



9 June 2023

Mark Feather  
General Manager, Strategic Policy and Energy Systems Innovation  
Australian Energy Regulator

**Via email: [AERringfencing@aer.gov.au](mailto:AERringfencing@aer.gov.au)**

Dear Mark

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

CitiPower, Powercor and United Energy welcome the opportunity to respond to the Australian Energy Regulator's (AER) consultation paper on options to address gaps in transmission ring-fencing framework.

We are supportive of the AER pursuing changes to the National Electricity Rules (NER) to grant itself sufficient powers to ring-fence negotiated transmission services. We consider this to be a practical step towards closing the gaps in the current regulatory framework that present an opportunity for transmission network service providers (TNSPs) to engage in discriminatory practices.

However, we are disappointed that the AER has not indicated an intention to pursue changes to the NER to introduce a civil penalty provision for non-compliance with the transmission-ring fencing guideline.

Our submission focuses on the following:

- the AER having unfettered ability to ring-fence negotiated transmission services
- contestable and negotiated transmission services must be legally and functionally separated
- accounting separation is necessary between contestable and negotiated transmission services
- service classification for TNSPs must be clearly defined
- greater avenues for review of Australian Energy Market Operator's (AEMO) determinations are required
- breaches of the transmission ring-fencing guideline must attract civil penalties.

These matters are further discussed in the attachment below.

Should you have any queries please do not hesitate to contact Zahra Crocker on [REDACTED] or [REDACTED].

Yours sincerely,

[REDACTED]

Renate Vogt  
General Manager Regulation  
**CitiPower, Powercor and United Energy**

## ATTACHMENT

### **1. The AER should extend its powers to ring-fence negotiated transmission services**

We support the AER expanding the ring-fencing framework to include the ability to ring-fence negotiated transmission services, in addition to prescribed transmission services.

The AER has highlighted all services that are provided on an exclusive basis by a single entity should be covered by the ring-fencing framework, to minimise the risk of cross-subsidisation or discriminatory behaviour.

We agree with the AER and consider given negotiated transmission services are subject to monopoly provision, there is ample scope for the incumbent TNSPs to abuse their position and act in a discriminatory manner. This impacts the cost and viability of connections from the distribution to transmission networks.

We are pleased that the AER has acknowledged two instances where potential harm can arise in their consultation paper being:

1. Generator connections, where a connecting party is seeking both contestable and non-contestable connection services and the TNSP discriminates in favour of generators completing all services with the TNSP (including with its related affiliates).
2. In distribution network connections, where an electricity distribution network service provider (DNSP) receives a connection application which requires upstream augmentation works on the shared transmission network, then the TNSP uses the information about the new potential connection to its advantage.

We consider ring-fencing negotiated transmission services from contestable transmission services would assist in provide a 'level playing field' by permitting different parties to compete with the incumbent TNSP and/or its unregulated affiliate. It will not though address the points set out under number 1 and/or 2.

Today we consider there is clear scope for TNSPs to subsidise their contestable transmission services with those of its negotiated transmission services which are not subject to competition. Further, the TNSP can use this leverage to influence customer's decisions when considering contestable transmission service providers or indeed deciding whether to connect through the distribution or transmission network. Given the need for efficient and fast connection of large-scale renewable energy, it is important that this area of the regulatory framework is 'cleaned up' and customer's are able to avail themselves to multiple options and choices that make sense for them.

Expanding the ring-fencing framework to capture negotiated transmission services would also provide greater transparency and accountability for how they engage in the negotiation process. Today this is a messy process absent of any transparency, subject to implicit or explicit discriminatory behaviour and beyond the oversight of any regulator. Providing greater transparency and a more effective regulatory framework would make future negotiations more equitable allowing better outcomes for customers.

Sorting out the transmission regulatory framework is vitally important given the unprecedented level of investment being made in transmission networks. The AER has previously noted that over 10,000 kilometres of new transmission lines will be constructed to accommodate the anticipated growth in renewable generation over the next 30 years, at an estimated cost of around \$12.7 billion.<sup>1</sup> Ensuring transmission investment is delivered as efficiently as possible, and not subject to discriminatory or monopolistic pricing, will be essential given the pressure transmission costs are going to place on energy affordability over the next 30 years.

