

15 December 2022

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Australian Energy Regulator
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Lodged by email to: AERringfencing@aer.gov.au

Dear General Manager,

Response to Draft *Ring-fencing Guideline (Electricity Transmission)*

The Clean Energy Investor Group (CEIG) welcomes the opportunity to provide feedback to the Australian Energy Regulator (AER) on the *Ring-fencing Guideline (Electricity Transmission) - Draft* (Draft Guideline) published on 4 November 2022.

CEIG represents domestic and global renewable energy developers and investors, with more than 11GW of installed renewable energy capacity across more than 70 power stations and a combined portfolio value of around \$24 billion. CEIG members' project pipeline is estimated to be more than 18GW. CEIG strongly advocates for an efficient transition to a clean energy system from the perspective of the stakeholders who will provide the low-cost capital needed to achieve it.

KEY POINTS

- CEIG supports the strengthening of the Ring-fencing Guideline to improve competition.
- CEIG is concerned that Battery Energy Storage Systems (BESS) owned by Transmission network service providers (TNSPs), or their affiliates, might obtain favourable treatment during the expensive and very time-consuming grid connection process.
 - CEIG welcomes the establishment of an information sharing protocol and disclosures which aim to address concerns of TNSPs, or their affiliates, being favoured when connecting batteries however,
 - CEIG supports a rule change as suggested by the AER that would expand the AER's ring fencing powers to include the ability to specifically ring-fence

negotiated transmission services, in addition to prescribed transmission services.

- Waiver conditions imposed must ensure that BESSs owned by TNSPs, or their affiliates, are not able to obtain favourable treatment during the grid connection process.
 - The Guidelines must be strict around waiver applications: at a minimum, before submitting a waiver, TNSPs need to demonstrate that they have gone through the market for services and batteries.
 - Public notification of waiver applications should occur (not ‘may occur’); waiver applications should be made public and open to public comments.
- While there appears to be obligations for a TNSP not to give favourable treatment to its own BESS projects, it is not clear how non-compliance would be detected and this requirement enforced.
 - Since grid connection application processes are not made public, and considering the obvious conflicts in this space, providing some transparency is critical and a TNSPs’ BESS may need to have greater obligations placed on them.
- A robust TNSP civil penalty regime must underpin the Guidelines to ensure that enforcement of the ring-fencing Guidelines is consistent across DNSPs and TNSPs and to boost consumer and investor confidence around how the TNSPs engage in their efforts to decarbonise the National Electricity Market (NEM). CEIG supports the AER taking relevant steps to progress this issue.

Grid connection process

CEIG welcomes the AER’s acknowledgement that there is a risk that TNSPs can use their monopoly power to achieve favourable outcomes in providing transmission connection services and that the existing framework is not functioning as well as intended.

CEIG is concerned that BESS owned by TNSPs, or their affiliates, might obtain favourable treatment during the expensive and very time-consuming grid connection process.

To address these concerns, CEIG welcomes the AER’s introduction of the concept of ‘related electricity service provider’ that includes TNSP’s affiliates and parts of a TNSP that provides contestable electricity services.

Furthermore, CEIG welcomes the establishment of an information sharing protocol and the requirement of TNSPs to establish, maintain and keep an information register.

CEIG supports the introduction of a new obligation on TNSPs that mirrors the guideline’s non-discrimination and information access and disclosure provisions to third party service providers who provide services to TNSPs.

Although CEIG welcomes the ability to raise concerns with the AER in respect of TNSP conduct in the provision of connection services, the current arrangements are inadequate and CEIG supports a rule change as suggested by the AER that would expand the AER's ring fencing powers to include the ability to specifically ring-fence negotiated transmission services, in addition to prescribed transmission services. Considering the lengthy rule change process, the AER should be granted the ability to raise a rule change on this matter as soon as possible.

Waivers for energy storage projects

CEIG welcomes the AER's acknowledgement that TNSPs don't have a role in owning and/or operating batteries for purposes other than as an input into providing prescribed transmission services. As such, CEIG supports the AER's comments that it is appropriate to explicitly restrict the leasing of spare capacity from batteries without a waiver.

As the AER highlighted in the Draft Guideline, waivers provide greater transparency, allowing the AER to provide the market with greater confidence that TNSPs are not cross-subsidising or using their monopoly power to gain an advantage in a contestable market.

CEIG supports the AER's assessment that cross-subsidisation and discrimination are concerns that need to be mitigated and as such welcomes the AER's initial view that waiver conditions imposed on TNSP aim to ensure there is transparency over the leasing arrangements between the TNSP and the third party.

Furthermore, waiver conditions imposed must ensure that BESS owned by TNSPs, or their affiliates, are not able to obtain favourable treatment during the grid connection process. The Guidelines must be strict around waiver applications: at a minimum, before submitting a waiver, TNSPs need to demonstrate that they have gone through the market for services and batteries.

Finally, CEIG considers that public notification of waiver applications should occur (not 'may occur' as per Section 5.3.2 (b)); every waiver application should be made public and open to public comments. Publishing a register of waivers after they have been granted has only limited use.

The Guideline should address those risks to competition and ensure that independently owned and TNSP-owned BESS are treated equitably.

Enforcing obligations for a TNSP to not give favourable treatment to its own BESS project

While there appears to be obligations for a TNSP not to give favourable treatment to its own BESS projects, it is not clear how non-compliance would be detected and this requirement enforced.

Since grid connection application processes are not made public, it is not clear how the AER or a market participant would find out if a TNSP BESS was provided more lenient grid connection standards, was able to skip a connection process step and/or was prioritised ahead of a private BESS. Considering the obvious conflicts in this space, providing some transparency is critical and a TNSPs' BESS may need to have greater obligations placed on them.

Civil penalties non-compliance

Under the current arrangements, CEIG understands that the TNSPs are not subject to a civil penalties non-compliance regime. CEIG believes that a robust TNSP civil penalty regime must underpin the Guidelines, similar to that for DNSPs, and CEIG supports the AER taking relevant steps to progress this issue (as per explanatory statement section 7.2).

This is necessary to ensure that enforcement of the Guidelines is consistent across DNSPs and TNSPs and it would boost consumer and investor confidence around how the TNSPs engage in their efforts to decarbonise the NEM.

CEIG thanks the AER for the opportunity to provide feedback on the Draft Guideline and looks forward to continued engagement. Our Policy Director Ms. Marilyn Crestias can be contacted at marilyne.crestias@ceig.org.au if you would like to further discuss any elements of this submission.

Yours sincerely,



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