

16 December 2022

Mr Mark Feather
General Manager, Strategic Policy & Energy Systems Innovation
Australian Energy Regulator

Via email: AERringfencing@aer.gov.au.

Dear Mark

Re: Draft transmission ring-fencing guideline review

Australian Energy Operations (**AEO**) welcome the opportunity to respond to the Australian Energy Regulator's (**AER**) draft Ring-fencing guideline (electricity transmission) and accompanying explanatory statement.

We support the AER's updating and strengthening the existing ring-fencing obligations that apply to Transmission Network Service Providers (**TNSP**). Strong ring-fencing arrangements are necessary to protect competition in the transmission industry.

We are disappointed that the AER has identified that it does not have the powers to ring-fence negotiated transmission services nor does it have the power to apply civil penalties to breaches of the ring-fencing guideline.

Further disappointing us is the AER's position that it does not see a need to introduce functional separation, which we consider to be a key pillar to ensuring that anti-competitive practices are 'stamped out'.

Notwithstanding this we recognise the efforts undertaken by the AER in seeking to update and modernise the transmission ring-fencing guideline to include strengthened restrictions on information sharing as well general non-discrimination provisions.

We also provide our full support to the AER in advocating for a rule change so that it may be granted the requisite powers to address the above-identified issues.

Negotiated services must be ring-fenced

Negotiated services should be subject to ring-fencing requirements as they are provided on a monopoly basis.

The incumbent TNSP has the exclusive monopoly position which allows it to provide negotiated transmission services and in doing so is able to specify the technical requirements of a connection (which we currently understand to be a negotiated transmission service).

Without applying ring-fencing to negotiated transmission services there is the inability to enforce functional separation within the incumbent TNSP's business between those staff involved with specifying the technical requirements of the connection (a negotiated transmission service) and those involved in the provision of contestable transmission services.

We strongly support the AER in advocating for a rule change so that these services may be ring-fenced in the future.

Functional separation is required for effective anti-discrimination measures information sharing restrictions

We support the introduction of general non-discrimination obligations set out in the draft transmission ring-fencing guideline.

The introduction of these obligations is important to ensure that TNSPs are subject to anti-discriminatory provisions that prevent it from favouring its unregulated affiliates at the expense of other market participants.

However, we are concerned with how the AER will enforce this in practice. Without functional separation we are concerned that there may be 'unconscious bias' as the same staff that work on matters related to competitive transmission services will also be working on matters related to regulated transmission services.

Similarly, we support the updated information access and disclosure requirements.

The introduction of these measures is an important step in establishing a level playing field to ensure market participants do not feel they are operating at a disadvantage when compared with affiliates of the incumbent TNSP.

Despite this positive step, we do consider that the risk of information sharing is particularly high with respect to TNSPs. This is because typically, as the AER notes, transmission businesses are smaller in size.

As a result of this, there is likely to be a greater level of employee familiarity and informal discussions which may occur where privileged information has the potential to be shared. Further to this, many of the incumbent TNSPs staff will be involved in the provision of both regulated and contestable services

We are therefore disappointed that the AER has taken the position that "the costs of requiring additional staff and office separation to restrict information flows between staff providing prescribed transmission services and those providing other services is likely to outweigh the benefits."

We have taken the opposite view to the AER, and we believe that the introduction of the information access and disclosure requirements are idealistic without also enforcing functional separation.

Accounting separation

We are pleased to see that AER has introduced requirements to ensure that TNSPs make transactions transparent between themselves and any affiliated entities.

However, we are concerned that there is still the risk of contestable transmission services being cross subsidised by regulated transmission services where they are provided from the same entity.

For this reason, we would be supportive of the costs associated with contestable transmission services being isolated from costs associated with other regulated transmission services.

Civil penalty provisions must be available as an enforcement mechanism to the AER

An effective transmission-ring fencing guideline is an enforceable transmission ring-fencing guideline.

Whilst we appreciate the transmission ring-fencing guideline is enforceable via court action, however, this is a costly and time-consuming process.

Through civil penalty provisions the AER is afforded a quicker and more certain enforcement mechanism. TNSPs are aware of this, and the mere existence of civil penalties represents a significant deterrent to non-compliances of the transmission ring-fencing guideline.

To that end, we consider it of the utmost importance that a rule change is introduced so that civil penalties may attract to breaches of the transmission ring-fencing guideline.

Transmission services should be subject to service classification

With the guideline now regulating services as opposed to activities we support the introduction of a service classification guideline that clearly sets out which services are prescribed, negotiated or contestable transmission services.

As a TNSP we appreciate that TNSPs operate in an environment where it is difficult to observe which services may interpreted as being prescribed, negotiated or contestable. It is even more difficult for our customers to understand how these services classified, given they are not experts in the field.

The introduction of service classification would eliminate this ambiguity and provide certainty to market participants. While this may be difficult to achieve, we consider that the ends justify the means.

Should you have any queries please do not hesitate to contact Trent Gibson on [REDACTED] or [REDACTED]

Kind regards,
[REDACTED]

Glen Thomson
Chief Executive Officer
Australian Energy Operations