

20 December 2024

Christine Allen  
NSW Independent Pricing and Regulatory Tribunal  
(IPART)  
Submitted online

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Dear Ms Allen

Ausgrid is pleased to provide this submission on IPART's Draft Report on its Review of electricity network operators' critical infrastructure licence conditions.

Ausgrid operates the electricity distribution network that powers the homes and businesses of more than 4 million Australians living and working in an area that covers over 22,000 square kilometres from the Sydney CBD to the Upper Hunter in New South Wales.

While Ausgrid supports most of the proposed changes to the Critical Infrastructure Licence Conditions, we are concerned that proposed drafting changes in some areas represent a significant change to current Licence conditions and will require significant alterations in business practices and additional costs. After discussion with IPART staff, we understand that these impacts are not an intended outcome of the proposed drafting changes. As a result, we encourage IPART to further review the proposed drafting changes for:

- Data security and onshore access in relation to systems that contain load data, as these drafting changes may have significant unintended impacts to Ausgrid's support and maintenance of systems and associated costs.
- Allowances for critical infrastructure providers to choose between NV1 and AusCheck security clearance procedures, which do not align with existing Commonwealth practices which favour using NV1 procedures.

We also propose drafting changes to ensure the new Licence conditions are aligned to existing conditions where relevant. **Attachment A** provides Ausgrid's response to the questions raised in the Draft Report.

We would welcome the opportunity to discuss these issues and our proposed amendments with IPART's Licence Conditions review team. To discuss this response further, please contact Anthony Colebourn, Operations & Emerging Business Tech Partner, at

[Redacted]

[Redacted]

Group Executive, Market Development and Strategy

## Attachment A – Responses to Questions

### 1. Do you consider the critical infrastructure reporting manual and applicable audit guidelines contain significant issues in complying the requirements of these documents, and if so, what are these issues?

Ausgrid recommends reviewing the following clause in the *Electricity Networks Audit Guideline* which identifies that an auditor's conflict of interest would not generally be able to be appropriately managed where: "the auditor has performed advisory services or technical functions for the network operator in relation to the particular obligation being audited or on a topic/project related to the audit subject matter within the last 2 years."<sup>1</sup>

Our experience has been that, particularly in relation to cyber security issues, there is limited market capability amongst auditors with critical infrastructure domain expertise. This clause constrains our ability to utilise the best capabilities to undertake work and risk mitigation by limiting the types and amount of work potential auditors may undertake.

### 2. Do you agree with our proposal to retain the maintenance of the distribution/transmission system conditions?

Ausgrid supports the retention of conditions in principle, however:

1. We recommend adjusting the drafting to clarify that "physical servicing of components" in this context refers to components that are taken off the 'System', serviced, and returned onto the 'System'. This would ensure that components that are taken off the system (e.g. for warranty, investigations etc) and are not returned to service on the System are outside of scope for these conditions.
2. For clarity, "Components" in this context should be defined to not include maintenance of primary assets that do not contain active equipment (e.g. electronic processor capabilities or communications capability) such as poles, pole hardware (e.g. fittings and fixtures), conductors and serviceable parts of primary assets, such as circuit breaker contacts and mechanisms.

We recommend the drafting be amended to:

"2.2 - (2) the senior officer with Network Operations or Operational Technology Responsibility approves the acquisition from, or physical servicing by, a specific person or Entity. "

This aligns the accountabilities of the Senior Responsible Officers with the equipment types and impacts proposed to be approved.

### 3. Do you agree with our proposal to retain the exception to the maintenance condition allowing for a protocol to be agreed with the Cyber and Infrastructure Security Centre?

Yes.

We recommend amending the current draft requirement "The Licence Holder must provide a copy of any Protocol or varied Protocol to the Tribunal within one week of entering or varying the Protocol." We recommend this be replaced with:

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<sup>1</sup> [https://www.ipart.nsw.gov.au/sites/default/files/cm9\\_documents/Audit-Guideline-Audit-fundamentals-process-and-findings-Electricity-networks-June-2023.PDF](https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Audit-Guideline-Audit-fundamentals-process-and-findings-Electricity-networks-June-2023.PDF) p. 4

“The Licence Holder must provide a copy of any Protocol or varied Protocol to the Tribunal within one **month** of entering or varying the Protocol.”

Our experience, particularly when co-signing documents with the Commonwealth, has been that one week may be insufficient to allow for completion of the process in all situations.

