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General Manager, Strategic Policy & Energy Systems Innovation
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Submitted by email: AERringfencing@aer.gov.au.

Dear Sir/Madam,

AER consultation paper on options to address gaps in transmission ring-fencing framework

Transgrid welcomes the opportunity to respond to the Australian Energy Regulator's (**AER**) consultation paper on options to address gaps in transmission ring-fencing framework.

In our role as the transmission planner and operator for NSW and the ACT for over 40 years, Transgrid has developed unique expertise and capability in managing one of the key parts of the Australian energy system. Our primary responsibility is to ensure the ongoing security and reliability of the system as it transitions to higher renewables penetration to support Australia's carbon target of 43% reduction by 2030 and net zero by 2050.

We support the AER in its intent to ensure that there is no discrimination in the market and that consumers are not worse off because of lesser competition. We also fully support a framework that delivers transparency and accountability. However, we are concerned that the AER has given greater weighting to perceived harms, rather than pursue changes to the National Electricity Rules (**Rules**) that are based on robust evidence. Given we take our obligations under competition law very seriously, we do not agree with either of the options.

We would encourage the AER, to provide evidence of harms currently caused by the current framework instead of proposing changes that are based on perceived harms which is contrary to best practice. Any proposed changes should have a clear risk assessment to avoid any unintended consequences such as increased costs to consumers, impact on system reliability and security and/or less competition. As the AER has clearly outlined in their consultation paper, the benefits of any change to the rules will need to outweigh the costs. This is especially important at a time of increased costs to consumers and the need to accelerate critical electricity transmission infrastructure to support Australia's energy transition to a low emissions electricity supply.

Our primary concerns and Transgrid's response to the questions asked by the AER are further outlined in the attached submission.

Transgrid looks forward to working with the AER to ensure that the ring-fencing framework is fit for purpose and reflects best regulatory practice.

If you or your staff require any further information or clarification on this submission, please contact me or contact Zainab Dirani at [REDACTED].

Yours faithfully



Maryanne Graham
Executive General Manager – Corporate and Stakeholder Affairs

AER options to address gaps in transmission ring-fencing framework

Transgrid submission on the AER's Consultation Paper

Key Issues

The Australian Energy Regulator's (**AER**) consultation paper proposes changes to the National Electricity Rule (**the Rules**). The AER's paper proposes two options for stakeholders to consider that they claim will minimise discriminatory behaviour during the connection process. Both options examine changes to the NER to allow for ring-fencing of negotiated services. The two options are:

- Option 1: Introduce compliance reporting requirements within Chapter 5 of the Rules.
- Option 2: Expand the ring-fencing framework in clause 6A.21.2(a) of the Rules to include the ability to ring-fence negotiated transmission services, in addition to prescribed transmission services.

The AER states that these two options will reduce the potential for discrimination to occur and so improve competition.

We acknowledge the AER's intent to minimise discriminatory behaviour. However, it appears the consultation paper nor the survey questions appropriately consider the current rules or the numerous factors that influence the outcome and timeframe of a connection process. Furthermore, the paper lacks appropriate acknowledgment of the role of competition law and the responsibilities of corporations under the law. The misuse of market power is an over-arching legal concern outside of the strict auspices of the Ring-fencing Guideline. To the extent there are concerns about discriminatory behaviour that privileges the provision of services by one entity that has the effect of likely lessening competition, then that is something that Transgrid and all TNSPs would already need to take action to address.

The AER considers it is sufficient for it to have concerns and implement regulatory changes based on the potential for discriminatory conduct to occur rather than require evidence of discriminatory conduct. In our view, making significant changes based on mere suspicions of potential for discriminatory conduct could introduce substantial regulatory risks and costs without any actual benefit.

We encourage the AER to allow the new Ring-fencing Guideline requirements to be fully rolled out and its benefits examined. We believe the audits and reviews that will be done under the new Ring-fencing Guideline will provide additional assurance to the AER and the industry.

Notwithstanding the absence of tangible evidence of a problem, we also encourage the AER to conduct the necessary research to pinpoint the specific gaps in the framework that it seeks to solve for to ensure a thorough and fair process. In our view, the AER's current path lacks critical analysis.

