



# Draft Decision

## DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline

October 2017

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## Shortened forms

Shortened Form	Extended Form
AAD	ActewAGL Distribution
ACS	alternative control services
AE	affiliated entity
AEC	Australian Energy Council
AER	Australian Energy Regulator
AGL	AGL Energy Limited
ASP	accredited service provider
CAM	Cost Allocation Methodology
CES	contestable electricity services
DNSP	electricity distribution network service provider
Explanatory Statement	Australian Energy Regulator, Electricity Distribution Ring-fencing Guideline Explanatory Statement, November 2016
F&A	Framework and Approach
Guideline	Australian Energy Regulator, Electricity Distribution Ring-Fencing Guideline Version 2, October 2017
NEM	National Electricity Market
NEO	National Electricity Objective
NER or the rules	National Electricity Rules
No Action Letter	An AER-issued letter that guarantees the AER will not take any action in relation to certain conduct
NSW F&A	Australian Energy Regulator, New South Wales Framework and Approach, July 2017
Other Services	Services other than: (a) transmission services; or (b) distribution services within the meaning of the Guideline.
PIAC	Public Interest Advocacy Centre

**Shortened Form****Extended Form**

SCS

standard control services

UDS

unclassified distribution services

## Request for submissions

Interested parties are invited to make written submissions to the Australian Energy Regulator (AER) regarding this draft decision by the close of business on **13 November 2017**.

Submissions should be sent electronically to: [ringfencing@aer.gov.au](mailto:ringfencing@aer.gov.au)

Alternatively, submissions can be mailed to:

Mr Chris Pattas  
General Manager, Networks  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

We prefer that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested. Parties wishing to submit confidential information are requested to:

- clearly identify the information that is the subject of the confidentiality claim, and
- provide a non-confidential version of the submission in a form suitable for publication.

All non-confidential submissions will be placed on our website at [www.aer.gov.au](http://www.aer.gov.au). For further information regarding our use and disclosure of information provided to us, see the ACCC/AER Information Policy, June 2014, available on our website.

**Please note that late submissions may not be able to be taken into account in our final decision.** If you have any concerns about meeting the above deadline, please contact us as soon as possible.

Enquiries about this paper, or about lodging submissions, should be directed to [ringfencing@aer.gov.au](mailto:ringfencing@aer.gov.au).

### Indicative timetable

Milestone	Date
Waiver applications due	31 July 2017
Invitation for submissions to waiver applications	2 August 2017
Submissions to waiver applications close	27 August 2017
Draft decision published, invitation for submissions to draft decision	18 October 2017
Submissions to draft decision close	13 November 2017
Final decision published, waiver notices issued	18 December 2017



## Summary

The AER released its Ring-fencing Guideline (**Guideline**) for Electricity Distribution in November 2016. The Guideline requires that all electricity Distribution Network Service Providers (**DNSPs**) must be fully compliant as soon as reasonably practicable and no later than 1 January 2018. As a result, 2017 is considered a transitional year, in which DNSPs have been working towards full compliance with the Guideline. During this transitional year the AER has identified the need for some amendments to the Guideline and has conducted a separate Guideline amendment process concurrent with the waiver application process. This draft decision has been determined based on the amended version—Electricity Ring-fencing Guideline (October 2017).

DNSPs have worked toward achieving compliance with the Guideline and have identified aspects of the Guideline for which compliance would be problematic due to their specific circumstances. As a result, the DNSPs have applied for waivers, which are considered in this Draft Decision. Nearly all of the issues identified by DNSPs relate to short term matters, and DNSPs have applied for waivers from the Guideline's obligations on a temporary basis.

A small number of waivers are to address longer-term issues. In these circumstances, DNSPs have applied for waivers of a more enduring nature. However, waivers are only granted for a finite period, and must be reapplied for upon expiration, which provides an opportunity for review at the new regulatory control period. It should be noted that waivers can be reviewed and revoked at any time subject to the arrangements set out in the Guideline<sup>1</sup>.

