

Friday 10th November 2017

Mr Chris Pattas
General Manager, Networks
Australian Energy Regulator
GOP Box 520
Melbourne VIC 3001

Re: Submission on Draft Waivers to Ring-Fencing Guidelines

1 Background

- 1.1 This submission is made by All Round Supplies (**ARS**). ARS is a supplier/distributor to Accredited Service Providers (**ASP's**) in NSW and electrical infrastructure contractors in other states with considerable experience as a distributor of utility materials, having worked with many utility networks throughout Australia over a long period of time.
- 1.2 These submissions relate to the:
- (1) Electricity Distribution Ring-Fencing Guideline (**Guideline**) which commenced on 1 June 2016 (as amended from time to time);
 - (2) Version 2 of the Explanatory Statement to the Guidelines dated October 2017 (**Statement**); and
 - (3) the Draft Decision – DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline dated October 2017 (**Waiver**).
- 1.3 ARS had previously made submissions with respect to the Guideline and the original Explanatory Statement. Those previous submissions are attached for ease of reference and they were primarily focussed on ensuring that the Guideline appropriately and adequately addressed the provision of goods and materials by distribution network services providers (**DNSPs**) so as to ensure that:
- (1) the risk of DNSPs cross-subsidising an affiliate's services in contestable markets with revenue or goods derived from its regulated services was reduced; and
 - (2) the development of the competitive contestable market was not compromised.

2 Explanatory Statement (Goods and materials)

- 2.1 Section 2.13 of the Statement, at page 24, states as follows:
- Our interpretation of the Rules is that the term 'services' has a very broad meaning, and that the Guideline applies to the full range of different services a DNSP might provide, including where they might sell or provide goods as well as services to consumers.*
- 2.2 Notwithstanding that interpretation, the Statement confirms that *a number of interested parties....sought clarification of whether the Guideline applied to the provision of goods by DNSPs as well as the provision of services.*
- 2.3 ARS therefore presses its previous submissions that the Guideline should be amended to make it clear that it applies to goods as well as to services given that a number of interested parties have raised the same concerns, and given the position of the AER is that the Guideline definitely applies to goods which otherwise fall within the ambit of the Guideline.

3 Waiver

Extent of Decision

- 3.1 Section 2.2.3 of the Waiver refers to *Ergon Energy, Energex and Essential Energy* having applied for waivers for the sale of inventory.
- 3.2 However there is no reference to Essential Energy having applied for a general waiver with respect to the sale of goods in Section 9, or in Attachment A. ARS therefore assumes that the reference to Essential Energy in section 2.2.3 is a reference to the specific waivers proposed to be granted to Essential Energy (as set out in Section 9) to the extent that they include the supply of goods. If not, the inclusion of Essential Energy in section 2.2.3 must be an error.
- 3.3 ARS submits that this must be clarified in the Waiver as there is a risk that the reference to Essential Energy in section 2.2.3 could be read as a general waiver being available/granted to Essential Energy, even though no such waiver was requested.

Scrap

- 3.4 ARS believes that the reference to scrap being exempted from the ring-fencing guidelines should be clarified to ensure that the intention of that exemption is honoured.
- 3.5 In that regard, inventory could be classed as “scrap” if it is in new condition, but is written off for an accounting purpose, but could then be sold at market.
- 3.6 It should be made clear in that regard that “scrap” is limited to material that is either damaged and not saleable for its original intended purpose, or material recovered from assets that have been decommissioned.

Waiver for inventory which becomes part of a DNSP's network

- 3.7 The Waiver indicates that the decision with respect to the request for waivers which have been sought for the sale of inventory has been granted with respect to goods and materials that are sold, but which relate to the provision of:
- approved materials/equipment to third parties for connection assets that will become part of the shared distribution network.*
- 3.8 ARS submits that this distinction is impractical and will not be able to be enforced to the extent that it will not allow the Guideline to achieve its desired purpose as set out above.
- 3.9 The main reasons for this is that, unless the relevant material is so unique that its only application could be for use in the relevant DNSP's network, it is impossible to discern the ultimate use of any goods at the point of sale.
- 3.10 ARS submits that the only practical alternatives to the proposed structure of the waiver are as follows:
- (1) Ring-fence the sale for any material or good that is able to be purchased from at least one (1) source other than the DNSP, or an affiliate of the DNSP. These materials and goods would be deemed to be contestable items and subject to the ring fencing guidelines. Any material or good that can only be sourced from the DNSP and no other source, would be deemed to be a non contestable item and not subject to the ring fencing guidelines. The non contestable items would be free issued by the DNSP as they would ultimately be gifted back to them as they would be unique to that DNSP network. Alternatively the DNSP could apply to the AER for a regulated rate to sell the individual non contestable item: or
 - (2) Require that the DNSP issue at no cost or free issue, all the relevant materials that will ultimately be gifted back to them, no matter if they can be sourced from others.

- 3.11 It is accepted that DNSPs need to carry significant inventory for the purpose of the maintenance of their networks, however that stock is for the maintenance of their own networks and not for commercial sale.
- 3.12 As set out in previous submissions, it is this significant inventory which contributes to the competitive advantage enjoyed by the DNSPs and which must be addressed by the Guideline.
- 3.13 If there is no commercial gain to be made on the inventory maintained by a DNSP for the purpose of the maintenance of its network, then it stands to reason that they should not be able to profit from the sale of that inventory which will ultimately form part of their network.
- 3.14 ARS submits in that regard that as a condition to the issue of any waiver, the relevant DNSP must provide sufficient detail as to how it will identify, at the point of sale, the materials and goods that will ultimately form part of the DNSP network and therefore will not be subject to the ring-fencing obligations.
- 3.15 It is not sufficient to grant general waivers to DNSPs without any such details when there are significant practical difficulties which will arise in the monitoring and enforcement of the specific conditions included in the waivers.

4 Concluding comments

I would be happy to discuss any aspect of the above with you, otherwise I look forward to the Guidelines being amended so as to clarify the matters referred to above.

Yours faithfully



Earl Palfrey
Managing Director