

8 July 2021

Mr Mark Feather
General Manager, Strategic Policy and Energy Systems Innovation
Australian Energy Regulator
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Lodged electronically: AERringfencing@aer.gov.au

Dear Mr Feather

AER Electricity Ring-Fencing Review

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. EnergyAustralia owns, contracts, and operates a diversified energy generation portfolio that includes coal, gas, battery storage, demand response, solar, and wind assets. Combined, these assets comprise 4,500MW of generation capacity.

The AER's draft determination considers how the ring-fencing guideline can be adapted to ensure that consumers benefit from timely and less costly network solutions, specifically the use of Stand Alone Power Systems (SAPS) and the use of batteries instead of much larger network augmentation. EnergyAustralia appreciates the opportunity to participate in the consultation, as we seek to ensure that appropriate consideration is provided to protecting the availability for a competitive market to achieve the timely and less costly alternatives, and establish a framework that enables the near and long term interests of consumers.

EnergyAustralia's view is that competition in a market can achieve efficiencies and downward pressure on prices. We have historically supported the ring-fencing guideline as it fundamentally aims to protect the opportunity for competitive entities to operate in a fair and unprejudiced market. While we appreciate the consideration the AER has provided to the timely and less costly facilitation of services that a network can provide consumers, we are concerned how views have been formed on the likelihood, availability, or cost, of alternative solutions provided by competitive entities. EnergyAustralia believes these views have incorrectly been established based on limited evidence - predominantly provided by networks - as to the appetite of competitive entities to enter either SAPS or the battery market.

Appreciating the underlying reasons why competition *may* not be currently providing alternatives for SAPS or network service batteries, is an important step the AER should consider before extending easier access or broader exemptions to networks, as this is unlikely to address the cause/s of a lack of competition, and while this may achieve beneficial outcomes in the near term for consumers, it comes with a heightened risk for the long term.

While a level playing field is a desirable benchmark, alas it is unlikely to be achievable when networks mainly operate under the protection of guaranteed returns and capped liability. Therefore,



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consideration must be provided to how competition can be promoted. Providing easier and greater access to required information, and ensuring networks substantiate that no competitive entity offered a least cost solution to the network's proposal (test the market), would be reasonable to ensure that the diminished requirement for networks when participating in SAPS or batteries are balanced with requirements that ensure competition is provided the safeguards to participate and opportunity to succeed.

While the proposed exemptions for networks to provide generation services in SAPS may enable the establishment of these SAPS in a faster timeframe, it will be a further encumbrance for competitive entities to overcome when they are attempting to be competitive in the SAPS market, thereby reducing their likelihood of entering and the flow on positive effects competition can provide.

Contestable services for batteries

The draft guidelines prohibit networks from providing contestable services via batteries however allows them to apply to the AER for waivers in circumstances where the benefits outweigh the harm. As the AER notes, the regulatory treatment of batteries will be affected by the speed and scope of the broader energy transition, and so its guideline requirements, even if subject to change in the future, need to be carefully determined.

While the AER's assessment would involve considering risks to competitive service provision, the matters to be considered as part of any waiver application would be quite complex. We therefore remain concerned at the prospects of arrangements that allow networks to favour their related parties, with resulting detrimental impacts to customers e.g. via cross subsidisation. The concerns below present too great a risk unless targeted safeguards are established:

- How does the operation of the battery in the competitive services market provide benefit to consumers? If there is no benefit to the customer, then the ring-fenced entity operation of the battery is cross subsidised by the consumers that had ultimately funded the battery under the Regulatory Asset Base (RAB).
- Networks providing information to their ring-fenced entity that is not provided, or provided later, to a competitive service provider. This unfair advantage could result in networks providing information to their ring-fenced entity on the batteries that will produce the most benefit in the competitive services markets.
- Preferential access rights to the competitive services of a battery for the ring-fenced entity, this could include greater or timely information on when they can operate the competitive elements of the battery.
- Networks setting operating terms for grid connection approval of customer's batteries that will prioritise the network's capacity to operate in the competitive services market, i.e. constraining the ability of customer's batteries.

A simple solution is for networks to be unable to contract out the competitive elements of network service batteries to their ring-fenced entity, or that when networks are deciding on installing a battery in lieu of larger network augmentation, they should not consider the benefits the battery would have in a competitive market.

