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Your Ref:

Tasmanian Networks Pty Ltd
Level 6, 39 Murray Street
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05 February 2014

Adam Petersen
Director
Australian Energy Regulator
GPO Box 922
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Dear Sir

Transmission Ring-fencing Guidelines waiver application – Tasmanian Networks Pty Ltd

I refer to previous communications between Bess Clark and yourself regarding an application by Tasmanian Networks Pty Ltd (TasNetworks) for a waiver of obligations contained in the Transmission Ring-Fencing Guidelines.

TasNetworks is a new company, wholly owned by the State of Tasmania, which has been created to manage the distribution and transmission of energy in Tasmania from 1 July 2014. In order to effect this the transmission business of Transend Networks Pty Ltd and the distribution business of Aurora Energy Pty Ltd will be transferred to TasNetworks.

Enclosed is an application pursuant to clause 11 of the Guidelines for a waiver of the obligations contained in clause 7.1(b)(ii) of the Guidelines which would otherwise prevent a Transmission Network Service Provider from carrying on the activity of distribution.

If you have any questions about the application please contact Bess Clark, TasNetworks' GM Strategy and Stakeholder Relations (03 6274 3909 or 0418 396 378).

Yours faithfully



Lance Balcombe
Chief Executive Officer
Tasmanian Networks Pty Ltd

Encl.



Transmission Ring Fencing Guidelines

Waiver Application by Tasmanian Networks Pty Ltd

5 February 2014

Contact

Tasmanian Networks Pty Ltd, ACN 167 357 299.

Please contact TasNetworks' General Manager Strategy and Stakeholder Relations, Bess Clark (03 6274 3909 or 0418 396 378), with any queries or suggestions.

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1 Introduction

This paper outlines Tasmanian Networks Pty Ltd (TasNetworks) application for a waiver of those parts of the Transmission Ring-Fencing Guidelines (Guidelines) which prevent a *TNSP* from carrying on a *related business*, specifically the activity of *distribution*.

TasNetworks applies for a waiver of the obligations contained in clause 7.1(b)(ii) of the Guidelines to allow the merger of Transend Networks Pty Ltd's (Transend) *transmission* business and Aurora Energy Pty Ltd's (Aurora) *distribution* business. TasNetworks submits that the cost of complying with the aforementioned obligations, which would require the maintenance of two separate businesses, far outweighs the negligible public benefit, or likely benefit, of compliance in the Tasmanian jurisdiction where there is no competition in the activity of *distribution*, nor is there likely to be in the foreseeable future.

2 Tasmanian Energy Market

2.1 Current situation

There are currently three electricity network businesses registered and operating in Tasmania: Transend is registered as a *TNSP*; Aurora is registered as a *DNSP*; and Basslink Pty Ltd is registered as an *MNSP*. Both Transend and Aurora's network businesses are effectively natural monopolies in the relatively small Tasmanian energy market. Both businesses are wholly owned by the State of Tasmania.

2.2 Proposed TESI reforms

In October 2010 the Tasmanian Parliament passed the *Electricity Supply Industry Expert Panel Act 2010* pursuant to which an independent expert panel was established to conduct a review into the electricity supply industry in Tasmania. Following extensive consultation both within the industry and with the public, including a formal written submission process and public hearings, the expert panel delivered its final report in March 2012. The report included a recommendation to combine Aurora's *distribution* business with Transend to form a single State-owned network business¹. The expert panel determined that network integration would "improve network management and capture ongoing efficiencies and cost savings, estimated to be around \$8 million per annum."² These savings were expected to arise predominantly from the rationalisation of duplicate functions and assets; and the co-location of network and network services staff.³

The Tasmanian Government's electricity reform package, announced by the Hon Bryan Green MP, Minister for Energy on 15 May 2012, adopted the expert panel's recommendation to integrate the network businesses. The reform objectives, as set out in section 5 of the *Electricity Reform Act 2012* (Tas), are:

¹ Electricity Supply Industry Expert Panel, "An Independent Review of the Tasmanian Electricity Supply Industry", Final report, Volume 1, March 2012, page vii-viii

² *ibid* page viii

³ (Electricity Supply Industry Expert Panel, "An Independent Review of the Tasmanian Electricity Supply Industry", March 2012, Page 122).

