

28 January 2025

Ms Stephanie Jolly

Executive General Manager, Consumers, Policy and Markets

Australian Energy Regulator

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Canberra, ACT, 2601

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Dear Stephanie,

AER Draft Transmission Ring-Fencing Guideline

Energy Networks Australia (ENA) welcomes the opportunity to respond to the Australian Energy Regulator's (AER) draft version 5 of the Transmission Ring-fencing Guideline (Draft Guideline).

ENA represents Australia's electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia. This submission is on behalf of electricity transmission members.

The intent of the Draft Guideline is to protect against the potential for Transmission Network Service Providers (TNSPs) to use their monopoly position in ways that could undermine or damage competition, efficiency and innovation in contestable markets. ENA considers that in making any amendments to the Guideline to achieve this intent, the underlying objective should be to support the long-term interests of consumers, rather than furthering the interests of one group of businesses vis-a-vis another.

Many of the issues pointed out by stakeholders regarding how TNSPs carry out their role in facilitating contestable connections appear to relate to the intended operation of the National Electricity Rules (NER). For instance, in the draft Explanatory Statement, the AER refers to the Clean Energy Council's submission, implying that it is a concern for a TNSP to review detailed connection designs where a connecting party has sourced that design from a competitor. Far from being problematic conduct, this is an explicit requirement of the NER, as highlighted in our previous submission. ENA is concerned at the implication that TNSPs may contravene the guideline merely by following the existing connection processes under the NER.

Nonetheless, ENA supports the *principle* that consumers should be protected from the risk of any anti-competitive conduct that causes harm to consumers. This is increasingly important in the context of growing levels of new generation but must be balanced against the need for TNSPs to deliver efficient connections, facilitate jurisdictional policy, and to undertake their broader functions effectively.

In response to specific aspects of the Draft Guideline, the ENA's positions are as follows:

- ENA remains of the view that ring-fencing should be used as a tool to address a specific and well understood regulatory problem that causes harm to consumers. Such a problem is not evident in the draft Explanatory Statement. As set out in previous submissions, there are already sufficient provisions in the NER and other parts of the law to prevent undue discrimination. ENA considers it important that the proposed new obligations do not interfere with the intended operation of the

NER, which requires TNSPs to – amongst other things – undertake additional steps to ensure any third-party assets are designed in such a way as not to diminish the security and reliability of the shared network.

- ENA supports the AER's decision not to amend staff separation requirements as this would provide little or no benefit to consumers. TNSPs generally have a smaller, more specialised staff compared with DNSPs. Applying the distribution ring-fencing requirement in this context to transmission networks would be costly and would dilute the capability of the limited resource pool providing contestable and non-contestable services, potentially slowing down new connections.
- ENA supports the AER's decision not to introduce cross branding and promotion restrictions as this would provide little or no benefit to consumers. Transmission customers are generally large and sophisticated buyers, unlikely to be confused by shared branding. It is not plausible that credible transmission connected generators and storage providers are unable to protect their interests throughout the connections process.
- ENA supports standardising signoffs for annual compliance reports by requiring a cover letter signed by the organisation's most senior executive, as this aligns with best practice.
- ENA notes that the AER intends to require reporting of timeframes associated with connection processes. This will only apply to certain TNSPs. It will not capture connection information held by jurisdictional bodies such as AEMO, VicGrid and EnergyCo, that are responsible for the connections process and decisions in their respective jurisdictions. It is also unclear how the data gathered through this process would be meaningfully interpreted or utilised to further the interests of consumers. In ENA's view, there needs to be further consideration of the value purported to be delivered by the proposed reporting arrangements. Additionally, any reporting arrangements imposed on TNSPs need to relate only to matters that are within TNSPs' control. *See further comments below.*
- ENA supports removing the maximum term for ring-fencing waivers to provide longer term certainty. Further, ENA suggests waiver prohibitions for certain obligations in the Guideline should be removed as this would allow the AER to better tailor waivers to individual circumstances, rather than imposing restrictions that do not account for TNSP-specific or jurisdictional circumstances. This would better enable TNSPs to appropriately respond to the growing need to disclose information and/or coordinate with parties in connection with jurisdictional schemes (e.g. REZs). *See further comments below.*
- ENA suggests clearer transitional arrangements. To reduce administrative complexity and additional reporting costs, the new version of the Guideline should commence from the beginning of the next compliance year, 1 January 2026. *See further comments below.*
- Lastly, ENA notes that the definition of connection proposed in the Draft Guideline references clause 5.2A of NER which does not apply to the Victorian jurisdiction.¹ Better clarification is required, including acknowledgment that the definitions of transmission connection services in clause 5.2A.4 are not relevant in Victoria.

Further detail on key points is provided below.

Reporting requirements should be meaningful

The AER has proposed additional reporting requirements for TNSPs regarding:

- the number of connection applications received in a calendar year

¹ Refer rule 5.1.2(c)

- the proportion of these applications where contestable electricity services were provided solely by a RESP versus by a third-party service provider
- where contestable electricity services are provided, the average time (in business days) between initial receipt of the application for connection and the commissioning of the connection by RESPs versus by a third-party service provider.

