

**TO/**

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Australian Energy Regulator  
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Thursday, July 8, 2021

Dear Australian Energy Regulator,

**Firm Power 'Update' submission in support of Targeted Stakeholder discussion (23/2/21 & 3/3/21).**

Firm Power is pleased to provide this update in support of the Australian Energy Regulator (AER's) Ring-fencing Guideline Targeted and Generic stakeholder discussions.

Importantly Firm Power supports the AER in maintaining and reinforcing the importance of Ring-fencing as a valuable integrity check to ensure Distribution Network Service Providers (DNSP's) have adequately tested the market when procuring the most cost competitive energy services on behalf of consumers.

This paper addresses questions posed by the AER in its consultation slides and attempts to provide clear articulation that Energy Storage Device (ESD) ownership by Network Service Providers (NSP) will:

- Create competitive harm by eliminating demand for third party provided non-network services. The market needs this demand and revenue potential to encourage investment in the non-network space and facilitate growth; and
- Create perverse outcomes by eroding the ability to maintain a level playing field, avoid monopolistic pricing and offer NSP's the most economically efficient method of delivering network support whilst driving down costs in the interests of the consumer.

Although Firm Power has a preference for a waiver approach rather than an exemption approach, Firm Power believes that using AER waivers can create a series of contiguous DNSP led ESD trials that will prevent the establishment of a sustainable market attractive to Investors and effectively lock out participation and incremental learning by providers of non-network solutions.

If you have any questions in relation to this submission please don't hesitate to contact Marcus Keller at [marcus@firmpower.com.au](mailto:marcus@firmpower.com.au).

Your sincerely,



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### **1. Stand Alone Power Systems (SAPS)**

Firm Power supports deployment of SAPS by DNSP's only as an alternative of last resort. We believe in the interests of obtaining a competitive solution on behalf of customers, and suggest DNSP's should still be tasked with undertaking a market testing exercise to determine if third parties are able to provide SAPS generation and maintenance services. An exemption can then be considered thereafter.

We acknowledge the volume of SAPS installations necessary to provide the requisite off-grid residential and community services, and suggest that if these were batched in sufficient numbers to facilitate economies of scale, the market will respond with an appropriate solution at a competitive price.

DNSPs hold significant knowledge about the nature, size, scale and timing of opportunities that exist in their respective networks to transition customers to SAPS. As part of their Distribution Annual Planning Reports (DAPR) DNSPs should provide transparency of these opportunities over a 5 year time horizon to better enable a planned and coordinated rollout of respective SAPS, thereby allowing the consumer to gain a greater benefit from the program.

Firm Power is aware of over 4000 CEC SAPS Accredited providers located across NEM connected States and Territories capable of managing the design, supply, installation and maintenance of SAPS. Despite this, by allowing DNSPs to provide SAPS services up to a revenue cap, this will stifle participation from third-party providers to enter and support the market, which will decrease competition and the benefits to end-consumers. If there is to be a revenue cap that allows monopolised participation of DNSPs in providing SAPS services via an exemption framework, then the exemption framework should contemplate a reduction in this revenue cap over time to provide a signal to third-party providers when the competitive landscape will open which allows them plan for entering and supporting the market.

We reinforce our concern that an exemption framework will create competitive harm and limit the market from establishing itself and providing competitive services in the SAPS sector.

### **2. Operation of BESS**

Firm Power is aware of several examples where DNSP's intend to provide non-network services via their regulated networks. Following is a summary of proposed projects:

- United Energy Bayside Battery Project
- CitiPower / Yarra Energy partnership
- Powercor's proposed BESS network upgrade (17 May 2021)

Firm Power is supportive of the AER's proposal that DNSP's be prohibited from providing non-network services with a battery and instead be directed to procure these energy services as a non-network solution from the market.

