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Friday, 16 December 2022

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 Draft Transmission Ring-fencing Guideline

Transgrid welcomes the opportunity to respond to the Australian Energy Regulator's (**AER**) Draft Transmission Ring-fencing Guideline (**Draft Guideline**).

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 appreciate the AER's general approach to the Draft Guideline and its recognition of Transmission Network Service Providers (**TNSP**) expanding role which includes managing the system at a time when the National Electricity Market (**NEM**) is transitioning to a renewable future at a record pace.

We support the AER in its views that no further functional separation is required on network connections given TNSPs' customer profiles and the robust framework that already exists in the NEM.

Furthermore, we support the AER's acknowledgement that the National Electricity Rules (**Rules**) have already expanded opportunities for third parties to provide elements of transmission connection services whilst recognising the role of TNSPs as fundamental to delivering the transmission services required to transition to a renewable future whilst maintaining system security and reliability.

The changes to the current Guidelines seek to increase competition and increase TNSP reporting requirements. However, there are no competitive harms identified. 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 decreased competition. This is especially important at a time of increased costs to consumers and community expectations to deliver the most efficient yet least cost solution on our path to net zero.

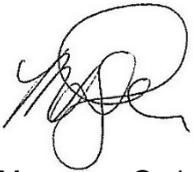
Best practice regulation should be fit-for purpose, encourage innovation and productivity and be in proportion to the risk. Several of the proposed changes appear to be contrary to this best practice given

they have been proposed with little or no evidence of increasing competition or avoiding harm. Our primary concerns and our response to the questions asked by the AER are further outlined in the attached submission.

Transgrid looks forward to continuing to work with the AER to develop a workable, flexible and relevant Guideline that is in the best interest of consumers 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 zainab.dirani@transgrid.com.au.

Yours faithfully



Maryanne Graham

Executive General Manager – Corporate and Stakeholder Affairs

AER Draft Transmission Ring-fencing Guideline

Transgrid submission on the AER's Draft Guideline

Key Issues

The AER's Draft Guideline proposes changes to the current Guideline. We have identified several key issues which require further consideration as part of the review of the transmission ring-fencing arrangements. Set out below are our responses on seven of those issues:

1. Transmission services
2. Registered TNSPs
3. Negotiated and contestable transmission services
4. Telecommunication Services
5. Marketing staff
6. Waivers
7. Compliance.

1. Transmission Services

The Draft Guideline proposes to permit TNSPs to provide transmission services but not other services. Transmission services is defined in the Rules as 'the services provided by means of, or in connection with, a transmission system.'¹

We appreciate the AER's position given TNSPs are best placed to undertake transmission services regardless of whether they are prescribed transmission services, negotiated transmission services or non-regulated transmission services. Furthermore, referencing the activities to the Rules provides a degree of clarity to TNSPs in the activities they can provide without a waiver.

However, there are several two broad services we believe should fall within this category and would benefit from further clarity in the Final Guideline. These are:

- Consulting services - Given TNSPs extensive knowledge of the power system and the intellectual capital they hold, we are increasingly requested to provide unique expert planning, operational and technical advice to Governments and market participants such as DNSPs. This advice may be in relation to REZ zones, connection of generation or load to non-transmission system or stand-alone power systems. This knowledge is an important element of delivering transmission services, and increasingly important as third parties enter the market. As this unique expertise is increasingly requested, it would not be prudent or efficient to apply for a waiver every time this service is requested. This should be dealt with through the current framework.
- Network support services – There are instances where a TNSP is required, for network support or to meet a reliability obligation, to acquire an asset that provides a service that is not permitted under the Draft Guideline (such as Transgrid's Broken Hill generators). These assets/services that are required to

¹ Clause 6A.21.2(d) of the National Electricity Rules

be provided under the reliability standard, legislation, regulation or license changes should be permitted to be undertaken without a waiver.

