

18 October 2013

Mr Chris Pattas
General Manager Network Operations and Development
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

By Email: expenditure@aer.gov.au

Dear Mr Pattas

Draft Regulatory Information Notice – Economic Benchmarking

I refer to your letter dated 18 September 2013 attaching the draft Regulatory Information Notice in relation to the collection of information for economic benchmarking purposes (**RIN**) and the associated explanatory statement. This letter sets out our representations and submissions in relation to the draft RIN and explanatory statement.

SA Power Networks is also cognisant that the AER is planning to release a draft regulatory information notice which will introduce additional Category Analysis Reporting requirements (**Category Analysis RIN**). Whilst we have not directly addressed the Category Analysis RIN in this letter, we bring to the AER's attention that the challenges and costs associated with providing information for the Category Analysis RIN are expected to be an order of magnitude greater than those outlined below in respect of the economic benchmarking RIN.

In this letter, SA Power Networks:-

- Endorses the Energy Networks Association's (**ENA**) submission on this topic;
- Emphasises the difficulty and expense in providing 10 years of historical data;
- Highlights the many challenges in meeting the time lines proposed in the draft RIN, noting other demands on key resources;
- Indicates the nature and magnitude of the preparation and audit costs SA Power Networks would incur in meeting the RIN as currently drafted;
- Urges the AER to remove the requirement to provide historical operating expenditure recast on the basis of the current Cost Allocation Methodology;
- States our concerns with supplying unaudited data where that data may be published in the public domain;
- Proposes changes to the proposed audit and statutory declaration assurance arrangements; and

- Indicates that we wish to be able to engage different firms separately to audit the financial and non-financial components of the RIN.

Endorsement of ENA Submission

The ENA has prepared a submission in relation to the form of draft RINs issued by the AER to both electricity distribution and transmission network service providers (**ENA Submission**).

By virtue of this letter, but subject to our comments in the 'Specific Issues' section below, SA Power Networks supports, endorses and reiterates the arguments, comments, observations and suggestions – including the suggested amendments to the content of various parts of the RIN – made in the ENA Submission in relation to distribution network service providers (**DNSPs**).

Specific issues

In addition to our endorsement of the ENA Submission, there are a number of aspects of, and issues associated with, the draft RIN, that SA Power Networks wishes to specifically address or reinforce in this submission.

Those issues are addressed below:

1. **Proposed Requirement for Ten Years of Back Cast Data**
 - 1.1 The purpose of the annual benchmarking report to be prepared by the AER is to describe the relative efficiency of each DNSP over a 12 month period¹.
 - 1.2 SA Power Networks submits that to require the provision of 10 years of historical data significantly exceeds the information requirements that the AER reasonably requires in order to carry out that task.
 - 1.3 In order to be legitimately issued, a RIN must be reasonably necessary for the performance or exercise of the AER's functions or powers², and yet neither the draft RIN nor the explanatory statement explains why the AER requires 10 years of data as opposed to data for a lesser time period in order to meet its regulatory requirements. A 10 year period appears to be arbitrary and, for reasons discussed below, seems incapable of being justified – either on a regulatory basis (as it is required by law to be) or on basic principles of fairness and reasonableness.
 - 1.4 The proposal to collect 10 years of audited historic data for benchmarking will:
 - (a) impose a significant, unreasonable and not yet justified workload on SA Power Networks; and
 - (b) result in the quality and reliability of the data reducing materially the further back the data is required to be sourced (as the extent to which data will have to be estimated will increase substantially the further back in time we are required to go). For example, requiring data prior to 2005/2006 will be a particular challenge

¹ NER, clause 6.27

² NEL, section 28F(1)



for SA Power Networks, as financial reporting systems were changed in January 2005.

