

14 March 2022



Mr Mark Feather
General Manager
Australian Energy Regulatory (AER)
GPO Box 3131
Canberra, ACT, 2601

Dear Mr Feather,

CONSULTATION ON CLASS WAIVER TO THE DISTRIBUTION RING-FENCING GUIDELINE

Endeavour Energy appreciates the opportunity to provide feedback to the AER's consideration of a class waiver under the distribution Ring-fencing guideline (the guideline) to allow DNSPs the right to own, construct and finance the network infrastructure in the Central-West Orana Renewable Energy Zone (CWO REZ).

The establishment of the CWO REZ involves the appointment of a Network Operator by the Consumer Trustee following a recommendation by the Infrastructure Planner (EnergyCo). As noted by the NSW Department of Planning and Environment (DPE) the intention is that this is done via a competitive tender¹:

the NSW Roadmap introduces the opportunity for competition for the selection of a Network Operator in certain circumstances. Unless determined to be inefficient or inappropriate, the Infrastructure Planner is expected to undertake a competitive market tender process to select the preferred Network Operator or Network Operators to deliver some or all of the project. It is currently intended that a Network Operator appointed as a result of a contestable market tender process would be granted a right to own, construct and finance the new REZ network infrastructure assets.

This means the incumbent transmission and/or distribution network will not automatically have the exclusive right to develop, build, own (or lease) and finance assets that provide shared REZ network infrastructure services. This competitive process is likely to be practicably restricted to the NSW network service providers given the capabilities and resources required to act as a Network Operator. As noted by DPE²:

The Network Operator tender would likely be based on delivering the technical requirements to be recommended in the Infrastructure Planner's recommendation to the Consumer Trustee, such that most design decisions would be locked-in, including route selection, most substation locations, the project's operational date, functional specifications and minimum technical or safety requirements.

The NSW networks have the requisite experience, knowledge, asset planning, management and safety systems and authorisations under the Electricity Supply Act to meet these criteria. Whilst incumbent networks would typically have natural advantages in fulfilling these duties, these are lessened by EnergyCo. undertaking a centralised approach to preparatory works, engagement and planning activities that would normally be under the transmission network's remit under the national framework.

This improves the prospects of DNSPs being able to leverage off their proven track record of consistently, successfully, and cost-effectively delivering and maintaining large-scale electricity infrastructure to offer a viable, innovative and competitive REZ network option. The NSW DNSPs also have established working relationships with Transgrid, making them well-placed to collaborate on

¹ [NSW Department of Planning, Industry and Environment, Network Infrastructure Projects \(Part 5 of the Electricity Infrastructure Investment Act 2020\). Policy paper, October 2021, p.24](#)

² Ibid.

design and planning requirements as well as satisfying the various minimum technical, operational and safety requirements for the CWO REZ.

However, we note that clause 3.1(b) of the distribution ring-fencing guideline permits DNSPs to provide distribution and transmission services but not other services. It is currently unclear how the services involved in acting as REZ Network Operator would be classified for ring-fencing purposes. This uncertainty gives rise to the potential for a DNSP acting as the CWO REZ Network Operator to be in breach of the guideline.

We note that EnergyCo. as the Infrastructure Planner is not bound by a DNSPs compliance to the ring-fencing guideline when making a recommendation on the Network Operator role. Nevertheless, the NSW Government has set out a guiding principle in relation to REZ network infrastructure projects that generally speaking, changes from the existing national framework should be avoided.

Given this, we believe a class waiver in relation to clause 3.1(b) is necessary to remove any ambiguity that may restrict DNSP participation in the competitive process for REZ network projects and influence any subsequent recommendation made by EnergyCo. As noted by DPE, a competitive process is central to serving the interests of NSW electricity customers³:

Selecting a model for the competitive procurement of a Network Operator for a REZ network infrastructure project must balance various other objectives including reducing barriers faced by non-incumbent network developers without ignoring the real advantages of incumbent network service providers, and encouraging innovative solutions to network needs that provide lower costs/higher value without unfairly shifting risk to customers or regulated incumbents.

If the NSW DNSPs are unable to participate in this process there would be no viable alternative to the incumbent TNSP acting as the Network Operator given the resourcing (operational and financial), experience, safety, and technical requirements of the role.

We therefore support granting a class waiver to enable the NSW DNSPs to act as the CWO REZ. This would ensure the benefits to NSW electricity customers envisaged by the competitive tender process are realised. It would also ensure a level playing field between the NSW networks given the transmission ring-fencing guideline is significantly less onerous than the distribution guideline.

If you wish to discuss our submission further please contact Patrick Duffy, Manager Regulatory Transformation and Policy at Endeavour Energy on [REDACTED].

Yours sincerely



Colin Crisafulli
Head of Network Regulation

³ Ibid, p. 25