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**Mr Chris Pattas**  
**General Manager, Networks**  
**Australian Energy Regulator**  
**GPO Box 520**  
**Melbourne VIC 3001**

By email: [ringfencing@aer.gov.au](mailto:ringfencing@aer.gov.au)

**7 December 2017**

Dear Mr Pattas,

**Re: Draft Decision: DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline**

AGL welcomes the opportunity to respond to the Australian Energy Regulator's (AER) Draft Decision on the applications that various electricity distribution networks have made for waivers from the Electricity Distribution Ring-Fencing Guideline (**Draft Decision**).

AGL is one of Australia's leading integrated energy companies with over 3.5 million electricity and gas accounts in New South Wales, Victoria, Queensland and South Australia. AGL is also the largest ASX listed owner, operator and developer of renewable generation and our diverse power generation portfolio includes base, peaking and intermediate generation plants, spread across traditional thermal generation as well as renewable sources.

In addition, AGL is continually innovating our suite of distributed energy services and solutions for customers of all sizes (residential, business and networks). These 'behind the meter' energy solutions involve new and distributed technologies such as energy storage, electric vehicles, solar PV systems, digital meters, and home energy management services delivered through digital applications.

The AER's Draft Decision includes preliminary decisions on multiple individual waiver applications, many of which the AER has indicated that it intends to approve.

AGL does not support the AER's Draft Decision. We are concerned that the AER's approval of multiple individual waivers to the Ring-Fencing Guideline will impact upon its effectiveness and substantially slow the broader energy market transformation.

The Draft Determination is inconsistent with the AER's own public messaging on the importance of ring-fencing. Indeed, as the AER observed in its report, *State of the Energy Market May 2017*, "where a network business offers services in a contestable market, robust ring fencing should be in place to ensure the business does not unfairly deter new entrants".

As we have consistently advocated, effective ring-fencing of regulated distribution monopolies from businesses providing competitive services in contestable markets is of fundamental importance to promoting the long-term interests of consumers. We do not consider that the requirements of the Ring-fencing Guideline are unreasonable or onerous. Network business and their associated commercial ventures should be required to transition to the new framework as quickly as possible. Whilst we accept that granting waivers



is appropriate in some instances, such as when the future reclassification of services is known with certainty, in our view these instances should be limited.

We are concerned that the AER appears to have taken an inverse approach that all ring-fencing waiver applications are to be accepted unless they are considered unnecessary or can be specifically proven to be detrimental. The AER has stated that the networks would normally be expected to comply with the Ring-fencing Guideline but that temporary waivers are necessary in this instance to accommodate a transition to full compliance in the long-term.

We consider that the AER's approach provides market participants with little confidence in the efficacy of the Ring-fencing Guideline. We believe that the AER is setting a negative precedent regarding its ability to enforce the National Electricity Rules and its own Guidelines.

The AER's approach is especially concerning given the breadth of energy market reforms currently underway. As the energy market undergoes significant transformation, regulatory and market frameworks need to facilitate (rather than inhibit) the emergence of new products and service markets that build on new distributed technology capabilities in ways that respond to customer preferences. To ensure the effective operation of a contestable market, it is essential that the AER enforces applicable rules and guidelines in a timely and robust manner. The AER will again be called upon in the context of the implementation and enforcement of the Contestability rule changes. Current and new entrant market participants that will be looking to invest in contestable markets require investment certainty, which is best supported by a consistent and robust regulatory regime. Indeed, any delay in the enforcement of these important reforms will ultimately slow the development of functioning contestable market in energy services.

In AGL's view, many of the Ring-fencing waiver applications evidence inertia on the part of network businesses or at least an attempt to avoid the commercial cost of complying with their regulatory obligations. The AER appears to assume that network businesses are actively working towards compliance and that the waiver applications seeking additional time are requested in good faith.

We consider that the AER's Final Determination should make clear the parameters of any waiver, stipulating that the Ring-fencing Guidelines will be vigorously enforced beyond that date.

We also make the following comments on several of the specific waiver categories.

#### **1. Negotiated and unclassified services waivers**

Most network businesses applied for waivers for services that are likely to be reclassified at the next determination. For the most part, AGL supports short-term waivers being provided for services that will be reclassification at the next regulatory determination. This will avoid networks costs of functionally separating a service now and then re-integrating that service in the near future. This will also hopefully avoid any unnecessary costs passing through to consumers. Accordingly, AGL supports an AER process that requires the AER to agree that the service in question is likely to be reclassified at the next determination.

Nevertheless, we do not consider that the AER's determination on SA Power Network's (**SAPN**) wide-ranging waiver application accords with the AER process. SAPN requested that all of its services currently classified as negotiated services be granted a waiver from functional separation until the commencement of the next regulatory control period starting 1 July 2020. It is not apparent whether the AER has individually examined whether the SAPN services are likely to be reclassified. Rather it appears to have



simply granted the waiver because of jurisdictional arrangements. We would urge the AER to apply a more robust approach in its consideration of the SAPN waiver application that accords with the process outlines above.

## **2. Legal Separation**

Several networks have sought an additional six months to comply with legal separation of services because of contract novation concerns. Whilst we appreciate that legal separation entails some complexity, we consider that network businesses have had sufficient time to comply. Indeed, the Ring-fencing Guideline was published in November 2016 and does not take effect until 1 January 2018.

Whilst we support the AER's ongoing work in tracking network business' transition towards compliance with legal separation, we consider that the AER should set stricter deadlines for compliance. The commercial cost of transitioning towards compliance should ultimately be borne by network businesses. It should not be cross-subsidised through regulated revenues.

If the AER is minded to proceed with these short-term waivers, we would urge the AER to make clear to the market that no further time extensions will be granted beyond this six-month period.

## **3. Branding waivers**

Several network businesses have sought extensive time waivers with respect to the Ring-fencing Guideline prohibition on the use of network business brands in the provision of unregulated electricity services (in some cases, up to 8 years).

AGL considers that the Draft Decision on branding waivers is an improvement on the initial network proposals, given that it has shortened the excessive timeframes initially requested, imposed requirements on network businesses to provide compliance timetables, and in some instances, limited the waiver to a subset of services.

Nevertheless, AGL reiterates that network businesses should transition to the new regulatory framework as quickly as possible. Any historical network branding will continue to provide an unfair competitive advantage in these competitive markets and impede contestability. Put into this context, allowing these networks to avoid compliance with the Guideline for an additional two years is a generous decision.

## **Concluding remarks**

Whilst we appreciate the AER's view that the waivers sought are reasonable on the basis that they are short-term and assist in avoiding unnecessary cost, we have substantial concerns that the AER is setting a negative precedent regarding its future enforcement of the market.

As we have elaborated above, any delay in the enforcement of these important reforms will ultimately slow the development of a functioning contestable market in energy services.

We would urge the AER to adopt a more proactive approach in its enforcement of the National Energy Rules and applicable guidelines.

If the AER is minded to proceed with these waivers on a "one-off" basis, we would also urge the AER to make clear in its final determination that no further waivers will be granted into the future.



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If you wish any further information, please contact Kurt Winter on (03) 8633 7204 or Patrick Whish-Wilson on (02) 9921 2207.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Stephanie Bashir', written in a cursive style.

Stephanie Bashir  
Senior Director Public Policy