



INDEPENDENT PRICING AND REGULATORY TRIBUNAL
OF NEW SOUTH WALES

**Application by EnergyAustralia
for a waiver of clause 5.4.1 of the Distribution Ring Fencing
Guidelines (Ref: 03/462)**

DRAFT DECISION

The Tribunal's draft decision is to grant EnergyAustralia a conditional waiver of the following form:

For network switching and earthing the requirements of Clause 5.4.1 are waived for staff conducting HV switching in the Upper Hunter and Maitland areas. In addition, the requirements of Clause 5.4.1 of the Guidelines are waived for LV work and HV work outside the Upper Hunter and Maitland areas subject to the following conditions:

- 1. EnergyAustralia staff who have been engaged in construction of a contestable¹ project may not switch or earth that particular project;*
- 2. EnergyAustralia is required to maintain an accurate and up to date log, available to the public (including ASPs), that records all contestable switching requests in the order that they are received and record when they are switched.*

In addition, the Tribunal's draft decision is to issue an amendment to the Guidelines to remove any ambiguity surrounding the operation of Clause 5.4.1 of the Guidelines. The amendment will explain that "specified services" are monopoly services as described in Annexure 2 of the Tribunal's 2004 Electricity Distribution Network Final Determination *only* when those services are being carried out to facilitate customer-funded contestable work - ie, they do not include services performed as part of DNSP funded work on the network.

Background

The Tribunal's Distribution Ring Fencing Guidelines (**Guidelines**) were published on 19 February 2003. The Guidelines aim to provide competitive neutrality between DNSPs and independent accredited service providers (ASPs) for contestable services.

In February 2004, EnergyAustralia applied to the Tribunal for a waiver of clause 5.4.1 of the Guidelines (staff separation). The waiver is sought for (i) all network switching (both high voltage - HV, and low voltage - LV) for Upper Hunter and

¹ "Contestable" as defined in the Guidelines.

Maitland staff; and (ii) line workers and cable jointers conducting LV switching on all parts of the network.

The relevant clauses of the Guidelines (requirements and provisions for the granting of waivers) are attached at Attachment A.

The Tribunal advertised the application in the press and placed a notice on the IPART website and invited comments. The Tribunal received submissions from National Electrical and Communications Association (NECA), the Department for Energy, Utilities and Sustainability (DEUS), and two Accredited Service Providers (ASPs). The Tribunal also commissioned a review by consultants, Sinclair Knight Mertz (SKM), who were asked to investigate the relative costs and benefits of granting and not-granting the waiver.

Reason for Draft Decision

In reaching its Draft Decision, the Tribunal took into account the likely costs of complying with the ring fencing guidelines (both monetary and non-monetary, including the costs associated with erosion of staff skills), the scope for economies of scale, the size of the relevant market, and the likely impact on competition if a waiver/conditional waiver were granted.

The Tribunal considers that concerns raised regarding the need to maintain the breadth of staff skills can be addressed without any negative impacts on competitive neutrality though the issuing of:

- a proposed amendment to Clause 5.4.1 of the Guidelines to clarify that DNSP staff undertaking contestable work can *also* engage in any other network work for which they are qualified;
- a waiver for the whole of EA's area, *limiting* the ring fencing requirements to requiring separation of construction and switching staff on a "project by project" basis (ie, staff undertaking construction work on one project, may undertake switching work on another project, or *vice versa*).

While the Tribunal's consultants, SKM, found no evidence to suggest that EnergyAustralia prioritises its own switching jobs ahead of those of ASPs as a form of non-price competition, the Tribunal considers that requiring EnergyAustralia to maintain a publicly-accessible log of contestable switching jobs, recording the order in which jobs are received and switched, would provide further confidence to the ASPs that non-price competition of this nature is not occurring.

In addition, the Tribunal considers that a *full* waiver is appropriate for High Voltage (HV) switching in EnergyAustralia's Upper Hunter and Maitland area. The Tribunal has based this draft decision on the basis that the Upper Hunter and Maitland area is dominated by HV networks of a relatively remote nature, where switching/construction crews must, in general, travel significant distances to

undertake contestable works. The Tribunal considers that the concerns raised by EnergyAustralia in relation to cost inefficiencies caused by the Guidelines will be concentrated in these areas. The Tribunal therefore considers that in limiting a full ring fencing waiver to HV switching in the Upper Hunter and Maitland area, it can have the largest impact in terms of avoiding cost inefficiencies, while limiting any negative impacts on competitive neutrality. The Tribunal considers this decision to be consistent with its view that competition should be encouraged where it can be employed as a means of promoting efficiency, rather than being pursued as an end in itself.

It should be noted that in reaching its Draft Decision, the Tribunal did not consider whether ASPs should be allowed to conduct their own switching. The Tribunal notes that this is a matter for the Minister/DEUS, and does not fall within IPART's remit.

The Tribunal notes that it is also currently considering a ring fencing waiver application from Country Energy. That application includes a request for a waiver in relation to similar functions to those covered by this Draft Decision. Stakeholders may wish to bear this in mind when considering their responses to this Draft Decision.

Consultation.

The Tribunal seeks comment from any interested stakeholders on this Draft Decision. The closing date for comment is **5.00pm Monday 11th July**.

Information regarding the process for lodging submissions and the Tribunal's privacy policy may be obtained from the Tribunal's website *www.ipart.nsw.gov.au*.

Any inquiries regarding this matter may be directed to Emma Kelso (emma_kelso@ipart.nsw.gov.au, telephone (02) 9290 8453).

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27th May 2005

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ATTACHMENT A

Clauses 5.4 states:

Clause 5.4 **DNISP staff separation**

- 5.4.1 A *DNISP* must ensure that *DNISP staff* that provide *specified services* do not also provide *contestable services*.
- 5.4.2 If a member of *DNISP staff* that provides *specified services* is in attendance at a *customer's* property because they have responded to a request for emergency services, clause 5.4.1 is suspended for such period as required for those emergency services to be provided.

Part 6 of the Guidelines addresses adding to or waiving the Guidelines.

Clause 6.1 states:

A *DNISP* may request in writing that the *Tribunal* waive a provision of these *Guidelines* in relation to the *DNISP*. The request must specify:

- (a) the reason that the *DNISP* is requesting the waiver, and the nature of the issue that the waiver is sought to address;
- (b) the costs associated with complying with the provision of the *Guidelines* in relation to which the waiver is sought;
- (c) any alternative measures that the *DNISP* proposes to undertake in conjunction with the waiver; and
- (d) why the waiver should be granted with reference to the matters set out in clause 6.3(a).

Under clause 6.2 of the Guidelines, the *Tribunal* may decide in relation to the *DNISP's* request for waiver to either:

- (a) waiver one or more provisions of these *Guidelines*, whether or not the waiver is granted in accordance with the *DNISP's* request, and attach conditions of the grant of waiver; or
- (b) refuse to grant the waiver.

Under Clause 6.3,

In deciding whether or not to grant a waiver to a *DNISP* under clause 6.2, the *Tribunal*

- (a) may have regard to:
 - i. the administrative costs of the *DNISP* complying with the provision of the *Guidelines* in relation to which the waiver is sought;
 - ii. the *DNISP's* ability to achieve the economies of scale;
 - iii. the size of the relevant market;
 - iv. the extent to which competition will be diminished or enhanced if the waiver is granted or refused; and
 - v. any other factors the *Tribunal* considers relevant.
- (b) Must conduct such public consultation as it considers relevant.