



9 June 2023

Ms Clare Savage
Chair of the Board
AER

Lodged via email to AERringfencing@aer.gov.au

Dear Ms Savage,

Response to proposed options to address gaps in transmission ringfencing framework Consultation paper

The CEC is the peak body for the clean energy industry in Australia, representing over 1,000 of the leading businesses operating in renewable energy, energy storage and renewable hydrogen. We are committed to accelerating the decarbonisation of Australia's energy system as rapidly as possible, while maintaining a secure and reliable supply of electricity for customers.

We welcome the opportunity to provide a submission in response to the AERs Options to address gaps in the transmission ringfencing framework Consultation paper (the paper).

This submission highlights the concerns and feedback received from CEC Members who voiced their options on the topic. From the generator and storage developers that we engaged with, there was strong support for expansion of the ring-fencing frameworks, specifically support for Option 2, to curb any potential discriminatory behaviour by Transmission Network Service Providers (TNSPs) and provide assurance of best outcomes when engaging connection services.

TNSPs are also members of the CEC, and we have engaged with representatives from some of those businesses. Feedback from these members is that there is insufficient evidence to support the proposed changes, and that extra reporting and compliance requirements will only add time and costs to the connections process.

We recognise the concerns that exist on both sides and have tried to provide a balanced view of these perspectives. The CEC will continue to consult with our Members on this topic and look to support continued consultation with the AER and AEMC.

Risk that TNSPs engage in discriminatory conduct

We see it as reasonable to ring-fence monopoly services in some manner, on the basis that there is a risk that TNSPs could engage in discriminatory behaviour when providing contestable connection services. Regardless of whether this has behaviour has happened to date – and we note that no

definitive evidence has been provided of such – the possibility of such an outcome would materially reduce competition and creates potential for inflated prices.

As TNSPs currently have an exclusive right to provide both the non-contestable part of a connection service as a negotiated service and the contestable connection services, an opportunity could arise for these businesses to discriminate in favour of an affiliate when providing connection services.

Without ring-fencing, there is a non-zero risk that a TNSP might favour a generator purchasing contestable services from its related entity. There is also a risk that TNSPs may set functional specifications and technical requirements which complicate the process for identified user shared assets (IUSAs), as well as provide related entities with necessary information in a more or less timely manner or delaying the competitor from providing the service.

Regarding AERs call for specific evidence that TNSPs are partaking in discriminatory behaviour (section 2.1), we note that it may be difficult to obtain this information. This is on the basis that any connecting applicant that has experienced a negative outcome and may wish to raise the issue, may nevertheless feel uncomfortable in doing so, due to the perception that this will impact negatively on any future connection applications.

We therefore support the AER engaging directly with connecting applicants in a confidential manner and using this evidence to inform your own decision making accordingly.

We also note that real negative impacts may flow from the very perception of this risk arising, rather than any explicit examples of discriminatory conduct. That is, connecting applicants may perceive a benefit from engaging with an associated entity of a TNSP and may therefore prioritise that business over others. This would have the same ultimate impact on consumers.

It's likely the only way to ameliorate this outcome it is through active ring-fencing provisions, or at least increased transparency to provide the market with confidence that no such preferential treatment can or will arise.

In support of mitigating the above risk, we considered both options presented by AER in the paper.

Feedback on Option 1

In relation to Option 1 proposed in the paper, this option alone would not be effective at mitigating any of the outlined issues. While reporting requirements may help to reduce the perception (or prevent actual examples) of discriminatory behaviour, most of our developer members consider that such a measure would generally be insufficient.

Reporting would also not give the AER any recourse should any discriminatory behaviour be identified.

On the other hand, this option would impose fewer administrative costs and reduce the extent of additional regulatory burden. It would also be easier to implement and manage, and we don't expect its implementation would be slow down the connections process.

Feedback on Option 2

Most of our developer members that we have engaged with consider there is more potential for Option 2 to mitigate the presented risks, compared to Option 1 or the status quo, as it would allow for discriminatory behaviour to be actively mitigated and would promote competition in contestable connection services.

Moreover, Option 2 would allow the AER to moderate any discriminatory behaviour by the TNSPs by taking direct action such as requiring functional separation of negotiated transmission services. As Option 2 is stronger than Option 1, it has a much stronger ability to actually curb any potential uncompetitive behaviour and promote competition in contestable connection services.

Ensuring generators can connect to the grid at an efficient cost is central to minimising project costs, especially given connection costs can be ten percent of overall project costs. By incorporating negotiated transmission services into the ring-fencing framework, investors and developers should have greater confidence that they will be able to connect to the grid at an efficient cost. This perception is key to minimising the material risk premiums already associated with connecting in the NEM.

Consistency between TNSP and distribution network service providers (DNSPs) ring-fencing framework is also welcome. Ring-fencing has already proven useful for DNSP connection services. Option 2 would provide similar opportunity to increase AER oversight by mirroring the DNSP ring-fencing frameworks.

With reference to Section 4 of the paper, any rule change being considered must ensure it is supporting achievement of the National Electricity Objective (NEO). Option 2 would be most likely to support the NEO by providing clearer tools for compliance, while reducing investment costs by giving connecting parties' greater confidence that connection costs will be reasonable.

We note objections from some of our TNSP members that Option 2 has the potential to slow down the connections process. While this is disputed by other members, we would encourage the AER to consider the full suite of effects of Option 2, particularly as this may relate to the speed of the connection process.

In regard to functional separation between individuals involved with specifically technical requirements of the connection, and those involved with in the provision of non-regulated transmission services, we consider that a degree of separation is preferable.

As with the growth expected in the market, which will bring many new players to the NEM, a continued review to introduce more rigour to support healthy competition and equitable process in this upcoming period is welcome.

As always, the CEC welcomes further engagement from AER on this reform. Further queries can be directed to Morgan Rossiter at the CEC on [REDACTED]

Kind regards

Christiaan Zuur
Director, Energy Transformation