- a) to assist in ensuring that the prices that customers are charged for electricity are as low as is consistent with ensuring the financial viability of the electricity supply industry; and
- b) to ensure that the supply of electricity in Tasmania is safe, secure and reliable; and
- c) to ensure that the advantage to Tasmania of generating electricity by means of renewable energy sources is maximised; and
- d) to ensure that State-owned electricity entities are financially viable and operated efficiently and effectively and that their overall economic benefit to Tasmania is maximised.

2.3 Formation of Tasmanian Networks Pty Ltd

Under the State Government's electricity reform program, a new business will be created to manage the *transmission* and *distribution* of electricity in Tasmania. The new network business, Tasmanian Networks Pty Ltd, trading as TasNetworks, will be wholly owned by the State of Tasmania and is intended to take over the *transmission* and *distribution* businesses of Transend and Aurora on 1 July 2014. The shareholders' vision is to have a single business operating the *distribution* and *transmission* networks as a single network with a view to saving in the order of \$8 million per annum.

3 The Guidelines

As required by law, the ACCC published the Guidelines on 15 August 2002. Rule 6A.21.1 of the Rules obliges *TNSPs* to comply with the Guidelines.

Clause 7 of the Guidelines provides that a *TNSP* must not also carry on a *related business*, meaning a *distribution*, *generation* or *retail* business (clause 7.1(a)(ii)).

Clause 11 of the Guidelines permits the AER to waive any of the *TNSP* obligations under clause 7, provided that the AER 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". The test requires a balancing exercise, if the AER is satisfied that the administrative cost of compliance outweighs the public benefit of compliance, the waiver should be granted⁴.

The Guidelines separate the accounting and functional aspects of ring fenced services (i.e. prescribed services) from other services provided by the *TNSP*. The aim of the guideline is to separate the monopoly powers and functions of the *TNSP* from contestable activities, particularly in the generation and retail supply sectors⁵.

The focus is not on separating the monopoly powers and functions of network businesses. The ring-fencing obligations are an additional layer of regulatory compliance that is not without cost. The requirements within clause 7 of the Guidelines by their very nature may create inefficiencies in the way the networks conduct business.

4 Public benefit of ring-fencing

The ACCC has stated that the public benefits to be considered are those that will be lost if the waiver is granted⁶. Accordingly the AER is to assess the likely public benefits of maintaining the requirements of the Guidelines that will be lost if the waiver is granted.

The ACCC has previously noted that the relevant potential benefits of full separation of the transmission and distribution businesses are that it may reduce the *TNSP*'s opportunity to:

⁴ ACCC Decision, SPI PowerNet Ring-Fencing Application for Waiver, March 2005 Page 8

⁵ ACCC Decision, SPI PowerNet Ring Fencing Application for Waiver, March 2005 Page 1

⁶ ACCC Decision, SPI PowerNet Ring Fencing Application for Waiver, March 2005 Page 8

1. discriminate in favour of a related business;
2. give preferential treatment to a related business;
3. share confidential information with a related business; and
4. shift costs within the integrated businesses.⁷

TasNetworks submits that in the Tasmanian jurisdiction there is little or no opportunity to engage in this type of behaviour because of the lack of any competition in the activity of *distribution* and the application of AER approved Cost Allocation Methodologies for both the *TNSP* and the *DNSP*. TasNetworks submits that the merged business will have nil effect on the opportunity for such behaviours and the current regulatory regime contains sufficient controls to mitigate the risk.

4.1 Discriminate in favour of a related business/give preferential treatment to a related business

The small size of the Tasmanian electricity market means that competition for the provision of regulated services generally does not occur. Transend is the only *TNSP* and Aurora is the only *DNSP* and they are both state-owned entities.

There is little scope for competition between Transend's transmission business and Aurora's distribution businesses in relation to the provision of contestable services. The clearly defined electrical functions and capabilities of each of the networks generally mean that a customer service could only practically be performed by one network or the other.

Waiver of clause 7.2(b) is not being sought, so the waiver application will not affect the public benefit arising from protection against the risk of discrimination in favour of itself under that provision.

