

Ring-fencing Guideline – Electricity Distribution Version 3, November 2021

8.05A Application by Essential Energy to maintain waiver: contestable technical training courses

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1. Introduction

This is our application to the Australian Energy Regulator (AER) to maintain our existing waiver in relation to providing a technical training service to deliver three notionally contestable training courses. We are requesting a waiver of clause 4.2 of the *Ring-fencing Guideline – Electricity Distribution* (Guideline), which requires a Distribution Network Service Provider (DNSP) to comply with obligations relating to having separate offices, staff, and branding and cross-promotion activities, as well as office and staff registers, between its direct control services and contestable electricity services provided by a related electricity service provider.

Essential Energy submits that:

- > there is a limited competitive market for these services in regional New South Wales (NSW) and a waiver will protect customers requiring this service in the specific locations requested
- > customers still require these training services
- > there have not been any complaints from a competitor in the current regulatory period
- > complying with clause 4.2 of the Guideline – which requires that the Technical Training team's offices, branding and promotional activities, as well as staff who manage or assist with delivering training, be separated from the regulated office's premises, staff and branding and promotional activities – would increase costs for customers for no public benefit.

2. Description of service – contestable technical training courses

Essential Energy currently offers three notionally contestable technical training courses to Accredited Service Providers (ASPs) or those who work on or near the network. The three training courses, which are offered across Essential Energy's footprint and other DNSP network areas, are:

- > **Accredited Service Provider (ASP) initial and refresher training** – This training supports the need for national mobility of the Electricity Supply Industry (ESI) workforce and provides a standardised approach for workers to gain and maintain authorisation to work on or near electrical supply industry networks. Essential Energy offers initial and re-assessment training days, aligned to national units of competency, to eligible ESI workers who conduct contestable work. This course is a contestable training course offered by other providers in NSW.
- > **Work Near Overhead Powerlines (WNP) initial and refresher training** – Contact with overhead powerlines is a serious risk and one of the largest single causes of fatalities associated with mobile plant and equipment. Aligning to the WorkCover NSW Code of Practice 2006 – Work Near Overhead Powerlines, training is offered as either initial training for new entrants or annual refresher training for existing workers. The WorkCover Code of Practice aims to protect people's health and safety by managing the risks associated with working near overhead powerlines and includes references to legislative obligations of persons conducting a business or undertaking (PCBU), officers and workers who are required to work close to overhead powerlines. Once successfully completed, accredited workers can work to reduced clearances, in accordance with the code. To remain compliant with the WorkCover Code, annual refresher training is required. This course is a contestable training course also offered by other providers in NSW.
- > **Safe Work Practices initial and refresher training** – Businesses with high-voltage (HV) assets connected to distribution networks must comply with the Electricity Supply (Safety and Network Management) Regulation 2014 (NSW), the *Work Health and Safety Act 2011* (NSW) and Section 7 of the Service and Installation Rules of NSW 2019. In addition, incorrect operation of HV assets can have an impact on Essential Energy's subtransmission and distribution networks and has the potential to cause outages that affect other customers. Knowing the requirements, correct processes and how to keep employees safe is a significant part of compliance, which is why Essential Energy offers Safe Work Practices training to organisations. The course trains participants in safe work practices, including identifying electrical and mechanical hazards specific to high-voltage substations; precautions to take when working on or near the infrastructure; how to avoid safety issues by using personal protective equipment; and rescue procedures if an incident occurs. This course is a contestable training course also offered by other providers in NSW.

In assessing options available to comply with the Ring-fencing Guideline, Essential Energy has determined that we cannot justify the cost to customers of creating and running a functionally separate business after 30 June 2024 to enable us to continue to offer the same (small) volume of services.

However, we are concerned about the possibility that this decision will lead to reduced services and increased costs for customers in regional locations with limited or no competition. The other identified providers of these training courses are all located in the Sydney basin or the Hunter Valley in NSW. Therefore, customers in most regional areas of NSW may not have ready access to these services at an affordable price should Essential Energy stop offering them.

Our two main concerns about the possible effects of a lack of competition on regional communities are:

- > lack of access to affordable services – where there is a single provider, they may abuse their market power, and where the service provider is located a significant distance from the training candidate, their employer could face high travel and accommodation costs
- > lack of access to timely services – where providers advise customers they can't perform the services requested in a timely manner and there are no alternative suppliers.

In recognition of Essential Energy's concerns for regional communities, we propose a Ring-Fencing Guideline-compliant solution to ensure that timely, high-quality and affordable technical training services are accessible to all communities in our network footprint.

