



OPERATIONAL RING FENCING REQUIREMENTS FOR THE SA ELECTRICITY SUPPLY INDUSTRY

ELECTRICITY INDUSTRY GUIDELINE NO. 9

June 2003

ELECTRICITY

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1. INTRODUCTION

- 1.1 The objectives of Ring-Fencing are to facilitate a competitive electricity supply market by providing controls that seek to:
- ▲ avoid the anti-competitive effects of cross-subsidies or other discriminatory interactions between the contestable and non-contestable activities;
 - ▲ ensure that unfair advantage is not secured by using information acquired by a monopoly activity, for the benefit of contestable activity;
 - ▲ avoid a perception of an uneven playing field that may deter potential market participants; and
 - ▲ provide the **Commission** with sufficiently detailed and accurate information to undertake price reviews.
- 1.2 Clause 6.20.1 of the **Code** states that all Transmission Network Service Providers and Distribution Network Service Providers must comply with Electricity Transmission Ring-Fencing Guidelines and the Electricity Distribution Ring-Fencing Guidelines prepared in accordance with Clause 6.20.2 of the **Code**.
- 1.3 Clause 6.20.2 of the **Code** requires the **ACCC** to be responsible for the Electricity Transmission Ring-Fencing Guidelines¹. Electricity Distribution Ring-Fencing Guidelines are to be developed by each Jurisdictional Regulator such as the **Commission**.
- 1.4 Ring fencing can take the form of:
- ▲ legal;
 - ▲ accounting; and
 - ▲ operational separation.
- 1.5 The existing legal and regulatory framework provides for legal separation within the South Australian electricity supply industry and the **Commission** has issued separate accounting separation guidelines. This Guideline outlines the **Commission's** operational ring fencing requirements for the **Distribution Licensee**.

¹ Refer ACCC "Transmission Ring Fencing Guidelines", August 2002.



2. NATURE OF THIS GUIDELINE

2.1 Authority and Purpose

- 2.1.1 This Guideline is published by the **Commission** for the purposes of achieving the **Commission's** objectives and functions under:
- ▲ section 6A of the **Electricity Act**; and
 - ▲ sections 5 and 6 of the **ESC Act**.
- 2.1.2 Section 23(1)(n)(i) of the **Electricity Act** requires the **Commission** on the issue of a **Licence** authorising the operation of the distribution network, to make the **Licence** subject to conditions determined by the **Commission** requiring the business of the operation of the distribution network authorised by the **Licence** to be kept separate from any other business of the electricity entity or any other person in the manner and to the extent specified in the conditions.
- 2.1.3 The Guideline sets out the **Commission's** conditions for how the business of the operation of the distribution network authorised by a **Licence** is to be kept separate from any other business of the entity that holds the **Licence**.
- 2.1.4 The Guideline also relates to the conduct of activities undertaken by the **Distribution Licensee** within the scope of the **Licence**, where those activities are considered contestable. The **Commission** has sought to ensure that the **Distribution Licensee** does not inappropriately extend its monopoly powers into these contestable markets in order to gain an unfair advantage over its competitors.

2.2 Interpretation

- 2.2.1 Where this Guideline quotes or paraphrases segments from legislation and other Guidelines and **Licences**, words have the meaning ascribed to or defined for them in the source documents.
- 2.2.2 Otherwise,
- ▲ the words and phrases defined in the Glossary to this Guideline have the meaning given to them in that Glossary; and
 - ▲ the words '*shall*' and '*must*' indicate mandatory requirements, unless the overall meaning of the phrase in which one of these words appears is otherwise.

2.3 Scope

- 2.3.1 This Guideline shall apply to the **Distribution Licensee**.



2.3.2 This Guideline does not in any way reduce the obligations placed on the **Distribution Licensee** by its **Licence**, legislation, the **Electricity Pricing Order** or any other regulatory Code or instrument.

2.4 Processes for Revision

2.4.1 The **Commission** may amend and expand this Guideline from time to time to meet the needs of customers, the electricity supply industry and the **Commission**, in the context of:

- ▲ changing circumstances including changes in the regulatory framework; and
- ▲ developments at the national level.

2.4.2 In deciding whether to revise this Guideline to impose any additional or varied obligations on the **Distribution Licensee**, or to impose obligations on other **Licenses**, the **Commission** will have regard to:

- ▲ the matters listed in section 6 of the **ESC Act**; and
- ▲ the general principle that the administrative cost to the **Licensee** of complying with the additional or varied obligations should not, or should not be likely to, outweigh the benefits to the public from compliance with that additional or varied obligation.

2.4.3 In making any revision to this Guideline the **Commission** will undertake appropriate consultation with relevant stakeholders in accordance with Guideline No. 5: Consultation.

2.5 Input from Interested Parties

2.5.1 The **Commission** welcomes comments, discussion, or suggestions for amendments to this Guideline, from any interested party. Any contribution in this regard should be addressed to:

Essential Services Commission of South Australia

GPO Box 2605

Adelaide SA 5001

Facsimile: (08) 8463 4449

Email: escosa@escosa.sa.gov.au

2.6 Version History and Effective Date

2.6.1 An issue or version number and date of issue will identify every version of this Guideline.

2.6.2 Subject to clause 3.10, this Guideline becomes effective as at 1 July 2003.

3. OBLIGATIONS

3.1 The **Distribution Licensee** must not hold:

- ▲ a **Retail Licence**, or
- ▲ a generation **Licence** except in circumstances where generation is carried out for network support purposes and where no revenue is earned from such generation.

