

South Australia

National Electricity (South Australia) (Firm Energy Reliability and Orderly Exit Management) Regulations 2025

under the *National Electricity (South Australia) Act 1996*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *National Electricity (South Australia) (Firm Energy Reliability and Orderly Exit Management) Regulations 2025*.

2—Commencement

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

3—Object

The primary object of these regulations is to establish a scheme and a fund for the purposes of providing long duration dispatchable electricity capacity to ensure secure, reliable and affordable electricity supply for the State.

4—Interpretation

(1) In these regulations—

Act means the *National Electricity (South Australia) Act 1996*;

appointing authority, in relation to a scheme entity, means—

- (a) the Minister; or
- (b) the Scheme Administrator; or
- (c) another person or body acting under regulation 9(5),

that has appointed the scheme entity under regulation 9;

authorised fund expenditures means a matter specified in a particular paragraph under regulation 19(6);

capacity commitment means—

- (a) an indication by a recognised electricity entity in an NOI to provide long duration dispatchable electricity capacity at a specified level over a commitment period; or
- (b) a commitment by a long duration capacity provider to provide long duration dispatchable electricity capacity at a specified level under a FERM contract;

contribution determination means a contribution determination made under regulation 25 (including as varied under regulation 26);

contribution notice means a contribution notice under regulation 27;

deemed FERM contract means a contract to which regulation 24 applies;

existing designated electricity entity means a person who is registered by AEMO as a Generator or Integrated Resource Provider;

FERM contract means a contract under Part 5 for the provision of long duration dispatchable electricity capacity (including a deemed FERM contract);

FERM Scheme Amount means an amount payable by a TNSP under a contribution notice or initial contribution notice;

FERM Scheme Refund Amount means an amount to be returned to a TNSP under a contribution notice;

Financial Vehicle means a person or body appointed to carry out scheme financial functions;

Firm Energy Target—see regulation 7;

Fund means the Fund established under Part 4;

initial contribution notice means an initial contribution notice under regulation 28;

long duration capacity provider means a person—

- (a) who is—
 - (i) an existing designated electricity entity capable of providing long duration dispatchable electricity capacity; or
 - (ii) a new designated electricity entity expected to be capable of providing long duration dispatchable electricity capacity; and
- (b) who is recognised by the Minister from time to time as being an entity suitable to be a participant in the scheme after taking into account any criteria specified in the Minister's guidelines;

long duration dispatchable electricity capacity means dispatchable electricity capacity with a minimum of 8 hours of continuous rated output;

Minister's guidelines means the guidelines made by the Minister under regulation 8;

NER means the National Electricity Rules;

new designated electricity entity means a person who is required or intends to be registered by AEMO as a Generator or Integrated Resource Provider (other than an existing designated electricity entity);

NOI means a notice of intention under regulation 20;

OEM functions means functions under Part 8AA of the *National Electricity (South Australia) Law* as applying in this jurisdiction;

recognised electricity entity means an existing designated electricity entity that falls within the definition of long duration capacity provider;

regulated entity means a Market Participant or other person to whom the scheme applies;

relevant day, in relation to a transitional FERM contract or a deemed FERM contract—see regulation 23 or 24;

the scheme means the scheme established by these regulations (other than Part 10) in relation to the provision of long duration dispatchable electricity capacity;

scheme administration functions—see regulation 10;

Scheme Administrator means a person or body appointed to carry out scheme administration functions;

scheme entity means a person or body appointed under regulation 9 (including a person or body appointed under regulation 9(5));

scheme financial functions—see regulation 12;

scheme functions means—

- (a) any scheme administration functions; or
- (b) any scheme regulation functions; or
- (c) any scheme financial functions;

scheme regulation functions—see regulation 11;

Scheme Regulator means a person or body appointed to carry out scheme regulation functions;

Scheme Regulator's guidelines means the guidelines made by the Scheme Regulator under regulation 35;

scheme regulatory year means a regulatory year in respect of which a TNSP proposes—

- (a) to recover a FERM Scheme Amount from its Transmission Customers; or
- (b) to pass through a FERM Scheme Refund Amount to its Transmission Customers;

TNSP means a transmission network service provider who owns, controls or operates a transmission system within the State;

transitional FERM contract means a contract entered into under regulation 23;

transition period means the period commencing on the commencement of these regulations and ending on 30 June 2026.

- (2) A reference in these regulations to a scheme entity performing a particular function will be taken to include a reference to any scheme entity that has been appointed to perform that function.
- (3) A reference in these regulations to the performance of a function includes a reference to the exercise of a power or the discharge of a duty related to that function.
- (4) A reference in these regulations to a Market Customer is a reference to a Market Customer who operates within the South Australian region of the NEM.
- (5) Words and expressions used in the *National Electricity (South Australia) Law* or the NER and in these regulations have the same respective meanings in these regulations as they have in that Law or the NER.

5—Modification of related Law and Rules

The *National Electricity (South Australia) Law* and the NER are modified to the extent necessary to enable the operation of the scheme and the Fund.

6—Governing law of a FERM contract

The governing law of any FERM contract is the law of South Australia.

