

27 May 2015

Mr John Pierce
Chairman
Australian Energy Market Commission
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Sydney South NSW 1235
Email: aemc@aemc.gov.au

Dear Mr Pierce

Expanding competition in metering and related services draft determination

Thank you for the opportunity to provide a submission on the expanding competition in metering and related services draft determination.

The draft rule requires the Australian Energy Regulator (AER) to develop national ring fencing guidelines for the accounting and functional separation of the provision of direct control services from other services provided by distribution network service providers (DNSPs), which can include legal separation.¹ Under the current National Electricity Rules (Rules), the AER “may” prepare such guidelines. The AEMC notes in the draft determination that the guidelines have a broader scope than just metering services, and cover other services provided by DNSPs.²

As part of a multi-utility joint venture, with interests in electricity and gas distribution and retailing, ActewAGL Distribution is keenly aware of the importance of carefully designed ring fencing arrangements. ActewAGL Distribution’s ability to access economies of scope, in particular shared management and operational functions, has been recognised by the AER.³ New ring fencing requirements, if not carefully considered, have the potential to limit economies of scope increasing the costs of providing metering and related services and also distribution and retail services.

¹ AEMC 2015, *Draft Rule Determination National Electricity Amendment (Expanding competition in metering and related services) Rule*, p. 228

² AEMC 2015, *Draft Rule Determination National Electricity Amendment (Expanding competition in metering and related services) Rule*, p. viii

³ AER 2015, *Final Decision ActewAGL distribution determination 2015-16 to 2018-18 Attachment 7 – Operating Expenditure*, p.7-186

ActewAGL Distribution considers that:

- The new Rules should not make it mandatory for the AER to develop new ring fencing guidelines;
- Ring fencing should not be seen as a means of levelling the playing field in contestable markets;
- The AEMC should provide further direction to the AER on the principles to be applied by the AER if it exercises its discretion to develop new national guidelines; and
- The AEMC should clarify that ring fencing requirements will not apply to DNSPs operating as the deemed Metering Co-ordinator for type 5 and type 6 meters.

These four points are addressed below.

ActewAGL Distribution does not agree with the draft determination to make it mandatory for the AER to develop new ring fencing guidelines. The current rules give the AER discretion to develop ring fencing guidelines, and this is appropriate. COAG, the rule change proponent, did not propose that “may” be replaced with “must” in the current clause 6.17.2.

Moreover, creating a requirement for new ring fencing guidelines to be developed by a set date prevents the AER from extending the time available, where it is in the long term interests of consumers, to conduct an appropriate level of consultation and carefully consider the issues. The development of ring fencing guidelines will require a series of issue, consultation and discussion papers to be published and a series of conferences and information sessions to be held. The distribution consultation procedures in the Rules currently recognise that additional time may be required for issues of unusual complexity or difficulty, such as ring fencing, and provide the AER with discretion to extend the time required to publish its final decision.

The Commission considers that ring fencing should, to some extent, limit the ability of DNSP’s to cross-subsidise the contestable services carried out by businesses through regulated services; and also seeks to limit the ability of DNSP’s to provide its contestable businesses with access to commercially sensitive information that is not available to others in the market.⁴

However, there is a distinction between these concerns and the operation of a competitive advantage in the market. It is not, as has been noted by the AER, the purpose of ring fencing to level the “...playing field in markets for contestable services, by

⁴ AEMC 2015, *Draft Rule Determination National Electricity Amendment (Expanding competition in metering and related services) Rule 2015*, p.235

eliminating the advantage that a DNSP may otherwise have in providing that services...”⁵
Preventing businesses from achieving economies of scale and scope will result in higher costs for consumers not only in metering but also in distribution and potentially retailing.

In the draft determination the AEMC sets out some factors that the AER “may” wish to consider when developing the guidelines – for example “the costs of implementing the measures and the effectiveness of these measures”.⁶

ActewAGL Distribution considers that the AEMC should include clearer direction in the rules on the matters the AER must address, if it elects to develop new ring fencing guidelines. The AER should:

- Apply the COAG principles of best practice regulation;
- Take account of all relevant costs and benefits of ring fencing measures;
- Take account of existing ring fencing and other regulatory interventions, and not remove all business advantages (including scale and scope efficiencies); and
- Recognise differences in jurisdictions and apply waivers as appropriate.

The AEMC should also include in its final determination a direction that any new ring fencing requirements must not apply in situations where DNSPs operate as a deemed Metering Co-ordinator for existing type 5 and type 6 metering installations and do not operate in the competitive segment of the metering market. Ring fencing requirements in these circumstances would impose significant costs on DNSPs and their customers, for no competitive benefit.

Please contact Leanne Holmes, Manager Economic Regulation, on 0412 850 715 if you have any queries.

Yours sincerely



Stephen Devlin
General Manager Asset Management

⁵ AER 2012, *Electricity Distribution Ring-fencing Guidelines Position paper*, p.2

⁶ AEMC 2015, *Draft Rule Determination National Electricity Amendment (Expanding competition in metering and related services) Rule 2015*, p.236