- 1.5 In determining whether to issue a RIN to SA Power Networks, the AER is also required to have regard to the likely costs that an efficient network service provider may incur in complying with the RIN³. SA Power Networks is an efficient network service provider, and we will incur very substantial costs in complying with the RIN.
- 1.6 Our external auditors have indicated that the audit/review costs for addressing 10 years of data, as contemplated by the draft RIN, are likely to:
- (a) exceed \$500,000 for the financial component; and
 - (b) approach a similar amount for the non-financial component.
- 1.7 The timing for auditing this RIN is proposed to occur at the same time that external audit resources will be committed to auditing our full year financial statements.
- 1.8 In addition to incurring such external costs, we will have to deploy significant internal human resources – probably some 5 to 7 people – to seek to collect and prepare the 10 years of data at a time when those very same internal resources need to be:
- (a) fully committed to preparing and finalising our statutory financial accounts (SA Power Networks' financial year ends 31 December);
 - (b) substantively committed to the very significant work required to prepare our regulatory proposal for the 2015 – 2020 regulatory control period; and
 - (c) heavily involved in assisting in relation to the proposed Category Analysis RIN and the Reset RIN.
- This will almost certainly mean that we will have to engage other personnel to assist with some of these critical matters, thereby diverting them away from other tasks. That, in turn, will have a cascading effect throughout the organisation as we find that day to day operational tasks have to be further re-allocated. Accordingly, we will incur both direct and indirect internal costs. These are difficult to quantify precisely at this time, but we estimate they would approach \$500,000.
- 1.9 The total cost to SA Power Networks of having to deal with 10 years of data is expected to exceed \$1.5 million.
- 1.10 SA Power Networks submits that such a cost impact on it, particularly given the lack of explanation or justification from the AER (as required by the NEL) for requiring 10 years of information for the purposes of preparing the annual benchmarking report:
- (a) is not reasonable;
 - (b) does not meet the requirements of section 28F of the NEL; and

³ NEL, section 28F(2)(b)



(c) will exceed any benefits obtained by requiring the information to be provided.

1.11 However, if information in relation to a period of less than 10 years was to be required, then:

(a) the overall quality of the information would be improved (e.g. less estimated information would be required);

(b) the costs that SA Power Networks would incur and the diversion of critical resources would be less (providing back cast information for 5 years would clearly cost less than providing back cast information for 10 years and the increase in cost for the longer period would be more weighted towards the back end of the 10 year period – the costs would be at least doubled by moving from 5 years to 10 years); and

(c) it is more likely that the resulting benefits from obtaining the information would exceed the costs.

1.12 The table below summarises the potential additional costs imposed by the draft economic benchmarking RIN and highlights the material high level cost differential between preparing and auditing 5 and 10 years of historical data. It is likely that the costs in relation to the earlier years will be higher than the costs in relation to the more recent years.

Estimated Costs	5 years data	10 years data
Financial Audit	\$200,000	\$500,000
Non-financial Audit	\$200,000	\$500,000
Internal Resource	\$250,000	\$500,000
Total	\$650,000	\$1,500,000

1.13 Accordingly, SA Power Networks submits that the AER should reduce the time period for which information is to be provided. We note and support the suggestion in the ENA Submission to reduce the amount of data required to 5 years.

2. Cost allocation methodology issues

2.1 We note and endorse the comments in the ENA Submission about the difficulty of recasting historic information under different cost allocation methodologies (**CAMs**). SA Power Networks' CAM has changed at the beginning of each regulatory control period in 2005 and 2010. Recasting will give rise to an excessive amount of work and cost for little benefit. Recalculating historical operating expenditure using the current CAM will significantly increase the time required, and costs of, preparing and auditing the template. Using the historical regulatory values for operating expenditure already



calculated would expedite the process and there would be no material difference between that data and the data recast using the current CAM.

