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26 June 2012

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Dear Mr. Ford

VARIATION OF EXEMPTION ISSUED TO OSBORNE COGENERATION PTY LTD

As previously advised to you, I confirm that, pursuant to section 80(3) of the *Electricity Act 1996*, the Essential Services Commission of South Australia has approved the variation to the terms of the exemption held by Osborne Cogeneration Pty Ltd, with effect from 13 June 2012.

The variation is limited to an amendment to the definition of "Power Purchase Agreement" as defined in the exemption.

An original copy of the notice of variation of exemption is enclosed for your records.

Please contact Kate Morrison, Manager Legal and Licensing, on (08) 8463 3959 if you have any queries on the matters raised in this correspondence.

Yours sincerely

Paul Kerin

CHIEF EXECUTIVE OFFICER



ESSENTIAL SERVICES COMMISSION

NOTICE OF VARIATION OF EXEMPTION ISSUED 27 JUNE 2001

SECTION 80 OF THE ELECTRICITY ACT 1996 (SA)

1 RECITAL:

- 1.1 On 27 June 2001, pursuant to sub-section 80(1) of the Electricity Act 1996 (SA) (*Electricity Act*), the Essential Services Commission (*Commission*) granted an exemption in favour of Osborne Cogeneration Pty Limited (ACN 072 027 331) (*OCPL*) from the requirement to hold a licence under Part 3 of the *Electricity Act* in respect of the generation of electricity at the Osborne Power Station, subject to conditions specified in the schedule to that exemption. The Minister for Energy approved the granting of the exemption.
- 1.2 Electricity generated by the Osborne Power Station is sold by *OCPL* to Origin Energy Electricity Ltd (ACN 071 052 287). Origin Energy Electricity Ltd is the registered generator for the purposes of the National Electricity Rules and holds a generation licence issued by the *Commission* in respect of the Osborne Power Station.
- 1.3 The licensing and exemption regime in place in respect of the Osborne Power Station is dependent upon the on-going existence of a Power Purchase Agreement between ETSA Utilities and *OCPL* dated 4 June 1996 (*Power Purchase Agreement*). The *Power Purchase Agreement* is expressly defined in the exemption.
- 1.4 The current drafting of the definition of *Power Purchase Agreement* in the exemption is such that it may impact on *OCPL's* ability to vary the *Power Purchase Agreement*, an act expressly contemplated by the *Power Purchase Agreement* provided appropriate notification of a variation is given.
- 1.5 In light of this anomaly, on 23 May 2012, pursuant to section 80(3) of the *Electricity Act*, *OCPL* applied to the *Commission* for a variation to the exemption, limited to a variation of the definition of *Power Purchase Agreement*.
- 1.6 On 13 June 2012, the *Commission* approved *OCPL's* application to vary the exemption.

2 VARIATION:

2.1 Pursuant to section 80(3) of the *Electricity Act*, the *Commission* varies the exemption issued to *OCPL* on 27 June 2001, limited to a variation of the definition of *Power Purchase Agreement*, as follows:

“Power Purchase Agreement” means the Power Purchase Agreement entered into between ETSA Corporation and Osborne Cogeneration dated 4 June 1996 (as amended or otherwise affected by subsequent agreement from time to time and as novated prior to 6 June 2012), and if the context requires, includes any provision of the Power Purchase Agreement.

2.2 The variation takes effect on and from 13 June 2012.

2.3 Subject to the variation set out in paragraph 2.1 above, in all other respects, the terms and conditions of the exemption are confirmed.

THE COMMON SEAL OF)
THE ESSENTIAL SERVICES)
COMMISSION OF SOUTH)
AUSTRALIA was hereunto affixed)
by authority of the Chairperson)
and in the presence of:)



R.P. Shambhan

.....
Witness

26/6/12

.....
Date

THE SOUTH AUSTRALIAN INDEPENDENT INDUSTRY REGULATOR

EXEMPTION

PURSUANT TO SUB-SECTION 80.(1) OF THE ELECTRICITY ACT, 1996 (SA)

RECITAL:

Pursuant to an Exemption granted by the Technical Regulator on 16 December 1998 under section 80 of *the Act* (as then in force), *Osborne Cogeneration* is not required to be licensed under *the Act* for its generation operations at Osborne Power Station.

Pursuant to section 80.(3) of *the Act* and to the terms of that Exemption, the *Industry Regulator* may revoke the Exemption on 28 days notice in writing to *Osborne Cogeneration*.

The *Power Purchase Agreement* sets out the *interests*, as between *Osborne Cogeneration* and Flinders Osborne Trading Pty Limited (ACN: 094 183 749), relating to the generation of electricity at, and the purchase of electricity generated by, Osborne Power Station. *The Licensees* hold a Joint Licence authorising them to generate electricity at Osborne Power Station.

