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Mr Chris Pattas

General Manager, Networks

Australian Energy Regulator

Submitted by email: ringfencing@aer.gov.au

21 June 2017

Dear Mr Pattas,

CitiPower/Powercor ring-fencing waiver application – May 2017

AGL Energy (AGL) welcomes the opportunity to respond to the Australian Energy Regulator's (AER) invitation for submissions on the CitiPower/Powercor ring-fencing waiver application – May 2017 (**Application**).

AGL is one of Australia's leading integrated energy companies and largest ASX listed owner, operator and developer of renewable generation. Our diverse power generation portfolio includes base, peaking and intermediate generation plants, spread across traditional thermal generation as well as renewable sources. AGL is also a significant retailer of energy, providing energy solutions to over 3.7 million customers throughout eastern Australia.

In addition, AGL is continually innovating our suite of distributed energy services and solutions for customers of all sizes (residential, business and networks). These 'beyond the meter' energy solutions involve new and emerging technologies such as energy storage, electric vehicles, solar PV systems, digital meters, and home energy management services delivered through digital applications.

AGL opposes the waivers sought in the Application.

AGL is concerned that the Application evidences a reluctance on the part of distributors to act in the long-term interests of consumers, consistent with the National Electricity Objective.¹ In AGL's view, the Application seeks to avert the commercial cost of transitioning towards compliance with the Ring-fencing Guideline, with protracted timeframes that will unnecessarily slow that transition. As the AER observed in its Ring-Fencing Guideline Explanatory Statement, some waiver applications may have far reaching implications in the development of contestable markets for electricity services². AGL considers the waivers sought in the Application to be one such example.

¹ Section 7 of the *National Electricity Law*. The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long-term interests of consumers of electricity with respect to—
(a) price, quality, safety, reliability and security of supply of electricity; and (b) the reliability, safety and security of the national electricity system.

² Australian Energy Regulator, Ring-fencing Guideline – Explanatory Statement (30 November 2016), Available at <https://www.aer.gov.au/system/files/AER%20Ring-fencing%20Guideline%20-%20Explanatory%20statement%20-%2030%20November%202016.pdf>.



As AGL emphasised in its submission on the AER's Draft Ring-Fencing Guideline³, effective ring-fencing of regulated distribution monopolies from businesses providing competitive services in contestable markets is of fundamental importance to promoting the long term interests of consumers. Given the pace of change in the energy market, AGL considers that network business and their associated commercial ventures should be required to transition to the new framework as expeditiously as possible.

Whilst the Guideline allows for network businesses to apply for a waiver under cl. 5.2, AGL remains firmly of the view that the more extensive the opportunity for waivers from the ring-fencing obligations, the weaker the protections they seek to offer will become over time. Waivers also introduce a degree of uncertainty for market participants seeking to keep track of which waivers apply to which network business and in what circumstance. New entrants and other entities seeking to invest in contestable markets require clarity over, and confidence in, a consistent and robust ring-fencing regime applying across all NEM jurisdictions.

AGL submits that the AER should decline to grant the waivers sought in the Application, having regard to the reasons that follow.

1. Negotiated and unclassified services waiver

The Application seeks a waiver for seven negotiated and unclassified services.

In AGL's view, CitiPower/Powercor have not demonstrated that this waiver accords with the National Electricity Objective. AGL is concerned with CitiPower/ Powercor's suggestion that the cost of its transition towards compliance with the Ring-fencing Guideline would be borne by consumers. AGL considers it to be entirely inappropriate and unlawful that a regulated entity such as CitiPower/ Powercor pass onto consumers the cost of establishing free-standing commercial entities, which should instead be underwritten by commercial funding and be subject to the consequences of commercial failure. Consumers should not be underwriting the development of such activities.

AGL also disagrees with the argument that there would be no market harm from not adopting the Ring-Fencing Guideline in respect of these services. Effective ring-fencing is fundamental to the very creation of a functioning competitive market. Indeed, the argument that these services are currently delivered in a monopoly manner is counterintuitive to the very intent of the Ring-fencing Guideline.

2. Powercor network services branding waiver

The Application seeks a waiver for using the Powercor brand, which is included in Powercor Network Services' name and branding material.

AGL considers that the waiver period sought for rebranding (more than three years) is disproportionate to the anticipated impacts that this would have on the emergence of a competitive market. AGL reiterates that the networks should transition to the new framework as expeditiously as possible.

³ AGL Energy, Submission on the Australian Energy Regulator's Draft Electricity Distribution Ring-Fencing Guideline, August 2016 (28 September 2016), Available at http://aglblog.com.au/wp-content/uploads/2016/09/AGL-submission_-Draft-Ring-fencing-Guideline_September2016_Final.pdf.



3. CitiPower and Powercor branding

The Application seeks a waiver from the prohibition on CitiPower's and Powercor's brand from being present when performing field work for third parties and affiliates (i.e. non-direct control services), with respect to large commercial and industrial customers.

AGL considers that the waiver period sought for rebranding (more than three years) is disproportionate to the anticipated impacts that this would have on the emergence of a competitive market.

4. Seeking No Action letter

The Application also seeks relief in the context of CitiPower and Powercor operating as a single business with shared management, employees and systems. It requests that the AER amend the guideline or issue a general No Action Letter with respect to areas of non-compliance arising from single business models and where there is no impact on other affiliated entities.

AGL does not oppose the AER granting relief to smooth the operation of the single business model between CitiPower and Powercor provided any such relief does not interfere with the effective and timely operation of the Ring-fencing Guideline.

Should you have any questions in relation to this submission, please contact Kurt Winter, Policy Advisor, on 03 8633 7204 or myself on 03 8633 6836.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Stephanie Bashir', is written over a light blue circular stamp.

Stephanie Bashir

Senior Director, Public Policy