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Mr Chris Pattas
General Manager, Networks
Australian Energy Regulator
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1 September 2017

Dear Mr Pattas,

Re: Ring-fencing waiver applications

AGL welcomes the opportunity to comment on the Ring-fencing waiver applications that various electricity distribution networks have submitted to the Australian Energy Regulator (AER). Specifically, we refer to the:

Essential Energy - Ring-fencing waiver application – July 2017;
Ausgrid - Ring-fencing waiver application – July 2017;
AusNet Services - Ring-fencing waiver application – July 2017;
TasNetworks- Ring-fencing waiver application – July 2017;
United Energy - Ring-fencing waiver application – 1 Aug 2017;
Jemena - Ring-fencing waiver application – July 2017;
Ergon Energy - Ring-fencing waiver application – 1 Aug 2017;
Energex- Ring-fencing waiver application – 1 Aug 2017;
Endeavour Energy - Ring-fencing waiver application – July 2017;
ActewAGL - Ring-fencing waiver application – July 2017; and
SA Power Networks - Ring-fencing waiver application – 2 Aug 2017.

AGL is one of Australia's leading integrated energy companies with over 3.7 million electricity and gas customers 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.

Throughout the AER consultation on its Ring-fencing Guideline, AGL consistently emphasised the need for effective ring-fencing of regulated distribution monopolies from businesses providing competitive services in contestable markets¹. This is of fundamental importance to promoting the long-term interest of consumers.

¹ <http://aglblog.com.au/2016/09/draft-ring-fencing-guideline/>



AGL submitted its initial concerns on the CitiPower and Powercor ring-fencing waiver application² and would reiterate these concerns given the extensive scope of activities as well as the protracted timeframes being sought in the many Ring-fencing waiver applications.

AGL considers that the requirements of the Ring-Fencing Guidelines are not unreasonable or onerous and the network business and their associated commercial ventures should be required to transition to the new framework as quickly as possible.

AGL recognises that the AER, in assessing the waivers, will consider:

- if a waiver would better achieve the National Electricity Objective (NEO);
- what are the benefits of the relevant obligation for the long-term interests of consumers
- what are the costs to the DNSP of its compliance with the obligation; and
- if the waiver would impact competition in markets for contestable electricity services.

AGL would encourage the AER when making its assessment, to only grant a waiver if, and only if, the waiver can unconditionally improve the NEO.

We believe this is important as this is the first practical application of the Ring-fencing Guideline and the granting of waivers introduces a degree of uncertainty for market participants. Businesses and new entrants that are seeking to invest in contestable markets require confidence in a consistent and robust ring-fencing regime and the granting of waivers can undermine this confidence and the development of these markets. Ring-fencing waivers should be for isolated circumstances and not wide reaching.

In AGL's view, the nature of many of these Ring-fencing waiver applications appears to be simply inertia on the part of the network businesses, an attempt to avoid the commercial cost of transition or indeed to slow that transition.

For example, most of the applications identify the nature of the costs of compliance with its obligations but none have attempted to quantify these costs and therefore highlight the appropriateness of the waiver being sought.

Consequently, AGL generally opposes the networks' applications for waivers from clauses 3.1, 4.2 and/or 4.4.1(a) of the Ring Fencing Guideline – Electricity Distribution (Guideline) as sought in these Ring-fencing applications.

There are specific instances that waivers may be appropriate and transitional waivers whether further time may be necessary but these should also be limited and strictly controlled. AGL highlights these below in its consideration of the various types of waivers being sought.

1. Negotiated and unclassified services waivers

All networks, except ActewAGL, are seeking waivers for negotiated and unclassified services that may or may not be standard or alternate services in the future.

² <http://aglblog.com.au/2017/06/submission-on-the-citipowerpowercor-ring-fencing-waiver-application/>



In the case of the NSW and Tasmanian distribution networks where these services are known to be changing classification in July 2019 then these waiver applications are reasonable. However, the waiver proposals of the other distribution networks have less certainty because they are anticipating regulatory decisions many years into the future and are based on imperfect information.

The Victorian network applications³ for waiving ring-fencing obligations for negotiated and unclassified services centre on the uncertainty of service classification and that the ring-fencing process should be aligned with the next regulatory period in 2021-25. This is clearly untenable and will undermine the implementation of contestable markets.