4.2 Share confidential information with a related business

Waiver of the Guidelines would not alter the existing obligations of the *TNSP* or *DNSP*. The same information provision obligations under the Rules, the National Electricity Law and jurisdictional regulatory regimes still apply to a *DNSP* and *TNSP* that are part of an integrated business. The *Electricity Reform Act 2012* will preserve all existing contractual arrangements, rights and liabilities of the separate businesses when transferred to the new integrated entity. Although the integrated corporation may report only once, the corporate information supplied to the community and customers is essentially unchanged.

TasNetworks proposes to retain similar kinds of robust and secure information systems as are already in existence within Aurora and Transend. Information systems within the business will be shared, however, appropriate access restrictions will be imposed.

4.3 Shift costs within the integrated businesses

For practical operational reasons and to maintain compliance with regulatory requirements of chapter 6 and chapter 6A of the Rules, the separate regulatory accounts for the *transmission* and *distribution* businesses of TasNetworks will continue. This separation will continue because both businesses are operating within different revenue setting and pricing rules and incentive arrangements.

Regulatory accounting separation serves to differentiate the costs of providing services, assets, liabilities and revenues between the network provider and affiliated businesses. Whilst regulatory accounting separation serves as a useful reporting tool it is also an important means of reducing any opportunities for cost shifting. Accordingly TasNetworks confirms that it will have in place,

⁷ ACCC Decision, SPI PowerNet Ring Fencing Application for Waiver, March 2005 , Page 9

procedures that will enable the appropriate identification and allocation of costs in accordance with Rules requirements.

There are considerable incentives on network businesses imposed through the regulatory framework that seek to reveal efficiencies in the provision of transmission and distribution services that will benefit the long term interests of consumers. TasNetworks confirms it will maintain accounting financial ring-fencing of the *transmission* business from the *distribution*, with separate regulatory accounts. The Rules and associated comprehensive AER guidelines for regulatory accounts and the cost allocation methodologies maintain sufficient separation.

5 Administrative cost of ring-fencing

In previous decisions, the ACCC has considered the test in clause 11 to waive the ring-fencing requirements and determined that it is required to assess the costs of compliance for the *TNSP*, which are solely attributable to the ring-fencing requirement, that will be avoided if the provision is waived⁸. For administrative costs this could be duplication of:

- (a) corporate services – financial and administrative support, human resource management, legal services, IT, and office accommodation;
- (b) regulatory costs – licensing and other duplicated regulatory requirements;
- (c) procurement arrangements – supply and purchasing; and
- (d) other costs of duplicating staff and systems.⁹

Ownership separation is an effective form of ring-fencing. However, the costs of such separation – loss of economies of scale and scope, and increased transaction costs – are large enough to outweigh the limited public benefit referred to in section 4 of this application.

Among its recommendations, the expert panel identified potential savings in the order of \$8 million per annum from integration of the network businesses of Transend and Aurora. These savings were expected to arise predominantly from the rationalisation of duplicate functions and assets; and the co-location of network and network services staff. This information arose from a confidential high-level estimate made by PricewaterhouseCoopers as part of a review initiated by the State Government.¹⁰

5.1 Greater administrative expenditure

The following administrative costs would be incurred to comply with clause 7.1(a)(ii) of the Guidelines:

- duplicated costs of corporate services, for example: administrative support, human resource management, legal services, information technology, finance and office accommodation;
- duplicated governance, risk and compliance systems;
- duplicated personnel for various common support and operations functions; and
- the separation of assets and skilled employees that could otherwise be shared instead of obliging each business to outsource these services to a commercial provider.

An alternative collaborative model that may have allowed for sharing of some corporate services without corporate restructuring was not deemed appropriate by the expert panel. Quoting an Ernst and Young study, the panel found that “Estimated additional savings through further potential areas of collaboration are in the order of \$0.3 million to \$1.2 million per annum. However, the

⁸ ACCC Decision, SPI PowerNet Ring Fencing Application for Waiver, March 2005 Page 8

⁹ ACCC Decision, SPI PowerNet Ring Fencing Application for Waiver, March 2005 Page 8

¹⁰ (Electricity Supply Industry Expert Panel, “An Independent Review of the Tasmanian Electricity Supply Industry”, March 2012, Page 122).

investigation and implementation of these opportunities would require time and investment by the entities”¹¹. Compared with full integration, the panel found that “The Network Integration Model identifies additional financial benefits from the Collaboration Model in the order of \$2.4 million to \$5.6 million per annum, predominantly from the rationalisation of duplicate functions and assets; and the co-location of network and network services staff”¹². It is these additional foregone savings that represent the additional costs that are directly imposed by clause 7.1(a)(ii) of the Guidelines. It is noted that Transend and Aurora have already achieved cost savings as a result of appropriate cross business collaboration through joint public safety initiatives, co-location of operational control centres and increased consultation in network planning. TasNetworks does not believe that further material efficiencies can be achieved in a cost effective manner through further inter-business collaboration.

