



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)**

FINAL DECISION

Integral Energy has applied for a waiver from the clause 5.4.1 of the Distribution Ring Fencing Guidelines where it is obliged to provide a contestable service, namely a construction and/or connection service (**connection services**).

The Tribunal's final decision is to grant Integral Energy's application for waiver, subject to conditions. Accordingly:

1. Clause 5.4.1 of the Tribunal's Distribution Ring Fencing Guidelines (**Guidelines**) will not apply to Integral Energy 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. However Integral Energy must first obtain from the customer a statutory declaration in which the customer identifies at least three ASPs that the customer has approached to perform the connection services and the ASP's have either:
 - (a) declined to provide those services; or
 - (b) declined to provide a quote for those services within a reasonable period of the customer's request.
2. If consistent with paragraph 1, Integral Energy provides the connection services requested by the customer under that paragraph, Integral Energy:
 - (a) may levy a charge on the customer for the provision of the connection services equal to the charge which Integral Energy would levy on a customer for work of that type under its usual terms of trade; and
 - (b) must charge the customer for monopoly services provided (that relate to the provision of 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).
3. This waiver will cease on a date on which the Tribunal notifies Integral Energy.

Background

The Tribunal's 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".¹ A copy of the relevant clauses of the Guidelines is 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 two submissions. The respondents were the *Department of Energy Utilities and Sustainability* (DEUS) and *National Electricity and Communications Association* (NECA).

The Tribunal considered these submissions and then published its draft decision on 28 February 2005.

The Tribunal received comments back on the draft decision from Integral Energy in which it requested clarification as to whether it could charge the appropriate commercial fee for carrying out the connection services in addition to the appropriate monopoly fees. The Tribunal has clarified this point.

Reason for Decision

After taking into account submissions and the relevant factors as described in Clause 6.3 of the Guidelines (see the attached) the Tribunal has decided 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.

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

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 imposed avoids Integral Energy having to apply for an amendment to the waiver in the future should the geographic extent of competition change.

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

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21 April 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.