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Dear Stephanie,

AER Issues Paper – Electricity Transmission Ring Fencing Guideline

Energy Networks Australia (ENA) welcomes the opportunity to respond to the AER's Issues Paper examining whether, and if so to what extent, it is appropriate to extend the existing Transmission Ring-fencing Guideline to cover negotiated transmission services.

ENA is the national industry body representing Australia's electricity transmission and distribution and gas distribution networks. Our members provide over 16 million electricity and gas connections to almost every home and business across Australia. This response is on behalf of electricity transmission members.

The Issues Paper builds on the AEMC's rule determination which empowers the AER to specify (or not to specify) ring-fencing obligations on TNSPs in respect of negotiated transmission services (or a subset of these services). The AEMC noted that where the AER exercises this power, it must do so in a manner that will, or is likely to, contribute to the NEO. Additionally, determining whether any change to the Guideline is necessary should involve a 'rigorous consultation' to 'carefully weigh up the costs and benefits'.¹ The AER now seeks views from stakeholders to assist in developing a formal proposal for any changes to the Guideline.

Conceptually, the ENA agrees with several aspects of the AER's proposed approach, including taking a 'nuanced' approach to assessing the appropriateness of additional ringfencing obligations at the service level. ENA shares the AER and AEMC's view that a blanket application of any additional obligations may not be appropriate and could instead impede timely connection of new sources of energy and storage at a time when this is more important than ever. A nuanced approach should also allow the AER to properly take account of differences in services and jurisdictions, including differences in the size of contestable markets as well as the different planning regime in Victoria.

However, extending ring-fencing arrangements to negotiated transmission services represents a material regulatory change, and could have significant unintended consequences for both TNSPs and consumers. While ENA wishes to work with the AER constructively, members are concerned that the Issues Paper (including the 25 consultation questions) is too open-ended and does not allow for meaningful engagement on any specific consumer harms that ring-fencing might be designed to address.

The attachment to this letter addresses matters raised in the Issues Paper², focusing on the following:

¹ AEMC Final Rule Determination (Expanding the transmission ring-fencing framework) 2024, p.11.

² The focus of the Issues Paper is on the potential for discrimination in non-contestable transmission connection services rather than any potential for cross-subsidisation, or issues pertaining to other types of negotiated transmission services. ENA agrees with this narrower focus. Our submission therefore focuses on negotiated connection services rather than negotiated transmission services more broadly.

- Any regulatory intervention must be targeted towards a clearly defined problem that causes harm to consumers. The Issues Paper points to a general risk of discrimination rather than any (actual) evidence of anti-competitive behaviour or specific consumer harms. While TNSPs are aware that the AER has received feedback regarding costs and timeframes for connections when using alternative connection service providers, the Issues Paper does not clarify whether this feedback relates to the (intended) operation of the NER or some other perceived issue. Given this, **it is not clear there is a problem that warrants regulatory intervention.**
- Without a clear understanding of the regulatory problem about which the AER is concerned, it is not possible to conclude whether ring-fencing is the appropriate tool to further the long-term interests of consumers, consistent with the NEO. Instead, these **measures may erode the benefits of the existing connections framework** which intentionally balances two objectives – safeguarding competition while also ensuring that connecting parties can capture the benefits of vertical integration of TNSPs to achieve an efficient connection. While this erosion may benefit individual competitors, it does not necessarily benefit consumers. Further, the Issues Paper fails to acknowledge that jurisdictional differences mean that ring-fencing is unlikely to apply universally to all connection arrangements.
- Once any underlying concerns are clearly defined and relevant consumer harms have been identified, the AER may wish to explore **alternatives to ring-fencing** aimed at improving transparency, confidence, and outcomes for connections delivered by alternative connection providers (rather than pursuing measures that worsen outcomes for connections delivered by TNSPs/RESPs).
- As the AEMC has specified, a **rigorous consideration of costs and benefits** is needed before introducing any additional measures.³ The limited timeframe for consultation, and a lack of clarity on the specific problems that the (very broad) proposals are intended to address, mean that we are unable to provide meaningful information on these costs and benefits at this early stage of the process.
- In relation to waivers, ENA welcomes the ability to have a more flexible waiver framework that supports longer term certainty and investment. This is also particularly important if the AER does not wish to reduce choice for connection proponents.
- While the scope of the new ring-fencing guideline is not at all clear at this stage, the proposed 9-month transition period, accompanied by waivers to provide extensions, is unlikely to be adequate and may lead to uncertainty (including for in-flight transactions).

