

ACCC Transmission Ring-Fencing Guidelines

Application For Waiver Of Ring-Fencing Obligations by SPI PowerNet Pty Ltd



Table of Contents

1	Introduction	1
2	Background	2
2.1	Transmission Ring-Fencing Guidelines	3
3	Effect of the Guidelines	4
3.1	TNSP not to Carry on a Related Business	4
3.2	No Sharing of Operational Activities	4
4	The Waiver	6
4.1	The Guidelines	6
4.2	Form of Waiver being Sought	6
4.3	Basis upon which Waiver is Sought	7
4.4	Cost-Benefit Analysis	7
4.5	The Relevance of the Accounting Obligations	9
4.6	The Relevance of the Provision of Information Obligations	9
5	Potential for Discriminatory Conduct	11
5.1	Connection Asset Planning	11
5.2	Transmission Outage Planning	12
5.3	Summary	13
6	Compliance Audit and Reporting	13
6.1	Guidelines	13
6.2	Undertaking	14
7	Conclusion	15
8	Glossary	16

ACCC Transmission Ring-Fencing Guidelines

Application For Waiver Of Ring-Fencing Obligations by SPI PowerNet Pty Ltd

1 Introduction

This document details SPI PowerNet's formal application in support of a waiver of certain ring-fencing obligations. The provisions for which a waiver is sought relate to the restriction on a transmission business carrying on a related business, which is defined in the Guidelines as including, as well as retail and generation, a distribution business.

SPI PowerNet applies for a waiver of those obligations contained in the Guidelines that effectively prevent a merger between a TNSP and an electricity distribution business. The Guidelines permit the Commission to grant a waiver if it is satisfied that the administrative cost to the TNSP and its associates of complying with the relevant ring-fencing obligations outweighs the benefit, or likely benefit, to the public from such compliance.

Following the acquisition of the SPIA Group by SP Energy Pty Ltd on 30 July 2004, consideration is being given to the most efficient manner in which to operate the overall business. At this stage, there are no detailed proposals. However, it is evident that some of the options that could be considered in more detail require a relaxation of the Guidelines in the manner proposed in this application. The waiver is sought to provide the flexibility required to capture any synergies that might exist between SPI PowerNet and the electricity distribution business of the SPIA Group (two regulated businesses) and allow the most efficient business structure to be developed in a timely manner.

This application is structured as follows:

- Section 2 provides background information and details the landscape within which this application is framed;
- The function of transmission ring-fencing, and the effect of the obligations on a TNSP are considered in Section 3;
- Section 4 provides more detail of SPI PowerNet's application for a waiver and outlines SPI PowerNet's cost-benefit analysis; and
- Section 5 considers the issue of discriminatory conduct in more detail;
- Finally, the audit and compliance provisions that will remain in place are detailed in Section 6.

In summary, SPI PowerNet considers that:

- The Guidelines were established to ensure an appropriate separation between the regulated monopoly sectors of the industry and the contestable or competitive portions, so as to avoid the potential for discrimination and anti-competitive behaviour. There are no foreseeable impacts that would require the separation of two regulated monopoly businesses (in this case SPI PowerNet and the distribution business of the SPIA Group) and hence there is no adverse competition implication that would prevent such a waiver.
- Even in the absence of detailed integration plans, it is possible to demonstrate that there may be significant cost savings if advantage can be taken of the range of synergies that exist between two “wires” businesses. These benefits represent the opportunity cost of continued compliance with the existing ring-fencing obligations. These benefits clearly exceed the minimal cost associated with integrating the businesses, and the minimal impact of the proposal on participants within the competitive market.
- Any residual concern that may be expressed by participants in relation to possible discrimination is adequately covered by existing regulatory obligations, including those contained in the Guidelines that will continue, and in the Undertaking.

For these reasons, SPI PowerNet submits that there is a compelling case to grant it a waiver from the restriction in the Guidelines to carry on a distribution business and looks forward to favourable consideration of this request by the ACCC.

2 Background

SP Energy Pty Ltd (SP Energy) entered into a Share Sale Agreement with TXU Corp, a company incorporate under the laws of Texas, USA under which it agreed, subject to certain condition, to purchase the group of companies of which TXU Australia Group Pty Ltd was the ultimate Australian holding company.

SP Energy completed the transaction on 30 July 2004.

