Electricity Distribution Ring Fencing Guideline update – summary workshop notes

28 & 29 August 2019

Attendees

- Essential Energy
- Endeavour Energy
- Ausgrid
- Energy Queensland (Energex and Ergon Energy)
- Jemena
- ActewAGL
- Cotton Australia
- Origin Energy
- Master Electricians Australia
- Citipower/Powercor/United Energy
- AusNet Services
- SA Power Networks
- TasNetworks
- PWC
- Energy Networks Australia
- Evoenergy
- Deloitte
- AGL
- KPMG
- Australian Energy Council
- EY

Meeting notes

General notes:

The guideline review process:

- Some stakeholders recommended that any changes or updates should be made to the Guideline, and should not be limited to an explanatory statement or fact sheet.

Enforcement of compliance**:**

- Stakeholders discussed enforcement responses to compliance issues by DNSPs, including the potential to attach civil penalties to ring-fencing in the NER. Some stakeholders noted that 'naming and shaming' is not effective for monopoly businesses, whose customer base is not impacted by bad publicity.

<u>Guideline provision specific notes:</u>

Cost allocation and attribution

- The AER stated that the purpose of clause 3.2.2 of the Guideline is to broaden the obligation around cost allocation to ensure costs incurred by an affiliate and attributed to a regulated service are properly accounted for. Some stakeholders noted that the wording of clause 3.2.2 is confusing, and doesn't clearly convey its intent.
- Some stakeholders noted that cost allocation approach can advantage affiliates of a DNSP by allowing costs to be shared.
- Questioned were raised about how annual regulatory reporting (i.e. through Regulatory Information Notices) and ring-fencing independent assessors should interact. The AER noted an annual reporting RIN serves a different purpose and is subject to different rules. While a RIN may meet some aspects of the ring-fencing requirements, independent assessors need to examine costs attributed to the DNSP by an affiliate.
- It was noted that ring-fencing is beneficial to DNSPs as it allows sharing of some costs. For example, it was noted that structural separation would not permit sharing of costs at all, as it would prohibit any cross-ownership between businesses that provide contestable electricity services and regulated network services.

Office sharing:

- Some stakeholders noted the cost of office sharing restrictions can be high for DNSPs. Some DNSPs questioned the need for any physical separation of DNSP staff and staff of an affiliate providing contestable electricity services in different offices.
    - The AER noted that staff separation and sharing restrictions in the Guideline aim to address the strong commercial incentives for staff to share information that would be advantageous to affiliates. One purpose of this consultation is to determine the appropriateness of current office separation requirements in light of recent compliance issues and breaches associated with some such arrangements.

Staff sharing

- Stakeholders noted that some DNSPs share executive staff with the affiliate, and queried whether there should be stricter cut-off points for sharing of executive staff.
- It was suggested that ring-fencing risks negatively affect service delivery to customers. For example, ring-fencing measures could impact a customer's access to timely services to restore power supply when power goes out on their premises.
    - A stakeholder gave an example of a DNSP that was unable to rectify a tap that was giving electric shocks to customer due to a broken insulator that was causing arcing.
- Some stakeholders suggested that the AER should avoid prescribing specific staff positions that cannot be shared between the DNSP and an affiliate.
- Stakeholders suggested that in some circumstances a staff member might be shared between the DNSP and an affiliate RESP because of their specialist skills, rather than their access to electricity information.
- The AER noted that it would be useful if stakeholders provide examples of DNSP staff who should be able shared but are presently restricted from being shared under the Guideline (including reasons).

Information access and disclosure

- Stakeholders suggested the phrase ‘confidential information’ is confusing in the context of ring-fencing. It is often confused with the plain-English definition of the term confidential information, which is related to the Privacy Act. They suggested that we use another term (e.g. restricted information; commercially sensitive information).

Compliance reporting

- Stakeholders suggested moving ring-fencing compliance reporting from a financial year to calendar year basis would help reduce reporting congestion in the period just after a financial year ends.
- Stakeholders noted clause 6.2.1 doesn’t specifically require an auditor to assess compliance with the guideline. Some DNSPs have interpreted this as the independent assessor should only assess statements made by the DNSP within their annual compliance report, irrespective of whether there are obligations in the Guideline that are not adequately covered in DNSP compliance reports. This aspect of independent assessments should be clarified.
- The AER noted that the quality and detail of transaction reporting varies between DNSPs and more guidance on this may be needed.
- A stakeholder noted that the language in the Guideline does not always match the language in a DNSP’s Framework and Approach, and this can cause confusion.

Breach reporting

- The AER outlined several options to improve breach reporting, including assigning automatic materiality to certain clauses and requiring all breaches be reported within 5 business days.
- There was some support for the idea of identifying certain clauses of the Guideline for which a breach would be subject to immediate (within 5 business days) breach reporting to the AER.
- Some DNSPs said they already report all breaches to the AER, regardless of materiality.
- Stakeholders suggested that having examples of material and non-material breaches in the AER’s annual ring-fencing report would help to clarify material and non-material breaches for reporting purposes.

Branding

- Stakeholders enquired whether ASX listings can include the parent name. The AER confirmed they can.
- Stakeholders enquired whether auditors should go out into the field to test branding. The AER noted that where DNSPs adopt a high risk approach to compliance (e.g. changeable branding on uniforms or trucks) there could be increased ongoing compliance costs for the DNSP. It was suggested such approaches be avoided.

Staff and office sharing registers

- Stakeholders noted the AER observation that informative registers are important for building confidence in the robustness of a DNSP’s ring-fencing arrangements. To be effective, these registers need to be easily found and kept updated regularly.

Innovation

- Stakeholders suggested that the AER could provide more clear guidance to DNSPs on how they can be involved in innovation projects.