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**Mr Chris Pattas**

**General Manager, Networks**

**Australian Energy Regulator**

**Submitted by email: ringfencing@aer.gov.au**

**15 August 2017**

Dear Mr Pattas,

**Electricity ring-fencing guideline 2017 amendment – July 2017**

AGL Energy (AGL) welcomes the opportunity to respond to the Australian Energy Regulator's (AER) invitation for submissions on its Electricity ring-fencing guideline 2017 (**Guideline**) amendment – July 2017 (**Draft Amendment**).

AGL is one of Australia's leading integrated energy companies and largest ASX listed owner, operator and developer of renewable generation. Our diverse power generation portfolio includes base, peaking and intermediate generation plants, spread across traditional thermal generation as well as renewable sources. AGL is also a significant retailer of energy, providing energy solutions to over 3.7 million customers throughout eastern Australia.

In addition, AGL is continually innovating our suite of distributed energy services and solutions for customers of all sizes (residential, business and networks). These 'behind the meter' energy solutions involve new and distributed technologies such as energy storage, electric vehicles, solar PV systems, digital meters, and home energy management services delivered through digital applications.

As AGL emphasised in its submission on the AER's Draft Ring-Fencing Guideline<sup>1</sup>, effective ring-fencing of regulated distribution monopolies from businesses providing competitive services in contestable markets is of fundamental importance to promoting the long-term interests of consumers. Given the pace of change in the energy market, AGL considers that network businesses and their associated commercial ventures should be required to transition to the new framework as expeditiously as possible.

We acknowledge the AER's intention for the Draft Amendment to improve clarity of certain terms and definitions used in the Guideline and to address unintended consequences stemming from the way the Guideline is presently drafted. Nevertheless, we are concerned that some of the proposed amendments are not appropriately framed to protect the integrity of competitive markets and the associated interests of consumers, consistent with the National Electricity Objective.<sup>2</sup>

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<sup>1</sup> AGL Energy, Submission on the Australian Energy Regulator's Draft Electricity Distribution Ring-Fencing Guideline, August 2016 (28 September 2016), Available at [http://aglblog.com.au/wp-content/uploads/2016/09/AGL-submission\\_-Draft-Ring-fencing-Guideline\\_September2016\\_Final.pdf](http://aglblog.com.au/wp-content/uploads/2016/09/AGL-submission_-Draft-Ring-fencing-Guideline_September2016_Final.pdf).

<sup>2</sup> Section 7 of the *National Electricity Law*: The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long-term interests of consumers of electricity with respect to—  
(a) price, quality, safety, reliability and security of supply of electricity; and (b) the reliability, safety and security of the national electricity system.



As outlined below, we urge the AER to revise or omit the amendments relating to the following matters as appropriate:

1. Services exempt from legal separation;
2. Disclosure of information;
3. Emergency response; and
4. Staff sharing registers.

### **1. Services exempt from legal separation**

We note that the exemptions to the requirements of legal separation have been amended to include transmission services and regulatory services, pursuant to clauses 3.1(d)(i) and 3.1(d)(ii) respectively.

We do not consider that it is appropriate or necessary for the Guideline to address transmission services when this is likely to be addressed in a separate transmission ring-fencing guideline. If the AER takes the view that this is the appropriate way forward, it would be useful to provide an example to illustrate why this amendment is needed.

Furthermore, we do not believe that regulatory services should be exempted from the requirements of legal separation. Given that regulatory services often inform network businesses' strategy on a range of issues including pricing of services to the market, such an exemption would permit a conflict of interest. We note that the exemption of regulatory services is also reflected in clauses 4.2.1(b)i.c. and 4.2.2.(b)i.c. To maintain consistency, we recommend that these amendments be revised.

### **2. Disclosure of information**

We consider that the amendment in clause 4.3.3(d), as it is currently worded, could enable network businesses to share information with affiliates. We do not consider that this kind of disclosure would be compatible with the overall objective of the Guideline. In accordance with the Explanatory Statement, we recommend that the language in clause 4.3.3(d) be refined to clarify that the clause is not applicable to the disclosure of information to affiliates.