While DNSPs are normally expected to comply with the Guideline, in this draft decision we propose to grant many of the waiver applications made by DNSPs, particularly those that relate to short term measures designed to assist full compliance with the Guideline over the long-term. We have carefully considered the relatively small number of longer-term waiver applications and, in some cases, we have granted waivers for shorter durations or not at all rather than indicating acceptance of a longer term waiver. We consider this approach is consistent with the exceptional nature of waivers.

To assist us in making our final assessment, we seek the views of stakeholders on this draft decision. With respect to some waivers, DNSPs have submitted applications on the basis there is no practical competition for the service in question. The AER agrees that imposing ring-fencing obligations on DNSPs for provision of a service for which there are no competitors at present (and for which there is unlikely to be competitors in the immediate future) may impose additional costs on consumers, with little benefit in terms of competitive outcomes. However, where there is existing or even good prospects for competition, we consider there are likely to be benefits to consumers from ensuring that robust ring-fencing is applied.

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<sup>1</sup> Electricity Distribution Ring-fencing Guideline Version 2, October 2017, clause 5.5.

Accordingly, we seek submissions from interested parties to the AER's draft decision, particularly in relation to waiver applications that have been made on the basis that the applicant faces limited or no competition in the provision of the relevant services. Submissions from existing and potential competitors, particularly for the provision of contestable electricity services in regional areas, are especially welcomed. We aim to release our final decision in December 2017.

Many of the waiver applications we received from different DNSPs were very similar. For ease of assessment and to reduce duplication, we have categorised the various waiver applications into six main bundles or 'groups'.

### **Waiver Group 1 – Reclassification of services**

We propose to grant short term waivers for the reclassification of services where there is a reasonable case for reclassification at the next Determination. We note that a number of DNSPs took an overly conservative approach to their waiver applications, requesting waivers for services that are already classified as direct control services. We propose not to grant waivers for these services. A small number of reclassification of services waivers were submitted for services that we expect should remain contestable and should not be reclassified. We propose not to grant waivers for these services.

### **Waiver Group 2 – Legal / functional separation**

A number of DNSPs requested temporary waivers from legal and functional separation obligations under the Guideline, to allow more time to relocate certain contestable business activities to affiliated entities. The terms for the waiver applications ranged from six months to three years. We propose to grant these waivers to provide those DNSPs with some additional time to become fully compliant over the long-term.

### **Waiver Group 3 – Branding**

A number of DNSPs requested waivers from the Guideline's branding obligations for specific services or business units, for periods ranging between three and seven years (with the exception of Ergon Energy's application to continue to use its brand in the supply of services in its Hayman Island contract till contract expiry). We intend to grant these waivers subject to a reduction in the duration of the waiver, as we believe that DNSPs can in most cases rebrand uniforms, fleet and materials in an accelerated timeframe.

### **Waiver Group 4 – Regional service delivery**

In this group DNSPs requested waivers for the provision of regional services where there is no practical competition, or where the DNSP is directed to provide the services by state or regional authorities. Although these waiver applications are sought on a more enduring — if not permanent — basis, there seems to be little benefit from enforcing strict compliance with the Guideline. As a result, we propose to grant these waivers.

### **Waiver Group 5 – Gas businesses**

This waiver group concerns three waiver applications from ActewAGL for legal and functional separation of its three gas businesses. Two of the applications, relating to its

covered and uncovered pipelines, were considered within the Explanatory Statement to the Ring-fencing Guideline as justification for the allowance of waivers from legal separation.<sup>2</sup> We propose to grant these waivers. In relation to the third application, we propose to grant ActewAGL a short term waiver to continue to own and operate its unregulated compressed natural gas refuelling facility. Waiver renewal will be subject to submission by ActewAGL and approval by the AER of a revised CAM for showing how costs are separated between the different businesses (including the CNG refuelling business), thereby addressing the risk of cross subsidy. We will need to reassess market conditions, including potential competitors at the end of waiver period to determine further options available.

### **Waiver Group 6 – Regional offices**

Waiver Group 6 is concerned with extending the application of the regional office exemption clauses of the Guideline for two DNSPs: Ergon Energy and Essential Energy. We propose to grant Ergon Energy a limited waiver in respect of providing certain services in locations within specified geographic boundaries which are not currently subject to competition. We propose not to grant Ergon Energy's application for a waiver to provide support staff and services from the Cairns depot to Barcaldine power station on the basis that a waiver is not required.

