



Review of 2011-2014 Electricity Standing Contract Price Determination

Statement of Regulatory Intent

Purpose

1. This Statement of Regulatory Intent, issued by the Essential Services Commission (**Commission**), sets out the Commission's position as to whether or not special circumstances exist which would enable it, through a subsequent regulatory process, to vary the terms of the current Electricity Standing Contract Price Determination (**ESCPD**).

Statement Of Regulatory Intent

2. The ESCPD was made by the Commission on 14 December 2010 under Part 3 of the Essential Services Commission Act 2002 (**ESC Act**), as authorised by the provisions of sections 36AA and 35A of the Electricity Act 1996 (**Electricity Act**).
3. Under section 36AA of the Electricity Act, once made an ESCPD must continue for a minimum three-year period and cannot be varied or revoked unless the Commission has determined that special circumstances exist.
4. However, section 36AA(4a)(f) of the Electricity Act provides an exception to that general rule. That section provides that the Commission may make a subsequent price determination under the ESC Act, with the effect of varying an existing ESCPD, when it determines that special circumstances exist:

(f) if the Commission has determined that special circumstances exist—the Commission may make a determination that takes effect as a variation of the existing determination (with effect for the balance of the term of the existing determination (unless another variation is subsequently made))

5. In addition, section 36AA(4a)(d) of the Electricity Act provides a further exception to the general rule, whereby the Commission may, in cases where it has determined special circumstances to exist, revoke an existing ESCPD in entirety and replace it with a new ESCPD (which must be of at least three years' duration).
6. The Electricity Act does not define the term special circumstances. Therefore, the existence, or otherwise, of special circumstances in any given case is a matter for the Commission to determine, having regard to its own statutory imperative to protect the long-term interests of

consumers with respect to the price, quality and reliability of essential services, as well as other relevant statutory criteria arising under the ESC Act and the Electricity Act.

7. For the reasons set out in this Statement, the Commission has determined that:
 - a. the commencement of the Clean Energy Act 2011 (Cth) (**Clean Energy Act**) from 1 July 2012; and
 - b. the Australian Energy Regulator's approval (pursuant to the provisions of the National Electricity (South Australia) Act 1996 and the National Electricity Law and Rules) of the introduction of a new cost recovery scheme, comprising a year to year assessment of quantum, for the recovery of costs incurred by ETSA Utilities as a result of the South Australian feed-in mechanisms scheme, as established under Part 3, Division 3AB of the Electricity Act,

constitute special circumstances for the purposes of the Electricity Act.

8. As the Commission has determined that special circumstances exist, it is empowered, under section 36AA(4a)(f) of the Electricity Act, to vary the existing ESCPD if it considers it necessary to do so. It is also empowered to revoke and replace the existing ESCPD.
9. The Commission will therefore commence a process to determine whether or not the impacts of the identified special circumstances are such as to require a variation to the ESCPD. If the Commission determines that the impacts:
 - a. warrant a variation to the ESCPD, it will issue a draft variation price determination in accordance with the provisions of Part 3 of the Essential Services Commission Act 2002, which will include a consideration of whether it intends to vary, or to revoke and substitute, the existing ESCPD (which itself varied in June 2011);
 - b. do not warrant a variation to the ESCPD, it will issue a public notice on that determination.

Reasons

The ESCPD

10. On 14 December 2010, the Commission made the ESCPD under Part 3 of the ESC Act, as authorised by the provisions of sections 36AA and 35A of the Electricity Act, in respect of the electricity standing contract prices to apply from 1 January 2011 to 30 June 2014.
11. A key feature of the ESCPD was that it adopted a new price setting methodology, the Relative Price Movement (RPM) methodology, to provide greater price flexibility and alleviate many of the difficulties in relying on long-term cost forecasts, which carry the risks of consumers paying more than necessary for electricity.
12. The Statement of Reasons for the ESCPD described the operation of the RPM in the following terms:

Prices to apply at the commencement of the regulatory period will be determined by examining costs over the first year through the usual building block approach. This will ensure that the starting price is cost reflective.

Annual movements in standing contract prices during the regulatory period will then be determined with reference to movements in market contract prices in SA. The Commission will calculate a price index (RPM index), measuring the change in weighted average market contract prices. This percentage change will then determine the allowed change in standing contract prices.

Changes in the standing contract price resulting from the RPM index calculation will be bound by a floor and ceiling, to provide some certainty over the extent to which prices will move over the regulatory period. Should the RPM index calculation breach the boundaries of the tolerance band, prices will be fixed at the floor or ceiling (whichever is applicable). If there are sufficient grounds to allow standing contract prices to move beyond the floor or ceiling, the Commission may undertake a “special circumstances” review to consider whether or not such a move is justified¹.

