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22 May 2024

Mr John Knox  
Chief Executive Officer  
Evoenergy

Sent by email to: [RegulatoryEnquiries@evoenergy.com.au](mailto:RegulatoryEnquiries@evoenergy.com.au)

Dear Mr Knox

### **Re: Evoenergy ring-fencing waiver application for a large customer**

Thank you for your email dated 30 August 2023 and the attached application from Evoenergy for a waiver from the obligations in clause 3.1(b) of the Ring-fencing Guideline for Electricity Distribution (the Guideline).

#### **Evoenergy's proposal**

We understand Evoenergy is seeking the relevant waiver to enable it to continue providing 'other services', as defined by the Guideline, to a single site for a large customer for a period of transition before that customer assumes responsibility for those services. We note that Evoenergy has requested that the name of this customer and the details of the site remain confidential.

The AER notes that this application has been submitted by Evoenergy after it had self-reported a breach of the Guideline with respect to the provision of 'other services' to this site. Further, Evoenergy has requested a waiver for a period of twenty-four months.

Finally, Evoenergy has requested that the AER consider granting an interim waiver for this purpose under clause 5.3.3 of the Guideline.

#### **AER's decision to grant a waiver**

The AER has decided to grant a waiver to Evoenergy from clause 3.1(b) of the Guideline until 22 May 2026. This waiver applies only to the site identified by Evoenergy in its application. For clarity, this is not an interim waiver under clause 5.3.3 of the Guideline.

When making this decision, the AER was mindful that Evoenergy has offered a court-enforceable undertaking that it will take certain steps to complete the transition within the period of the waiver so that Evoenergy will cease providing these services to this customer. It is understood that this enforceable undertaking will include a commitment by Evoenergy to provide the AER with regular reports on progress to resolve the breach.

#### **Reasons for granting the waiver**

Under clause 5.3.2 of the Guideline, when deciding whether to grant a waiver the AER must give regard to matters including:

- the National Electricity Objective;
- the potential for cross-subsidisation and discrimination if a waiver is granted or refused;
- whether the benefit, or likely benefit, to electricity consumers of the DNSP complying with the obligation would be outweighed by the cost to the DNSP of complying with that obligation;
- any other matter it considers relevant.

The AER notes that the breach in question is likely to have resulted in harm to competition. This harm would arise when the provision of 'other services' by Evoenergy to the site in question has precluded other potential service providers from seeking the opportunity to provide the services to the customer on a competitive basis.

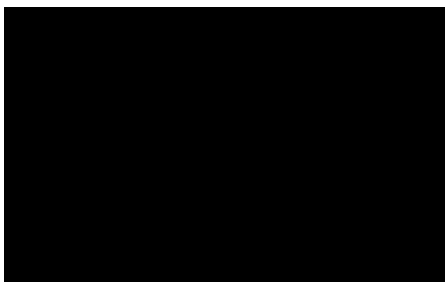
Further, the AER notes that the waiver application has been submitted after the commencement of the breach of the Guideline and in circumstances where, in the absence of a waiver, the breach may continue for up to a further two years.

The AER has considered also that the site where this breach has taken place is one of national significance. We also have taken note of the considerable work required to design and complete the changes to physical assets so as to remediate the breach. Evoenergy has stated that a reasonable period of transition would benefit this customer in making its own arrangements to assume responsibility for the services in question and to engage an alternative provider on a competitive basis.

The AER considers that this outcome, which over the course of this waiver will bring Evoenergy into compliance with its ring-fencing obligations and will support competition in the market for these other services, will lead to benefits to consumers that outweigh the costs to the DNSP of compliance with the Guideline, and support the achievement of the NEO.

If you would like to discuss this matter further, or have any questions, please contact Jacquie Shannon, Director, New Markets & Innovation by email at [AERringfencing@ aer.gov.au](mailto:AERringfencing@ aer.gov.au) or on [REDACTED] in the first instance.

Yours sincerely



**Justin Oliver**  
**Board Member**