

**From:** Constantine Noutso  
**Sent:** Thursday, 22 April 2021 10:20 AM  
**To:** Gulbenkolu, Arek  
**Cc:** AER Ring Fencing <[AERringfencing@ aer.gov.au](mailto:AERringfencing@ aer.gov.au)>; Mailbox - Regulatory <[regulatory@redenergy.com.au](mailto:regulatory@redenergy.com.au)>  
**Subject:** Electricity ring-fencing guideline review

Hi Arek,

Following release of the Australian Energy Regulator's (AER) issues paper on the Electricity Distribution Ring Fencing Guideline (Distribution Guideline) and the online stakeholder forums, Red Energy and Lumo Energy (Red and Lumo) wish to provide feedback on updating the Distribution Guideline for Stand Alone Power Systems (SAPS) and Energy Storage Devices (ESD).

We attended the online stakeholder forums organised by the AER. At these forums, our first impressions were the Distribution Network Service Providers (DNSPs) appeared intent on removing the Distribution Guideline. This was because they repeatedly requested that the current prohibitions that restrict them from participating directly in competitive energy markets be lifted.

The significant effort made by the distributors to remove the Distribution Guideline did not leave any opportunity for consumer groups or other retailers to reiterate support for the current policy settings which are based on the view that competition will deliver efficient outcomes and maximise customer benefits.

We therefore consider that the AER would benefit from hearing our arguments on these matters once more given the one sided affair at the online stakeholder forums. To this end, we continue to support the AER's efforts to reform the Distribution Guideline to ensure it is 'fit for purpose'. However, we do not support the proposed changes that would see:

- The introduction of any exemption framework for Distribution Network Service Provider (DNSP) led Stand Alone Power Systems generation that would make it easier for DNSPs to own generation for stand alone power systems
- A reduction in the current threshold that is applied to waivers that would make it easier for DNSPs to offer services other than distribution services from energy storage services.

These changes to the Distribution Guideline could potentially have a material impact on competition in the long term in the emerging

competitive energy markets. It is not obvious to us that the potential benefits of these changes would ever exceed the costs under any circumstances. We do not support the introduction of an exemption framework for Distribution Network Service Provider (DNSP) led Stand Alone Power Systems generation. The proposal would allow DNSPs to bypass the current waiver framework and undermine the basis of the Distribution Guideline. The Distribution Guideline was developed to drive effective competition and protect against DNSPs cross subsidising their competitive services and discriminating in favour of affiliates.

The AER has indicated that it would grant an exemption to distributors to own SAPS generation for up to 3 years in its Preliminary View. This represents a change from the current process. Hence, if the AER adopted this policy then it should require the DNSPs to provide evidence of market testing before allowing DNSPs direct ownership of SAPS generation. We prefer that this is done ex-ante. Nonetheless, if the AER does not consider this to be appropriate then it must evaluate this process after the event to ensure it was adequately undertaken. Otherwise, competitive service providers will lose faith in the AER's ongoing commitment to competitive processes.

Secondly, we do not support the proposal to reduce the current threshold that is applied to waivers that would make it easier for DNSPs to directly offer services other than distribution services from energy storage services. We continue to support the current position under the Distribution Guideline that restricts DNSPs to supplying distribution services through storage devices. The main reason for this is:

- the market for energy storage is in its early stages of development and an incorrect decision on access by the AER could have serious consequences on long term competition. Hence, the AER needs to continue to apply a high threshold under the waiver framework in the Distribution Guideline to protect competition in competitive energy markets.
- DNSPs could potentially cross subsidise their contestable activities where an energy storage service is used to provide multiple services across the supply chain. This is because you cannot rely on the existing Cost Allocation Manuals (CAM) to prevent cross subsidies. Using the CAM to allocate direct and shared costs between the categories of electricity services to mitigate any potential for cross subsidy would be a poor substitute in comparison to legal separation.
- the AER's compulsory information gathering powers do not extend to other services that are offered by DNSPs. As such, there would be no way to verify if the cost allocations that have been used by the DNSP between its regulated and unregulated businesses were fair and reasonable.

- Allowing DNSPs to provide contestable services through storage service devices would result in some undesirable outcomes. Some examples include:
  - a. the perception that DNSPs are cross subsidizing their competitive businesses disincentivizing third parties from investing in storage to sell network services to distributors because they feel they cannot compete
  - b. DNSPs in effect shifting commercial risks to customers of their regulated business to give themselves a competitive advantage in the energy storage market. This also leads to the perception that third parties are not able to compete and so they may not be willing to invest in storage overall
  - c. DNSPs that sell contestable services through storage devices could potentially provide valuable commercial information to an entity offering services into electricity markets

In the future, it will be important for the AER to ensure that any of its stakeholder forums are evenly balanced in terms of stakeholder participation with opposing interests. Only then can it be assured that its debates will be fair and reasonable. The AER must ensure that the poor representation from the consumers groups and the retailers as was the case in its recent ring fencing online forums does not occur again. Otherwise, we will end up in the unenviable situation where a single retailer ends up debating many DNSPs.

Regards

Constantine Noutso  
**Regulatory Manager**

W [www.redenergy.com.au](http://www.redenergy.com.au)