

# Minister's Guidelines

Pursuant to Regulation 8(1)(a) of the *National Electricity (South Australia) (Firm Energy Reliability and Orderly Exit Management) Regulations 2025*

**September 2025**

## Overview

Capacity Commitments are a foundational component of the Firm Energy Reliability Mechanism (FERM, 'the Scheme'). The Notice of Intention (NOI) process is one mechanism by which recognised electricity entities make a Capacity Commitment under the Scheme. A Capacity Commitment made under the NOI is comprised of two components:

- 1) A commitment to remain in the South Australian region of the NEM during a Commitment Period; and
- 2) A commitment to make available a nominated amount of long duration dispatchable electricity capacity to the NEM during a Commitment Period.

Pursuant to regulation 8(1)(a) of the *National Electricity (South Australia) (Firm Energy Reliability and Orderly Exit Management) Regulations 2025* (the Regulations), these Guidelines seek to capture the Minister's requirements for the following aspects of the NOI process:

- 1) Applicability of the NOI process.
- 2) The form of the NOI.
- 3) Timing of the NOI process.
- 4) Applications for an exemption or a revised NOI in the event of an unplanned technical or plant failure beyond the relevant recognised electricity entity's reasonable control.

For the avoidance of doubt, any requirements outlined in these Guidelines are in addition to and do not derogate from the requirements contained in the Regulations, including in relation to the functions and obligations of the Scheme Regulators and recognised electricity entities.

For the purpose of the Regulations and these Guidelines, the following entities have been appointed by the Minister as Scheme Regulators pursuant to regulation 9(1)(b) of the Regulations:

- 1) the **Essential Services Commission of South Australia** (ESCOSA) – to undertake the NOI process (amongst other functions); and
- 2) the **Australian Energy Regulator** (AER) – to oversee and monitor compliance with the scheme and oversee the NOI revision and exemption process (amongst other functions).<sup>1</sup>

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<sup>1</sup> Subject to the AER's formal appointment and approval of conferral of functions (as at the date of publication of these Guidelines).

Unless otherwise defined, capitalised terms in these Guidelines have the meaning set out in the Regulations.

## Eligibility

These Guidelines apply to all recognised electricity entities. Recognised electricity entities are existing designated electricity entities that fall within the definition of a long duration capacity provider (LDCP).

LDCP's include existing designated electricity entities and new designated electricity entities capable of providing long duration dispatchable electricity capacity who are recognised by the Minister from time to time as being an entity suitable to be a participant in the scheme, considering the criteria specified in Table 1.

**Table 1 – Long Duration Capacity Provider eligibility criteria**

Category	Criteria
<b>Capacity</b>	<p>Long duration capacity providers with at least 30MW capacity and capability to continually dispatch for at least 8 hours:</p> <ul style="list-style-type: none"> <li>• Gas and liquid fuel generators with a registered capacity of 30MW and above.</li> <li>• Integrated resource (storage) providers with a registered capacity of 30MW and 8 hours or above of storage as per AEMO's Generation Information Publication.</li> </ul>
<b>Connection</b>	<ul style="list-style-type: none"> <li>• Long duration capacity providers connected to the SA region of the NEM.</li> </ul>
<b>Registration</b>	<ul style="list-style-type: none"> <li>• Long duration capacity providers that are registered and operating as a generator/integrated resource provider in the NEM at the NOI release date.</li> </ul>

Recognised electricity entities who have made a Capacity Commitment via a FERM contract will not be required to participate in the NOI process during relevant Commitment Periods.

A list of long duration capacity providers (including recognised electricity entities) is published on the Department's website: [Firm Energy Reliability Mechanism \(FERM\) | Energy & Mining](#)

## Substantially Replaced Assets

An existing designated electricity entity can participate in Tender 1 on account of a substantial replacement of assets and if it is recognised as being equivalent to a new designated electricity entity by the Minister.

An existing designated electricity entity must indicate on its NOI if it is seeking Ministerial recognition as a new designated electricity entity for this purpose. The designated electricity entity must provide information of their proposed asset replacement including scope, anticipated cost and timing for Ministerial consideration.

## NOI Process

### Overview

ESCOSA must issue a NOI request to recognised electricity entities when directed to do so by the Minister pursuant to regulation 22(1).

The required format of the NOI is outlined in Schedule 1 of these Guidelines.

