

9 June 2023

Mr Mark Feather
General Manager, Strategic Policy and Energy Systems Innovation
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Submitted by email to AERringfencing@aer.gov.au

Dear Mr Feather,

Options to address gaps in transmission ring-fencing framework – Consultation Paper

PIAC welcomes the opportunity to respond to the Australian Energy Regulator's (AER) consultation paper on options to address gaps in transmission ring-fencing framework (the paper).

We support the intent to bolster competition in the provision of contestable services and help drive down energy prices for consumers. We consider it prudent to act to curtail the potential for discriminatory behaviour, regardless of whether such behaviour has actually occurred or not.

Option 2 proposed in the paper is preferable. This option includes the reporting and compliance measures in Option 1 but provides the AER with additional tools to directly address discriminatory behaviour when it appears.

PIAC supports Option 2

The costs of connection are a substantial component of project costs, and a growing component of overall energy system costs. This results from a growing number of generators requiring new connections in the move from a thermal to renewable base. It also stems from the shrinking bargaining power of new, smaller generators vis-a-vis connection service providers, relative to traditional large thermal generators. Driving down the costs of connections has substantial potential to return revenue to generators and consumers.

To unlock this potential, the ring-fencing regime must go beyond transparency and instil trust in market participants that there will be no greater potential for adverse consequences in selecting third-party providers over regulated Transmission Service Network Providers (TNSP) for contestable services.

As the paper notes, since the regulatory changes opening a new set of services for contestable provision were introduced, few market participants have gone to third-parties for these services.

PIAC supports Option 2. It manages the potential for discriminatory behaviour more effectively than Option 1 and provides the AER clear powers to direct ring-fencing structures by the regulated provider.

While the transparency measures in Option 1 would be welcome, they would be insufficient to influence generators' consideration of third-party providers for contestable services. While the transparency measures may capture simple discriminatory behaviour, they are not well suited, for example, for ongoing relationships between market proponents and the regulated provider.

For example, a generator may choose a third-party provider in a contestable service and then engage with the regulated provider in a second transaction. In this instance It would be very difficult to prove an allegation that the regulated provider treated the market participant differently as a result of the first decision to solicit a third-party provider. This is the case despite the proposed obligations in chapter 5 of the National Energy Rules relating to the connection information the TNSP would need to provide. A set of obligations which captured all possible discriminatory behaviour, up to and including the sharing of confidential information, would need to be extremely extensive. Faced with the potential for discriminatory behaviour, not necessarily its actual occurrence, it is very likely that most market participants would prefer to forego the risk associated with choosing third-party providers for contestable services.

Investing power and responsibility for redress with the AER allows a pathway for generators to raise concerns about discriminatory behaviour by the regulated provider in a way that manages (and precludes) the risk of retaliation. In Option 1 it is not clear what action a generator should take when they believe discriminatory action is occurring. The implied prescription is to raise the concern with the TNSP, who has responsibility for upholding the ring-fencing structure, which a generator is unlikely to do.

PIAC prefers Option 2 as it provides clear powers and responsibilities for the regulator to ensure compliance with the regime. We propose a further structure is added to enable market participants to raise allegations of discriminatory behaviour confidentially and to ensure that any action taken by the regulator 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 resulting from their complaint.

Remaining issues relating to ring-fencing and storage

Other contestable services, most importantly storage, must be considered in relation to ring-fencing. PIAC's comments in our submission to the Ring-fencing Guideline Electricity Transmission Version 4 in December 2022¹ remain pertinent.

The issue of a separation based on the type of service, combined with the artificial distinction between necessary storage capacity and 'excess' capacity creates complications when a battery is jointly owned and operated by a regulated and non-regulated party.

¹ PIAC response to Ring-fencing guideline (electricity transmission) full review. 19 December 2022. Provided below.

In this instance, the ringfencing rules require the excess capacity to be owned and used by a ringfenced entity or third party. This creates practical problems concerning which entity is empowered to direct the battery at any given moment and how any actor – participant or regulator – can objectively determine when network battery capacity is ‘excess’.

This creates inefficiencies for the operators and can be expected to result in lost revenue to consumers.

PIAC does not believe consumers’ interests are served by a ring-fencing regime that prevents TNSPs from leveraging economies of scale in providing contestable services such as grid-scale batteries, assuming that the resulting savings are passed on to consumers.

To enable this, PIAC supports a waiver process as an interim measure.

We welcome the opportunity to discuss these matters further with the AER and other stakeholders.

Yours sincerely,

Michael Lynch
Senior policy officer, water and energy

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19th December 2022

Mark Feather
General Manager Strategic Policy and Energy Systems Innovation
Australian Energy Regulator

Submitted electronically

Dear Mark,

PIAC response to Ring-fencing guideline (electricity transmission) full review

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to respond to the Australian Energy Regulator's (AER) Ring-fencing Guideline Electricity Transmission Version 4 (the guideline).