**4. Do you agree with our proposal to maintain the requirements for operation and control of the transmission/distribution system?**

Yes. However, the drafted definition of “Best Industry Practice” includes access already required by relevant Australian regulators and market and system operators to meet the Licence Holder’s obligations under Australian law.

We recommend the definition of “Best Industry Practice” be removed from the Licence conditions to avoid conflicting interactions with other regulatory requirements..

**5. Do you agree with our proposal to amend the security clearance requirements by allowing a network operator to choose between NV1 security clearance or the background checks under the AusCheck scheme?**

No. While NV1 is still a permitted option with this drafting, Ausgrid see that there are strong benefits to having only a NV1 security clearance both for the purposes of conducting background security checks, but also importantly for the purposes of key roles being able to receive security briefings as required from Commonwealth agencies.

The approach of making NV1 optional does not align with the approach of Commonwealth departments, which sponsor additional members of critical infrastructure entities to obtain AGSVA NV1 or NV2 clearances directly through them.

**6. Do you agree with our proposal to retain the data security requirements?**

Ausgrid has significant concerns with the revised Licence conditions pertaining to data security as currently drafted.

Current drafting of the Data Security requirements clause and definition of ‘*Sensitive Information*’ brings additional onshore access requirements for load data and by extension support and maintenance arrangements of IT systems that contain load data. Based on the absence in IPART’s Draft Report and the CyberCX analysis of any stated intent to change these requirements, in addition to discussions with IPART staff where it was stated that no substantive change was intended, we believe these changes are unintended.

As drafted, the clauses amount to a significant variation to current Licence Conditions. This would have significant impacts to the support and maintenance arrangements in relation to various applications and associated support costs. We note the costs of altering support and maintenance practices for applications involving load data may run into tens of millions of dollars. We strongly encourage IPART to revise its proposed Licence condition in relation to data security.

We suggest the following amendments, or similar drafting:

Data security

3.1 Subject to conditions 1, 3.2 and 3.3, the Licence Holder must ensure that all Sensitive Information is:

(1) held solely within Australia, and

~~(2) only accessible from within Australia, and~~

(3) in the case of Operational Technology Information, only accessible by a Relevant Person who has been authorised by the Licence Holder, and **only accessible from within Australia, and**

(4) in the case of Sensitive Information (other than Operational Technology Information), only accessible by a person who has been authorised by the Licence Holder.

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Sensitive Information means:

(a) Operational Technology Information,

(b) Load Data relating to, or obtained in connection with, the operation of the System by a Relevant Person, and

(c) Third Party Data that the Licence Holder obtains or accesses indirectly because a Carrier or another person transferred the Third Party Data using the Licence Holder's infrastructure.

Third Party Data includes:

(a) Communications, within the meaning of the Telecommunications (Interception and Access) Act 1979 (Cth), and

(b) personal information, within the meaning of the Privacy Act 1998 (Cth), and

(c) closed-circuit television footage.

**7. Do you agree with our proposal to remove the Bulk Personal Data requirements?**

Yes, we strongly support the removal of Licence conditions that duplicate other applicable legislation.

**8. Do you agree with our proposal to replace the data agreement provisions with a new provision enabling the Commonwealth Representative to agree to a Protocol**

Yes, this is a helpful simplification of current requirements.

**9. Do you agree with our proposal to retain the compliance reporting and auditing requirements?**

Yes, these remain appropriate.

**10. Are there any additional comments you wish to make on the draft licence conditions or the draft report?**

Licence condition 2.10 proposes that "The Licence Holder must ensure that any Director or senior officer who has undertaken a Background Check does not, based on the outcome of that Background Check, present a security risk."

Ausgrid recommends that this condition apply only to those officers referred to in Condition 2.8, as this appears to be the intent of the revised condition and to remove any ambiguity that it would also apply to other staff members, so that it reads:

“The Licence Holder must ensure that any Director or senior officer referred to in condition 2.8 who has undertaken a Background Check does not, based on the outcome of that Background Check, present a security risk.”

We also note that Directors are appointed at the discretion of our shareholders under the terms of the partnership deed. Ausgrid does not have the ability to “ensure” or enforce Licence condition 2.10 as it pertains to Directors. IPART may wish to consider alternative wording that reflects the governance arrangements of the NSW electricity networks and their shareholders.