In order to address the Commission’s concerns about the competition implications of the transaction, and in order to secure the Commission’s approval of the transaction, SP Energy, SPI PowerNet, and SPI Australia Holdings Pty Ltd provided an Undertaking that, *inter alia*, resulted in the voluntary assumption of additional ring-fencing obligations by SPI PowerNet.

The Commission’s concerns (that were largely shared by the market) related to competition issues arising between the existing transmission business and the newly acquired merchant generation business by SP Energy.

SPI PowerNet's Undertaking provides for additional ring-fencing arrangements between transmission and the merchant generation business. The Commission stated this at the time:

"The processes that have been put in place through the undertakings will ensure that the ACCC's concerns will be adequately addressed".¹

The Commission's assessment of the acquisition focussed on the potential for the collusion between a TNSP and an associated generation business through the TNSP's actions in seeking to optimise market outcomes for the generation business. It is noted that NEM Participants had 'stressed the importance of having the Victorian transmission network service provider being impartial between users and indifferent to outcomes in the wholesale market.'²

The Undertaking, thus, imposed additional ring-fencing obligations to those contained in the Guidelines to reinforce the need for the full separation of SPI PowerNet from the merchant generation business of the SPIA Group.

2.1 Transmission Ring-Fencing Guidelines

Pursuant to Clause 6.20 of the *National Electricity Code*, the Commission issued the Guidelines to detail what ring-fencing arrangements were to apply to TNSPs. The Guidelines were issued on 15 August 2002 and took effect on 1 November 2002.

Clause 7 of the Guidelines outlines specifically what the minimum ring-fencing arrangements are, and enables the Commission to issue further guidelines pursuant to clauses 9 and 10.

When the Commission released the Guidelines in August 2002 it also published its decision. In that document, the Commission identified the objectives of ring-fencing as follows:

*'The aim [of ring-fencing] is to separate as far as possible the monopoly powers of **TNSPs** from the contestable activities of **generation** and retail supply.'³*

SPI PowerNet's application for a waiver in this instance concerns a proposal to combine the operations of two **regulated businesses**, to the extent that this makes good business sense. The Commission regulates SPI PowerNet's business, whilst the distribution business of the SPIA Group is regulated by the ESC. The impending changes to the institutions of the NEM are likely to mean that both businesses will be regulated by one regulator in the foreseeable future.

Each businesses is subject to rigorous requirements with respect to, *inter alia*, how the cost of provision of its regulated services is measured (and thus

¹ Page 8, ACCC Assessment of SP Energy's Acquisition of TXU Australia. Date: 19 July 2004.

² Page 5, ACCC Assessment of SP Energy's Acquisition of TXU Australia. Date: 19 July 2004.

³ Pages 1-2, Decision: Statement of Principles for the Regulation of Transmission Revenues – Transmission Ring-Fencing Guidelines. Date: 15 August 2002.

forms the basis of its tariffs), how each provides its respective regulated services, as well as ring-fencing.

3 Effect of the Guidelines

This section discusses the specific provision of the Guidelines that prevents any form of combining of the operations of electricity transmission and electricity distribution. A further provision that may lead to a similar impediment is also discussed. SPI PowerNet's objective in presenting this analysis is to ensure clarity as to the extent of waiver that will be necessary.

3.1 TNSP not to Carry on a Related Business

The first impediment to the combining of a transmission and distribution business is clause 7.1(a)(ii), which states:

'A TNSP that provides ring-fenced services...

- (ii) *subject to clause 7.1(b)⁴, must not carry on a **related business**. To avoid doubt, if the TNSP is a member of a partnership, joint venture or other unincorporated association, the TNSP is carrying on the activities of the partnership, joint venture or unincorporated association.'*

The term 'related business' is defined as follows:

*'related business means the activities of **generation**⁵, **distribution**⁶ and electricity retail supply.'*

The effect of this provision is to preclude a TNSP from carrying on, *inter alia*, the business of a distributor of electricity.

3.2 No Sharing of Operational Activities

A further provision that requires detailed examination is clause 7.6(b), because of its reference to "sharing". However its impact on SPI PowerNet's application is not as obvious as the first. The need to seek a waiver from compliance with this provision is dependent on the interpretation of the clause, and clarification is sought from the Commission to ensure that the operation of transmission and distribution by related entities would not conflict with this obligation.

