AGL Energy Limited
T 02 9921 2999
F 02 9921 2552
agl.com.au
ABN: 74 115 061 375

Level 24, 200 George St
Sydney NSW 2000
Locked Bag 1837
St Leonards NSW 2065

Mr Daniel McCracken-Hewson

General Manager

Merger Investigations

Australian Competition and Consumer Commission

Level 17, 2 Lonsdale Street

Melbourne VIC 3000

By email: Brookfield-Origin-Merger@accc.gov.au

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Dear Daniel

AGL: Brookfield / Origin submission

On 9 June 2023, the ACCC published a letter (**Market Inquiries Letter**) seeking various information relevant to its assessment of the application for authorisation from Eos Aggregator (Bermuda) LP (**Brookfield LP**) and MidOcean Reef Bidco Pty Ltd (**MidOcean**) (**Application**) for the proposed acquisition of Origin Energy Limited (**Origin**) (the **Proposed Acquisition**). We set out below AGL Energy Limited's (**AGL**) response in respect of the areas where we can provide information that we consider may assist the ACCC.

About AGL

AGL operates nationally across the energy supply chain and delivers over 4 million gas, electricity and telecommunications retail services to customers across Australia. It also operates a large electricity generation portfolio.

AGL has a variety of relationships with the entities the subject of the Proposed Acquisition as a result of its activities across the energy industry including as a supplier, competitor and customer.

AGL works extensively with electricity network operators as part of its business, including in respect of generating units that are connected through distribution and transmission networks and customers connected to those networks. AGL intends to continue to do so in future years as it connects new renewable and firming capacity, and expands its distributed energy capabilities, to support its retail operations. AGL has an ambition to supply its customer demand with up to 12 GW of new generation and firming capacity, requiring a total investment of up to $20 billion, in place before 2036. To achieve that ambition, including connecting those new assets to the grid, AGL anticipates working with closely with various electricity transmission and distribution network operators over that time period.

Key role of electricity networks

The ACCC has observed that:

> *"Maintaining and developing competition in electricity markets throughout the transition to renewable energy is of paramount importance. Well-functioning competitive markets are critical to delivering the investment needed for new electricity generation and storage capacity at an efficient cost to consumers."*[1]

[1] ACCC, Inquiry into the National Electricity Market, November 2022 Report, 23 November 2022, page 1.

Electricity networks play a key role in the national electricity market (**NEM**) and are critically important for generators, retailers and customers that are connected to them. Accordingly, it is important that the interactions between competitive markets and network businesses (including transmission and distribution networks) are fair and transparent and facilitate effective competition between participants in contestable markets that rely on those networks.

In respect of transmission networks, the AEMC has observed:

> *"Transmission networks form the backbone of the national electricity grid … Transmission networks play a key role in transporting power from generators to consumers and in facilitating competition between generators so that consumers can be provided with electricity at the lowest cost."*[2]

The connection process is a very significant part of bringing new generation to market. This is for reasons including the significant time and resources involved in obtaining connection approval. For example:

- Multiple parties are involved including AEMO, the relevant network service provider (**NSP**) and the proponent;
- There is careful consideration of many detailed factors such as those set out in Schedule 5.2 of the NER;[3]
- Highly detailed modelling of the interactions with the network, including dynamic behaviour relating to factors including system strength, powerflow and voltage impacts, is reviewed by AEMO, but increasingly being undertaken by NSPs. Multiple iterations of this modelling are typically required. Part of the complexity relates to the ongoing shift in generation technologies, and requirements in some cases for services provided by older generators to be replaced. As AEMO has observed:

  > *"In circumstances where there is low system strength … inverter-based resources (like wind and solar) may be unable to operate in a stable or predictable manner.*
  >
  > *Such undesirable performance could mean an ongoing power and voltage 'tug-of-war' between nearby generators, or even generator disconnections, which could lead to supply disruptions and cascading failures of the power system. …*
  >
  > *Maintaining system strength is the responsibility of many different organisations, including Network Service Providers … , AEMO, and some power generators."*[4]

- Augmentations and connection services may be required, which are undertaken pursuant to specific agreements involving the proponent and the NSP (or potentially a third party). Some connection services may be contestable while others may be non-contestable (such that they must be undertaken by the relevant NSP); and
- AEMO publishes a regular scorecard with information as to the range of times taken to obtain approval for connection applications.[5] As of April 2023, the average processing time for connection applications was more than 12 months with a substantial range (less than 6 months for some and more than 12 months for others) which reflects, at least in part, the different levels of complexity associated with different projects. Our experience is that projects often take longer than 12 months, and can sometimes take significantly longer than 18 months, from the connection application to obtaining connection approval for the full application (including the full capacity the subject of the application).

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[2] AEMC Transmission Frameworks Review, Directions Paper: 14 April 2011.

[3] Clause S5.2.3 of the NER refers to technical matters including design at the *connection point,* physical layout adjacent to the *connection point,* control characteristics (clause S5.2.5), communications *facilities* (clause S5.2.6), fault levels and fault clearance (clause S5.2.8). Clause S5.2.5 relates to voltage fluctuations, harmonic voltage distortion and voltage unbalance.

