

4 April 2024

Australian Energy Market Commission
Level 15, 60 Castlereagh Street
Sydney NSW 2000

Submitted at: aemc@aemc.gov.au

ERC 0371

Dear Ashwin Raj,

Australian Energy Council – Draft Rule Determination - Expanding the transmission ringfencing framework

The Australian Energy Council (AEC) welcomes the opportunity to respond to Draft Rule Determination - Expanding the transmission ringfencing framework.

The Australian Energy Council (AEC) is the peak industry body for electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. Our members collectively generate the overwhelming majority of electricity in Australia, sell gas and electricity to millions of homes and businesses, and are major investors in renewable energy generation. The AEC supports reaching net-zero by 2050 as well as a 55 percent emissions reduction target by 2035 and is part of the Australian Climate Roundtable promoting climate ambition.

Overview

The AEC notes that in submissions to the consultation paper, a variety of stakeholders, including retailers, generators, gentailers, consumer advocacy groups, distribution network service providers, transmission developers and peak industry bodies, all expressed the view that the risk of discrimination during the connections process is a material problem that should be addressed urgently.¹

Like the AEMC, the AEC considers that it is not necessary to establish that TNSPs have engaged, or are engaging, in discriminatory conduct. There are legitimate reasons why connecting parties may be reluctant to provide direct evidence of discriminatory conduct and that proving discrimination would be difficult. But there is an apparent risk that TNSPs could discriminate and this reduces confidence in the effective competitiveness of the market for contestable connection services, and therefore the regulator should be provided with the tools to address this.

Flexibility to address the risk of discriminatory conduct.

Whilst providing the tools to address the risk of discriminatory conduct, the draft determination only provides the AER with the power to specify (or not to specify) ringfencing obligations in relation to negotiated transmission services in its Guidelines and does not compel the AER to do so. This is of concern given that the majority of stakeholders (except for TNSPs) contended that the risk of discrimination is material and exists. Instead, the AEMC proposes that the AER will consider the need for any obligations on TNSPs to ring-fence negotiated services from non-regulated transmission services.

The AEC believes that having all negotiated services being ring-fenced as the default position and removing draft rule 6A.21.2 (a1) that gives the AER flexibility to carve out obligations, is a superior approach. Industry has a general view that the AER has a low appetite for ring fencing

¹ AEMC, Expanding the transmission ring-fencing framework, Draft rule determination, 22 February 2024

enforcement and that it generally approves waiver applications too readily, even when competition concerns are raised. This historical performance means that there is low industry confidence that this will be addressed adequately in Guideline. The AEC would also like to see a shorter implementation time frame than 12 months, given both the critical need for change and the effect that delays will have on confidence and competition.

Whilst stakeholders would be able to provide feedback in response to the AER's consultation on any changes to its Guidelines, it has been identified in the AEMCs considerations that connecting parties, whether large or small, are reluctant to raise concerns about a primary TNSPs behaviour given the need for an ongoing working relationship with the TNSP as the only entity that can facilitate a connection to their network.² Thus it would appear that the very problem that the AEMC draft is intended to fix will remain a hurdle for future consultation as well. Hence our preference for an explicit direction in the draft to the AER to address the risk of discriminatory conduct and why we regard this proposed discretionary approach as a sub optimal outcome and would have preferred explicit direction to the AER. But nonetheless in the absence of any other option we still support the draft.

Please contact the undersigned at David.Markham@energycouncil.com.au should you wish to discuss.

Yours sincerely,

David Markham
Australian Energy Council

² AEMC, Expanding the transmission ring-fencing framework, Draft rule determination, 22 February 2024