Clean Energy Act 2011

13. The Australian Government’s Clean Energy Act will come into operation on and from 1 July 2012. Among other things, that Act introduces a price on carbon emissions by certain liable entities. In the fixed price stage that runs from 1 July 2012 to 30 June 2015, the carbon price will start at \$23 per tonne of carbon emissions in 2012/13 and will increase to \$24.15 per tonne in 2013/14 and \$25.40 per tonne in 2014/15. Thereafter, a flexible carbon price will apply.
14. On 13 February 2012, the Commission received an application from AGL SA Pty Ltd (**AGL SA**) to vary the ESCPD in respect of the “tolerance band” on the basis that the Clean Energy Act will result in cost changes which were not accounted for in the making of the ESCPD. AGL SA is of the view that this ought to constitute “special circumstances” for the purposes of the Electricity Act.²
15. In considering whether or not special circumstances exist as a result of the future commencement of the Clean Energy Act, the Commission has considered the legislative context for standing contracts established under the Electricity Act and the ESC Act, the provisions of the Clean Energy Act, AGL SA’s application and the submissions it has received on that application.
16. For the reasons that follow, the Commission has determined that the commencement of the Clean Energy Act from 1 July 2012 constitutes special circumstances for the purposes of section 36AA(4a)(f) of the Electricity Act:

¹ 2010-2014 Electricity Standing Contract Price Determination, Part A – Statement of Reasons, section 2.3, page A-36. Refer <http://www.escosa.sa.gov.au/library/101208-ElectricityStandingContractPrice-FinalPriceDetermination-PartA.pdf>

² <http://www.escosa.sa.gov.au/library/110213-SpecialCircumstancesReviewApplication-AGL.pdf>

- a. The price of carbon to be set under the Clean Energy Act was not taken in account directly in making the ESCPD and is not explicitly incorporated within either the initial prices set or the tolerance band limits set.
- b. While the Commission has not yet formed a view on the precise quantum of the costs arising under the Clean Energy Act in this regard, to the extent that those costs arise they will impact on a material component of the standing contract price and therefore investigation of this matter is warranted.

ETSA Utilities' Network Charges

17. Under the legislative framework established by the South Australian Government, the Australian Energy Regulator (**AER**) has responsibility for setting electricity network charges. For the purposes of establishing electricity standing contract prices, the Commission must treat ETSA Utilities' distribution network charges as being costs which are outside of the control of electricity retailers and therefore passed through directly to the standing contract price without further regulatory intervention by the Commission.³
18. On 23 December 2011, ETSA Utilities submitted a letter to the AER, giving notice of its intention to recover increased costs associated with administering the South Australian Feed-In Tariff (**FiT**) Scheme through increases in approved distribution network charges.
19. ETSA Utilities requested that the AER revoke its current distribution determination and make a new determination for the remainder of the period. The new determination would remove the FiT payment amounts which were assumed by the AER in 2010 and used for the purposes of determining distribution network charges for the 5-year regulatory period, and would introduce a new scheme whereby recovery of the FiT payments would be determined for each year of the regulatory period, based on up-to-date information on amounts credited to eligible PV customers.
20. The AER has approved ETSA Utilities' application for the revocation and substitution of the existing distribution price determination.⁴
21. In considering whether or not special circumstances exist as a result of a decision made by the AER approving future increases in ETSA Utilities' distribution prices arising from FiT payments the Commission has considered the legislative regime under the National Electricity Law and Rules, the legislative regime for standing contracts established under the Electricity Act and the ESC Act and the terms of ETSA Utilities' letter to the AER of 23 December 2011.
22. For the reasons that follow, the Commission has determined that the AER's approval of the introduction of a new cost recovery scheme for FiT payments, comprising a year to year assessment of the quantum of relevant costs to be recovered by ETSA Utilities through

³ 2010-2014 Electricity Standing Contract Price Determination – Variation Price Determination, section 1.4.6 to 1.4.8, page 2 to 3. Refer http://www.escosa.sa.gov.au/library/110704-2011_2014ElectricityStandingContractPrice-VariationPriceDetermination.pdf

⁴ Refer <http://www.aer.gov.au/content/item.phtml?itemId=752563&nodeId=779312709230665fa13fe709aac2953a&fn=Determination%20-%20ETSA%20Utilities%20-%20revocation%20and%20substitution.pdf>

approved distribution network charges, constitutes special circumstances for the purposes of section 36AA of the Electricity Act:

- a. The assessment of FiT costs on a year-on-year basis was not contemplated at the time of making the ESCPD. The ESCPD, and particularly the setting of the tolerance band limits, assumed the amount which were previously incorporated by the AER in approved distribution network charges as established under the electricity distribution determination made by the AER in respect of ETSA Utilities in 2010.
- b. While the Commission has not yet formed a view on the precise quantum of the costs arising in respect of the new FiT cost recovery scheme, to the extent that those costs arise they will impact on a material component of the standing contract price and therefore investigation of this matter is warranted.

Next Steps

23. As noted earlier in this Statement of Regulatory Intent, the Commission's determination that special circumstances exist is limited to that matter only: it does not extend to the question of what, if any, action the Commission will take in respect of the ESCPD.
24. However, having determined that special circumstances do exist, the Commission will move to consider the impacts of those events and will, by a subsequent public process, determine the actions which it will take in respect of the ESCPD.
25. As a part of the Commission's review process, the Commission is considering the feasibility of removing network costs from the RPM tolerance band. The Commission notes that this modification would have no effect on the resulting Electricity Standing Contract price. However, this variation would ensure that fluctuations in ETSA Utilities' network charges do not impact on the predetermined tolerance band.
26. The Commission will engage directly with relevant stakeholders to obtain feedback on the key issues that should be considered under this approach. The Commission will release its findings on the Commission's review process, including the proposal to remove network costs from the RPM tolerance band, in mid-June 2012.