Part 2—Firm Energy Target and guidelines

7—Declaration of target

- (1) For the purposes of section 15B(2)(c) of the Act, the Minister may make a declaration prescribing the quantity of long duration dispatchable electricity capacity that the State requires over a specified period (the ***Firm Energy Target***).
- (2) The Minister may at any time—
 - (a) vary the Firm Energy Target; or
 - (b) establish a new Firm Energy Target that is to apply in relation to an ensuing specified period.

- (3) The Minister must ensure that the Firm Energy Target is published on a website determined by the Minister.

8—Minister's Guidelines

- (1) For the purposes of section 15B(2)(c) of the Act, the Minister may make binding guidelines in respect of the scheme, including guidelines with respect to—
- (a) the notice of intention process under Part 5 Division 1; and
 - (b) the conduct of a scheme tender under Part 5 Division 3, including procedural requirements and eligibility and assessment criteria to be used for the purposes of a scheme tender; and
 - (c) contractual terms, commercial arrangements and other requirements that are to apply to FERM contracts; and
 - (d) requirements relating to a reliability obligation or a market liquidity obligation under Part 8; and
 - (e) any other matter that is—
 - (i) contemplated by these regulations as being the subject of guidelines for the purposes of the scheme; or
 - (ii) considered by the Minister as being necessary or expedient for the purposes of the scheme.
- (2) The Minister must ensure that any guidelines made by the Minister under this regulation are published on a website determined by the Minister.

Part 3—Scheme entities

Division 1—Appointment

9—Appointment

- (1) The Minister may appoint a person or body to carry out—
- (a) scheme administration functions (a ***Scheme Administrator***); or
 - (b) scheme regulation functions (a ***Scheme Regulator***).
- (2) The Minister may—
- (a) appoint 2 or more persons or bodies as a Scheme Administrator or Scheme Regulator; and
 - (b) divide various functions between persons or bodies appointed under subregulation (1), including so as to allow 1 entity to perform the functions of another entity referred to in that subregulation,
- as provided in the relevant instrument or instruments of appointment or as otherwise determined by the Minister from time to time.
- (3) The Scheme Administrator may appoint a person or body to carry out scheme financial functions (the ***Financial Vehicle***).

- (4) The Scheme Administrator may, until the Scheme Administrator appoints a Financial Vehicle, perform the scheme financial functions (and will be taken to be the Financial Vehicle until that appointment is made).
- (5) The appointing authority (being the Minister or the Scheme Administrator) may authorise a person or body appointed as a scheme entity under this regulation to appoint another person or body to undertake any scheme function that has been conferred on the person or body by the initial appointment.
- (6) A person or body appointed under subregulation (5)—
 - (a) may perform functions specified in the instrument of appointment that has been conferred on the scheme entity that made the appointment; and
 - (b) in so doing will be—
 - (i) subject to the direction and control of the scheme entity that made the appointment; and
 - (ii) taken to be a scheme entity for the purposes of these regulations.
- (7) In the performance of a function under these regulations, a person or body appointed under this regulation is not, except as otherwise provided by these regulations, subject to the direction or control of the Minister.

Division 2—Scheme entity functions

10—Scheme administration functions

The scheme administration functions are—

- (a) to implement and administer the scheme including (without limitation) to establish governance and financial arrangements for the purposes of the scheme; and
- (b) in relation to the operation of Part 5 Division 1—
 - (i) to review a recognised electricity entity's NOI to ensure that the entity has acted in accordance with the Minister's guidelines and other relevant requirements applying under these regulations; and
 - (ii) to obtain further information from a recognised electricity entity about a capacity commitment provided in an NOI (to such extent as is reasonably necessary in the circumstances); and
 - (iii) to notify the Scheme Regulator if a recognised electricity entity has failed to comply with a requirement under regulation 20; and
 - (iv) to publish the results of any process undertaken under regulation 20 (to such extent as the Scheme Administrator thinks fit); and
- (c) to conduct a scheme tender at the request of the Minister and in accordance with any relevant Minister's guidelines; and
- (d) to develop a tender model, processes and systems; and
- (e) to prepare tender and contractual documentation; and

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Part 3—Scheme entities

Division 2—Scheme entity functions

- (f) at the direction of the Minister, to develop a risk management framework for the scheme to protect the financial interests of South Australian electricity consumers—
 - (i) in connection with the risks associated with FERM contracts; and
 - (ii) otherwise in connection with the functions and activities of scheme entities under the scheme; and
- (g) to provide information to the Scheme Regulator in connection with the contribution determination processes associated with the scheme; and
- (h) any other functions conferred on a Scheme Administrator for the purposes of the scheme.