### **2. Contestable and negotiated transmission services must be legally and functionally separated**

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<sup>1</sup> Electricity transmission Ring-fencing Guideline Explanatory Statement – Version 4, Draft

For any expanded ring-fencing powers to be effective, there must be functional separation of negotiated and contestable transmission services. We consider functional separation to include prevention of staff and office sharing in addition to the prevention of brand sharing and cross promotion.

In the absence of functional separation, there is no practical way to limit the flow of information between those parts of the TNSP providing negotiated transmission services and those providing contestable transmission services. There is a clear commercial incentive to share information within parts of the TNSP. As such, functional separation is warranted to reduce the risk of the TNSP's unregulated affiliate gaining advantage from access to that information.

Separate branding, and a restriction on cross-promotion, is similarly needed to ensure competition in contestable markets is not compromised by the TNSP using its exclusivity in the provision of negotiated transmission services to disrupt conduct in the contestable transmission market. Imposing these obligations would be consistent with arrangements in the distribution sector.

The AER has indicated it considers the costs of requiring functional separation are not insignificant. Whilst this may or may not be the case, we note that the AER considered these costs warranted in the distribution sector when requiring functional separation. Indeed, these costs are likely to be minor in the context of the broader market benefits generated by transmission functional separation.

### **3. Accounting separation is required between contestable and negotiated transmission services**

Extending the ring-fencing framework to capture negotiated transmission services would permit accounting separation between the provision of regulated and competitive services. This would reduce the risks associated with inappropriate allocation of costs to gain a commercial advantage in the provision of a contestable services.

We are supportive of the introduction of the measures the AER has proposed such as:

- how many connection enquiries were received
- how many connection applicants tendered for the contestable connection elements (if known)
- how many connections proceed with a non-incumbent provider
- connection timeframes and costs.

Collection and publication of this information would improve transparency of transmission markets and provide greater confidence as to whether TNSPs are acting in a manner consistent with rule requirements related to transmission connection services.

To support the AER in regulating AusNet under Chapter 6A, an understanding of the operating model and payment structures between these entities may be beneficial for providing users of the transmission network greater confidence in the regulatory arrangements.

### **4. Service classification should be more clearly defined and greater avenues for dispute of AEMO's determinations are needed**

We have previously raised concerns over how transmission services are classified and have advocated for the introduction of a service classification guideline for TNSPs.

Under current arrangements, if a connection requires an augmentation to the declared shared network, AEMO gets to determine whether the augmentation is contestable, non-contestable, or a combination of both. AEMO also gets to determine the technical requirements for that connection.

In deciding if an augmentation is contestable, AEMO considers whether the augmentation is separable, meaning:

- whether the augmentation will result in a distinct and definable service to be provided by the contestable service provider to AEMO and

- that the augmentation will not have a material effect on the incumbent TNSPs ability to provide services to AEMO under any relevant network agreement.

The AER has acknowledged that AEMO is heavily reliant on the technical information they are provided by the incumbent TNSP. Therefore, while AEMO may be the ultimate decision maker, its decisions are heavily influenced by the inputs and advice provided by the incumbent DTSO.

Addressing these concerns requires the introduction of a dispute resolution mechanism for customers where there is concern over how AEMO has classified a service or set the technical requirements of a connection. This could take the form of an independent panel who could review the technical information and reasons provided by AEMO as to why they have arrived at their decision.

#### **5. Breaches of the transmission ring-fencing guideline must attract civil penalties.**

We are surprised the AER has not pursued legislative change to ensure breaches of the transmission ring-fencing guideline attract civil penalties. We consider this to be of the utmost importance with respect to an effective, enforceable guideline.

Breaches of the transmission ring-fencing guideline are equally as egregious as breaches of the distribution ring-fencing guideline and warrant the same penalties. There is no reason breaches of the transmission ring-fencing guideline should be treated as less serious given they ultimately result in higher charges to end customers.

The AER has previously recognised the important role that the role civil penalties play as a deterrent, and as an enforcement mechanism to ensure compliance.<sup>2</sup> As such, we continue to support the AER advocating to the Energy Ministers for a change to the law and introducing civil penalties.

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<sup>2</sup> Electricity transmission Ring-fencing Guideline Explanatory Statement – Version 4