

25 May 2016

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Dear Mr Pattas

**Submission to the Australian Energy Regulator**  
**Preliminary Positions Paper: Electricity Ring-Fencing Guideline**

The Energy and Water Ombudsman (SA) Limited ("EWOSA") welcomes the opportunity to comment on the Australian Energy Regulator's Preliminary Positions Paper on the *Electricity Ring-Fencing Guideline*.

In this submission, the EWOSA primarily addresses matters that are specifically of interest to the EWOSA Scheme. Many of the questions posed in the Preliminary Positions Paper are addressed in the submission.

EWOSA is an independent Energy and Water Ombudsman Scheme in South Australia. It receives, investigates and facilitates the resolution of complaints by customers with regard to (*inter alia*) the connection, supply or sale of electricity, gas or water.

**Question 2: Do you consider these objectives discussed in section 2.1 adequately reflect the harm ring-fencing is seeking to avoid and the benefits of an even playing field?**

We support the proposed ring-fencing objectives and believe they adequately identify the potential harm ring-fencing is aiming to avoid. We also believe that the objectives should have the National Electricity Objective as their guiding principle and the creation of an even playing field in contestable energy services is the most likely way of delivering high quality services efficiently, reliably and safely to customers, at competitive prices.

In addition, it is vital that the ring-fencing guidelines ensure that potential new market participants are not discouraged from entering the markets for contestable energy services and do not face any barriers to entry that are the result of existing market participants exercising market power.

**Question 3: Do you agree with the service classification approach to ring-fencing which is discussed in section 3.3? Is there a better alternative?**

We generally agree with the service classification approach to determining which services should be ring-fenced.

However, one disadvantage with the service classification approach is the implied review of ring-fencing services every five years in the Australian Energy Regulator (AER) Framework and Approach (F&A) process. This may introduce some uncertainty for businesses wishing to provide such services and therefore result in less investment in these services than would otherwise be provided in a competitive market. This could make consumers worse off.

We believe that placing the onus on Network Service Providers (NSPs) to present a case for which of their potentially contestable services should not be subject to ring-fencing – by applying for waivers – is the best approach for customers. As suggested in the Preliminary Positions Paper, electricity customers and most other stakeholders would have limited access to information to argue their own cases. NSPs can also respond to the classification of services during the F&A consultation process to present a case for specific services to not be ring-fenced.

**Question 5: Are there other ring-fencing obligations we should impose on NSPs that provide services into contestable markets?**

We generally support the proposed ring-fencing obligations that should be imposed on NSPs providing contestable energy services. Please see comments under Question 7.

We do not believe other obligations need to be imposed on NSPs to achieve effective ring-fencing of contestable energy services.

**Question 7: Should assets sharing be restricted between regulated services and contestable service provision?**

We believe assets sharing should be restricted between the regulated services provided by a NSP and the contestable services provided by an affiliate of that NSP. These restrictions should particularly apply to staff with expertise that can apply to both categories of services, such as marketing and operational staff. Such restrictions currently exist in some States' ring-fencing guidelines.

It should be noted that some electricity retailers are likely to become involved in the provision of contestable services and will have the ability to allocate staff and other assets (such as office space) across the provision of both electricity retail services and contestable services. While the retailing of electricity takes place in a competitive market, any restrictions placed on NSPs regarding the sharing of assets should not place them at a disadvantage compared to other businesses that are providing contestable energy services and which have the ability to share assets. This would go against the objective of creating an even playing field and may result in consumers being worse off, through reduced choice and possibly higher prices.

**Question 8: Do the factors set out above reflect the issues we should consider in deciding whether to grant a ring-fencing waiver?**

We agree that the factors outlined in the Preliminary Positions Paper reflect the issues that should be considered in deciding whether to grant a ring-fencing waiver to a NSP. In some cases, not all of the factors will need to be considered.

We believe the process of granting waivers should have the National Electricity Objective as a guiding principle, since the creation of an even playing field in contestable energy services is the most likely way of delivering high quality services efficiently, reliably and safely to customers, at competitive prices.

In particular, the granting of a waiver should consider the issue of whether customers would be better off with or without the ring-fencing of a particular contestable energy service, as well as with or without the imposition of each ring-fencing obligation associated with such a service.

**Question 9: In which circumstances should the customers of ring-fenced services and not customers of the DNSP's services in general pay the additional costs of complying with ring-fencing obligations?**

We agree with the proposed approach in the Preliminary Positions Paper that the customers of ring-fenced services should in general pay the additional costs of the NSP in complying with ring-fencing obligations. This is in parallel with the ring-fencing obligation of accounting separation and avoids involving all of the customers of the NSPs regulated services paying for the costs of providing contestable energy services that some of them may not be receiving.

**Question 10: How else could the AER minimise the administrative cost of ring-fencing while maintaining the integrity of its approach?**

We support the options of fast track waiver applications for less contentious applications and bulk waiver applications for common applications as ways to minimise compliance costs for NSPs and regulatory costs for the AER.

Another option to reduce administrative costs is to consider whether a lighter regulatory approach to ring-fencing is required in some circumstances, where procedures and protocols developed and applied by NSPs – and approved by the AER – might work just as effectively as imposed obligations to achieve ring-fencing, but at a lower cost to NSPs and possibly the AER.

**Question 11: Is it reasonable for the AER to consider these transitional arrangements to the new ring-fencing guideline?**

We believe transitional arrangements should be put in place for NSPs to shift to the new ring-fencing guideline.

Given that the guideline is scheduled to be published in November 2016 and the rule for competition in metering services will apply from 1 December 2017, it would be sensible to allow a one year transition period for NSPs. Part of this transition could include a choice for NSPs to comply with the ring-fencing guideline in their relevant State jurisdiction or with the AER's guideline. Each NSP would be required to inform both the AER and the relevant regulator in their State jurisdiction which guideline they were complying with and their intended timeline for switching to the national guideline and in applying for the associated waivers. Such an approach would most likely minimise costs for NSPs and could be made transparent for stakeholders. All NSPs would be required to have transferred to the AER electricity ring-fencing guideline before the end of November 2017.

**Question 12: How can we ensure ring-fencing compliance is robust and effective without imposing excessive costs that may ultimately be borne by consumers?**

We support the annual reporting and publishing requirements proposed in the Preliminary Positions Paper.

To help achieve compliance with the electricity ring-fencing guideline, we believe penalties are necessary in some circumstances. These include where a breach of the guideline has caused measurable harm to customers or competitors and/or where there are multiple or repeated breaches, particularly when they imply a systemic issue. A single, isolated and minor breach should not warrant a penalty.

Should you require further information or have any enquiries in relation to this submission, please telephone me on (08) 8216 1851 or email me at [antony.clarke@ewosa.com.au](mailto:antony.clarke@ewosa.com.au).

Yours faithfully



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