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Friday, 11 February 2022

Ms Liz Livingstone
Chief Executive Officer
Independent Pricing and Regulatory Tribunal
PO Box K35 Haymarket Post Shop
Sydney NSW 1240

Lodged via electronic submission portal

Dear Ms Livingstone

Review of electricity network operators' licences – Issues Paper and Draft Report

NSW Electricity Networks Operations Pty Limited as the trustee for the NSW Electricity Networks Operations Trust (**Transgrid**) welcomes the opportunity to respond to the IPART Energy Network Regulation Committee's (**Committee**) Review of electricity network operators' licences - Issues Paper and Draft Report (**Draft Report**).

As the holder of a NSW Transmission Operator's Licence, Transgrid supports the NSW Energy and Environment Minister's direction to the Committee to review network operator licences to ensure they remain appropriate in regulatory practice and continue to meet public expectations of network operators.

Please find attached Transgrid's detailed submission that sets out its views on the issues and proposals identified in the Draft Report. Please do not hesitate to contact me or Hilary Priest at Transgrid should you wish to discuss any aspect of Transgrid's submission.

Yours faithfully

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Review of electricity network operators' licences

Transgrid's response to the Issues Paper and Draft Report

1. Background

The NSW Minister for Energy and Environment has directed IPART to conduct a review of licences in force under the *Electricity Supply Act 1995* (NSW) (**ES Act**). This review is being conducted to ensure that licences remain appropriate by ensuring that licences continue to reflect good regulatory practice and meet public expectations of network operators.

Included in the scope of this review is Transgrid's Transmission Operator's Licence (**Licence**) required under Section 93A of the ES Act, issued in December 2015 and varied in November 2017. Transgrid's Licence authorises it to operate the transacted transmission system under the *Electricity Networks Asset (Authorised Transactions) Act 2015* consistent with conditions required under the ES Act or otherwise identified by the Minister for Energy and Environment (**Minister**) as necessary to protect customers and the public through safe and reliable operation of the NSW transacted transmission system.

The Review of electricity network operators' licences – Issues Paper and Draft Report (**Draft Report**) sets out IPART's preliminary proposals with respect to variation of Transgrid's Licence. In April 2021, Transgrid participated in early consultation with IPART to inform the Draft Report and is pleased that its views in a number of areas have been identified in the Draft Report.

This submission sets out Transgrid's views on the issues and proposals in the Draft Report. Largely in line with the Draft Report, this submission is structured as follows:

- Section 2 addresses the Critical Infrastructure Licence Conditions;
- Section 3 addresses IPART's proposals to amend the *Transmission Reliability and Performance Standard*;
- Section 4 addresses the National Electricity Market (**NEM**) obligations and related Licence Conditions;
- Section 5 addresses the Business Continuity Licence Condition;
- Section 6 addresses the Licence Conditions on Management Systems; and
- Section 7 addresses Conditions related to reporting, audit, compliance management and fees.

Transgrid is conscious that under the *Electricity Infrastructure Act 2020* (NSW), there is a possibility that there will be additional owners and operators of high voltage transmission assets in NSW. In order to ensure that electricity consumers and the public to have the same benefits and protections contained in Transgrid's Licence, it is important that any new transmission system owners and operators in NSW should also be required to be licenced under the ES Act and have the same obligations as Transgrid.

2. Critical Infrastructure Licence Conditions

2.1. Draft Report proposal

The Draft Report proposes no review of the Critical Infrastructure Licence Conditions. We understand IPART's proposal is on the grounds that Commonwealth legislation to address security of critical infrastructure assets such as the Transgrid transmission system are under consideration. We further understand the Department of Home Affairs Cyber and Infrastructure Security Centre (**CISC**) holds the view that the Commonwealth legislation and rules for the electricity sector are expected to replace State-based requirements such as the Critical Infrastructure Licence Conditions.

We understand IPART proposes to retain the Critical Infrastructure Licence Conditions in their current form until the Commonwealth rules are finalised, when IPART will consider whether to recommend amendment or removal of the Critical Infrastructure Licence Conditions to the Minister.

