



WATER INDUSTRY RULE NO.1

EXCLUDED RETAIL SERVICES

WIR/01

CONSULTATION DRAFT

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Enquiries concerning this Industry Rule should be addressed to:

Essential Services Commission of South Australia
GPO Box 2605
Adelaide SA 5001

Telephone: (08) 8463 4444
Freecall: 1800 633 592 (SA and mobiles only)
E-mail: escosa@escosa.sa.gov.au
Web: www.escosa.sa.gov.au

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The Essential Services Commission of South Australia is the independent economic regulator of the electricity, gas, ports, rail and water industries in South Australia. The Commission's primary objective is the *protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services*. For more information, please visit www.escosa.sa.gov.au.

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1 INTRODUCTION

1.1 Authority

- 1.1.1 This Water Industry Rule No. 1 – Excluded Retail Services is made by the **Commission** as an industry rule pursuant to Part 4 of the **ESC Act**.

1.2 Purpose

- 1.2.1 The **Commission** has made a **price determination** under the **ESC Act**, as authorised by the **Water Industry Act**, regulating the prices which **SA Water** may charge for the provision of **excluded retail services** during the period 1 July 2013 to 30 June 2016.
- 1.2.2 **SA Water** is required by section 27 of the **ESC Act** to comply with the requirements of the **price determination**.
- 1.2.3 **Excluded services** are a class of **excluded retail services** in respect of which a pricing principles form of price regulation has been established by the **Commission** through the **price determination**.
- 1.2.1 Clause 5.1.1 of the **price determination** requires **SA Water**, in setting prices for **excluded retail services** for each **regulatory year**, to comply with the following principles:
- (a) NWI Principle 1 for the recovery of capital expenditure;
 - (b) NWI Principle 7 for urban water tariffs;
 - (c) NWI Principle 8 for urban water tariffs;
 - (d) NWI Principle 9 for urban water tariffs;
 - (e) NWI Principle 10 for urban water tariffs;
 - (f) where an **excluded retail service** is provided for the sole benefit of one customer, that customer should pay the full efficient cost of the service and other customers should not be required to contribute to the cost of the service;
 - (g) where an **excluded retail service** is provided to a distinct group of customers, the prices charges to those customers should reflect:
 - (i) the incremental cost of supply of that **excluded retail service** to those customers; and
 - (ii) a reasonable allocation of the fixed costs of providing that **excluded retail service**; and
 - (h) prices should reflect the efficient cost of provision of the relevant **excluded retail service**, provided that in circumstances where the cost of implementing differentiated prices to different customers is more likely than not to outweigh the benefits, undifferentiated prices may be implemented.

- 1.2.2 Clause 5.1.2 of the **price determination** provides that, in addition to the matters specified in clause 5.1.1, in setting prices for excluded retail services for each **regulatory year SA Water** must also comply with any principles, requirements or matters specified by the **Commission** under an industry code, industry rule or guideline as in force from time to time in respect of the provision of **excluded retail services**.
- 1.2.3 Clause 6 of the water retail licence held by **SA Water** obliges **SA Water** to comply with the terms of any industry rule made by the **Commission** from time to time.
- 1.2.4 This industry rule is an industry rule for the purposes of clause 5.1.2 of the **price determination** and clause 6 of the water retail licence held by **SA Water**.

1.3 *Scope*

- 1.3.1 This industry rule sets out requirements in relation to **excluded retail services** in respect of the following matters:
- (a) the determination of disputes as to **SA Water's** compliance with the requirements of the **price determination** in respect of the compliance of the price of an **excluded retail service** with clause 5.1.1 of the **price determination** and any requirements of this industry rule; and
 - (b) the information that **SA Water** or another person may have to provide to the **Commission** in the event that the **Commission** determines that such a dispute exists.

