23 September 2019

Moston Neck
Director, Consumers and Markets
Australian Energy Regulator
Level 24, 400 George Street
Brisbane QLD 4000

By email: ringfencing@aer.gov.au

Dear Moston

Re: Ring fencing guideline review stakeholder workshop

CitiPower, Powercor and United Energy welcome the opportunity to respond to the Australian Energy Regulator's (**AER**) stakeholder workshop slides, presented at the Melbourne workshop on 29 August 2019 as part of the review of the distribution ring fencing guideline (**guideline**).

Cross subsidy and cost allocation issues

We consider that the current arrangements on cross subsidies and cost allocation are sufficient. In our experience, these provisions complement other regulatory checks and balances such as the audit of the statutory accounts. These processes have been successful at identifying and addressing any cost allocation issues.

Office sharing

The AER inferred at the workshop that it intends to clarify the existing definition of 'office' in the ring fencing guideline to include bathrooms and kitchens. We do not consider that such clarification is practical or proportionate.

Firstly, many bathroom and kitchens are accessible from common areas of many buildings such as receptions or lift wells. There would be no practicable and cost effective way to police affiliate staff access (such as using swipe cards) to areas such as these which are intended to be available for general access.

Secondly, we consider that cost of any such compliance is likely to outweigh any potential benefits to competition. The net costs of moving an existing bathroom or kitchen would ultimately be passed on to customers through network tariffs. The benefits to competition from doing this are not apparent particularly given not all opportunities for information sharing would be eliminated e.g. coffee shop.

Our affiliate, Beon Energy Solutions, is already housed in a separate building to our regulated businesses and we note that we are compliant with office sharing provision of the guideline.

Staff sharing

We consider the current level of disclosure regarding staff sharing is sufficient. That said, the positions presented at the workshop indicate the AER may wish to develop a better mechanism for identifying staff that may be shared. This may helpfully clarify the application of the guideline to particular staff roles which to date have been unclear.

We understand that the AER considers that where shared staff have access to electricity information, whether or not they download or view it, there is a ring fencing breach.

Based on previous correspondence with the AER, the AER should make clear that the following circumstances do not amount to a material breach of the ring-fencing guidelines:

- the staff member is not aware they have this access
- the staff member is aware of the access but has never actually accessed the electricity information

Where a staff member has not actually accessed the information, there is no risk of them disclosing this information to the affiliate. As such, there is no risk of the affiliate obtaining information in this scenario which would provide it with a competitive advantage. As such, these types of scenarios should not be recognised as ring fencing breaches.

Many of these circumstances arise due to legacy changes to IT systems. Requirements to ring-fence all IT systems should be allowed to occur over a longer transitional period of time. We note that that functional separation of the British Telecommunications IT systems is ongoing 12 years after it was agreed to be implemented. Physical separation of, or implementation of access controls to, IT systems has been one of the most challenging, complex and costly aspects of implementing functional separation to British Telecommunications.[1] Correspondingly, applying the obligation to separate IT systems to 13 distributors across Australia will also take time to implement.

We further note we do not consider that the definition of “electricity information” needs to be revisited.

Compliance reporting and materiality of breaches

The AER has indicated its continued preference for distributors to alert the AER within five business days upon becoming aware of ring fencing breaches. Such a short time period should be reserved for urgent matters such as network safety, to ensure the root cause of the matter is quickly identified and rectified to minimise any further risk.

Reporting potential breaches to the AER is not a simple process for distributors. Investigations in short spaces of time involve considerable resources across a range of disciplines, including network planners, technicians, IT, legal and regulatory staff. After the details of the potential breach have been determined, internal governance processes must be completed prior to notifying the AER. These steps are difficult to achieve within a five day timeline.

The matters that are likely to arise through a potential material ring-fencing breach are likely to be legacy IT system issues, where a change in staffing or circumstances has resulted in the matter now being identified. These breaches are highly unlikely to cause detrimental harm to consumers or to competition.

We further note that ring fencing has only applied to distributors for three years. In that time, we have driven a cultural change in behaviour to comply with the new requirements. Breaches are becoming fewer. Any breaches identified in our last audit were legacy issues only. Going forward, we expect to continually report fewer and fewer breaches as our culture of compliance continues to strengthen.

Branding

Our branding waiver is expiring on 31 December 2019. We are taking steps to be fully compliant with the guideline’s branding provisions by that date.

We look forward to responding to a comprehensive issues paper, consultation paper and draft decision in line with normal process.

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1 Refer Equality of Access Board, Annual Report 2018, May 2018, p. 18.

Should you have any queries about this letter please do not hesitate to contact Amber Wilkie on (03) 9683 4124 or awilkie@powercor.com.au.

Yours sincerely,

Brent Cleeve
Head of Regulation
CitiPower, Powercor and United Energy