Arek Gulbenkoglu

Acting General Manager, Consumers and Markets Branch

Australian Energy Regulator

GPO Box 520

Melbourne VIC 3001

Submitted by email to:  [AERringfencing@aer.gov.au](mailto:AERringfencing@aer.gov.au)

6 November 2020

**United Energy ring-fencing waiver application**

The Australian Energy Council (AEC) welcomes the opportunity to respond to the AER consultation to United Energy (UE)’s application for a waiver of the legal separation obligations under clause 3.1 (b) of the Ring-Fencing Guideline. In its waiver application UE seeks to purchase 40 new pole mounted battery energy storage system (BESS) units to install on the LV network that will be used to supply both regulated and non-regulated energy.

The AEC is the industry body representing 22 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

**AEC position**

The AEC has raised previous concern that a competitive asset like grid scale batteries can be treated as a regulated asset rolled into the RAB to provide standard control services. We do not support this regulatory treatment of such competitive assets. The AEC is also concerned at the rise of distributor centric models that displace competition between third party providers at the centre of DER framework. Our position is that competition and non-discriminatory access are the best mechanisms for providing services to customers at an efficient cost. Policy approaches should foster the development of competitive third-party providers and competitive platforms.

In this application UE's use of the BESS units to provide standard control services and additional leasing income creates the potential for them to offer battery storage services in the competitive market at a discount to that market.  This is because with accounting separation, UE’s ring-fenced affiliate could in theory provide the service at a discounted price by using part of the benefit available to UE to do so. This has the potential to crowd out potentially more efficient service providers from the BESS market in the short-term, which diminishes productive efficiency, and would have a chilling effect on competition and technological development in the BESS market in the long-term, which diminishes dynamic efficiency.

Whilst in this specific case the partner energy retailer is independent and not a UE affiliate nothing prevents UE doing this with an affiliate in the future.  If UE placed the BESS units on a part of the network that gave them significant benefits, it would have the ability to significantly cross subsidise and offer battery rental storage cheaply.

The AEC notes that this cross subsidy can theoretically be resolved through UE's Cost Allocation Methodology (CAM). Whilst this allocation and attribution in the UE CAM must be consistent with the cost allocation principles in NER clause 6.15.2 it is important to note that the cost allocation principles outlined in the Rules are broad, and offer little guidance beyond high level, generic principles. Because of this and the nature of joint costs themselves, there is a range of outcomes that might be deemed to be “economically efficient” that in fact are not. The AEC therefore urges the AER to require future applications to disallow the use of a ring-fenced affiliate as the equivalent to a partner retailer. The AEC supports the partner retailer requirement in this waiver application.

Any questions about this letter should be addressed to David Markham by email to [david.markham@energycouncil.com.au](mailto:david.markham@energycouncil.com.au) or by telephone on (03) 9205 3107.

Yours sincerely,

**David Markham**  
Networks and Distributed Energy Resources Policy Manager  
Australian Energy Council