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Dear Mr Johansen

Electricity Distribution Ring-Fencing Guideline - Exposure Draft

Thank you for publishing the exposure draft of the Electricity Distribution Ring-Fencing Guideline (**Exposure Draft**) and providing the opportunity to comment.

ActewAGL Distribution (**AAD**) has identified two points arising from the Exposure Draft that are sufficiently significant to warrant clarification. These are explained below.

Gas Assets

AAD requests a change expressly permitting DNSPs to provide regulated gas services in order that AAD would be able to continue to provide services by means of its regulated gas distribution network in the ACT and adjoining regional areas.

As presently drafted, clause 3.1 of the Exposure Draft would prevent AAD from providing those services.

Therefore, AAD proposes that the following clause 3.1(d)(vii) of the Exposure Draft (and associated definitions for clause 1.4) be inserted:

vii. providing **regulated gas services**; and

[Definition for clause 1.4]

regulated gas services means services provided by means of a 'covered pipeline', as that term is defined in the National Gas Law.

It is unnecessary for the ring-fencing guidelines to preclude DNSPs from providing regulated gas services. Specifically:

- the AER regulates the costs associated with regulated gas services pursuant to the National Gas Law and National Gas Rules. Further, AAD is required to comply with the ring-fencing requirements set out in Chapter 4, Part 2 of the National Gas Law. In consequence, AAD has no ability to engage in cross

subsidisation, discrimination or any other conduct which the ring-fencing guidelines seek to prevent;

- to the extent that the AER considers it necessary to obtain information from AAD at the same time in respect of both the costs allocated to its electricity distribution business and the costs allocated to its gas distribution business, the AER already has the power under the National Electricity Law to require the provision of information at a time of its choosing, such that it can achieve this outcome; and
- to the extent it may be relevant, regulated gas services are, by definition, not contestable. As such, preventing AAD from providing regulated gas services could not increase competition for the provision of such services. Those services will be exclusively be provided by a single party irrespective of the application of the electricity distribution ring-fencing guidelines.

The Exposure Draft appears to contemplate the use of the waiver provision in clause 3.1(e) as the means by which AAD could effectively seek an exemption to prevent clause 3.1 precluding its continued provision of regulated gas services. However, the waiver process is not well suited to addressing this issue as it would create inefficiency and/or uncertainty which would increase costs for a number of reasons including:

- Applying for a waiver involves time and cost. Applications would be required on a regular basis;
- For each waiver application, DNSPs would be forced to wait for the AER's decision and would not be certain of a waiver being granted;
- A waiver can only apply for a limited period of time pursuant to clause 5.3.3(b) of the Exposure Draft;
- A waiver can be revoked with as little as 40 days' notice pursuant to clause 5.5 of the Exposure Draft; and
- The mandatory factors in clause 5.3.2(a) of the Exposure Draft which the AER must consider in determining whether to grant a waiver do not include any reference to consumers of gas, or the efficient supply of gas. In consequence, the AER may choose not to grant a waiver despite there being significant benefits to gas consumers from AAD continuing to provide its existing regulated gas services.

In consequence, the final ring-fencing guidelines should expressly permit DNSPs to provide regulated gas services rather than relying upon the waiver process as appears to be contemplated in the Exposure Draft.

Service Providers

AAD proposes the following change to clause 4.4 of the Exposure Draft:

A **DNSP** must **take reasonable steps** to ensure that any provider of services to the **DNSP** does not engage in conduct which, if the **DNSP** engaged in the conduct itself, would be contrary to the **DNSP's** obligations under clause 4 of this **Guideline**.

This proposed clarification recognises that a DNSP cannot control the actions of a service provider. However, a DNSP can take steps to influence the conduct of a service provider. For example, a DNSP may include clauses in a service agreement with a service provider in relation to conduct of the type prohibited by the Exposure Draft.

It would be inappropriate to impose a firm obligation on DNSPs in respect of conduct which is beyond their control.

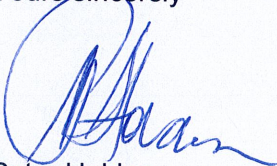
The revised proposed version of clause 4.4 above reflects the intent of the obligation.

Time for review

Finally, AAD observes that there have been some major substantive changes from the draft guideline published in August and is concerned that, in the short time provided for stakeholders to review and comment, not all of the key issues will surface. This letter addresses the major issues AAD has identified to this point.

Please do not hesitate to contact Patricia Cameron on 02 6248 3812 should you wish to discuss further.

Yours sincerely



Peter Holden

General Counsel & Board Secretary
ActewAGL Distribution