Clause 7.6(b) provides:

'A TNSP that provides ring-fenced services must:

- ...
- (b) *ensure that preferential treatment is not given to an **associate**⁷ that takes part in a **related business**, through sharing of **operational activities**.'*

⁴ Clause 7.1(b) is not relevant for present purposes.

⁵ The term 'generation' is defined in the National Electricity Code.

⁶ The term 'distribution' is defined in the National Electricity Code.

The term 'operational activities' is defined as follows:

'operational activities means activities common to the production of both ring-fenced services and unregulated activities.'

The terms 'ring-fenced services' and 'unregulated activities' are defined as follows:

'ring-fenced services means prescribed services⁸.'

'unregulated activities means activities other than the supply of ring-fenced services, and includes but is not limited to carrying on a related business.'

In SPI PowerNet's view this provision is capable of being read in one of two ways:

1. because it qualifies the term 'preferential treatment' with the phrase 'through sharing of operational activities', it could be argued that it precludes a TNSP from utilising its existing resources to provide any activities for the benefit of a related business associate, as this of itself constitutes 'preferential treatment'; or
2. it could be interpreted as meaning that, in the course of sharing operational activities, the TNSP must not give preferential treatment to a related business associate.

SPI PowerNet seeks the Commission's guidance on the meaning that should be ascribed to the provision.

If, indeed, the Commission prefers the first interpretation, SPI PowerNet seeks a waiver in respect of this obligation insofar as it applies to a related business associate that is an electricity distribution business, as it effectively precludes the two businesses from sharing any personnel who are capable of delivering services that are common to both businesses.

If the Commission prefers the second interpretation, SPI PowerNet seeks the Commission's further guidance on the meaning of 'preferential treatment'. The reason for this clarification is that there are other provisions that could be seen as addressing similar issues. These are:

- **Clause 7.2(b):** The obligation not to discriminate in favour of an associate by a TNSP in the provision of Prescribed Services.
- **Clause 7.6(a):** The requirement that any information provided to a related business associate about a TNSP's Prescribed Services be available to any other party.
- **Clause 7.7:** The requirement that a TNSP's Marketing Staff not perform any work for a related business associate and a related

⁷ The term 'associate' has the meaning given in Division 2 of Part 1.2 of the *Corporations Act 2001* (Cth), as if sections 13, 14, 16(2) and 17 were repealed.

⁸ The term 'prescribed services' is defined in the *National Electricity Code*.

business associate's Marketing Staff not perform any work for the TNSP. The Commission has stated that the rationale for this prohibition is '*to stem the flow of information between the TNSP's regulated activities and competitive activities*'.⁹

In summary, SPI PowerNet's application is contingent upon the Commission's views on what clause 7.6(b) is intended to achieve:

- If it is intended to prevent any sharing of operational activities, SPI PowerNet will require a waiver from compliance with this provision, as well as from clause 7.1(a)(ii); or
- If it is intended to prevent any 'preferential treatment' during the course of sharing operational activities, SPI PowerNet seeks the Commission's views on what would constitute 'preferential treatment' so that appropriate compliance measures can be taken.

4 The Waiver

4.1 The Guidelines

Clause 11 enables a TNSP to seek a waiver from any of the ring-fencing obligations detailed in clause 7. It states:

*'The **ACCC** may, by notice to the **TNSP**, waive any of the **TNSP's** obligations under clause 7 provided that the **ACCC** is satisfied that the benefit, or any likely benefit, to the public is outweighed by the administrative cost to the **TNSP** and its **associates** of complying with the obligation.'*

Clause 11, therefore, authorises the Commission to waive any obligations contained in clause 7, provided it is satisfied that the public benefit of compliance is outweighed by the administrative cost of compliance.

In other words, the relevant test for determining whether a waiver should be granted involves a comparison of:

1. the **administrative cost** to SPI PowerNet of compliance, that is, the cost to SPI PowerNet of not combining the operations of the transmission and distribution businesses; and
2. the **benefit, or any likely benefit, to the public** that would result from the maintenance of the *status quo*.

4.2 Form of Waiver being Sought

SP Energy wishes to identify and, if appropriate, implement activities that will result in a more efficient delivery of SPIA Group's regulated services.

⁹ Page 2, Decision: Statement of Principles for the Regulation of Transmission Revenues-Transmission Ring-Fencing Guidelines, date: 15 August 2002.