We encourage the AER to provide further clarity on the classification of these services given they are fundamental to the electricity system and transition to net zero. We recommend the AER exempt these services from ring-fencing obligation, and make them permitted services for the purpose of the Ring-fencing Guideline. In the event the AER believes a waiver is necessary, commentary in the Final Guideline providing reassurance a waiver would be granted in these circumstances would be helpful to provide certainty.

2. Registered TNSPs

The AER outlines in the Draft Guideline that the role of ring-fencing is to prevent TNSPs from using their position as monopoly providers of prescribed transmission services to distort outcomes in contestable markets. Furthermore, the primary purpose of ring fencing is to prevent cross subsidisation between prescribed and contestable services.

However, the Draft Guideline does not distinguish between TNSPs that have prescribed revenue and those that do not. Currently, there are several market participants registered as a TNSP with the Australian Energy Market Operator (**AEMO**) for the purpose of owning, operating, and maintaining contestable transmission assets such as the Transgrid Group's separate contestable entity, Lumea Pty Limited (**Lumea**)². In the case of Lumea, it is registered as a TNSP for the purposes of its contestable transmission connection assets in Victoria, connecting the Berrybank Wind Farm and the Kiamal Solar Farm.

These TNSPs, including Lumea, do not receive prescribed revenue to cross-subsidise nor will they adversely affect competition by being exempt from the ring-fencing obligations. However, under the current drafting of the Draft Guideline, because these market participants are registered as TNSPs, they would be prevented from providing 'other services' including contestable battery services, electric vehicle services and other areas of future growth where the services are not related to the transmission system, by virtue of clause 3.1(b) in the Draft Guideline. This restriction will significantly impact Lumea and other market participants registered as a TNSP that do not earn prescribed revenue, adversely affecting competition. It is also not consistent with the AER's stated purpose of this section of the Draft Guidelines, which is to prevent cross subsidisation of 'other services' by prescribed services.

In Transgrid's view, these TNSPs should not be restricted from providing 'other services'. That restriction would simply be contrary to the ring-fencing objectives. Given this, we encourage the AER to provide clarification in the Final Ring-fencing Guideline that clause 3.1(c) in the Draft Guideline does not apply to a TNSP that does not provide prescribed transmission services.

3. Negotiated and contestable transmission services

The AER recognises that its ring-fencing powers are limited under the Rules and has sought stakeholder feedback on whether it should seek a rule change to expand these powers in relation to negotiated and contestable services.

Transgrid's view is that the Rules in which the AER is seeking to change reflect the most efficient operation in the provision of transmission connections and so no further expansion of powers is necessary. The AEMC went through a rigorous stakeholder engagement process for the Transmission Connection and

² Lumea was formally called Transgrid Services Pty Limited as trustee of the Transgrid Services Trust.

Planning Arrangements³ (**TCPA Rule**) rule change and Connection to Dedicated Connection Assets⁴ rule change. Using detailed modelling and risk assessment, the AEMC outlined a contestability framework that promotes competition whilst maintaining system security. It is clear, as multiple parties connect to the transmission system, the role of the primary TNSP is vital to ensuring that the system remains reliable and secure.

Furthermore, the AER has presented no evidence that these Rules are leading to lessened competition from discrimination. In fact, to the contrary, over the last 5 years, the NEM has experienced substantial growth in national and international competitors, in which the current Transmission Ring-fencing Guideline apply. These large, sophisticated competitors are well resourced to determine least cost options. The current system and interactions between TNSPs and market participants are efficient as they lead to increased benefits to consumers. We encourage the AER to be mindful of exploring any rule change that would lead to further restrictions on TNSPs and lead to unintended consequences such as lessening competition, expertise gap and increased barriers to transitioning to net zero.

4. Telecommunication Services

The AER has proposed to allow, without the application of a waiver, TNSPs to continue to lease out transmission assets to third parties, such as using poles and wires to mount telecommunications equipment or lease out real estate, so long as that use does not prejudice the provision of prescribed services. Allowing TNSPs to lease out transmission assets was considered appropriate and likely to benefit consumers where it is in accordance with the shared asset rules and guideline.

