Wednesday, 28 September 2016

Mr Chris Pattas
General Manager, Networks
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001
By email: ringfencingguideline2016@aer.gov.au

Dear Mr Pattas,

SUBMISSION ON THE AER'S DRAFT RING-FENCING GUIDELINE FOR DISTRIBUTION NETWORK SERVICE PROVIDERS

Spark Infrastructure is pleased to provide this submission to the AER's Draft Ring-fencing Guideline (**Guideline**) and explanatory statement.

Spark Infrastructure understands that the Guideline applies to electricity distribution network service providers (**DNSPs**), however, it is the intention of the AER to mirror the requirements for transmission services.

Spark Infrastructure is an infrastructure fund listed on the Australian Stock Exchange with a market capitalisation of approximately $4 billion. Its current investment portfolio includes 49% interests in SA Power Networks, CitiPower and Powercor and a 15.01% interest in Transgrid. Each of these businesses are subject to regulation by the Australian Energy Regulator (AER) and will either be subject to the Guideline currently being developed by the AER or any subsequent guideline developed to cover transmission services.

Spark Infrastructure urges the AER to ensure that any subsequent review of the existing Ring Fencing Guideline for transmission services properly considers the unique characteristics, services, customers and markets relevant to transmission services and does not simply apply the same framework as will apply to DNSPs.

Spark Infrastructure acknowledges the intention outlined by the AER to prevent DNSPs cross-subsidising between regulated and contestable services and discriminating against other service providers. However, it is important to ensure that the measures put in place to give effect to these intentions do not inadvertently stifle competition, innovation and efficiency. It could do this by removing the ability and incentives for DNSPs to pursue non-network solutions and continuously pursue more efficient ways to deliver services. This includes efficiently utilising existing networks to provide value adding non-traditional energy delivery services and sharing the benefits of this with customers as currently required through the Cost Allocation Methodology and Shared Asset Guideline. By prohibiting DNSPs from providing services in competitive markets, customers will be prevented from receiving the benefits of efficiencies and innovation in services that competitive rivalry stimulates. This is not in the long term interests of customers.

Level 25, 259 George Street, Sydney NSW 2000 ABN 36 114 940 984
t +61 (0)2 9086 3600 f +61 (0)2 9086 3666 e info@sparkinfrastructure.com w www.sparkinfrastructure.com

Spark Infrastructure considers that the Draft Ring Fencing Guideline will have this effect as a result of:

- **Not providing clarity over the services that will be subject to the requirements of the ring-fencing guideline** – this may result in inadvertently narrowing the scope of services that can be provided by a DNSP and introduce considerable uncertainty into planning and operation of the business. This will reduce the ability of the business to deliver on efficiency and growth initiatives in business plans.

- **Prohibiting DNSPs from providing value adding services utilising existing assets and capability** – this could result in a culture which stifles competition, efficiency and innovation as a result of ensuring compliance risks and costs are minimised. This will reduce the value to be gained from efficiency incentives and result in higher costs to customers than necessary.

Spark Infrastructure has a general high level of concern about the AER's approach to introducing new obligations and requirements on network businesses without first demonstrating a market failure or assessing the costs associated with the new obligations and requirements. Consumers have a right to hold the AER accountable for the impact on prices of the increased cost and risks imposed on the businesses compared with the claimed benefits. They are unable to do this if the costs and benefits are not identified or measured.

There is already a substantial body of law in Australia regarding competition as well as a range of other safeguards such as information sharing requirements; the Cost Allocation Guideline and the Shared Asset Guideline. It is not clear how the additional requirements will supplement rather than duplicate these.

Further, where the AER does identify a gap in the current body of law, an alternative may be to require network businesses to develop ring fencing policies that give effect to the objectives to be approved by the AER. This would enable each business to identify the lowest cost means of giving effect to the objectives that take into account individual circumstances reducing the cost impact on consumers whilst achieving the identified outcome.

The businesses in which Spark Infrastructure invests and that will be subject to the Guideline will provide separate submissions addressing the operational issues and costs associated with the legal separation, staff sharing, physical separation and waiver options contemplated by the Guideline.

We appreciate the opportunity to comment and invite you to contact Sally McMahon on 0421057821 if you have any questions or wish to discuss this submission further.

Yours faithfully,

Rick Francis

Managing Director

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