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Australian Energy Regulator

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Ring-fencing guideline (electricity transmission) Issues paper

AGL Energy (AGL) welcomes the opportunity to respond to the Australian Energy Regulator (AER) Ring-fencing guideline (electricity transmission) Issues paper.

About AGL

Proudly Australian for more than 185 years, AGL supplies around 4.5 million energy and telecommunications customer services. AGL is committed to providing our customers simple, fair, and accessible essential services as they decarbonise and electrify the way they live, work, and move.

AGL operates Australia's largest private electricity generation portfolio within the National Electricity Market (NEM), comprising coal and gas-fired generation, renewable energy sources such as wind, hydro and solar, batteries and other firming technology, and gas production and storage assets. We are building on our history as one of Australia's leading private investors in renewable energy to now lead the business of transition to a lower emissions, affordable and smart energy future in line with the goals of our Climate Transition Action Plan.

Regulatory settings should support an efficient energy transition

We support the Australian Energy Market Commission's (AEMC) decision to amend rule 6A.21.2 of the National Electricity Rules (NER) to empower the AER to revise the Electricity Transmission Ring-fencing guideline to achieve the functional separation of TNSPs' (or their related entities') prescribed transmission services and negotiated transmission services from the provision of contestable (i.e. non-regulated) electricity services by them.

Given the substantial pipeline of energy projects expected to be developed and connected to the NEM, as part of the energy transition, it is imperative that regulatory settings, such as the transmission ring-fencing guideline, are appropriately structured to maximise market competition and ensure timely and efficient connections processes. Without appropriate regulatory settings, there is a risk connections will take longer and be more expensive, thereby increasing the costs of the transition for consumers.

There is a risk TNSPs could misuse their monopoly power

Given the current ring-fencing guideline does not apply to negotiated transmission services, there is the possibility that transmission network service providers (TNSPs) could potentially misuse their monopoly position in the market for negotiated transmission services.

We consider any risk, or even the perceived risk, of delays to generation project timelines, or additional costs, are key factors in selecting transmission service providers, even if more economically efficient options are otherwise available. Project developers may select TNSP-affiliated entities over other providers, despite higher prices, due to the potential risk of discriminatory conduct. Significant savings across industry could be achieved if the regulatory settings enabled project developers to select the lowest cost provider. We consider such risks can lead to ineffective competition in the market for these contestable services.

The transmission ring-fencing guideline should be expanded to include ALL negotiated transmission services

We note the AER is seeking views to develop a proposal for changes to the transmission ring-fencing guideline, and considering to what extent obligations under the guideline should apply to the range of negotiated services.



While we support the AER's proposed changes to improve the guideline presented in its Issues Paper; we consider the core risk associated with the monopoly power position of TNSPs is most effectively addressed by extending the obligations under the ring-fencing guideline to include all contestable negotiated transmission services.

This will give the AER the power to minimise the risk that TNSPs use their exclusive right to provide non-contestable connection services to discriminate in favour of themselves or an affiliate in the contestable connections market.

We note Chapter 5 of the National Electricity Rules (NER) restricts the ability of TNSPs to engage in discriminatory conduct. We consider that these obligations do not fully mitigate the risk of discriminatory conduct and note that they are merely behavioural obligations which means their effectiveness will be very limited in comparison to structural measures such as ringfencing.

We note that connecting generators to transmission is a long slow complex process which is typically prone to delays that can greatly increase costs for connecting parties and that in many cases there is a lack of transparency in negotiations for the provision of connection services. In negotiations with TNSPs on the cost of contestable connection services TNSPs will often bundle the costs as a package which includes both contestable and non-contestable services and it can be difficult to determine which costs apply to which. Where third-party alternatives exist the prices offered can sometimes be less than that offered by the TNSP at first instance. While sometimes this competitive pressure can be used to negotiate with the TNSP, third-party alternatives will not always result in an equivalent outcome, for reasons including that they need to engage with the TNSP.

Therefore, we strongly consider the AER should expand the ring-fencing guideline to include all negotiated transmission services as this is critical to address and prevent actual or perceived discriminatory conduct. This is a necessary condition if effective competition for contestable transmission services is to develop.

The benefits of ring-fencing outweigh the costs

We disagree with the assertion that ring-fencing requirements will delay connection of projects and the broader energy transition. Rather, we consider an appropriately regulated market for contestable negotiated transmission services will incentivise competition, leading to lower costs, new entrants, service innovation and more efficient rollout of connection of generators.