11—Scheme regulation functions

- (1) The scheme regulation functions are—
 - (a) to oversee the operation and performance of the scheme including (without limitation)—
 - (i) to prepare and provide to the Minister an annual report on the operation and performance of the scheme, in accordance with any requirements of the Minister; and
 - (ii) to audit the performance of entities performing the scheme administration functions or the scheme financial functions to the extent determined to be necessary, appropriate or advisable by a Scheme Regulator or at the direction of the Minister; and
 - (iii) to review and approve any risk management framework developed for the purposes of the scheme; and
 - (b) to oversee and monitor compliance with the provisions of the scheme by scheme entities and regulated entities; and
 - (c) to issue contribution determinations, contribution notices and initial contribution notices for the purposes of the scheme; and
 - (d) to administer the civil penalty scheme established by these regulations; and
 - (e) any other functions conferred on a Scheme Regulator for the purposes of the scheme.
- (2) An annual report under subregulation (1)(a) may be included in the Scheme Regulator's annual report under regulation 16.

12—Scheme financial functions

The scheme financial functions are—

- (a) to administer the Fund, including by managing the receipt and expenditure of funds in accordance with the scheme; and
- (b) to enter into FERM contracts with long duration capacity providers in circumstances prescribed by these regulations; and
- (c) to monitor and enforce contractual performance and compliance by long duration capacity providers in respect of FERM contracts; and

- (d) to provide information to the Scheme Regulator in connection with the contribution determination processes associated with the scheme, which may include compiling information that has been provided by other scheme entities for this purpose; and
- (e) any other functions conferred on the Financial Vehicle under these regulations.

Division 3—Related provisions

13—Establishment of entities

The Minister may, for the purposes of the scheme, establish a body (including a company established under the *Corporations Act 2001* of the Commonwealth) that may be appointed as a scheme entity.

14—Principles

In the performance of a function under these regulations, a scheme entity must—

- (a) act independently and in the long-term financial interests of South Australian electricity consumers; and
- (b) act in a commercially reasonable and prudent way.

15—Scheme Regulator may request provision of information

- (1) The Scheme Regulator may, by written notice, request a prescribed entity to give the Scheme Regulator information the Scheme Regulator reasonably requires for the performance of its scheme regulation functions.
- (2) A notice under this regulation may be in a form determined by the Scheme Regulator.
- (3) A prescribed entity must comply with a request under this regulation within a period specified by the Scheme Regulator in the notice.
- (4) In this regulation—
prescribed entity means—
 - (a) the Scheme Administrator or Financial Vehicle; or
 - (b) a regulated entity.

16—Annual reports

- (1) Each scheme entity must prepare an annual report.
- (2) Subject to this regulation, an annual report—
 - (a) must be prepared by 31 August in each year; and
 - (b) must report on the activities of the scheme entity for the financial year ending on the preceding 30 June; and
 - (c) must include any other information, or provide a report in relation to any other matter, specified by the Minister's guidelines for inclusion in an annual report; and
 - (d) except in the case of the Scheme Regulator—must, immediately after it has been finalised by the scheme entity, be furnished to the Scheme Regulator.

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Part 3—Scheme entities

Division 3—Related provisions

- (3) The Scheme Regulator must incorporate the annual reports received under subregulation (2)(d) into a consolidated annual report, which will include the Scheme Regulator's annual report, and furnish it to the Minister by 31 October in each year.
- (4) The Minister must ensure that an annual report furnished to the Minister under this regulation is published on a website determined by the Minister.

17—Suspension or removal of scheme entities

- (1) The appointing authority may, by notice in writing to a scheme entity, suspend or terminate the appointment of the scheme entity under this Part.
- (2) An appointing authority may not take action against a scheme entity under subregulation (1) unless the appointing authority is satisfied, on the basis of an audit that has been undertaken under regulation 11(1)(a)(ii), that the scheme entity has, in the performance of its functions, displayed incompetence, misconduct or incapacity to act under these regulations.
- (3) Before suspending or terminating the appointment of a scheme entity under this regulation, the appointing authority must—
 - (a) advise the scheme entity in writing that action under this regulation to suspend or terminate the appointment is being contemplated and the basis on which this course of action is being considered; and
 - (b) provide the scheme entity with a reasonable opportunity to make submissions and consider the submissions received.
- (4) Nothing in this regulation limits the operation of regulation 9.

18—Resignation from appointment

A scheme entity may resign from an appointment under this Part by providing 6 months notice to the appointing authority or as agreed to by the appointing authority.

Part 4—Fund

19—Establishment of Fund

- (1) A fund is established for the purposes of the scheme (the **Fund**).
- (2) The Fund will be administered by the Financial Vehicle.
- (3) The Fund must be kept at an ADI.
- (4) The Fund will consist of—
 - (a) any money paid by a TNSP under a contribution notice or an initial contribution notice; and
 - (b) any money paid by a long duration capacity provider under a FERM contract; and
 - (c) any money advanced by a scheme entity for payment into the Fund; and
 - (d) any money advanced by the Treasurer for payment into the Fund; and
 - (e) any money appropriated by Parliament for payment into the Fund; and

