

28 January 2025

Ms Danielle Chifley
General Manager Policy
Australian Energy Regulator (AER)
Submitted electronically: AERringfencing@aer.gov.au

Dear Ms Chifley,

Consultation paper – Distribution Ring-Fencing Guideline Updates

Endeavour Energy appreciates the opportunity to provide feedback to the AER's consultation on proposed updates to the current distribution ring-fencing guideline.

We support the AER's proposed amendments

We are supportive of the targeted scope of the proposed amendments. In particular, we consider it appropriate for the AER to have greater discretion in determining an appropriate waiver length, noting that community batteries have become a key driver of ring-fencing waivers and, as assets that can have an economic life up to and in excess of 15 years, it is appropriate for the AER to be able to grant waivers that cover the economic life of such assets in order to provide investment certainty.

We are also supportive of annual compliance reports being accompanied by an attestation of accuracy by the most senior executive of the Distribution Network Service Provider (DNSP), noting that we already follow this practice in submitting our annual compliance reports to the AER.

We welcome the future review of the guideline and anticipate several key focus areas

We agree with the AER's observation that the long-term changes under way in the energy transition are likely to require the ring-fencing guideline to evolve. We endorse the need for a broader review into the guideline to ensure it supports DNSPs to innovate and evolve to be able to deliver an energy transition that meets the long-term interests of customers.

The National CER Roadmap, released by Energy Ministers in July 2024, sets out a set of recommended actions and reforms to support the integration of CER into the electricity grid including to:

Define the role of DNSPs to achieve equitable two-way market operations, including in owning/operating community batteries and kerbside EV chargers, and other distributed resources;

and

Define the roles and responsibilities of power system operation with high CER and drive alignment of incentives between industry actors for CER integration.

Similarly, the NSW Consumer Energy Strategy highlights the need to re-define the role of DNSPs with respect to community batteries, kerbside EV charging, supplying microgrids and remote operation of energy savings technologies, noting in particular that Action 48 of the strategy recommends a national review of the regulatory framework for distribution networks.

Actioning these recommendations will require reviewing several elements of the regulatory framework to ensure DNSPs are providing the right suite of services; integrating and operating CER safely and reliably; and making the necessary enabling investments – and doing so innovatively, efficiently and providing access to data and efficient pricing signals to third parties and customers. In turn, this will likely necessitate a review of the ring-fencing guideline, given its interrelationship with service classification and other regulatory controls such as cost allocation, shared asset revenue sharing and restricted asset ownership.

In the context of the broader suite of regulatory controls available, ring-fencing should be considered as a final backstop to protect against consumer harms. We submit that a more efficient approach would be to:

- identify and classify those services that might be provided by DNSPs;
- protect consumers against potential harms through the application of cost allocation and/or revenue sharing; and
- promote innovation through sandboxing and/or incentive schemes.

In contrast, ring-fencing, and using ring-fencing waivers as a means of applying controls and enabling innovative service offerings, would seem a more administratively burdensome (and less efficient) pathway that provides less certainty than the broad-based measures otherwise available (as outlined above).

More specifically, some of the innovations and changes we anticipate in relation to the role of DNSPs to enable the energy transition to occur in a timely manner include:

- DNSPs taking on a more active role in the orchestration and operation of CER to support power system quality as a Distribution System Operator;
- DNSPs partnering with third parties more regularly in deploying, operating and pricing community batteries, microgrids, Virtual Power Plants and supporting household electrification;
- DNSPs supporting the energy transition through data sharing and provision;
- DNSPs providing system support services; and
- DNSPs facilitating and supporting the rollout and operation of EV charging infrastructure (EVCI) and utilising existing kerbside assets to provide EVCI.

It will likely be necessary for the AER, DNSPs and third parties to test how these services can best be provided to achieve positive customer outcomes, and to what extent regulatory controls may be required in pursuit of this goal. In our view, collaboration and the use of innovation incentive schemes and tools such as the Regulatory Sandbox would be best placed to test new approaches, rather than relying on the use of ring-fencing waivers.

In addition, as these innovations are rolled out at scale, we expect that more efficient regulatory controls will be required that promote certainty. For instance, community batteries are a particular asset type where we consider that there are opportunities for improvement in relation to the current regulatory approach. Ordinarily, DNSPs can share under-utilised assets with third parties (e.g., pole rental to Telecommunication Providers). In circumstances where these assets are new, costs are allocated between the regulated and unregulated uses; where these assets are existing, the Shared Asset Guideline provides for a sharing of a portion of the unregulated revenue subject to a materiality criterion.

However, a different approach has been adopted for batteries, such that DNSPs are restricted from sharing this particular asset type in the ring-fencing guideline. This means a waiver, subject to a 'streamlined' or 'full' review process depending on the circumstances, is required in all instances that a DNSP owns a battery and wishes to share it with a third party. We understand that the rationale for this approach in relation to this specific asset class was so that the AER could address competition concerns and understand appropriate regulatory mechanisms to allocate battery costs between regulated and unregulated users. Our practical experience, however, is that the application of this approach to this asset class creates investment uncertainty, delays our ability to work with third parties on community battery projects and, in turn, hinders the benefits of community batteries from flowing to NSW electricity customers. This approach also results in a somewhat perverse outcome such that the AER's service classification guideline and decisions as part of regulatory determinations are *subordinate* to the ring-fencing guideline, not vice versa (as would be the usual application of these controls).

In view of this, we recommend that the subsequent review consider how other regulatory controls could better promote customers' interests. Potentially, this may require service or asset-specific cost allocation and revenue sharing approaches which could address potential concerns regarding cross-subsidisation or over-investment. The effective, efficient application of the suite of regulatory controls will become

increasingly important, noting that experience to date suggests that the effective implementation of the energy transition will require cooperation and partnerships between DNSPs and third parties.

An additional area of focus for the future review of the guideline would be a cost / benefit assessment regarding the existing ringfencing guideline controls, particularly in relation to whether the costs associated with DNSP compliance with the branding and functional separation controls provide adequate corresponding consumer benefit (noting also the difference between the distribution and transmission ringfencing guidelines in this regard).

We look forward to discussing our submission further with you and contributing to the future review of the guideline. For any further enquiries, please contact Patrick Duffy, Manager Regulatory Transformation and Policy at Endeavour Energy via email at [REDACTED]

Yours sincerely

[REDACTED]

**Emma Ringland
Head of Regulation & Investments**