www.metropolis.net.au

140B Dawson Street, Brunswick VIC 3056
P (03) 9024 7400 F (03) 9354 2347

ABN 53 116 717 321

16th November 2016

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

EXPOSURE DRAFT

AER Ring Fencing Guideline

Dear Mr Pattas,

Metropolis Metering Services Pty Ltd (Metropolis) is an AEMO accredited Metering Provider and Metering Data Provider with a significant volume of contestable advanced meters installed across homes and businesses in all states and territories in the NEM.

As an independent Meter Provider for almost 10 years, Metropolis has unique, practical experience in the application of existing ring-fencing rules. The results of this review and guideline will shape the competitive landscape for the critical starting of Competition in Metering, and hopefully result in a significant improvement in regulatory certainty for contestable service providers seeking to enter the market. Ultimately, this should result in improved service for consumers.

Please find in the attached appendix, Metropolis's feedback regarding the AER's exposure draft of the Ring Fencing Guideline.

Sincerely,

Charles Coulson

Regulatory Manager
Metropolis Metering Services

Overview
The exposure draft does not come with an explanatory note, so it is difficult to understand the AER's reasoning for some of the changes from the draft guideline. Equally, it is not clear why previously provided feedback has not been taken up.

Given this lack of transparency, Metropolis cannot provide a fully informed review of the exposure draft. However, we have performed a limited review, and we do not support the changes that have occurred in the exposure draft and do not believe previously provided feedback has been sufficiently considered.

In its current form, Metropolis are of the view that the guideline has a significant risk of being ineffective.

Changes made from the Draft Guideline
The only significant changes appear to have been watering-down of the guideline, primarily by allowing waivers for most elements. This reduces confidence in the ability of the guideline to facilitate an undistorted market.

- It is unclear in what circumstance it would be appropriate for a DNSP to be cross promoting or co-branding. This is a significant problem in the contestable market currently.
- Allowing staff and office sharing "where doing so will not compromise it's compliance with the guideline" is circular logic. Again it is not clear what situation this would be appropriate for, or why it has been allowed. It also appears that a specific waiver is not required for this, just a register of where it's being done.

Metropolis support interim waivers conceptually, but caution that many waivers likely to be applied for, that this process could easily result in long-term interim waivers while the waiver application backlog is assessed by the AER. This would be an inappropriate outcome and detrimental to the market. Presumably an interim waiver would be fast-tracked and more likely to be accepted, which provides incentive to request a large volume of spurious waiver requests, in order to delay the assessments.

There is also a risk that an interim waiver could allow for expenditure that would be considered in the assessment of the final waiver. For example, an interim waiver for building a behind-the-meter battery storage for R&D purposes could result in a significant capital expenditure occurring based on an interim waiver. The cost then of not granting an ongoing waiver would include the write-off of this expense – influencing the outcome of the waiver assessment.

Changes not made from the Draft Guideline
There were two areas of significant concern highlighted by Metropolis and other parties in previous submissions, which have not been addressed in the exposure draft.

There are:

- Sharing of aggregate, market and strategic information, as distinct from individual customer information. The exposure draft makes it clear that it is acceptable for a DNSP to share a large amount of aggregate and strategic information with subsidiaries and not the broader market. This is an extraordinary allowance and there has been no reason provided for it.
- Penalties for "minor" non-compliances do not exist. The compliance regime only allows for a "written response" or a court to enforce compliance going forward. There is no method of addressing the damage done, or penalising a DNSP for damage caused. This provides an incentive for a DNSP to maintain a level of non-compliance marginally below the AER's threshold for court-enforced compliance action.

For more details, please see Metropolis's response to the Draft Guideline.

In addition, there should be clarity on the AERs intention regarding publishing of DNSP annual reports. The guideline says the AER may publish these reports. "May" does not provide any clarity, and incentivises for ongoing advocacy to publish (from non-DNSPs) and to not publish (for DNSPs). This is an additional cost on the market, for no meaningful benefit.

The use of the term "may" again reduces confidence in the guideline, and Metropolis recommend changing this to "will".

<u>Summary</u>

Metropolis support the stated objective and intention of this review. It is not clear, however, that this guideline will achieve the outcomes intended. Indeed, it appears that it may result in conflicted incentives and additional bureaucracy without achieving the stated objectives.

Metropolis has significant concerns with:

- The broad range of waivers now available
- Sharing of strategic information between DNSPs and subsidiaries
- The lack of enforcement capabilities of the AER under this guideline

END