In order to do this, however, a waiver of certain ring-fencing obligations is required to effectively remove the prohibition on the TNSP's carrying on of a related business, insofar as this relates to the distribution of electricity.

In SPI PowerNet's submission, this can be achieved by waiving SPI PowerNet's compliance with clause 7.1(a)(ii) and, potentially, 7.6(b).

4.3 Basis upon which Waiver is Sought

As noted above, the test for determining whether a waiver should be granted depends upon a comparison of the administrative costs of compliance with clauses 7.1(a)(ii) and 7.6(b) and the public benefit, or any likely public benefit of maintaining the *status quo*.

While the term 'administrative costs' is not defined in the Guidelines, in the context of clauses 7.1(a)(ii) and 7.6(b) it can be interpreted broadly as the costs that would be incurred by SPI PowerNet in maintaining the *status quo* relative to those costs that would be incurred if the businesses were to combine their operations (that is, the cost of synergies forgone from not carrying on a related business).

Similarly, the estimation of public benefits requires a comparison of the benefits of maintaining the *status quo*, compared to the benefits that would be derived from the waiver of clauses 7.1(a)(ii) and 7.6(b).

4.4 Cost-Benefit Analysis

SP Energy believes that there are a number of potential synergies that will ultimately result in cost savings and benefits to consumers, and is seeking this waiver in order to actively develop and implement such opportunities that could result in the elimination of the duplication of resources and systems that currently exist.

In SPI PowerNet's submission, the benefits that will flow to the public by allowing this organisational flexibility to occur, will satisfy the criteria detailed in clause 11, that is, the '*benefit, or any likely benefit, to the public is outweighed by the administrative cost to SPI PowerNet and the distribution business of the SPIA Group of complying with the obligation*'.

When considering what the benefits to the public are, they should be considered as the 'net' benefits, after taking into account any costs to the public that would arise if the waiver were granted. In the case of combining two regulated businesses, SPI PowerNet submits that the regulated status of the businesses means that there should be no additional costs on the public by reason of the waiver. Regulatory discipline and isolation from the competitive market ensure that the potential for anti-competitive behaviour is not heightened through the act of combining transmission and distribution businesses.

Any proposals to share existing resources and systems, however, will be based on a careful assessment of the cost of the relevant input by each business separately, as against a combined input. This assessment has not been performed at a detailed level to date because of the impediment to implementation that clauses 7.1(a)(ii) and (potentially) 7.6(b) pose.

There is considerable scope for positive benefits to flow to the public in the form of cost savings that can be achieved by taking advantage of the natural synergies that exist between the two businesses. Synergies that may be considered include the provision of administrative support, finance, human resource management, legal services, IT and accommodation.

Therefore, the likely benefits that can flow need to be examined by way of example:

- There are a number of corporate areas where separate business units presently provide a similar service to each of the transmission and distribution businesses. For mergers generally, the improved corporate efficiency that can be attained is a significant factor in the merger decision, and the potential benefits to SPI PowerNet and the distribution business of the SPIA Group should be incorporated into this cost-benefit analysis.

However, at this time the detailed analysis necessary to reveal an optimum corporate services arrangement has not been performed, and it is not desirable to undertake this step without greater certainty of the waiver being granted. For the purposes of this cost-benefit analysis it is sufficient to recognise that there is considerable scope for cost savings in the corporate area;

- The businesses currently operate separate facilities to control and monitor the transmission and distribution networks. The facilities are underpinned by sophisticated supervisory control and data acquisition systems, which, having regard to the nature of IT system obsolescence, require regular planned upgrades. The on-going costs of maintaining control centre facilities could be substantially reduced through the sharing of SCADA systems. Savings would arise through avoidance of duplication in both licensing costs and IT infrastructure. Annualised savings in respect of these capital components of at least \$150,000 can be envisaged;
- The businesses have significant annual electrical plant capital expenditure programs. SPI PowerNet's capital expenditure forecast for the current year (covering both replacement and augmentation expenditure) is well over \$100 million and the distribution business of the SPIA Group also has a significant capital commitment. The business' share the 66kV system, and opportunities exist to generate savings through the sharing of spare equipment and developing supply arrangements for purchasing this type of equipment. SPI PowerNet's typical annual spend on 66kV circuit breakers and associated protection systems alone is in the order of \$2 million, and increased purchasing power, conservatively estimated at 5%, could generate savings of approximately \$100,000;
- In addition, both businesses rely heavily on external design service providers for capital projects. There is an acknowledged shortage of skilled power system engineering expertise within Australia due to the significant works programs occurring in most jurisdictions. It is anticipated that the combined works program of the two businesses would create improved attractiveness in the marketplace, enabling SPI PowerNet to negotiate more favourable terms with service providers. External design services are a significant cost to SPI PowerNet, with a current (regulatory) year cost in the order of \$10 million; and