- 2.2 SA Power Networks notes and supports that the AER has not requested recasting historical RAB data using the current CAM. Given that position, it would be introducing an inconsistency to then require recasting of historical operating expenditure in accordance with the current CAM. Hence it is SA Power Networks' contention that, consistent with the RAB approach, operating expenditure should be presented in accordance with the actual CAMs that applied in each year.
- 2.3 Further, we seek clarification as to whether the AER intends that all historic data be continually recast back to 2003 for each future change in CAM. If it is necessary to do so, this will lead to scenarios where, for example, 15 or 20 years of data must be recast and reaudited (involving greater audit time and cost than the initial 10-year audit) while the availability of historical records and data will likely continue to diminish over time. Alternatively, SA Power Networks would need to maintain multiple regulatory accounts going forward which would be clearly undesirable and inefficient. The ENA suggests that only the current and prior year's data should be recast for changes in CAM (consistent with normal statutory accounting practice).
3. **Proposed provision of both unaudited and audited information**
 - 3.1 The draft RIN requires initial data to be provided by 14 February 2014. SA Power Networks understands that this timing is largely because the AER would like to commence testing and validation of its benchmarking models. However, given the very short timeframe proposed, the data that will be provided is likely to be incomplete, unaudited and subject to change (until 16 May 2014 when the draft RIN requires that final audit reports are to be submitted).
 - 3.2 This two-stage process is highly inefficient for both the AER and SA Power Networks. Between the first and second stage, data can be expected to change, as better information is collated by the business or as a result of the auditor's work. SA Power Networks contends that there is therefore no benefit to be obtained in requiring unaudited data to be provided.
 - 3.3 Furthermore, no officer of SA Power Networks will be prepared to swear a statutory declaration in relation to the accuracy of information which has not yet been audited, but is proposed to be audited and provided again to the AER. To do so would place that officer in the untenable position of risking allegations of civil and criminal wrongdoing if the subsequent audit arrives at different conclusions.
 - 3.4 SA Power Networks submits that the reasonable, and most efficient, course of action (for both the AER and SA Power Networks) is to modify the RIN to:
 - (a) remove the requirement for unaudited information to be provided in February 2014; and
 - (b) require only (appropriately) audited information to be provided to the AER.



- 3.5 SA Power Networks will take reasonable steps to complete the template (with estimates where appropriate) as soon as reasonably practicable. However, our current estimate is that we will be unable to achieve this by 14 February 2014. Preparation of data and subsequent audit assurance timelines are uncertain because:
- (a) this is the first time that such data will have been prepared and audited;
 - (b) availability of key internal resources and experienced audit resources may be reduced during the high leave period of December to January and given the necessity to finalise the preparation and audit of our annual financial statements; and
 - (c) we will face significant hurdles and challenges in providing backcast data (such as locating available data sources, interpreting data which is not otherwise stored in an appropriate format, analysing the quality of different data sources, and developing reasonable assumptions where necessary) and this will require an increased level of manual processing.
- 3.6 However, if a lesser period was to be required for providing backcast data, such as the 5 year period advocated by us and by the ENA, then it follows that:
- (a) we will be in a position to provide audited data earlier than would be the case for 10 years of data; and
 - (b) as explained above, the quality and reliability of that information can be expected to be far better than for 10 years of data.
- 3.7 We propose that an end March 2014 time frame may be more realistic to provide audited data to the AER, but this would still be subject to further discussion with, and clarification from, our auditors once the full scope, purpose and audit requirements of the RIN are finalised.
- 4. Proposed publication by the AER of unaudited information**
- 4.1 The AER has also indicated that it intends to publish unaudited data on its web site (in April 2014).
- 4.2 SA Power Networks submits that the publication of unaudited data:
- (a) will not give rise to any identifiable benefit;
 - (b) may be misleading to third parties; and
 - (c) would not be in accordance with good corporate governance practices.
- 4.3 As indicated above, SA Power Networks is only prepared to release audited data to the AER if, as indicated by the AER, this data will be placed in the public domain. SA Power Networks seeks further clarification from the AER on its intentions for the proposed use of unaudited data.



5. **Draft RIN – specific content issues**

5.1 **General observations**

The comments made below are largely in relation to the current wording of some aspects of the draft RIN (and its component parts). The comments should, of course, be read in the light of the submissions made above by SA Power Networks, which clearly call for the draft RIN (and its component parts) to first be substantially redrafted to accommodate issues outlined above (such as unaudited information not being provided).

