

National Energy Retail Law (South Australia) Act 2011

(Section 34)

**NOTICE OF EXEMPTION BY THE
MINISTER FOR MINERAL RESOURCES AND ENERGY**

**FLINDERS POWER HOLDINGS GMBH
(ARBN 094 284 723)**

**FLINDERS LABUAN (NO.1) LTD
(ARBN 094284812)**

**FLINDERS LABUAN (NO. 2) LTD
(ARBN 094 284 769)**

Notice

PURSUANT to section 34 of the *National Energy Retail Law (South Australia) Act 2011*, I, Tom Koutsantonis, Minister for Mineral Resources and Energy, grant an exemption to the partnership comprised of Flinders Power Holdings GMBH (ARBN 094 284 723), Flinders Labuan (no.1) LTD (ARBN 094284812) and Flinders Labuan (no. 2) LTD (ARBN 094 284 769) ('Exempt Seller') from the requirement to hold a current retailer authorisation under Part 5 of the *NERL*, subject to the conditions listed below.

Conditions

1. Interpretation

- 1.1. Words appearing in italics are defined in Part 1 of the Schedule.
- 1.2. This Exemption must be interpreted in accordance with Part 2 of the Schedule.

2. Form of energy

- 2.1. The form of energy authorised by this Exemption is electricity.

3. Commencement, variation and revocation

- 3.1. This Exemption commences on the date the *NERL* comes into operation in South Australia and continues in force until it is revoked by the *AER* under section 111 of the *NERL*.
- 3.2. Subject to section 34(5) of the *National Energy Retail Law (South Australia) Act 2011*, the *AER* may decide to vary or revoke this Exemption.

4. Limitation

- 4.1. The *Exempt Seller* is limited to retailing electricity in the geographic area of South Australia at the localities specified in Part 3 of the Schedule.
- 4.2. The *Exempt Seller* is limited to retailing electricity to the *business customers* specified in Part 4 of the Schedule.

5. Sale of Electricity to Customers

- 5.1. If the *Exempt Seller* sells electricity to a *business customer*, it must do so on terms and conditions which are consistent with this Exemption and any applicable laws.

6. Compliance with Laws

- 6.1. The *Exempt Seller* must comply with all applicable laws and any technical or safety requirements or standards contained in regulations made under the *Electricity Act 1996* (SA).

7. Information Provision to the Australian Energy Regulator

- 7.1. If the *Exempt Seller* commits a *material breach* of a provision of an applicable law or a condition of this Exemption, the *Exempt Seller* must provide a written report on the breach to the AER as soon as reasonably practicable and in any case within five business days of the breach occurring.
- 7.2. The *Exempt Seller* must, from time to time, in a manner and form determined by the AER, provide to the AER:
 - a. details of the *Exempt Seller's* financial, technical and other capacity to continue the operations authorised by this Exemption; and
 - b. such other information as the AER may require.

8. Statement of charges

- 8.1. A statement of charges to a *customer* must itemise separately:
 - a. the amounts charged for the electricity sold; and
 - b. the total amounts charged by a *distributor* (for transmission and distribution connection and use of system) in respect of that *customer*.

9. Disconnection

- 9.1. The *Exempt Seller* must not disconnect or discontinue, or take any action which may lead to the disconnection or discontinuance of, supply of electricity to a *customer* except in accordance with the *electricity retail contract*.

10. Customer Enquiries

- 10.1. The *Exempt Seller* must provide a means of contact for account enquiries and complaints which can be readily accessed by *customers*. Where a telephone number is provided, the charge for this call must be no more than the cost of a local call.

11. Dispute Resolution

- 11.1. The *Exempt Seller* must develop and make available to *customers* a set of procedures for handling customer complaints and disputes.
- 11.2. The procedures must be substantially consistent with the Australian Standard AS ISO 10002-2006 "Customer Satisfaction – Guidelines for Complaints Handling in Organisations" as amended and updated from time-to-time.
- 11.3. The procedures must be regularly reviewed and kept up to date.

12. National Electricity Market

- 12.1. The *Exempt Seller* must hold and comply with the conditions of any registration required under the *NEL*.