-
- Economies of scale in purchasing could be extended to non-system expenditure for equipment such as motor vehicles, desktop computers, and services such as telecommunications. SPI PowerNet's experience with volume-based purchasing indicates that increased purchasing power could deliver substantial savings in non-system costs. To meet the requirements of the SPI PowerNet transmission business alone, savings of at least \$150,000 a year would be anticipated for the three equipment/service areas referred to in this paragraph.

Therefore, in SPI PowerNet's submission, the proposal that the electricity transmission and distribution businesses be integrated could only benefit the public by eliminating the duplication of resources and systems that can be more efficiently delivered by one set of resources/systems than two.

4.5 The Relevance of the Accounting Obligations

SPI PowerNet will continue to be bound by clauses 7.3, 7.4 and 7.5 of the Guidelines and its regulatory accounts will be audited annually to assure the Commission of compliance with respect to the accounting aspects of ring-fencing.

On the other hand, as an electricity distribution licensee, SPI Electricity Pty Ltd will continue to be bound by the ESC's Electricity Industry Guideline No. 3: Regulatory Information Requirements with respect to the preparation of its regulatory accounts, which will also be audited annually to assure the ESC of compliance with respect to the accounting aspects of ring-fencing.

Any concerns about cross-subsidy and inappropriate cost allocation should be alleviated by the fact that both businesses are required to demonstrate compliance with ring-fencing requirements insofar as their accounts are concerned. Moreover, two regulators currently oversee the businesses and it is anticipated that, in the foreseeable future, one regulator will oversee both businesses, thus providing greater opportunity for cross-checking and verification.

This anticipated change would only enhance the need for these businesses to ensure that their processes are, and will continue to be, fully compliant with their ring-fencing obligations in this area.

4.6 The Relevance of the Provision of Information Obligations

As noted earlier, this application does not seek to modify the application of clause 7.6(a) in any way.

Moreover, the Commission has stated that its primary concern with respect to the provision of information by a TNSP to its related business associates is to '*stem the flow of information between the TNSP's regulated activities and competitive activities*'.¹⁰

This is particularly relevant when considering the impact a grant of this application might have on SPI PowerNet's relationship with the Data

¹⁰ Page 2, Decision: Statement of Principles for the Regulation of Transmission Revenues – Transmission Ring-Fencing Guidelines. Date: 15 August 2002.

Measurement Solutions metering business (which is now part of the distribution business of the SPIA Group) and SPI PowerNet will ensure that appropriate measures are in place to assure compliance.

Moreover, any theoretical concerns that information might 'leak' from SPI PowerNet to any of the competitive businesses of the SPIA Group by the electricity distribution business of the SPIA Group should be allayed by the additional ring-fencing obligations assumed by SPI PowerNet pursuant to the Undertaking. Specifically, these include the following:

- **Clause 5.5** – SPI PowerNet must ensure that all Confidential Generator Information and Market Sensitive Information is kept confidential and is only disclosed by SPI PowerNet Staff pursuant to the Market Disclosure Mechanisms;
- **Clause 5.6(a)(i)** – SPI PowerNet can only access Pre-Dispatch Data at the same time as all NEM Participants; and
- **Clause 5.6(a)(ii)** – SPI PowerNet cannot access SCADA Data, unless it is for maintenance or error rectification.

Therefore, in order to satisfy itself that the key objective of stemming the flow of information to relevant competitive activities following the acquisition by SP Energy of SPIA Group, the Commission agreed to the imposition of these additional obligations that either require SPI PowerNet to keep certain types of information from those competitive businesses, or remove SPI PowerNet's access to other types altogether.

