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Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

AER Ref: 31940806

By e-mail: [REDACTED]

Call for input - Review of the Ring-fencing guideline (electricity distribution) and Shared asset guideline

Alinta Energy welcomes the opportunity to respond to the Australian Energy Regulator's Call for input on its review of the Ring-fencing Guideline (electricity distribution) v4 and Shared Asset Guideline v2.

We support a review of the Ring-fencing and Shared Asset Guidelines. The boundary between regulated network activities and competitive energy services is becoming more important as consumer energy resources, community batteries, electric vehicle charging and related services continue to develop. This is because the long-term interests of consumers are best served by markets that remain open to competition. Competitive markets support innovation, efficient investment, choice and downward pressure on the cost of emerging energy services over time.

However, we question whether this review should proceed ahead of the AEMC's concurrent Electricity Network Regulation Review (ENRR). That process may materially reshape the roles and responsibilities of distributors, retailers, aggregators and other service providers. There is therefore a real risk that changes made now will pre-empt broader policy decisions, duplicate related reforms or need to be revisited once the Network Regulation Review is settled.

If the AER proceeds now, the review should be tightly focused on strengthening the practical operation of ring-fencing where safeguards are clearly needed. In particular, the AER should:

- set clearer limits on distribution network service provider's (DNSP's) participation in activities that competitive providers can deliver, including CER, batteries and electric vehicle charging services;
- raise the threshold for ring-fencing waivers, so they operate as exceptional, evidence-based approvals rather than routine exceptions;
- require stronger evidence that network-led activities will not crowd out competitive alternatives or deter efficient market entry; and
- improve transparency, monitoring and enforcement so stakeholders can see that waiver conditions and ring-fencing obligations are being tested in practice.

Interaction with related policy and regulatory reforms

The effectiveness of the Ring-fencing and Shared Asset Guideline reviews is closely associated with the outcomes of related policy and regulatory processes, including the ENRR and the (Commonwealth) DCCEE's National Consumer Energy Resources Roadmap; specifically, the recommendations contained within the final advice to Ministers to progress M3/P5 priority streams.

We acknowledge the AER's stated intention to coordinate its review with these separate processes. However, it will be difficult for the AER to produce enduring and effective guidelines without greater

clarity on the respective roles and responsibilities of market participants, the functions that should properly be performed by electricity distributors in a regulated capacity, and the scope and limits of distributor participation in emerging but contestable markets. The outcomes of the AEMC's ENRR may require further, iterative reviews of the Ring-fencing and Shared Asset Guidelines to respond to any changes to the National Electricity Rules and other instruments.

Protecting competitive neutrality in emerging markets

The central test for the review should be whether a future version of the Ring-fencing Guideline gives market participants and customers confidence that monopoly network businesses will not use their regulated position, information, assets or customer relationships to advantage their own activities in contestable markets. This confidence is essential if third-party providers are to invest in services that are closely related to the network, including battery deployment, efficient and innovative CER orchestration and roadside or kerbside electric vehicle charging infrastructure. Preserving that confidence is in the long-term interests of consumers. Competitive entry and investment are more likely to deliver innovation, service choice and efficient pricing than arrangements that allow monopoly network businesses to extend regulated advantages into emerging markets.

Strengthening waiver discipline and enforcement

The current framework has not provided confidence that the test for ring-fencing waivers is sufficiently robust. While the Ring-fencing Guideline sets out important obligations directed at preventing cross-subsidisation, discrimination and unfair competitive advantage, the practical effect of the framework has been weakened by limited visible enforcement and by the routine granting of waivers in circumstances where competitive market impacts are material and stakeholders have raised substantive concerns.

Waivers should be treated as exceptional, last-resort approvals because, where granted too readily, they erode emerging competitive markets. Where waivers allow regulated network businesses to occupy activities that could otherwise develop competitively, consumers may lose the benefits of innovation, price discovery and service diversity that competition is intended to deliver.

The AER's 2025 decision to grant Ausgrid a five-year trial waiver for its Community Power Network proposal illustrates this concern. That waiver permits Ausgrid to own and operate 130 MWh of battery assets and to install up to 70 MW of solar generation assets as a supplier of last resort in two trial areas. Even where such arrangements are described as trials and are subject to conditions, they can materially affect the willingness of competitive providers to invest, particularly where the network business is permitted to enter adjacent markets using its existing regulated position and local network information.

Alinta Energy considers that the review should therefore place greater emphasis on implementation, enforcement and waiver discipline, not only on the wording of the obligations themselves. A revised guideline should make clear that waivers are exceptional, evidence-based and subject to a high threshold where the relevant activity is contestable or likely to become contestable. The AER should also ensure that waiver decisions include robust testing of whether third-party alternatives have been genuinely sought, whether market development would be impeded, and whether any claimed consumer benefits could be achieved through competitive procurement or other less distortive mechanisms.