As *Osborne Cogeneration* is presently exempted from the requirement to be licensed under the *Act*, the *Industry Regulator* considers that *Osborne Cogeneration* should continue to be exempt from the requirement to hold a licence. Nevertheless, the *Industry Regulator* considers that the Exemption held by *Osborne Cogeneration* should (to the extent applicable taking into account the *interests* of *Osborne Cogeneration* under the *Power Purchase Agreement*) contain conditions imposing the duties and obligations that would be required by *the Act* (as presently in force) if *Osborne Cogeneration* were licensed.

NOTICE OF REVOCATION OF THE EXEMPTION DATED 16 DECEMBER 1998:

Notice is given to *Osborne Cogeneration* that the Exemption granted by the Technical Regulator on 16 December 1998 is hereby revoked.

EXEMPTION:

Pursuant to sub-section 80.(1) of *the Act*, the *Industry Regulator* hereby grants an Exemption to *Osborne Cogeneration* from the requirement to hold a licence under Part 3 of *the Act* in respect of the generation of electricity at Osborne Power Station, subject to conditions described below.

This Exemption is to take effect on the same day as the Notice of Revocation of the Exemption dated 16 December 1998 takes effect, that is, 28 days after the Notice of Revocation has been given to *Osborne Cogeneration*. This Exemption terminates on the same day and at the same time that the *Power Purchase Agreement* terminates or expires.

CONDITIONS IMPOSED PURSUANT TO SECTION 80.(1):

This Exemption is subject to the Condition set out below as well as to the Conditions set out in the Schedule attached to this Exemption.

Osborne Cogeneration is required to inform the *Industry Regulator*, as soon as possible, of any intention to terminate the *Power Purchase Agreement*, or of the cessation of operation of the

Power Purchase Agreement; or of any intention to novate, assign, or amend the **Power Purchase Agreement** that **Osborne Cogeneration** reasonably believes would impact on the effective operation of the above-mentioned Joint Licence or of this Exemption.

DEFINITIONS:

"**the Act**" means the *Electricity Act, 1996 (SA)*;

"**Industry Regulator**" means the body corporate established by section 4 of the *Independent Industry Regulator Act, 1999 (SA)*;

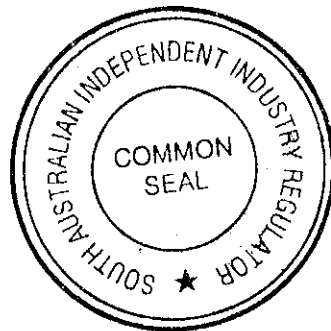
"**interests**" includes, as appropriate: rights, interests, powers and privileges; and duties, obligations and liabilities;

"**the Licensees**" means Flinders Osborne Trading Pty Limited (ACN: 094 183 749) and NRG Flinders Operating Services Pty Limited (ACN: 094 130 837);

"**Osborne Cogeneration**" means Osborne Cogeneration Pty Limited (ACN 072 027 331);

"**Power Purchase Agreement**" means the Power Purchase Agreement entered into between ETSA Corporation and Osborne Cogeneration dated 4 June 1996 (in its form as at 25 June 2001), and if the context requires, includes any provision of the **Power Purchase Agreement**.

The **COMMON SEAL** of the **SOUTH AUSTRALIAN INDEPENDENT INDUSTRY REGULATOR** was hereunto affixed by authority of the South Australian Independent Industry Regulator and in the presence of:



[Handwritten signature]

Witness

Date: 27/6/01

I APPROVE THE GRANTING OF THIS EXEMPTION:

The **COMMON SEAL** of the **TREASURER** was hereunto affixed by authority of the Treasurer and in the presence of:



[Handwritten signature]

Witness

Date:

SCHEDULE

The following conditions apply to *Osborne Cogeneration*:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Words appearing in italics like *this* are defined in Part 1 of the Annexure to this Schedule.
- 1.2 These Conditions must be interpreted in accordance with the rules set out in Part 2 of the Annexure to this Schedule.
- 1.3 For the purposes of the application of Clauses 2 and 3 of this Schedule and of regulations 31B and 31C of the Electricity (General) Regulations 1997, this Exemption shall be treated as if it were a licence authorising *Osborne Cogeneration* to generate electricity under the *Act* at the Osborne Power Station and as if *Osborne Generation* were the holder of such a licence.

2. COMPLIANCE WITH CODES

Osborne Cogeneration must:

- (a) comply with all applicable provisions of the *Transmission Code*, the *Distribution Code* and the *Metering Code*;
- (b) comply with all applicable provisions of any other *Code* or *rule* made by the *Industry Regulator* from time to time; and
- (c) notify the *Industry Regulator* if it commits a material breach of the *Transmission Code*, the *Distribution Code* or the *Metering Code* within 3 days after becoming aware of that breach.

3. SAFETY AND TECHNICAL MANAGEMENT PLAN

Osborne Cogeneration must:

- (a) within 6 months of the commencement of this Exemption, prepare a safety and technical management plan dealing with the matters prescribed by regulation and submit the plan to the *Industry Regulator* for approval;
- (b) annually review, and if necessary update, the plan to ensure its efficient operation, and submit the updated plan to the *Industry Regulator* for approval;
- (c) comply with the plan (as updated from time to time) as approved by the *Industry Regulator*;
- (d) not amend the plan without the approval of the *Industry Regulator*; and
- (e) undertake annual audits of its compliance with its obligations under the plan and report the results of those audits to the *Technical Regulator*, in a manner approved by the *Technical Regulator*.