Finally, and for the sake of completeness, it is noted that, pursuant to its electricity distribution licence, SPI Electricity will need to comply with the ESC's Electricity Industry Guideline on Ring-Fencing that, in the context of information, requires the following:

*'A **distributor** must ensure that **distribution information** it provides to any **retail business** is available to all **retail businesses**.'*¹¹

The term 'distribution information' is defined as follows:

*'**distribution information**' means information concerning a **distributor's distribution goods and services** or obtained by a **distributor** in providing **distribution good and services**.'*

Therefore, any information that SPI Electricity were to receive from SPI PowerNet that was obtained in the course of providing its licensed distribution services should be available to all retail businesses, thus preventing any leakage to any of the competitive businesses of the SPIA Group alone.

All of these matters lead to the conclusion that the waiver should have no impact on the public benefit associated with competition issues arising out of the provision of information by SPI PowerNet to the distribution business of the SPIA Group.

¹¹ Clause 3.

5 Potential for Discriminatory Conduct

There is very limited opportunity, or incentive, and no ability for any significant and enduring level of discriminatory treatment to be applied to favour the distribution business of the SPIA Group over any other distribution business.

When considering the matters raised in this section, it is useful to recall that Victoria's transmission arrangements are unique in Australia. It is VENCORP, an independent statutory corporation that dictates transmission planning in the state with respect to the Shared Network, not SPI PowerNet.

This section discusses two areas that SPI PowerNet considers may be raised in the consultation process.

5.1 Connection Asset Planning

In respect of connection asset planning it may be claimed that there would be an incentive on SPI PowerNet to favour the distribution business of the SPIA Group in meeting a connection augmentation request.

In reality, any incentive to show favouritism is extremely small. Interference in the planning process could only affect the timing of proposed augmentations, the impact being costs that accrue as a consequence of later, or earlier, service delivery. The only costs directly impacting a distribution business in this situation are the potential S-factor payments by the distribution business in the event of a loss of supply. It is understood, however, that where such a penalty arises as a result of a transmission failure, an exemption is likely to be granted for the S-factor penalty.

In practice, there is no ability to delay augmentation of connection asset investment by other distribution businesses, and in fact there is a strong disincentive for SPI PowerNet not to engage in such conduct. Any project delays increase SPI PowerNet's costs through accrued interest, and delay the recovery of revenue from SPI PowerNet's customers. Similarly, the ability to advance projects for a particular distributor is very limited, and can generally only be achieved by incurring increased costs, again providing a disincentive to SPI PowerNet to engage in any such conduct.

Even if there was a positive incentive, the ability for SPI PowerNet to discriminate in such a manner would be highly visible and subject to regulatory control, which is manifested by:

- The requirement to comply with the very detailed connection application process in Chapter 5 of the National Electricity Code;
- The requirement to provide open access to SPI PowerNet's infrastructure in compliance with the access undertaking given to the Commission in accordance with the National Electricity Code;
- The requirement to publish SPI PowerNet's connection application process (called the "Negotiating Framework for Negotiable Services") pursuant to the National Electricity Code and be able to demonstrate that it has fully complied with it in all cases;

-
- The requirement to offer connection to qualifying applicants as a condition of SPI PowerNet's Transmission Licence; and
 - Disputes over connections can either be resolved using the National Electricity Code dispute resolution procedures, or they can be determined by the ESC pursuant to SPI PowerNet's Transmission Licence.

Therefore, any connection application is subject to rigorous regulatory oversight, coupled with access to dispute resolution mechanisms that should alleviate any concerns raised by potential connection applicants who are concerned about the impact a grant of waiver will have on their future prospects of receiving fair and equitable treatment by SPI PowerNet by reason of its association with the distribution business of the SPIA Group.

Moreover, and as a matter of practice:

- Any connection asset augmentations will frequently involve two (or more) distributors at an individual terminal station, and augmentation cannot proceed without agreement and involvement of all connected parties.
- Frequently, some augmentation or alteration of the Shared Network is also required to accommodate the augmentation of the connection assets. In these circumstances, VENCORP would also become involved in the connection process thus increasing the level of scrutiny and oversight of the connection application processes. Even for minor augmentation works, VENCORP must become involved because of the need to modify the connected party's Transmission Use of System Agreement.

5.2 Transmission Outage Planning

It is recognised that SPI PowerNet's conduct in respect of planning outages of the transmission network has the potential to impact NEM Participants exposed to market outcomes in the NEM. As a regulated business, however, the distribution business of the SPIA Group is not exposed directly to any market outcomes. Market impacts are felt at the supply end (generation) and at the demand end of the electricity supply chain (retailers), only.

