



Australian Energy Operations

9 June 2023

Mark Feather
General Manager, Strategic Policy and Energy Systems Innovation
Australian Energy Regulator
Via email: AERringfencing@aer.gov.au

Dear Mark,

Re: Options to address gaps in transmission ring-fencing framework – Consultation paper

Australian Energy Operations (AEO) appreciates the opportunity to provide feedback on the Australian Energy Regulator's (AER) consultation paper on options to address gaps in transmission ring-fencing framework.

We welcome this consultation as we believe it is crucial the AER has the authority to extend the current transmission ring-fencing guideline to encompass both prescribed and negotiated transmission services.

By ring-fencing negotiated transmission services from contestable transmission services, we can eliminate the potential for TNSPs to exploit their monopoly power in negotiated transmission services to influence the contestable market.

While we are encouraged by the AER's efforts to address the current limitations in ring-fencing negotiated transmission services, we are disappointed the AER lacks the power to enforce civil penalties for breaches of the ring-fencing guideline.

We believe that the AER should continue to pursue this matter which will persist as the scope of the ring-fencing guideline expands. Legislative gaps will remain until the National Electricity Rules (NER) are amended to grant the AER the authority to impose civil penalties for breaches of the ring-fencing guideline.

Expanding the ring-fencing guideline will lead to a level playing field for contestable transmission services

The most elegant solution to addressing the discrimination with respect to contestable transmission connections is to amend the NER so that negotiated transmission services fall within the scope of the ring-fencing framework.

Expanding the ring-fencing framework would afford the AER the information access and monitoring tools that they would obtain by modifying chapter 5 of the NER. The AER would also gain access to the additional regulatory tools available under the ring-fencing framework to address potential discriminatory behaviour.

The AER has recognised that not all aspects of Chapter 5 of the NER are applicable in Victoria. By amending the ring-fencing framework, a consistent approach can be achieved across National Electricity Market (NEM) jurisdictions.

Given the complex framework that connection applicants and market participants are required to navigate, pursuing consistency in the transmission connection space is essential. Consistency via expansion of the ring-fencing guideline should be actively pursued.

Functional separation is needed to promote a level playing field

To ensure the effectiveness of expanded ring-fencing powers, functional separation between negotiated and contestable transmission services is crucial. Functional separation encompasses measures such as prohibiting staff and office sharing, as well as preventing brand sharing and cross-promotion.

Without functional separation, it becomes challenging to control the flow of information between the TNSP responsible for providing negotiated transmission services and their unregulated affiliates which provides contestable transmission services.

Functional separation and with it, stricter rules regarding information sharing, safeguards against potential advantages that the incumbent TNSP could provide its unregulated affiliate. These advantages could extend to the timing and cost of the “cut-in” to the shared network, or through the price, terms and conditions associated with the operation and maintenance for an identified user shared asset.

There is a strong commercial incentive for a TNSP to share information with its unregulated affiliate, thereby gaining an unfair advantage. Implementing functional separation is essential to maintain a fair and competitive environment in the transmission services sector.

Separate branding and restrictions on cross-promotion are similarly required to protect competition in contestable markets. These measures ensure that the TNSP, with its exclusivity in providing negotiated transmission services, cannot disrupt conduct in the contestable transmission market.

While the AER has acknowledged that requiring functional separation entails costs, we do not consider that costs should be viewed as a barrier. In the broader market context, these costs are likely to be minor compared to the overall benefits they provide. The onus should be placed on the TNSP to demonstrate why functional separation should not apply and apply for a waiver, rather than removing benefits from the broader market.

There is an opportunity to refine the Victorian transmission framework

The AER highlights that Victoria operates under its own distinct contestability framework, which differs from other National Electricity Market (NEM) jurisdictions. In Victoria, the Australian Energy Market Operator (AEMO) has authority over network functions and the connections process.

This arrangement has led to the development of competition for contestable transmission services in Victoria, while competition remains virtually non-existent in other NEM jurisdictions.

AEMO plays a crucial role in Victoria's contestable transmission framework as the arbiter of contestability for augmentations and sets the technical requirements for connections.

To make informed decisions, AEMO requires the incumbent TNSP to share significant amounts of information. This information helps AEMO determine whether an augmentation is separable,

meaning *i.e.*, whether it will materially affect the TNSP's ability to provide services to AEMO under a network agreement, and if it can be provided as a distinct service by a contestable service provider.

The technical information supplied by the TNSP holds significant sway over AEMO's decision-making processes. While we recognise the necessity of sharing information with AEMO for well-informed decision-making, we support the implementation of checks and balances to prevent any perceived or actual disproportionate influence by the TNSP on AEMO's decisions.

We propose the introduction of a dispute resolution mechanism for customers who have concerns about how AEMO has classified a service or set the technical requirements for a connection. This mechanism could involve an independent panel that reviews the technical information and reasoning provided by AEMO to arrive at their decisions.

Furthermore, incumbent TNSPs should be restricted from sharing information beyond what is provided to AEMO with their unregulated affiliates. Without proper safeguards on information sharing, unregulated affiliates may gain access to detailed information about the transmission network that is not available to other market participants.

Negotiated transmission services should not cross subsidise contestable transmission services

The AER has taken positive steps in their most recent review of the transmission ring-fencing guideline by mandating TNSPs to establish internal accounting procedures which allow the TNSP to:

- isolate its costs associated with transmission services; and
- make transparent transactions between the TNSP and any affiliated entities.

These accounting requirements should be extended and applied to negotiated transmission services in the same manner as prescribed transmission services. It is also essential to legally separate contestable transmission services from prescribed and negotiated transmission services to ensure transparency and provide assurance regarding separate cost allocation arrangements.

By introducing legal separation and enforcing clear internal accounting procedures, the potential for a TNSP to engage in bids involving both regulated and unregulated works would be eliminated. This, in turn, mitigates the risk of cross-subsidisation by the incumbent TNSP to reduce costs associated with contestable transmission services.

Enforceability of the ring-fencing guideline is paramount

We advocate for the AER to pursue an amendment to the regulatory framework, enabling the imposition of civil penalties for breaches of the transmission ring-fencing guideline.

The introduction of civil penalty provisions would enhance the effectiveness of ring-fencing measures, promoting competition, and benefiting consumers. Such provisions would provide the AER with a swifter and more reliable enforcement mechanism compared to the current reliance on court action as the sole means of enforcement.

We maintain optimism that a future rule change will be pursued, specifically targeting the critical enhancement of enforcement mechanisms available to the AER for ensuring compliance with the transmission ring-fencing guideline.

There has been many reviews and discussions regarding how to make this critical reform happen and be effective. I look forward to seeing positive change in this area for the benefit of participants right across the value change.

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