

House of Assembly—No 100

As laid on the table and read a first time, 6 April 2011

South Australia

Electricity (Miscellaneous) Amendment Bill 2011

A BILL FOR

An Act to amend the *Electricity Act 1996*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Electricity (Miscellaneous) Amendment Act 2011*.

2—Commencement

- 5 This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Electricity Act 1996*

- 10 **4—Amendment of section 10—Technical Regulator's power to require information**

Section 10(1)—delete "under this Act" and substitute:

(whether under this Act or any other Act)

5—Amendment of section 11—Obligation to preserve confidentiality

Section 11(1)—delete "in the course of the performance of the Technical Regulator's functions" and substitute:

by the Technical Regulator

5 **6—Amendment of section 35A—Price regulation by Commission**

(1) Section 35A(1)—after paragraph (b) insert:

(ba) the feeding-in of electricity into a distribution network under Division 3AB;

(2) Section 35A—after subsection (2) insert:

10 (2a) In addition to the requirements of section 25(4) of the *Essential Services Commission Act 2002*, the Commission must, in acting under subsection (1)(ba), have regard to the fair and reasonable value to a retailer of electricity fed into the network by qualifying customers within the meaning of Division 3AB.

15 **7—Substitution of Part 3 Division 3AB**

Part 3 Division 3AB—delete the Division and substitute:

Division 3AB—Feed-in mechanisms

36AC—Interpretation

In this Division—

20 *designated day* means 1 October 2011;

excluded electricity means electricity generated by an excluded generator;

25 *excluded generator* means a small photovoltaic generator that, in the opinion of the operator of a distribution network from which permission to connect the generator is sought, would, but for the fact that the generator is an excluded generator by virtue of this definition, be installed for the dominant purpose of feeding into the network electricity generated by the generator (and the fact that a generator is to be installed in a pair or group of generators may be evidence that the generator is an excluded generator);

30 *excluded network* means a distribution network that supplies electricity to less than 10 000 domestic customers;

prescribed amount means the amount determined for the purposes of this Division by the Commission in accordance with section 35A;

35 *qualifying customer*—a small customer is a qualifying customer for the purposes of this Division;

qualifying generator means a small photovoltaic generator—

(a) that is operated by a qualifying customer; and

(b) that complies with *Australian Standard—AS 4777* (as in force from time to time or as substituted from time to time); and

(c) that is connected to a distribution network in a manner that allows electricity generated by the small photovoltaic generator to be fed into the network; and

(d) that is used in conjunction with a meter that complies with a code relating to meters published by the Commission and that falls within a class of meters approved by the Commission by notice in the Gazette,

other than where the distribution network is an excluded network;

small photovoltaic generator means a photovoltaic system with capacity up to 10kVA for a single phase connection and up to 30kVA for a three phase connection.

36AD—Feeding electricity into networks—requirements on holder of licence authorising retailing

(1) It is a condition of the licence of the electricity entity that has the relevant contract to sell electricity as a retailer to a qualifying customer who feeds electricity generated by a qualifying generator into a distribution network, other than an excluded network, that the retailer will, after taking into account any requirements prescribed by the regulations—

(a) credit against the charges payable by the qualifying customer for the sale of electricity to the qualifying customer the prescribed amount, or an amount determined by the retailer, being an amount greater than the prescribed amount, for electricity fed into the network in excess of the electricity used by the qualifying customer (after taking into account the operation of the following subsections); and

(b) reflect the credits under paragraph (a) and section 36AE in the charges payable by the qualifying customer for the sale and supply of electricity; and

(c) provide to the qualifying customer information relating to—

(i) the amount of electricity fed into the distribution network by the qualifying customer; and

(ii) the amounts to be credited for the benefit of the qualifying customer for electricity fed into the distribution network.

5 (2) If the whole of the amounts to be credited to a qualifying customer under paragraph (a) and section 36AE(1) in respect of electricity fed into a distribution network in a particular billing period has not been set-off against the charges payable by the qualifying customer for the supply of electricity at the end of that billing period, the qualifying customer is, subject to subsection (3), entitled to the payment of the outstanding balance.

10 (3) A retailer may, in respect of any outstanding balance to which a qualifying customer is entitled under subsection (2), pay the balance—

(a) at the end of the billing period referred to in subsection (2);
or

15 (b) not later than 1 year after the end of the billing period referred to in subsection (2) (but in such an event the retailer must pay all outstanding balances at that time).

36AE—Feeding electricity into networks—requirements on holder of licence authorising operation of distribution network

20 (1) It is a condition of a licence authorising the operation of a distribution network, other than an excluded network, that the holder of the licence will—

25 (a) allow a qualifying customer to feed into the network electricity generated by a qualifying generator (subject to complying with any relevant technical, safety or other requirements imposed by or under this or any other Act or any relevant instrument); and

30 (b) credit against the charges payable by the qualifying customer for the supply of electricity to the qualifying customer the amount of \$0.54 per kWh for electricity, other than excluded electricity, fed into the network under paragraph (a) in excess of the electricity used by the qualifying customer (after taking into account the operation of section 36AD and the following subsections); and

35 (c) comply with any reporting requirements imposed by the Minister under subsection (7).

