

13 November 2024

General Manager Policy
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Lodged electronically via AERringfencing@aer.gov.au

Dear Ms Jolly,

Ring-fencing guideline (electricity transmission) – negotiated services updates

Nexa Advisory welcomes the opportunity to provide a submission on the AER’s transmission ring-fencing guideline (‘Guideline’) issues paper.

Nexa is a ‘for purpose’ advisory firm. Our unwavering focus is accelerating the clean energy transition in a way that provides secure, reliable, and affordable power for consumers of all types. Nexa Advisory is a team of experienced specialists in the energy market, policy and regulation design, stakeholder engagement, and advocacy. We work with public and private clients including renewable energy developers, investors and climate impact philanthropists to help them get Australia’s clean energy transition done.

We support the AER in upholding strong ring-fencing provisions for Transmission Network Service Providers (TNSP) – and strongly support the similar arrangements in place for Distribution Network Service Providers (DNSP). Ring-fencing rules ensure competition is maintained and that regulated monopoly network businesses do not hinder innovation from third-party service providers, for services which can be effectively delivered by the market.

Ultimately, genuine competition in the provision of new transmission infrastructure has the potential to improve the delivery of these assets, resulting in timely and cost-effective connections. We have previously discussed this in the context of transmission contestability¹, though consider the same principles would apply around ring-fencing of negotiated services.

Following the AER’s rule change request and the AEMC’s final determination to amend rule 6A.21.2 of the National Electricity Rules, it is important for the AER’s Guideline to clearly articulate the negotiated transmission services that are subject to ring-fencing.

As noted in both the AEMC’s consultation and current Issues Paper, the number of new connections will continue to increase as we progress through the energy transition, resulting in a range of negotiated shared transmission and connection services being sought by connection applicants. Given the scale of assets connecting to the transmission network, the cost of these negotiated services (as part of the broader connection process) is a major consideration within the business cases of connecting parties. This is why the perception of any discrimination throughout the negotiation or provision of negotiated transmission services must be clearly managed by the AER.

¹ Nexa Advisory, [Transmission Contestability in Australia](#), June 2023

We consider that the key outcomes of any amendments to the Guideline are:

- the extension of ring-fenced information (i.e., between TNSPs and related entities)²;
- additional reporting around negotiated services³, which would provide transparency to market participants and connection applicants to better understand the negotiation process - including around connection timeframes and the activity of non-incumbent providers of contestable services.

It is critical that the amended Guideline specifies how the additional reporting and compliance will be enforced by the AER. This would detail the penalty regime that the AER would apply to TNSPs in the event of any breaches outlined in the Guideline (e.g., inadequate functional separation).

The waiver mechanism should only be used in limited circumstances

The above amendments to the Guideline would be undermined by the possibility of the AER granting waivers to regulated TNSPs. We have previously discussed that the Community Battery waiver for DNSPs presents a risk to competition and does not guarantee that benefits would flow to consumers⁴. We consider that if the Guidelines specify the negotiated services and any functional separation necessary to achieve the above discussed outcomes, this will mitigate the need for an additional waiver process⁵.

As such, we consider the AER's proposal to remove the limits for waiver duration periods would have adverse market implications and be contradictory to the intention of these amendments.

Additionally, the AER must provide transparency around the waiver application process (e.g., via a waiver register), in addition to the compliance of TNSPs with the other elements of the Guideline. We note the existing obligation for TNSPs to maintain a waiver register under the current Guideline. However, the AER should also have a responsibility to provide transparency around these applications, by setting clear objectives when granting waivers to ensure any assumed benefits for the TNSP are achieved. This is an important element of regulatory performance monitoring which would allow for evaluation of any decision by the AER to grant a ring-fencing waiver⁶.

Thank you for the opportunity to provide input to the Issues Paper. We welcome the opportunity to further discuss any aspect of our report or submission - please contact either myself or Jordan Ferrari, Director - Policy and Analysis, jordanferrari@nexaadvisory.com.au.

Yours Sincerely,

Stephanie Bashir
CEO and Principal
Nexa Advisory

² Discussed in Chapter 3 of the current Issues Paper

³ Discussed in Chapter 3.3 of the current Issues Paper

⁴ Nexa Advisory, [AER Ring-fencing class waiver Community batteries submission](#), January 2023

⁵ This aligns with the AEMC's discussion in Chapter 3.2.2 of its [final determination](#)

⁶ We note that there is also no obligation for ongoing evaluation, reporting or monitoring of waiver decisions for distribution ring-fencing