TasNetworks believes that there may be further scope for cost savings beyond that identified by the expert panel, however, at this stage detailed analysis for an optimum organisational structure for TasNetworks has not yet been completed nor has streamlining of support processes and systems. Given the rigour of the expert panel’s review it is not unreasonable to rely on its assessment that the integration of the two network businesses would save in the order of \$8 million per annum.

5.2 Loss of Economies of Scale

If the *distribution* and *transmission* businesses remain separated this means that they have a lessened ability to contract in the marketplace as a larger Tasmanian corporate entity. This introduces further costs in the form of reduced ability to negotiate for better contract prices for goods and services.

In larger marketplaces it may be relatively easy to impose extensive ring-fencing conditions on TNSP/DNSPs, but the separation of small sections of employees or systems is not practical in a small marketplace with relatively small electricity network businesses.

Although the integrated corporation may report only once and use shared resources, the openness of service access, customer protections and quality of information supplied are essentially unchanged.

6 Waiver sought

Waiver is sought from clause 7.1(a)(ii) of the Guidelines. The waiver application is limited to clause 7.1(a)(ii) on the understanding that if a waiver of 7.1(a)(ii) is granted TasNetworks will be allowed to own and operate both the *transmission* and *distribution* networks and accordingly there will be no *associates* carrying on a *related business* for the purpose of clause 7 of the Guidelines.

The ACCC has determined¹³ that the effect of a waiver of clause 7.1(a)(ii) is that a *TNSP* may no longer have an *associate* carrying on a *related business*. As a consequence of a waiver to clause 7.1(a)(ii) the obligations in clauses 7.6, 7.7 and 7.8, which all relate to the relationship between the *TNSP* and an *associate* that carries on a *related business*, will cease to have any effect.¹⁴

¹¹ Electricity Supply Industry Expert Panel, “An Independent Assessment of the Tasmanian Electricity Supply Industry, Draft Report” December 2011, Page 263

¹² Electricity Supply Industry Expert Panel, “An Independent Assessment of the Tasmanian Electricity Supply Industry, Draft Report” December 2011, Page 256

¹³ ACCC Decision, SPI PowerNet Ring Fencing Application for Waiver, March 2005, page 9

¹⁴ ACCC Decision, SPI PowerNet Ring Fencing Application for Waiver, March 2005, page 9

7 Summary

TasNetworks submits that a waiver of clause 7.1(a)(ii) of the Guidelines is justified on the basis that:

1. The likely public benefits of continuing compliance with clause 7.1(a)(ii) of the Guidelines are limited.
2. The administrative costs resulting from compliance with clause 7.1(a)(ii) of the Guidelines (that will be avoided if the requirement is waived) are significant and are based on a reasonable assessment of the costs.

TasNetworks therefore submits that full operational integration of the *transmission* and *distribution* businesses in Tasmania will best promote both the long-term interests of consumers of electricity in Tasmania and the National Electricity Objective.

Glossary

In this document:

- words in italics have the meaning given in the Guidelines and if not defined in the Guidelines have the meaning given in the Rules; and
- the following terms have the following meanings:

TERM	MEANING
ACCC	Australian Competition and Consumer Commission
AER	Australian Energy Regulator
Aurora	Aurora Energy Pty Ltd ABN 85 082 464 622
Guidelines	Transmission Ring-Fencing Guidelines
Rules	National Electricity Rules
TasNetworks	Tasmanian Networks Pty Ltd ACN 167 357 299
Transend	Transend Networks Pty Ltd ABN 57 082 586 892

Guidelines

Statement of Principles for the Regulation of Transmission Revenues

Transmission Ring-Fencing Guidelines

Date: 15 August 2002

File Number:
C2001/1053

Commissioners:
Fels
Bhojani
Jones
Martin
McNeill

Transmission Ring-Fencing Guidelines

Background

1. Clause 6.20.1 of the National Electricity Code (the *Code*) requires all *Transmission Network Service Providers* to comply with the *Transmission Ring-Fencing Guidelines* prepared in accordance with clause 6.20.2 of the *Code*.
2. Clause 6.20.2(a) of the *Code* requires the Australian Competition and Consumer Commission (ACCC) to develop the *Transmission Ring-Fencing Guidelines*.
3. These Guidelines were *published* by the ACCC on 15 August 2002.