PIAC supports reviewing and updating the guideline to ensure it remains fit-for-purpose as our energy systems and markets undergo significant transformation. Changes to the guideline should prioritise outcomes for consumers and we support the AER's strengthening of legal separations, commitment to transparency of costs and benefits, and consideration of compliance measures.

As our energy systems and markets continue to transform further work will be required to ensure the best outcomes for consumers. While the guideline makes good progress, we have identified areas for ongoing improvement in future guidelines, as well as processes considering cross-subsidisation, grid-scale batteries, and benefit-sharing with consumers.

Separation of regulated and contestable services

PIAC is concerned a regulatory approach requiring separation of "monopoly/regulated" and "contestable/market-based" services is outdated and does not reflect the preferences and long term interests of consumers. For example, because of this approach network service providers (NSPs), the AER and other stakeholders are being required to devise complicated arrangements for shared ownership and/or control of single batteries between two parties, one of whom is regulated and one not. This results in treating a portion of the battery capacity as 'excess' to network requirement and restricting the NSP from earning regulated revenue. An approach which is unnecessarily complicated, creating further problems which must be resolved.

Artificially separating ownership and control creates inefficiencies, complexities, and risks, eroding consumer benefits that could otherwise be realised (and shared) by regulated networks (or unregulated third party or ringfenced businesses) wholly owning and controlling batteries. By requiring the ownership and use of 'excess' capacity through a ringfenced entity or third party:

- 'Contestable' revenue streams for the battery will not accrue to consumers through regulated revenue, missing the opportunity to reduce consumer costs.
- The inefficiencies of two owners and/or operators will increase overall cost of the operation of the asset, if not the capex of the asset itself.
- The need for certainty of access and control to effectively monetise the various value streams is likely to reduce overall revenue, again at the expense of consumers.

'Excess' network battery capacity is inherently arbitrary, and hard to measure objectively and monitor transparently. An NSP generally will need to have full control and access of the battery when it is being used for network support services, regardless of how any aspects of the battery are demarcated. Predicting the nature and timing of network need for control could be very difficult. It is unlikely to be a viable business proposition for a third-party energy service provider to effectively control and access some portion of an NSP-owned battery.

Separating non-network ownership and/or operation between multiple parties does not support consumer interests and undermines the scope for optimum consumer benefit.

PIAC recommends further consideration of how greater flexibility could provide scope for better consumer outcomes. We consider a more appropriate long-term solution is likely to be incentivising NSPs to build non-network solutions optimised for the most benefit. This would involve allowing them to operate in contestable markets and requiring most of their revenue from these markets to offset revenue from their customers.

Waivers

PIAC supports clarification and strengthening of legal separation between TNSPs and affiliated entities in the guideline.

Grid-scale storage in particular will be integral to the energy transformation, and we do not want to limit the potential for these projects to be implemented cost-effectively to deliver better outcomes for consumers. TNSPs may be well-placed to leverage economies of scale in providing (currently) contestable services such as grid-scale batteries as long as the cost-savings could be reliably passed onto consumers.

Noting our earlier points on ownership and operation, PIAC supports the waiver process *as an interim measure* which can also provide a process to better understand the range of transmission responses and their potential benefits for consumers in an increasingly complex energy market. Ensuring the guideline is fit-for-purpose will be an ongoing process and waivers can provide useful data for future reviews into ring-fencing, benefit-sharing and consideration of cross-subsidisation.

PIAC supports ensuring the proposed waiver process is transparent and accessible to consumers.

Consumer Outcomes

The key considerations for further changes to ring-fencing guidelines should be how to allocate costs and benefits to provide better outcomes for consumers. Specifically:

- What does optimisation and efficiency entail in the more complex energy system and markets that are emerging?

- Are there instances where 'cross-ownership' can work to improve outcomes for consumers, for example where TNSPs also provide grid-scale batteries with appropriate benefit sharing provisions?
- Can contestable services that could be provided by TNSPs, such as grid-scale batteries, be brought into regulated services?
- Does the shared asset guideline need to be updated to more effectively and reliably share benefits with consumers in a wider range of circumstances?

Guideline Enforcement

PIAC supports the implementation of procedural consistency across the DNSP and TNSP ring-fencing guidelines. Subsequently, we support the AER exploring the ability to impose civil penalties for non-compliance of the ring-fencing guidelines as outlined in section 7.2 of the explanatory statement.

PIAC welcomes the opportunity to discuss these matters further with the AER and other stakeholders.

Yours sincerely

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