We are not aware of any publicly documented example of the AER rejecting a DNSP ring-fencing waiver application since the first electricity distribution ring-fencing guideline was introduced in 2016. If correct, this further suggests there would be value in considering whether the waiver threshold is calibrated appropriately, particularly where the relevant activities are contestable or likely to become contestable over time.

Improving transparency and compliance reporting

The review should also consider whether the guideline requires stronger transparency and compliance mechanisms. This should include clearer reporting on potential breaches, publication of waiver performance against conditions, and a more transparent approach to how the AER assesses the cumulative competitive impact of repeated waivers across the sector. Without visible and credible enforcement, the guideline risks becoming a framework that permits exceptions as a matter of course rather than safeguarding the boundary between monopoly network services and competitive energy services.

Recommended focus for the AER's review

We encourage the AER to use this review to strengthen the practical operation of ring-fencing. This should include clearer limits on DNSP participation in contestable services, stronger evidentiary requirements for waivers, greater transparency around compliance and enforcement, and a framework that supports investment by competitive providers in emerging services such as batteries and electric vehicle charging. These reforms would better align the guideline with its underlying purpose: protecting consumers by preserving competitive neutrality and preventing monopoly network advantages from being leveraged into contestable markets.

Sequencing reform in a period of unprecedented regulatory change

More broadly, policy makers and market bodies are imposing additional regulation across the energy market at an unprecedented rate. In this context, overlapping proposals are increasingly being progressed before earlier reforms have had sufficient time to be implemented, assessed or reviewed. We consider this is becoming an important issue for the rule change and guideline setting processes, particularly where successive reforms interact with one another and create cumulative obligations for market participants. Greater attention to sequencing, implementation timeframes and post-implementation review would help ensure regulatory change remains targeted, workable and proportionate.

We respond to the AER's questions set out in the call for input below. Alinta Energy welcomes any further opportunity to discuss our response with the AER. Please contact [REDACTED] ([REDACTED]) in the first instance.

Yours sincerely

Attachment: AER consultation questions

The AER's call for input seeks stakeholder views to help refine the review's scope, identify priority issues and develop draft changes to the Ring-fencing Guideline and Shared Asset Guideline. The specific consultation questions are set out below.

1. Have we accurately described the key changes occurring in distribution networks and the broader energy system? Are there any important developments or trends we have not captured?

The call for input captures the key changes in the market, including the recommendations made by the National Consumer Energy Resources Taskforce.

2. Have we accurately reflected the concerns raised by stakeholders regarding the guideline? Are there additional issues that should be considered as part of this review?

The issues and concerns raised by stakeholders in chapter 3.1 of the Call for input summarise the range of views held by stakeholders on the Ring-fencing and Shared Asset Guidelines.

3. Are there relevant experiences, case studies, examples or evidence that would help illustrate these issues or inform this review?

A review and reporting of adherence by applicants to past ring-fencing waiver conditions, along with reporting the net benefits of a waiver's application would provide evidence

4. Do you consider the scope of this review to be appropriate? Are there additional areas of focus that you believe should be included?

Alinta Energy generally agrees with the AER's proposed scope and staged approach for the review. A joint review of the Ring-fencing Guideline and Shared Asset Guideline is appropriate given the increasing overlap between regulated network activities, emerging energy services and markets that are contestable, or capable of becoming contestable over time. A focus on a formal, consistent test for granting waivers in absence of competitive alternatives should be a focus of the review of the Ring-fencing Guideline in particular.

Furthermore, the review should not be confined to whether the current guidelines remain appropriately drafted. The AER should also expressly consider how effectively it has enforced the Ring-fencing Guideline and Shared Asset Guideline since their respective inception, and how effectively it has used the information provided to it through compliance reporting, waiver applications and shared asset reporting. In our view, the practical effectiveness of the framework depends not only on the clarity of the obligations, but also on the extent to which those obligations are monitored, tested and enforced in a way that gives stakeholders confidence that monopoly network advantages are not being leveraged into contestable markets.

5. Do you have suggestions on ways that we can make it easier for stakeholders to effectively engage with the review process?

Alinta Energy encourages the AER to continue with initiatives such as the recent stakeholder workshops held in relation to the review of the Ring-fencing and Share Asset Guidelines. These forums allowed stakeholders to freely express their views on the Guidelines. A similar series of stakeholder workshops

would be encouraged on release of the draft decision and associated consultation process. The interaction with the Network Regulation Review on an ongoing basis would also be of value to interested parties.