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- (f) any money received as voluntary contributions to the Fund made by a person or body; and
 - (g) any amount paid as a civil penalty under regulation 32; and
 - (h) income and accretions from investment of money from the Fund; and
 - (i) other money required to be paid into the Fund under these regulations.
 - (5) Money advanced under subregulation (4)(c) or (d) may be in the nature of a loan.
 - (6) The Fund will be applied towards—
 - (a) payments to a long duration capacity provider under a FERM contract; and
 - (b) money otherwise required to meet the financial liabilities of the Financial Vehicle in respect of scheme financial functions; and
 - (c) costs incurred by scheme entities in the performance of their functions under these regulations, including costs associated with the administration and implementation of the scheme, to the extent authorised by the Minister; and
 - (d) a FERM Scheme Refund Amount payable to a TNSP; and
 - (e) other money required to be paid from the Fund under these regulations.
 - (7) In connection with subregulation (6)(a) but subject to subregulation (8), any payment to be made to a long duration capacity provider under a transitional FERM contract or a deemed FERM contract after the commencement of these regulations and before the relevant day is to be made by Financial Vehicle on behalf of the Minister.
 - (8) In the case of a deemed FERM contract, subregulations (6)(a) and subregulation (7) only apply to a payment to be made under the contract to a long duration capacity provider in respect of a liability accrued after the commencement of these regulations.
 - (9) Nothing in this regulation allows the payment of money into, or the application of money from, the Fund in connection with OEM functions.
 - (10) Any money not immediately required for the purposes of the Fund may be invested by the Financial Vehicle in any form of investment that is consistent with the Financial Vehicle's responsibility to act in a prudent way.

Part 5—Commitments and arrangements to achieve Firm Energy Target

Division 1—Notice of intention

20—Notice of intention

- (1) The Minister may direct the Scheme Administrator to issue a request (an **NOI request**) to recognised electricity entities to submit a notice of intention (an **NOI**) to the Scheme Administrator in accordance with this regulation.
- (2) A recognised electricity entity who receives an NOI request must submit an NOI within the time specified in the NOI request and in accordance with any relevant requirements specified by the Minister's guidelines.

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Part 5—Commitments and arrangements to achieve Firm Energy Target

Division 1—Notice of intention

- (3) An NOI must—
 - (a) be submitted in a form specified by the Minister's guidelines; and
 - (b) in respect of a period specified in the NOI request (a ***commitment period***) indicate—
 - (i) the recognised electricity entity's intention in respect of the provision of long duration dispatchable electricity capacity; and
 - (ii) the level of long duration dispatchable electricity capacity that the recognised electricity entity intends to provide in the NEM; and
 - (c) include any other information specified by the Minister's guidelines.
- (4) A recognised electricity entity who has indicated an intention to provide long duration dispatchable electricity capacity in the NEM over the relevant commitment period must provide that capacity during that commitment period at the level indicated in the NOI.
- (5) The Minister's guidelines may specify circumstances where subregulation (4) does not apply.

Division 2—Negotiated contracts

21—Negotiated contracts

- (1) This regulation applies if—
 - (a) a recognised electricity entity has indicated in an NOI that the entity intends to withdraw from or exit the NEM or otherwise cease to provide long duration dispatchable electricity capacity during the commitment period to which the NOI relates; or
 - (b) a recognised electricity entity provides advice that the entity is, or is expected to be, in breach of a capacity commitment indicated in an NOI.
- (2) The Scheme Administrator may determine, after taking into account any requirements specified by the Minister's guidelines, to enter into negotiations with the recognised electricity entity for the provision of long duration dispatchable electricity capacity on account of the circumstances specified in subregulation (1).
- (3) The Scheme Administrator must consult with the Minister and the Financial Vehicle before entering into negotiations under subregulation (2).
- (4) The Scheme Administrator may, at the end of negotiations under subregulation (2) and after taking into account any requirements specified by the Minister's guidelines and further consulting with the Minister, recommend to the Financial Vehicle that a contract be entered into with the recognised electricity entity for the provision of long duration dispatchable electricity capacity.
- (5) The Financial Vehicle may, on the basis of a recommendation under subregulation (4), enter into a contract with the recognised electricity entity for the provision of long duration dispatchable electricity capacity.
- (6) The Financial Vehicle must ensure that any contract entered into under this regulation is consistent with any relevant requirements or terms specified by the Minister's guidelines.

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- (7) A recognised electricity entity who is a party to a contract under this regulation must comply with a capacity commitment specified in the contract in accordance with the terms of the contract.
 - (8) If a recognised electricity entity enters into a contract under this regulation—
 - (a) any capacity commitment under the relevant NOI ceases to apply; and
 - (b) the recognised electricity entity will be taken not to have breached any capacity commitment under the NOI.

