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AER's Ring-fencing guideline issues paper

Transgrid welcomes the opportunity to respond to the Australian Energy Regulator's (**AER**) issues paper on the Electricity Transmission Ring-fencing guideline (**the paper**). The objective of the review is to update the guideline to include negotiated transmission services. This review follows an AEMC final rule decision that empowers the AER to revise the Electricity Transmission Ring-fencing guideline (**the Guideline**) to achieve the functional separation of TNSPs' (or their related entities') prescribed transmission services and negotiated transmission services from the provision of contestable (i.e. non-regulated) electricity services.

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.

Transgrid acknowledges the role that the ring-fencing guidelines plays in promoting competitive markets by seeking to ensure a level playing field for providers in markets for contestable services, in the long-term interests of consumers.

However, we do not believe excessive regulation through restrictive and costly ring-fencing measures is in the best interests of energy consumers or an appropriate response to industry concerns. If excessive regulation is created, it will pose a risk to the market such as delays, and increased costs given the increasing number of connections and engineering expertise shortages.

Transgrid looks forward to continuing to work with the AER to ensure the Guideline is fit-for-purpose. If you require any further information or clarification on this submission, please contact Zainab Dirani, Policy and Advocacy Manager, at zainab.dirani@transgrid.com.au.

Yours faithfully



Maryanne Graham
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AER's Electricity Transmission Ring-fencing guideline review

Transgrid submission to the AER's issues paper

Summary

This submission provides Transgrid's response to the Australian Energy Regulator's (**AER**) issues paper on the Ring-fencing guideline (electricity transmission) (**the paper**), published on 23 October 2024. We understand the objective of the paper is to receive views from stakeholders to assist the AER update the Ring-fencing guideline – electricity transmission (**the Guideline**) to include negotiated transmission services.

Transgrid acknowledges the role that the Guideline plays in promoting competitive markets by seeking to ensure a level playing field for providers in markets for contestable services, in the long-term interests of consumers. In addition to providing a level playing field, ring-fencing measures are an important tool that also provide additional comfort to consumers as an extra layer of protection to minimise the risk of discrimination and cross-subsidisation.

However, the introduction of restrictive and costly ring-fencing measures that place further economic burden and costly timed delays to renewable connections is not in the best interests of energy consumers or an appropriate response to the concerns raised by the industry. Further, excessive regulation is already considered a significant market burden that is impacting the timeliness and cost of the transition to these renewable energy sources and impacting an industry already struggling with capability and capacity shortages, to deliver them

In introducing any additional ring-fencing measures, the AER should comprehensively consider the full financial, economic and environmental impact of the proposed changes to the Guideline, including costs, impact to the market (especially the energy consumer), and the timely achievement of the energy transition. This should be supported by published analysis that enables all stakeholders to fully understand the implied benefit of the review in the interests of the consumer, noting the timely delivery of the transition as a key consumer benefit. If the AER is still minded to proceed with additional ring-fencing measures, then we understand the AER is committed to:

- obtain more detailed and specific information and learn how the potential costs and impacts may vary.
- take a risk-based approach in understanding the costs and benefits of extending ring-fencing obligations.
- ensure that any new ring-fencing measures do not impose disproportionate costs on transmission network service providers' (**TNSP**) and their customers.

We understand the AEMC has provided several options to the AER, one of which is to not specify any obligations so as to avoid the risk of adding additional ring-fencing measures that have no added benefit. We urge the AER to ensure any additional measures are meaningful and do not impose unjustifiable cost to the energy consumer or industry - in each case either directly or indirectly.

