

A few
words.

Mr Chris Pattas
General Manager
Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001
28 September 2012

Submitted via email to AERInquiry@aer.gov.au.

Dear Chris,

AGL Energy welcomes the opportunity to comment on the Position Paper on “Electricity Distribution Ring-Fencing Guidelines”, issued by AER on September 2012 (Paper).

AGL Energy (AGL) is one of Australia’s largest energy companies that operates across the supply chain including investments in electricity generation and electricity retailing. AGL has over 3 million retail customers and operational control of over 5,000MW of generation capacity in the National Electricity Market (NEM).

AGL supports AER’s conclusion on the need to develop a national ring-fencing guideline to apply to electricity distributors in the NEM. AGL generally agrees with AER on a range of issues identified in the Paper including significant gaps and inconsistencies across the six state guidelines and efficiency of administration of the guidelines. AGL is pleased that AER has indicated the need to address the deficiencies of the existing guidelines on the treatment of DNSP in an emerging market to mitigate the risk of a sub-optimal outcomes being entrenched in the NEM. AGL concurs that there is an urgency in establishing a nationally consistent and effective enforcement regime of ring-fencing guidelines in the NEM. It plays a significant role in the development of emerging market including the current policy and rule change initiatives on the power of choice and smart meter arrangements that are underpinned by effective competition in the NEM.

In the Paper, AER pointed out that there is a lack of certainty and consistency in the types of services in the emerging market that are subject to ring-fencing obligations, and metering is one of them. Currently, distributors are providing metering services including smart meters as a monopoly service and not subject to ring-fencing. AGL believes metering services do not possess the characteristics of a monopoly service and certainly, metering with remote capability has been recognised by the Rules and ACCC as contestable services. The distributors may be currently responsible for metering services under the current Rules as part of the legacy issues related to full retail contestability, AGL believes these assumptions should now be questioned in this review in the context of new development in smart meters and communication technology and the critical role smart meters would play in the development of an open and competitive market in both the provision of energy and energy services. AGL has no issues with distributors participating in the provision of competitive metering services as long as ring-fencing obligations apply.

AGL acknowledges that the Paper has reviewed the compliance issues and identified the lack of a compliance requirements in some states. AGL believes that without a strong compliance regime, the credibility of the ring-fencing guideline and its efficacy would be undermined. In AGL’s view, the guidelines should give significant weight on a strong compliance regime and enforcement measures that can detect and where necessary penalise non-competitive behaviours. AGL believes that as the energy market is opening up to facilitate and empower customer choices, effectively functioning ring fencing would enhance the development of a free and competitive market to deliver long term benefits to the consumers both in terms of efficient pricing and service quality.

A detailed response to the questions raised in AER’s Paper is provided in the Appendix.

Please contact Kong Min Yep on 03 8633 6988 for further information regarding this submission.

Yours sincerely,





N Wallis

Nicole Wallis

Head of Energy Regulation (Acting)

Appendix

AGL looks forward to providing specific comments on the proposed draft guidelines to be published by AER in November 2012. The following are general comments on the overall approach for various aspects of the guidelines.

The AER is interested in the views of interested parties on how prescriptive the ring-fencing guidelines should be in specifying the application of particular ring-fencing obligations to address particular concerns.

AGL is supportive of an approach that develops a set of criteria as outlined in the Paper against which a set of obligations can be tested for its effectiveness in ring-fencing a non-regulated business from a related regulated business. This provides an objective and transparent process that can be subject to industry examinations and consultations before a decision is made.

Once a final set of obligations is determined through this process, AGL's view is that the full set of obligations should be applied in all cases to achieve consistency and high standard ring-fencing outcomes across all states. AGL understands there may be a need to provide partial exemptions on obligations for exceptional circumstances, the onus should be on the applicant to provide appropriate evidence to demonstrate the merit of exemption. AGL believes the exemption application should be subject to public consultations and a due diligence process administered by AER.

The AER notes that there are currently situations in the NEM where an entity owns multiple regulated businesses (for example, CitiPower and Powercor have the same ownership). The AER is interested in the views of interested parties as to whether any other requirements, in addition to accounting separation supported by approved cost allocation methodologies, are necessary in these circumstances. Is a national set of Distribution Ring-Fencing Guidelines desirable under the current regulatory framework? Are the current guidelines and provisions of the CCA sufficient to deal with the issues that vertical integration poses?

AGL believes there are many ways companies are structured for different reasons and it may not be possible to deal with different variations in corporate structure. As indicated in our comments above, it may be more productive in defining a set obligations that is robust enough in achieving the ring-fencing objectives as a whole. For example, where a non-regulated and a regulated entity is related either through direct ownerships or indirect corporate entities, a combination of legal, accounting, functional, physical, organisational and system separation together with agreed cost allocation methodology should provide a strong basis for ring-fencing. AGL believes it is incumbent upon the applicant of an entity within a specific corporate structure to provide the all the required information, data and documents to AER that shows how ring-fencing objectives can be demonstrably achieved and compliance effectively monitored.

AGL believes that a national distribution ring fencing guidelines would be consistent with the on-going regulatory reform that has resulted in the harmonisation of many jurisdiction regulations into a national framework. The current guidelines have been effective in addressing the ring-fencing issues of vertical integrations but will be less effective if a national approach is not adopted and the issues of emerging market are not addressed.