In the interests of providing equity between Network Service Providers we believe these same rules should also apply to Transmission Network Service Providers (TNSP's). We are aware of numerous TNSP led announcements where they intend to own and operate batteries either directly or via their unregulated business, which we believe is a significant departure from the intent of the National Electricity Rules. Further we believe a TNSP specific framework for protections that avoids cross subsidisation (by attributing costs incurred in providing unregulated activities, avoidance or discount of network tariffs to regulated activities) and discrimination (by a regulated business affording its unregulated affiliate preferential treatment or access to network information) is a critical element in the avoidance of competitive harm.

We would encourage AER re-engagement of TNSP's in the Electricity Transmission Ring-fencing Guideline Review (AER REF: 63302).

### **3. Functional Separation**

Firm Power supports an arrangement where DNSP's are discouraged from seconding staff between related entities who are competing against non-network energy service providers within a given RIT/D process. The location specific engineering intellectual property shared between regulated and unregulated entities by the

<p>movement of staff between them, creates a significant information advantage when compared to information made available to non-network service providers from within a RIT/D process.</p> <p>Firm Power supports:</p> <ul style="list-style-type: none"> <li>• The 12 month time period identified in relation to identifying seconded staff positions on the DNSP's website register, and</li> <li>• Quarterly updates to this register.</li> </ul> <p>Firm Power would encourage the AER to consider a guideline which calls for all DNSP's to create a Whistle-blower Policy. This policy would:</p> <ul style="list-style-type: none"> <li>• Facilitate a supportive environment in which DNSP team members could anonymously report to the AER unethical, misleading or deceptive conduct associated with non-compliance of "staff and information sharing" and,</li> <li>• Enable a timelier reporting of serious guideline breaches.</li> </ul>
<p><b>4. Information Access &amp; Disclosure</b></p>
<p>Firm Power would support greater clarity over the procedure for non-network service providers to obtain "Ring-fenced information" from DNSPs. Often non-network service providers are not privy to the DNSP data sets available to them as this information is either not publicized in full within Distribution Annual Planning Reports or becomes available within a reporting period and not publicized.</p>
<p><b>5. DNSP discrimination.</b></p>
<p>Firm Power supports the insertion of a non-discrimination clause in the Guideline. We would like to understand if the AER intends to clarify the methodology and/or definition of discrimination? An example may be where an affiliate establishes a joint venture, such as with Boundary Energy in Western Australia, the effect of which is to distort the market and limit market access for other non-network service providers.</p>
<p><b>6. Granting of DNSP Waivers</b></p>
<p>Waivers should be a decision of last resort with DNSP's compelled (on a non-discretionary basis) to offer evidence they have fairly and fully tested the market for suitable solutions and established the costs of this when compared to a network solution. If the market has been unable to provide a solution on a fair basis with reasonable terms and conditions, only then should the DNSP solution and a waiver be considered.</p> <p>Firm Power believes the fundamental role of a DNSP is to act as a market enabler and facilitate the deployment of batteries by procuring services. A waiver should not encourage a DNSP to deviate from this role.</p> <p>We support the AER's perspective that no evidence has currently been tabled by either DNSPs or TNSPs to confirm that vertical integration of batteries would support efficient investment in, and use of, assets in the long term interest of consumers. Further we support the directive of the European Union that batteries should be market based and competitive. Whilst waivers will provide the necessary hold point for DNSPs in their energy storage ambitions, in order to afford the market time to develop an appropriate solution, DNSPs should be encouraged to commence and publish RIT/D processes at least five years in advance of the identified need.</p> <p>Information made available from any trial enabled by a waiver should also be provided in depth. It may be easy for a waiver applicant to claim energy security or privacy principles disable the ability to share information.</p> <p>A period of end-to-end waivers will also do little to strengthen investor confidence in the establishment of a sustainable and profitable non-network energy service sector.</p>
<p><b>7. Supply of excess capacity to third parties.</b></p>
<p>Firm Power supports the AER's approach to limit any form of waiver or guideline which enables DNSPs to structure a project with the intent to rent excess capacity to third parties. Whilst this may be a current practice amongst TNSP's to adjust the value stack their projects can accomplish, we believe it will significantly distort the market and create competitive harm.</p>