



Friday, 15 November 2024

General Manager Policy
Australian Energy Regulator

Lodged via email to: AERringfencing@aer.gov.au

Dear Ms Chifley,

Submission on AER Issues Paper on Updating the Ring-fencing guideline (electricity transmission)

The Clean Energy Council (**CEC**) is the peak body for the clean energy industry in Australia, representing nearly 1,000 of the leading businesses operating in renewable energy, energy storage, and renewable hydrogen. The CEC is 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 comment on the AER's Issues Paper on Updating the Ring-fencing guideline (electricity transmission) (**Guideline**) to include negotiated transmission services. This submission only reflects the views of our developer and investor industry members (**CEC industry members**) and does not reflect the views of TNSPs.

Overview

A fundamental principle of good economic regulatory practice is the establishment of clear ex-ante frameworks to avoid any potential abuse of monopoly power by a regulated entity. The Clean Energy Council has consistently called for the establishment of such ex-ante frameworks in relation to the ring-fencing provisions applied to network businesses.

This is regardless of the occurrence of any actual abuse of the monopoly position of any specific regulated entity; the entire point of such frameworks is to prevent the perception of market power abuse, rather than its necessary exercise.

Given TNSPs' regulated monopoly role in planning, operating and maintaining the transmission network, as well as in providing connections to transmission networks, it is necessary to have appropriate controls in place to support competitive outcomes in markets within which TNSPs may operate.

It is necessary to ring-fence monopoly services (including those components involved in providing connections to the grid) on the basis that there is a risk that TNSPs could engage in discriminatory behaviour when providing non-contestable services, distorting competition for the provision of contestable services.

This potential for discriminatory conduct by the TNSP in the provision of (non-contestable) negotiated transmission services has been recognised by the AER, the AEMC, industry and other stakeholders (other than TNSPs)¹.

The AER has previously acknowledged that, as a matter of good regulatory practice, “in principle, all services that are provided on an exclusive basis by a single entity should be covered by the ring-fencing framework, where there is a risk of cross subsidisation or discriminatory behaviour”².

Network monopolies hold all the power when it comes to connection negotiations with generators. Developers are extremely unlikely to publicly raise concerns regarding any discriminatory conduct for fear of negatively impacting current and future connections. Unlike other network businesses (eg telecommunications) where negotiations for access to the network may only happen once, renewable energy developers undertake repeat negotiations with the same TNSPs for each of the many projects they are developing as part of the clean energy transition. This makes the developer more reluctant to raise concerns about discriminatory conduct because of the need to maintain relationships for future projects.

When faced with potential delays, longer project timelines and/or additional costs if the TNSP’s non-regulated affiliate/business (**affiliate**) is not chosen for non-regulated contestable transmission services (**contestable services**), developers choose the affiliate to provide the contestable services.

Ring-fencing all negotiated transmission services is therefore critical to address and prevent actual or perceived discriminatory conduct. This is a necessary condition if effective competition for contestable transmission services is to develop i.e. the detailed design, construction and ownership of IUSAs. We understand that only a limited number of projects in the NEM have selected third parties to provide those contestable services. This is despite the AEMC introducing contestability for the detailed design and construction of IUSAs under the 2017 *Transmission Connection and Planning Arrangements rule change*.

From information provided by CEC industry members, we understand that affiliates are selected over other providers, even if their offer prices are higher – mainly due to addressing this risk of discriminatory conduct. It follows that significant savings could be made available if projects were truly free to select the lowest cost provider. We understand these potential savings could be many millions of dollars per project and billions of dollars up when combined. These cost savings will be passed onto consumers in lower electricity bills.

An effective ring-fencing framework is also likely to speed up the transition to a decarbonised power system resulting in lower emissions and a more reliable power system. These cost

¹ AER [Rule Change Request Expanding the transmission ring-fencing framework to include negotiated transmission services](#) dated July 2023 at pages 5, 15-16, AEMC’s [Final Determination, Expanding the transmission ring-fencing framework](#) at page 1, Clean Energy Council [submission](#) on the AEMC Draft Determination, *Expanding the transmission ring-fencing framework*.