Preliminary

4. In these Guidelines, unless the contrary intention appears, italicised expressions have the meaning given to them in:
 - (a) this clause 4; or
 - (b) if they are not defined in this clause 4, the meaning given to them in the *Code*.

Note: To avoid doubt, *Code* means the National Electricity Code as in force from time to time.

associate, in relation to a *person*, has the meaning it would have under Division 2 of Part 1.2 of the *Corporations Act* if sections 13, 14, 16(2) and 17 of that Act were repealed.

Note: Schedule 1 section 13(7) of the *Gas Pipelines Access (South Australia) Act 1997* (SA) contains an identical definition of 'associate'.

auditing standards means the Auditing Standards and Auditing Guidance Statements as in force or existing from time to time issued by the Auditing Standards Board of the Australian Accounting Research Foundation (and any succeeding bodies).

auditor means a *person* who qualifies as an auditor under Part 2M.4 of the *Corporations Act*.

Corporations Act means the *Corporations Act 2001* (Cth) as in force from time to time.

economic entity has the meaning given in Accounting Standard AASB 1024: Consolidated Accounts as in force from time to time.

marketing staff means servants, consultants, independent contractors or agents directly involved in sales, sale provision or advertising (whether or not they are also involved in other functions) but does not include servants, consultants, independent contractors or agents involved only in:

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

Note: Section 10.8 of the National Third Party Access Code for Natural Gas Pipeline Systems contains an identical definition of 'marketing staff'.

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

parent entity has the meaning given in Accounting Standard AASB 1024: Consolidated Accounts as in force from time to time.

person includes an individual or a body politic or corporate.

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

relevant commencement date means the later of the following dates:

- (a) 1 November 2002; or
- (b) the date on which the ACCC, under s. 44ZZA of the *Trade Practices Act 1974* (Cth), accepts an access undertaking provided by the *Transmission Network Service Provider* in accordance with clause 2.5 of the *Code*.

reporting entity has the meaning given in Accounting Standard AASB 1024: Consolidated Accounts as in force from time to time.

ring-fenced services means *prescribed services*.

TNSP means a *Transmission Network Service Provider*.

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

5. Where these Guidelines authorise the making of an instrument or decision:

- (a) the power includes the power to amend or repeal the instrument or decision; and
- (b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

6. In these Guidelines:

- (a) words in the singular include the plural; and
- (b) words in the plural include the singular.

Ring-fencing minimum obligations

7. A *TNSP* must comply with the following provisions on and from the *relevant commencement date*:

7.1 (a) A *TNSP* that supplies *ring-fenced services*:

- (i) must be a legal entity incorporated under the *Corporations Act*, a statutory corporation or an entity established by royal charter; and
- (ii) subject to clause 7.1(b), 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.

(b) A *TNSP* is not subject to clause 7.1(a)(ii) if it carries on *related businesses* that, in total, attract revenue of less than or equal to 5 per cent of the *TNSP*'s total annual revenue.

7.2 (a) The directors of a *TNSP* that provides *ring-fenced services* must act in the best interest of the *TNSP* in respect of all decisions relating to the provision of *ring-fenced services* and the terms and conditions on which those services are provided.

(b) A *TNSP* that provides *ring-fenced services* must not make decisions or act in a manner that discriminates in favour of an *associate* in relation to the terms or conditions on which those services are provided. To avoid doubt, a *TNSP* providing *ring-fenced services* must offer those services to its customers on terms and conditions no less favourable than it provides to itself or its *associates*.

7.3 (a) A *TNSP* that provides *ring-fenced services* must establish and maintain:

- (i) a separate set of accounts for the provision of *ring-fenced services*; and
- (ii) a separate amalgamated set of accounts for its entire business.

- (b) The accounts must be prepared in accordance with any guidelines that apply to the *TNSP* under clause 8.

