatherill: <http://www.abc.net.au/news/2017-03-15/sa-power-battery-storage-bidders-sought/8356196>

<sup>5</sup> AER, *Draft decision - SA Power Networks waiver from the Distribution Ring-Fencing Guideline*, May 2017, pp.7-8.

<sup>6</sup> AER, *Draft decision - SA Power Networks waiver from the Distribution Ring-Fencing Guideline*, May 2017, pp.8-9.



We also note that other service providers' brands – for example the brand of the manufacturer(s) supplying the generating plant – are likely to be visible at the locations where the plant is installed.

*Summary*

In summary, noting the matters set out in this letter and our waiver application, we consider that:

- Our ability to deliver the temporary generation project requested by the SA Government is entirely dependent on the required works:
  - being delivered by the SA Power Networks entity;
  - using SA Power Networks staff (who may also provide direct control services and other services); and
  - utilising staff clothing, materials and vehicles bearing the SA Power Networks brand.
- There are no feasible alternatives to deliver the SA Government project in the time frame required. Allowing us to do so will not raise any potential harm to competition nor confer any benefit to SA Power Networks by way of brand visibility.
- We acknowledge SA Power Networks cannot (and will not) advertise or promote other merchant generation services.



Sean Kelly  
**General Manager Corporate Strategy**