Essential Energy has applied for a waiver that would enable it to act as a service provider of last resort for a wide range of services, across a dispersed geographic area. We consider that an alternative approach to treat these services as Alternative Control Services (**ACS**). We therefore propose to grant Essential Energy with a temporary waiver with the intention of reclassifying the proposed services to a new ACS classification, "provider of last resort", which would be defined in the Essential Energy Determination and take effect at the start of the next regulatory control period. We consider that this approach, combined with Essential Energy's stated intent to offer these services only if there are no alternative service providers willing to operate, provides a basis on which these services can continue to be offered by Essential Energy until the new classification for these services (including the precise scope of the services that will be within that classification) is established.

We seek stakeholder feedback on this draft decision, in particular regarding the circumstances in which a service might be provided appropriately as a last resort service. We are also seeking additional information from Essential Energy regarding the conditions and controls that they consider would allow the classification to operate effectively, without unduly affecting competition. Our aim is to ensure that provider of last resort services are only utilised in the case where no alternative service providers are able to or willing to offer these services in a timely manner, or at competitive prices. The waiver granted would be subject to a strict set of conditions that achieve these aims.

### **Our approach**

Our draft decision generally proposes to grant short-term, transitional waivers to DNSPs across reclassification of services, legal/functional separation and branding, to allow those DNSPs additional time to become fully compliant with the Guideline. We note some

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<sup>2</sup> AER, Ring-fencing Guideline - Electricity Distribution Explanatory Statement, November 2016, pp. 20- 24.

stakeholder submissions to the DNSPs' waiver application have suggested that we should take a strict approach to the compliance deadline of 1 January 2018. Our draft decision takes this view into consideration, as we propose to decide that some waivers will expire earlier than the timeframe requested by the DNSP. However, our assessment approach is to focus on the importance of ensuring DNSP's are fully compliant with the Guideline over the long-term. Our view is that allowing short-term transitional waivers is acceptable where they enable a practical pathway to long-term compliance.

We invite submissions in relation to this draft decision from interested parties for consideration in forming our final decision.

# 1 Ring-fencing waiver applications

Ring-fencing separates the regulated and contestable parts of a DNSP's network business via legal separation and functional separation obligations. Ring-fencing facilitates competition in markets that are contestable and makes regulation more effective in markets that are not contestable. It aims to provide a level playing field for third party providers in new and existing markets for contestable services.<sup>3</sup> Without ring-fencing, there is a risk that a DNSP might cross-subsidise unregulated electricity services with revenue earned from provision of distribution (and transmission) services. There is also a risk that a DNSP might discriminate in favour of an affiliate that provides unregulated electricity services, potentially harming competition in contestable markets. Such outcomes could lead to less efficient prices for operation and use of both regulated and contestable electricity services and restrict the development of competition in contestable markets.

In this way, ring-fencing aims to drive effective competition where it is feasible, open up new markets to competition and provide effective regulation where competition is not feasible. Compliance with the Guideline will help to ensure that consumers are empowered to choose the products, services and suppliers they want, with bills that are no higher than they need to be.

We published our Electricity Distribution Ring-fencing Guideline (**Guideline**) on 30 November 2016.<sup>4</sup> The Guideline took effect across the National Electricity Market (**NEM**) on 1 December 2016, replacing jurisdictional ring-fencing guidelines.<sup>5</sup> Each DNSP must comply with all of the obligations of the Guideline as soon as reasonably practical and by no later than 1 January 2018.<sup>6</sup> The period from commencement of the Guideline until the compliance deadline is considered a transition period, during which DNSPs have designed and implemented compliance plans and strategies.

Our Guideline recognises that strict adherence to the ring-fencing obligations, in some circumstances, might result in outcomes that are not in the interests of consumers. This is why the Guideline makes provision for ring-fencing waivers. Waivers provide the ring-fencing framework with flexibility by allowing DNSPs exemptions, subject to AER approval.

As the DNSPs have developed their compliance plans, they have identified compliance issues for which they consider a waiver is appropriate. In most cases, DNSPs have requested temporary waivers to allow more time to implement the Guideline. A few of the waivers are concerned with longer term issues, with waivers requested on a more enduring basis.