[4] AEMO, Energy Explained: System Strength, 15 July 2020.

[5] See example, at url: https://aemo.com.au/-/media/files/electricity/nem/network_connections/connections-scorecard/score-card-apr23-v02.pdf?la=en

Existing regulatory regime

As is noted in the Market Enquiries Letter, the existing regulatory regime contains a number of provisions relevant to NSPs, and their interactions with participants in contestable markets.

It is important that the conditions for open, fair and transparent competition in contestable energy markets are maintained, that participants have confidence that this is the case and that regulatory bodies are in a position to effectively monitor and enforce compliance with all relevant laws and obligations. This includes in respect of the relationship between participants in contestable markets and electricity networks.

One example is the ring-fencing guidelines published by the AER in respect of transmission and distribution networks respectively. Those guidelines may also be further bolstered in the future. For example, the AER is presently consulting on options identified in a consultation paper that are:

> *"intended to provide greater transparency and accountability for TNSPs in how they engage in the negotiation process to provide greater confidence that TNSPs are not discriminating in favour of themselves or an affiliated entity."*[6]

In that consultation paper, the AER observes:

> *"In consulting on and potentially pursuing these rule changes, the AER … does not require evidence that TNSPs have engaged in discriminatory conduct. Rather, it is sufficient for the AER to have concerns that in the absence of regulatory changes there is the potential for that conduct to occur and damage competition."*[7]

Another example is that energy distributors and retailers have shared customers and are required to work together to ensure that relevant information is shared between them in a timely manner. As is set out in the National Energy Retail Rules:

> *"The distributor and the retailer must give all reasonable assistance to each other, and cooperate with each other, in relation to the performance of their respective obligations and the enforcement of their respective rights in respect of the sale and supply of energy to shared customers…*
>
> *In particular, the distributor and the retailer must each use their best endeavours to provide or make available to the other at no cost and in a timely manner information or documentation that the other reasonably requires to carry out its obligations"*[8]

The evolution of the NEM

Storage and firming technologies. including batteries, will be important for the evolution of the NEM, and it will be necessary to connect such assets to transmission and distribution networks at significant scale. The AEMC has noted that the regulatory regime, and commercial arrangements by which these assets and technologies are deployed will continue to develop over time.[9]

That is in part due to the continuing evolution of these new technologies in the NEM and the range of services they can provide. The AER recently noted:

> *"since 2002 …, the scope of services that a TNSP can provide that do not clearly fall into generation, transmission, distribution or retail has expanded … Furthermore, deployment of technologies that can provide both transmission services and contestable services, such as grid-scale batteries, makes it harder to monitor and control the potential for cross-subsidisation. … To address these concerns, we have strengthened TNSPs' legal separation obligations in three main areas in the final [Ring-fencing] guideline."*[10]

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[6] AER Consultation Paper: Options to address gaps in transmission ring-fencing framework, May 2023 , page 7.

[7] AER Consultation Paper: Options to address gaps in transmission ring-fencing framework, May 2023 , page 7.

[8] National Energy Retail Rules, s94.

[9] AEMC, Rule Determination: Integrating Storage into the NEM, 2 December 2021, page I;.AER Electricity distribution Ring-Fencing Guideline Explanatory Statement – Version 3, November 2021, page 9.

[10] AER Electricity Ring-Fencing Guideline – Explanatory Statement, Version 4, March 2023.

It is important that throughout this evolution, the interactions between contestable market participants and NSPs are fair and transparent and promote effective competition (including in respect of the use of assets such as batteries that can provide multiple services).

The AER has already undertaken careful consideration of potential issues associated with the range of services that storage systems can provide. For example, as the AER noted in its most recent distribution ring-fencing guideline explanatory statement:

> *"Batteries can provide many different services. … There is likely to be value in using a single battery to provide regulated network services (or inputs to regulated network services) and contestable services. …*
>
> *Both DNSPs and other potential providers of batteries emphasised the importance of the regulatory framework encouraging efficient investment in and deployment of batteries, particularly for community-scale batteries. For DNSPs, we understand that a clear pathway to deploy community-scale batteries, where appropriate, is needed. For other providers of batteries, there needs to be robust safeguards in place to mitigate the potential risks from DNSP discrimination and cross-subsidisation in order to allow space for competition and innovation to develop. This is particularly important given the nascent and emerging status of battery services markets. …*
>
> *We consider that our approach strikes an appropriate balance … Given the speed and scope of energy transition, there are likely to be further regulatory developments in the future. We will re-examine our approach as needed to respond to developments".*[11]

In a subsequent decision in 2023, the AER granted a waiver in specified circumstances, noting:

> *"Due to concerns regarding the potential for cross subsidisation, discrimination and the subsequent impacts on competition in the market for battery services, the Distribution Ring-fencing Guideline … restricts DNSPs from leasing new energy storage devices to another legal entity without a waiver from the AER. …*
>
> *Our [February 2023] decision is to grant a ring-fencing class waiver, effective from 3 February 2023 to 30 June 2041, to waive clauses 3.1, 4.2.1 and 4.2.2 of the Guideline for battery assets funded under the Australian Government's Community Batteries for Household Solar Program …. that come within the classes and meet the criteria set out in section 4".*