We would also recommend that the AER elaborate further the amendment that provides for disclosure for research purposes (clause 4.3.3(f)). We do not consider that wording of the clause should reflect the caveat noted in the Explanatory Statement to make it explicit that such information should not be subsequently disclosed to a related electricity provider of the DNSP. We consider that clause 4.3.3(f) should be amended as follows:

- (f) the disclosure is solely for the purposes of research by a legal entity other than a related electricity service provider of the *DNSP*, provided that the person or entity doing the research does not then disclose the information to a related electricity service provider of the DNSP.

### **3. Emergency response**

The amendments providing for contingency emergency response, as they are currently worded, could also be relied upon by network businesses in the provision of services in the context of non-emergency events. These amendments are provided in clause 4.2.3(b)(iv) with respect to branding and 4.3.3(e) in relation to the disclosure of information.



We recommend that the AER tighten the wording of these clauses to only allow for emergency events (such as floods). It may also be necessary to define what is meant by 'reasonable control' in these clauses. We consider that these clauses should be amended as follows:

#### 4.2.3 Branding and cross-promotion

iv. providing assistance to another Network Service Provider in response to ~~an event (such as an emergency)~~ an emergency event (such as a flood) that is beyond the other Network Service Provider's reasonable control.

#### 4.3.3 Disclosure of information

(e) the disclosure is solely for the purpose of providing assistance to another Network Service Provider in response to ~~an event (such as an emergency)~~ an emergency event (such as a flood) that is beyond the other Network Service Provider's reasonable control;

### 4. Staff sharing registers

We do not agree that the types of corporate positions that may be shared between a network business and its ring-fenced entity are relatively intuitive, as the AER notes in the Explanatory Statement. Accordingly, we do not support the amendment to remove the requirement to list the corporate position of those exempt in the staff sharing register, pursuant to clause 4.2.4(b).

As we observed in our submission on the AER's Draft Ring-Fencing Guideline, we acknowledge that sharing certain corporate services staff, such as payroll and human resources, is likely to be a reasonable exception to the general prohibition on staff sharing. Nevertheless, other exceptions would compromise the effectiveness of ring-fencing by enabling the operation of a conflict of interest. That risk is heightened in circumstances where shared staff provide strategic advice (whether it relates to operational, product, pricing, financing or resourcing decisions). We consider that there are a range of corporate functions which fall into this category, including regulatory affairs. As such, we consider that a detailed listing of the positions of exempt staff is an appropriate safeguard that accords with the Guideline and National Electricity Objective.

### Reporting, compliance and enforcement

We note that reporting, compliance and enforcement issues are beyond the scope of this particular consultation. We would like to reiterate our concern that a robust reporting, compliance and enforcement framework is critical to ensuring that the Guideline is strictly observed in the long-term interests of customers. As well as ensuring the efficiency of prices paid by customers for regulated services, a stringent and effectively enforced ring-fencing regime has a direct impact on investor confidence in contestable markets and the emergence of effective competition.

Whilst the Guideline allows for network businesses to apply for a waiver under cl. 5.2, AGL remains firmly of the view that the more extensive the opportunity for waivers from the ring-fencing obligations, the weaker the protections they seek to offer will become over time. Waivers also introduce a degree of uncertainty for market participants seeking to keep track of which waivers apply to which network business and in what circumstance. New entrants and other entities seeking to invest in contestable markets require clarity over, and confidence in, a consistent and robust ring-fencing regime applying across all NEM jurisdictions.



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We also note that Guideline currently provides that the AER may publish reports about network businesses' compliance with the Guideline from time to time under cl.6.2.3. In the interests of promoting full compliance, we consider that reporting should be regular and mandated.

Should you have any questions in relation to this submission, please contact Kurt Winter, Policy Advisor, on 03 8633 7204 or myself on 03 8633 6836.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Stephanie Bashir', written in a cursive style.

**Stephanie Bashir**

Senior Director, Public Policy