This draft decision considers the merits of all these waiver applications and seeks input from stakeholders on our proposed approach to granting or not granting the waivers.

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<sup>3</sup> AER, Electricity Distribution Ring-fencing Guideline Explanatory Statement, November 2016, p. 1.

<sup>4</sup> Following an amendment process, we published an updated version of the Guideline, 'Electricity Distribution Ring-fencing Guideline Version 2.0', in October 2017.

<sup>5</sup> Clause 6.17.1 of the National Electricity Rules obliges all DNSPs to comply with the Guideline.

<sup>6</sup> As required by clause 7.1(a) of the Guideline.

Where our draft decision is to grant a waiver, or to grant a waiver subject to conditions, our approval is limited to the circumstances and conduct set out in the waiver applications (and as further by any of our proposed conditions). The proposed waivers do not extend to any other conduct or circumstances.

## 1.1 Waiver process

Our Electricity Distribution Ring-fencing Guideline Explanatory Statement (**Explanatory Statement**) states that waivers are likely to be granted as an exceptional and temporary measure only. We consider that waivers are not to form part of a business as usual approach but may be considered where alternatives are inappropriate. DNSPs will normally be expected to achieve compliance with the Guideline's obligations.<sup>7</sup>

Clause 5.2 of the Guideline 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 the Guideline regarding:

- legal separation
- physical separation, staff separation, branding and cross-promotion and office and staff registers, and
- ensuring that any new or varied agreement between the DNSP and a service provider requires that service provider to comply with the relevant clauses of the Guideline.

A DNSP may apply on its own behalf or on behalf of itself and one or more other DNSPs who are affiliated entities of the DNSP.

We have prepared this draft decision for consultation with interested parties. After the consultation period ends, we will publish a final decision on the waiver application, including the terms and conditions of any waiver we grant. We will endeavour to make a final decision on each waiver application within 90 days of valid lodgement.

In exceptional circumstances, we may modify our waiver process to the extent we consider appropriate and allowed by the Guideline. We consider this initial bulk application process to be one such exceptional circumstance outside of the expected business as usual approach. Once the transition period is over, we consider there are likely to be very few applications for waiver from the Guideline and assessments will be able to be conducted in the expected 90-day timeframe.

In the event that a waiver is granted, we may, in our absolute discretion and at any time, vary or revoke a DNSP's waiver as long we have given the DNSP at least 40 days' notice that we are considering doing so.<sup>8</sup>

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<sup>7</sup> AER, Electricity Distribution Ring-fencing Guideline Explanatory Statement, November 2016, p. 6.

<sup>8</sup> See clause 5.5 of the Guideline for further detail.

## 1.2 Assessment approach

Clause 5.3.2 of the Guideline states that, in assessing a waiver application and deciding whether to grant a waiver (subject to any conditions) or refuse to grant a waiver, we must have regard to:

- i. the National Electricity Objective
- ii. the potential for cross-subsidisation and discrimination if the waiver is granted or refused, and
- iii. 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.

Clause 5.3.2 also states that we may have regard to any other matter we consider relevant. In our view, these include:

- whether the applicant has sought to constrain the likely the harm from granting the waiver. For example, CitiPower and Powercor's proposal to restrict the use of their branding on unregulated services to only large commercial and industrial customers, and only after a tender is won, is likely to limit the potential for a related electricity service provider to benefit from the use of the DNSP's brand.
- whether a DNSP's particular circumstances have affected its ability to implement the changes needed to achieve compliance, and whether it is practically possible for that DNSP to achieve compliance before 1 January. For example, Ausgrid has faced logistical barriers to achieving legal separation, including those related to the Fair Work Act 2009, establishing an affiliated entity and negotiating an Enterprise Agreement with its new workforce. It is unlikely to be able to comply with the Guideline by 1 January 2018 regardless of whether we grant the six-month waiver it has requested.
- whether the applicant has clearly demonstrated that there are other legitimate reasons why its compliance will be delayed, and that it is working meaningfully towards compliance in the near term. One important aspect of this is whether the proposed waiver is permanent or temporary. For example, AusNet has sought a waiver as an interim measure until an existing contract for regulated work expires. It will cease providing the service immediately after the contract ends.