The service of document requirements as contained in Part 6 of the National Electricity Law (in the Schedule to the *National Electricity (South Australia) Act 1996 (SA)*) apply to the issue of NOI requests by ESCOSA.

A recognised electricity entity that receives a NOI request must submit a NOI response within the timeframe specified in the NOI request and in accordance with the requirements of these Guidelines.

ESCOSA must acknowledge receipt of all NOI responses.

ESCOSA must review all responses to the NOI process and:

- 1) Confirm that all recognised electricity entities have responded to the NOI Request.
- 2) Calculate the total of the Capacity Commitments made under the NOI.
- 3) Submit a final report to the Office of the Technical Regulator's (OTR) Planning and Forecasting team (on behalf of the Minister) with respect to the NOIs submitted (including a summary of the total Capacity Commitments for the Commitment Period and any recognised electricity entities that respond with an intention to exit during the Commitment Period or wish to be considered as a New Designated Electricity Entity for the purpose of FERM Tender 1).

## Requests for additional information

Where required, ESCOSA may request further information to clarify a recognised electricity entity’s response to a NOI Request.

## Extensions of time to submit NOI

ESCOSA may extend the timeframe for a recognised electricity entity to submit an NOI only if ESCOSA is satisfied that there are exceptional circumstances which justify such an extension. Any extension must not be longer than 10 business days from the initial timeframe specified in the NOI request.

In exercising this discretion, ESCOSA must take into account any impacts on timing for the NOI process and tender process under the FERM Regulations, as well as any other relevant considerations.

## Submission of final report to OTR

ESCOSA must submit the final report to the OTR within two weeks of receiving the NOIs from recognised electricity entities, subject to and excluding any outstanding NOIs as at the end of the relevant period. The report must include a list of any outstanding NOIs and the reasons (if known) for the failure to respond to the NOI request.

## NOI Timeline

The NOI process must be completed in accordance with the below timeline.

Activity	Timeline
1. <b>Minister publishes list</b> of long duration capacity providers and directs ESCOSA to issue a NOI Request	29 September 2025
2. ESCOSA <b>Issues a NOI request</b> to recognised electricity entities	Within 2 weeks of receiving the Ministerial direction
3. Recognised electricity entities respond <b>to NOI request</b>	Within 3 weeks of receiving the NOI request
4. ESCOSA <b>provides the Minister with a report</b> which contains a summary of total Capacity Commitments for the Commitment Period	Within 2 weeks of receiving the NOI responses

## Compliance with Capacity Commitments

### Compliance Monitoring

A recognised electricity entities' Capacity Commitment is critical to the security, reliability and affordability of electricity supply for South Australia. Recognised electricity entities must provide capacity at the level outlined in their NOI for the duration of the relevant Commitment Period. The AER must monitor compliance with Capacity Commitments made.

### Changing a Capacity Commitment

#### Increasing a Capacity Commitment

If a recognised electricity entity has indicated in a NOI that they intend to withdraw from or exit the NEM, or otherwise cease to provide long duration dispatchable electricity capacity during the commitment prior to which the NOI relates, but then elects to remain in the NEM or otherwise to provide long duration dispatchable electricity during the Commitment Period, the entity must notify ESCOSA in writing as soon as practicable (pursuant to regulation 22(6)(a) of the Regulations).

#### Deemed exemptions

Upon provision of written notice from a recognised electricity entity of a minor unplanned outage, an exemption under regulation 22(5) can be deemed (unless the AER determines otherwise).

For the purposes of these guidelines, a 'minor unplanned outage' means an unplanned outage of the recognised electricity entity's facility that results in a reduction in the level of long duration dispatchable electricity capacity indicated in the NOI for a period of less than 7 days.

#### Temporary exemption or revision to a Capacity Commitment

It is acknowledged that recognised electricity entities may include facilities that are near the end of their operational life. This section outlines how recognised electricity entities must act in response to a technical or plant failure, where that failure interferes with the ability to meet a Capacity Commitment.

If a recognised electricity entity reasonably believes that they may be unable to provide capacity at the level outlined in their Capacity Commitment for the duration of the relevant Commitment Period due to a technical or plant failure, the entity must monitor the situation and engage with the AER as soon as possible.