² AER [Consultation paper - Options to address gaps in the transmission ring-fencing framework - 12 May 2023](#) at page 11

savings far outweigh any increased administrative costs to TNSPs. Apart from a few additional staff which may be needed on an ongoing basis, the costs in setting up new procedures or systems to comply with ring-fencing obligations are largely a one-off cost that can be amortised over the entire clean energy transition.

We also note ring-fencing all negotiated transmission services may not result in a material increase in the TNSP's costs of compliance. This is because ring-fencing obligations to a large extent already overlap with, and are required, by TNSP's obligations under Chapter 5 of the NER.

Ring-fencing is essential to deter and detect any discriminatory conduct by regulated businesses when providing negotiated transmission services. On this basis we consider the AER should focus on the costs and benefits of addressing *potential* harm and conflicts of interests, rather than reported harm. The AEMC has acknowledged that discriminatory conduct may be difficult to detect, and developers would be reluctant to report this conduct because of concerns about the impact on future projects. The very possibility of TNSPs engaging in discriminatory conduct materially reduces competition and investor confidence, creating the potential for inflated prices for consumers.

The CEC considers it is better to have the default position that ring-fencing applies automatically to all categories of negotiated transmission services, with waivers for limited obligations available only by way of exception.

In our view, TNSP's concerns can be adequately dealt with by waivers of limited duration. Any carve outs of categories of negotiated transmission services, or reduction in obligations under the current Guideline, will undermine the effectiveness of a ring-fencing framework for negotiated transmission framework and will be contrary to the National Electricity Objectives.

We have responded below to the AER's specific questions for consideration in the Issues Paper (which are extracted in italics below).

Issue 1 – What types of negotiated transmission services should be ring fenced?

- *How well does the classification of negotiated services in clause 5.2A.4 of the NER enable stakeholders to identify which negotiated services should be subjected to ring-fencing controls? What kind of additional information would be useful in to distinguish negotiated services?*
- *If stakeholders do not consider the classifications in clause 5.2A.4 of the NER to be a feasible method to distinguish types of negotiated services to be ring-fenced, which alternative method would provide better clarity? How would that alternative method achieve a more appropriate balance between benefits for competition and costs for TNSPs to comply with new obligations?*

The categories of contestable and non-contestable transmission services related to connection in clause 5.2A.4 of the NER are well understood by industry. Non-contestable negotiated transmission services in clause 5.2A.4 of the NER include:

- Setting the functional settings of an identified user shared asset/component (**IUSA**). IUSA include substations, switchyards and powerlines.
- Cut-in works to connect the IUSA to the network

- Operation and maintenance of IUSA not owned by TNSP.

Any potential discrimination by TNSPs in providing any of these non-contestable services, distorting competition for the provision of contestable services, could materially extend project timelines (both delaying offers to connect and the connection of projects to the network once built) as well as materially increase a project's costs.

CEC industry members, other stakeholders and the AEMC have outlined concerns about the potential advantages a TNSP could afford to an affiliate in providing the non-contestable negotiated transmission services under Clause 5.2A.4 of the NER, for example:

- ***in terms of the timing and costs of the “cut-in” to the shared network***³

The TNSP could preference its own projects and those projects which have selected its affiliate to provide contestable services. CEC industry members have expressed concern that the TNSP can hold up the completion of a project in failing to provide cut-in services in a timely manner. There are no liquidated damages payable by the TNSPs and as a result the TNSP can theoretically delay or derail a project indefinitely, with no contractual consequences to them.

The proportion of risk/potential costs to a developer from delays from interface works is the highest in a project (even through these services represent only a relatively small part of the costs of the entire project). The significant risk, and potential costs, of delays in the TNSP providing these non-contestable interface works is a significant deterrent in connecting parties seeking offers from parties other than the primary TNSP to provide contestable connection services.

- ***through the price, terms and conditions associated with the ongoing maintenance of assets the TNSP is required to control***

The AEMC recognised that a TNSP could charge a price for operating and maintenance costs for an IUSA that is above the cost of supply with the aim of increasing the total cost of a competitor's offer: see page 15 [Final Determination](#). Incenta identified potential harms that TNSPs may overstate the cost of maintaining connections that they become responsible for (IUSAs)⁴.

CEC industry members have expressed concern about the lack of transparency when quoting for these operation and maintenance services, making it difficult for the price of these services to be negotiated.