In assessing the waivers, we have also sought to maintain consistency with our previous public statements. In our Explanatory Statement to the Guideline, we indicated that:

- we are likely to grant waivers from legal separation obligations:
  - (a) in relation to other services that a DNSP is required by law to provide, and
  - (b) in relation to other services provided by a DNSP that are also regulated services, such as a gas or water network business, whether regulated by us or by another economic regulator. For example, we might only grant a waiver subject to a DNSP agreeing to establish a Cost Allocation Methodology (CAM) that deals with all of its regulated services. Through this additional cost allocation requirement we can



have greater confidence that costs are being allocated to distribution (and transmission) services appropriately. Subject to the DNSP submitting an all regulated services CAM to us for approval, we might grant the waiver.<sup>9</sup>

- where a waiver from legal separation obligations is granted, we consider that it would usually be appropriate to also grant waivers from office and staff separation obligations and, potentially, obligations restricting co-branding.<sup>10</sup>
- especially in the initial period of the Guideline's operation, there may be need for waivers or interim waivers to transition DNSPs to their next distribution determination when service classifications may be amended. In particular, we stated that we would consider granting waivers for SA Power Networks' negotiated services, at least for the period of its current distribution determination.<sup>11</sup>

We also indicated that our intention is generally not to grant waivers other than in specific circumstances.<sup>12</sup> That said, the overall assessment involves weighing up all the factors listed above. In considering the long term objectives of the Ring-fencing Guideline we have taken account of the extent to which DNSPs have demonstrated that they are 'acting in good faith' by seeking an outcome that is practical and ensures long-term compliance with the Guideline.

Submissions to waiver applications from some industry stakeholders wanted us to take a strict approach to the granting of waivers. For example, Origin Energy, AGL, Red Energy and Lumo Energy and the Australian Energy Council all submitted that waiver applications must be supported by rigorous cost benefit analysis, demonstrating a real net benefit, before waivers are granted.<sup>13</sup> AGL also submitted that the AER should only grant waivers "if and only if, the waiver can unconditionally improve the NEO". While a strict approach to assessment does have merits, including being straight-forward and easy to administer, it does not allow the AER flexibility to take into account the more qualitative and practical considerations detailed above.

### 1.3 Waiver application groupings

Many DNSPs sought waivers for similar arrangements. For efficiency and ease of presentation, we have assessed their waiver applications in groups. In the following sections, the waivers are assessed in bundles or 'groups'. The six waiver groups are titled:

Waiver Group 1 – Reclassification of services

Waiver Group 2 – Legal / functional separation

Waiver Group 3 – Branding

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<sup>9</sup> AER, Electricity Distribution Ring-fencing Guideline Explanatory Statement, November 2016, pp. 55, 58.

<sup>10</sup> Ibid., p. 55.

<sup>11</sup> Ibid., pp. 6, 59, 74.

<sup>12</sup> Ibid., pp. 23, 55, 57; AEC, Draft submission to applications for waiver from the Electricity Distribution Ring-fencing Guideline, August 2017, p. 1.

<sup>13</sup> See submissions by Origin Energy, p. 1; AGL Energy, p. 2; Red Energy and Lumo Energy, p. 1; and Australian Energy Council, p. 3.



Waiver Group 4 – Regional service delivery

Waiver Group 5 – Gas businesses

Waiver Group 6 – Regional office

Accordingly, the assessment discussion in the next sections is presented in relation to these groups. However, details of the individual waiver applications that make up these groups are shown in Attachment A.

## 2 Waiver Group 1 – Reclassification of services

Ring-fencing is a new regulatory requirement. It obliges a DNSP to separate provision of services depending on those services' classifications. The Guideline states a DNSP may provide distribution services and transmission services (within the meaning of the National Electricity Law) but may not provide other services. Under the Guideline, a DNSP must also keep any service that the AER has classified as either a standard control service or alternative control service separate from any other distribution service that it provides. Implementation of the Guideline has prompted DNSPs to re-examine the existing classifications of the services they provide and consider whether they are appropriate for ring-fencing. As a result, we expect most DNSPs will seek at least some classification changes at their next Determinations.

