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General Manager, Strategic Policy and Energy Systems Innovation
Australian Energy Regulator (AER)
GPO Box 520 Melbourne
Melbourne VIC 3001

Locked Bag 14051
Melbourne City Mail Centre
Victoria 8001 Australia
T: 1300 360 795
www.ausnetservices.com.au

Dear General Manager, Strategic Policy and Energy Systems Innovation

Issues Paper: Ring-fencing Guideline Electricity Transmission

AusNet appreciates the opportunity to submit a response to the Australian Energy Regulator's (AER's) *Ring-fencing Guideline Electricity Transmission, Issues Paper (Issues Paper)*.

We acknowledge the legitimate role that ring-fencing guidelines and similar instruments can play in circumstances where there is a real, evidence-based risk of harms such as cross-subsidies, discriminatory behaviour or misuse of confidential information. However, imposing additional ring-fencing obligations on certain participants in existing, appropriately functioning competitive markets – such as the market in Victoria for network and non-network services administered by the Australian Energy Market Operator (AEMO) – will only damage, rather than promote, competition and innovation. Rather than it being a case of the cost of compliance not being outweighed by any benefits (although this may also be true), there are no apparent benefits from imposing additional requirements and associated costs on existing Declared Transmission System Operators (DTSOs) in Victoria. It will reduce their competitiveness, and it raises the real risk that they may seek to exit the market. As the AER acknowledges, DTSOs tend to be relatively small businesses with limited systems, offices, staff and functions. Even incremental costs or changes can have a material impact.

In this submission, AusNet contextualises these and other issues raised in the Issues Paper in the Victorian transmission sector. We address the specific questions in the Issues Paper in the Attachment to this submission. We encourage the AER to review and consider both documents in parallel.

Victoria's unique transmission arrangements limit the need for ring-fencing obligations

As the AER is aware, Victoria is the only NEM jurisdiction where the transmission network service provider (TNSP) function is split between a transmission planner-procurer (AEMO) and owner-operators (the DTSOs). AEMO, acting as the Victorian TNSP, is responsible for network planning (excluding replacements), augmentations and the provision of shared network services, including network support and system strength services. DTSOs, who are registered network service providers (NSPs), own and operate the network assets and provide services to AEMO. AusNet is a DTSO, owning and operating 99 per cent of Victorian shared transmission network assets.¹

A key element of the Victorian transmission framework is the competitive procurement process for transmission network investment.² This process, which is administered by AEMO in accordance with Chapter 8 of the National Electricity Rules (NER), has maintained competition and market integrity in transmission investment projects in Victoria for over two decades. It demonstrates that contestability can offer several advantages to consumers compared to the existing regulatory framework, including the potential to drive down costs, identify innovative design solutions and provide greater certainty regarding the timely delivery of infrastructure.

Decisions to invest in new Victorian transmission network assets are made by AEMO. Where AEMO concludes an augmentation is required, it determines if the project satisfies the criteria for contestability, selects the preferred solution, determines the technical specifications, and calls for tenders from interested parties. Importantly, it is AEMO that is responsible for preparing and managing the dissemination of the tender materials. The successful

¹ Other DTSOs are Transmission Operations Australia, TransGrid, Murraylink and Rowville Transformer Limited.

² The specifics of the contestability framework are summarised in KPMG's case studies report, *Contestability in transmission – International and domestic examples*, July 2022, 2, <https://www.aemc.gov.au/sites/default/files/2022-07/KPMG%20Report%20-%20International%20and%20domestic%20examples%20of%20transmission%20contestability%20%28case%20studies%20report%29.pdf>.

tenderer is required to enter into a network agreement with AEMO, so that AEMO can provide the electricity network services required as part of its Victorian network functions.

In other jurisdictions, AEMO's functions are performed by the Primary TNSP. The concerns raised by the AER regarding the potential harms to competition and innovation in the Issues Paper arise in those jurisdictions specifically because the Primary TNSP undertakes those functions. AEMO's central role in the transmission planning and procurement process in Victoria precludes the possibility that any party (a DTSO or its affiliate) will be favoured or discriminated against. This applies with respect to transmission services, but also non-network services that AEMO has and continues to procure in the Victorian context pursuant to its declared network functions (as supplemented, updated or modified from time to time pursuant to Victorian legislation, statutory or administrative instruments, orders or notices).

