



16 December 2022

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

Via email: AERringfencing@aer.gov.au.

Dear Mark,

Re: Draft transmission ring-fencing guideline review

CitiPower, Powercor and United Energy welcome the opportunity to comment on the Australian Energy Regulator's (AER) draft Ring-fencing guideline (electricity transmission) and accompanying explanatory statement.

We appreciate the AER's effort to align the distribution and transmission ring-fencing guidelines. While the draft guideline represents a step towards that goal, there are still shortcomings which need to be addressed. Our submission focuses on the following:

- Negotiated services should be within the scope of the AER's ring-fencing powers
- Prescribed and negotiated transmission services must be functionally separated from contestable transmission services
- The guideline must be enforceable inclusive of civil penalties
- Prescribed and negotiated transmission services should be subject to accounting separation from contestable transmission services
- We support the proposed information access and sharing requirements
- Transmission services should be more clearly defined through a distribution equivalent service classification document.

We understand the AER does not believe it has the necessary powers to ring-fence transmission network service providers negotiated transmission services from other services or apply civil penalties to transmission ring-fencing guideline breaches.

Although we do not believe this is necessarily the case, if the AER believes it so, we encourage the AER to advocate for changes to the National Electricity Rules (Rules) to grant itself sufficient powers.

Each of these matters is discussed in further detail in the attached submission.

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

Yours sincerely,

[REDACTED]

Brent Cleeve
Head of Regulatory Policy and Compliance
CitiPower, Powercor and United Energy

1. Negotiated services should be within the scope of the AER's ring-fencing powers

We support negotiated transmission services falling within the scope of the Australian Energy Regulator's (AER) transmission ring-fencing guideline. This is appropriate because, as acknowledged by the AER and Australian Energy Markets Commission (AEMC), transmission network service providers (TNSPs) have the exclusivity over the provision of negotiated transmission services.

Given that 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, impacting the cost and viability of connections from the distribution to transmission networks. We have previously discussed examples of these impacts with AER staff.

We are encouraged by the AER's willingness to consider a change to the National Electricity Rules (Rules) to provide itself greater powers to regulate TNSPs. We support the AER seeking an expedited Rule change.

2. Prescribed and negotiated transmission services must be functionally separated from contestable transmission services.

We are disappointed the AER did not amend the current draft guideline to include additional obligations around staff and office separation or restrictions on cross-branding and promotions.

At a minimum, prescribed transmission services should be functionally separated from negotiated and contestable transmission services.

Governments have proposed record investment in the transmission networks. The AER highlights this itself, noting 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.

Given the unprecedented level of investment, we believe it is incumbent on the AER to ensure this program is delivered as efficiently as possible, and not subject to discriminatory or monopolistic pricing. This is especially so given the pressure transmission costs are going to place on customer bills over the next 30 years.

In the absence of functional separation, there will be no practical way to limit the flow of information between those parts of the TNSP that provide "prescribed" transmission services and parts of its business that provide any other services such as competitive transmission services. We have discussed this issue with AER staff where we have encountered information provided to the regulated TNSP being acquired by competitive transmission service provider.

We believe it necessary there be a further Rule change to allow the AER to functionally separate prescribed transmission and negotiated transmission services from competitive transmission services. This is because the same information disclosure risks associated with prescribed transmission services applies equally to information gained when providing negotiated transmission services.

3. The guideline must be enforceable with civil penalties attached.

It is disappointing the AER is still considering whether breaches of the transmission ring-fencing guideline should attract civil penalties. From the position of a distributor, this decision would seem a very easy one to make given similar provisions in the distribution ring fencing guideline can attract a tier 1 penalty. It's not clear why transmission is considered 'special' and that anti-competitive behaviour in that sector is not considered as serious. Transmission charges are ultimately passed through the end customers, so the impact of anti-competitive practices is equally as grievous.

Through the current post 2025 National Electricity Market (NEM) reform consultations, and recent legislative changes in Victoria, the overwhelming consensus has been in the absence of civil penalties, compliance is impossible to enforce. The AER itself has noted, civil penalties play a valuable role as a deterrent, and as an enforcement mechanism to ensure compliance.

For this reason, we are supportive of the AER advocating to Energy Ministers for this change to the law and consider introducing civil penalties as an appropriate next step to the guideline review.

4. Prescribed and negotiated transmission services should be subject to accounting separation from contestable transmission services.

We support the introduction of accounting separation.

It's appropriate TNSPs be required to establish and maintain internal accounting procedures to isolate prescribed transmission costs and improve transparency of transactions between the TNSP and any affiliated entities.

Despite these positive developments, we remain concerned in the contestable transmission space, TNSPs will still be able to gain unfair advantages through the recovery of contestable transmission costs from consumers of prescribed transmission services. This allows them to undercut competitors in the competitive transmission markets, and issue particularly relevant in the Victoria where there is some limited contestability of transmission services.

Therefore, while the accounting separation will help, we would like to see this extended so that internal accounting procedures allow for negotiated and contestable transmission services to be isolated.

This would provide greater clarity that these competitive transmission services are not being subsidised by prescribed transmission services.

5. We are supportive of the newly introduced information access and sharing requirements.

We are pleased that information access and disclosure requirements will align with the distribution ring-fencing guideline. These new provisions will help prevent a TNSP passing information to its unregulated affiliate at the expense of other market participants.

However, until there is functional separation and limitation of information sharing between prescribed and negotiated transmission services from contestable transmission services, these information access and disclosure requirements will not stop the passing of information gained through performing negotiated transmission services being passed to unregulated affiliate.

6. Transmission services should be more clearly defined akin to distribution services.

We support the updating of language in the transmission ring-fencing guideline to shift from regulating "activities" to regulating the "services" TNSPs can provide.

Now that the transmission ring-fencing guideline regulates services, we believe the AER should look to implement a service classification guideline for TNSPs (similar to the service classification guideline that exists to define the nature of services provided by distributors).

As it stands today, transmission services are poorly defined, resulting in competing and confusing interpretations that can be subject to manipulation. This contrast to distribution where very clear delineation exists.

We believe the introduction of a service classification document for TNSPs that clearly sets out which services are prescribed, negotiated or contestable transmission services would provide transparency users of transmission services desperately need.

7. Other comments on the draft guideline for consideration by the AER.

We also seek to raise the following:

- Enforcing legal separation between transmission and other services is an effective tool to ensure greater accounting cost allocation clarity
- We support the change to the discrimination provisions in the transmission ring-fencing guideline to replicate the non-discrimination provisions in the distribution ring-fencing guideline. This is a positive step towards aligning the guidelines, language, and promoting competitive practices
- We oppose TNSPs being permitted to engage in contestable distribution markets unless they are subject to the same functional separation requirements as distributors engaging in those markets

- A requirement should be added for third party service providers who provides services to a TNSP to have provisions in their own agreements which mirror the guideline's non-discrimination and information access and disclosure provisions. There should not be the ability to apply for a waiver from this requirement.
- We support the shift towards a 15-day reporting mechanism
- We support the introduction of auditing requirements and the need for TNSPs to demonstrate via their annual independent third-party assessment that their compliance with the guideline's obligations has been independently reviewed (aligning with the distribution ring-fencing guideline).