The rest of our submission addresses the following key areas:

1. Cost and benefit analysis on additional ring-fencing measure.

2. Key stakeholder concerns.
3. Proposed amendments to the Guideline.
4. Waivers.
5. Transitional period.

1. Cost and benefit analysis on additional ring-fencing measure

The AER has asked stakeholders to provide potential costs and benefits of a preferred approach. However, without the appropriate time to consider this detailed analysis, the lack of a well-defined ‘problem’ and identified proposed ring-fencing measures, it will be difficult to provide a detailed cost and benefit analysis of any additional measures. However, we encourage the AER to:

- Undertake a detailed costs and benefit analysis of any additional ring-fencing measures and share these findings with industry for open discussions before adopting them in the final Guideline.
- Distinguish between real discriminatory behaviour and what is required in the National Electricity Rules (**Rules**) for a connecting party. We understand the AER undertook a survey in previous reviews of the Guideline, however the results of the survey, including comments and concerns were not shared. We encourage the AER to share any concerns¹ so that TNSPs, including Transgrid, can proactively address all concerns in a constructive and open manner.
 - For example, during the AEMC’s extensive consultation on the R1 process², it was determined that a large majority of complaints that relate to the connection process are attributed to the requirements outlined in the Rules and the required connection process.

If the issue is a perception that TNSPs are not complying with what is already required in the Rules, we suggest in the first instance a focus on compliance within the existing framework to give confidence that such fears are unfounded.

- Detail the impact of any proposed additional ring-fencing measures on:
 - The connection process and the risk of any unintended consequence of any additional measures, such as further delays to the connections process and increased costs for connectors and consumers.
 - Jurisdictions that have limited providers of contestable work.
 - The market and subsequently, the energy transition.

¹ Whilst omitting confidential information.

² See AEMC’s Enhancing investment certainty in the R1 process | Final decision

2. Key stakeholder concerns

The AER has listed several concerns expressed by stakeholders in relation to TNSPs' conduct. These include:

- A connection process will be given a lower priority by a TNSP if its related entity is not allocated some of the contestable works.
- Connections will be quoted at a lower price if the related entity is engaged for contestable services.
- A TNSP intends to arrange for its related entity to act in the capacity of the TNSP.

In unambiguous terms, the above do not reflect Transgrid's practices or conduct. Transgrid has established dedicated teams to effectively manage connections to ensure the market can quickly and efficiently connect to the grid. This approach has been developed and refined by Transgrid over a decade and aims to facilitate the connection process and ensure it is completed in a timely and cost-effective manner ultimately benefiting the consumer. Stakeholder concerns are addressed further below.

A connection process will be given a lower priority by a TNSP if its related entity is not allocated some of the contestable works

Transgrid does not prioritise connection processes based on whether Lumea, its related entity, is involved in contestable works. Negotiated service connections are handled in the order they are received. The increasing volume and complexity of renewable energy (RE) generation and energy storage projects, data centres and other load projects under development have led to significant time and effort required to process connection applications. Duplicating the customer interface provided by a TNSP's related entity will not streamline the connection process or resolve the underlying issues. In relation to this concern, we would encourage the AER to consider the following points:

- The overwhelming volume of projects seeking connection, and the complexity involved in RE project proponents reaching financial close contribute to the extensive time and effort required to process a connection application.
- The energy market faces significant challenges due to the high volume of proposed RE connections currently in development. While the number of RE projects progressing through the connection application stage is a positive indicator for the energy transition, it also increases the time and cost associated with the process.
- The involvement of Lumea does not influence how Transgrid's network connections team or the Australian Energy Market Operator (AEMO) reviews and assesses connection applications, meaning no priority is, or can be, granted to RE projects that provide contestable scope to Lumea. The primary issue, and the perceived delays, stem from the process as prescribed in the Rules and the increased volume of work and system complexity that TNSPs and AEMO must manage. Developing, finalising, and approving a connection application requires significant time and effort from the proponent, the TNSP and AEMO. This process involves multiple modelling, submissions, reviews, and impact assessments.
- Duplicating the customer interface that has been established with Lumea by implementing additional ring-fencing measures for the negotiated service aspects of the connection process would not improve the timelines for connection application approval nor the feasibility of an RE

project. It does not address the core challenges related to the generator performance standards (GPS) review process as required by the Rules, the financial complexity for RE proponents (including securing funding), the increased number of RE connections in development, or the individual and aggregate impact of those connections on the transmission system.