3.2 The **Distribution Licensee** must ensure that any information (including technical drawings, standards and specifications) obtained by the **Distribution Licensee** (or by its **Staff**) in the course of conducting a **Licensed Business** or known to the **Distribution Licensee** (or to its **Staff**) as a result of conducting a **Licensed Business** which might reasonably be expected to:

3.2.1 affect materially the commercial interests of a competitor of a **Related Business** if disclosed to that **Related Business**; or

3.2.2 provide a competitive advantage to a **Related Business** over a competitor of that **Related Business** if disclosed to that **Related Business** without also being disclosed to that competitor

is used only for the purpose for which that information was provided or obtained; and, subject to any confidentiality requirements specified in the **Distribution Licensee's** distribution **Licence**, disclosed to a **Related Business** or a competitor of the **Related Business** in a non-discriminatory manner.

3.3 The **Distribution Licensee** must ensure that, in providing goods or services for which the **Licensed Business** is the monopoly supplier to a **Related Business** or a competitor of the **Related Business**, those goods and services are provided on a non-discriminatory, commercial basis.

3.4 The **Distribution Licensee** must ensure that:

3.4.1 any **Marketing Staff** involved in the **Distribution Licensee's Licensed Business** are not also involved in a **Related Business**;

3.4.2 any **Operations Staff** involved in the **Distribution Licensee's Licensed Business** and a **Related Business** are shared between the two businesses on a non-discriminatory arm's length commercial basis.



Waiver of obligations

- 3.5 The **Distribution Licensee** may apply to the **Commission** for a waiver of any of the **Distribution Licensee's** obligations under this Guideline. An application for a waiver must include all information and materials necessary to support the **Distribution Licensee's** application.
- 3.6 The **Commission** must consider an application under Clause 3.5 and may, subject to Clause 3.7, grant, or refuse to grant, the waiver.
- 3.7 In considering an application under Clause 3.5, the **Commission** will have regard to at least:
- 3.7.1 the matters listed in section 6 of the **ESC Act**; and
 - 3.7.2 the general principle that the **Commission** will only grant a waiver from any of the **Distribution Licensee's** obligations under this Guideline if it is satisfied that the benefit, or any likely benefit, to the public of compliance with the relevant obligation will be outweighed by the administrative cost to the **Distribution Licensee** and its **Associates** of complying with that obligation.

Compliance procedures

- 3.8 The **Distribution Licensee** must establish and maintain appropriate internal procedures to ensure it complies with its obligations under this Guideline. Compliance Audits, and the reporting of compliance with this Guideline, are to be undertaken by the **Distribution Licensee** in accordance with the requirements of Electricity Industry Guideline No. 4 "Compliance Systems and Reporting".
- 3.9 The **Distribution Licensee** must notify the **Commission** if it commits a material breach of any of its obligations under this Guideline within 5 business days of becoming aware of that breach.

Transitional arrangements

- 3.10 All obligations specified in this Guideline must be complied with from the effective date of this Guideline, except for Clauses 3.2 to 3.4 inclusive which must be complied with from 1 January 2004:

4. GLOSSARY

This Guideline utilises the following definitions:

ACCC means the Australian Competition and Consumer Commission.

Associate has the same meaning given to it under the *Corporations Act 2001*.

Code means the National Electricity Code.

Commission has the meaning given to it in the *ESC Act*.

Distribution Licensee means *ETSA Utilities*.

ETSA Utilities has the same meaning given to it as in chapter 9 of the *Electricity Pricing Order*.

Electricity Act means the Electricity Act.

Electricity Pricing Order means the pricing order issued by the Treasurer and any pricing determination made by the **Commission** under the *Electricity Act*.

ESC Act means the Essential Services Commission Act 2002.

Excluded Distribution Services has the same meaning given to it as in chapter 9 of the *Electricity Pricing Order*.

Licence means a **Licence** issued to a person pursuant to Part 3 of the *Electricity Act* and, where an Exemption has been granted to a person pursuant to section 80 of the *Electricity Act* containing a condition that requires a person to report compliance with certain obligations, includes that Exemption.

Licensed Business means the business of providing **Prescribed Distribution Services** and **Excluded Distribution Services**, but does not include any **Related Businesses**.

Licensee means a person for whom a **Licence** issued by the **Commission** on or after 11 October 1999, is in force.

Marketing Staff means **Staff** directly involved in sales, sale provision or advertising (whether or not they are also involved in other functions) but does not include **Staff** involved only in:

- (i) strategic decision making, including the executive officer or officers to whom marketing staff report either directly or indirectly; or
- (ii) technical, administrative, accounting or service functions.



Operations Staff means **Staff** who are involved in the day to day provision of prescribed services but does not include **Staff** involved only in:

- (i) strategic decision making, including the executive officer or officers to whom operations staff report either directly or indirectly; or
- (ii) marketing, administrative, accounting or service functions.

Prescribed Distribution Services has the same meaning given to it as in chapter 9 of the *Electricity Pricing Order*.

Related Business means, in relation to the **Distribution Licensee**, any business carried on or activities undertaken in the electricity supply industry by the **Distribution Licensee**, an **Associate**, or any **Staff**, which is subject to effective competition, as determined by the **Commission** from time to time.

Retail Licence means a **Licence** issued by the **Commission** authorising the sale of electricity.

Staff means any servants, employees, consultants, independent contractors or agents of the **Distribution Licensee**.