ENA looks forward to engaging with the AER further on these matters, to ensure any new ringfencing measures (if actually required) in version 5 of the Guideline are targeted and measured.

Should you have any queries on this response please feel free to contact Verity Watson,

[Redacted]

Yours sincerely,

[Redacted]

Dominique Van Den Berg
Chief Executive Officer

³ AEMC Final Rule Determination (Expanding the transmission ring-fencing framework) 2024, p.12.

Attachment

It is unclear that there is a problem warranting regulatory intervention

It is critical for any regulatory intervention to be targeted towards a clearly defined problem that causes harm to consumers (as opposed to any market participant or other party). Where uncompetitive market structures or anti-competitive conduct results in consumer harm, regulatory intervention is appropriate where such intervention will generate a more efficient outcome (e.g. lower wholesale electricity prices for consumers in the long run). In other cases, regulatory intervention is typically not warranted. It is not evident that this threshold has been met.

The problem articulated by the AEMC and AER appears to be that there is a *risk* of discrimination, rather than any (actual) evidence of anti-competitive conduct. That is, the risk that a TNSP can favour itself or related entity service provider (RESP), or discriminate against a competitor, in its provision of non-contestable services.

In the context of connections, ENA understands that the AER has received feedback from stakeholders which points to longer timeframes and additional costs when using alternative connection service providers versus a TNSP / RESP.

As explained in previous submissions⁴, there are legitimate reasons why time and cost might be higher when using an alternative provider. The AEMC deliberately established a connection process with the primary TNSP that avoids additional steps that would otherwise be necessary to ensure any third-party assets are designed in such a way as not to diminish the security and reliability of the shared network. These additional steps (including reviewing detailed designs for technical compliance and/or negotiating network operating agreements to control, operate and maintain third-party owned assets) necessarily add time and cost to a connection process.

It is unclear whether stakeholders' feedback relates to the outcomes of this simplified connections process vis-à-vis the contestable connections process, or some other alleged (but unevidenced) anti-competitive behaviour. **This lack of clarity means it is difficult to establish whether some form of regulatory intervention is needed, and if it is, whether ring-fencing is the appropriate tool.** It is important that any concerns are verified and are not simply due to the intended operation of the existing connection process under the NER.

Additional ring-fencing may erode key benefits of the existing framework

The current connection framework is intentionally designed to balance two objectives. That is, it safeguards competition while seeking to ensure that connecting parties can benefit from the economies of scale and scope of TNSPs to achieve the most efficient connection possible. It does so by allowing TNSPs to provide contestable connection services (with competitive constraints provided through the threat of competition), whilst including comprehensive measures to ensure that TNSPs cannot frustrate customers who choose an alternative provider. Importantly, it is the connection proponent that has the power to choose the provider. These are generally large, sophisticated and well-resourced parties that are well placed to make this choice.

ENA is concerned that the changes canvassed in the Issues Paper seek to prioritise the former objective, at the expense of the latter. Measures that might appear to 'level the playing field' may simply diminish efficiencies of scale and scope that were intended, by design, to be harnessed by TNSPs. Preventing TNSPs from accessing these efficiencies can only increase cost and time for

⁴ ENA, [Response to AER Consultation Paper on 'Options to address gaps in transmission ring-fencing framework'](#), 8 June 2023, pp. 4, 6. See also AEMC, [National Electricity Amendment \(Expanding the transmission ring-fencing framework\) Rule 2024](#), 16 May 2024, rule determination, p. 2.

connections that are delivered by TNSPs/RESPs. Caution should be taken to ensure that any changes to the ring-fencing guideline do not promote the interests of third-party competitors at the expense of delivering the most efficient connection possible which promotes the long-term interests of customers.

