

16 December 2022

Mark Feather  
General Manager Strategic Policy and Energy Systems Innovation  
Australian Energy Regulator  
GPO Box 3131, Canberra ACT 2601  
Submitted electronically

*via email: AERringfencing@aer.gov.au*

Dear Mark

**Re: Electricity Transmission Ring-fencing Guideline - Draft**

Marinus Link Pty Ltd (**MLPL**) welcomes the opportunity to make this submission in relation to the AER's draft Electricity Transmission Ring-fencing Guideline (**draft Guideline**). As you know, MLPL is a subsidiary of TasNetworks and is responsible for progressing Marinus Link. MLPL supports the submission lodged by Energy Networks Australia (**ENA**) in relation to the draft Guideline.

MLPL notes that the challenge in designing effective ring fencing guidelines is to balance the protection they provide to customers against the compliance costs and risks to innovation that overly stringent ring-fencing provisions can impose. While the AER's explanatory statement comments that it has 'generally erred on the side of having a lighter-touch approach'<sup>1</sup>, in some instances it appears to have erred in favour of imposing ring-fencing obligations where the benefits of those provisions are doubtful.

MLPL's view is that a 'lighter-touch approach' is warranted for transmission networks. In this regard, we ask the AER to consider ENA's submission in determining whether some of the proposed provisions in the draft Guideline should be relaxed. In particular, MLPL supports ENA's position that the case for legal separation for TNSPs has not been established. As explained in ENA's submission, legal separation provides limited additional benefits compared to the existing cost allocation provisions, and therefore is overly onerous in this instance.

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<sup>1</sup> AER, Electricity transmission Ring-fencing Guideline Explanatory Statement – Version 4, Draft, November 2022, page 6.

MLPL is also concerned that the uncertainty and costs associated with the waiver regime may prove to be significant. While MLPL understands the AER's preference for a 'prohibit and waive' approach to ring-fencing, the previous materiality provisions had merit. In particular, previously TNSPs were allowed to undertake contestable activities subject to the condition that the revenues earned should not exceed 5% of a TNSP's total revenue. This materiality threshold avoided unduly onerous ring-fencing obligations while also providing an implicit degree of customer protection and incentives for TNSPs to innovate. MLPL's position is that the AER should reconsider whether retaining some form of materiality threshold is warranted, rather than requiring TNSPs to lodge waiver applications for those activities.

In addition to these observations on the proposed provisions, MLPL notes that the draft Guideline applies to TNSPs but does not consider how it would apply to prospective TNSPs, which is MLPL's current status, or newly formed TNSPs, such as when MLPL starts to provide prescribed transmission services. Evidently, MLPL may find itself to be non-compliant if it starts to provide prescribed transmission services without first obtaining a waiver in relation to particular ring fencing provisions. However, MLPL would be unable to apply for a waiver until it becomes a TNSP, as section 5.1 of the draft Guideline only allows TNSPs (not prospective TNSPs) to apply for a waiver.

MLPL notes that this compliance issue could be addressed by amending the transitional provisions or amending the definition of 'commencement date', so that it reads (modifications underlined):

**"commencement date** means the later of version 4 amendment date of this Guideline on page ii or 12 months after the TNSP commences the provision of prescribed transmission services"

MLPL would welcome the AER's consideration of this issue as it finalises the Guideline.

If you would like to discuss this submission, please contact me at [REDACTED]

Yours sincerely

[REDACTED]

**Heath Dillon**  
**Executive Manager Customer and Revenue**