We request that the AER approve the proposed solution – granting a waiver of clause 4.2 for delivering courses in the following locations, which lack ready access to the courses:

- > within Essential Energy's footprint: Albury, Armidale, Ballina, Bathurst, Bingara, Blayney, Braidwood, Broadwater, Broken Hill, Bulahdelah, Buronga, Cobar, Cobram, Coffs Harbour, Condon, Corowa, Culcairn, Deniliquin, Dubbo, Eden, Ewingsdale, Glenn Innes, Goulburn, Goondiwindi, Grafton, Griffith, Harwood, Hay, Holbrook, Inglewood, Inverell, Kempsey, Leeton, Lismore, Marulan, Mittagong, Moree, Moruya, Mulwala, Murwillumbah, Nambucca Heads, Narrabri, Orange, Parkes, Queanbeyan, Tamworth, Taree, Temora, Tweed Heads, Uki, Wagga Wagga, Walcha, Wyallda and Young
- > outside Essential Energy's footprint in regional Victoria but authorised to work on our network: Bendigo, Echuca, Swan Hill and Wodonga.

3. Description of waiver being sought

3.1 Obligation subject of this waiver

As required by clause 6.17.2 of the National Electricity Rules (NER), the AER published the Guideline in November 2021. Clause 6.17.1 of the NER requires *DNSPs* to comply with the Guideline.

The subclauses within clause 4.2 of the Guideline require *DNSPs* to functionally separate the offices, staff, and branding and cross-promotion of direct control services from contestable electricity services. Clause 4.2.5 of the Guideline permits a *DNSP* to apply for a waiver of these obligations.

Essential Energy is seeking a waiver of the obligations under clause 4.2 in relation to the three technical training courses outlined above in those locations specified in section 2.

3.2 Proposed waiver commencement date and expiry date

Essential Energy requests that the waiver be granted from 1 July 2024 to 30 June 2029 (the entire 2024–29 regulatory control period) as allowed for by clause 5.3.4(b), such that it continues on from the current waiver, which expires on 30 June 2024. These dates allow the waiver to operate for the longest duration possible, given that we do not foresee any change in the service during this timeframe.

4. Legislative arrangements for waivers

Clause 5.2 states that ‘a *DNSP* may apply in writing to the AER for a waiver of its obligations under clauses 3.1, 4.2 and/or 4.4.1(a) of this Guideline. Furthermore, this clause states an application for waiver must contain all information and materials necessary to support the *DNSP*’s application, including:

- a. The obligation in respect of which the *DNSP* is applying for a waiver;
- b. The reasons why the *DNSP* is applying for the waiver;
- c. Details of the service, or services, in relation to which the *DNSP* is applying for the waiver;
- d. The proposed commencement date and expiry date (if any) of the waiver and the reasons for those dates;
- e. Details of the costs associated with the *DNSP* complying with the obligation if the waiver of the obligation were refused;
- f. The *regulatory control period(s)* to which the waiver would apply;
- g. Any additional measures the *DNSP* proposes to undertake if the waiver were granted; and
- h. The reasons why the *DNSP* considers the waiver should be granted with reference to the matters specified in clause 5.3.2(a), including the benefits, or likely benefits, of the grant of the waiver to electricity consumers.’

5. Grounds for seeking a waiver

5.1 Reasons for seeking a waiver

Essential Energy is applying for a waiver of the obligations under clause 4.2 of the Guideline to ensure regional customers do not lose access to these technical training services.

5.2 Reasons for the AER to grant the waiver

Clause 5.3.2(a) states that in assessing a waiver application and deciding whether to grant a waiver or refuse to grant a waiver, the AER ‘must have regard to:

1. The National Electricity Objective;
2. The potential for cross-subsidisation and discrimination if the waiver is granted or refused;
3. Whether the benefit, or likely benefit, to electricity consumers of the *DNSP* complying with the obligation (including any benefit, or likely benefit, from increased competition) would be outweighed by the cost to the *DNSP* of complying with that obligation.’

In addition, on page 57 of the *Electricity Distribution Ring-Fencing Guideline – Explanatory Statement, November 2016* (Explanatory Statement), the AER states ‘in considering whether to grant a waiver from the Guideline’s non-discrimination obligations, we will consider a range of issues. These include:

- > Whether a waiver would better achieve the National Electricity Objective;
- > The potential for cross-subsidisation and discrimination if the waiver is granted;
- > The benefits of the relevant obligation for the long-term interests of consumers;
- > The costs to the *DNSP* of its compliance with the obligation;
- > The effect of granting a waiver on competition in markets for contestable electricity services.’

On page 58, the Explanatory Statement says, ‘We expect some waivers will be inconsequential in nature’ and ‘In assessing a waiver application it is important that we have flexibility in how we choose to assess an application on a case-by-case basis, to ensure we provide procedural fairness for each application, while minimising unnecessary administrative and compliance burdens.’

Essential Energy's request for a waiver for the functional separation obligations for the three technical training courses in the locations specified in section 2 meets the AER's criteria for granting a waiver for the following reasons.