The Issues Paper sets out 5 areas of changes under consideration:

1. Non-discrimination in negotiated transmission services

The AER is considering extending the general non-discrimination obligation in the guideline to explicitly state that a TNSP cannot discriminate in relation to its provision of negotiated transmission services. We assume that the AER is principally concerned with addressing an underlying risk – or perceived risk – of anti-competitive conduct rather than the features of the simplified connections process.

ENA considers there are currently sufficient provisions in the NER and other parts of the law⁵ to prevent such discrimination. These include obligations on TNSPs to negotiate in good faith, provide information and keep relevant information confidential, whilst also empowering connecting parties to seek independent technical advice and have recourse on the terms and conditions of the service (including price) through dispute resolution processes where necessary.⁶ On request, connection applicants can also require the TNSP to demonstrate that charges for providing negotiated transmission services reflect costs incurred.⁷

Given these existing protections, it is unclear what extending the general non-discrimination obligation means in practice, how it would require TNSPs to change their existing connection processes, or what it would achieve in terms of parity of outcomes between different connection providers.

2. Extending the definition of ring-fenced information

The AER is considering expanding the definition of ring-fenced information to clarify that this includes information acquired or generated by a TNSP in connection with its provision of prescribed transmission services or negotiated transmission services.

This will be meaningful only where information exists that is able to be used by a TNSP to unduly favour itself and/or a related entity to the ultimate detriment of the consumer. Such information would be limited, given:

- the existing provisions of the NER include extensive confidentiality obligations in respect of connections data and information provided
- TNSPs do not have access to commercial or pricing information from competing contestable bids
- design and technical information from contestable bids is only seen by the TNSP at the connection application stage after the competitive process has concluded
- connecting parties are free to share information regarding their intention to connect to alternative connection providers at the same or a similar time to advising the TNSP, removing any timing advantage in this regard to the TNSP.

⁵ For example, section 46 of the Competition and Consumer Act supports competitive markets by prohibiting conduct that has the purpose, effect or likely effect of substantially lessening competition in a market.

⁶ Schedules 5.11 and 5.12; clause 5.5.5 of the NER.

⁷ Clause 5.2A.6 of the NER. Additionally, as part of each connection application, the TNSP undertakes a detailed scoping study to determine a feasible connection solution based on the TNSP's standard technical design specification. The detailed scoping works including concept design, detailed scopes of works, assumptions, exclusions, detailed program and annual fee is all included in the offer to connect.

- there are already extensive information provision requirements under the NER that require the primary TNSP to share information (E.g. important information, including legal information, technical specifications, timescales for easement acquisition and commissioning etc., must either be published on the TNSP's website or provided upon request).

The AER's proposal also appears to preclude a connecting party from approving information disclosure under rule 5.3.8(a1). Any extension of ring-fenced information should not adversely impact the rights of connecting parties and measures under the NER that exist to expedite the connections process.

Overall, it is not clear what additional information should be ring-fenced or how this would materially improve outcomes for connecting parties (and ultimately, end consumers).

3. Requiring additional reporting on delivery of services

The AER is seeking feedback on requiring additional, public reporting by TNSPs on relevant aspects of delivery of negotiated transmission services and extending compliance reporting from contestable services.

Conceptually, additional reporting by TNSPs on aspects of negotiated transmission services and / or contestable services may present a lower-cost option to support market transparency and help identify whether (or not) consumer harms are actually occurring. It would be feasible to report certain information identified in the Issues Paper, such as the number of connection enquiries received, number of applicants that have tendered for contestable elements where known and the number of connections that proceeded with a non-incumbent provider. In Victoria, AEMO (rather than AusNet) is likely best placed to provide this information in its capacity as jurisdictional transmission planner.

However, given TNSPs currently report information as part of AEMO's Connections Scorecard process and the Annual Planning Report process, it is less clear whether the benefit of transparency delivered by this extra reporting would be meaningful. Universal reporting appears to be beyond the scope of the ring-fencing guidelines.