Note: Since clause 7.1(a)(ii) prohibits a *TNSP* from carrying on a *related business*, clause 7.3(a)(ii) will only impose additional obligations on a *TNSP* if (a) the *TNSP* is carrying on any *unregulated activities* other than a *related business*; (b) clause 7.1(b) applies to the *TNSP*; and/or (c) the *ACCC*, under clause 11, has waived the *TNSP*'s obligation under clause 7.1(a)(ii).

- 7.4 A *TNSP* that provides *ring-fenced services* must allocate any costs that are shared between an activity covered by a set of accounts described in clause 7.3(a)(i) and any other activity, in accordance with a methodology that complies with any guidelines that apply to the *TNSP* under clause 8.

Note: Clause 7.4 regulates the allocation of costs between *ring-fenced services* and any other activity including activities undertaken by other entities. The purpose of clause 7.4 is to prevent *TNSPs* subsidising contestable activities through regulated activities.

- 7.5 If a *TNSP* that provides *ring-fenced services* is part of an *economic entity*, the *TNSP* must ensure that:

- (a) a separate amalgamated set of accounts in respect of the provision of *ring-fenced services* by that *economic entity* is established and maintained; and
- (b) the accounts are prepared in accordance with any guidelines that apply under clause 8.

Note: Accounting Standard AASB 1024: Consolidated Accounts requires a *parent entity* in an *economic entity* that is a *reporting entity* to prepare consolidated accounts to reflect the *economic entity* as a single *reporting entity*. Principally, adjustments will be necessary whenever entities within an *economic entity* have had transactions with each other. The purpose of clause 7.5 is to ensure that the cost of providing the *ring-fenced services* is adjusted to reflect any transactions between the entities within the *economic entity*, that relate to the provision of the *ring-fenced services*.

- 7.6 A *TNSP* that provides *ring-fenced services* must:

- (a) ensure that information it provides in relation to its *ring-fenced services*, to any *associate* that takes part in a *related business* is available to any other party; and

Note: The purpose of clause 7.6(a) is to restrict access to information that may give the associated entity an unfair advantage over other participants in the national electricity market.

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

7.7 A *TNSP* that provides *ring-fenced services* must:

- (a)
 - (i) ensure that its *marketing staff* are not also servants, consultants, independent contractors or agents of an *associate* that takes part in a *related business*; and
 - (ii) in the event that its *marketing staff* become or are found to be servants, consultants, independent contractors or agents of such an *associate* contrary to clause 7.7(a)(i), procure their immediate removal from its *marketing staff*; and
- (b)
 - (i) ensure that none of its servants, consultants, independent contractors or agents are *marketing staff* of an *associate* that takes part in a *related business*; and
 - (ii) in the event that any of its servants, consultants, independent contractors or agents are found to be the *marketing staff* of such an *associate* contrary to clause 7.7(b)(i), procure their immediate removal from their position with the *TNSP*.

Note: Clause 8.6.1(d) of the *Code* also states that the officers of a *TNSP* participating in *transmission service* pricing must not be involved in or associated with competitive electricity trading activities of any other *Code Participant*.

7.8 A *TNSP* that provides *ring-fenced services* must notify the *ACCC* if:

- (a) any of its servants, consultants, independent contractors or agents are, or will be, servants, consultants, independent contractors or agents of an *associate* that takes part in a *related business*; or
- (b) any servants, consultants, independent contractors or agents of an *associate* that takes part in a *related business* will be servants, consultants, independent contractors or agents of the *TNSP*.

7.9 A notification under clause 7.8 must be provided to the *ACCC* on or before the later of the following dates:

- (a) the *relevant commencement date*; or
- (b) five *business days* prior to the date:
 - (i) on which the servant, consultant, independent contractor or agent of the *TNSP* will be a servant, consultant, independent contractor or agent of the *associate*; or

Note: See clause 7.8(a).

- (ii) on which the servant, consultant, independent contractor or agent of the *associate* will be a servant, consultant, independent contractor or agent of the *TNSP*.

Note: See clause 7.8(b).

8. In complying with clauses 7.3, 7.4 and 7.5, a *TNSP* must:
- (a) if the *ACCC* decides to *publish* accounting guidelines for *TNSPs* that apply to the accounts being prepared, comply with those guidelines; or
 - (b) if the *ACCC* has not *published* such guidelines, comply with any guidelines that are prepared by the *TNSP* and approved by the *ACCC*.