In the meantime, nearly all DNSPs (excepting ActewAGL) have applied for waivers for services they consider are likely to be reclassified at the next Determination in order to bridge the period between the compliance deadline of 1 January 2018 and the commencement of each DNSP's next regulatory control period. If granted, a waiver would allow a service to be treated, for ring-fencing purposes, as if the classification had already been changed. This could result in cost savings for DNSPs, as they would not have to undergo the cost of functionally or legally separating a service on a temporary basis, only to undergo further cost of re-integrating that service into the DNSP's main business for the next Determination period. Our draft decision is to only grant these waivers if we also agree that the service is likely to be reclassified at the next Determination.

Many of the services referred to in the 'reclassification of services' group of waiver applications have already been considered in the Framework and Approaches (**F&A**) for DNSPs in NSW, ACT and Tasmania.<sup>14</sup> The services for which we consider there is a reasonable case for reclassification at the next Determination are outlined in section 2.1. These new classifications will not come into effect until the commencement of the next regulatory control period.

### 2.1 Waiver descriptions and our preliminary positions

DNSPs have indicated that they intend to seek reclassification of the following services for the next regulatory control period, and are seeking waivers for the interim period. This section describes the services for which a waiver has been sought, identifies the DNSPs that have sought those waivers, and indicates our preliminary positions.

#### (a) Public lighting and nightwatchman lights

These services include the provision, alteration and relocation of public lighting, as well as new types (technologies) of public lighting. These services are alternative control services

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<sup>14</sup> AER, Framework and approach – Ausgrid, Endeavour Energy and Essential Energy: Regulatory control period commencing 1 July 2019, July 2017; AER, Framework and approach – TasNetworks electricity distribution and transmission – Regulatory control period commencing 1 July 2019, July 2017; AER, Framework and approach – ActewAGL – Regulatory control period commencing 1 July 2019, July 2017.

(ACS) in most jurisdictions. However, in some jurisdictions, these services or aspects of these services are classified as negotiated distribution services or as unclassified distribution services. While there may be some competition in the initial offer of public lighting services, once the infrastructure is in place DNSPs have significant advantage in setting or negotiating prices with consumers. In forthcoming F&A processes, we will seek stakeholder views in regard to changing the classification of public lighting to alternative control where this is not the case already.

Nightwatchman lights are essentially public lighting used to improve security, such as to illuminate a customer's premises. These services are either often not regulated or are negotiated services. In line with the arguments above, we will consider reclassifying nightwatchman lights as alternative control in future. This would make nightwatchman lights consistent with our approach to public lighting.

Our draft decision is to grant the waivers sought for these services.

- The following DNSPs have applied for waivers in this category: AusNet; Ausgrid; CitiPower and Powercor; Endeavour Energy; Essential Energy; Ergon Energy; Jemena; TasNetworks; SA Power Networks; United Energy.<sup>15</sup>

### **(b) Emergency recoverable works**

This service is concerned with repairs to the distribution network required as a result of damage caused by a third party. The works are recoverable because the third party is liable. As the damage is to a DNSP's network assets, the work is not contestable. Typically, this service is not currently regulated as costs can be directly recovered from the party that caused the damage.

The Guideline requires unregulated services to be functionally separated from a DNSP's regulated business because they are generally contestable. However, we do not consider this is appropriate in this circumstance. While the service is a distribution service because it relates to the maintenance and repair of the network, it is not contestable because it concerned with assets that belong to the DNSP. The Guideline therefore imposes obligations on a DNSP that are not needed. We consider there is a reasonable case that this service will be reclassified as a direct control service at the next Determination. On this basis, we propose to grant the waivers that DNSPs have sought in regard to this service.

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<sup>15</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19; AusNet Services, Ring-fencing Guideline Electricity Distribution: Unregulated and negotiated services – Waiver application, July 2017, pp. 1-23; CitiPower and Powercor, CitiPower and Powercor ring-fencing waiver application, May 2017, pp.1-12; Endeavour Energy, Ring-fencing waiver application, July 2017, pp. 1-5; Essential Energy, Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: LED streetlighting, July 2017, pp. 1-7; Essential Energy, Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: Nightvision service, July 2017, pp. 1-8; Ergon Energy Network, Ring-fencing waiver applications, 31 July, pp.1-39; Jemena Electricity Networks (Vic) Ltd, Ring-fencing Guideline waiver application, July 2017, pp.1-9; SA Power Networks, Application for waiver from AER Ring-fencing Guideline – Electricity Distribution: SA Power Networks' negotiated distribution services, August 2017, pp.1-5; TasNetworks, Ring-fencing waiver application, July 2017, pp.1-14; United Energy, United Energy ring fencing waiver application, August 2017, pp.1-15.