5.2 **Definition – 'Regulatory Years'**

- (a) The manner in which the draft RIN describes the years in respect of which data is being requested, is difficult to read and understand.
- (b) The RIN seeks data from SA Power Networks by 14 February 2014 relating to the "Initial Regulatory Years" which is defined as the 2003 to 2012 Regulatory Years. As our Regulatory Years are financial years (ie 1 July of one year to the following 30 June), we interpret this definition as meaning, in respect to us, the 2002/03 to 2011/12 Regulatory Years. The next, "Subsequent Regulatory Year" data (ie for 2012/13,) would be sought by 31 October 2014.
- (c) We seek confirmation from the AER that our interpretation is correct.
- (d) However, if our interpretation is incorrect and the AER's intention is that we are to provide information for 2013/14 by 31 October 2014, then we will almost certainly not be able to provide it by that date. (For our annual RINs, we note we have until November/December to provide information for the year ended on 30 June and that is a challenging date to meet.)

5.3 **Schedule 1 – Confidentiality Claims**

- (a) We note the requirements in paragraph 1.3 of Schedule 1 in relation to claiming confidentiality.
- (b) It is appropriate for the AER to request, as it does in paragraph 1.3(a), reasons supporting how and why detriment may be caused from disclosing certain information.
- (c) As presently drafted, paragraph 1.3(b) also imposes an obligation on SA Power Networks to identify the public benefit of disclosing certain information. However, we will not necessarily be in a position to identify public benefit and therefore whether the identified detriment outweighs the public benefit.
- (d) The Confidentiality Guideline⁴ as drafted by the AER recognises the difficulty of network service providers assessing the public benefits of disclosing confidential information and makes the provision of comments on this aspect optional.

⁴ AER's Better Regulation Draft Confidentiality Guideline, August 2013, page 8

Paragraph 1.3 requires amendment to reflect the approach taken in the AER's Confidentiality Guideline. The draft RIN has been marked-up with suggested changes to paragraph 1.3 to address this issue.

5.4 ***Schedule 2 – Supporting Information***

- (a) Paragraph 1.2(c) of Schedule 2 appears to require 'all supporting documentation' to be provided with our response.
- (b) A strict interpretation of this provision would involve significant work (and therefore significant time and cost in addition to that described above) to put the information into a format that could be understood and interpreted by the AER - particularly when much of the data will have to be collected from many sources including systems no longer currently used and a multitude of paper-based records.
- (c) We submit that such a requirement is unnecessary and unwarranted, given that the information provided to the AER will have been subject to audit.
- (d) Current practice by the AER is not to seek lodgement of all supporting documents but for those documents to be available if requested.
- (e) Accordingly, paragraph 1.2(c) needs to be amended to remove the reference to us providing supporting documentation. We have marked-up a suggested change to paragraph 1.2(c) to address this issue.
- (f) If, despite its practice to date, the AER takes the position that supporting documentation must be provided, then that will be a major exercise, will require us to deploy significant human resources, will result in delays in being able to provide the documentation, and will come at a very significant additional cost to us without any obvious benefit to outweigh that cost.

5.5 ***Schedule 2 – Providing 'the most appropriate' estimate where 'it is not possible' to provide information***

- (a) Paragraph 1.3 of Schedule 2 provides that where 'it is not possible' to provide information we are to use best endeavours to generate 'the most appropriate' estimate.
- (b) The threshold test of it 'not being possible' to provide actual information before an estimate can be provided, requires modification because:
 - (i) such a 'test' is onerous and unreasonable, as most things are 'possible' if unlimited time and resources are available and are applied to the task (along with, of course, the accompanying significant costs that would be incurred as a result – without any demonstrable benefit to outweigh those costs); and



- (ii) if this 'test' is not clarified, then it is unclear when an estimate could ever legitimately be provided by SA Power Networks.
- (c) A more reasonable 'test' is therefore required; one which recognises that the particular information either may not exist or has not been able to be located by employees of SA Power Networks after the making of reasonable enquiries by them given the available time since the date of receipt of the RIN.
- (d) In addition, whether one estimate is to be preferred over another, is a subjective matter, depends on the particular set of assumptions upon which each estimate is based, and is clearly susceptible to wide ranging argument and debate. Accordingly, it is simply not possible to assert that one particular estimate is 'the most appropriate' estimate.
- (e) A more reasonable standard is required; one which takes into account the nature of the particular information in respect of which the estimate is given and the available time since the date of receipt of the RIN.
- (f) We have marked-up the draft RIN with suggested changes to address both of these matters.

