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Submitted electronically

Dear Mr Pattas

Draft Restricted Asset Exemption Guideline and Explanatory Statement

SA Power Networks welcomes the opportunity to comment on the AER's Draft Restricted Asset Exemption Guideline (**the Draft Guideline**) and Draft Explanatory Statement to apply to electricity distribution network service providers (**distributors**). These instruments are specifically to apply to assets located behind a retail customer's connection point.

We consider that some amendments to the Draft Guideline are required as currently it unreasonably denies the ability for the AER to even assess cases where an application could best promote the National Electricity Objective (NEO).

Exemption process

The Draft Guideline does not accurately give effect to the intent set out in the Draft Explanatory statement and is more restrictive than envisaged by AEMC's Contestability of Energy Services rule change decision:

- The AER points to international examples where regulatory bodies have allowed or disallowed distributor investment in 'behind the connection point' assets, to demonstrate that there is need for a cautious approach that considers cases / exemption applications on their individual merits.¹ The AER accepts that there may be situations where distributor ownership of assets will maximise value across the NEM.² We agree with this statement.
 - Although this still reflects a singular view of the means of asset investment by referring to "distributor ownership". There could be multiple feasible approaches by which distributors could partner / co-invest in assets with unregulated firms to provide regulated and unregulated services respectively. This more nuanced consideration was intended by the AEMC in its metering contestability rule change³, but has largely been forgotten in the AER's service classification decisions. In a time when energy market challenges increasingly cross over particular segments of the electricity supply chain, placing barriers to joint solution making is not supported.
- The Draft Guideline's wording does not match the intent to consider cases on their individual merit and is unduly restrictive:
 - while Section 3, Clause 1 of the Draft Guideline aims to test if an exemption will negatively impact competition or if potential effects on competition are mitigated by benefits to customers, Section 3 Clause 2 limits this test to unreasonably few situations. For example, it only refers to rural / remote regions, and cases where the intended service relates to safety or a force majeure event.
 - there could be many other reasons why an investment could satisfy the test in Clause 1. Other investment cases might pertain to a joint action by a distributor with an unregulated firm to manage a network or system security, efficiency or reliability issue. There might also be situations where a sole or co-investment in an area (not only regional / remote) is justified because of some practical impediment to competitive service provision. Experience with metering contestability has

¹ AER, Explanatory Statement: Draft Asset Exemption Guideline, pp.8-9.

² AER, Explanatory Statement: Draft Asset Exemption Guideline, p.7.

³ AEMC, *Rule Determination—Expanding competition in metering and related services Rule 2015*, November 2015, p.82.

demonstrated that despite open contestability / competition for meter coordination functions, practical service execution issues can arise and there should be avenues for proposing practical and interim solutions that involve investment.

- there is no justifiable reason to deny even the consideration of cases where other investments not envisaged by the current drafting of Section 3 Clause 2 could best promote the NEO, and nothing in the AEMC rule change that suggests cases should be limited to those the AER has set out. If the AER expanded the cases listed in Clause 2, it would still be within the AER's discretion to disallow the application after considering its merits.

Guideline wording

We propose that the Draft Guideline's wording be amended as follows:

- The reference in Section 3, clause 1(a) to "...investment is not likely to have any negative impact on the development of competition..." should be revised to be a test that "...investment is not reasonably likely to have a materially negative impact on the development of competition". This revised wording will avoid focussing on high level theory and draw upon more practical and local considerations of the real circumstances being faced in particular jurisdictions or regions within jurisdictions.
- For the reasons discussed above, Section 3, clause 2 should allow a broader list of considerations, including where an investment is for "...network or system security, safety, efficiency and / or reliability...", and also where an investment is "...to overcome an impediment to the provision of an effective service to a retail customer".

Other issues

The Draft Explanatory Statement outlines various exclusions to asset investment restriction, such as for assets that are 'network devices', assets that are already in the Regulatory Asset Base (RAB), and assets located at a connection point where the retail customer is the distributor. However, it is important to clarify other exclusions that the rule change permitted but which the AER appears to have omitted, including:

- assets used by distributors to provide Alternative Control Services;⁴ and
- refurbishments of existing assets that are already reflected in the RAB.

If you wish to discuss any of our comments further, please contact Bruno Coelho on 08 8404 5676.

Yours sincerely



Richard Sibly

Head of Regulation

⁴ The wording of the rule change was intentionally tied to a building block proposal and regulatory asset base covering Standard Control Services.