



Powercor/Beon/Energy Solutions Pty Ltd – Conflicts of Interest and the Potential for Anti-Competitive Behaviour and Abuse of Monopoly Powers

Background

Powercor has an electricity distribution licence granted by the Commission which restricts its activities in terms of non-discrimination, providing market information about retailers to related body corporates, and its use of monopoly power. This distribution licence is a monopoly, effectively granted to Powercor by the people of Victoria. It gives Powercor exclusive control over the electricity distribution network and who can access it. With this control comes the opportunity for profits that are not available to other entities, as well as legal and ethical responsibilities.

Powercor has a related body corporate called Beon, also known as Energy Solutions Pty Ltd (ES). The General Manager of Beon is part of the Powercor executive management team (see website).



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Executive Management Team

Tim Rourke Chief Executive Officer	
Brendan Bloore General Manager Customer Services	Steven Neave General Manager Electricity Networks
Garrick Rollason Chief Financial Officer	Peter Wilkins General Manager People, Culture & Legal
Alex Jones Chief Information Officer	Scott Russell General Manager Strategy, Programs & Change
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Iraak Sun Farm Licence Application

According to the electricity generation licence application for Iraak Sun Farm Pty Ltd:

“The contract for Engineering, Procurement, and Commissioning (EPC) has been awarded to Energy Solutions Pty Ltd (Beon or Contractor) as of 25 January 2018.”

This project is being built “approximately 35km south of the town of Mildura, Victoria”, connecting to the Powercor 66kV distribution network. A Generator Deed (effectively a connection agreement) was executed with Powercor on 31 October 2016.

Powercor is the gatekeeper for access to its distribution network. It is a very complex, time consuming and expensive process, for aspiring electricity generation project developers, to gain access to the Powercor network (and any other distribution network in the National Electricity Market); yet Powercor, in the guise of Beon/ES, competes against these very same developers and EPC contractors for access to its own distribution network. This is a potential conflict of interest that also raises questions of abuse of monopoly power and anti-competitive behaviour.

Beon/ES has an unfair advantage over other EPC companies and can potentially out-compete them, when tendering for contracts for new generation projects in the Powercor distribution region, in the following ways:

- The potential to exert influence over an electricity generation project seeking an EPC contractor, by insisting, whether explicit or implicit, that a related body corporate (such as Beon/ES) be awarded a contract in return for favourable connection agreement terms or the granting of a connection agreement by Powercor.
- The possibility of tailoring a bid for an EPC contract, undercutting other potential bidders, by utilising confidential information about Powercor’s own network, that is not available to other EPC contractors.
- The opportunity for front-running or queue-jumping by Beon/ES when there are multiple requests for limited network capacity within the Powercor distribution area.¹

This shows there is enormous scope for corruption by Powercor and Beon/ES in the development process for new embedded generators in the Powercor distribution area.

Objectives of the Commission and this Submission

The primary objective of the Commission is to protect the long-term interests of Victorian consumers. The purpose of this submission is not to suggest that Beon/ES has acted in an anti-competitive manner, in the case of the Iraak Sun Farm EPC contract, but to point out that:

- The potential for corruption exists because the current license conditions and industry codes do not adequately protect other developers or EPC contractors that are trying to gain access to the network, or to participate in contracts for electricity generation projects, in the face of unfair competition from the network owner, Powercor/Beon/ES.
- This scenario is likely to result in the abuse of monopoly power and the occurrence of anti-competitive behaviour, leading to a reduction in the level of competition in the Victorian electricity wholesale market.

¹ Connection enquiries to the transmission network are managed by AEMO in Victoria. Perhaps this arrangement could be considered for the distribution network.

- A reduction in the level of competition would not be in the long-term interests of Victorian consumers.

It is worth remarking that electricity distribution licences were set up with retailers and retail customers in mind, not embedded generators, at a time when electricity was generated by large, centralised generators that were connecting to the transmission network. The rapid pace of change in the marketplace, such as the increase in embedded generation of distributed energy resources, has caused disruption to market participants and regulators, who are struggling to keep up. Consequently, market participants and regulators need to constantly review the frameworks in which they operate.

This submission would like to recommend that changes be made to the relevant industry codes, the standard electricity distribution licences, and specifically to Powercor's distribution licence, to reflect these rapidly changing market conditions.

Proposed Changes

Proposal – Restriction of Activities

The Commission to ensure there are no possible conflicts of interest and no potential for anti-competitive behaviour or abuses of monopoly power, by prohibiting Powercor related body corporates, such as Beon/ES, from developing, or tendering for EPC contracts for, electricity generation projects within the Powercor distribution area, or the distribution areas of other related body corporates, such as Citipower. Other distributors within Victoria, and their related body corporates, should be similarly restricted from developing or tendering for contracts for such projects within their own networks.²

In the absence of the above change, the following proposals are also suggested.

Proposed Actions or Changes to Relevant Powercor Electricity Distribution Licence Clauses

The following are extracts from the Powercor Electricity Distribution Licence.

Clause 21

"21. NON-DISCRIMINATION IN CONDUCT OF BUSINESS

21.1 In conducting its distribution business, the Licensee must not unreasonably discriminate, or have the effect of creating unreasonable discrimination, between retailers or between customers of any retailer.

21.2 Without limiting clause 22.1, the Licensee must not use customer information or information about the activities of a retailer obtained by it in conducting its distribution business to gain an advantage for a retail business conducted by it or by a related body corporate if that information is not available to other retailers.

21.3 Any question as to the meaning of unreasonable discrimination or advantage, or the application of those concepts, is to be decided by the Commission on the basis of the Commission's opinion of the matter."

² It would also make sense to apply this rule to all other NEM jurisdictions and the SWIS in WA. This is of course outside the scope of the Commission.

Proposal – Non-Discrimination

The Commission to modify Clause 21 to also apply to Generators and Embedded Generators. For example, references to “retailer” could be replaced with “retailer or embedded generator”.

Clause 23

“23. STANDARDS AND PROCEDURES

23.1 At the request of the Commission, the Licensee must participate to the extent specified by the Commission in the development, issue and review of any standards and procedures specified by the Commission.

23.2 The Licensee must in accordance with any guideline published for this purpose, or as directed by the Commission, report to the Commission on its performance against applicable standards and procedures.

23.3 In addition to its powers under section 26 of the Act, if the Commission considers that:

(a) the Licensee has failed to comply with clause 23.1; or

(b) standards or procedures applicable to the Licensee have been shown to be insufficient to prevent abuses by the Licensee of any monopoly power it enjoys,

the Commission may issue standards and procedures applicable to the Licensee and with which the Licensee must comply.”

Proposal – Standards and Procedures

In reference to item 23.3(b):

The Commission to review the Powercor/Beon/SE standards and procedures to ensure that Beon/SE does not have access to confidential Powercor network information. The Commission to specify the insertion of such controls if this is found not to be the case.

The Commission to review the Powercor/Beon/SE standards and procedures to ensure that Beon/SE cannot discuss commercially sensitive information regarding third party electricity generation projects within the Powercor network, with Powercor, and vice versa. The Commission to specify the insertion of such controls if this is found not to be the case.

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