

29/06/2018

COAG Energy Council Secretariat

Department of the Environment and Energy
GPO Box 787
Canberra ACT 2601

Lodged via email: energycouncil@environment.gov.au

Dear Officials

Consultation Paper - AER Powers and Civil Penalty Regime

TransGrid welcomes the opportunity to provide comments on the COAG Energy Council's consultation paper on the Australian Energy Regulator's (AER's) powers and civil penalty regime.

TransGrid is the operator and manager of the high voltage transmission network connecting electricity generators, distributors and major end users in New South Wales and the Australian Capital Territory. TransGrid's network is also interconnected to Queensland and Victoria, and is instrumental to an electricity system that allows for interstate energy trading.

TransGrid is supportive of measures that increase transparency and the integrity of the electricity market, provided the new powers strike an appropriate balance with the need to ensure there is no scope for abuse of power and individual rights are not unduly compromised.

Our comments on the specific questions raised by the consultation paper are provided below.

Consultation Question 1

The AER has powers to gather information through requiring the provision of documents, or information in writing which appear sufficient for the AER to fulfil its functions and powers. It is important that any consideration of additional powers clarifies the grounds for exercising the new power. TransGrid considers that the power to compel individuals to appear before the AER should be subject to the following limitations:

- > The powers would be most relevant to the investigation of offences and exercise of AER enforcement action, as opposed to the economic regulatory functions of the AER under Chapters 6 and 6A of the National Electricity Rules. If the power is to extend to economic regulatory functions, TransGrid considers that it should apply only to executives and senior management of the organisation, not all employees. It is not reasonable to expect all employees of any position to appear to give evidence. Ultimately, executives and senior management are accountable for the areas of business under their management.
- > In order to exercise the power, the AER should be required to have reasonable grounds for believing that the person is capable of furnishing relevant information to the matter being investigated.
- > The power should only be capable of being used to seek information relevant to a particular matter being investigated by the AER. A general power in relation to any of its functions or powers is too broad and would go further than the Australian Competition and Consumer Commission's powers in the *Competition and Consumer Act*, which are limited to specified types of matters set out in section 155(2) of that Act.

Consultation Questions 2 and 3

TransGrid considers that allowing the AER to use the information obtained in relation to any of its functions or powers is too broad. The information obtained should be used only for the specific

purpose for which it was obtained, and not more generally in relation to any of the AER's functions or powers. While the existing powers of the AER to collect information are not limited in this way, the proposed powers to compel individuals to give evidence represent a significant imposition on individual liberties, and the limitation is therefore justified to ensure the power is not abused.

Consultation Question 4

If existing penalties for providing false or misleading information will apply to the new power, procedural fairness should be afforded to the individual. The individual should be given an opportunity to prepare for the questioning and an understanding of the subject matter. The penalty should be limited to situations where the information is deliberately false or misleading or it should be a defence where information is given honestly and in good faith.

Consultation Question 7

TransGrid agrees that individuals should have the right to exercise privilege against self-incrimination.

Consultation Question 9

TransGrid agrees that a guideline should be a requirement. The guideline should be required to be consistent with the legitimate exercise of the powers and in particular set out, and not go beyond, the limitations on the exercise of the power.

Consultation Question 10:

TransGrid agrees that the provisions described in this section of the Consultation Paper should be extended to the AER's new power.

Civil Penalty Regime

It would be helpful to provide further explanation as to what is meant by "particularly significant" in the context of the civil penalty regime (see p14 of the Consultation Paper). It would also be appropriate to consider the level of risk of the significant impact occurring, such as "a breach would be *highly likely* to be particularly significant".

Consultation Questions 16 and 17

TransGrid agrees that the AER should be able to issue infringement notices for the higher penalties. However, we consider the amounts should be less than 20 per cent of the relevant civil penalty amount for the reason set out in the second paragraph under heading 3.5. We suggest an amount of 10 to 15 per cent would be more appropriate.

If you would like to discuss this submission, please contact Neil Howes, Acting Manager Regulatory Policy, on 02 9284 3748.

Yours faithfully



Caroline Taylor
Acting Executive Manager Regulation