Connection process

The AER states there is limited evidence on whether the current framework is working. Furthermore, the AER states that there is potential for TNSPs to use their monopoly power in the provision of non-prescribed services to discriminate in favour of themselves or an affiliate and so hinder the competitiveness of the contestable connections market.

Transgrid has connected 11GW of renewable energy generation to the NEM over the last seven years (including connection assets completed or in construction). Transgrid's connection process is governed by

the Rules¹ and follows an extensive and rigorous internal process that can be accessed on Transgrid's external website². Transgrid's connection enquiry follows the below path.

1. Enquiries and pre-connection enquiry information and discussions are managed by a Transgrid dedicated team. At times, connecting parties may contact our affiliate first, in which they are directed to Transgrid. Work orders are established for each enquiry to capture revenue and costs (in accordance with the cost allocation methodology).
2. The customer enquiry follows a constructive and unbiased process in accordance with the Rules. Information regarding the customer enquiry or project information is not shared at any stage of the process with any affiliate or third party unless the customer specifically consents to it by signing a consent letter. Transgrid considers that the restrictions on sharing of this information is already effectively regulated by the updated transmission ring-fencing guidelines.
3. On completion of the connection enquiry process, the customer decides whether they want to proceed with the connection and with whom. Transgrid will only share the information with its affiliate or a third party if the connection applicant signs a consent letter authorising Transgrid to do so. Again, this is already effectively regulated by the updated Transmission Ring-fencing Guideline.
4. A Connection Process Agreement (**CPA**) is then developed with the Customer to facilitate the Application to Connect as per the Rules. The CPA contains a detailed scope of work and timeframe for the work to be undertaken by Transgrid to facilitate the connection of the customer to NEM. Connecting parties have an indicative outline of the scope of work and timeframe through this agreement.
5. Timeframes for the enquiry process are well defined in the Rules.

Transgrid facilitates and manages connections in accordance with the Rules obligations. Upon receipt of a completed and compliant connection application, Transgrid will review and liaise with the Australian Energy Market Operator (**AEMO**) on technical advisory matters to respond to the application and registration with AEMO within prescribed timeframes outlined in the Rules.

At the beginning of the Application to Connect process, customers are asked to provide further information about their project and timelines so Transgrid and AEMO can plan and allocate resources. However, quite often projects are delayed by other factors such as the Development Application and Environmental Impact Statement approvals, community support and the ability to achieve financial close. In addition, Transgrid is required by the Rules to undertake a detailed due diligence process. Given this, Transgrid may not meet the customers' expectations for a 'quick' response. Customers may feel their projects are unnecessarily delayed as TNSPs are not meeting the customers timeframes often without the knowledge that the process is governed by the Rules. There is transparency in the process as the process is publicly available. AEMO also publishes a Connections Scorecard every month that outlines the average processing times at various stages of the connection process³.

In addition to the actual process that is governed by the Rules, delays in the connection and negotiation process can be a result of:

- Location of the connection that have higher network concerns and constraints.
- Impact on system security and reliability.

¹ Chapter 5.3 of the NER

² <https://www.transgrid.com.au/about-us/network/network-connections>

³ See [AEMO | Connections Scorecard](#)

- New technical requirements that may require more assessments.

The Clean Energy Council (**CEC**) and AEMO initiated the Connections Reform Initiatives (**CRI**) with CEC members, NSPs and industry stakeholders to address concerns with the challenges of processing high volume of connections in a heavily constrained network, delay in the process and complexity in connections. They have identified the need to improve the connection process as governed by the current Rules. The CRI review clearly illustrates that NSP's are driven by the Rules and the results of the connection process are not because of biased or discriminatory behaviour.

We encourage the AER to undertake a rigorous deep dive of the connection process and the Rules to enable a more informed decision through a better understanding of the process and timeframes. Ultimately, Transgrid does not approach any connection application with the intent to discriminate or favour one party over another.

Connecting parties

The AER claims that new entrants seeking to connect to the network are less familiar with the regulatory framework. Consequently, these parties may have less bargaining power than the parties historically seeking connections.

We disagree with this assertion. The majority of connecting parties are large, at times international corporations, or subsidiaries of large, sophisticated companies, that have the means to be thoroughly aware of the regulatory framework including through the engagement of sophisticated advisers. The Australian Energy Market Commission (**AEMC**) in their Connection to dedicated connection assets (**DCA**) final determination state *'that market power possessed by a network service provider is, or is likely to be, mitigated by countervailing market power possessed by a network service user or prospective network service user. This countervailing market power arises because the network service users are themselves likely to be companies that have significant resources to negotiate effectively.'*⁴ The DCA review, along with the negotiating principles are significant additions to the framework that reduces any asymmetry between TNSP and their proponent.