40 (2) Subject to subsection (3), the holder of the licence authorising the operation of a distribution network is only required to credit a qualifying customer under subsection (1)(b) for the first 45kWh of electricity fed into the network each day (and the relevant electricity entity under section 36AD must reflect the relevant credit in giving effect to section 36AD(1)(b)).

- 5
- (3) For the purposes of subsection (2), the holder of the licence must average the electricity fed into the network by the qualifying customer over a billing period so as to determine an average daily feed-in amount (and the amount so determined will be taken to be the daily amount fed into the network over the billing period).
- 10
- (4) If a qualifying customer receives credit under subsection (1)(b) in respect of 1 qualifying generator, the qualifying customer is not entitled to credit for any electricity generated by a second or subsequent qualifying generator of the qualifying customer (but nothing in this subsection prevents such a second or subsequent qualifying generator from being connected to a distribution network for the purposes of feeding electricity into the network).
- 15
- (5) A person is not eligible to receive a credit under this section on or after the designated day in respect of a generator unless—
- (a) the generator is a qualifying generator immediately before the designated day; or
- (b) the person, before the designated day, has received permission to connect the generator to a distribution network from the holder of a licence authorising the operation of the network and has, within 120 days after the designated day, made arrangements with the holder of the licence for a new meter to be installed on account of that connection.
- 20
- (6) If a generator referred to in subsection (5)(a) or (b) is, on or after the designated day—
- (a) altered in a manner that increases the capacity of the generator to generate electricity; or
- (b) disconnected for any period,
- the generator will be taken to not be a qualifying generator for the purposes of this Division.
- 25
- (7) The Minister may, in connection with the operation or administration of this section—
- (a) by notice in the Gazette, impose reporting requirements on the holders of licences authorising the operation of distribution networks;
- 30
- (b) by subsequent notice in the Gazette, vary any reporting requirements previously imposed under this subsection (including by the substitution or addition of requirements).
- 35
- (8) Subsections (1)(b), (2), (3) and (4) will not apply to electricity fed into a distribution network after 30 June 2028.

8—Insertion of section 91A

After section 91 insert:

91A—Protection from liability

Nothing done by a person in furnishing information to the Commission, AEMO or the Technical Regulator in accordance with a requirement under this Act—

- (a) is to be regarded as placing the person in breach of contract or confidence or as otherwise making the person guilty of a civil wrong; or
- (b) is to be regarded as placing the person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding; or
- (c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or
- (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument; or
- (e) gives rise to any right or entitlement to damages or compensation.

Schedule 1—Transitional provisions

1—Preliminary

- (1) In this Schedule—

Commission means the Essential Services Commission established under the *Essential Services Commission Act 2002*;

new Division 3AB means Part 3 Division 3AB of the *Electricity Act 1996* (as substituted by this Act);

prescribed qualifying customer means a qualifying customer in relation to a generator where—

- (a) permission to connect to a distribution network for the purpose of feeding-in electricity generated by the generator as a qualifying generator in accordance with section 36AB(1)(a) of the *Electricity Act 1996* (as in existence immediately before the commencement of this Act) has been obtained before 1 September 2010; and
- (b) the generator has fed electricity into the network as a qualifying generator within 6 months after the commencement of this Act,

(but if the generator is, on or after 1 September 2010—

- (c) altered in a manner that increases the capacity of the generator to generate electricity; or
- (d) disconnected for any period,

then the status of the person as a prescribed qualifying customer in relation to that generator will no longer apply under this Schedule).

- (2) Terms used in this Schedule and also in new Division 3AB have the same meanings in this Schedule as they have in new Division 3AB.

5 **2—Existing qualifying customers**

A prescribed qualifying customer—

- (a) will be entitled to receive the credits under new Division 3AB in respect of excluded electricity (if any) generated by a qualifying generator; and
- 10 (b) will not be subject to the operation of section 36AE(2), (3), (4) and (5) (as enacted as part of new Division 3AB) with respect to a qualifying generator.

3—Commencement of certain provision

15 Until the commencement of section 36AD as substituted by this Act, section 36AD(2) of the *Electricity Act 1996*, as in existence immediately before the commencement of this Act, continues to apply to electricity entities holding licences to sell electricity as retailers to qualifying customers (as if this Act had not been enacted).

4—Initial determination of prescribed amount by Commission

- (1) The Commission must, after the commencement of this clause, make an initial determination in relation to the credits payable by a retailer for the feeding-in of electricity into a distribution network under section 36AD of the *Electricity Act 1996* (as to be inserted into that Act as part of new Division 3AB).
- 20 (2) Despite the amendments effected by section 6 of this Act and the provisions of the *Essential Services Commission Act 2002*, an initial determination—
- (a) will be made after the Commission has adopted such processes as the Commission thinks fit; and
- 25 (b) may be based on such principles, policies and other factors as the Commission thinks appropriate; and
- (c) will be made by the Commission by notice in the Gazette; and
- (d) will be binding on the electricity entities to which it is expressed to apply; and
- (e) must be made within 6 months from the commencement of this clause.
- 30 (3) An amount determined under this clause will be taken to be an amount determined under section 35A of the *Electricity Act 1996* for the purposes of the definition of prescribed amount in new Division 3AB.