Connections will be quoted at a lower price if the related entity is engaged for contestable services

Transgrid does not engage in this practice. More specifically:

- The current Guideline sufficiently ensures that cost estimates for both negotiated and contestable assets are clearly separated and appropriately assigned to the correct asset type. Transgrid does not provide a different price to the negotiated connection based on whether or not the customer has engaged Lumea to deliver the contestable assets. All negotiated connection prices are negotiated in good faith in accordance with the negotiating principles for negotiated transmission services set out in Schedule 5.11 to the Rules, and are not influenced by further contestable work the customer may or may not request Lumea to provide. Furthermore, the negotiated connection price and the work involved in determining that price require the same level of analysis and engineering hours regardless of whether or not Lumea has any involvement in the RE project, as Transgrid would utilise the same designs and same estimate database to develop the negotiated connection price. Therefore, Transgrid's connection process does not allow for any individual discretion or discriminatory practices in determining the negotiated scope price that is given to any customer.
- Applying burdensome and unnecessary ring-fencing measures to negotiated services will not result in more cost-effective connections as detailed above. In fact, the counterfactual position is that energy consumers will likely be forced to accept more expensive costs for the same scope of work, with RE projects competing for resources with larger, regulated and critical projects already underway to support the transition to RE generation.
- Additionally, ring-fencing measures would complicate the process for RE proponents who prefer a combined negotiated and contestable solution. Proponents already have the choice to engage any entity for contestable assets. Introducing additional ring-fencing measures would add unnecessary complexity without providing clear benefits to cost or project timelines. Modifying the ring-fencing rules will remove options from customers who – for their own business purposes – desire to combine negotiated and contestable solutions. RE proponents should be free to have more choices, not less, to accelerate the energy transition in a cost-effective manner for the energy consumer – broader market competition is in the best interests of consumers.

A TNSP intends to arrange for its related entity to act in the capacity of the TNSP

Transgrid refutes this assertion for the following reasons:

- It is Transgrid, not Lumea, that is solely responsible for reviewing and approving negotiated connection applications.
- In the case of Transgrid and Lumea, one of Lumea's key roles is to manage interactions with the RE proponent. Transgrid's employees are the sole party responsible for performing the necessary assessments for connecting an RE project to the network. This is in accordance with the Rules³.

³ Chapter 5 of the NER. Also see AEMO connections process AEMO | Streamlined Connection Process

- Lumea does not influence assessments by the network connections team or AEMO's project assessments.

Further ring-fencing measures would not yield more cost-effective or efficient outcomes for RE project connections and therefore not consumers.

3. Transgrid's position on proposed changes to the Guideline

In the limited time Transgrid has had to consider the paper, Transgrid provides the following high-level views to assist the AER consider whether or not, and the extent to which, it updates the Guideline to extend ring-fencing obligations to the provision of negotiated services.

While Transgrid is certain that its existing processes already achieve practically the same outcome that any additional ring-fencing measures would seek to achieve, the imposition of additional regulatory obligations itself will create significant additional costs to TNSPs, connectors and ultimately to consumers which cannot be avoided. This will be primarily because, even though the desired outcome is already achieved in practice, the enshrining of specific ring-fencing measures as regulatory obligations, breach of which triggers regulatory penalties and implications, requires review of existing processes, reconfiguration of existing processes and further internal compliance measures to ensure strict compliance with those regulatory obligations. These additional costs will be incurred with little discernible overall benefit, as existing practices already achieve the outcome.

Additional ring-fencing measures that provide no discernible benefit to customers but create a connection process that is less able to deliver the increased volume of connections from RE generation and storage capacity in a timely and efficient manner, will be to the overall detriment for customers and a timely energy transition. However, if the AER still considers that negotiated services should be ring-fenced, then the AER should ensure that any ring-fencing measures applying to negotiated services are fit-for-purpose and facilitate a timely energy transition, rather than an overly simplistic extension, or replication, of existing ring-fencing obligations for prescribed services.

