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Submitted via email: ringfencing@aer.gov.au

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Citipower Powercor Networks ring fencing waiver application

The Australian Energy Council (the Energy Council) welcomes the opportunity to make a submission to the Australian Energy Regulator (AER) regarding the Citipower and Powercor waiver application (the application) for its services, branding and shared employees.

The Energy Council is the industry body representing 21 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.

The objective of ring-fencing is to provide a level playing field for third party providers in new and existing markets for contestable services, such as those for metering and energy storage services, in order to promote competition in the provision of electricity services. Without effective ring-fencing, DNSPs would hold significant advantages in such markets.¹

Request for interim waiver

The Ring Fencing Guideline contemplates the circumstances in which a waiver may be legitimately required because of a jurisdictional requirement that compels a network to provide services that do not satisfy the definition of distribution services under the guideline.

Where such a community service obligation or other government direction or law exists, then to the extent that the AER ring fencing guideline is inconsistent with the obligation and the direction or law, the Energy Council has previously submitted that the threshold test has been met for a waiver to be made². These are very limited and entirely apparent cases. The Energy Council remains of the view that this threshold test should be the only circumstance in which a waiver application can be made or granted.

Therefore the Energy Council opposes the waivers sought in the application where they apply to contestable services as they do not meet this test or circumstances. We emphasise that contestable services, whether they are negotiated services or unclassified services, are the subject of concern.

¹ AER Electricity distribution Ring-fencing Guideline Explanatory statement, November 2016

² Australian Energy Council, Response to AER Draft Ring Fencing Guideline- Exposure Draft, 16 November 2016

Non contestable services, such as emergency recoverable works, might quite legitimately form part of a waiver application.

We understand that there is a view that some of the services subject to the application may be reclassified as alternate control services in future reviews, and that the costs of enforcing the guideline would then be passed through. We assume that the AER will consider whether these costs are material, as the detail of these costs does not form part of the application. This must be balanced against the development of competitive markets for energy services.

The development of competitive markets for energy services

Ring Fencing in of itself is a concessional arrangement to allow a lower threshold than full physical, structural and legal separation of the competitive and regulated parts of network businesses. The arrangement works largely in favour of the network businesses themselves, allowing them to augment opportunities for growth in revenues, and substitutes to network investments, without the establishment costs of competitive market entry. Competitive businesses do not enjoy this comparative advantage, and they remain justifiably concerned that the current ring fencing arrangements will neither prevent market harm nor ultimately prove to be in the best long term interests of consumers.

In this context, the application seeking of further concessions to essentially support business as usual avoidance of the Ring Fencing Guideline for periods beyond 1 January 2018 means that the support the guideline provides to the development of competitive markets for energy services, and for efficient investment, is in practice delayed a further two years plus.

In light of the already existing concessions in the transition period, this is unacceptable. The intention of the Guideline is that network businesses comply as reasonably as practicable, and no later than 1 January 2018³.

Negotiated and unclassified services

Effective ring fencing is required to establish a competitive market in electricity services. When competitive neutrality in the provision of these services to customers is in any way compromised this can allow the network businesses to dominate the market for these services in their own service area, which would deny customers the dynamic benefits of effective competition.

We therefore disagree with the applications assertions that there is no harm in the waiver for these services. These dynamic benefits outweigh any short-term gains that may accrue to customers in the form of lower costs to the network businesses in the near term. The long term interests of consumers are not served in the waiver application for negotiated and unclassified services that can be competitively sourced.

We are also concerned with the applications assertion that network business would pass the costs of establishing its separate competitive activities to comply with the Guideline on to customers through its regulated charges. This seems inconsistent with the requirements of the Guideline.

Branding and cross promotion

³ Ring fencing Guideline (electricity distribution) Fact Sheet November 2016

The Energy Council does not support the waiver applications for the functional separation requirements from Part 4 of the Guideline for the period or purposes sought in the application. The Guideline was published In November 2016 and the requirements are not unreasonable given the start date of 1 January 2018. The period sought is disproportionate to the real effect on the applications operations, and the approach does not give practical effect to addressing 4.2.3(a) of the Guideline.

The requirements of 4.2.3 do not seem unreasonable or difficult to comply with in regard to the jurisdictional direction. The Energy Council view is that confusion as to Citipower and Powercor roles in competitive services can and should be avoided.

We also disagree with the applications assertions that there is no harm in the waiver for these services. These benefits of establishing competitive markets outweighs any short-term gains that may accrue to customers in the form of lower costs to the network businesses in the near term.

No Action letter

The application addresses the current operating arrangements where Citipower and Powercor share management, employees and systems. Subject to the Ring Fencing Guideline, the Energy Council does not oppose any No Action determined by the AER in respect of the application.

Any questions about our submission should be addressed to David Markham, Corporate Affairs by email to david.markham@energycouncil.com.au or by telephone on (03) 9205 3111.

Yours sincerely,



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