Division 3—Scheme tenders

22—Scheme tenders

- (1) The Minister may from time to time direct the Scheme Administrator to undertake a competitive tender process to assist in meeting the Firm Energy Target or otherwise for the purposes of the scheme.
- (2) In connection with subregulation (1)—
 - (a) the tender process must be undertaken in accordance with any relevant requirements specified by the Minister's guidelines; and
 - (b) a long duration capacity provider who meets any eligibility criteria specified by the Minister's guidelines is eligible to participate in the tender process; and
 - (c) a long duration capacity provider participating in the tender process must submit a response and otherwise act in accordance with any relevant requirements specified by the Minister's guidelines; and
 - (d) various types of contracts may be offered as a result of a tender process, as provided by the Minister's guidelines.
- (3) The Scheme Administrator may, at the conclusion of the tender process and after taking into account any requirements specified by the Minister's guidelines, enter into negotiations with any successful tenderer for the provision of long duration dispatchable electricity capacity.
- (4) The Scheme Administrator may, at the end of negotiations under subregulation (3) with a particular tenderer and after taking into account any requirements specified by the Minister's guidelines and further consulting with the Minister, recommend to the Financial Vehicle that a contract be entered into with the relevant entity for the provision of long duration dispatchable electricity capacity.
- (5) The Financial Vehicle may, on the basis of a recommendation under subregulation (4), enter into a contract with the relevant entity for the provision of long duration dispatchable electricity capacity.
- (6) A long duration capacity provider who is a party to a contract under this regulation must comply with a capacity commitment specified in the contract in accordance with the terms of the contract.
- (7) The Scheme Administrator must, at the conclusion of a tender undertaken under this regulation, publish a notice setting out the outcomes of the tender in accordance with the Minister's guidelines.

Division 4—Transitional and novated contracts

23—Transitional contracts

- (1) The Minister may, during the transition period, enter into a contract with 1 or more long duration capacity providers to provide long duration dispatchable electricity capacity in order to assist in meeting the Firm Energy Target or otherwise for the purposes of the scheme.
- (2) A contract entered into under this regulation will be for a term agreed between the Minister and the long duration capacity provider (which may be a term that extends beyond the end of the transition period).
- (3) A contract entered into under this regulation will, on a day determined by the Minister (the **relevant day**), be taken to be a contract between the Financial Vehicle and the long duration capacity provider who is the other party to the contract.
- (4) In connection with subregulation (3) but subject to subregulation (5), on and from the relevant day—
 - (a) the rights and liabilities of the Minister under the contract vest in and attach to the Financial Vehicle in substitution for the Minister; and
 - (b) the Minister is wholly released and discharged from the contract; and
 - (c) a reference in the contract to the Minister as a party to the contract will be taken to be a reference to the Financial Vehicle as a party to the contract.
- (5) Subregulation (4)(a) and (b) do not apply to or in relation to a right or liability of the Minister specified by the Minister by notice in writing to the Financial Vehicle and the other party to the contract (and the Minister is not released or discharged from any such liability).
- (6) The parties to a contract entered into under this regulation may vary or extend the contract, including after the end of the transition period, subject to the qualification that, on and from the relevant day, the Financial Vehicle must consult with the Minister before a variation or extension (if any) is made.
- (7) A long duration capacity provider who is a party to a contract under this regulation must comply with a capacity commitment specified in the contract in accordance with the terms of the contract.

24—Deemed contracts

- (1) This regulation applies to the following contracts:
 - (a) a contract between the Minister and [xxx] for the provision long duration dispatchable electricity capacity dated [] (including that contract as varied or extended at any time);
 - (b) a contract between the Minister and [yyy] for the provision long duration dispatchable electricity capacity dated [] (including that contract as varied or extended at any time).
- (2) An existing designated electricity entity who is a party to a contract to which this regulation applies is taken to be a long duration capacity provider for so long as they remain a party to the contract.

- (3) A contract to which this regulation applies will, on a day determined by the Minister (the **relevant day**), be taken to be a contract between the Financial Vehicle and the existing designated electricity entity who is the other party to the contract.
- (4) In connection with subregulation (3) but subject to subregulation (5), on and from the relevant day—
 - (a) the rights and liabilities of the Minister under the contract vest in and attach to the Financial Vehicle in substitution for the Minister; and
 - (b) the Minister is wholly released and discharged from the contract; and
 - (c) a reference in the contract to the Minister as a party to the contract will be taken to be a reference to the Financial Vehicle as a party to the contract.
- (5) Subregulation (4)(a) and (b) do not apply to or in relation to—
 - (a) a liability of the Minister accrued before the commencement of these regulations; or
 - (b) a right or liability specified by the Minister by notice in writing to the Financial Vehicle and the other party to the contract,
(and the Minister is not released or discharged from any such liability).
- (6) The parties to a contract to which this regulation applies may vary or extend the contract, subject to the qualification that, on and from the relevant day, the Financial Vehicle must consult with the Minister before a variation or extension (if any) is made
- (7) An existing designated electricity entity who is a party to a contract to which this regulation applies must comply with a capacity commitment specified in the contract in accordance with the terms of the contract.