Whether all, some, or no negotiated services should be ring-fenced, and the manner in which ring-fencing should occur

The catch all approach to ring-fencing measures for any negotiated services – will not result in any discernible benefit to customers but will result in material cost increases.

- 1) **Existing processes are non-discriminatory:** In Transgrid's case, as explained in Section 2 above, our existing connection process does not allow for any discriminatory practices that result in cost increases or inefficiencies to the customer. Transgrid's process for pricing negotiated services relies, firstly, on a database that does not discriminate between projects where Lumea is or is not involved, and secondly, complies with Transgrid's obligations under the Rules and existing competition laws. Lumea can only provide contestable services where the customer specifically consents to it by signing a consent letter. Therefore, the legal and functional separation of Transgrid and Lumea, and the teams involved within those entities, do not allow Lumea any ability to influence the outcomes of the connection process that Transgrid is considering and progressing.
- 2) **Risk of delay and cost to connection applications:** Ring-fencing negotiated services will delay connections and create additional costs for customers. In particular, if information and staff separation requirements are imposed in respect of negotiated services, this will mean, in Transgrid's case,

customers will no longer have the benefit of working with Lumea, which can coordinate both negotiated and contestable services for a RE project connection. Dealing with a single entity provides significant time and cost savings for the Proponent, Transgrid and Lumea. Information and staff separation obligations would fundamentally require Transgrid and Lumea to run separate and parallel teams and processes to manage what is currently a single protected interface. In the context of increasing numbers of RE project connections and internal resource availabilities, this will inevitably lead to delays, inefficiencies and higher connection costs from needing all parties to deal with multiple entities, multiple agreements and multiple delivery interfaces.

Whether to expand the definition of ‘ring-fenced information’

It is unnecessary to expand the definition of ‘ring-fenced information’ in clause 1.4 of the Guideline to include all information obtained via the provision of negotiated services. The existing connection process set out in the Rules imposes an appropriate level of protection against discriminatory or anti-competitive behaviour. Rule 8.6 of the Rules imposes explicit and strict confidentiality obligations on all TNSPs in respect of the information they receive from a party seeking negotiated services. Under Transgrid’s existing connection process, information relating to negotiated services is not shared at any stage of the connection process with any affiliate or third party unless the customer specifically consents to it by signing a consent letter. This is sufficient restriction to minimise the risk of discrimination.

Whether to expand current obligations, in regard to marketing staff separation, to provision of negotiated services

Expanding marketing staff⁴ separation to the provision of negotiated services undermines the cost efficiencies that Transgrid is able to achieve for customers and consumers through a single point of customer interface, and as such does not result in any material benefit to customers.

Transgrid’s recent experience in undertaking RE project connections indicates that RE projects often require both negotiated and contestable services for connection. This is often due to RE projects seeking connection to parts of the transmission network that require augmentations or extensions, or non-contestable connection assets, to enable its connection, and which Transgrid thus provides as negotiated services. By nature, customers are able to engage any suitable person to provide contestable services and Transgrid has observed that customers do seek multiple competitive offers from different providers of the required contestable services, as is in their best interests and allows for market determined outcomes. As the number of alternative providers increase and RE penetration increases, customers are more sophisticated than ever before.

However, Transgrid currently utilises a shared services model, where certain functions within Transgrid are shared across Transgrid and Lumea, currently in strict compliance with the Guideline, again to minimise cost to customers and consumers. Expanding marketing staff separation, and noting that it is often difficult in practice to determine who is defined as marketing staff according to the current Guideline, which will result in Transgrid being unable to continue to utilise the shared services model and passing on the inherent cost-efficiencies to customers and consumers. Even if the current shared services model likely continues to satisfy additional marketing staff separation obligations should they apply to the provision of negotiated services, given the nature of a regulatory obligation and potential consequences of breach, Transgrid is unlikely to continue implementing a process that results in cost-efficiencies for Transgrid, Lumea and customers, but carries regulatory risk for Transgrid even if remote. Therefore, this separation