2.2. Transgrid's view

Transgrid supports the principle of ensuring that Australia's electricity networks meet high security and protection standards. As the backbone of the NEM, Transgrid's secure and reliable network operations and interconnection to other jurisdictions is essential to the delivery of stable electricity to consumers across the NEM.

Security threats to the operation of electricity networks are ever present. Therefore, Transgrid is pleased the Commonwealth is taking a holistic approach to uplifting the security standard of electricity networks and generators nationwide. Transgrid acknowledges the improvement in Commonwealth's proposed security obligations to the Critical Infrastructure Licence Conditions imposed on Transgrid in 2015.

Transgrid agrees in part with IPART's proposal to retain the Critical Infrastructure Licence Conditions and to reconsider their continuation following the finalisation of the Commonwealth's new security rules. With passage of Commonwealth legislation expected in early February and consultation on electricity sector rules well advanced, Transgrid is keen to work with IPART on its process and timing for reconsideration of the Critical Infrastructure Licence Conditions. Once the Commonwealth rules are in effect, Transgrid views the Critical Infrastructure Licence Conditions as no longer relevant.

2.2.1. Transgrid's proposed amendment to Critical Infrastructure Licence Conditions

Transgrid requests IPART's consideration of an amendment to the Condition 7.2(d) that applies to the Data Security Conditions 7.1(a), 7.1(b)(i) and 7.1(c). The proposed amendment would allow Transgrid employees to be able to access data restricted under Conditions 7.1(a), 7.1(b)(i) and 7.1(c) from outside of Australia provided it is in the ordinary course of Transgrid's business and access to the data is required by those persons to provide functions bona fide required of them by the nature of their employment by Transgrid.

Transgrid believes its Licence does not appropriately consider the operational requirements of Transgrid employees to be able to access data restricted under Conditions 7.1(a), 7.1(b)(i) and 7.1(c) from outside of Australia in order to work effectively. Transgrid's concerns in this regard were raised with IPART and CISC officers in July 2021. In that consultation, IPART largely agreed with Transgrid's view that exemptions under Condition 7.2 do not consider the operational requirements of employees who may be required to work offshore from time to time, whilst at the same time granting broad allowances to other third parties.

The need for offshore access by Transgrid employees required to use data restricted under Conditions 7.1(a) and 7.1(b)(i) has grown since the imposition of the Data Security Conditions and are becoming increasingly onerous to the efficient operation of the business and management of the transmission system. As IPART is aware, Transgrid is undertaking major expansion of its network as required under AEMO's Integrated System Plan. Such expansion requires Transgrid's engagement with international design, engineering, construction and equipment suppliers where domestic options do not exist or service providers with an Australian presence are unable to meet delivery timelines imposed on Transgrid under regulation.

For example, the exemption under Condition 7.2(d) allows data restricted under Conditions 7.1(a), 7.1(b)(i) and 7.1(c) to be disclosed to such suppliers and service providers but Transgrid employees meeting with such service providers outside of Australia, are not allowed access to the same information. This severely limits Transgrid employees' ability to effectively work with its service providers and operate efficiently.

Therefore, Transgrid proposes an amendment, noted in red, to Condition 7.2(d) to read:

7.2 The Licence Holder is not in breach of its obligations under conditions 7.1(a), 7.1(b)(i) or 7.1(c) if the Licence Holder discloses, holds, uses or accesses any information or data referred to in those conditions, or the Licence Holder allows a Relevant Person approved by the senior officer referred to in condition 6.3(b)(i) to disclose, hold, use or access any information or data referred to in those conditions for the purposes of:

*(d) disclosure to participants, regulators and service providers in the electricity sector, **and access by authorised Transgrid employees**, provided it is in the ordinary course of business and in accordance with good electricity industry practice, and such information is required by those persons to provide the services or to perform the functions bona fide required of them;*

Under the proposed amendment, the Senior Officer Operational Technology would be required to approve which employees require access to data currently restricted under Conditions 7.1(a), 7.1(b)(i) and 7.1(c) to perform the functions required of them as part of their employment.