Part 6—Contributions

25—Annual contribution determinations

- (1) The Scheme Regulator must, before 1 March in each year, in respect of each TNSP, make a determination (a **contribution determination**) as to the amount of money that is to be paid into or out of the Fund for the ensuing regulatory year (the **relevant regulatory year**).
- (2) A contribution determination must specify—
 - (a) the amount (if any) that is to be recovered from each TNSP for the relevant regulatory year; and
 - (b) the amount (if any) that is to be returned to each TNSP for the relevant regulatory year; and
 - (c) a minimum prudent cash balance to be retained in the Fund.
- (3) In making a contribution determination, the Scheme Regulator—
 - (a) will consult with the scheme entities to the extent specified by the Scheme Regulator's guidelines; and
 - (b) must take into account the following:

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- (i) the need to limit the variability in contribution determinations from year to year;
 - (ii) the equitable allocation of amounts payable under the contribution determination between TNSPs (after applying any principles, methodologies or approaches specified by the Scheme Regulator's guidelines);
 - (iii) the need for the Financial Vehicle to be able to meet its liabilities as they fall due;
 - (iv) the extent to which there is surplus money in the Fund after taking into account payments that must be made from the Fund in relation to the relevant regulatory year;
 - (v) information provided by the other scheme entities in connection with the making of the determination; and
 - (c) will take into account any other matter specified in the Scheme Regulator's guidelines; and
 - (d) may take into account any other matter considered relevant by the Scheme Regulator.
- (4) To the extent to which subregulation (3)(b)(iv) applies, the Scheme Regulator may apply (in whole or in part) a surplus by doing 1 or both of the following:
- (a) reducing the amount payable by a TNSP under the scheme in a particular regulatory year;
 - (b) returning an amount to a TNSP in a particular regulatory year,
- with any amount under this subregulation being applied on an equitable basis between the TNSPs to which the scheme applies (and after applying any principles, methodologies or approaches specified by the Scheme Regulator's guidelines).
- (5) The Scheme Regulator may require a TNSP to provide information specified by the Scheme Regulator for the purposes of making a contribution determination.
 - (6) A TNSP must comply with a request under subregulation (5) within a period specified by the Scheme Regulator.
 - (7) The Scheme Regulator must ensure that a contribution determination made under this regulation is published on a website determined by the Scheme Regulator.

26—Variation of contribution determinations

- (1) The Scheme Regulator may, by further determination, vary a contribution determination if it appears to the Scheme Regulator—
 - (a) that the Financial Vehicle will not be able to meet its liabilities as they fall due; or
 - (b) that the cash balance of the Fund has fallen, or is likely to fall, below the minimum prudent cash balance specified in the contribution determination.
- (2) The Scheme Regulator must ensure that a contribution determination, as varied under this regulation, is published on a website determined by the Scheme Regulator.

27—Contribution notices

- (1) The Scheme Regulator may, after making a contribution determination, by written notice served on a TNSP (a **contribution notice**), provide advice about the effect of the contribution determination on the TNSP.
- (2) A contribution notice must specify—
 - (a) the amount (if any) to be paid by the TNSP under the contribution determination (which may include the amount being paid in instalments); and
 - (b) the amount of money (if any) that is to be returned to the TNSP; and
 - (c) the date by which any payment must be made by the TNSP; and
 - (d) the date by which any money that is to be returned to the TNSP must be paid; and
 - (e) the way in which each payment must be made; and
 - (f) any other matter specified in the Scheme Regulator's guidelines.
- (3) A TNSP must comply with the requirements of a contribution notice.
- (4) A payment by a TNSP under a contribution notice must be made to the Financial Vehicle for payment into the Fund.
- (5) A payment to a TNSP under a contribution notice must be made by the Financial Vehicle from money standing to the credit of the Fund.
- (6) The amount to be paid by a TNSP under a contribution notice is recoverable by the Financial Vehicle as a debt in a court of competent jurisdiction (and once recovered is payable into the Fund).
- (7) If the Scheme Regulator has varied a contribution determination under regulation 26, this may be reflected by the variation of a contribution notice or by the making of a new or additional contribution notice.

28—Initial contribution notices

- (1) The Scheme Regulator must, at the direction of the Minister, by 1 or more written notices served on a TNSP (**initial contribution notices**), require the TNSP to pay an amount in order to—
 - (a) make payments to long duration capacity providers who are required under a transitional FERM contract or deemed FERM contract to provide long duration dispatchable electricity capacity; and
 - (b) cover the costs of the administration and implementation of the scheme during the transition period.
- (2) An initial contribution notice must specify—
 - (a) the amount to be paid by the TNSP (which may include the amount being paid in instalments); and
 - (b) the date by which a payment must be made by the TNSP; and
 - (c) the way in which each payment must be made; and
 - (d) any other matter specified by the Scheme Regulator's guidelines.

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- (3) In determining the requirements to be included in an initial contribution notice, the Scheme Regulator—
 - (a) must take into account the following:
 - (i) the equitable allocation of amounts payable between TNSPs (after applying any principles, methodologies or approaches specified by the Scheme Regulator's guidelines); and
 - (ii) the need for the Financial Vehicle to be able to meet its liabilities as they fall due; and
 - (b) may take into account any other matter considered relevant by the Scheme Regulator.
 - (4) A TNSP must comply with the requirements of an initial contribution notice.
 - (5) A payment by a TNSP under an initial contribution notice must be paid to the Financial Vehicle for payment into the Fund.
 - (6) The amount to be paid by a TNSP under an initial contribution notice is recoverable by the Financial Vehicle as a debt in a court of competent jurisdiction (and once recovered is payable into the Fund).

