

A few  
words.

**Mr Chris Pattas**

**General Manager – Networks**

**Australian Energy Regulator**

**By email: [AERinquiry@aer.gov.au](mailto:AERinquiry@aer.gov.au)**



**12 January 2016**

Dear Mr Pattas,

**Re Energex ring fencing waiver application – Battery Energy Storage System trial (BESS waiver application)**

The energy industry is undergoing a major transformation, moving from a linear value chain to a decentralised, customer driven market.

AGL Energy (**AGL**) has embraced this change and, to complement its traditional energy retailing and merchant operations, has established a New Energy Services business unit (**New Energy Services**) to provide distributed energy services and solutions to all end use customers. Within New Energy Services, we are able to offer customers with beyond-the-meter energy solutions, including new technologies such as batteries and other energy management solutions, solar PV systems for both residential and business customers, and digital meters through our subsidiary business, Active Stream.

The ring-fencing guidelines applying in each jurisdiction, including those applying to Energex in Queensland, predate this major market evolution. As the Australian Energy Regulator (**AER**), the Australian Energy Market Operator (**AEMC**) and the COAG Energy Council (**COAG EC**) have all acknowledged, there is a need to develop revised, nationally consistent ring fencing guidelines as a matter of some urgency.<sup>1</sup> This is necessary to ensure that the principle of competitive neutrality is upheld in the context of new and emerging markets for energy services in the long term interests of all customers.

We understand that the AER may assess the BESS waiver application against the current guidelines applying in Queensland which set out a general prohibition on distribution businesses carrying on “the business of producing, purchasing or selling electricity”. As such, the application focuses solely on the electricity generated by the solar PV installation. However, it is now widely acknowledged that the coverage of this ring-fencing guideline is too narrow.

The AEMC recommends that all services provided by distribution businesses behind-the-meter be treated as contestable and should not be provided by network businesses except through a ring-fenced business.<sup>2</sup> The AER has also identified the need for revised ring-

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<sup>1</sup> See for example:

AER, Position paper: Distribution Ring-fencing Guidelines, September 2012

AEMC, Integration of Storage: Regulatory Implications, Final Report, Sydney, 3 December 2015

COAG Energy Council, Meeting Communique, Canberra, 4 December 2015

<sup>2</sup> AEMC, Integration of Storage: Regulatory Implications, Final Report, 3 December 2015

fencing guidelines to appropriately address network businesses seeking to operate in emerging contestable markets.<sup>3</sup>

The BESS waiver application directly contemplates Energex operating behind-the-meter in the installation of a solar PV plus battery system. These are new markets in which competition has already emerged and continues to strengthen. It is of fundamental importance that participation by network businesses in contestable markets only occur through a legally, financially and operationally (including data and information) separate business and that the effectiveness of ring-fencing arrangements are subjected to regular independent audit. Otherwise these businesses will obtain an unfair advantage and distort competitive outcomes.

Against this background, AGL is firmly of the view that the AER should not grant Energex a waiver from compliance with the ring-fencing guidelines in this instance. We note also that:

- The BESS waiver application fails the threshold test of establishing that the administrative costs of complying with the guideline and involving a retailer and/or other third party provider outweigh the public benefits of upholding the ring fencing guidelines – in terms of cultivating the emergence of a vibrant, competitive market for these services. In fact, Energex does not attempt to quantify these costs and we note that there are likely to be many third party providers (New Energy Services included) keen to be involved in such a trial.
- In this regard, we note that AGL New Energy Services is currently participating in a relevant trial directly with a network business which is focussed on understanding the capabilities and network impacts of emerging technologies. This trial is currently commercial-in-confidence, however we will share additional information directly with the AER if this would assist in its deliberations.
- Furthermore, other trials of new battery storage technology of which we are aware – including those being undertaken by Ergon and ActewAGL – involve retailer participation. There do not appear to be any grounds for making an exception in this case.
- We also note that trials that actually involve a retailer and/or other third party provider are likely to be of more value since these will better embody the characteristics of possible real world commercial deployments and applications. If there is a desire to unlock network value from storage, then the retailer and its customer, will be key elements to involve.
- Although Energex may not currently intend to commercialise the IP developed through the trial, if in the future it changes its strategy and joins a number of other distribution businesses in seeking to enter contestable markets for behind-the-meter services, then that IP could prove highly valuable. Such a change in strategy might see IP that was developed using regulated revenue leveraged by Energex to gain an unfair competitive advantage in a contestable market.

Although the current BESS waiver application relates to a relatively small scale test site, in AGL's view it is important for regulator discretion to be applied consistently and, where possible, to anticipate the likely future state where nationally consistent ring-fencing guidelines more directly regulate distribution business activities behind-the-meter.

Should you have any questions in relation to this submission, please contact Eleanor McCracken-Hewson on (03) 8633 7252 or myself on (03) 8633 6836. We would be pleased to discuss this submission in more detail.

Yours sincerely,



**Stephanie Bashir**

Head of Policy & Regulation, New Energy

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<sup>3</sup> AER, Position paper: Distribution Ring-fencing Guidelines, September 2012