Note: To avoid doubt, clause 8(b) does not require a *TNSP* to prepare guidelines.

Additional ring-fencing obligations

9. The *ACCC* may, by notice to the *TNSP*, require the *TNSP* to comply with obligations in addition to those contained in clause 7 provided that the *ACCC* is satisfied that the administrative cost to the *TNSP* and its *associates* of complying with the additional obligations is, or is likely to be, outweighed by the benefit to the public.
10. Without limiting the additional obligations that may be imposed under clause 9, the *ACCC* may require that:
- (a) the *TNSP* ensure its servants, consultants, independent contractors or agents are not also servants, consultants, independent contractors or agents of an *associate* that takes part in a *related business* and, in the event that they become or are found to be involved with such an *associate*, ensure their immediate removal from their position with the *TNSP*;
 - (b) at least one director of the *TNSP* is not also a director of a company (whether or not an *associate*) that takes part in a *related business* or is a *Code Participant* or *Intending Participant*; and
 - (c) the electronic, physical and procedural security measures employed in respect of the offices of the *TNSP* and of all offices of its *associates* are satisfactory to the *ACCC*.

The examples given in this clause 10 shall not be construed as limiting the types of action a *TNSP* may have to take to comply with clause 7.

Waiver of ring-fencing requirements

11. 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.

Note: In deciding whether to waive any of the *TNSP*'s obligations under clause 7, the *ACCC* may consider any additional obligations that can be imposed under clause 9.

Compliance procedures and compliance reporting

12. A *TNSP* must establish and maintain appropriate internal procedures to ensure it complies with its obligations under clause 6.20.1 of the *Code*. The *ACCC* may require the *TNSP* to demonstrate the adequacy of these procedures upon reasonable notice. However, any statement made or assurance given by the *ACCC* about the adequacy of the *TNSP*'s compliance procedures does not affect the *TNSP*'s obligations under clause 6.20.1 of the *Code*.
13. A *TNSP* must provide a report to the *ACCC*, at reasonable intervals determined by the *ACCC*, describing the measures taken to ensure compliance with its obligations under clause 6.20.1 of the *Code*, and providing an accurate assessment of the effect of those measures.
14. A *TNSP* that is required to prepare documents in accordance with clauses 7.3, 7.4 and/or 7.5 must provide those documents to the *ACCC* at least once a year or at reasonable intervals determined by the *ACCC*.
15. (a) The *ACCC* may, on reasonable notice, require a *TNSP* to:
 - (i) appoint an independent *auditor* approved by the *ACCC* to report on such matters as specified by the *ACCC*; and
 - (ii) provide a copy of the *auditor's* report to the *ACCC* by a date specified by the *ACCC*.
- (b) If the *ACCC* nominates *auditing standards* to apply to an audit under clause 15(a), the *auditor* must report in accordance with those *auditing standards*. To avoid doubt, the *ACCC* may nominate one or more *auditing standards*.
- (c) For the purpose of clause 15(a), the *ACCC* may *publish* auditing guidelines with which a *TNSP* must comply.

Note: The *ACCC* need not *publish* auditing guidelines to impose an obligation on a *TNSP* under clause 15(a). It is intended that auditing guidelines will be *published* where obligations are to apply generally to *TNSPs* on an on-going basis.

16. When a *TNSP* becomes aware of a breach of any of its obligations under clause 6.20.1 of the *Code*, it must immediately inform the *ACCC*.

Consultation

17. In deciding whether to:
- (a) amend the *Transmission Ring-Fencing Guidelines*;
 - (b) impose additional obligations on a *TNSP* under clause 9; or
 - (c) waive a *TNSP*'s obligations under clause 11;

the *ACCC* will follow a consultation process that complies with clauses 6.20.2(a) and 6.20.2(e) of the *Code*.

Note: Under this consultation process, the *ACCC* will:

- (a) publish a notice on its website and notify relevant parties about the possible amendments, imposition of additional obligations or waiving of obligations (as the case may be);
- (b) specify a time by which any comments or submissions are to be received;
- (c) issue a draft decision seeking comments; and
- (d) issue a final decision.