- ***by defining the Functional Specifications of an IUSA***

The AEMC acknowledged that TNSPs can impose technical obligations in a TNSP's favour⁵.

³ See also [Australian Energy Operations - Electricity Transmission Ring-fencing Guideline Review - Submission to Discussion Paper - 30 January 2020 | Australian Energy Regulator \(AER\)](#). This risk was recognised by the AEMC at page 15 Final Determination

⁴ AER [Consultation paper - Options to address gaps in the transmission ring-fencing framework - 12 May 2023](#) at page 19

⁵ This was recognised by the AEMC at page 15 Final Determination

The TNSP's ability to define the functional specifications of an IUSA coupled with its control over connection services allows the TNSP to favour its affiliate and delay projects where the affiliate is not chosen to provide services for the detailed design, construction and ownership of contestable IUSAs.⁶ For example, where a third party is responsible for providing the detailed design of the contestable IUSA scope:

- CEC industry members have advised that, in some jurisdictions, TNSPs require more detailed design drawings if an affiliate does not provide these contestable services (for example, drawings based in the region of 80% design of the contestable component may be required rather than a 30% design if an affiliate had been chosen). The additional detail is arguably more than what is needed at this stage of the connection process.
- the TNSP reviews those detailed designs once provided to check compliance with its functional specification before a Connection Agreement can be entered into. The AEMC acknowledged that the TNSPs may unreasonably delay the provision of an offer to connect through this review process and "a connecting party ... cannot be confident that delays are a result of legitimate reasons or a result of discriminatory conduct"⁷:

The preparation of these more detailed design drawings, and their review, can add 6 to 18 months onto a project's timeline (depending on the level of detail required). This is a significant deterrent in connecting parties seeking offers from parties other than the primary TNSP' affiliate to provide contestable services, particularly as Connection Applications are not progressed until the detailed designs are provided and reviewed.

We note that the AER on page 11 of the Issues Paper refers to some of negotiated transmission services specified under Clause 5.2A.4 of the NER but does not specifically refer to cut-in works and operation and maintenance services. However, due to the potential harms referred above, both of these negotiated transmission services should be included in the updated Guideline.

- ***What factors should the AER consider in weighing up which of the categories of services should be ring-fenced? What evidence can be provided about the potential costs and benefits of a preferred approach?***

We consider all categories of negotiated transmission services should be included in the Ring-fencing Guideline to promote competition in contestable services relating to the detailed design, construction and ownership of IUSAs and to promote the National Electricity Objectives. The AER should focus on the following factors:

- ***State of competition in the provision of contestable services***

Despite the AEMC introducing contestability for the detailed design, construction and ownership of IUSAs under the 2017 *Transmission Connection and Planning Arrangements rule change*, there have only been a limited number of projects in the NEM which have selected third parties to provide those contestable services.

The AER should put considerable weight on the lack of competition that has developed since 2017 in relation to these contestable services as this shows that the current rules as applied are

⁶ The AEMC recognised that the TNSP can engage in conduct during the connection process that discriminates against competitors by delaying processes at page 15 Final Determination

⁷ page 16 Final Determination

not working. In our view, without robust ring-fencing of **all** negotiated transmission services, competition for these contestable services is unlikely to emerge.

We are concerned that the AER and the AEMC are giving undue importance to the additional costs TNSPs may incur from ring-fencing negotiated transmission services. Such costs are insignificant when compared to the costs to developers and consumers from the lack of competition in the detailed design, construction and ownership of IUSAs (as discussed below).

The AER should only give any importance to the additional costs to the TNSP from ring-fencing should effective competition for these contestable services emerge across the NEM.

- **Harm from discriminatory conduct**

The AER should focus on potential rather than reported harm, given the AEMC has acknowledged:

- Connecting parties, whether large or small, would be reluctant to raise concerns about a primary TNSP's behaviour given the need for an ongoing working relationship with the TNSP as the only entity that can facilitate a connection to their network
- Some types of discriminatory conduct would likely not be overt or obvious and clearly detectable but would instead likely be subtle and difficult to detect⁸.

The potential ability of the TNSP to engage in discriminatory conduct without a robust ring-fencing framework in place is a significant reason for the lack of competition in contestable services and is likely to continue to:

- hinder the development of a market for contestable transmission services
- result in renewable generation projects being delivered more slowly and at a higher cost
- increase risk premiums for projects as investors and developers will not have confidence that developers will be able to connect to the grid at an efficient cost without undue delays
- result in higher consumer costs (from developers passing on higher connection costs and from delays in the availability of new generation supply reducing market competition).

