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Mr Chris Pattas
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By email to: Ringfencingguideline2016@aer.gov.au

Dear Chris

RING FENCING GUIDELINES – Exposure Draft

United Energy (UE) appreciates the opportunity to provide this submission on the AER's Exposure Draft Ring Fencing Guideline of November 2016 even though timeframes were short. As a member of the Energy Networks Australia, UE also supports the Energy Networks Australia's submission.

Allow some scale of non distribution services

United Energy considers it is important that the Ring Fencing Guidelines recognise that the National Electricity Objective (NEO) will be promoted by DNSPs engaging fully in competitive markets and leveraging their expertise and regulated asset base wherever it is economic to do so.

UE recommend that the old drafting of clause 3.1 (b) be re-introduced as this allows UE to trial new innovations and product offerings on a small scale. This allows technology and aspects of the service to be trialled so that any larger scale operation of the product can be progressed via other entities and UE will be in a position to understand technically and commercially how to construct these arrangements and will have undertaken a level of internal due diligence on whether the expected benefits are reasonable. This has the potential to assist in overcoming the issues perceived/experienced in the battery market with poor products, poor product installation and the misleading sales regarding performance not eventuating in the expected cost savings.

UE consider that the removal of this drafting to provide some small level of innovation or possible trialling without relying on DMIS or other schemes will serve to constrain innovation of services that could seek to reduce distribution services costs.

Constraining DNSP innovations at a small scale in these new areas is not in the long term interests of consumers.

Regulated services should not be included in the Branding Restraints, 4.2.3

The exposure draft states that a DNSP must use separate branding for direct control services from the branding that it uses for other distribution services or other electricity services. This appears to suggest that any negotiated distribution service, reserve feeder or public lighting, would have to be offered by an affiliated ring fenced entity that did not look like it was connected to the DNSP.

This suggests that increased levels of costs, regulatory burden would be placed on these types of offers as they need to come from separate entities and separate branding. This does not appear in the interests of a customer who is seeking higher network reliability when ultimately the assets are deemed to the DNSP later.

It is not appropriate that the AER force imprudent costs on a DNSP to establish these legal structures and ring fencing requirements for regulated services.

Staff definition/staff sharing 4.2.2/Service Providers, 4.4

The definition of staff includes employees and direct or indirect contractors to a DNSP and employees of those direct and indirect contractors. This is a very broad scope for a staff definition.

The ring fencing guideline then constrains staff involved in the provision or marketing of direct control services are not also involved in the provision or marketing of other distribution services/other electricity services by the DNSP or by the affiliated entity.

The exposure draft appears to suggest that these service providers contracted can now not share staff, buildings or information. The exposure draft captures offers, quote/tendering in relation to a negotiated distribution services for a “reserved feeder” and suggests that staff working on this cannot also work on direct control services ie quoting or providing offers for the “original” feeder.

Whilst the services volume in this area may be low, UE query how this duplication of teams in UE can be considered prudent and efficient, but extending this to force a different service provider business model is not appropriate.

UE has a mixture of insourced and outsourced arrangements in order to provide efficient services and performs well in the industry cost benchmarks. The addition of 4.4 to propose to restrain arrangements in service provider’s contracts seems to limit the embedded efficiencies that occur in field services contracts and other service provider contracts and will ultimately lead to increased costs.

Branding, 4.2.3

The exposure draft appears to suggest that a negotiated services quote must come from a separate affiliated legal entity, even though the service rests with the DNSP.

It is not appropriate to have to create a separately branded affiliated entity to have to quote for a negotiated distribution service. The drafting of other distribution services should clearly carve out legal obligations on the DNSP in relation to regulated services and connection services to avoid this nonsense.

Service providers, 4.4

Clause 4.4 has been added in the exposure draft to require all service providers who provide services to the DNSP to not engage in any conduct, that, if they were the DNSP, would be contrary to the DNSP obligations under clause 4.

Clause 4 covers the following areas:



- Non discrimination
- Physical separation/co-location
- Staff sharing
- Branding and cross promotion
- Office and staff registers
- Protection of confidential information
- Information register

Staff sharing and physical separation already includes the broad definition of staff and hence is not required in clause 4.4. Branding obligations should not extend to regulate service provider branding, nor should the regulatory burden of the development and maintenance of public registers of staff and information extend to services providers. Increasing the costs of service provider's services is not in the long term interests of consumers.

Matters in 4.4 must be limited to the provision of the services contracted by the DNSP. There is no legal basis on which a DNSP can fully control a service provider's organisational structure decisions and actions. UE recommend the following drafting;

A **DNSP** must use its best endeavours to ensure that any provider of services to the **DNSP** does not, in relation to those services it provides to the DNSP, engage in conduct which, if the **DNSP** engaged in the conduct itself, would be contrary to the **DNSP's** obligations under clause 4.3.2 of this Guideline.

Transition and Commencement Date, 1.1.2

The AER has an obligation to make the Ring Fencing Guideline by 1 Dec 2016, UE suggest that the new Guideline commence in April 2017 and the first compliance reporting be for the year 2018. UE note that full compliance is required by 1 Jan 2018 to reflect that businesses may take some time to interpret the final guideline and work through internal processes to ensure that policy, process and procedures comply and training is updated etc. Given that annual compliance reporting may be made public, UE suggest that the first report only be due for the year commencing 1 Jan 2018 and not while businesses are moving to ensure compliance in 2017.

UE support the Energy Networks Australia's amendment that the Ring Fencing Guideline be made by 1 Dec 2016 and the commencement date be 1 April 2017 in clause 1.1.2.

If you have any queries regarding this submission, please contact me on 03 8846 9856.

Yours sincerely

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