50 Camberwell Road Hawthorn East VIC 3123

28 January 2025

Mr Mark Feather

General Manager Policy

Australian Energy Regulator

Lodged via email to: AERringfencing@aer.gov.au

Dear Mr Feather,

Response to AER's proposed changes to the Ring-fencing guideline (electricity transmission)

The Clean Energy Investor Group (CEIG) welcomes the opportunity to provide feedback on the Australian Energy Regulator's proposed changes to the Ring-fencing guideline (electricity transmission) published in December 2024.

CEIG represents domestic and global renewable energy developers and investors, with more than 16GW of installed renewable energy capacity across more than 76 power stations and a combined portfolio value of around $38 billion. CEIG members' project pipeline is estimated to be more than 46GW across Australia. CEIG strongly advocates for an efficient transition to a clean energy future on behalf of the investors who will provide the low-cost capital required for this transition.

Key Points

- **CEIG largely supports the proposed changes to the ring-fencing guideline (electricity transmission).**
- CEIG agrees that **all negotiated services should uniformly be subject to ring-fencing obligations.**
- CEIG supports the requirement that **TNSPs must not discriminate between a RESP and its competitors** when providing prescribed or negotiated transmission services.
- CEIG believes **further measures should be considered to increase transparency and address challenges in accessing pricing information from TNSPs,** including:

  - **Require TNSPs to provide detailed, unbundled breakdowns of regulated and contestable pricing.**
  - **Mandate that the regulated scope adhere strictly to regulated returns.**
- **CEIG supports the extension of information access and disclosure requirements for TNSPs.**
- **CEIG requests a fair process for proponents to challenge contestable services without discrimination.**
- **CEIG endorses increased public reporting requirements for TNSPs** but urges future amendments to the ring-fencing guidelines to **incorporate strong audit and compliance measures.**
- **CEIG supports removing the maximum term for waivers** to enhance flexibility but emphasises the **need for more transparent waiver application processes** to address potential preferential treatment of BESS assets by TNSPs in grid connections.

GENERAL COMMENTS

CEIG has previously supported updates to the ring-fencing guideline that aim to improve competition[1,2,3,4]. CEIG largely supports the proposed changes to the ring-fencing guideline (electricity transmission) and support the AER's decision to retain the current staff separation obligations and not extending restrictions on cross-branding and promotions. We also acknowledge and value the clear guidance provided on transitional arrangements, which aids in implementation clarity.

Position on proposed changes

Whether ring fencing should be applied to classes of types of negotiated services

CEIG agrees with the proposed change that all negotiated services should be uniformly subject to ring-fencing obligations. This change reduces uncertainty and ambiguity in the application of the guidelines and promotes a more consistent regulatory framework.

Extending the non-discrimination clause to negotiated services

CEIG supports the requirement that Transmission Network Service Providers (TNSPs) must not discriminate between a Related Energy Service Provider (RESP) and a competitor of a RESP in connection with the provision of prescribed or negotiated transmission services. Such measures are vital to ensuring fair competition and reducing potential conflicts of interest. Preventing discrimination in negotiated services and increasing fair competition may also reduce connection times, given the lengthy TNSP delivery timelines for negotiated services work, and help achieve our energy transition targets.

In addition, CEIG believes further measures should be considered to increase transparency and address challenges in accessing pricing information from TNSPs. Specifically, CEIG has concerns regarding bundled pricing estimates provided by TNSPs,

[1] CEIG (Jul-22) Response to Ring-fencing Guideline Electricity Transmission - Issues Paper
[2] CEIG (Dec-22) Response to Draft Ring-fencing Guideline (Electricity Transmission)
[3] CEIG (Apr-24) CEIG response to the AEMC's consultation on expanding the transmission ringfencing framework
[4] CEIG (Nov-24) Response to AER's Issues paper on the Ring-fencing guideline (electricity transmission)

which often obscure the breakdown between regulated and non-regulated pricing. This lack of transparency creates difficulties in whether regulated pricing indeed aligns with expected regulated returns or whether they are also based on the higher commercial returns expected for non-regulated activities.

For example, it could be difficult to engage competitors to a TNSP's RESP for contestable work, especially where the contestable scope has already been granted to a TNSP RESP and timing constraints, such as an impending 5.3.4A negotiated access standard deadline, make it impractical to reconsider other competitors. In such cases, TNSPs may only provide price estimates with an approximate percentage split between regulated and contestable components, limiting stakeholders' ability to interrogate the pricing or assess the cost drivers effectively.

To address this, CEIG recommends incorporating a specific requirement into the non-discrimination clause to mandate greater transparency in TNSP pricing practices. This could include:

- A requirement for TNSPs to provide an unbundled and detailed breakdown of regulated and contestable pricing components in all pricing estimates and final offers.
- An explicit obligation to ensure that the regulated scope attracts only the regulated return, with evidence of compliance provided as part of pricing disclosures.

Such measures would strengthen stakeholders' ability to evaluate pricing and foster greater trust in the fairness of TNSPs' practices.

Expanding ring-fenced information requirements to negotiated services

CEIG supports the extension of information access and disclosure requirements in the draft guidelines. Enhanced disclosure obligations are key to promoting transparency and accountability.

It is also important to ensure that proponents have a process to challenge contestable services without discrimination from TNSPs. For example, a TNSP could indicate directly or indirectly, that pursuing competition in contestable services might lead to project delays or increased risks for the proponent, such as extended negotiations for Connection Access Agreements. This pressure would then compel proponents to prioritise certainty over potential cost savings or contractual benefits with non-TNSP entities.

Strengthening these provisions will help ensure a level playing field by reducing the risk of TNSPs leveraging non-public customer or connection information to favour related entities.

Reporting on negotiated services

CEIG endorses the proposal to increase public reporting requirements for TNSPs. Increased reporting will also encourage more competition in the provision of contestable connection services, benefiting the sector overall.

Fully contestable works should be accompanied by detailed specifications, allowing proponents to seek cost-competitive alternatives. However, this does not appear to be consistently implemented in practice. CEIG would support future amendments to the ring-fencing guideline with strong audit and compliance measures, beyond just reporting, that enforce and enhance this level of transparency. Greater transparency is crucial for fair competition and boosting investor confidence in the clean energy sector.

Removing the maximum term for waivers

CEIG supports the removal of the maximum term for waivers, as this change will provide greater flexibility in tailoring waiver terms to individual cases. However, we further advocate for the establishment of more transparent waiver application procedures, particularly regarding TNSPs' preferential treatment of Battery Energy Storage System (BESS) assets during the grid connection process.

Addressing preferential treatment in grid connections

As highlighted in the draft guidelines, the number of new connections by both renewable generators and storage providers to the transmission network has significantly increased and will continue to rise. In our previous submissions to the ring-fencing guidelines changes, CEIG has called for more stringent guidelines to address potential favourable treatment of BESS assets during the grid connection process, which can be costly and time-consuming.

CEIG appreciates the guidance on documenting material variations in agreements, particularly regarding the utilisation, ownership, or control of BESS assets. The clear restriction on TNSPs entering into new agreements or materially varying existing agreements to grant third parties the right to use energy storage devices – except for network support services – is an important safeguard against preferential treatment.

CEIG thanks the AER for the opportunity to provide feedback on its proposed changes to the ring-fencing guideline and looks forward to continued engagement on those issues. Our Head of Policy and Advocacy 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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