Furthermore, most new entrants to the Australian market, are sophisticated operators in overseas markets, and as they are new to the Australian market, they value the experience and knowledge that Transgrid provides as it navigates through the connection process. Transgrid actively supports customers to finalise their application to connect and execute the Offer to Connect to achieve the customers Financial Close, registration and energisation of their plant.

The AER also claims that connecting parties may be reluctant to complain or dispute TNSPs so not to damage the relationship between the two parties.

We do not support this view. Contrary to what has been stated, connecting parties are still large, sophisticated entities, or are subsidiaries of large, sophisticated entities. Transgrid's experience is that applicants are more than forthcoming and do not shy away from making demands and raising issues. Regardless, Transgrid makes every effort to preserve relationships and follow the Rules process in good faith. It is implausible to suggest they would forfeit a favourable business arrangement and an efficient connection process simply to preserve a relationship with a TNSP.

⁴ Section A.4.1 of AEMC Final determination on Connection to dedicated connection assets. See <https://www.aemc.gov.au/sites/default/files/2021-07/Final%20determination%20DCAs.pdf>

Furthermore, connecting parties can raise any concerns of discrimination or unfair practices to the Australian Competition and Consumer Commission (**ACCC**) or through the dispute resolution process outlined in the Rules without prejudice.

We encourage the AER to consider these points in their analysis.

Survey

The AER has published a survey intended for connection proponents with the objective to collect data on their experience with the connection process.

Transgrid encourages the ability for stakeholders to express their views in a manner that does not negatively affect them. We also welcome constructive, uninfluenced stakeholder feedback. However, we believe the survey questionnaire is structured in a manner that encourages subjective opinions rather than seek unbiased information about the process. We note the following issues with the survey questions:

- Some questions exhibit bias that may encourage participants to think there is a problem when one does not exist.
- Several questions appear to be open for interpretation, open ended and can imply discriminatory conduct is being undertaken by the TNSP when there is not.
- Certain questions will not deliver meaningful responses given the AER has not asked for evidence to support responses.
- Questions are targeted at generation connection and has not considered load connections.

We urge the AER to consider these points and the factors that influence the connection process (outlined in this submission), when analysing the survey responses and forming views and conclusions.

Transgrid responses on issues on which stakeholder feedback is sought

AER questions	Transgrid's response
<p>Is there any other evidence that TNSPs are discriminating in favour of themselves or an affiliate in providing contestable connection services? Are the issues encountered by connecting parties different in Victoria versus other jurisdictions and, if so, how?</p>	<p>TNSPs take their obligation under Competition law very seriously. Transgrid is not aware of there being any evidence of discrimination for any services a TNSP provides whether this is for negotiated or contestable works.</p> <p>In the case of the Transgrid Group, contestable services are provided by Transgrid's affiliate entity, Lumea. Lumea operates as a standalone entity on commercial arm's length terms to Transgrid, using a shared services model. Transgrid considers that this is already sufficiently regulated through the Ring-fencing Guidelines, competition law and the Rules.</p>
<p>Do the mitigating factors identified by Incenta sufficiently address the concerns raised about the ability of TNSPs to discriminate in favour of themselves or an affiliate in providing connection services? If not, why not? Are there any other mitigating factors?</p>	<p>As we have previously stated in our submissions during the AER's Ring-fencing Guideline review, we believe that competition law and the current framework are fit for purpose to address cross subsidization and discriminatory behaviour in the industry. To ensure there is transparency, we encourage the AER to provide evidence of any harms. We also encourage the AER to outline how extra compliance and reporting will be used to mitigate the perception of anti-competitive behaviour. Given extra reporting and compliance will require extra resources, it is important to justify these to consumers.</p>
<p>Does the Victorian framework for contestable transmission limit the ability of the incumbent DTSO to discriminate in favour of itself or an affiliate? If not, why not? Are there any other mitigating factors?</p>	<p>No comment</p>
<p>Why do stakeholders consider that third party providers are not being engaged to provide contestable connection services? Is there any evidence available to identify the cause(s) of the apparent lack of third-party providers being engaged to provide contestable connection services?</p>	<p>Transgrid plans to invest \$11 billion in transmission over the next 5-10 years to help deliver AEMO's most recent ISP actionable projects. As TNSPs have the planning and technical expertise to deliver this transmission services, the market is increasingly leaning into this expertise of TNSPs to deliver both negotiated and contestable connection services. This expertise is needed to deliver this infrastructure in the fastest possible way and at the least cost to consumers.</p> <p>A key challenge for the energy transition is the development and retainment of skilled labour, especially as other industries compete for this labour during the same period. Transgrid is already experiencing skills shortages in construction managers, electrical and power engineers, civil engineers and transmission line workers, and these shortages will only increase over the coming decade.</p>