4. PLANNING COUNCIL

- 4.1 *Osborne Cogeneration* must, following a request from the *Planning Council*, provide to the *Planning Council* such documents and information as the *Planning Council* may reasonably require for the performance of its functions under the *Act*.

5. INFORMATION TO THE INDUSTRY REGULATOR

5.1 **Osborne Cogeneration** must, from time to time, provide to the **Industry Regulator**, in a manner and form determined by the **Industry Regulator**:

- (a) An annual return by 15 September each year, setting out details of its performance, in the financial year ending 30 June prior to the reporting date, in relation to:
- total energy sales on MW/h;
 - plant availability;
 - number of outages(planned and unplanned);
 - details of its directors, secretaries and major shareholders as at 30 June;
 - the audited balance sheet and profit and loss statement; and
- (b) such other information as the **Industry Regulator** may require from time to time.

6. OPERATION AND COMPLIANCE AUDITS

6.1 Except as otherwise provided by a Guideline referred to in clause 6.2, **Osborne Cogeneration** must undertake audits, at least annually, of the operations the subject of this Exemption and of their compliance with their obligations under this Exemption and any applicable **Codes**, and provide the results of those audits to the **Industry Regulator**.

6.2 Where the **Industry Regulator** has published a Guideline relating to Compliance Systems and Reporting, the audits referred to in clause 6.1:

- (a) must be conducted at times;
- (b) must be conducted in the manner; and,
- (c) the results of the audit must be reported to the **Industry Regulator** in the manner set out in that Guideline.

6.3 If the **Industry Regulator** considers it appropriate, the **Industry Regulator** may require **Osborne Cogeneration** to use an independent expert nominated or approved by the **Industry Regulator** to undertake the audits (or any part of the audits) referred to in clause 6.1 in the manner and at the times determined by the **Industry Regulator**.

7. COMPATIBILITY

Osborne Cogeneration must not do anything to its electricity generating plant affecting the compatibility of its electricity generating plant with any **distribution network** or **transmission network** so as to prejudice public safety or the security of the power system of which the electricity generating plant forms a part.

ANNEXURE PART 1: DEFINITIONS

1. DEFINITIONS

In this Schedule:

"Act" means the *Electricity Act, 1996* (SA);

"business day" means a day on which banks are open for general banking business in Adelaide, excluding a Saturday or Sunday;

"Code" means any code, made by the *Industry Regulator* under section 23 of the *Industry Regulator Act*, as in force from time to time;

"Distribution Code" means the code of that name made by the *Industry Regulator* under section 23 of the *Industry Regulator Act* which regulates connections to a *distribution network* and the supply of electricity by distributors.

"distribution licence" means a licence to operate a *distribution network* granted under Part 3 of the *Act*;

"distribution network" has the meaning given to that term under the *Act*;

"electricity entity" means a person who has been granted a licence under Part 3 of the *Act* to carry on operations in the electricity supply industry;

"Industry Regulator" means the South Australian Independent Industry Regulator under the *Industry Regulator Act*;

"Industry Regulator Act" means the *Independent Industry Regulator Act, 1999 (SA)*;

"Metering Code" means the code of that name made by the *Industry Regulator* under section 23 of the *Industry Regulator Act* which regulates the installation, maintenance and testing of meters;

"National Electricity Law" means the *National Electricity Law* referred to in the *National Electricity (South Australia) Act 1996 (SA)*;

"National Electricity Code" means the *Code*, as defined in the *National Electricity Law*;

"officer" means a director or secretary,

"Planning Council" means the Electricity Supply Industry Planning Council established under Part 2 of the *Act*;

"rule" means any rule, made by the *Industry Regulator* under section 23 of the *Industry Regulator Act*, as in force from time to time;

"Technical Regulator" means the person holding the office of Technical Regulator under Part 2 of the *Act*;

"Transmission Code" means the code of that name made by the *Industry Regulator* under section 23 of the *Industry Regulator Act*;

"transmission licence" means a licence to operate a *transmission network* granted under Part 3 of the *Act*; and

"transmission network" has the meaning given to that term under the *Act*.

ANNEXURE

PART 2: INTERPRETATION

2. INTERPRETATION

- 2.1 It is the intent of this Exemption that the conditions of this Exemption be construed in a manner which (to the extent necessary) takes into account the particular duties and obligations that are imposed on *Osborne Cogeneration* under the *Power Purchase Agreement*.
- 2.2 In this Schedule, unless the context otherwise requires:
- (a) headings are for convenience only and do not affect the interpretation of this Schedule;
 - (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;
- (e) 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;
- (f) 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;
- (g) an event which is required under this Schedule to occur on or by a stipulated day which is not a *business day* may occur on or by the next *business day*; and,
- (h) a reference in this Schedule to electricity generating plant of a body includes a reference to electricity generating plant which is not owned by the body but is operated by the body.