Transgrid agrees with this position, given both markets have extensive competition and consumers benefit by reducing prescribed transmission prices in accordance with the shared asset guidelines. In addition, TNSP's provision of non-electricity services increases the level of competition in the markets in which they operate as they increase choice for consumers of those services and reduce unnecessary duplication of infrastructure.

However, Transgrid provides telecommunications services itself using its carrier licence under the Telecommunications Act⁵. Arguably this goes beyond simply permitting another legal entity to use the spare telecommunications capacity, and we would welcome clarification from the AER on its intention in that regard.

To provide more background and context regarding Transgrid's telecommunications business, Transgrid works with enterprise and wholesale customers, mobile carriers, NSW Government agencies and local councils to provide critical telecommunications infrastructure services that assist in bridging the digital divide and supporting the socio-economic growth in rural & regional NSW.

The telecommunications services that Transgrid provides falls into two broad categories:

- telecommunications services utilising spare capacity on the existing assets that form part of the transmission system (the co-location services) (Category A); and
- telecommunications services provided by means of standalone telecommunications infrastructure that is not related to the transmission system (Category B).

³ <https://www.aemc.gov.au/rule-changes/transmission-connection-and-planning-arrangements>

⁴ <https://www.aemc.gov.au/rule-changes/connection-dedicated-connection-assets>

⁵ Telecommunication Act 1997 Commonwealth

In accordance with the definition prescribed in the Rules, transmission services are the services provided by means of, or in connection with, a transmission system⁶, accordingly:

- On Category A, co-location services are transmission services because they are services provided by means of a transmission system because they are using the transmission system's spare capacity.
- Category B may not be so easily distinguishable. This category of services may not necessarily have a sufficient physical linkage to its transmission system because there are scenarios where the infrastructure is built out to connect with a third-party telecommunications infrastructure to enable Transgrid to use the third-party telecommunications infrastructure to provide the Category B services. Transgrid also utilises, as part of the Category B services, the capacity of third-party network capacity (unrelated to its own transmission system) to provide telecommunications services. These services include wavelength, ethernet and internet services.

Allowing TNSPs to provide a holistic telecommunication service (category A and Category B telecommunication services), which they have provided for decades, would provide communities and businesses the opportunity to continue to have access to innovative solutions. Benefits of this approach include:

- Strategic partnerships with other utilities companies.
- Connecting people and businesses by providing innovative solutions through combining service support such as wavelength, carrier ethernet, dark fibre and colocation.
- Able to provide a scalable, resilient and secure network that could withstand extreme weather events such as Bushfires & Floods.
- Allow an extensive network and services that enable national connectivity across metro & regional NSW.

Furthermore, allowing TNSPs to provide these packaged solutions increases competition in a highly competitive market, leading to better choice for consumers through innovative solutions and decreased costs through the shared assets guideline (as the AER have clearly pointed to in the Draft Guideline for leasing of transmission assets)⁷. There is no evidence of consumer harm from allowing TNSPs to continue to provide a holistic telecommunication service.

Given this, we would encourage the AER to clarify clause 3.1(e)(i) to include the ability for TNSPs to undertake telecommunication services such as those in Category B. In our view, Category A and Category B together form the one holistic telecommunication business and it makes no sense for a demarcation between the two when they are undertaken by the single carrier licence entity.

If the AER is minded that these telecommunication services require a waiver, we would recommend that this restriction only applies to new agreements (as it was recommended for batteries) and the current agreements grandfathered.

⁶ Clause 6A.21.2(d) of the National Electricity Rules

⁷ Clause 3.1(e)(i) of the AER Transmission Draft Ring-fencing Guideline

5. Marketing staff

The AER has proposed no additional staff or office separation except for the separation of marketing staff. The Draft Guideline states that TNSP must ensure that its marketing staff are also not staff of a related electricity service provider; and its staff are not marketing staff of a related electricity service provider⁸.

Transgrid supports the AER's position that no further functional separation is required given TNSPs customer profiles and the robust framework that already exists in the Rules. However, we are concerned that the marketing staff restriction goes beyond the Distribution Ring-fencing Guideline and the current Transmission Ring-fencing Guideline.