Transgrid welcomes the opportunity to discuss this proposal further with IPART.

3. Transmission Reliability and Performance Standard Condition

3.1. Draft Report proposal

The Draft Report proposes to amend the *Transmission Reliability and Performance Standard (Standard)* and attach it to the Licence as an appendix.

Amendment of the Standard is proposed to clarify the definition of a Bulk Supply Point (**BSP**) and providing Transgrid, in limited circumstances, discretion to agree with affected distributors and customers that a proposed new load supply point is not a BSP as defined. No further amendments are proposed.

3.2. Transgrid's view

Transgrid agrees with IPART's proposal to only amend the Standard to clarify the definition of a BSP and provide discretion to be able to be applied by Transgrid and connected parties as to when a new load supply point should not be considered a BSP covered by the Standard.

3.2.1. Definition of a Bulk Supply Point

Transgrid appreciates IPART addressing the need for a clearer definition of a BSP and some discretion on the application of this definition to new load supply points to the transmission system. The current Standard does not define a BSP with the only definition provided in IPART's Final Report – Electricity Transmission Reliability Standards – An economic assessment (August 2016).

As the Transgrid network expands rapidly in the short and medium term, there will be increasing opportunity and need for load connections to the transmission system. Many of these load connections will necessitate a new BSP, including redundancy and expected unserved energy settings, to be approved by the Minister. Clarification of the BSP definition and its application will allow Transgrid to be more efficient in its processes for designing, engineering and delivering new BSPs and meeting the objectives of the Standard.

3.2.2. Clarification on connection points for a single directly connected customer

Transgrid welcomes the opportunity to further clarify with IPART the application of the BSP definition to instances when Transgrid establishes a load supply point for a single directly connected customer.

In Transgrid's consultation with IPART on its 2016 review Electricity Transmission Reliability Standards – An economic assessment, IPART agreed with Transgrid's assessment that load supply points for single customers on a negotiated supply agreement were not considered a BSP.

When Transgrid directly connects a load customer to its network, such connections are always under a negotiated supply agreement where such agreements generally allow for supply disruption in limited, negotiated circumstances. Transgrid is of the view that a single negotiated customer connecting at a load supply point, where that load supply point is not servicing other customers or a distributor, should not be considered a BSP.

To further clarify the treatment of such load supply points, Transgrid requests IPART consider:

- Amending draft Standard clause 7(e) to apply to a point of connection where supply is provided to more than one directly connected customer; or
- Amend the Note under Standard clause 7(f) to include the application of clause 7(f) to instances where a single customer on a negotiated supply agreement is the sole party connected at a load supply point.

Transgrid welcomes the opportunity to discuss this proposal further with IPART.

4. NEM Obligations

4.1. Draft Report proposal

The Draft Report proposes to remove Conditions requiring Transgrid to:

- Be registered, or exempt from registration, as Network Service Providers in the NEM and to hold any equivalent authorisation;
- Satisfy technical and prudential criteria to meet with conditions of NEM registration, exemption or other authorisation; and

- Submit an Annual Demand Forecast to AEMO that is prepared as part of Transgrid's Annual Transmission Planning Review required under the National Electricity Rules (**NER**) clause 5.12.

IPART is proposing to remove these Conditions as these obligations are set out in the NER, which is within the domain of the Australian Energy Regulator to regulate. Further, IPART views the risk of non-compliance with these obligations, which underpin NEM participation and planning, as low.

4.2. Transgrid's view

Transgrid agrees with IPART's proposal to remove these Conditions Transgrid's Licence. Per Transgrid's submission of 30 April 2021 to IPART, it view these conditions as duplicative of obligations on Transgrid as a Transmission Network Service Provider operating in the NEM. We appreciate IPART's focus on removing unnecessary regulatory requirements wherever possible.