⁴ As defined in the [Ring-fencing Guideline \(Electricity Transmission\)](#) March 2023 | page 3

obligation will fundamentally require Transgrid and Lumea to duplicate its resourcing and processes, resulting in increased cost and practical inefficiencies

Whether to introduce restrictions on cross-branding and promotions

As the AER notes in the paper, it has previously made an explicit decision to not impose cross-branding or promotion restrictions on TNSPs, as opposed to the obligations that apply to distribution network service providers, due to different profile of customers. This continues to be the case and introducing such restrictions will not result in any additional benefit to customers.

While there are an increasing number of smaller RE generators and storage providers, Transgrid's experience is that these customers have internal resources and/or external advisers who are familiar with the industry and the market, and are capable of navigating the connections process. Industry and stakeholder feedback the AER has noted in the paper do not raise this as a concern, and it is unclear why the AER considers there may be merit to reconsidering its previous decision. In any case, implementing these restrictions will not address any industry concern or deliver any material value to customers.

What is an appropriate transitional period for TNSPs to come into compliance with any new ring-fencing obligations?

The AER has proposed a requirement for TNSPs to comply with changes related to ring-fencing of negotiated services within 9 months of the commencement date of a new guideline.

Transgrid would encourage caution in relation to this timeframe. Given it is unclear what additional measures the AER will make, there is some difficulty in commenting on whether or not 9 months is reasonable. However, we would encourage the AER to consider a period of 18 months if the AER were minded to apply significant ring-fencing changes such as legal, office and/or staff separation. If staff separation requirements are implemented, Transgrid will be required to employ additional staff and will require sufficient time for the recruitment, onboarding and training of additional personnel, new accommodation and security measures. Transgrid anticipates that there may be additional delays in this process given the tight labour market.

4. Transgrid's proposed amendments to the Guideline

We understand that customers would welcome greater transparency in the connection process. In Transgrid's view, any additional measures that the AER introduces should be pragmatic improvements without adding unnecessary complexity which could lead to further delays in connecting applicants. To improve customer confidence, Transgrid proposes that the AER considers the following:

- To promote and facilitate third party participation – TNSPs can provide connecting parties with additional information on the contestable process and third-party options, confirming there are multiple options for connection customers and affirming that connection applications submitted by connecting parties which utilise third party options for contestable infrastructure/services will not be treated any differently by the TNSP.

- Additional reporting requirements. TNSPs can provide additional reporting on negotiated services and the timeframe of the process, including those activities undertaken by external parties such as AEMO, which form part of the overall connection application process⁵.
- Promote confidence – this can be done by disclosing, at the commencement of the connection application, whether contestable services would be required by the respective proponent to ensure that negotiated asset designs are fit for purpose.
- Clearer connection application process details - noting that each connection application is already assessed by the TNSP network connections team – which is ring-fenced from the TNSP related/contestable entity via physical separation, different personnel and information barriers - and AEMO, without any preferential treatment or influence from the TNSP or its affiliated entity that is responsible for managing the connection process.

We have spent a significant amount of time over the last year in developing a transparent connection process for RE proponents – something that has had a tangible impact in recent months.

Transgrid welcomes further discussions with the AER on these proposed measures or any others that are proposed.

5. Waivers

The AER has outlined that it is considering removing the current restriction on the maximum length of waivers from the current Guideline.

Transgrid strongly supports this amendment as it provides flexibility to TNSPs and offers TNSPs with and stakeholders with greater certainty. In addition, it decreases administrative burden on TNSPs by eliminating unnecessary repeat waiver applications. This will also align the waiver requirements with other network service providers who have access to class waivers and long expiry waivers.

⁵ However each connection inquiry is assessed in accordance with the Rules and TNSPs are not totally in control of the connection application timeframes.