The proposed information requirements the AER need when assessing a waiver, confirms the AER is aware of the difficulty in minimising risks to competition. EnergyAustralia supports the proposed information requirements and accepts that the AER's consideration via a waiver process will be the easiest solution to implement and will provide flexibility as the market develops. However, we request the AER to review the Shared Asset Guideline to ensure it remains fit for purpose and will ensure customers share the benefits when networks use regulated assets for unregulated purposes.

Stand Alone Power Systems generation services

A period of development is required for a competitive market to grow to the level in which downward pressure on price occurs. In the SAPS generation services market, any competition is already hindered by competing against networks that are well established, enjoy minimal risk, and largely dictate how competitive entities can operate/interact. This is without considering the logistical difficulties of the geographical locations where SAPS are expected to be deployed (rural areas, high bushfire risk, etc).

The draft determination would allow networks to derive revenue (up to a specific revenue cap) for providing generation within a SAPS. The allowable percentage of the revenue cap is based on information provided to the AER by networks on their forecast SAPS deployment. It is not inconceivable that a blanket waiver based on a revenue cap could see networks providing generation services for SAPS that may have been provided by a competitive entity, had the opportunity been provided.

EnergyAustralia does not support a blanket waiver based on a percentage of the revenue cap, for permanent SAPS generation services, as competition should be given the opportunity to develop within the SAPS generation market.

The draft determination's proposal for a blanket waiver is based on the belief that there is a current lack of competition in the SAPS generation market, *we received limited evidence that third party providers are currently willing or able to offer SAPS services*¹. While we do not dispute a current lack of competition, we do not support a proposal that will innately create additional challenges for competition to overcome. We believe that for a permanent SAPS, the consideration and design are lengthy processes, it is therefore not unreasonable for a waiver process to be included.

EnergyAustralia preference is for a network to apply for a waiver in all instances in which it seeks to provide the generation services for a SAPS, and the waiver should include a requirement for the network to provide a Statement of Opportunities that can be considered by the competitive market. We believe this will ensure that competition is provided the opportunity to develop, as this will produce evidence for the AER to determine if the competitive market had been tested.

We do not believe this requirement should be needed where the SAPS generation is temporary, such as those established after natural disasters. Reducing the requirements for a network to provide temporary SAPS generation services is completely understandable, whereas for permanent SAPS generation services – particularly when a waiver exists for the life of the asset – it is reasonable that the market is appropriately tested to see if competition will provide a solution that is preferable to consumers.

¹ Draft electricity distribution ring-fencing guideline (version 3) Explanatory Statement p.18

Furthermore, where a SAPS is supplying very few (less than three) customers it would be inappropriate for networks to be burdened with a lengthy waiver process. We suggest the AER consider how it can create a reduced waiver requirement for SAPS generation that is only servicing one or two customers.

EnergyAustralia believes that achieving the lowest price is the most important value for consumers, and this can only be achieved by providing competition the opportunity to develop. We believe that by requiring networks to provide a Statement of Opportunities, they will be providing the required information to foster the development of a competitive market. Furthermore, we would suggest that this Statement of Opportunities should be presented in a format and location that is easily accessible and digestible by interested parties.

Additional guideline improvements

EnergyAustralia supports the proposed guideline improvements, they provide a framework for understanding and reporting breaches of the ring-fencing guidelines; however, we believe the AER should consider additional actions that could further limit ring-fenced breaches:

- Restrictions on information sharing between networks and their ring-fenced entity could be proactively reviewed, as an example, via a random selection of some of customers of a ring-fenced entity, to establish how they procured the client and adhered to any ring-fencing guideline requirements during their relationship. This could be as simple as a questionnaire to customers that have had large scale solar installations, enquiring who directed them to the ring-fenced entity.
- Timeframes on breach reporting, requiring all breaches to be reported within 15-business days, does not address the cause of the breach. The AER should consider whether self-reporting breaches has made a material change to the type or degree of breaches that are routinely reported by networks, the AER could then consider whether more punitive punishments would achieve a more pronounced response.

If you would like to discuss this submission, please contact me on 03 8628 1704 or Travis.Worsteling@energyaustralia.com.au.

Regards

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Regulatory Affairs Lead