Part 7—FERM cost recovery scheme

29—Recovery and allocation of amounts through pricing

- (1) When a TNSP is determining prices for a scheme regulatory year in accordance with the requirements of the NER, the TNSP must provide for a charge to—
 - (a) pass on a FERM Scheme Amount to Transmission Customers; or
 - (b) pass through a FERM Scheme Refund Amount to Transmission Customers, or both.
- (2) A FERM Scheme Amount, or a FERM Scheme Refund Amount, (in whole or in part) must be passed on or passed through in a scheme regulatory year through an adjustment to the prices for prescribed transmission services provided by the TNSP and calculated in respect of each Transmission Network Connection Point as if it were a prescribed common transmission service under clause 6A.23.4 of the NER.
- (3) An amount—
 - (a) to be passed on to Transmission Customers in respect of a FERM Scheme Amount; or
 - (b) to be passed through to Transmission Customers in respect of a FERM Scheme Refund Amount,

will be incorporated into the TNSP's prices to be charged for prescribed transmission services for each scheme regulatory year, as published by the TNSP in accordance with clause 6A.24.2(c) of the NER for the following financial year.

- (4) The TNSP may pass on a FERM Scheme Amount in respect of an initial contribution notice in the regulatory year in respect of which the notice was made, notwithstanding that prices for prescribed transmission services have already been determined for that regulatory year in accordance with the requirements of the NER.

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- (5) The TNSP must adjust the amount that would otherwise be passed on or passed through to Transmission Customers in a scheme regulatory year (in respect of a FERM Scheme Amount or a FERM Scheme Refund Amount) to account for any over or under recovery of a FERM Scheme Amount or over or under passing through of the FERM Scheme Refund Amount in the previous scheme regulatory year in accordance with the Scheme Regulator's guidelines
 - (6) The Scheme Regulator's guidelines may provide for the manner in which an adjustment for over or under recovery is to be calculated by the TNSP, including so as to ensure that the TNSP is able, as relevant, to—
 - (a) recover from Transmission Customers no more or no less than the FERM Scheme Amounts it incurs; and
 - (b) pass through to Transmission Customers no more or no less than the FERM Scheme Refund Amounts it receives; and
 - (c) adjust for the time cost of money based on the allowed rate of return in the relevant transmission determination of the relevant scheme regulatory year.

30—Records

- (1) A TNSP must keep records of the manner in which it has—
 - (a) passed on a FERM Scheme Amount; and
 - (b) passed through a FERM Scheme Refund Amount; and
 - (c) calculated an adjustment for over and under recovery.
- (2) A TNSP must keep any other records or information required by the Scheme Regulator's guidelines.
- (3) A TNSP must, at the request of the Scheme Regulator, provide records or information kept for the purposes of this regulation within a period specified by the Scheme Regulator.

Part 8—Related obligations on market participants

31—Reliability and market liquidity obligations

- (1) To support or facilitate the scheme's purpose—
 - (a) a Market Customer is required to act in accordance with a reliability obligation; and
 - (b) a recognised electricity entity, or a new designated electricity entity who is a party to a contract under regulation 22, is required to act in accordance with a market liquidity obligation.
- (2) For subregulation (1)—
 - (a) the *reliability obligation* is an obligation to undertake certain contracting activities, and to take related steps, in the NEM by purchasing a certain number of contracts, or having a certain net contracting position, over a particular period, in accordance with requirements specified by the Minister's guidelines; and

National Electricity (South Australia) (Firm Energy Reliability and Orderly Exit Management) Regulations 2025

Part 8—Related obligations on market participants

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- (b) the *market liquidity obligation* is an obligation to undertake certain contracting activities, and to take related steps, in the NEM by offering a certain number of contracts, or having a certain net contracting position, over a particular period, in accordance with requirements specified by the Minister's guidelines.
 - (3) The Minister's guidelines may (without limitation) may make provision for—
 - (a) the application of an obligation as it applies to certain Market Customers, recognised electricity entities, or new designated electricity entities who are parties to contracts under regulation 22, or in relation to certain contracts or contracting positions; and
 - (b) the nature of an obligation; and
 - (c) the transfer of an obligation to another a person; and
 - (d) any other matter that is considered by the Minister as being necessary or expedient for the purposes of this regulation.
 - (4) The Minister may—
 - (a) by notice in writing to a person who would otherwise be required to comply with an obligation under this regulation and to the Scheme Regulator, exempt the person from the need to comply with the obligation; and
 - (b) by subsequent notice in writing to the relevant person and to the Scheme Regulator, revoke an exemption under this subregulation.
 - (5) The Scheme Regulator's guidelines may (without limitation) make provision for reporting requirements in connection with the operation of this regulation.
 - (6) A person who is required to comply with an obligation under this regulation must comply with any reporting requirements that apply in relation to the person under subregulation (5).