5. Business Continuity Condition

5.1. Draft Report proposal

The Draft Report proposes to retain the Condition requiring network operators have documented and implemented business continuity plans. The ES Act (Schedule 2, s6 cl5(b)) requires this condition be part of any network operator's licence.

5.2. Transgrid's view

Transgrid agrees with IPART's proposal to retain the Condition requiring it to have appropriate plans in place to identify, assess and manage business continuity risks and manage business disruptions affecting the operation of the transmission system. Transgrid understands its critical role as the provider of an essential service, where disruption can have major economic and quality of life impacts in NSW.

6. Management System Conditions

6.1. Draft Report proposal

6.1.1. Asset Management System

The Draft Report proposes to retain the Conditions that each network operator maintain and implement a certified Asset Management System (**AMS**). The Draft Report does propose to amend the condition by:

- Removing the requirement that network operators notify IPART of significant changes to their AMS; and
- Changing the management standard to which an AMS must be certified from ISO55001 to AS55001.

6.1.2. Environmental Management System

The Draft Report proposes to retain the Conditions that each network operator maintain and implement a certified Environmental Management System (**EMS**). The Draft Report does propose to amend the condition by:

- Removing the requirement that network operators notify IPART of significant changes to their EMS; and
- Changing the management standard to which an EMS must be certified from ISO14001 to AS/NZS14001.

6.2. Transgrid's view

6.2.1. Asset Management System

Transgrid agrees with the amendments proposed to the Conditions related to its AMS. As the holder of an award-winning AMS, Transgrid understands the value of its AMS in managing the safety and reliability of its assets over their life-cycle. IPART's proposed changes will have no material impact on Transgrid's AMS implementation.

6.2.2. Environmental Management System

Transgrid agrees with the amendments proposed to the Conditions related to its EMS. Transgrid understands its societal and regulatory responsibilities to manage and minimise, wherever reasonably possible, the environmental impact resulting from its infrastructure and service delivery. Transgrid understands its EMS supports the business in meeting those responsibilities now and into the future. IPART's proposed changes will have no material impact on Transgrid's EMS implementation.

7. Reporting, Audit, Compliance Management and Fees Conditions

7.1. Draft Report proposal

The Draft Report proposes to retain the Conditions requiring network operators to:

- Prepare and submit reports in accordance with IPART reporting manuals;
- Comply with audit guidelines issued by IPART;
- Ensure their internal systems are capable to manage compliance with Licences issued; and
- Pay Licence fees as determined by the Minister within prescribed timeframes.
- Further IPART proposes to include a new Condition allowing IPART to direct network operators to conduct compliance audits with all Conditions of network operator's licences, not just as prescribed through IPART's audit guidelines.

7.2. Transgrid's view

7.2.1. Reporting, Compliance Management and Fees

Transgrid agrees with IPART's proposal to retain Conditions requiring Transgrid to:

- Prepare and submit reports in accordance with IPART reporting manuals;
- Ensure internal systems are capable of managing compliance with its Licence; and
- Pay Licence fees.
- Transgrid understands each of these requirements are necessary for IPART to be able to effectively regulate and monitor compliance by Transgrid with its Licence issued under the ES Act.

7.2.2. Audit

Transgrid understands that audits are part of a regulator's suite of tools to monitor regulated entities' compliance with their obligations. Transgrid understands IPART's interest to include a general auditing condition in its Licence, particularly as this power is not conferred upon it in the ES Act.

Should the general auditing condition be included in its Licence, Transgrid requests IPART:

- Rationalise wherever possible its obligation specific audit guidelines to remove potential for confusion between IPART audit directions issued and existing audit guidelines;
- Ensure it continues to apply a risk-based approach to compliance and enforcement as per its Compliance and Enforcement Policy (December 2017);
- Recognise that risks and issues in network operations are not consistent between distribution and transmission networks and apply a tailored use of compliance audits accordingly; and
- Continue to seek to minimise additional and unbudgeted costs on network operators that will ultimately impact on the cost of electricity to consumers.