13. Operational and Compliance Audits

- 13.1. The *Exempt Seller* must, if so required by the *AER*, carry out an audit of the *Exempt Seller's* compliance with the requirements of this Exemption, the *NERL*, *National Energy Retail Regulations* and the *NERR* in relation to aspects of the activities of the *Exempt Seller* that are specified by the *AER*.
- 13.2. If the *AER* requires the *Exempt Seller* to carry out a compliance audit under this clause 13, the entity may arrange for the audit to be carried out on its behalf by contractors or other persons, but the *Exempt Seller* remains responsible for the audit.
- 13.3. The *Exempt Seller* must, within a period specified and in a manner required by the *AER*, provide the *AER* with the results of a compliance audit carried out under this clause 13.
- 13.4. The cost of conducting a compliance audit under this clause 13 is to be borne by the *Exempt Seller*.

14. B2B Information Exchange

- 14.1. To the extent that the *Exempt Seller* is not bound to participate in a B2B information exchange regime under an applicable regulatory instrument, the *Exempt Seller* must ensure that appropriate B2B information exchange protocols are in place between the *Exempt Seller* and each other electricity entity with whom the *Exempt Seller* is required to exchange information.

15. Confidentiality

- 15.1. The *Exempt Seller* must, unless otherwise required or permitted by law, ensure that information concerning a *customer* is not disclosed without the prior express consent of, or as agreed in writing with, the *customer*.

Dated this 23rd day of January 2013



Hon Tom Koutsantonis MP

Minister for Mineral Resources and Energy

SCHEDULE

PART 1: DEFINITIONS

business customer means a *customer* who is not a *residential customer*.

business day means a day that is not:

- a. a Saturday or Sunday
- b. observed as a public holiday in South Australia.

customer means a person:

- (a) to whom electricity is sold for premises by the *Exempt Seller*, or
- (b) who proposes to purchase electricity for premises from the *Exempt Seller*.

electricity retail contract means a contract between a *customer* and an *Exempt Seller* for the sale of electricity to the *customer*.

Exempt Seller means the partnership comprised of Flinders Power Holdings GMBH (ARBN 094 284 723), Flinders Labuan (no.1) LTD (ARBN 094284812) and Flinders Labuan (no. 2) LTD (ARBN 094 284 769).

material breach means a breach:

- a. that the *AER* considers to be material, and has been notified to the *Exempt Seller* as such; or
- b. that the *Exempt Seller* considers to be material, having regard to:
 - (i) the impact (financial or otherwise) on *customers*;
 - (ii) the number of *customers* affected; and
 - (iv) any potential or actual risk to public safety.

National Energy Retail Regulations means the National Energy Retail Regulations under the *NERL*.

NEL means the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996*.

NERL means the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011*.

NERR means the National Energy Retail Rules under the *NERL*.

small customer means a customer:

- (a) who is a residential customer; or
- (b) who is a business customer as defined by *National Energy Retail Law (South Australia) Act 2011*.

residential customer means a *customer* who purchases energy principally for personal, household or domestic use at premises.

PART 2: INTERPRETATION

In this notice, unless the context otherwise requires:

- (a) headings are for convenience or information only and do not affect the interpretation of this notice;

- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency and vice versa;
- (e) a reference to a clause, schedule or annexure is to a clause, schedule or annexure of this notice;
- (f) a reference to any statute, regulation, proclamation, order in council, ordinance or by-law includes all statutes, regulations, proclamations, orders in council, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, orders in council, ordinances, by-laws and determinations issued under that statute;
- (g) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement of or novation of, that document or that provision of that document;
- (h) an event which is required under this notice to occur on or by a stipulated day which is not a business day may occur on or by the next business day;
- (i) a reference in this notice to a distribution network includes a reference to a distribution network which is not owned by the entity but is operated by the entity;
- (j) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- (k) other parts of speech and grammatical forms of a word or phrase defined in this licence have a corresponding meaning.

PART 3: LOCALITIES

- Leigh Creek, South Australia;
- Osborne, South Australia; and
- Port Augusta, South Australia.

PART 4: CUSTOMERS

- Flinders Power Partnership;
- ASC Pty Ltd;
- ASC Engineering Pty Ltd;
- Urban Renewal Authority;
- ASC AWD Shipbuilder Pty Ltd; and
- Clean Seas Tuna Limited.