AGL contests the networks' views that there would be no market harm from not adopting the Ring-Fencing Guideline in respect of these services. Effective ring-fencing is fundamental to the creation of a functioning competitive market. Similarly, the Victorian networks suggest that the costs of transition should not be borne by customers given the uncertainty with regard to these services. This is also without merit as the costs of transition towards compliance with the Ring-fencing Guideline should be met by the free-standing commercial entities which will be performing these activities, not the network's regulated customers.

The SA power Network's Ring-fencing waiver application is even more lacking with regard to reclassification of services as it has not even attempted to specify which services should be exempt, it simply proposes a waiver for all of them until July 2020. This appears to be an attempt to avoid ring-fencing obligations entirely and simply sustain the status quo.

Energex and Ergon Energy have at least applied for specific services to be waived until July 2020 and provided some detail on these services. However, they have not justified the application with any estimate of cost of compliance and a high degree of uncertainty remains to whether they are likely to be reclassified. The AER will need to individually consider these services as to whether they are sure to meet its criteria.

As the AER observed in its Ring-Fencing Guideline Explanatory Statement, waiver applications can have far reaching implications in the development of contestable markets for electricity services and AGL believes this is the case for many of the broad range of services contained within these applications.

2. Legal Separation

The AER has stated that it is likely to grant a waiver from legal separation obligations for other regulated services provided by a DNSP.

Based on this criterion, AGL believes that ActewAGL, with respect to gas network regulation, and Essential Energy, with regard to its water distribution services are acceptable cases for this type of legal separation.

However, Energex, Ausgrid, Ergon and TasNetworks are seeking an additional 6 months from 1 January 2018 to comply with legal separation of services because of contract novation concerns.

Although AGL sympathises with the complications of legal separation, we consider that these networks have had sufficient time prior to now to ensure their compliance. We consider that any transitional waiver should be limited to 3 months.

³ AusNet Services - Ring-fencing waiver application – July 2017, United Energy - Ring-fencing waiver application – 1 Aug 2017, Jemena - Ring-fencing waiver application – July 2017,



3. Branding waivers

Energex and Ergon Energy are seeking a branding waiver for using the Energex and EEQ brands for staff performing contestable electricity services. Both Energex and Ergon claim that there are significant challenges associated with rebranding uniforms so that they will be unable to comply with the branding obligations for uniforms and fleet until 30 June 2025.

Ergon Energy has also proposed the waiver from branding separation extend to retail services provided by Ergon Energy Queensland (EEQ) until it is a competing retailer and can offer market contracts to all market customers in Queensland.

AGL considers that these waiver periods sought for rebranding (around 8 years) are completely disproportionate to the anticipated impacts that this would have on the emergence of a competitive market. AGL believes that the AER should enable the emergence of competitive markets as quickly as possible and the networks' brand, which has been cross-subsidised through regulated funding, will continue to provide an unfair competitive advantage in these markets and impede contestability.

AGL reiterates that the networks should transition to the new framework as expeditiously as possible.

4. Regional Office

AGL notes that Ergon Energy has applied for a waiver to allow the offices within the Mareeba and Charters Towers depot boundaries to be classified as regional offices for the purposes of the Guideline to allow the avoidance of staffing, branding and financial obligations under the Guideline.

AGL urges the AER to review this application critically but again would highlight that the waiver period being sought (almost 8 years to 2025) is disproportionate and unnecessary. If waivers are granted by the AER then they should for a limited period (in this case the next regulatory period starts in 2021) and can be revisited at that time.

5. Contestable metering

Essential Energy and TasNetworks are seeking waivers for legacy contestable meter services because they will retain ownership of a small number of residual contestable type 1-4 meters post 1 January 2017.

Both networks are reliant on retailer action for the transfer of these metering obligations and are requesting waivers from the functional separation obligations in the Guideline to allow retailers to transfer these meters by 2019.

AGL considers that the networks breach of their obligations may be outside of their control at this point in time and therefore justifies this application. However, as a matter of principle, AGL encourages the AER to determine a more appropriate way for dealing with this issue rather than issuing further ring-fencing waivers. Potential solutions could be providing a letter of no action or simply allowing the network to be non-compliant on 1 December as an alternative to a waiver



AGL looks forward to the AER's draft decision on these applications and will make further comment at that time but if you wish any further information, please contact Kurt Winter on (03) 8633 7204 or Patrick Wish-Wilson on (02) 9921 2207.

Yours sincerely



Elizabeth Molyneux

Head of Energy Markets Regulation