As noted above, harm results not only from actual discrimination but also from the perceived risk of discriminatory conduct arising from the failure to have ring-fencing in place to deter such conduct.

- **Conflicts of interest**

In deciding whether to ring-fence all categories of the negotiated transmission services, the AER should also consider potential harm from conflicts of interest. For example, there is a potential conflict of interest in the TNSP's role in:

- leasing spare capacity in its battery and its role in approving and connecting other grid-scale batteries. TNSP could delay connecting another project's grid scale battery to the network to enable it to negotiate a better price for the capacity it leases.

⁸ Pages 16 Final Determination

- building their own batteries but also approving others. There is a risk that TNSP could get more favourable treatment during the process to connect their batteries to the transmission system, than other projects (including grid-scale batteries), for example, in the timing of connection or in assessment of GPS compliance⁹.
- deciding if the detailed design of an IUSA is satisfactory while its commercial arm is trying to get the design work.
- assessing and approving modelling demonstrating that the developer's self-remediation addresses the project's system strength impacts. The TNSP is incentivised for developers to pay system strength charges in respect of infrastructure it has built to deal with future projects' impact on system strength, otherwise the costs of under-utilised infrastructure will be borne by consumers. A developer will be disincentivised to engage in self-remediation if they are concerned about the risk of delay to the project as a result of the TNSP carrying out system strength connection works (a negotiated transmission service).

Ring-fencing obligations (in particular, those involving separation of offices, IT systems and staff) would minimise potential harm from these conflicts of interest.

- **Potential for discriminatory conduct arises for all negotiated transmission services**

All negotiated transmission services should be ring-fenced as there is the potential for TNSPs to engage in discriminatory conduct in providing any of the four categories of non-contestable negotiated transmission services listed in the definition:

- shared transmission services that exceed network performance requirements (category 1)
- connection services (category 2)
- services specified to be negotiated transmission services under clause 5.2A.4 of the NER (category 3)
- system strength connection works (category 4). A Connection Applicant may elect to deal with a project's system strength impacts by paying for the TNSP to carry out system strength connection works.

There is the same potential for the TNSP to engage in discriminatory conduct impacting competition in contestable transmission services, in particular, when providing category 2, 3 or 4 of negotiated transmission services as no renewable generation project can be connected without the TNSP providing these services on an exclusive basis.

As noted above, conflicts of interest also arise in relation to all categories of negotiated transmission services.

- **Benefits and costs of a robust ring-fencing framework**

We consider it likely that a robust ring-fencing framework could result in material cost savings and promote the National Electricity Objectives by:

⁹ In Western Australia, batteries owned and operated by Western Power are "excluded services" to avoid this conflict of interest. In reaching this [decision](#), the Economic Regulation Authority at page 5 took into account stakeholder submissions that:

- Western Power's ownership of network connected batteries without any ring-fencing or the batteries being classified as an excluded service would itself create a barrier to entry for third-party suppliers.
- Western Power could be perceived as having a commercial advantage in that it owns potentially suitable sites on the land occupied by its electricity sub-stations and that Western Power's inherent knowledge of the state of its system and ability to plan its own developments gave it a head-start position compared to external businesses.

- reducing the cost of each project by several millions of dollars (given that connection costs can account for roughly 10 per cent of a proponent's total project costs)¹⁰. These costs saving will result in lower electricity bills for consumers
- lowering emissions, and increasing power system reliability, from speeding up the connection of renewable generation and storage to the grid.

The annualised capital cost of all utility-scale generation, storage, firming infrastructure (excluding transmission infrastructure) in the Optimal Development Pathway in the 2024 ISP¹¹ has a present value of approximately \$107 billion - based on the Step Change scenario to 2050. Even small improvements in the connection process through a robust ring-fencing framework have the potential to save billions in project costs, and this will result in lower energy costs for consumers.

These cost savings far outweigh any increased administrative costs to TNSPs. Apart from a few additional staff which the TNSP may need on an ongoing basis, the costs in setting up new procedures or systems to comply with the ring-fencing obligations are largely a one-off cost that can be amortised over the entire clean energy transition.