As set out in previous submissions, ENA considers that reporting is generally helpful in supporting market transparency. ENA members agree that it is feasible to report the type of information identified in the Draft Guideline (where they hold it), though consider that the value of this additional information may be limited, because:

- Jurisdictional bodies such as AEMO, VicGrid and EnergyCo hold – or will hold in the future – some of the information identified in the Draft Guideline. These bodies are not subject to the Draft Guideline or ring-fencing more broadly. For example, in Victoria, information on connection applications and connections delivered by third-party service providers is held by AEMO in its capacity as jurisdictional transmission planner. AusNet does not receive, set requirements for or approve connection applications to the Victorian Declared Shared Network (DSN) – this function is performed by AEMO under its DSN responsibility. Hence, the information provided by TNSPs will provide only a partial view of the market, if at all.
- There are many reasons why commissioning timeframes will vary, on both an individual project and average basis. Fundamentally, the nature of individual connections, including their purpose and scale, can differ significantly. At a more granular project level, reasons for variances include (but are not limited to) the connecting party's choice of original equipment manufacturer, the level of information provided as part of the connection application, the connecting party's ability to achieve financial close, or changes to the generator design over time. Broader delays with the development application, environmental approvals and community support, can also significantly influence connection timeframes and are largely beyond the TNSP's control. Where there is a relatively small number of connections, averages will also be heavily influenced by project -specific factors. The sheer scope of the connection, along with available resourcing and impact of competing construction works can also influence the commissioning timeframes greatly.
- Government support is also being provided to accelerate specific connections, which will influence both project-specific and average connection times. ENA understands that the Energy and Climate Change Ministerial Council will be prioritising accelerated planning and development approvals for certain critical renewable energy projects included on a National Renewable Energy Project List (due to be released in February 2025).² Similarly, the NSW Government is working to ensure connections in Renewable Energy Zones (REZs) are timely, for example by funding upgrades to the road network to enable efficient transportation of project components.³
- Significant contextual information would be required to meaningfully interpret and utilise the information/data provided, particularly in relation to average connection timeframes. The collection of such information would result in additional costs for TNSPs (and likely connecting parties). In many cases, TNSPs would not be privy to, or would be prohibited from disclosing, the reasons for delays caused by connecting parties.
- ENA understands that as part of implementing the Australian Government's Accelerated Connections Fund⁴, AEMO will be seeking to fast track or chaperone certain connections through the connection process, which may lead to varying speed processes.

² Energy and Climate Change Ministerial Council, [meeting communique](#), 6 December 2024.

³ EnergyCo, [Port to Renewable Energy Zones](#).

⁴ Australian Government, [Mid-Year Economic and Fiscal Outlook 2024-25](#), p. 14.

Given these limitations, it is not clear how reporting of the proposed information will support the AER's intended aim of monitoring the effectiveness of the Draft Guideline or deliver additional value to consumers.

Waiver prohibitions should be removed

ENA supports removing the maximum term for ring-fencing waivers to provide longer term certainty and support investment. For similar reasons, ENA considers it would also be prudent to remove waiver prohibitions for information sharing provisions to effectively allow the AER greater flexibility to exercise its discretion when considering the applicability of waivers in specific circumstances.

TNSPs have access to a large volume of network information and will increasingly need to coordinate with large customers and parties involved in government schemes e.g. REZs to ensure adequate network planning. While section 4.2.2 of the Guideline provides for certain circumstances where information can be shared, this can be an intensive process that results in delays and costs to consumers and ultimately slows planning and connection processes. Allowing for waivers ensures that the AER can, at its discretion, allow information sharing in circumstances where it is prudent and sensible, while still preserving the intent of the provision that sensitive information should not be used to unfairly benefit a TNSP.

Transitional arrangements should align with a new compliance year

The AER is proposing to finalise version 5 of the Guideline by 24 February 2025, providing a -six-month transitional period with an option for TNSPs to apply for waivers if required. ENA considers that a six-month transition period is too short and will likely duplicate effort across TNSPs' compliance, reporting and assurance activities, noting that TNSPs would be required to report against two different versions of the Guideline within the 2025 calendar year. This mismatch with the calendar reporting period could also potentially lead to discrepancies or gaps in reporting.

It would be more efficient to mandate compliance with the Guideline from the beginning of the relevant compliance year, i.e. from 1 January 2026 (with the option for early adoption if the TNSP has capacity). This will ensure that TNSPs can appropriately implement the changes to the Guideline, rather than seeking to fast-track implementation in a way that is likely to be less efficient or costlier.

ENA looks forward to working with the AER as it finalises version 5 of the Guideline. In the meantime, if you would like to discuss this submission, please contact Verity Watson [REDACTED] in the first instance.

Yours sincerely

[REDACTED]
Dominique van den Berg
Chief Executive Officer