AER questions	Transgrid's response
	<p>Given the labour shortage of skilled labour, the expertise of the current TNSP workforce, and the ability for TNSPs to do these connections quickly and at a low cost, connecting parties relying on the TNSPs or its affiliates to undertake contestable works. The assumption that TNSPs are undertaking a large portion of contestable work because of discriminatory conduct is unfounded. Transgrid does not believe this to be the case.</p> <p>Furthermore, whilst there are efficiencies (and presumably lower overall cost for the customer) for a TNSP or its' affiliate to deliver contestable services alongside the TNSP delivering negotiated services, the costs for negotiated and contestable services are separated for the customer to assess on merit and against other contestable service offers</p>
<p>Are existing measures in the NER sufficient to prevent TNSPs from discriminating in favour of themselves or an affiliate in providing connection services? If not, why not? Are there barriers to a connecting party reporting non-compliance with specific rules or using the dispute resolution process to resolve concerns about discriminatory behaviour by TNSPs?</p>	<p>Yes. There are already extensive provisions in the Rules and extensive clauses in competition law that go above and beyond to ensure that corporations do not engage in anti-competitive behaviour. This also includes a general provision in relation to the price and terms of negotiated transmission services, as set out in Chapter 5 (including the principles Sch.5.11).</p> <p>Furthermore, the recently implemented connections framework by the AEMC has deliberately increased competition whilst maintaining the ability for TNSPs to offer these services for reasons stated extensively in previous submissions to the AER.</p> <p>We encourage the AER to engage better with the existing Rules and identify genuine gaps in the framework, rather than rely on a small number of stakeholder assertions.</p>
<p>Are there any benefits in the AER having the ability to impose functional separation between negotiated transmission services and non-regulated services where the costs of doing so are outweighed by the benefits? What are those benefits?</p>	<p>No. We encourage the AER to undertake a rigorous cost-benefit analysis before deciding on a rule change which in our view will only add costs to consumers.</p> <p>Furthermore, imposing material functional separation would be incompatible with the existing connections framework, and possibly require a completely different model for transmission connections.</p>
<p>What measures do TNSPs currently take to ensure they are complying with their obligations in Chapter 5 that support contestability for connection services? How transparent are these measures?</p>	<p>Transgrid has a clear connection process that is outlined on Transgrid's external website. Connections are facilitated based on the Rules. Upon receipt of a complete and compliant connection application, Transgrid will review and liaise with AEMO on advisory matters to respond to the application and registration within the</p>