Part 9—Civil penalty regime

32—Civil penalties

- (1) For the purposes of section 15B(2)(g) of the Act, this regulation makes provision for civil penalties in connection with the scheme.
- (2) The provisions of the *National Electricity (South Australia) Law (the Law)* that relate to the creation and imposition of civil penalties are applied for the purposes of the scheme with the following modifications:
 - (a) section 2AA of the Law (as it applies under this regulation) is modified so that a civil penalty provision includes a relevant regulation, and the other provisions of the Law that refer to a civil penalty provision will be taken to include a reference to a relevant regulation;
 - (b) section 2AB of the Law (as it applies under this regulation) is modified so that—
 - (i) the designated tier 1 regulations are taken to be civil penalty provisions prescribed by the Regulations under section 2AB(1)(c); and

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- (ii) the designated tier 2 regulations are taken to be civil penalty provisions prescribed by the Regulations under section 2AB(1)(b);
 - (c) section 61 of the Law (as it applies under this regulation) is modified so that an application to the Court in respect of a breach of a relevant regulation may be made by the Scheme Regulator on behalf of the State (as if a breach of a relevant regulation were a breach of the Regulations);
 - (d) sections 62 and 64 of the Law (as they apply under this regulation) are modified so that a reference to a breach of the Regulations includes a breach of a relevant regulation;
 - (e) section 69 of the Law (as it applies under this regulation) is modified so that a civil penalty with respect to a breach of a relevant regulation is payable to the State for payment into the Fund;
 - (f) Part 6 Division 5 of the Law (as it applies under this regulation) is modified so that—
 - (i) a reference to a ***tier 1 civil penalty provision*** includes a reference to a designated tier 1 regulation; and
 - (ii) a reference to a ***tier 2 civil penalty provision*** includes a reference to a designated tier 2 regulation; and
 - (iii) a reference to the AER were a reference to the Scheme Regulator;
 - (g) Schedule 2 clause 37A of the Law (as it applies under this regulation) is modified so that a reference to a civil penalty amount includes a reference to a civil penalty amount payable with respect to a breach of a relevant regulation.
- (3) In this regulation—
- designated tier 1 regulation*** means any of the following:
- (a) regulation 20(2);
 - (b) regulation 20(4);
 - (c) regulation 21(7);
 - (d) regulation 22(6);
 - (e) regulation 23(7);
 - (f) regulation 24(7);
 - (g) regulation 27(3);
 - (h) regulation 28(4);
 - (i) regulation 29;
 - (j) regulation 31(1);
- designated tier 2 regulation*** means any of the following:
- (a) regulation 15(3) (in relation to a regulated entity);
 - (b) regulation 30;
 - (c) regulation 31(6);

relevant regulation means a designated tier 1 regulation or designated tier 2 regulation.

Part 10—Application of Orderly Exit Management Framework

33—Application of Orderly Exit Management Framework

For the purposes of section 118AB of the *National Electricity (South Australia) Law*—

- (a) the whole of Part 8AA of that Law applies in South Australia on and from the day on which these regulations come into operation; and
- (b) the financial vehicle for the purposes of that Part (the **OEMF financial vehicle** is to be established (as the Minister thinks fit)—
 - (i) if the Scheme Administrator has appointed a Financial Vehicle under regulation 9(3)—by the Minister conferring, by notice in the Gazette, the functions referred to in section 118AS of the *National Electricity (South Australia) Law* on the Financial Vehicle; or
 - (ii) in any case—by the Minister establishing a body (including a company established under the *Corporations Act 2001* of the Commonwealth) and, by notice in the Gazette, identifying that body as the financial vehicle for the purposes of Part 8AA.

Part 11—Miscellaneous

34—Delegations

- (1) For the purposes of section 15B(2)(e) of the Act, the Minister may delegate any of the Minister's functions—
 - (a) to a scheme entity; or
 - (b) to another specified body or person (including a person for the time being holding or acting in a specified office or position).
- (2) A delegation under this regulation—
 - (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the Minister to act in any particular matter; and
 - (c) is revocable at will by the Minister.

35—Guidelines made by Scheme Regulator

- (1) The Scheme Regulator may make guidelines in respect of the processes that will apply for the purposes of making or varying contribution determinations and related matters, or that will otherwise apply with respect of the scheme, including guidelines with respect to—
 - (a) consultation processes in connection with making a contribution determination; and

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- (b) the collection any payment of money under a contribution notice or an initial contribution notice; and
 - (c) the roles and responsibilities of scheme entities in connection with the contribution determination processes; and
 - (d) principles, methodologies or approaches that are to be applied in allocating amounts to TNSP's under a contribution determination; and
 - (e) annual reporting requirements for scheme entities; and
 - (f) reporting requirements for regulated entities; and
 - (g) any other matter that is—
 - (i) contemplated by these regulations as being the subject of guidelines made by the Scheme Regulator for the purposes of the scheme; or
 - (ii) considered by the Scheme Regulator as being expedient in connection with the Scheme Regulator's functions under these regulations.
- (2) The Scheme Regulator must ensure that any guidelines made by the Scheme Regulator under this regulation are published on a website determined by the Scheme Regulator.

36—Variation of licence conditions

For the purposes of section 15B(2)(m) of the Act, it will be a condition of a TNSP's licence issued under Part 3 Division 1 of the *Electricity Act 1996* that the TNSP will comply with the requirements of an initial contribution notice or contribution notice under these regulations.

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

with the advice and consent of the Executive Council
on

No of 2025