The only possible incentive for SPI PowerNet to benefit a related distribution business through its outage planning is by minimising the distributor's S-factor penalty for outages. However, as was the case for connection asset planning, the distribution business will generally be exempt for any S-factor penalties arising from events within the transmission network. SPI PowerNet would have no need to take an interest in the impact its outage planning might have on a related distribution business.

Furthermore, opportunities do not exist for discriminatory behaviour in respect of transmission outage planning by SPI PowerNet, particularly in a manner that discriminates in favour of a specific distribution business. Any scheduled outages of the Shared Network will, by definition, impact on a range of distribution businesses and generators. In addition, any substantial outages would be reviewed by NEMMCO to ensure that they met system security obligations. SPI PowerNet also provides VENCORP with its forward outage

plan for consideration and comment and this transparency also acts to mitigate the potential for discriminatory behaviour.

Transmission outage planning is highly transparent, with considerable advance notice provided to all NEM Participants through the publication of planned outage information. Connection outage plans are provided to each connected party three months in advance, providing ample opportunity for distribution businesses to advise their requirements in the development of a fully co-ordinated network outage plan. If a party's needs are not met, this is highly visible, and avenues for dispute resolution under the *National Electricity Code* can be applied.

5.3 Summary

SPI PowerNet is a highly regulated business and is subject to extensive oversight by dedicated and expert bodies as part of their existing and established functions in the NEM. There is no incentive to discriminate by virtue of association with the distribution business of the SPIA Group, any attempt to do so would be highly transparent, and the mechanisms for monitoring SPI PowerNet's compliance of are already in place. In SPI PowerNet's submission, discrimination issues do not present a reason to deny the requested waiver.

6 Compliance Audit and Reporting

SPI PowerNet is currently subject to a number of compliance audit and reporting obligations that far exceed those of any other TNSP:

6.1 Guidelines

(a) Audit

Clause 15 enables the Commission to appoint an independent auditor to report on such matters as the Commission specifies and report to the Commission on the findings.

(b) Compliance Reporting

- SPI PowerNet must establish and maintain appropriate internal procedures to ensure compliance with its ring-fencing obligations and could be required by the Commission to demonstrate the adequacy of those procedures upon reasonable notice.¹²
- SPI PowerNet is obliged to report to the Commission at reasonable intervals determined by the Commission on the measures taken to ensure compliance with SPI PowerNet's ring-fencing obligations, and providing an accurate assessment of the effect of those measures.¹³
- Clause 16 requires the immediate reporting of any breach by SPI PowerNet.

¹² Clause 12.

¹³ Clause 13.

6.2 Undertaking

(a) Audit

SPI PowerNet must appoint an independent auditor to audit and report to the Commission on SPI PowerNet's compliance with respect to:

- the removal of certain data from the Victorian Network Switching Centre, by 30 January 2005;¹⁴ and
- the Undertaking generally, at the Commission's request upon reasonable notice.¹⁵

(b) Compliance Reporting

- SPI PowerNet must provide the Commission with its compliance plan.¹⁶
- SPI PowerNet must provide an annual report to the Commission describing the measures taken to ensure compliance and provide an assessment of the effect of those measures.¹⁷
- SPI PowerNet must provide the Commission with all information (subject to third party confidentiality obligations) reasonably requested by the Commission that is relevant to the performance of the Undertaking.¹⁸
- SPI PowerNet must provide the Commission with information or documents in its possession or control (subject to third party confidentiality obligations) that relate to the operation of the Heywood Interconnector and are relevant to the performance of the Undertaking.¹⁹

In SPI PowerNet's submission, these are extensive compliance reporting obligations that enable the Commission to monitor SPI PowerNet's compliance with any varied ring-fencing obligations as a result of this application, and to take appropriate measures to ensure that the objective of the ring-fencing obligations is achieved, which is to ensure the separation between regulated and **unregulated** businesses.

¹⁴ Clause 5.6(a)(iv).

¹⁵ Clause 5.8(d).

¹⁶ Clause 5.8(b).

¹⁷ Clause 5.8(c).

¹⁸ Clause 9.2.

¹⁹ Clause 5.9(a).

7 Conclusion

In this application, SPI PowerNet has sought a waiver from compliance with clauses 7.1(a)(ii) and 7.6(b) of the Guidelines.

The test for determining whether the waiver should be granted is whether the public benefit (or likely benefit) is outweighed by the administrative cost of compliance.