The Distribution Ring-fencing Guideline clause⁹ on marketing staff restricts marketing staff of direct control services from being involved in the marketing of contestable electricity services. The TNSP Draft Guideline goes one step further as it restricts the TNSP staff from being marketing staff of a related electricity service provider regardless of whether they are solely involved in the marketing of the activities in the related entity.

Clause 4.3(a)(ii) of the Draft Guideline requires that Transgrid staff cannot be marketing staff of a related electricity service provider such as Lumea. This clause presents an issue for Transgrid on the basis that a number of Transgrid staff are deployed to related electricity service providers (ie Lumea) through an arms-length cross structure arrangement and undertake marketing activities for that entity (however do not undertake marketing activities for Transgrid).

The definition of 'marketing staff' is also absolute in the sense that any participation in the selling and marketing of related electricity service constitutes 'marketing staff', such that even if a staff member can demonstrate that they only allocate 10% of their role and time to marketing activities for a related entity, they are still marketing staff of that entity.

Given this, we encourage the AER to provide clarity in the drafting of clause 4.3(a)(ii) to ensure that staff who are employed by Transgrid and therefore technically "staff" of the primary TNSP, but otherwise deployed into a related electricity service provider through arms-length cross structure arrangements and undertake marketing activities for the related electricity service provider (but not for the primary TNSP), are not caught by clause 4.3(a)(ii). This would also be consistent with the Distribution Ring-fencing Guideline.

6. Waivers

The AER has mirrored the waiver framework in the distribution ring-fencing guideline, including having some key clauses that are not able to be waived. The AER says that waivers provide flexibility to respond to circumstances as they arise.

However, the AER has not demonstrated that relying on a blanket prohibition approach is in the best interest of consumers. Not only does relying on waivers increase costs to consumers to enforce but also hinders the ability for TNSPs to respond, when necessary, without the need to go through another regulatory approval process that may take months. For example, we understand that a battery waiver may take months to approve. This adds time and investment risk to an already lengthy regulatory approval process.

⁸ Clause 4.3(a)(ii) of the AER Transmission Draft Ring-fencing Guideline

⁹ Clause 4.2.2(a) of the AER Distribution Ring-fencing Guideline

There are over a hundred batteries registered with AEMO¹⁰, of which three are owned by TNSPs. In outlining these three batteries in the Draft Guideline, the AER has not demonstrated how these three arrangements have harmed competition or increased the risk of cross-subsidisation. In our view, the AER should illustrate how leasing out the spare capacity of the battery is detrimental to consumers. In fact, these three arrangements have benefited consumers, as TNSPs are able to utilise the battery for network services and lease out the remainder to third parties, benefiting consumers by delivering the most economic model whilst lowering energy bills. Applying a lengthy waiver application has not been shown to benefit consumers.

Given this, we encourage the AER to outline what benefit they see or evidence they have received for applying a blanket waiver approach in the Draft Guideline. This should have clear linkage to consumers and how it benefits them. Especially at a time when TNSPs are under increasing pressure to deliver projects ahead of schedule whilst meeting system security and reliability needs to achieve renewable targets.

7. Compliance

The AER has added additional compliance and reporting requirements on to TNSPs, seeking to improve transparency and provide evidence that TNSPs are complying with their ring-fencing obligations. The Draft Guideline also requires TNSPs to notify the AER within 15 business days of becoming aware of any breach.

In our submission to the Issues paper, we urged the AER to apply a risk-based regulatory model to its compliance requirements that seeks to focus obligations on TNSPs to areas of higher risk to ensure resources are efficiently directed whilst minimising excessive costs on regulated entities, which are ultimately borne by consumers.

It appears the AER requires TNSPs to start reporting immediately on any breach, even if that breach is within the 12-month transitional period. We would encourage the AER to provide further clarification on this point.

We continue to urge the AER to undertake the necessary risk-based regulation and provide evidence of harm before making additional obligations that only reflect over-regulation rather than best practice.