Separately, the AEMC has identified an intention to prioritise consideration of the use of system charges applicable for storage assets. In 2021, the AEMC noted:

> *"In its rule change request, AEMO considered that there was a lack of clarity on how network use of system charges apply to grid-scale storage"*[12]
>
> *"The Commission's final decision maintains the existing framework to allow transmission connected storage to choose between connecting under a negotiated agreement at a negotiated price, or the prescribed service and corresponding prescribed transmission use of system (TUOS) charge. …, storage participants can choose the service they need and whether they go through the process of obtaining a negotiated or prescribed shared transmission service. New transmission–connected storage participants will be able to negotiate arrangements with Transmission Network Service Providers (TNSPs) in the same way existing storage participants have … The Commission understands that many storage proponents have negotiated very low or zero network charges with their TNSP, and does not consider any changes made in this rule change should alter those agreed charges."*

[11] AER Electricity distribution Ring-Fencing Guideline Explanatory Statement – Version 3, November 2021, page 9.
[12] AEMC Rule Determination, National Electricity Amendment (Integrating Energy Storage Systems into the NEM) Rule 2021, 2 December 2021, page 52.

"The Commission notes that the existing rules relating to prescribed transmission service tariffs were not designed for loads like storage that can respond to dynamic price signals and can be controlled to minimise their impact on, or indeed reduce, network congestion.. … The Commission considers there are broader issues that would need to be considered in relation to prescribed TUOS charges …. Further work is needed on how network prices are set for storage and other large flexible loads (e.g. hydrogen) to provide them with efficient operational and investment incentives to support the energy market as it transitions to more renewables."[13]

The number of connections to electricity networks is likely to increase in the future.[14]

As to geography, we observe electricity network infrastructure plays an important role for the location of generation and storage assets. For example, there are a number of large batteries that have been, or may be, connected at the sites where fossil fuel generators were previously connected, an approach that has efficiencies for the use of existing transmission and connection assets, which efficiencies may have a significant commercial impact. The NEM operates across multiple regions and while electricity flows between regions, and AGL operates its business on a portfolio basis, electricity networks are subject to constraints that can significantly impact commercial outcomes for generators, retailers and operators of other assets (including firming and storage assets). Financial products may in some instances be used to assist in managing inter-regional risk.

Metering is also an important aspect of the development of the NEM. Meters are designed to last many years and retailers that win new customers will in many cases take on a relationship with the entity that installed the relevant meter, including as to data and ongoing maintenance. The AEMC observed in 2022:

"Smart meters are … providing the foundation to a more connected, modern and efficient energy system that supports future technologies, services and innovations."[15]

"Under current industry practice, retailers do not generally pay for smart meter installation and capital costs upfront for small customers at the time of installation. Rather, retailers face an annualised charge that cover both the capital and operating costs of smart meters."[16]

"The financial interactions between metering providers, retailers and customers can be complicated."[17]

"smart meters should open up a range of potential service options that better integrate [consumer energy resources, such as – such as solar photovoltaic (PV) systems, home batteries and electric vehicles] into the energy system and allow customers to choose from different access and pricing services that best meet their needs and preferences"[18]

Testing of new functionalities or approaches, which assist metering providers and retailers to understand new services that may be able to be provided, are often undertaken through trials that operate for a limited time period and may involve a limited group of customers.

Efficiency

Common ownership of electricity generation and retailing activities has in the past been found to create efficiencies. For example, in 2016, the Competition and Markets Authority observed:

"*A vertically integrated firm is, for our purposes, a firm that has under common ownership electricity generation and electricity retailing activities …*

Vertical integration can also result in a range of potential benefits to firms, mostly in the form of increased efficiency"

[13] AEMC Rule Determination, National Electricity Amendment (Integrating Energy Storage Systems into the NEM) Rule 2021, 2 December 2021, pages vi - vii.
[14] AEMO NEM Generation Information lists generation projects that are publicly announced, committed and anticipated.
[15] AEMC Draft Report – Review of the Regulatory Framework for Metering Services, 3 November 2022, page i.
[16] AEMC Draft Report – Review of the Regulatory Framework for Metering Services, 3 November 2022, page 136.
[17] AEMC Draft Report – Review of the Regulatory Framework for Metering Services, 3 November 2022, page 135.
[18] AEMC Draft Report – Review of the Regulatory Framework for Metering Services, 3 November 2022, page ii.

In 2014, the Australian Competition Tribunal observed:

> *"Vertical integration is one of the key ways in which electricity retailers and generators manage the risk associated with pool price volatility. This benefit was part of the rationale for the key recommendation in the Owen Report that the State divest itself of all ownership in electricity retail and generation."*

If you have any questions in relation to this submission, please contact us.

Yours sincerely,

Leanne Hanna
Head of Competition Regulation and Strategy