If, following such a technical or plant failure, the recognised electricity entity determines that a change is required to their Capacity Commitment (whether to Part 1 (availability) or Part 2 (capacity level)), the entity may apply to the AER in writing for:

- A temporary exemption from the requirement to comply with the Capacity Commitment during the Commitment Period (pursuant to regulation 22(5) of the Regulations) as a result of a technical or plant failure; or
- Approval to revise the NOI (pursuant to regulation 22(6)(b) of the Regulations) – if the recognised electricity entity wishes to change the level of long duration dispatchable electricity capacity it intends to provide in the NEM during the relevant Commitment Period as a result of a technical or plant failure.

An application for a temporary exemption or approval to revise the NOI must be lodged to the AER within 5 business days of non-compliance with the Capacity Commitment.

### Civil penalties

A recognised electricity entity will be liable for civil penalties for a failure to comply with a Capacity Commitment specified in the NOI under Part 9 of the Regulations, unless a relevant exemption or revision is granted.

The AER is responsible for overseeing and monitoring compliance with the provisions of the FERM scheme (including by regulated entities) and administering the civil penalty regime under the Regulations.

### Summary of pathways

A summary of the available pathways for an exemption or revision of a NOI is provided below and contained in Schedule 2.

Occurrence	Relevant pathway	Action Required by the LDCP
<b>Planned outage in accordance with NER / licensing requirements</b>	No action required	
<b>Minor unplanned outage (as defined below)</b>	Deemed Exemption	Notify the AER immediately
<b>Temporary (e.g. up to 6 months) change to Capacity Commitment due to an unplanned technical or plant failure.</b>	Apply for exemption from a Capacity Commitment	Apply to the AER for a temporary exemption (reg 22(5))

Occurrence	Relevant pathway	Action Required by the LDCP
<b>Prolonged (e.g. more than 6 months) or permanent change to Capacity Commitment due to an unplanned technical or plant failure.</b>	Revision of NOI	Seek the approval of the AER to revise the NOI (reg 22(6)(b))
<b>Increase to Capacity Commitment (including a change to no longer exit or mothball)</b>	Revision of NOI	Notify ESCOSA of the revised NOI (reg 22(6)(a))

### Interaction with early closure process

The Regulations or this Guideline do not derogate from any requirements under the National Electricity Rules (NER), including compliance with the early closure notification process in clause 2.10 of the NER.

It is a matter for each recognised electricity entity as to whether it makes a concurrent notification to AEMO and/or the AER where necessary at the same time as making an application for exemption or revised Capacity Commitment under the Regulations.

### Information to be provided with applications for an exemption or revised NOI

In applying for an exemption under regulation 22(5) or seeking approval to revise a NOI under regulation 22(6)(b), a recognised electricity entity must provide the following information to the AER:

- 1) Details of the relevant entity and a primary point of contact.
- 2) The relevant scheduled generating or bi-directional unit(s) and the MW capacity of the unit(s).
- 3) Details of the proposed exemption or revision to the NOI including applicable periods.
- 4) In the case of an exemption, details of the required maintenance, repair and/or reinstatement works (whether scheduled or unplanned) and a plan demonstrating when the facility will return to full operations and be able to provide the level of long duration capacity outlined in the Capacity Commitment.
- 5) The reasons why the recognised electricity entity is seeking an exemption or revised NOI, supported by relevant analysis, evidence or supporting information.
- 6) Any other relevant supporting information.

## **Review of application for exemption or revised NOI**

### **Acknowledgement of an application and initial review**

The AER must acknowledge receipt of a complete application for an exemption or revised NOI within 10 business days.

The AER must notify the Minister and ESCOSA of receipt of an application for an exemption or revision of a NOI.

### **Requests for further information**

If, in the AER's opinion, there is insufficient evidence to adequately assess an application for an exemption or a revised NOI, the AER may request further information from the recognised electricity entity.

A recognised electricity entity must respond to a request from the AER or for a request for information within 10 business days.