- > Granting the waiver will support the National Electricity Objective as it will protect consumers in locations where these courses are not offered by a functioning competitive market. Not allowing the waiver will mean that Essential Energy will not be able to offer this service in these areas. This will likely result in customers not being able to access the course, only being able to access the course at substantially increased rates, or being forced to incur significant travel and accommodation costs to send employees to a location where an alternative provider conducts training.
- > The potential for discrimination is reduced due to Essential Energy only requesting a waiver in specified regional locations that aren't currently adequately serviced.
- > The potential for cross-subsidisation is removed due to the use of a whole-of-business cost allocation method (CAM) and the accounting separation of this service from standard control services.
- > Customers will benefit as it will ensure there is no gap in the contestable market caused by Essential Energy withdrawing this service for regional and remote areas not currently serviced by another provider.
- > It would be unlikely to have an impact on contestable markets, given the lack of competition currently in the market in regional and remote areas.
- > It will enable Essential Energy to continue to deliver the courses in the specified locations because we wouldn't incur new costs that would have to be passed onto consumers. If the waiver is not granted, our most likely approach would be to stop providing this service in these locations. The cost to Essential Energy of complying with the obligation would be higher than the value derived from delivering the small volume of services currently provided in these locations. Meeting the obligation would incur costs in a number of areas. These include the separation of the staff managing the service from the staff conducting regulated training activity, opening new offices or refitting existing offices, rebranding activities and possible information technology costs. These costs would need to be recouped from the small number of customers currently using these services. Essential Energy is not concerned with actively competing in the contestable training market, but with providing a service to customers who would otherwise not have access in a competitive market.

5.3 Cost associated with complying with obligations under clause 4.2

The ring-fencing obligations create an additional layer of regulatory compliance that comes with costs. These relate to the functional separation of staff performing management and administrative roles for the contestable courses within the technical training service. These would need to be passed on to customers. Additional costs relate to:

- > separating employees' office spaces – this may require partitioning of sections of already leased or owned property, or leasing or buying new office space. New fit-outs and security measures if partitioning leased or owned space would also generate costs. Leasing or buying more office space would also incur additional ongoing costs that would need to be funded by customers
- > separating the management of staff providing regulated training activities from those delivering contestable training activities – this would not be a full-time role
- > rebranding and/or advertising – we would need to create and implement a new brand and website for the technical training service.

Regulated training activities (that is, training of internal and external staff in monopoly courses) comprise about 90 per cent of the technical training group's time. Creating functionally separate contestable training services would be commercially unviable given that contestable tasks alone would not fill a full-time role. As a result, if this waiver is not approved, Essential Energy would be likely to stop providing this service in the additional areas requested rather than set up a ring-fenced business group to deliver the contestable activity.

5.4 Additional measures to be undertaken on granting of a waiver

Essential Energy doesn't propose to undertake any additional measures on the granting of this waiver, but we reaffirm our commitment to existing protections by:

- > maintaining a CAM that covers all services offered by the business, including the contestable services offered by the Technical Training team

- > maintaining separate accounting practices for the contestable training courses offered by the Technical Training team
- > meeting our other obligations under the Guideline, such as the discrimination and information-sharing provisions, that cannot be waived.

6. Summary

Essential Energy submits that a waiver of the obligations in clause 4.2 of the Guideline is justified on the basis that:

1. there are no issues in relation to competition, given the lack of competition for these courses in regional NSW
2. the likely public benefits of rejecting the waiver are negligible or non-existent. In fact, the likely impact would be a reduction in services for those customers in Essential Energy's footprint who can't get these services from other providers
3. the administrative costs of complying with clause 4.2 of the Guideline (which will be avoided with a waiver) outweigh the benefit of achieving compliance.

Essential Energy therefore submits that granting a waiver in relation to the obligations in clause 4.2 of the Guideline promotes the long-term interests of consumers.

Appendix 1 – Waiver information compliance checklist

Required information as per clause 5.2	Section
The obligation in respect of which the <i>DNISP</i> is applying for a waiver	3.1
The reasons why the <i>DNISP</i> is applying for the waiver	5.1
Details of the service, or services, in relation to which the <i>DNISP</i> is applying for the waiver	2
The proposed commencement date and expiry date (if any) of the waiver and the reasons for those dates	3.2
Details of the costs associated with the <i>DNISP</i> complying with the obligation if the waiver of the obligation were refused	5.3
The <i>regulatory control period(s)</i> to which the waiver would apply	3.2
Any additional measures the <i>DNISP</i> proposes to undertake if the waiver were granted	5.4
The reasons why the <i>DNISP</i> considers the waiver should be granted with reference to the matters specified in clause 5.3.2(a), including the benefits, or likely benefits, of the grant of the waiver to electricity consumers	5.2