



24 February 2012

Mr Chris Pattas
General Manager, Network Operations and Development
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Via Email: AERinquiry@aer.gov.au

RE: Electricity Distribution Ring-Fencing Guidelines Review Discussion Paper

Dear Mr Pattas

Australian Power & Gas (APG) welcomes the opportunity to provide comments to the Australian Energy Regulator (AER) with respect to its Discussion Paper on the review of Electricity Distribution Ring-Fencing Guidelines. While APG is making its own submission to the Discussion Paper, it would also like to offer its support to the submission of the Energy Retailers Association of Australia (ERRA), of which APG is a member.

APG is a "second tier" electricity and gas retailer operating in the Victoria, New South Wales and Queensland energy markets. Our role as an energy retailer operating in the contestable areas of the energy market was realised through reforms in the 1990's designed to ensure lower prices, more choice, and improved services for consumers. To facilitate energy market reform and improvement of consumer outcomes, Australian governments implemented the National Competition Policy (NCP), which:

- Separates markets into their natural contestable and monopoly parts;
- Creates conditions for competition in the contestable parts of the market;
- Ensures that market participants have fair and equitable access to natural monopoly infrastructure in order to compete equally;
- Removes anti-competitive outcomes; and
- Improves customer protection regimes.

The NCP underpins the structural separation of the natural monopoly players, such as Distribution Network Service Providers (DNSPs), from entities operating in the contestable areas of the energy market, such as retailers. This structural separation has been, to some degree, achieved through the implementation of ring-fencing guidelines at the jurisdictional level.

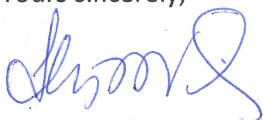
Our experience with ring-fencing regimes in the three jurisdictions in which APG operates confirms that they are necessary to ensure that there is structural separation between monopoly and contestable activities in the energy market. Ensuring that there is a clear delineation between network and retailer activities is particularly important as the energy industry continues to evolve with changes to regulation and the implementation of technology advances, such as smart metering. As they stand, the ring-fencing guidelines at

the jurisdictional level alone do not, in our opinion, eliminate the risk of a blurring of activities of distributors as monopoly players into contestable areas of the energy market.

Therefore, we support the AER's efforts to review the existing jurisdictional ring-fencing guidelines with the vision to establish national ring-fencing guidelines that, at a minimum, maintain and in some areas enhance the structural separation of retailers and network provider's activities already in place in jurisdictions. Please find attached our responses to the specific questions raised in the Discussion Paper that relate to the relationship between distributors and retailers and the importance of ring-fencing.

Thank you again for the opportunity to comment on the Discussion Paper. Should you wish to discuss any aspect of this submission, I can be contacted on (02) 8908-2714 or via email at hpriest@auspg.com.au.

Yours sincerely,



Hilary Priest

Manager, Government, Regulatory Relations & Compliance

Part 3: AER questions on the relevance of ring-fencing today

Question	APG Response
<p>Is ring-fencing an appropriate means of addressing the problems that vertical integration of DNSPs may give rise to? If not, what is an appropriate regulatory method?</p>	<p>Yes, ring-fencing is an appropriate means of addressing the risks of vertical integration of DNSPs conditional that the ring-fencing in place provides a clear delineation between non-contestable and contestable activities. Ring-fencing is required to prevent anti-competitive effects that can arise from co-ownership of DNSPs and retailers and ensure that they are structurally separated. Absent ring-fencing, there must be clear regulation to ensure that as monopoly entities, DNSPs cannot engage in contestable activities in the market as they enjoy a clear competitive advantage.</p>
<p>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?</p>	<p>With the change to the National Energy Customer Framework (NECF), movement of ring-fencing guidelines under the regulatory jurisdiction of the AER would be more desirable than maintaining the current jurisdictional guidelines. A national set of guidelines should seek to actively address potential for blurring of DNSP and retailer responsibilities for customers under NECF and in other emerging areas of contestable service. It does not appear that the provisions of the CCA may be sufficient to address the risks of vertical integration of DNSPs.</p>
<p>Are the current enforcement mechanisms sufficient to ensure effective compliance by DNSPs with their ring-fencing obligations?</p>	<p>There are not specific enforcement mechanisms in the three jurisdictions in which APG operates to prohibit DNSPs from entering contestable areas of the energy market. As an example, retailers currently consider a subversion of the Victorian ring-fencing guidelines with respect to distributor's exclusive role in the Advance Metering Initiative implementation. Under this implementation plan, exclusive access and control of customer data about smart meter customer usage has been granted to DNSPs without any appropriate controls. In setting up its ring-fencing guidelines, the Essential Services Commission (ESC) under Guideline 17 sought to grant the Commission discretion in how the guideline should be enforced. This requires strong oversight on the part of regulators and an instable playing field for parties participating in the market. The outcome of such instability will be poorer consumer protections, which were not envisaged under energy reform.</p>
<p>Are the existing jurisdictional guidelines still appropriate in light of recent developments in the industry structure and the regulatory framework governing DNSPs? If not, why?</p>	<p>No. Per the example above with respect to DNSP implementation of smart metering in Victoria, the jurisdictional guidelines are not being adhered to. Further, with the implementation of NECF in July 2012, AER will become the regulator for DNSPs and retailers and will regulate the relationships between retailers and their customers and between customers and DNSPs. Absent AER guidance, there is a risk under NECF that DNSPs may seek to blur the boundaries of their role with the customer to enter contestable areas of the market reserved for retailers.</p>

Part 4: AER questions on the appropriate scope and content of ring-fencing guidelines

Question	APG Response
<p>What matters should distribution ring-fencing guidelines address and what is the appropriate way to deal with such matters?</p>	<p>Ring-fencing guidelines need to provide clear definition and delineation required for structural separation of contestable and non-contestable activities in the market. From a review of the jurisdictional guidelines, these may include clear guidance on operational, legal, and accounting separation. In our opinion, the ring-fencing guidelines need to consider that when DNSPs might engage in contestable activities, e.g. AML implementation, that they should be subject to the same regulatory conditions imposed on retailers.</p>
<p>Are there any problems with the content of the current jurisdictional guidelines? In what ways could they be improved?</p>	<p>They should be more prescriptive as to services that should be ring fenced from DNSPs distributors or provide a set of principles that classifies what is contestable and not. Where a service is contestable than the distributor must adhere to the conditions sets out in the ring-fencing guidelines which ensures competitive neutrality and removes any opportunities available from the monopolistic nature of DNSPs.</p>
<p>Should the AER work to develop a set of national guidelines that apply consistently across all participating jurisdictions?</p>	<p>Yes, provided that jurisdictional guidelines are withdrawn and there is not opportunity for derogation by states.</p>

Part 5: AER questions on how ring-fencing guidelines need to take into account changes in the electricity supply industry

Question	APG Response
<p>Does the current structure of the NEM mean that distribution ring-fencing guidelines are no longer necessary?</p>	<p>No. Unless DNSPs are completely prevented under a new, robust regulatory framework from offering contestable services then ring-fencing is required.</p>
<p>How should distribution ring-fencing guidelines be modified to account for changes in the electricity supply industry?</p>	<p>As there is an emerging area of contestable services, ring-fencing guidelines will need to be more prescriptive as to services that should be ring fenced from distributors or define what classifies what is contestable and not. As recommended above, where a DNSP is engaging in a service that is contestable than it must adhere to the conditions sets out in the ring-fencing guidelines which ensures competitive neutrality and removes any opportunities available from the monopolistic nature of distributors.</p>