OPERATIONAL RING FENCING REQUIREMENTS FOR THE SA ELECTRICITY SUPPLY INDUSTRY

ELECTRICITY INDUSTRY GUIDELINE NO. 9

June 2003
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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 Guidelines. 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.

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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 Licensees, 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:

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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.