

Thursday, 29 September 2016

Mr Chris Pattas
General Manager, Networks
Australian Energy Regulator
Lodged Electronically: ringfencingguideline2016@aer.gov.au

Dear Mr Pattas,

RE: AER Draft Electricity Ring-Fencing Guideline

The Clean Energy Council is the peak body for the clean energy industry in Australia. We represent and work with hundreds of leading businesses operating in solar, wind, energy efficiency, hydro, bioenergy, energy storage, geothermal and marine along with more than 4000 solar installers. We are committed to accelerating the transformation of Australia's energy system to one that is smarter and cleaner.

As noted in our previous submission to this review a rapid transformation is being driven by highly competitive aspects of the market. Technology changes are occurring and providing new consumer choices far faster than regulatory process can keep pace with. Innovation is at the heart of deploying, growing and evolving these technologies and competitive markets are best-placed to innovate and deliver consumer choice at lowest costs. Harms to efficient consumer investments occur when these choices cannot be met through competitive measures.

The creation of a robust framework that clarifies the boundaries between regulated networks and competitive markets will be a timely contribution to this transition. The Draft Guidelines and the refined objectives of ring-fencing largely deliver this in our view. Given the ongoing work on contestability in transmission connections the CEC also agrees that this guideline should be applied to DNSPs, with ring-fencing for TNSPs considered separately in a subsequent process.

Our previous submission set out our concerns about opportunities for discrimination where DNSPs provide negotiated services¹. Some of these concerns remain and we have focussed

¹ CEC submission to AER Preliminary Positions Paper, p. 2-3.

this submission on those aspects of non-discrimination that we feel are most relevant to this matter. Detail in the relevant parts of the Guideline is set out below.

Definitions

The CEC recommends that the Guideline set out the definitions of the defined terms used in the Guideline. Examples should be used where possible in order to make this document accessible to stakeholders that are operating in the competitive markets which the Guideline seeks to protect. Given there is an expectation on these stakeholders to report a breach if they feel one has occurred it is important they can easily interpret this document. The AER should not assume they have a detailed knowledge of the National Electricity Rules.

Application of the Guidelines (cl. 1.1)

The CEC understand that the Ring Fencing Guideline is intended to apply to *distribution services* as defined by the National Electricity Rules to include *negotiated services*. However, clause 1.1 appears to focus the Guideline towards *direct control services* rather than the broader intent of *distribution services*.

The objective of the Guideline should be consistent with the objective as set out in the Explanatory Statement which – in addition to preventing cross subsidisation – is to prevent the business conferring a competitive advantage to a related body corporate or affiliated business, including in the provision of negotiated services.

The CEC also queries the limit to discrimination as “*providing an inappropriate competitive advantage to its own service providers or **related bodies corporate** which provide competitive or contestable **energy-related services***”². Our view is that the discrimination provisions should apply contestable *network services* or *non-network services*³. As the definition of ‘energy-related’ services is unclear the scope of this clause is also unclear. This needs to be resolved in the final guideline.

Materiality threshold (cl. 3.1)

The purpose and application of the proposed \$500,000 materiality threshold⁴ needs to be clarified. It appears that the threshold is needed to permit non-network services that may strictly be required to support network services. However, the framework in which this limitation is applied is not clear.

If this intent is not strictly applied it may be possible to establish a non-network services team within the network business that provides services directly to related bodies corporate. For example, this team could focus on grid-connection applications and assessments for the related body corporate’s embedded generation connections⁵. Its access to the network

² Draft Guideline, p. 1.

³ Illustrated by the orange box in Figure 1 of the Explanatory Statement, p. 15.

⁴ Explanatory Statement, p. 24.

⁵ A service that can be found competitively now.

business' major customer, or connections teams would enable it to access information and staff more expeditiously than any competitive provider would be able to.

Such a service is not strictly required to support network services and would clearly convey a competitive advantage to the related body corporate(s). The framework needs to be able to demonstrate that non-network expenses below a materiality threshold are indeed providing critical support to network services.

General obligations not to discriminate (cl. 4.1)

The CEC agrees with and supports the proposed general clauses around non-discrimination. However, the Guideline needs to ensure that the definitions and application of this section clearly apply to all network services offered by a DNSP, including negotiated services.

Further to the above, confidence of compliance with this clause in relation to negotiated services can be completely undermined by the confidentiality under which those services occur. This lack of confidence alone can do harm to competitive markets.

As raised in our previous submission far more transparency is required in relation to the connection of embedded generation. These processes are opaque and do not provide any confidence that discrimination is not occurring⁶. Increasing transparency in these connections frameworks is the only measure through which businesses competing with a related body corporate can be provided a satisfactory level of confidence there is no discrimination.

Staff sharing (cl. 4.2.2)

Restrictions on staff sharing will be essential to the success of the guidelines. However, the current drafting of clause 4.2.2(a) implies that some staff in a DNSP can be used to market the services provided by a related body corporate.

For example clause 4.2.2(b)(iv) appears to intend that staff providing negotiated services (such as for an embedded generator connection) are permitted to market for a DNSP's related body corporate (that may wish to bid for the embedded generator installation for example). This appears to be inconsistent with the intent of the Guideline to restrict or remove opportunities for discrimination.

The AER must clarify this clause to ensure that DNSP staff are not permitted to provide or market the services of a related body corporate.

Information access and disclosure (cl. 4.3)

The CEC supports the limitations around information access and disclosure. While these requirements are consistent with expectations under the National Electricity Rules it is important to clarify them in the Guideline due to the limited potential for staff sharing between the DNSP and a related body corporate.

⁶ CEC Submission to Preliminary Positions Paper, p. 6-7.

Transitional arrangements

The CEC does not support the level of flexibility proposed in the transitional arrangements. It is reasonable to expect that some aspects of current practice should be changed almost immediately, while others will require more time. Cross promotion and potentially branding under clause 4.1(b)(v) and (vi) are good examples of opportunities for very quick compliance. It is not clear why these changes should be delayed for up to one year.

As suggested in our previous submission, competitive market actors would benefit from interim reporting on the status of compliance within the permitted timeframe.

Please contact the undersigned for any queries regarding this submission.

Sincerely,



Tom Butler

Mobile +61 431 248 097

Media: (Mark Bretherton) +61 9929 4111