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Australian Energy Regulator
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Dear Mark,

Gaps in transmission ring-fencing

AGL Energy (AGL) welcomes the opportunity to comment on the Australian Energy Regulator Options to address gaps in transmission ring-fencing framework consultation paper.

About AGL

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 4.3 million energy 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 10,330 MW, which accounts for approximately 20% of the total generation capacity within Australia's National Electricity Market.

Question responses

1. Are there any other negotiated transmission services other than non-contestable connection services where a TNSP could potentially discriminate in favour of itself or an affiliate in providing those services?
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2. Is there any other evidence that TNSPs are discriminating in favour of themselves or an affiliate in providing contestable connection services? Are the issues encountered by connecting parties different in Victoria versus other jurisdictions and, if so, how?

There is in many cases a lack of transparency in negotiations for the provision of connection services. Connecting generators to transmission is a long slow complex process which is prone to delays that can greatly increase costs for connecting parties.

In negotiations with TNSPs on the cost of contestable connection services TNSPs will often bundle the costs as a package which includes both contestable and non-contestable services and it can be difficult to determine which costs apply to which. Where third-party alternatives exist the prices offered can sometimes be less than that offered by the TNSP at first instance. While sometimes this competitive pressure can be used to negotiate with the TNSP, third-party alternatives will not always result in an equivalent outcome, for reasons including that they need to engage with the TNSP.

Similar connection challenges occur in Victoria and can sometimes be more complicated due to the involvement of AEMO as an additional party to the connections.



3. Do the mitigating factors identified by Incenta sufficiently address the concerns raised about the ability of TNSPs to discriminate in favour of themselves or an affiliate in providing connection services? If not, why not? Are there any other mitigating factors?

The five key harms identified by Incenta are examples of potential situations which create ineffective competition in contestable connections. While the mitigating factors Incenta have identified have some impact in reducing this risk they do not eliminate the risk. Given that connection is a long complex highly detailed process and there are a wide variety of areas in which a TNSP is involved, we consider it would be difficult for the AER to effectively monitor and therefore enforce the regulatory regime.

In regard to the risk of harm through information sharing we note that it is both use of information obtained from connecting parties and use of TNSP information which may not be available to third-party providers of contestable connection services which is relevant. It may be that the existing ring-fencing provisions would not entirely address this issue. For example:

- the staff separation provisions in the Ring-Fencing Guidelines relate only to 'marketing staff' not having a role in two affiliated entities; and
- there is a practical question as to how TNSP's comply with the obligation in clause 4.2.3(a) of the Ring-Fencing Guidelines, including to which other legal entities such information must be shared, in what form, at what time and whether it is practically possible for regulatory bodies to effectively monitor this.

4. Does the Victorian framework for contestable transmission limit the ability of the incumbent DTSO to discriminate in favour of itself or an affiliate? If not, why not? Are there any other mitigating factors?

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5. Why do stakeholders consider that third party providers are not being engaged to provide contestable connection services? Is there any evidence available to identify the cause(s) of the apparent lack of third party providers being engaged to provide contestable connection services?

Despite the complexity of the works required in many cases, our experience is that contestable connection services often occur quite smoothly when undertaken by an affiliate of a TNSP.

6. Are existing measures in the NER sufficient to prevent TNSPs from discriminating in favour of themselves or an affiliate in providing connection services? If not, why not? Are there barriers to a connecting party reporting non-compliance with specific rules or using the dispute resolution process to resolve concerns about discriminatory behaviour by TNSPs?

The ability to connect efficiently to a network is of crucial importance for a connecting generator, as delays can lead to significant cost blowouts. However, connection is a hurdle that must be overcome before a generator can start generating income and it is only one aspect of the relationship between generators and TNSPs who provide a broad suite of services for generators on a monopoly basis. Therefore it will often not be in the interest of a connecting party to challenge perceived discriminatory behaviour. In addition, connecting parties and the AER (as indicated in this consultation paper) have low visibility over the provision of contestable connection services. As a result, the existing measures in the NER are insufficient to mitigate the concerns identified in the consultation paper.

7. Are there any benefits in the AER having the ability to impose functional separation between negotiated transmission services and non-regulated services where the costs of doing so are outweighed by the benefits? What are those benefits?



We consider there are benefits from greater transparency, and that ring-fencing can assist in this regard. However, a key question is whether it is practically possible for regulators to effectively monitor and enforce TNSP ring-fencing obligations.

We consider there are benefits from measures that build market confidence in compliance, and that ring-fencing can assist in this regard. The mere possibility, or perception, of discrimination could create uncertainty in the market that could impact commercial decision-making, and competition, to the detriment of customers and the industry as a whole.

8. What measures do TNSPs currently take to ensure they are complying with their obligations in Chapter 5 that support contestability for connection services? How transparent are these measures?

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9. In Victoria, is the combination of the new information access and disclosure obligations under the Transmission Ring-fencing Guideline (Version 4) and the contestability framework in Victoria sufficient to curb any potential discriminatory behaviour by the incumbent DTSO in respect of information sharing? If not, why not? What gaps remain?

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10. Are there any concerns about the ability of an incumbent DTSO to discriminate in respect of other elements of a connection, such as delays to works that only the incumbent DTSO can perform, and costs associated with those works?

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11. Would Option 1 sufficiently address any concerns that TNSPs are using their market power to discriminate in favour of themselves or an affiliate in the provision of connection services? What clauses in Chapter 5 of the NER should TNSPs be required to report compliance with? Should Option 1 extend to requiring TNSPs to report certain connection information and, if so, what information should be required? How effective would this option be in addressing concerns about potential discriminatory behaviour in Victoria?

We consider that greater regulatory oversight would assist to ensure compliance and should be implemented, however we do not consider it would sufficiently address the concerns raised in the consultation paper.

12. Would Option 2 sufficiently address any concerns that TNSPs are using their market power to discriminate in favour of themselves or an affiliate in the provision of connection services? If this option were to be implemented, should clauses of the NER that currently address discriminatory behaviour in respect of connections, such as those relating to information access and disclosure be shifted to the Guideline?

Extending the ring-fencing framework to incorporate negotiated transmission services would in our view be a positive step which would mitigate the concerns identified in the consultation paper. We suggest this should be coupled with the greater regulatory oversight contemplated under option 1, as the effectiveness of the ring-fencing framework will depend on whether it is practically possible for regulatory bodies to effectively enforce and monitor the obligations. We suggest the AER's objective in choosing how to implement ring-fencing should be to grow meaningful participation by third-party providers in as many areas of contestable connections services as possible, as this will be the best indicator of effective competition.



13. Are there any other options that we should consider? How would any additional options address the identified issue?

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14. Will additional transparency and/or functional separation address concerns with the contestability framework or are there other fundamental challenges with the framework that mean that competition will always be challenging to promote?

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15. How else would the two options contribute to the NEO compared to the status quo? Alternatively, what advantages in terms of the NEO does the status quo have compared to the two options identified?

The consultation paper's assessment of how the two options contribute to the NEO is accurate.

16. What other benefits could arise under either option that we have not identified here?

Functional separation should lead to more effective competition, leading to more efficient contestable connection services to the benefit of connecting parties and consumers.

17. What other costs could be incurred under either option that we have not identified here? Would any other stakeholders incur costs? Can likely costs to TNSPs of each option be quantified?

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18. What other impacts could be incurred under either option that we have not identified here?

Given the connection challenges experienced by many connecting generators and the lack of transparency experienced in contracting for contestable connection services it's possible that the flow on effect of the changes proposed will be improved relationships between generators and TNSPs due to reduced uncertainty.

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