AER questions	Transgrid's response
	<p>timeframe required under the Rules. All elements of the process are transparent and follow a carefully constructed process.</p> <p>Transgrid has a robust compliance framework in place including internal training and policies regarding ring-fencing and competition law principles.</p>
<p>In Victoria, is the combination of the new information access and disclosure obligations under the Transmission Ring-fencing Guideline (Version 4) and the contestability framework in Victoria sufficient to curb any potential discriminatory behaviour by the incumbent DTSO in respect of information sharing? If not, why not? What gaps remain?</p>	<p>No comment.</p>
<p>Are there any concerns about the ability of an incumbent DTSO to discriminate in respect of other elements of a connection, such as delays to works that only the incumbent DTSO can perform, and costs associated with those works?</p>	<p>No comment.</p>
<p>Would Option 1 sufficiently address any concerns that TNSPs are using their market power to discriminate in favour of themselves or an affiliate in the provision of connection services? What clauses in Chapter 5 of the NER should TNSPs be required to report compliance with? Should Option 1 extend to requiring TNSPs to report certain connection information and, if so, what information should be required? How effective would this option be in addressing concerns about potential discriminatory behaviour in Victoria?</p>	<p>We do not agree with either option one or two. We do not believe any added reporting or compliance requirements or changes to the Rules will affect the way a TNSP conducts negotiated or contestable work. This is because TNSPs currently have rigorous process in place to ensure a clear and transparent connection process in place.</p> <p>No information regarding any connection enquiry is shared with anyone outside Transgrid (including its affiliates) without the written consent of the connecting party.</p>
<p>Would Option 2 sufficiently address any concerns that TNSPs are using their market power to discriminate in favour of themselves or an affiliate in the provision of connection services? If this option were to be implemented, should clauses of the NER that currently Options to address gaps in transmission ring-fencing framework address discriminatory behaviour in respect of connections, such as those relating to information access and disclosure be shifted to the Guideline?</p>	<p>As above.</p>
<p>Are there any other options that we should consider? How would any additional options address the identified issue?</p>	<p>The AER can use existing reporting requirements or engage with TNSPs to gain a more thorough understating of the connecting application and process and the corporate governance procedures in place to mitigate discrimination.</p> <p>We encourage the AER to identify any barriers to entry in the contestable works sector and ensure there are credible threats to competition before implementing additional regulation rather than rely</p>

AER questions	Transgrid's response
	<p>on baseless assertions from a small number of large corporate bodies.</p>
<p>Will additional transparency and/or functional separation address concerns with the contestability framework or are there other fundamental challenges with the framework that mean that competition will always be challenging to promote?</p>	<p>Imposing material functional separation would be incompatible with the existing connections framework, and possibly require a completely different model for transmission connections (e.g., one where TNSPs were not expected to be able to participate in competitive projects, or where the scope for competition was withdrawn or wound back). Furthermore, functional separation will only increase costs for consumers with no clear benefit. There is no evidence that functional separation will achieve greater competition or allow the transition to net zero in an efficient manner and at a pace that is demanded by the national bodies.</p>
<p>How else would the two options contribute to the NEO compared to the status quo? Alternatively, what advantages in terms of the NEO does the status quo have compared to the two options identified?</p>	<p>The current framework does not impose any restrictions on TNSPs providing both prescribed transmission services and non-regulated transmission services.</p> <p>In fact, during the consultation of the Transmission Connection and Planning Arrangements, the AEMC made it clear that the new arrangements do not impose any restrictions on TNSPs providing both prescribed transmission services and non-regulated transmission services.</p> <p>We encourage the AER to consider that a more restrictive approach to ring-fencing may affect the ability and incentives for TNSPs to participate in a market for the provision of contestable connection</p>
<p>What other benefits could arise under either option that we have not identified here?</p>	<p>Given the lack of evidence and our robust internal processes, we see no benefit in any of the options presented in the AER paper.</p> <p>We support a rigorous cost-benefit analysis on applying additional regulatory obligations, in which consumers have clear understanding of the benefits they are receiving through increased regulatory obligations.</p> <p>Furthermore, it is important that the AER outlines to consumers how the proposed additional reporting requirement will be used and what it will be benchmarked to. This is because any new reporting and compliance requirements require resources which consumers will fund.</p>
<p>What other costs could be incurred under either option that we have not identified here? Would any other stakeholders incur costs? Can likely costs to TNSPs of each option be quantified?</p>	<p>We believe that the AER has ignored the costs of imposing additional functional separation, reporting and compliance activities and focused on superficial benefits that lacked rigour.</p> <p>We believe the consultation paper ignored the potential costs of imposing further restrictions on TNSPs ability to undertake non prescribed transmission services or restrict their participation in the contestable market. There is little substance</p>

AER questions	Transgrid's response
	<p>to many of the perceived benefits, with some of these being wealth transfers rather than actual efficiency improvements.</p> <p>Costs of additional reporting and compliance requirements cannot be fully understood until details are known. However, as we work through the implementation of the Final Ring-fencing Guideline that was published in March 2023, we understand that extra FTE are needed to ensure compliance. In addition, we envision we will experience delays in proceeding with certain projects giving the extra layer of administration.</p>
<p>What other impacts could be incurred under either option that we have not identified here</p>	<p>No comment.</p>