We note ring-fencing all negotiated transmission services may not result in a material increase in the TNSP's costs of compliance. This is because ring-fencing obligations to a large extent already overlap with, and are required, by TNSP's obligations under Chapter 5 of the NER.

- **TNSP's concerns and circumstances**

The AER should address the TNSPs concerns through the waiver process, rather than wholesale carveout of categories of negotiated transmission services. We consider that the waiver framework allows the specific concerns and circumstances of TNSPs to be adequately taken into account. In assessing a waiver application under the current Guideline, AER must fully consider the TNSP's costs, relative size, the specific controls which the TNSP proposes to implement, the risk of discriminatory conduct or cross subsidisation in light of the proposed controls, the National Electricity Objectives and whether the benefits to consumers from increased competition would be outweighed by the cost of the TNSP complying with the obligation. The waiver regime therefore allows the AER to critically consider whether the TNSP's costs of complying with specific obligations can be minimised, taking account the circumstances and proposed controls, provided competition in nascent markets is not hindered.

Waivers are limited in time and scope and AER retains the regulatory tools to respond flexibly to evolving market conditions, for example, following an oral complaint about discriminatory conduct. In contrast, the carve outs proposed by the AEMC's rule change are unqualified and categories of services carved out cannot be "reincluded" without the AER first following an extensive 9-month consultation procedure.

¹⁰The AEMC in the 2017 *Transmission Connection and Planning Arrangements rule change* at page 36 notes:

Input from stakeholders indicates that connection costs account for roughly 10 per cent of a proponent's total project costs, and that total project costs are in the order of several hundred million dollars. Improvements to the way in which parties connect to the transmission network are therefore likely to have an impact on project costs and ultimately, the costs that are passed on to consumers. For example, the connection costs for a project with total costs of \$300 million would be expected to be about \$30 million. A ten per cent reduction in these connection costs equates to \$3 million in potential savings.

¹¹ See page 13 of AEMO's 2024 *Integrated Systems Plan*

Issue 2 – Obligations that may be applied

We consider that all obligations in the current Ring-fencing Guideline should apply to negotiated transmission services and support the broadening of obligations as outlined below. Waivers should be limited to those permitted under the current Guideline.

2.1 No discrimination in negotiated transmission services

- ***What changes would TNSPs have to make to be compliant with a clearer obligation for non-discrimination in relation to negotiated services? What would be the associated financial cost?***
- ***Would it be feasible to extend the current obligation to only some types of negotiated connection services? If so, is there any benefit from making this change for only some types of negotiated services? Please provide details.***
- ***How would extending the obligation for non-discrimination to negotiated services impact the market for contestable connection services, noting these impacts may be positive or negative?***
- ***Are there alternate measures to address the perception of discrimination within the context of the ring-fencing framework that the AER should consider?***

We support the AER extending the non-discrimination obligation in clause 4.1(b) of the guideline to explicitly state that a TNSP cannot discriminate in relation to its provision of negotiated transmission services. This would promote competition for contestable connection services as:

- potential competitors would be more likely to participate in the market for contestable connection services, if they consider there is less scope and risk that the primary TNSP will use its exclusive right to provide non-contestable connection services to enable its affiliate to obtain a competitive advantage in the market for contestable connections; and
- connecting parties would be more likely to seek offers from parties other than the primary TNSP to provide contestable connection services if there is less scope for projects to be delayed or to be offered less advantageous terms.

We do not consider that extending the non-discrimination obligation in clause 4.1(b) of the guideline would materially increase TNSP's compliance costs. We note that TNSPs have previously argued that they already meet legal and regulatory obligations in relation to discrimination against rivals to their related entities¹².

We note that extending the non-discrimination obligation would also have positive impacts in so far as it overlaps with and reinforces the requirements of Chapter 5 of the NER. The Tier 1 civil penalties introduced for breaches of the Guideline would also provide a strong motivator for complying with regulatory obligations.