SPI PowerNet has demonstrated in this submission that there is no public benefit in the maintenance of those ring-fencing obligations that prevent it from combining its operations with those of the electricity distribution business of the SPIA Group. On the other hand, the public benefits that could arise from the waiver are readily demonstrated.

8 Glossary

Dispatch and Trading Activities	<p>(a) the determination and management of:</p> <ul style="list-style-type: none"> i. the scheduling of available capacity; ii. dispatch and re-bidding strategies; iii. the placement of dispatch offers and re-bids, by a Generator; and <p>(b) the determination and management of trading strategies and the entry into of electricity derivative contracts or power purchase contracts by a Generator or a Market Customer.</p>
Confidential Generator Information	<p>(a) information about connection arrangements or planned connection arrangements of a Generator or a Connection Applicant that will be required to register with NEMMCO as a Generator;</p> <p>(b) details (including quantities, dates and times) of any changes in the availability of generating systems or generating units of a Generator;</p> <p>(c) details (including quantities, dates and times) of the sent out generation of any Generator; and</p> <p>(d) any other information about the operational activities of a Generator that is known to SPI PowerNet due to its activities in carrying out SPI PowerNet's transmission business that would reasonably be regarded as confidential information of a Generator, but does not include any information that:</p> <ul style="list-style-type: none"> (e) is in the public domain other than as a result of a breach of the Undertaking or has been or is required to be disclosed pursuant to the Market Disclosure Mechanisms; or (f) the Generator has agreed is not confidential information or may otherwise be disclosed by SPI PowerNet.
ESC	Essential Services Commission of Victoria
Guidelines	Statement of Principles for the Regulation of Transmission Revenues: Transmission Ring-Fencing Guidelines, dated 15 August 2002.
Information Reporting Guidelines	Statement of Principles for the Regulation of Transmission Revenues: Transmission Ring-Fencing Guidelines Reporting Guidelines, dated 23 October 2002.
Market Disclosure Mechanisms	Any requirements, procedures or mechanisms for the disclosure of Market Sensitive Information or Confidential Generator Information by SPI PowerNet to any person provided for under Electricity Laws or adopted or endorsed by any Regulatory Body.
Market Sensitive Information	Confidential information about the operations of SPI PowerNet's transmission business that might reasonably be regarded as material to the Dispatch or Trading Activities of any Generator or Market Customer, including, without limitation, information on asset ratings, planned and unplanned network outages and transmission constraints, but does not include information that is in the public domain other than as a result of a breach of the Undertaking or

	information that has been or is required to be disclosed pursuant to the Market Disclosure Mechanisms.
Marketing Staff	Staff involved in sales, sales provision or advertising.
NECA	National Electricity Code Administrator
NEM	National Electricity Market.
NEM Participant	A participant in the National Electricity Market.
NEMMCO	National Electricity Market Management Company Ltd.
Pre-Dispatch Data	Pre-dispatch data made available by NEMMCO to SPI PowerNet at the Victorian Network Switching Centre.
SCADA Data	<ul style="list-style-type: none"> (a) Individual generator real power output (MW) for each generator; (b) Individual generator reactive power output (MVAR) for each generator; (c) Individual generator unit current (amps) for each generator (if applicable); (d) Individual generator unit voltage (kV) for each generator (if applicable); (e) Real power flows on dedicated connection to generating units (MW); (f) Reactive power flows on dedicated connection to generating units (MVAR); (g) Current on dedicated connection to generating units (amps).
Shared Network	That part of the Victorian transmission network that cannot be attributable to individual users of the network and for which SPI PowerNet and VENCORP have entered into a Network Agreement pursuant to clause 7 of SPI PowerNet's Transmission Licence.
SPIA Group	That group of companies that represent the Australian businesses of TXU Corp purchased by SP Energy Pty Ltd on 30 July 2004 and of which SPI Australia Group Pty Ltd is now the holding company.
Staff	Employees, consultants, independent contractors, and agents acting in a role equivalent to that of an employee, but excluding professional advisers.
TNSP	Transmission Network Service Provider
Undertaking	An Undertaking pursuant to section 87B <i>Trade Practices Act 1974</i> (Cth) given by SP Energy Pty Ltd, SPI PowerNet Pty Ltd and SPI Australia Holdings Pty Ltd to the Commission, dated 19 July 2004.
VENCORP	Victorian Energy Networks Corporation.