

# Legal Alert

Energy

January 2020

## State Energy Minister Triggers T-3 Electricity Reliability Rule

### In a Nutshell:

South Australian Minister for Energy and Mining, Dan von Holst Pellekaan, recently made the decision to make a T-3 Electricity Reliability Instrument under freshly introduced legislative provisions. Although there is no denying that extreme climatic conditions could lead to potential disruption to electricity supply and demand in South Australia, both the State Parliament's decision to afford the Minister such a discretionary power, and the Minister's invocation of that power have been viewed as controversial moves by industry participants.

Given the exercise of the ministerial power was somewhat unanticipated (and the compressed timeframes under South Australian transitional provisions), liable entities now have a short amount of time to secure new electricity contracts ahead of the T-1 cut-off day.

#### Background

Newly introduced section 19B of the *National Electricity (South Australia) Act 1996* (Cth) confers power upon the South Australian Minister for Energy and Mining to make a T-3 Reliability Instrument if it appears to the Minister, on reasonable grounds, that there is a real risk that the supply of electricity to all or part of South Australia may be disrupted to a significant degree on one or more occasions during a particular period (i.e. where generation will not meet forecasted peak demand).

This Instrument forces entities to obtain firm on-demand contracts regarding the purchase or sale of electricity from the wholesale exchange.

The National Electricity Law does not confer the same power upon Ministers in other Australian jurisdictions; instead, the making of Reliability Instruments is the responsibility of AEMO and AER.

The South Australian legislation gives a large amount of discretion to the Minister to respond to an issue that, according to submissions from industry participants, is unduly interventionist and should be determined by energy regulators.

In addition to providing the Minister with the ability to make a Reliability Instrument, South Australian legislation also permits:

- the Minister also to revoke or vary a T-3 Reliability Instrument (with no time limitations whatsoever);
- the Governor to, by regulation, modify the application of the National Electricity Rules insofar as they apply to South Australia; and
- the Minister to make orders to market participants in response to electricity supply emergencies.

Industry participants are of the view that this kind of government intervention will interfere with market forces and distort electricity prices in an unfavourable direction for consumers.

#### Ministerial Action

On 9 January 2020, by notice in the Gazette, the Minister triggered this mechanism to protect against any significant reliability gaps in electricity supply in the State.

The Minister has prescribed two periods in January–March 2022 and 2023. During these periods, large generators including Origin Energy, AGL Energy and Engie will be required to offer contracts to retailers.

The AEMO has been reported as being supportive of the Minister's decision; however, it has been viewed by commentators (including the Australian Energy Council) as without justification, especially given that the announcement has come without a shortfall being forecast by AEMO (as is required in other States,

where Ministers do not have the same power to make Reliability Instruments as in South Australia).

### Three years to three months

The Minister has triggered a 15-month timeframe instead of the usual three-year timeframe, under transitional arrangements in the new legislation.

Ordinarily, a T-3 Instrument would be issued 3 years and 3 months before a forecasted reliability gap; however, the new legislation's transitional provisions permit the Minister to make a T-3 Instrument only 15 months ahead of a deemed reliability gap. Accordingly, liable entities face a compressed timeline of only three months to secure contracts ahead of the T-1 cut off day (which occurs 12 months ahead of a forecast reliability gap).

This comparatively small amount of notice for entities to secure sufficient qualifying contracts to meet their possible future compliance needs may have a distortionary impact on the market due to factors including:

- demand induced inflation of market prices;
- a potentially insufficient time to comprehensively negotiate, or re-negotiate and restructure, contracts; and/or
- an inadequate amount of time to make capital investment in alternative solutions.

The burden on market participants may well be high, causing onerous and expensive changes to entities' planning, purchasing and contracting strategies. This, combined with the potentially negative impact on competition in the market due to the hasty need for companies to secure additional contracts, as well as the potential to face financial penalties upon failing to do so, is not likely to be ideal for liable entities.

### Watch this space

It will be interesting to see how the remainder of the process will unfold under South Australia's modified and transitional regime, and interested parties will no doubt be keeping a close eye on publications from AEMO, AER and Minister regarding announcements about the issuance of T-1 Instrument or potential variations of the Minister's T-3 Instrument.

### Further information

This Alert is intended as general information only. It does not purport to be comprehensive advice or legal advice. Readers must seek professional advice before acting in relation to these matters.

If you have any queries regarding this alert and what it means for you and your operations, please contact:



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