



15 August 2017

Mr Chris Pattas
General Manager, Networks
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Via Email: ringfencing@aer.gov.au

Dear Mr Pattas,

Submission on the AER's Draft Amended Ring-Fencing Guidelines for Electricity Distribution

1. The Electrical Trades Union (ETU) is the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents approximately 65,000 electrical industry workers around the country and the CEPU represents over 100,000 workers nationally, making us one of the largest trade unions in Australia.
2. The ETU welcomes the opportunity to provide this submission on the AER's Draft Amended Ring-Fencing Guideline (Guideline).
3. The ETU does not dispute that the Guidelines closely adhere to the development requirements set out in Chapter 6 Part H of the National Electricity Rules. However, the ETU believes that it should be brought to the attention of the AER that these Guidelines have been interpreted to justify changes in the industrial landscape by a distribution service provider.
4. This submission provides 5 recommendations to improve the drafting of the Guidelines which pertain to;
 - a) Unintended Industrial Relations Impacts;
 - b) Disclosures;
 - c) Waivers;
 - d) Employee Consultation; and
 - e) Spot Auditing of Compliance and Performance Reporting.

Unintended Industrial Relations Impacts

5. The ETU is aware of numerous DNSP's and related electricity service providers who are claiming the Guidelines have the effect of **requiring** them to modify their industrial instruments.

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7. In the electrical power industry, most DNSP's and related electricity service providers are governed by enterprise agreements which provide for common terms and conditions of employment.
8. DNSP's and related electricity service providers engaging employees under common terms and conditions of employment is not contrary to the identification and separation of regulated monopoly business activities, costs and revenues from those that are associated with providing services in a contestable market.
9. If the AER was to determine that it was, then the obvious conflict with the Modern Award system, the *Fair Work Act 2009* and the National Employment Standards would need to be resolved as a matter of urgency.
10. The ETU recommends the following clarification be inserted into the Guidelines:
4.2.2(e) For the avoidance of doubt, nothing in Clause 4.2 prevents a DSNP and a related electricity service provider from engaging staff under the same industrial terms, including staff from a DNSP and a related electricity service provider being employed under the same industrial instrument.

Disclosures

11. The ETU understands the purpose of the staff sharing requirement as an additional provision to assist in limiting the flow of information "where there is the potential for competitive disadvantage between those parts of the Distribution Network Service Provider's business which provide direct control services and parts of the provider's business which provide any other services".¹
12. The ETU recommends removing the ability at 4.2.5 of the Guideline for DNSP's to seek a waiver for obligations under clause 4.2.4.
13. Further the ETU recommends the Guideline seek that in addition to DNSP's being required to publish the information currently outlined in the Guideline, that DNSP's also be required to outline how they will actively monitor and manage their staff sharing arrangements to comply with the Guidelines.
14. This will allow consistency with obligation requirements set in clause 4.3 on information access and disclosure.

Waiver requirements

15. The ETU notes the current Guideline allows a DNSP to make applications for a waiver on 4.4.1 (a) but not 4.4.1 (b).

¹ Rule 6.17.2(b)(1)(v) National Electricity Rules, Version 94.

16. The current version of the Guideline at 4.4.1 (a) is sufficiently broad which provides some justification for the ability of DNSP's to seek a waiver in relation to agreements between DNSP's and service providers.
17. The ETU believes that with the added clarification detail at 4.4.1 (a) that particularises the specific scope of where new or varied agreements are captured by the requirement of the Guidelines, the AER should determine that this provision is no longer eligible for waiver applications.

Employee Consultation

18. The Guidelines provide for a range of circumstances which may impact employees engaged in the industry, however nothing in the Guidelines currently requires DNSP's to engage with employees in relation to Ring Fencing.
19. Both industrial relations and work health and safety laws in Australia recognise the added benefit of employee engagement in organisational decision making.
20. The ETU recommends inserting the following in clause 5.2 of the guidelines:

5.2(i) information and evidence that the DNSP has consulted with employees (and their nominated representative) about the waiver application including detailing what affect the waiver may have on employees.

Spot Auditing regarding compliance and enforcement

21. To improve the robust nature of clause 6 of the Guidelines, the ETU recommends that the capacity for random spot auditing of the DNSP compliance with the Guidelines should be embedded in the Guidelines.
22. The Guidelines only provide the onus on the DNSP to be compliant and openly disclose to the AER if there has been a material breach of its obligation under these Guidelines.
23. This recommendation can be supplementary to clause 6.4 of the Guidelines to enhance consumer confidence in the Guidelines.
24. Such arrangements recommended would further enhance transparency and confidence for consumers and make DNSP's less susceptible to non-compliance.

Conclusion

We urge the AER to take all ETU recommendations into serious consideration when finalising the amendments to the Guidelines. The absence of the five recommendations will have paramount implications on the employment terms and conditions of the ETU membership in the power industry and may garner inconsistency between the Guidelines and Chapter 6 Part H of the National Electricity Rules.