We consider ring-fencing a fundamental regulatory requirement to minimise the risk of discriminatory conduct by regulated businesses when providing negotiated transmission services. We note the negative impacts associated with discriminatory conduct may not be observed directly and will instead for example manifest in a developer's actions to minimise actual or perceived risk of harm e.g. when a developer chooses to utilise a TNSP-affiliated entity for transmission services even when it is not as economical as using a non-TNSP affiliated competitor. Consequently, the AER should give consideration to the costs and benefits of addressing both the potential negative impacts in addition to actual reported misuse of market power.

Given the scale and pace of the energy transition and the substantial pipeline of generators which will need to be connected to the NEM over the next few decades, expanding ring-fencing arrangements to include negotiated services is likely to result in material savings to project developers (and in turn energy customers). These savings are likely to exceed any minor additional administrative burdens placed on TNSPs as a result of complying with expanded ring-fencing guidelines.

We suggest the AER's assessment criteria for potential changes to the ring-fencing guideline include the growth of meaningful participation by third-party providers in as many areas of contestable connections services as possible, as this will be the best indicator of effective competition.



Ring-fencing waiver duration limits should not be removed

While we acknowledge the need for waivers as a mechanism which can be used to provide TNSPs with flexibility, we do not support the removal of the current restriction on the maximum length of waivers from the guideline.

Waivers should only be granted on a case-by-case basis for a limited period of time. Excluding specific categories of negotiated transmission services or reducing obligations under the existing guideline would undermine the ring-fencing framework for negotiated transmission services and run counter to the National Electricity Objectives.

The AER should address TNSP concerns through the waiver process rather than creating broad exemptions for entire categories of negotiated transmission services. We consider waivers are well-suited to address the concerns and specific circumstances of individual TNSPs. The waiver process enables the AER to determine if the TNSP's compliance costs for specific obligations can be reduced, based on the particular circumstances and controls proposed, without impeding competition in competitive markets.

Non-Discrimination obligation

We support the AER's objective to promote fair competition within the transmission sector and efforts to ensure that TNSPs do not unfairly favour their related entities. We support the AER's proposal to extend the general non-discrimination obligation in clause 4.1(b) to include negotiated transmission services.

In addition to the existing general non-discrimination obligations, this would require TNSPs to better demarcate their dealings with customers, and their related entities, between negotiated and contestable services.

Definition of ring-fenced information

We support the AER's proposal to extend the definition of ring-fenced information to include information obtained through negotiated transmission services, as this could help mitigate the risk of related entities gaining competitive advantages by accessing sensitive customer information.

We do not consider that there should be derogations from the current access and disclosure requirements as it would undermine the ring-fencing protections.

Additional reporting requirements

We consider the AER should implement additional reporting requirements for TNSPs. TNSPs should publicly report information related to the provision of negotiated services, to increase transparency of the connection process for large customers. As noted in the Issues Paper, we consider TNSPs should report the following:

- the number of connection enquiries received.
- the number of connection applicants who have tendered for the contestable connection elements (if known).
- the number of connections that proceeded with a non-incumbent provider.
- the connection timeframes and costs for delivery of negotiated services.

This will provide greater transparency for the market, improve accountability, and enable market participants to make more informed commercial decisions.

Staff separation requirements



We recognise the importance of clear and effective ring-fencing measures, including staff separation and data management, to prevent any unintended advantages that might arise from the sharing of sensitive information.

We agree with AER that Option 2: widening the scope of staff separation beyond marketing staff, which proposes broader staff separation beyond marketing teams, offers a robust approach to achieving this objective. By extending staff separation requirements, it will reduce the risk of information being inadvertently shared in ways that could influence competition in the contestable services market.

Restrictions on cross-branding and promotions

We support the proposal for restrictions on branding and cross-promotion between TNSPs and their related entities. We acknowledge that such restrictions can play a crucial role in maintaining a fair and competitive market, and we support efforts to ensure equal opportunities for all market participants in accessing transmission services.

Sign-offs for TNSP Annual Compliance Reports

We support the AER's proposal to introduce a requirement that annual ring-fencing compliance reports must be submitted to the AER with an accompanying cover letter, which has been signed by the most senior executive of a TNSP.

We agree that this change would ensure that all TNSPs are consistent in the level of review and sign-off for annual compliance reports. It would also ensure consistency with the AER's Compliance Reporting Best Practice Manual.

If you have queries about this submission, please contact Alifur Rahman at [REDACTED]

Yours sincerely,

Chris Streets

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