## Assessment of an application

In assessing an application for an exemption or a revised NOI, the AER may consider the following matters:

- 1) Information contained within the entity's application, including (but not limited to):
  - a) Details of the proposed exemption or revision to the NOI including applicable periods.
  - b) Plans for the required maintenance, repair and/or reinstatement works (whether scheduled or unplanned) and when the facility will return to full operations, as applicable.
  - c) The reasons why the recognised electricity entity is seeking an exemption or revised NOI.
  - d) Any other relevant supporting information provided.
- 2) If the application for exemption is necessitated by a technical or plant failure that was beyond the relevant recognised electricity entity's reasonable control including:
  - a) an 'emergency', being an event posing an imminent risk of:
    - i. death of personal injury to any person; or
    - ii. causing a major failure;
  - b) a 'force majeure event', meaning an event or circumstance, or combination of events and circumstances occurring after the date of NOI that:
    - i. is not within the reasonable control of the recognised electricity entity or its related bodies corporate;
    - ii. the recognised electricity entity or its related bodies corporate could not reasonably have avoided; and
    - iii. results in the recognised electricity entity being unable to comply with its Capacity Commitment (whether in whole or in part), other than an event or circumstance which is caused by the recognised electricity entity failing to comply with Good Electricity Industry Practice.
  - c) a 'major failure', being any mechanical or electrical failure of any plant or equipment located on the generation facility side of the transmission network connection point which:
    - iv. is reasonably likely to cost more than \$10 million exclusive of GST;
    - v. renders the facility unable to meet the Capacity Commitment; or

- vi. renders facility unable to be operated in a manner which allows the recognised electricity entity to comply with the NER (or any other applicable law, including work health and safety laws), other than a failure which is caused by the recognised electricity entity failing to comply with Good Electricity Industry Practice.
- 3) Whether the exemption is consistent with the purpose and objects of the scheme;
- 4) The nature and scale of the proposed exemption (including, e.g., whether there is a proposed reduction in more than 5% of the level of long duration dispatchable electricity capacity indicated in the NOI);
- 5) Any risks, impacts or consequences associated with granting the exemption;
- 6) Whether the application for exemption is necessitated by a requirement to meet a change in legal or regulatory obligations.
- 7) Any previous applications for an exemption or revision to the NOI by the same or other entities.
- 8) Relevant research produced by suitably qualified analysts.
- 9) Independent advice from expert consultants, if engaged.
- 10) Any other factor the AER considers relevant in the circumstances of the case.

### **Response to application for exemption or revised NOI**

Within 30 business days of receipt of all necessary information required to respond to the application for exemption or revision to the NOI, the AER must notify the recognised electricity entity of the decision to either:

- 1) Approve the exemption or revision to NOI; or
- 2) Deny the exemption or revision to NOI.

### **Reporting requirements**

The AER must notify the Minister and ESCOSA as soon as practicable following approval of any exemption or revision to a NOI.

In accordance with regulation 22(7)(b), ESCOSA will provide a report to the Office of the Technical Regulator's Planning and Forecasting team (on behalf of the Minister) of any NOI revisions made under regulation 22(6) and any exemptions granted under regulation 22(5).

## Schedule 1 – NOI Template

Key Information	
NOI request date	
NOI response date	
Commitment Period	
Asset/Site Name:	
Registered Owner:	
Registration Category:	<i>Please select:</i> Generator / Integrated Resource Provider
Relevant Point of Contact:	
NOI Authorised by:	<p><i>[signature]</i></p> <p><i>[name and title]</i></p> <p><i>[Date]</i></p>
Capacity Commitment	
<p><b>1. Availability</b></p> <p><i>Do you commit to be operating in the market during the nominated Commitment Period?</i></p>	<p><i>Please remove the statements that do not apply:</i></p> <p>I intend to continue to operate as an existing designated electricity entity and provide long duration dispatchable electricity capacity during the nominated Commitment Period; OR</p> <p>I intend to exit the SA region of the NEM at the commencement of, or during, the Commitment Period; OR</p> <p>I intend to exit the SA region of the NEM at the commencement of, or during, the Commitment Period and I intend to undertake a substantial replacement of assets for the purposes of participating in Tender 1.</p>
<p><b>2. Capacity Level</b></p>	<p><i>If yes above: [XX] MW</i></p>

*Please confirm the level of long duration dispatchable electricity capacity you will provide during the Commitment Period*

**Note:** *the level of long duration dispatchable electricity capacity included above is based upon the anticipated registered summer peak capacity of the Generator / Integrated Resource Provider during the relevant Commitment Period. The Generator / IRP may elect to include an alternative capacity.*

