

Reference: A790756



**Small Business
Commissioner**
SOUTH AUSTRALIA

Mr Chris Pattas
General Manager, Networks
Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001

BY EMAIL: Ringfencingguideline2016@aer.gov.au

T 08 8303 2026
Toll Free 1800 072 722
F 08 8303 0943
E sasbc@sa.gov.au

GPO Box 1264,
Adelaide SA 5001

ABN 34 643 517 562

www.sasbc.sa.gov.au

Dear Mr Pattas

Electricity Ring-Fencing Guideline

I write to respond to the Australian Energy Regulator's (AER's) Preliminary Positions Paper (the Paper) dated April 2016 in relation to the proposed Electricity Ring-Fencing Guideline (the Guideline).

I note that the AER is required to develop a national ring-fencing guideline by 1 December 2016, one year ahead of metering contestability.

As the Small Business Commissioner of South Australia, I am of the view that ring-fencing in the electricity market is of vital importance as it will assist small businesses by increasing competition and encouraging a more even playing field.

I note at page 10 of the Paper that ring-fencing aims to avoid the following types of behaviour:

- *cross-subsidising the affiliate's service in the contestable market with revenue derived from its regulated services;*
- *discrimination in favour of an affiliate operating in a contestable market;*
- *providing the affiliate with access to commercially sensitive information acquired through the provision of regulated services; and*
- *restricting the access other participants in the contestable market have to the infrastructure services provided by the regulated entity, or providing access on less favourable terms than its affiliate.*

I fully support the development of a guideline which aims to limit these types of behaviours, as in my view it will prevent the larger corporations from monopolising the market and squeezing out small businesses operating in the industry.

I agree that the Guideline should facilitate the use of new technologies, such as the use of batteries for energy storage, as stated at page 7 of the Paper. It was reported this month that SA Power Networks (SAPN) will undertake Australia's largest trial of storage batteries in homes in Adelaide's northern suburbs. This announcement highlights the need for ring-fencing in the area of storage systems, otherwise it is possible that SAPN will use its financial ability to cross-subsidise and extensive data intelligence to push smaller competitors out of the market.

At page 18 of the Paper under the heading "*Is it possible to ring-fence an asset?*" it says:



Government
of South Australia

*"The short answer is that given the current rules we consider it is **unlikely** that assets can be ring-fenced."* (my emphasis)

It is not clear what it meant by this, and I ask that further information be provided in relation to this statement.

I note the proposed ring-fencing obligations and exemptions to those obligations set out at page 27 of the Paper. In my opinion these obligations are critical to the establishment of an even playing field in the market, thereby assisting small businesses in the industry.

In relation to the practical implementation of the Guideline, discussed at page 12 of the Paper, I believe there are two fundamental issues which must be addressed in order to ensure that the objective of ring fencing, namely *"to limit the ability of the regulated entity to confer an unfair advantage to itself or to an affiliate operating in a competitive market"*, is achieved. These issues are touched on briefly at page 34 of the Paper, but I recommend that they are given further consideration in order to ensure the effectiveness of the Guideline.

The first issue relates to auditing. I note that the AER proposes that each NSP will be required to undertake an audit of its compliance using an independent third party, and report annually to the AER. The importance of auditing undertaken by an independent third party as opposed to self-auditing cannot be underestimated. I have been informed by a participant in the industry that the larger companies sometimes appear to take the view that the rules do not apply to them. I recommend that a thorough auditing process be set out in the Guideline. I also recommend that the AER take an active role in overseeing the auditing process.

The second issue relates to penalties for non-compliance with the Guideline. I note at page 34 of the Paper it says:

"In response to our 2012 paper on ring-fencing, we received submissions suggesting that penalties be applied for breaches of the ring-fencing guideline. Where there are breaches of the guideline, the AER could seek court enforceable compliance with the guideline. Whether pecuniary penalties should be available for non-compliance is an issue about which interested parties may wish to comment."

In my view it is imperative that the AER establish a penalty regime to ensure compliance with the Guideline. Without penalties, it is unlikely that NSPs will feel compelled to comply with the proposed obligations.

Finally, I note the following at page 28 of the Paper:

"The effectiveness of electricity ring-fencing to date and in other industry sectors is an aspect of the guideline development that needs to be further investigated. The findings may suggest whether more restrictive approaches to asset sharing may be warranted."

I look forward to receiving information on the outcome of those investigations prior to the final Guideline being released.

I note that the AER intends to meet with interested parties prior to issuing the draft Guideline. I would welcome the opportunity to discuss my submission in further detail if required.

If you have any queries, please do not hesitate to contact me on 08 8303 0927 or john.chapman@sa.gov.au.

Yours sincerely



John Chapman
SMALL BUSINESS COMMISSIONER

John
May 2016