1.4 *Definitions and Interpretation*

- 1.4.1 In this industry rule, unless the context otherwise requires:
- (a) the words “shall” and “must” indicate mandatory requirements, unless the overall meaning of the phrase in which one of these words appears is otherwise;
 - (b) headings are for convenience only and do not affect the interpretation of this Industry rule;
 - (c) words importing the singular include the plural and vice versa;
 - (d) words importing a gender include any gender;
 - (e) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency;
 - (f) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;

- (g) a reference to any statute, regulation, proclamation, order in council, ordinance or bylaw 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;
- (h) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
- (i) an event which is required under this industry rule to occur on or by a stipulated day which is not a **business day** may occur on or by the next **business day**.

1.4.2 In this industry rule words and phrases presented in a bold font such as **this** have the following meanings:

best endeavours	means to act in good faith and use all reasonable efforts, skill and resources.
business day	means a day that is not a Saturday, a Sunday or a public holiday in the State of South Australia.
Commission	means the Essential Services Commission established under the ESC Act .
Price Determination	means the price determination made by the Commission on 27 May 2013 in accordance with the provisions of the ESC Act , as authorised by the Water Industry Act .
ESC Act	means the Essential Services Commission Act 2002 (SA).
SA Water	has the same meaning as given to that term in the price determination .
excluded services	has the same meaning as given to that term in chapter 8 of the price determination , as follows: <ul style="list-style-type: none"> (a) standard and non-standard connection services; (b) miscellaneous minor services; (c) annual sewerage and recycled water audit services; (d) fire plug flow testing; (e) easement extinguishment services; and

(f) network analysis services.

regulatory year means a period of 12 months ending on 30 June during the period for which the **price determination** is in effect.

Water Industry Act means the Water Industry Act 2012.

- 1.4.3 Where words and phrases are not defined in this industry rule, they will have the meaning given to them by the **Water Industry Act, ESC Act, price determination** or any other relevant regulatory document made by the **Commission** (as the case may be).

1.5 Confidentiality

- 1.5.1 The **Commission's** obligations regarding confidentiality and the disclosure of information provided to it by **SA Water** or any other person are governed by Part 5 ("Collection and Use of Information") of the **ESC Act**.

1.6 Application

- 1.6.1 This industry rule applies to **SA Water** in its capacity as the holder of a licence under Part 3 of the **Water Industry Act**.
- 1.6.2 This industry rule also applies to a person in dispute with **SA Water** in relation to the price of an **excluded retail service** which that person purchases or is seeking to purchase.

1.7 Version History and Effective Date

- 1.7.1 An Issue Number and Commencement Date will identify every version of this industry rule.

2 DISPUTE RESOLUTION

2.1 *What constitutes a dispute?*

- 2.1.1 **SA Water** must handle complaints in relation to the prices of **excluded retail services** in accordance with the complaint and dispute resolution procedures approved by the **Commission** under the **Water Retail Code – Major Retailers**.
- 2.1.2 The **Commission** may decide that a dispute exists between **SA Water** and a person in relation to the price of an **excluded retail service** if there is no satisfactory resolution of a complaint in accordance with the complaint and dispute resolution procedures referred to in clause 2.1.1.
- 2.1.3 The **Commission** may also decide that a dispute exists between **SA Water** and a person in relation to the price of an **excluded retail service** where there is no timely progress towards the resolution of a complaint in accordance with the complaint and dispute resolution procedures referred to in clause 2.1.1.
- 2.1.4 The **Commission** will not consider a purported dispute notified to it where it determines that:
 - (a) the application for review of a dispute is vexatious; or
 - (b) the subject matter of the application for review of a dispute is trivial, misconceived or lacking in substance.

2.2 *Publication*

- 2.2.1 Subject to confidentiality requirements as set out in clause 1.5, if an application is made for a review of a dispute, the **Commission**:
 - (a) will advise **SA Water** and the person with whom **SA Water** is in dispute of the application;
 - (b) will provide a copy of the application to the **SA Water** or the person with whom **SA Water** is in dispute (as the case may be);
 - (c) may publish a copy of the application on its website; and
 - (d) may invite submissions on the matter the subject of the review in a manner and within a period specified by the **Commission**.

2.3 *Commission role if a dispute arises*

- 2.3.1 If the **Commission** decides that a dispute exists between **SA Water** and a person in relation to the price of an **excluded retail service**, the **Commission** will decide whether the price proposed to be charged by **SA Water** in respect of the **excluded retail service** complies with clause 5.1.1 of the **price determination** and any requirements of this industry rule.