*OR if no above: N/A*

### Supporting/Other information

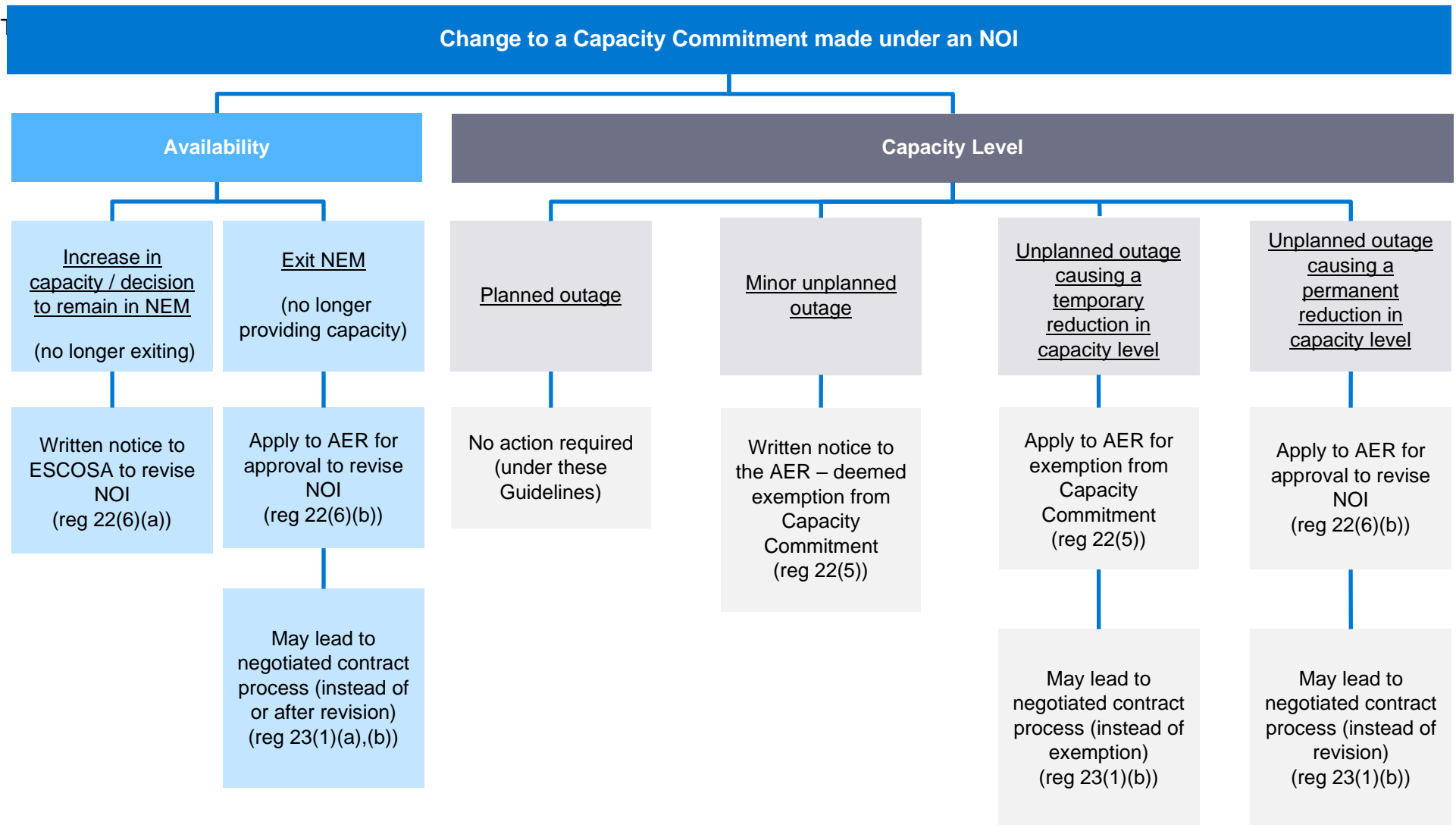
#### **3 Relevant Information**

*Please provide any information that may be relevant with respect to the Capacity Commitment made above.*

*The recognised electricity entity may provide information regarding known date of withdrawal within a Commitment Period, outages, fuel source, age-related de-ratings, weather and any other relevant conditions / factors in respect to the capacity commitment above.*

*If seeking to participate in Tender 1 as a new designated electricity entity on account of a substantial replacement of assets, please provide information of the proposed asset replacement including scope, anticipated cost and timing for Ministerial consideration.*

## Schedule 2 – Exemption or revision of NOI



**Note:** a failure to provide capacity at the level indicated in the NOI during the relevant commitment period attracts civil penalties under Part 9 of the Regulations.