We consider that a broad non-discrimination obligation will make it more difficult for TNSPs to adopt an interpretation of the National Electricity Rules which permit it to treat more favourably projects which use its affiliate for contestable services. For example, as discussed above, we

¹² Transgrid Submission to AER consultation paper on options to address gaps in transmission ring-fencing framework, June 2023, page 6

understand that some TNSPs interpret the rules so as to require projects to provide more detailed designs of IUSAs if an affiliate is not chosen to provide these services before a Connection Application can be progressed. It is arguable that the non-discrimination obligation will make it more difficult for the TNSPs to interpret the NER to require different requirements for those projects that choose its affiliate for contestable services and those that do not unless there are justifiable engineering reasons for doing so.

We consider the broader non-discrimination obligation should apply to all categories of negotiated transmission services given that:

- developers are reliant on the TNSP to provide those services on an exclusive basis to obtain connections agreements and to connect their renewable generation project to the network once built.
- conflict of interests arise between the regulated and competitive business activities of the TNSP.

2.2 Extending the definition of ring-fenced information

- ***In what sort of circumstances might it be appropriate for TNSPs to share information on negotiated services to maintain the efficiency of connection processes?***
- ***Would it be feasible to extend the definition of ring-fenced information to only some types of negotiated connection services? If so, is there any benefit from making this change for only some types of negotiated services? Please provide details.***
- ***What specific types of customer information should be included in an updated definition of 'electricity information' in the guideline, and how feasible is it to make a distinction?***
- ***What changes would TNSPs have to make if the definition of ring-fenced information is changed to include information obtained via the provision of negotiated services? What would be the associated financial cost?***

CEC industry members consider that the definition of ring-fenced information should be expanded to include information acquired or generated in connection with the provision of all categories negotiated transmission services. We do not consider that there should be derogations from the current access and disclosure requirements as it would undermine the ring-fencing protections.

2.3 Requiring additional reporting on delivery of services

- ***Is there additional reporting by TNSPs that would support the aims of ring-fencing to promote competition in contestable transmission connection services? What are the types of reporting information that would provide the greatest benefit?***
- ***What information do TNSPs currently capture in relation to the provision of negotiated services?***
- ***For TNSPs, would there be differences in the costs and compliance burden of reporting on different types of negotiated services? If so, provide details or examples.***
- ***Are there any restrictions on the type of information relating to negotiated services that can be reported on, which the AER should consider?***

Additional reporting on the delivery of negotiated transmission services is essential to deter and detect discriminatory conduct.

We consider that TNSPs should publicly report on the following:

- the number of connection enquiries received
- the number of connection applicants who have tendered for the contestable connection elements (if known)
- the number of connections that proceeded with a non-incumbent provider
- the connection timeframes and costs for delivery of negotiated services.

We also consider that there should be reporting on TNSP's compliance with obligations under Chapter 5 of the NER. We support the adoption of a robust ring-fencing framework with monitoring obligations and recommend that the AER seek further feedback from industry on their concerns and the connection information that should be sought.

Ring-fencing can incentivise compliance with regulatory obligations as demonstrated by the example below.

We have heard concerns from CEC industry members about the lack of transparency in the costs for operation and maintenance of IUSAs, which makes it difficult to negotiate a reduction in costs. Seeking additional information on whether indicative prices for non-contestable services are negotiated could shed light on whether there is compliance with:

- clause 5.2A.5(c) of the NER (which requires a TNSP and a Connection Applicant to provide information (including commercial information) reasonably required by the other party that would facilitate effective negotiation for the provision of a negotiated transmission service in a timely manner); and
- clause 5.2A.6(b) of the NER (which requires a TNSP to identify and demonstrate to a Connection Applicant that the charges for providing a negotiated transmission service reflect its reasonable costs).

We consider that the process of reporting on whether costs have been negotiated is likely to incentivise the TNSPs to provide greater transparency in its pricing to ensure compliance with the NER. If prices are not being negotiated, the AER has a range of tools, including issuing a compliance letter providing its expectations in breaking down costs and outlining assumptions made.

It is essential that reporting covers all stages of the connection approval process including:

- **the stages before a Connection Application is lodged**

For example, there should be reporting:

- on whether the TNSP imposes different requirements (including project timeframes) in relation to a Connection Application where the TNSP's affiliate is not chosen to provide contestable services. The AER in particular could seek information on whether more detailed design drawings of the IUSA is required and whether this information needs to be assessed before a Connection Application can progress;
- to ascertain whether the quote for contestable and non-contestable services are sufficiently transparent with sufficient detail about each of the services being provided to permit effective commercial negotiation and to compare any changes in costs for non-contestable services should a third party be chosen for the contestable works. CEC industry members have expressed concern about the lack of transparency when quoting for contestable and non-contestable services.