Reporting connection timeframes and costs in a meaningful way would be inherently difficult given variances in time and cost are project-specific and may arise for a range of reasons. For example, costs might be higher due to connecting in locations with higher network constraints or additional impacts on system security and reliability. Delays might be due to the connecting party's choice of original equipment manufacturer, the level of information provided as part of the connection application, or broader delays with the development application or environmental approvals, community support, or the connecting party's ability to achieve financial close. Connecting parties may not be prepared to disclose this type of contextual project information publicly. Comparisons between bespoke network projects could be an arbitrary exercise. Importantly, this type of reporting could also create friction in the negotiation process between connecting parties and TNSPs, where applicants expect parity in connection costs and timeframes that is not achievable due to differing project characteristics unrelated to the connection process. This has the potential to slow down the connection negotiation process, ultimately impacting network efficiency and end-consumers.

4. Extending the current obligation in respect of staff separation

The AER has suggested two potential options for expanding staff separation requirements:

- requiring separation of marketing staff involved in the provision of negotiated transmission services from staff involved in the provision of contestable services
- widening the scope of staff separation beyond marketing staff.

The cost and impact of staff separation will vary significantly across jurisdictions. There is significant diversity across TNSPs regarding the size and organisation of teams responsible for negotiated and

contestable connection services. In some jurisdictions, staff separation will have limited impact due to the requirements of jurisdictional frameworks (e.g. the role of AEMO in Victorian planning, the role of contestable network operators for NSW REZs, etc) while in others the impact would be substantial.

In general, TNSPs have much fewer staff compared with DNSPs. Some TNSPs do not have a clearly demarcated marketing function or marketing staff, and do not proactively market connection services.

Staff separation would result in high implementation costs in some jurisdictions, and would dilute the capability of the limited resource pool providing contestable and non-contestable services. In jurisdictions where there is a relatively low volume of connection enquiries, applications and agreements, the cost of duplicating staff (even a relatively small number of staff) may mean that it is unviable for TNSPs to provide contestable connection services. If TNSPs withdraw from the contestable market, connecting parties would be denied access to the expertise and efficiency of the primary TNSP. Further, there is no guarantee that alternative connection providers would adequately service all jurisdiction and connection types – there is a real risk that some connecting parties would be under (or not at all) served by the market. i.e. no ‘provider of last resort’ is left in the market. A TNSP in this situation could seek a waiver but this is an uncertain process and even if granted could be revoked at any time. Connections processes are long and complex, and creating additional uncertainty is not helpful to the energy transition.

For negotiated connection services specifically, TNSPs must maintain capability to deliver ‘identified user shared asset (IUSA)’ projects that fall below the contestability threshold (\$10m). Widening the scope of staff separation beyond marketing staff could require duplicate teams of highly skilled resources split cross >\$10m and <\$10m IUSA projects, noting that it is not always clear at the outset of a connection enquiry which side of the contestability threshold it will fall. These skilled resources are in high demand and need to be efficiently utilised.

5. Introducing restrictions on cross-branding and promotions

The AER considers there may be merit in restrictions on any sharing of branding or cross-promotion between a TNSP and a related entity.

The AER has previously identified that transmission connected customers tend to be *‘large, well-capitalised firms with their own regulatory and technical staff, capable of addressing complex network and legal issues’* in comparison with customers accessing distribution services that are *‘more likely to be susceptible to, or confused by, shared branding and cross-promotions’*.⁸

While the Issues Paper suggests that this may not be the case for smaller renewable generators and storage providers, ENA is unaware of any evidence that would suggest that credible transmission connected generators and storage providers are unable to protect their interests throughout the connection process. ENA has previously advised the AER that a renewable connection to the transmission network requires access to finance in the order of \$300-\$800m, while a battery connection will be in the order of tens of millions of dollars.⁹ The application fee for a connection alone is approximately \$1m. Even a smaller renewable generator or storage provider may still be part of a global entity in the renewable energy sector, will be scheduled and need to meet its obligations in the wholesale market and for credit support.

Without tangible evidence that these entities (1) consider branding when selecting their contestable provider and (2) are at risk of being confused by, or susceptible to, shared branding or cross-promotions, any additional benefit delivered by imposing these obligations cannot be established.