5.6 **Schedule 2 – 'Subsequent Regulatory Year'**

- (a) Given the comments made in paragraph 5.2 above in relation to the definition of 'Regulatory Years', we seek clarification from the AER in relation to 'Subsequent Regulatory Year' in paragraph 1.4 of Schedule 2.
- (b) The phrases "year t commences in 2014" and "the relevant Subsequent Regulatory Year is the year t-1" are unclear, as SA Power Networks' Regulatory Year is from 1 July in one calendar year to 30 June in the following calendar year.
- (c) This confusion is further exacerbated by the instructions in the template.

5.7 **Schedule 2 – Estimated Data**

- (a) Paragraph 1.4(c) of Schedule 2 appears to indicate that only actual, and not estimated, data may be provided for 2012/2013 onwards. It will not be possible for SA Power Networks to comply with this requirement.
- (b) First, as noted in the ENA Submission even actual information involves the application of some assumptions and estimates. For example, the process of cost allocation necessarily involves the application of assumptions and estimates to actual cost amounts.
- (c) Second, in order to capture the relevant data moving forward in the form required by the RIN, new systems and processes will need to be put in place. We will not be able to implement these new systems and processes until the final requirements for the RIN and related information have been determined. We will therefore not have these new systems and processes in place for the current



regulatory year. It is also likely that these new systems and processes will not be fully implemented until after the commencement of the 2014/2015 regulatory year.

- (d) Insisting upon the provision of actual data only in relation to a regulatory year before these new systems and processes have been implemented for that regulatory year is unreasonable.
- (e) This also has a potential cost implication which may not outweigh any perceived benefits. The AER should therefore continue to allow estimates to be provided in future years where necessary.

5.8 ***Schedule 2 – Requirement to Engage Auditor***

- (a) Paragraph 1.5 of Schedule 2 requires amendment to clarify the fact that previously audited information need not be audited again – a principle which is set out Paragraph 1.2 of Appendix C.
- (b) The attached copy of the draft RIN has been marked up with a suggested change to address this issue.

5.9 ***Schedule 2 – Maintaining Information***

- (a) Paragraph 2.1 of Schedule 2 requires SA Power Networks to maintain indefinitely all information prepared under paragraph 1 of that Schedule. That is a highly unreasonable and unjustifiable requirement, as we would incur significant additional costs as a result without there being any justification or any benefit in doing so.
- (b) We note that other RINs issued to us only require information to be maintained/retained for a specified period of time. At the very least that approach should be adopted in this RIN.
- (c) However, the information to be provided under this RIN is for benchmarking purposes to enable the AER to produce the benchmarking report. We submit that there should be no requirement imposed on us to maintain information after that information has been provided to the AER for that purpose.
- (d) Paragraph 2.1 of Schedule 2 should therefore be amended to address this material concern.

5.10 ***Appendix A – Data Template***

SA Power Networks has now reviewed several versions of the template. With reference to the version accompanying the draft RIN issued on 18 September 2013, we make a number of detailed comments in a separate attachment accompanying this letter.



5.11 **Appendix B – Statutory Declaration**

(a) We have a series of major concerns with, and comments to make in relation to, the proposed statutory declaration:

(i) First, given that audited information is to be provided to the AER, it is both inappropriate and unnecessary for any statutory declaration to be provided in addition to an audit sign-off. In circumstances where audited information is to be provided, there is simply no reason or justification to require a statutory declaration as well.

The fact that there is no valid reason to require a statutory declaration in such circumstances is in fact (effectively) acknowledged by the AER itself in the form of statutory declaration that accompanied the RIN issued to us in 2012 for the purposes of monitoring our compliance with the 2010 – 2015 Distribution Determination. The wording of paragraph 3 of that statutory declaration clearly (and appropriately) excludes from the reach of that declaration all information that was required to be audited in accordance with that RIN.

(ii) Secondly, and putting that first issue to one side, although the AER has the power to require that 'the information specified in a RIN be verified by way of statutory declaration by an officer of the regulated network service provider'⁵, it is our view that the AER does not have the power to dictate the precise content/wording of such a statutory declaration.

The content/wording of any such statutory declaration is a matter to be (appropriately) determined by SA Power Networks and the relevant officer, not the AER.

