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Mark Feather
General Manager
Strategic Policy and Energy Systems Innovation
Australian Energy Regulator
GPO Box 3131
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21 December 2022

Dear Mark,

Ringfencing guidelines

AGL Energy (AGL) welcomes the opportunity to comment on the Australian Energy Regulator draft ring-fencing guideline for electricity TNSPs (version 4).

AGL is a leading integrated essential service provider, with a proud 185-year history of innovation and a passionate belief in progress – human and technological. We deliver 4.2 million gas, electricity, and telecommunications services to our residential, small and large business, and wholesale customers across Australia. We operate Australia's largest electricity generation portfolio, with an operated generation capacity of 10,826 MW, which accounts for approximately 18% of the total generation capacity within Australia's National Electricity Market.

Legal separation

AGL strongly supports the AER's draft position to extend the TNSP prohibition on providing generation, contestable distribution, and electricity retail supply within the same legal entity to now also prohibit TNSP provision of other types of contestable electricity services and non-electricity services, such as telecommunications. While there may be some costs involved for TNSPs in separating out existing non-transmission services, and these costs will ultimately be passed to consumers, we consider these costs will be minor compared to the efficiency benefits obtained by ensuring that investment in contestable electricity services and non-electricity services will be market driven.

Waiver approach

AGL supports the AER's draft position to replace the current allowance for TNSPs to engage in generation, distribution, and retail electricity supply activities up to a cap of 5% of their annual revenue with a waiver approach. The AER has indicated that in administering the waiver they will be able to provide greater transparency over the services being provided and allow conditions, such as reporting, to be attached. We fully support these transparency objectives and suggest mandating them in the guidelines.

The AER notes that the waiver approach will allow them to assess whether a TNSP engaging in otherwise permitted activities will lead to cross-subsidisation or using monopoly power to gain advantage in a contestable market. We suggest the assessment should be broader and must consider whether the waiver will negatively impact a contestable market. For example, even if cross-subsidisation or use of monopoly power cannot be shown, the encroachment of TNSPs into contestable markets can dissuade new entry or accelerate exits to the detriment of consumers.

We consider that assessment of impacts of this nature should be a key consideration in any waiver assessment. In instances where a TNSP may argue that the contestable market has not on its own brought about needed investment, then supporting entry by a contestable participant rather than allowing TNSP entry should be the preferred approach.



Batteries

We strongly agree with the AER's assessment that the grid-scale battery market for contestable services is in development and ring-fencing is particularly important given the nascent and emerging status of battery services markets, and that allowing TNSPs to operate without checks and balances could stifle smaller and less well-equipped market participants, harming competition and ultimately resulting in consumers paying more for services. We support the change by which TNSPs will only be able to use a battery to provide contestable services to a third party through AER waiver. If TNSP investment in a battery is only viable due to the ability for that battery to provide contestable services, then we suggest it is preferable that the TNSP contract with a generator to provide the needed network services.

Synchronous condensers

AGL considers that TNSP investment in synchronous condensers is a growing issue of concern in the NEM. While we were the only stakeholder to comment on this issue in response to the issues paper, we note that the issue was not included in the listed questions to stakeholders. Synchronous condensers exist to provide the same system services provided by synchronous plant and therefore operate in direct competition with coal, gas, and hydro generators (including decommissioned synchronous units which may operate in the market in synchronous condenser mode after exiting the market as a generator). Synchronous condensers also compete with batteries and other plant which are beginning to provide these services despite not being synchronous.

In the short term whether or not a generator provides these services, and whether or not they are needed, can determine whether or not they are dispatched and therefore network synchronous condenser can already undermine the efficient functioning of a contestable market even if these system services are not explicitly valued by the market. In the longer term these services will be explicitly valued under the new System Strength framework, the Operational Security Mechanism, and in the potential new inertia market.

The AER has used the fact that there is still significant uncertainty about how these markets will develop as justification for not specifically prohibiting TNSPs from leasing synchronous condenser to third parties to provide contestable services, however we submit that TNSP investment in synchronous condensers (rather than providing transparent information to the market for the need for these services) is a key cause of the uncertain development of these markets.

For these reasons, we strongly suggest that the TNSP operation or leasing of synchronous condensers should be prohibited and only permitted with AER waiver, as per the draft position for batteries. We consider the AER's argument that the nascent emerging status of battery services markets justifies a prohibition (and need for waivers) for batteries applies equally for synchronous condensers, especially as batteries can also provide services in competition with synchronous condensers.

Accounting and cost allocation

We support the AER's draft position that the separate accounting and cost allocation obligations on TNSPs should be strengthened.

Preventing discrimination

We support the AER's decision to implement general non-discrimination obligations to mitigate the risk of a TNSP providing a competitive advantage to a related electricity service provider in the supply of contestable electricity services. We agree that general competition law alone is not adequate to mitigate the risk of discrimination.



If you have any queries about this submission, please contact Anton King on (03) 8633 6102 or aking6@agl.com.au.

Yours sincerely,

Liz Gharghori

A/g Senior Manager Wholesale Markets Regulation