The cost of implementing separate branding would vary across jurisdictions, depending on arrangements already in place. For some TNSPs, the administrative and financial burden imposed by an obligation of this nature is likely to be substantial. Noting that restricting cross-branding and

⁸ AER, [Electricity Transmission Ring-fencing Guideline Explanatory Statement – Version 4, Draft](#), November 2022, pp. 34-35.

⁹ ENA, [Transmission Ring-fencing Guideline Response to AER Issues Paper](#), July 2022, p. 3.

promotion is likely to deliver limited (if any) additional benefit, ENA considers that the costs of compliance would not be justified.

Alternative measures may better address stakeholder concerns

Once any underlying concerns are clearly defined, ENA is open to exploring proportionate measures that would address those concerns, including measures that would improve outcomes for connections delivered by alternative connection providers (rather than measures that worsen outcomes for connections delivered by TNSPs/RESPs).

Significant further work would then be required to develop more specific proposals and assess their costs and benefits. The following areas could be explored as part of that work:

- Promoting confidence through **more explicit obligations regarding anti-competitive conduct** in negotiated connections services, *provided* such obligations were constructed in such a way to preserve the benefits of the simplified connection process currently available to customers.
- Promoting or facilitating participation in the market by providing connection applicants with **information on the contestable process and connection providers** (including both alternative connection provider and TNSP/RESP options). For example, providing information on TNSP websites and/or to connection applicants at the enquiry stage. The AER may wish to review the information currently provided, including that which is required by the NER, to identify whether there is any information that ought to be provided but is not.
- Rather than measures that restrict the sharing of information, **broadening/equalising the sharing of information to alternative connection providers and RESPs**. This would require detailed consideration of the type of information that could be shared in practice and how/when information should be shared (noting that customer confidentiality and network security must be maintained, and that connecting parties may not want their information widely shared).
- Promoting transparency and monitoring through **more accessible reporting on certain connections information**, noting that the cost of reporting must be justified by the additional benefit delivered.

ENA otherwise considers that the compliance and monitoring powers of AER provide a sufficient deterrent for the risk of undue discriminatory conduct.

Possible changes not in the rule change request

The AER proposes two additional changes that are not part of the AEMC's rule change:

- removing the limitation on waiver duration in the guideline; and
- requiring the most senior executive of a TNSP to sign off on the Annual Compliance report.

ENA supports the ability to have a more flexible waiver framework that supports longer term certainty and investment. This is also particularly important if the AER does not wish to reduce the choice for connection proponents.

ENA supports the proposal for a consistent level of sign off on Annual Compliance Reports. This aligns with the requirement for CEO sign off in the AER's Compliance Reporting Best Practice Manual.

Transition to version 5 of the guideline

ENA supports an appropriate transition period to enable TNSPs to consider the amendments and implement any changes needed to ensure compliance, noting that the last guideline has only been in place for just over a year and changes are only just 'settling in'.

The AER is considering a range of possible options in its Issues Paper, however the proposed changes are not yet clear. An assessment of an appropriate transition period will only be possible

once there is additional clarity on any changes that are likely to be required. The AER states that a 9 month transition period will be appropriate as the expected changes are likely to be less demanding. However, this conclusion cannot be made at this early stage of the consultation process.

ENA notes that TNSPs were afforded a 12 month compliance period for version 4 of the guideline. Similarly, DNSPs have previously been afforded at least a 12 month period for changes to the distribution ring-fencing guideline.

Implementing a shorter transitional period and relying on waivers to provide extensions where needed would not be appropriate. The AER has no time requirement within which to consider waivers, leading to an uncertain process. Depending on any changes implemented, some new obligations may also not be subject to waivers. In addition, there may be a range of in-flight transactions at various stages that should not be disrupted.

Next steps

Given any change to ring-fencing arrangements has the potential for significant consequences – including adding new costs, we agree that a rigorous consideration of costs and benefits (analogous to a regulatory impact assessment) at an appropriate level of detail is needed before any changes can be introduced. The timeframe for consultation, as well as ambiguity regarding the specific problems that the proposals are intended to address, mean that transmission members are unable to provide meaningful information on costs and benefits at this stage of the process.

ENA looks forward to engaging with the AER further on these issues as the consultation progresses.