And without limiting the generality of that observation, it is clearly beyond the power of the AER to require an officer (as the proposed form of declaration seeks to do) to attest as to whether data can be 'relied upon' by the AER, as the officer cannot know whether the AER will find the data to be reliable or not, how the AER will assess reliability, etc.

(iii) Thirdly, it is unreasonable and unjustifiable for the AER to seek to place an officer in a position where they are being required to attest to the accuracy of information which will, but has yet to be, audited and then provided to the AER, knowing that some information may well be expected to change as a result of the audit. As noted at paragraph 3.3 above, no officer of SA Power Networks will be prepared to swear a statutory declaration in such circumstances.

(b) For the sake of completeness, but without conceding any of the arguments noted above, if SA Power Networks was to be compelled to:

⁵ NEL, section 28M(d)

- (i) provide unaudited information to the AER ahead of an audit being carried out;
- (ii) seek to have an officer swear a statutory declaration in respect of that unaudited information; and
- (iii) provide that statutory declaration with specified wording,

then the wording would have to be substantially modified from that included by the AER in the draft RIN in order for any officer of SA Power Networks to consider making the declaration. In that regard, the attached copy of the draft RIN has been marked up with the minimum changes that we assume would be required by any officer.

5.12 **Appendix C – Audit Requirements**

- (a) The proposed audit requirements set out in Appendix C are extremely onerous and unclear in places. The ENA Submission specifically addresses a number of audit issues, and SA Power Networks supports, endorses and reiterates the comments and suggested amendments made in that submission.
- (b) Paragraph 1.2 of Appendix C provides that audited 'financial data' that has previously been provided to the AER need not be audited again. It goes on to provide that 'This fact would however need to be confirmed and documented in response to the Notice'. SA Power Networks seeks clarification from the AER as to what this means, and what would be required by way of such confirmation and documentation.
- (c) Paragraph 1.2 only makes that concession (about no further audit being required) in relation to 'financial data'. Given that the RIN applies to both 'Financial Information' and 'Non-Financial Information', the same concession should apply to both categories. The attached copy of the draft RIN has been marked up with changes to address that issue.
- (d) We currently engage a non-CPA (engineering) firm for auditing our non-financial information. Given their knowledge and experience of our systems and data, we would want to engage them for auditing non-financial information associated with the RIN as this would result in the taking of less time than would otherwise be the case and thereby reduce costs and inefficiencies.
- (e) However, an engineering firm would not meet all of the criteria currently proposed in paragraph 2.1 of Appendix C of the draft RIN. This could potentially be overcome by the engineering firm negotiating and entering into arrangements with our financial auditors, but this would take time and therefore add delays and inefficiencies into the audit process, along with resulting additional costs.
- (f) To minimise costs and to expedite the audit process, our strong preference is to directly and separately engage our financial and non-financial auditors.



- (g) We have therefore marked up Appendix C in the attached copy of the draft RIN with changes to allow this to occur.

6. **Explanatory Statement**

- 6.1 SA Power Networks notes that there are some inconsistencies between the requirements of the draft RIN and the content of the explanatory statement.
- 6.2 For example, the current form of the draft RIN requires SA Power Networks to provide data in all parts of the template (whether that data be actual or estimated). And yet the AER's explanatory statement contemplates – and we would say properly so – that a network service provider may not be able to provide some data (eg because it does not exist or cannot reasonably be estimated). At page 10 of the explanatory statement, the AER notes that there may be 'gaps' in data provided by a network service provider and that the AER would therefore 'liaise with NSPs to fill [such] gaps' (ie after we have provided the template to the AER).
- 6.3 The explanatory statement and the requirements of the RIN must be consistent, and therefore amendments should be made by the AER accordingly.

If you wish to discuss any of these comments further, please contact Richard Sibly on 08 8404 5613 or by email at richard.sibly@sapowernetworks.com.au.

Yours sincerely



Sean Kelly
General Manager Corporate Strategy

Attachments:

- 1. Marked-up proposed changes to Draft RIN (including the Statutory Declaration)
- 2. SA Power Networks comments on Economic Benchmarking Template

