

5 April 2024

Ashwin Raj
Senior Advisor – Networks and Technical
Australian Energy Market Commission
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By email: ashwin.raj@aemc.gov.au

Dear Mr Raj,

Draft rule determination – Expanding the transmission ringfencing framework

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) draft rule determination on Expanding the transmission ringfencing framework (the draft rule determination).

PIAC broadly supports the draft rule determination. We agree with the intent to curtail the potential for discriminatory behaviour, regardless of whether such behaviour has actually occurred or not.

We agree the AER should be given flexibility to impose conditions on a bespoke basis in order to minimise the imposition of unnecessary costs on transmission service providers (TNSPs).

However, our support is predicated on:

- the Australian Energy Regulator's (AER) Transmission Ringfencing Guidelines (the Guidelines) being robust and fit for purpose, and
- the AER being very effective at anticipating all forms of potential discrimination.

These are substantial and important qualifiers.

PIAC supports the 12-month timeline proposed by the AEMC for the AER to review, update and publish the Guidelines. The process of consultation should start as soon as possible as the two key tasks of the review are sizeable. They are:

- To define a set of principles underpinning an AER-discretion based regime that balances the aims of curtailing all potential discriminatory behaviour by TNSPs with allowing the particular advantages of TNSPs, such as institutional knowledge, to return value to consumers.

- To develop a catalogue of possible modes or expressions of discrimination that the AER will be tasked with managing (much as the AEMC has begun in the draft rule determination on pages 16-17).

The ringfencing regime rests on market participants' assessments of the AER's efficacy.

While we see the two tasks above as possible, we retain some concerns.

A catalogue of all possible forms of possible TNSP discriminatory behaviour is likely to be very extensive. It is unlikely to ever capture every possible expression of discrimination.

We propose that the AER is not tasked solely with anticipating or recognising all forms of discriminatory behaviour. Market participants – both the procurers of contestable services such as generators and storage providers and third-party providers of those services – should be able to raise allegations of, or concerns about, discriminatory behaviour with the AER.

There would need to be a clear mechanism by which market participants could do this confidentially, and to have assurance that any action taken by the AER does not implicate the market participant as an aggrieved party. This measure is key to precluding any fears a generator facing discriminatory behaviour may have about potential retaliatory action or other perceived disadvantage resulting from their complaint.

The powers bestowed on the AER in the draft rule change also appear to be limited to preventing the possibility of future discriminatory behaviour. There is no (new) cost or penalty to a TNSP being found to have engaged in discriminatory behaviour in the past.

If market participants believe that TNSPs are inadequately disincentivised to engage in new forms of discriminatory behaviour – at least until this behaviour is recognised – they will continue to eschew third party providers in favour of TNSPs or their affiliates. The risks of incurring costs from discriminatory behaviour will remain too high, and the benefits to consumers of increased competition in the provision of these services will not be realised.

The AER needs powers to impose costs on TNSPs found to have engaged in discriminatory behaviour in order for the regime to function as intended.

Other hindrances to competition

It may be the case that the ringfencing settings currently imposed on distribution network service providers (DNSP) limit their capacity to most effectively compete with TNSPs in the provision of a number of the contestable services relevant to this rule change determination.

If that is the case, and DNSPs are able to draw on their existing technical knowledge and resources to compete effectively with TNSPs, their affiliates, and third-party providers, there are benefits to consumers in allowing them to.

While the issue may be out of scope for this rule change determination, the AEMC should consider reviewing the ringfencing arrangements pertaining to DNSPs to assess whether they, too, are hindering competition in ways that are suboptimal for consumers.

We welcome the opportunity to meet with the AEMC and other stakeholders to discuss these issues in more depth. Please contact me at mlynch@piac.asn.au regarding any further follow up.

Yours sincerely,

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