



INDEPENDENT PRICING AND REGULATORY TRIBUNAL  
OF NEW SOUTH WALES

**Application by Integral Energy  
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 Integral Energy's application for waiver on the following conditions:

- 1. The waiver applies only in the circumstance where a customer has requested Integral Energy to provide connection services because the customer is unable to have those connection services provided by an ASP as evidenced by a statutory declaration from the customer in which the customer identifies at least three ASPs that he has approached to perform the connection services and the ASP's have either declined to provide those services or declined to provide a quote for those services within a reasonable period of the customer's request; and**
- 2. If condition (1) is satisfied and Integral Energy provides the connection services requested by the customer under that paragraph, Integral Energy must charge the customer for those connection services in accordance with the Tribunal's *Final Determination: NSW Electricity Distribution Pricing 2004/05 to 2008/09* published in June 2004 (specifically Annexure 3, table 2 of that determination).**

**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 (**ASP**) for contestable services.

On 5 October 2004, Integral Energy applied to the Tribunal for a waiver of clause 5.4.1 of the Guidelines. The waiver is sought for the circumstance where a customer has requested Integral Energy to provide connection services because the customer is unable to have those connection services provided by an ASP so that Integral Energy is then in effect the "provider of last resort".<sup>1</sup> A copy of the relevant clauses of the Guidelines is attached at attachment A.

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<sup>1</sup> Section 15 of the *Electricity Supply Act 1995* permits a customer to request that a distribution network service provider provide connection services.

The Tribunal advertised the application in the press and placed a notice on the IPART website and invited comments.

The Tribunal received two submissions. The respondents were the *Department of Energy Utilities and Sustainability* (DEUS) and *National Electricity and Communications Association* (NECA).

### **Reason for Decision**

After taking into account submissions and considering costs, level of competition, economies of scale and the extent to which competition may be diminished the Tribunal is minded to grant the waiver application, subject to conditions that ensure that Integral Energy does not obtain a competitive advantage over ASPs, contrary to the terms and intent of the Guidelines.

The Tribunal considers that without the conditions proposed, a situation could emerge where Integral was conducting work under the waiver where it was not the provider of last resort, even if this was not a deliberate action by Integral Energy. For example, competition may emerge in an area over time which Integral may not necessarily be aware of. Integral may undertake a job believing it was requested as the only supplier, when in fact it simply had the lowest quote. A waiver condition requiring that Integral obtain a statutory declaration from customers stating that an ASP declined to perform the services or declined to quote for the services would avoid this situation.

Whilst Integral Energy's waiver application only refers to Bowral, Bowenfels and Nowra the Tribunal believes that identifying specific depots will not provide any benefit as there may be uncertainty over which areas a depot covers, and areas in which there is no competition may change over time. The condition proposed would avoid Integral Energy having to apply for an amendment to the waiver in the future should the geographic extent of competition change.

## Consultation

The Tribunal seeks comment from any interested stakeholders on this draft decision. The closing date for comment is **5.00pm Friday 18 March**.

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 Gerard O'Dea by phone (02) 9290-8439 or email [gerard\\_odea@ipart.nsw.gov.au](mailto:gerard_odea@ipart.nsw.gov.au)

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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.