In this context, the Victorian transmission framework has important implications that limit the need for ring-fencing obligations in Victoria:

- **The key transmission services that would be subject to ring fencing under the AER's proposal are undertaken by AEMO, not by a DTSO.** This means a DTSO has no opportunity to cross-subsidise or discriminate in the provision of those services.
- **Victoria's market-based approach to tendering for contestable augmentations requires a significant volume of information to be shared.** AEMO's role in running the tender process already ensures the DTSOs are unable to engage in discriminatory behaviour. Additional obligations relating to information, separation, or behaviour more generally, would only increase costs and reduce competitiveness.
- **AEMO is required to conduct a tender and evaluation process that accords with best practice.** This includes a requirement to call for expressions of interest, prepare and issue an invitation to tender which must be evaluated and assessed in accordance with published a tender and evaluation process.³
- **The bifurcation of the transmission function in Victoria means DTSOs do not have the opportunity to favour themselves or an affiliate in the provision of transmission services or inputs thereto.** This being the case, there is no need for ring-fencing obligations to purport to operate as sector-specific competition regulations. Furthermore, it is appropriate that any concerns about anti-competitive conduct in the transmission sector are dealt with under the competition laws administered by the Australian Competition and Consumer Commission (ACCC).

We encourage the AER to work closely with AusNet to ensure any additional obligations do not impose additional costs and erode the benefits of contestability

The division of the TNSP function and the contestability framework mean DTSOs are already subject to functional separation. Imposing additional legal or operational separation obligations through ring-fencing guidelines is unnecessary and will impose significant additional costs and erode the benefits of contestability. It makes it increasingly uneconomic for DTSOs to participate in new markets for transmission services.

If the AER accepts that the contestability regime adequately protects competition in the transmission sector in Victoria, it is still possible for the AER to make a guideline with universal application but with targeted effect or application in Victoria. One option is for the AER to identify specific obligations as not applying in an adoptive jurisdiction, as is the approach in the NEL and the NER. AusNet would be happy to present other options for the AER's consideration if that would assist.

We encourage the AER to ensure it understands the impacts for DTSOs of any new obligations it proposes to introduce

If the AER adopts its proposal to link ring-fencing obligations to "services" rather than "activities", it is essential to ensure that a new ring-fencing guideline does not inadvertently prevent a DTSO from complying with its other regulatory obligations or providing services that are necessary for the operation of the declared shared network. In particular, AusNet's transmission licence requires it to make connection offers and enter into network

³ National Electricity Rules, clause 8.11.7.

agreements with AEMO upon request. It is critical that any service-based ring-fencing obligations do not preclude AusNet from complying with these obligations.

In addition, if a "services"-based approach is adopted, determinations made by AEMO in connection with procurement processes may preclude DTSOs from tendering for core network-related functions. Categorisation of the use of technology, such as a synchronous condenser, as a non-network service may be done to attract both NSPs and non-NSPs to participate in the procurement process. If DTSOs are precluded from providing non-network services, they would be precluded from tendering or operating the equipment, despite the fact that the benefit from using the technology may be identical or materially the same as the benefit obtained by a TNSP in another NEM jurisdiction that installed the same technology as part of its transmission system.

We discuss these issues in more detail in the Attachment in response to Questions 1, 6 (waivers) and 7 (revenue cap).

Market evidence shows TNSPs are helping to prove the feasibility of new technologies rather than engage in anti-competitive behaviour

AusNet submits that the AER's concerns regarding the potential for DTSOs to engage in anti-competitive behaviour in the market for new services and technologies (particularly energy storage solutions) is unfounded. Sixteen grid scale battery projects have been delivered to date. Of these, only three have had the involvement of a Primary TNSP or DTSO – mainly through ARENA supported demonstration projects. This demonstrates that TNSPs are not preventing new entrants from developing storage projects. Rather, it reveals that TNSPs are part of a diverse group looking to prove the feasibility of new technologies to the benefit of all market participants. Furthermore, there is no evidence that TNSPs have, or have sought to leverage, any perceived competitive advantage. Arguments that TNSPs could favour network investment or operate the network in a way that favours the performance or reliability of new technologies that it owns or operates are highly theoretical rather than practically observed because they overlook the countervailing incentives and pressures for TNSPs to operate the network in a non-discriminatory manner. Furthermore, such theoretical arguments are invalidated in Victoria due to the nature of AEMO's declared functions and the resultant market structure.

We provide more detailed commentary on this issue in our response to Question 5.

Precluding TNSPs from participating in new technology markets, including energy storage, will hinder innovation and prevent the market from developing mechanisms to deliver network services in a dynamic and rapidly changing grid. Ultimately, the costs of such failures will be borne by consumers. It may also adversely affect network reliability.

Other comments

AusNet acknowledges that the transmission infrastructure landscape in the NEM is currently the subject of several different reviews. As these reviews are not expected to conclude before the AER plans to issue a final ring-fencing guideline, we encourage the AER to consider ring-fencing in light of the regulatory frameworks as they current apply, including in Victoria. If those frameworks change, the ring-fencing obligations can be revisited as necessary.

We would be happy to meet with the AER to discuss the matters raised in our submission. If this would assist, or if you have any questions about the implications of ring-fencing from the Victorian transmission perspective, please contact Ian McNicol on ian.mcnicol@ausnetservices.com.au.

Yours sincerely



Tom Hallam
GM Regulation (Transmission & Gas)
AusNet

Encl: Attachment