- **the stages after the connection application has been lodged, when the TNSP's affiliate has been made aware that they are not providing the contestable work**

For example, the reporting might cover whether the costs, and terms and conditions, for providing non-contestable services, GPS requirements and the project's timeline, changed after the TNSP was advised that its affiliate would not be providing contestable services, and require the TNSPs to provide details of the change and the reasons why. We have

been advised by CEC industry members that this has occurred (becoming more unfavourable).

AER guidance

The information the AER receives from the reporting obligations will help the AER to understand whether industry guidance is needed on any aspect of the rules.

We note that more than one interpretation of the National Electricity Rules may be possible. The National Electricity Law (NEL) explicitly states that the interpretation of the NER that will best achieve the purpose or object of the NEL is to be preferred to any other interpretation: section 7(1) of the NEL.

We consider that the AER has a role in providing guidance to industry where a different interpretation of the NER should be adopted on the basis that it:

- best achieves the National Electricity Objective (NEO)
- prevents TNSPs favouring its affiliate in the provision of contestable transmission services
- removes obstacles to the development of competition in contestable transmission services.

For example, the AER may decide through information obtained from additional reporting that a different interpretation of the requirement to provide “detailed design” of IUSAs under clause 5.3.4(b)(3)(ii) of the NER to the one being adopted by TNSPs will better achieve the NEO and support competition. The AER could issue guidance to industry which clarifies:

- to be eligible for connection under clause 5.3.4 of the NER, drawings only need to be submitted which:
 - demonstrate consistency (vs compliance) with the functional specifications provided by the TNSP under clause 5.3.3(b)(9)(i);
 - permit modelling of a plant’s performance; and
 - are based on the Standard Planning Data and Detailed Planning Data outlined in the Power System Model Guidelines, Power System Design Data Sheet, Power System Setting Data Sheet and in schedules 5.5.3 to 5.5.5.

Unless justified engineering reasons are provided for requiring more detailed design drawings, the detailed design drawings to be submitted under clause 5.3.4 will be based on 30% design of the contestable components.

- demonstrated compliance with the functional specification is only needed prior to commissioning i.e. during the R1 registration stage;
- the detail design drawings required from a Connection Applicant that proposes to obtain contestable services related to IUSAs from a third party should not be more onerous than those required if the TNSP’s affiliate were to provide the same service.
- it is more efficient for grid connection and the connection of IUSAs to be progressed in parallel. Holding design workshops with the TNSP and agreeing issued for construction drawings can be progressed in parallel with the connection process prior to the R1 stage.

We encourage the AER to use the information it obtains through this ring-fencing consultation and through the additional reporting to initiate changes that will improve the connection process. For example:

- The AER could work with the AEMC in reviewing whether the negotiated transmission services framework under the NER is fit for purpose

- The AER could establish service providers which are accredited to provide contestable transmission services. These may be drawn from the TNSP's own panel of consultants which provides the same services for them. In addition the AER could tender for, and accredit, other service providers.

Reporting obligations may change over time

The AER may consider reducing the scope of the reporting obligations on the TNSP should effective competition in contestable services relating to transmission connections emerge.

2.4 Extending the current obligation in respect of staff separation

- ***What are the potential benefits of the guideline requiring a separation of TNSP staff between the provision of prescribed and ring-fenced negotiated services, on the one hand, and the provision of contestable services?***
- ***Would it be feasible to apply the obligation on the separation of marketing staff to only some types of negotiated services? If so, is there any benefit from making this change for only some types of negotiated services? Please provide details.***
- ***What changes would TNSPs have to make to comply with marketing staff separation for negotiated services? What would be the associated financial cost? Are the costs mitigated if the sharing of staff is permitted, subject to arms-length arrangements and regular publication of registers (as is done for DNSP ring-fencing)?***
- ***What are your views on whether the specification of marketing staff (as opposed to other types of staff) is still pertinent to manage the potential risk of discrimination?***

The AEMC acknowledged in its Final Determination at page 17 that although "the rules impose strict obligations as to the use of confidential information (under Clause 5.3.8(a) and (a1) of the NER)"..."TNSPs are not required to explain how they are complying with these obligations and there is limited monitoring and reporting in this respect"...and that "while there are prohibitions against the disclosure of confidential information, it would be very difficult in circumstances where employees are permitted to participate in both the regulated and non-regulated activities of the TNSP to ensure that an employee in possession of confidential information (gained from the regulated business) is not using that information in a way that is advantageous to the TNSP. The Commission also notes that the obligations on TNSPs around the use of confidential information are not civil penalty provisions and as a result the prohibitions may not have a strong deterrence effect."