¹⁰ See AEMO electricity market participants list - <https://aemo.com.au/en/learn/market-participants/electricity-market-participants>

Transgrid responses on issues on which stakeholder feedback is sought

| AER questions | Transgrid's response |
|--|---|
| <p>We are seeking evidence from TNSPs regarding any electricity services that are currently provided by TNSPs that do not fit the definition of a transmission service, but which could not practically be provided by any other party</p> | <p>Yes:</p> <ul style="list-style-type: none"> Consulting services – TNSPs currently provide consulting services (electrical expertise) to third parties that may not fall within the transmission service definition as outlined in the Rules |
| <p>If current arrangements for preventing discrimination are considered inadequate, we may consider a rule change request that would seek to expand our ring-fencing powers to include the ability to specifically ring-fence negotiated transmission services, in addition to prescribed transmission services. We welcome feedback on this issue</p> | <p>Given there is no evidence of harm from the current functional separation arrangements, we see no justification in pursuing a Rule change to change clauses in the Rules, that have only been extensively consulted on by the AEMC.</p> |
| <p>We welcome further feedback on our approach to functional separation.</p> | <p>We welcome the AER's position on functional separation given it benefits consumers by not adding any unwarranted costs in the supply chain and utilising unique expertise to deliver increasingly large and complicated projects.</p> |
| <p>We are seeking feedback from stakeholders on the costs of functional separation where possible.</p> | <p>We support the AER's decision not to apply any additional obligations on functional separation. However, if the AER were to explore additional functional separation, we would estimate that will have an order of magnitude in the millions of dollars. However, these costs will be immaterial to the shortage of intellectual capital that TNSPs will lose in the process, or the impact on the market as a result of labour shortage. TNSPs have a highly specialised team of experts. These subject matter expert positions are currently at an extreme shortage.</p> <p>TNSPs are experiencing it more difficult to find talent to fill positions. If staff separation is imposed, this may have detrimentally consequence on the NEM as functions will need to be duplicated across the business.</p> <p>Given there is no evidence of harm, and the current framework in place is working, there is no need for additional function separation that will add pressure on an already under pressure electricity system.</p> |
| <p>We are specifically seeking feedback from stakeholders on whether a streamlined process is appropriate for battery waivers and what criteria could be used to determine which applications qualify for a streamlined assessment.</p> | <p>We do not agree a waiver mechanism is necessary for batteries. When a battery solution, that also has spare capacity to be offloaded to third parties, is identified by a TNSP as the least cost solution, this battery and customer that lease out the spare capacity, are substantially different to those that the distribution businesses deal with. Also, TNSPs only own less than 2% of registered batteries. This</p> |

| AER questions | Transgrid's response |
|---|---|
| | <p>data clearly indicates that TNSPs are not affecting competition. We would appreciate that these differences are considered in the Final Guideline.</p> <p>If the AER is minded on keeping the proposed battery restriction in the Final Guideline, we would support a streamlined process that would take weeks rather than months to finalise. Given the fast pace of change in the NEM and the current expectation to deliver projects on time whilst maintaining a secure transmission system, waiting months for a waiver determination is not prudent or efficient. In fact, it would be detrimental to networks ability to choose the best business model for consumers. Given this, we would support a streamlined process that ensures the waiver process from start to finish, is weeks rather than months.</p> |
| <p>We invite stakeholders to advise us if there are additional [existing] services that may require further consideration.</p> | <p>Yes:</p> <ul style="list-style-type: none"> • Telecommunication services – TNSPs currently provide telecommunication services that may not have a clear connection to the transmission system. These services should be able to be provided by the TNSP without a waiver. • Services provided by a TNSP that does not receive prescribed revenue. TNSPs that do not receive any prescribed revenue should not be prevented from providing “other services”. |
| <p>We are seeking stakeholder feedback on whether advocating for civil penalties in relation to guideline enforcement is an appropriate next step to follow the guideline review.</p> | <p>We do not agree with imposing civil penalties on TNSPs. TNSPs have always worked on the principle of good faith, and there is no evidence to suggest a civil penalty mechanism is required.</p> |