- 2.3.2 Where the **Commission** decides that the price proposed to be charged by **SA Water** in respect of the **excluded retail service** does not comply with clause 5.1.1 of the **price determination** or this industry rule, it will notify **SA Water** and the person of the price which it considers would comply with those requirements.
- 2.3.3 Where relevant to do so the **Commission** may also provide advice as to the application of a compliant price.

2.4 *Information that may be required from SA Water*

- 2.4.1 In the event that the **Commission** decides that a dispute exists between **SA Water** and a person in relation to the price of an **excluded retail service**, **SA Water** will be required to provide the **Commission**, within a timeframe to be specified by the **Commission** at the time, with information regarding the dispute including, but not limited to, the following matters:
- (a) written confirmation that the matter has not been resolved, despite escalation, in accordance with the complaint and dispute resolution procedures referred to in clause 2.1.1;
 - (b) written history of the dispute, including copies of all relevant information – correspondence, notes of telephone conversations, electronic communications, records of meetings and other relevant background information;
 - (c) a timeline showing the history of attempts to resolve the dispute and explaining the rationale for successive offers (if any were made);
 - (d) a submission detailing why the **excluded retail service** price is, in the opinion of **SA Water**, compliant with the requirements of clause 5.1.1 of the **price determination** and any requirements of this industry rule, addressing at least the following matters:
 - (i) a description of the **excluded retail service**;
 - (ii) the operating costs (if any) required to provide the **excluded retail service**;
 - (iii) the capital related costs (if any) required to provide the **excluded retail service**, including capital expenditure requirements and depreciation allowances;
 - (iv) relevant cost drivers, such as customer numbers and sales;
 - (v) relevant internal and external benchmarks of either price or cost components;
 - (vi) the overall profitability of **excluded retail service**; and
 - (vii) any other information that **SA Water** considers relevant in justification of the **excluded retail service** price.

- 2.4.2 Where **SA Water** considers that the **excluded retail service** price is compliant with the requirements of clause 5.1.1 of the **price determination** and any requirements of this industry rule on the basis that it is a market determined price, in addition to the matters specified in clause 2.4.1, **SA Water** must provide the following information:
- (a) a definition of the relevant market for the **excluded retail service**;
 - (b) justification for any assertion that effective competition exists for the excluded service (for example, information on market share); and
 - (c) relevant price benchmarks supporting the **SA Water**' price for the **excluded retail service**.
- 2.4.3 **SA Water** must provide the information required under this clause 2.4 within 20 **business days** of the **Commission** determining that a dispute exists, unless otherwise agreed by the **Commission**.
- 2.4.4 Nothing in this clause 2.4 limits the right of the **Commission** to require further information from **SA Water** in relation to a dispute.
- 2.4.5 The **Commission** may also require similar information to that set out above from the person with whom **SA Water** is in dispute.

2.5 *Determination by the Commission*

- 2.5.1 Subject to clause 2.5.2, a dispute will be determined within 8 weeks of the application being lodged with the **Commission**.
- 2.5.2 The **Commission** may, at its absolute discretion, extend the time period for determination of a dispute by publication of a written notice setting out the new time by which the dispute will be determined:
- (a) to **SA Water**;
 - (b) to the person with whom **SA Water** is in dispute; and
 - (c) on the **Commission's** website.
- 2.5.3 After considering the application, the **Commission** will determine whether or not the **excluded retail services** price is compliant with the requirements of clause 5.1.1 of the **price determination** and any requirements of this industry rule.
- 2.5.4 The **Commission** will give **SA Water** and the person with whom **SA Water** is in dispute written notice of the **Commission's** determination under clause 2.5.3 and an outline of the reasons for that determination.



The Essential Services Commission of South Australia

Level 1, 151 Pirie Street Adelaide SA 5000

GPO Box 2605 Adelaide SA 5001

08 8463 4444 | escosa@escosa.sa.gov.au | www.escosa.sa.gov.au

