



22 July 2022

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

Via email: AERringfencing@aer.gov.au.

Dear Mark

Re: Transmission ring-fencing guideline review

CitiPower, Powercor and United Energy welcome the opportunity to review the Australian Energy Regulator's (AER) Ring-fencing Guideline Electricity Transmission Issues Paper.

We continue to support the AER updating and strengthening the ring-fencing obligations that apply to transmission network service providers (TNSP) to support the development of competitive markets for contestable services.

To ensure a better outcome for our customers, who are also customers of the transmission network, we believe full functional separation is required between the provision of regulated transmissions services and contestable transmission services. In its absence, we consider the potential for a TNSP to discriminate in favour of their affiliate in the provision of contestable services or provide them with competitive advantage through the provision of privileged information remains a real threat to the efficient and prudent delivery of transmission services. For avoidance of doubt, we consider full functional separation to entail:

- separation of staff
- separation of office locations
- prohibition on branding and cross-promotion with affiliates that provide contestable electricity services.

These requirements should be underpinned by robust accounting and transactional separation, monitored by the AER, to minimise the risk of cross-subsidies. They should also be supported by strengthened restrictions on information sharing and disclosure between the regulated and affiliated entity.

These matters are explored further below, together with an explanation of the unique regulatory framework in Victoria and how this used and applied to transmission connections.

Victoria has a unique regulatory framework for transmission

There are several characteristics of the Victorian transmission regulatory arrangements that differ from other states. We have sought to explain the arrangements below in the practical context of a customer seeking a connection to the transmission network.

It is important to note that the Australian Energy Market Operator (AEMO) is the jurisdictional planning body in Victoria. AEMO plans and directs augmentations to the declared shared network. It does not complete the augmentations itself.

Assume a large renewable generator seeks to connect to the transmission network. Generally, the assets associated with the connection are provided by a supplier of the connecting party's choice. If the large connection requires an augmentation to the declared shared network, such as the construction of a new terminal station, AEMO will determine whether the augmentation is contestable, non-contestable, or some

combination of both. If AEMO determines that the augmentation is contestable, then the connection applicant can either:

- nominate a declared transmission system operators (DTSOs) of its choice to build, own and operate the contestable assets (essentially it would conduct a private tender to determine who it wishes to appoint to provide these services) or
- ask AEMO to select the DTSO, with AEMO running a tender process to select the most appropriate party.

If AEMO determines that an augmentation is not contestable, the services will be provided by the incumbent DTSO. The augmentation may not be contestable because the works are “not separable” from the incumbent’s network.

There are numerous DTSOs in Victoria. The DTSO builds, owns and operates electricity transmission infrastructure. The main DTSO is AusNet Transmission, which owns and operates most of the Victorian declared transmission system.¹ Other DTSOs include TransGrid, which owns and operates the Deer Park terminal station, and Australian Energy Operations (a related entity of ours), which owns and operates the Elaine and Ararat terminal stations.

Connections to the distribution network can trigger upgrades or expansions of the transmission network. For example, a large load connection to our network may necessitate the upgrade of a transformer at the local terminal station. On behalf of the customer, we will seek information from the DTSO that owns and operates the terminal station to obtain a price for the costs of those works. These costs are typically borne by the connecting customer.

Some differences between the distribution and transmission regimes need to be recognised

We broadly support the alignment of the transmission ring-fencing guideline with the current distribution ring-fencing guideline. However, there are differences in the services and definitions that need to be considered when applying the ring-fencing regime to TNSPs.

The ring-fencing guidelines for distribution and transmission are focused on ensuring competition in different markets. For distribution, the focus is on competitive markets “behind the meter”. However, for transmission the focus should be on competitive transmission connections and ensuring these are clearly defined.

Distribution services are clearly defined in the NER and the AER’s service classification guideline. Regulated distribution services are treated differently from other services, and robust controls are in place between the regulated entity and affiliates that provide contestable electricity services, particularly those services “behind the meter”.

Transmission services are not clearly defined as in distribution. We are not aware of any equivalent to the service classification guideline in the transmission framework. Furthermore, there is a blurring of the delineation between transmission and distribution, such as dual function assets.

Introduce and enforce new anti-discriminatory measures

To support the reduction in discriminatory practices, we support the AER introducing the four tools identified in the issues paper being:

1. a general obligation not to discriminate
2. functional separation of offices, staff, branding and cross-promotions
3. restrictions on sharing of confidential information and information sharing obligations to promote information symmetries

¹ AusNet Transmission is the only DTSO that is economically regulated under Chapter 6A of the National Electricity Rules (NER).

4. application of non-discrimination measures to third party service providers.

We are particularly concerned with the provisions involving the sharing of information.

Where a connection to the distribution network involves terminal station works, we inform the incumbent DTSO of the connection. The incumbent DTSO has the ability to freely pass on that information to its unregulated affiliate or, use the information themselves to offer an alternate connection to the transmission grid.

We believe to prevent the sharing of information, which leads to the opportunity for anti-competitive practices, the separation of staff and offices akin to that required of distributors is a necessary step.

There also needs to be stricter rules regarding information sharing and we support the AER aligning this with the current obligations imposed in the distribution ring-fencing guideline.

Robust accounting and transactional separation is essential

There must be stricter accounting separation between the provision of regulated and competitive services, to reduce the risks associated with incorrect allocation of costs to gain a competitive advantage in the provision of a competitive service.

The ring-fencing guideline must prevent the TNSP discriminating in favour of affiliates when providing offers to customers to undertake works on the regulated transmission network. For example, if a connection involves terminal station works, the TNSP should provide offers that are consistent, whether or not the customer is an affiliated entity, a distributor or themselves in relation to:

- price, including with a breakdown of costs
- non-price terms and conditions, such as timeframes for delivery, quality of service and variations.

Ring-fencing could further support competition for competitive connection services by requiring a clear breakdown of costs in an offer, which would assist the customer in comparing offers involving regulated and unregulated works and reduce the risk of cross-subsidisation by a TNSP.

We support removing the ability for a TNSP to apply for a waiver from accounting requirements. It is important the AER has oversight over accounting requirements to ensure that there is no cross-subsidisation occurring and this cannot occur if a waiver has been provided.

TNSPs should be permitted to obtain waivers to deliver emerging services

There are many benefits that can flow from regulated providers, together with third parties, providing contestable services. Grid scale batteries and frequency control ancillary services highlight the innovation undertaken by TNSPs in these emerging markets and customers are likely to benefit from these initiatives.

However, we consider that these emerging services should not be provided in the absence of a TNSP obtaining a waiver from the AER. The AER's concern with cross subsidisation in nascent markets has required distributors to seek waivers for providing many of these emerging services and we see the situation no different for transmission. The waiver process provides a transparent process to allows regulated entities to participate in emerging markets whilst at the same time providing transparent comfort these activities are not subject to cross subsidisation.

Compliance

In relation to other compliance matters, we support:

- aligning language used between both ring-fencing guidelines
- introducing regulatory compliance reporting obligation, including independent assessment obligations
- requiring TNSPs to notify the AER within 15 business days of a becoming aware of a breach

- introducing an obligation on TNSPs to support the AER carrying out its monitoring function
- not allowing TNSPs to seek a waiver from compliance obligations.

Should you have any queries please do not hesitate to contact Elizabeth Carlile on 0419 878 852 or ecarlile@powercor.com.au.

Yours sincerely,



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