

28th September 2016

Mr Chris Pattas
General Manager, Networks Pricing, Policy and Compliance Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

DRAFT GUIDELINE

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.

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

Sincerely,

Charles Coulson

Regulatory Manager
Metropolis Metering Services

Overview

Metropolis support the direction and approach taken by the AER in the draft Ring Fencing Guideline. In most areas, Metropolis strongly supports the implementation methods. In some areas, Metropolis has concern that there is still room for activities that harm the market and long term consumer's interest. However, even in this situation, the harm is reduced compared with the current state.

Metropolis has significant concerns regarding the compliance/enforcement framework, which does not allow for the AER to apply any penalties to non-compliant DNSPs.

Application

Metropolis support the scope and approach of the review, being the ring-fencing of direct control services offered by DNSPs under a regulated regime from contestable services.

Prevention of cross subsidies

Metropolis support the *Prevention of cross subsidies* guidelines. Metropolis does not support a "materiality threshold", as this is a subjective value. What is immaterial to a large infrastructure provider may be very material to a smaller industry or service provider.

However if a threshold is considered necessary, Metropolis support the drafted value as a maximum.

Non-discrimination

Metropolis support the *Non-discrimination* guidelines. In particular, arms-length dealings are mandatory to an equitable contestable market.

Metropolis do not support senior executives being excluded from the Staff Sharing restrictions.

The energy market is rapidly and dramatically changing. The ability to predict what changes are occurring are a critical strategic element to contestable providers. DNSPs are a large and significant participant in the market, and have sufficient market power to affect changes in the market.

By allowing decision making executives to participate in both organisations that can significantly affect the market and service providers who are responsive to the market, there is an informational advantage to the service provider. It is not possible or reasonable to expect an executive to not consider information they have gained from DNSPs in relation to likely changes, when considering the strategic path of the service provider.

This is in direct contradiction to the *Sharing of information* requirement. An executive cannot download their brain for provision to all third parties competing with the related body corporate.

Metropolis would like clarity on the definition of “staff”. It is not clear if this covers contracted staff, in particular field staff. Shared field staff may have an incentive to offer advantageous terms to a DNSPs subsidiary, in an attempt to gain work with the regulated provider.

Compliance and Reporting

Metropolis support the reporting measures identified, however the compliance regime is manifestly inadequate.

Minor Breaches

It remains unclear how minor breaches of the ring fencing guideline will be handled. There appears to be incentive for DNSPs to “push the boundary”. There is only one penalty identified in the guidelines, and that is “enforcement of this Guideline by a court”.

This is a major, and costly, step. The implications are that for minor breaches the AER will not seek enforcement, and thus there is no reason for a DNSP to comply.

Major Breaches

For a major breach, where enforcement via court order is enacted, there is still no penalty imposed. It simply means that going forward the DNSP must comply.

The lack of penalties associated with this draft guideline are of great concern, and Metropolis’s view is that they have the potential to render the guideline effectively unenforceable.

The AER identified within the *Explanatory Statement* that pecuniary penalties were raised as appropriate by a number of respondents to the *initial positions paper*. However there was no further discussion in the explanatory statement.

Pecuniary penalties have precedent within the market, and appear to be an appropriate method of dealing with breaches.

Summary

Metropolis support the objective and intention of this review, including the implementation of:

- Prevention of cross subsidies
- Non-discrimination

Metropolis has concerns with

- Sharing of strategic information between DNSPs and subsidiaries
- The lack of enforcement capabilities of the AER under this guideline

END