The TNSP obtains commercially sensitive information as part of providing its regulated services which, if provided to its affiliate, could advantage the affiliate in competing for contestable services. This commercially sensitive information includes:

- Commercially sensitive information about a plant's costs and operations obtained during the RITT tender process
- Information about a competitor's designs of an IUSA which have been submitted to the TNSP in order to negotiate an operations and maintenance agreement
- Information about grid scale batteries in the pipeline.

The separation of TNSP staff between the provision of prescribed and ring-fenced negotiated services, on the one hand, and the provision of contestable services will minimise risks that commercially sensitive information is provided which advantages staff involved with contestable services.

For example, staff involved in leasing arrangements for the TNSP's spare capacity should not be permitted to be involved in the connection of other developer's grid scale batteries to the

grid. Information about battery projects in the pipeline is commercially sensitive information and should not be disclosed to any third party, particularly lessees of the spare capacity, as they are potential competitors of the grid scale battery operators. Ring-fencing has a role in ensuring that relevant protections are implemented.

2.5 Introducing restrictions on cross-branding and promotions

- **In which scenarios may there be potential negative impacts on competition from shared branding and cross-promotion between a TNSP and its related entity? Are there any concrete examples where harm has resulted?**
- **When may it be feasible for TNSPs and their related arms to use separate branding for provision of negotiated services? What would be the likely costs and impacts of that separation?**

CEC does not consider that introducing restrictions on cross-branding and promotions is necessary.

Issue 3 - Removal of maximum limit on waivers

- ***What are stakeholders' views on removing the maximum period limitation for granting a waiver from the guideline?***

Under the current Guideline, a waiver can be granted for no longer than part or all of a TNSP's current regulatory control period, next regulatory control period, or both periods unless it is granted in relation to battery storage. We do not support the removal of the current limitation on waiver duration.

It is preferable for the AER to reassess a waiver's impact on competition within this current maximum time for granting a waiver as the energy market is undergoing rapid technological and structural change and can be anticipated to continue to do so.

Other issues

- ***What is an appropriate transitional period for TNSPs to come into compliance with any new ring-fencing obligations?***
- ***How can the costs and benefits of a transitional period be best managed? For example, is there additional complexity if certain new obligations have longer or shorter transitional periods?***
- ***If the guideline is amended to include obligations related to negotiated services, are there some obligations or services that should be excluded from consideration of waivers?***
- ***What are stakeholders' views on the proposed change to require sign off of Annual Compliance Report by the most senior executive of a TNSP?***

Transitional arrangements

We agree that 9 months is a reasonable time for TNSPs to comply with new obligations concerning negotiated services which require legal or organisational changes. Otherwise, we consider that TNSPs should be given 6 months to comply with the other ring-fencing obligations concerning negotiated transmission services.

Waivers for specific obligations

We consider that the AER should only be allowed to grant waivers for those obligations permitted under version 4 of the guideline i.e. waivers for obligations related to negotiated transmission services:

- should only be permitted in respect of obligations relating to legal separation, staff separation, and constraints on Service Providers and (if introduced) on cross-branding and promotions
- should not be permitted from the obligation:
 - not to discriminate
 - restricting information access and disclosure
 - to comply and report on compliance
 - to establish and maintain separate accounts
 - in respect of cost allocation and attribution
 - to respond to complaints about adherence to the Guideline.

Compliance Report sign off

We agree that Annual Compliance Report should be accompanied by letter signed by the most senior executive at the TNSP. Oversight by senior management will encourage compliance with the ring-fencing obligations.

As always, the CEC welcomes further engagement from the AER on this reform. Further queries can be directed to Diane Staats at the CEC on dstaats@cleanenergycouncil.org.au.

Kind regards

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