- Our draft decision is to grant the waivers sought for these services. The following DNSPs have applied for this waiver: AusNet; CitiPower and Powercor; Endeavour Energy; Energex; Essential Energy; Ergon Energy; and Jemena.<sup>16</sup>

**(c) Minor and legacy metering services**

DNSPs have applied for waivers for services in relation to data handling for type 1-4 contestable meters, and for new services for type 5 and 6 meters.

Under the National Electricity Rules (NER), DNSPs are required to have access to type 1-4 meter data. This data is provided to the DNSP by the Meter Data Provider for billing purposes. This involves processing and storage of meter data, and provision of access to meter data for type 1-4 meters (excluding smart meters) by the DNSP.

Minor and legacy metering services also includes services for type 5 and 6 meters that are not already classified as an alternative control service in existing Determinations. This includes:

1. meter recovery and disposal
2. provision, installation and maintenance of meters, manual meter reading, and data meter handling for large customers (consumption of >160MWh/annum)
3. services for DNSP-provided type 5 or 6 meters where the retailer has yet to take action to replace those meters with contestable meters and become the metering provider, such as for customers whose consumption grows to exceed 160MWh/annum and child meters in embedded networks.

This service also covers a number of general metering services, such as DNSP-arranged outages for the purpose of replacing a meter, correction of metering and billing data, and meter disposal. It also includes the operation and maintenance of legacy pre-payment meters and, where applicable, time switch adjustment for customers with non-AMI meters.

To the extent these services remain a DNSP responsibility, we expect they will be changed (if need be) from unclassified to alternative control at the next regulatory control period.

Our draft decision is to grant the waivers sought for these services.

- The following DNSPs have applied for waivers in this category: Ausgrid, CitiPower and Powercor; Endeavour Energy; Essential Energy; SA Power Networks; TasNetworks; and United Energy.<sup>17</sup>

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<sup>16</sup> AusNet Services, Ring-fencing Guideline Electricity Distribution: Unregulated and negotiated services – Waiver application, July 2017, pp. 1-23; CitiPower and Powercor, CitiPower and Powercor ring-fencing waiver application, May 2017, pp.1-12; Energex, Energex ring-fencing waiver application: AER Ring-fencing Guideline, July 2017, pp.1-16; Endeavour Energy, Ring-fencing waiver application, July 2017, pp. 1-5; Essential Energy, Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: Classification of services, September 2017, pp. 1-8; ; Ergon Energy Network, Ring-fencing waiver applications, 31 July, pp.1-39; Jemena Electricity Networks (Vic) Ltd, Ring-fencing Guideline waiver application, July 2017, pp.1-9.

<sup>17</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19; CitiPower and Powercor, CitiPower and Powercor ring-fencing waiver application, May 2017, pp.1-12; Endeavour Energy, Ring-fencing waiver application, September 2017, pp. 1-8; Essential Energy, Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential

#### (d) **Non-standard connections and customer-requested supply enhancements**

These distribution services refer to situations where a customer requests a connection or an enhancement to an existing connection at a higher standard than the least cost technically acceptable standard. This service also includes customer or third-party requested asset relocations. We expect that these services would typically be classified as an alternative control service. For many DNSP these services are already classified as an alternative control service.

Our draft decision is to grant the waivers sought for these services.

- The following DNSPs have applied for waivers in this category: Ausgrid, CitiPower and Powercor; Endeavour Energy; and United Energy.<sup>18</sup> Note that Ausgrid requested this service be regarded as an unregulated distribution service.

#### (e) **Reserve feeder construction**

This service refers to a customer request for construction of a second connection from the distribution network to the customer. We consider it likely this service will be changed from a negotiated service to an alternative control service for the next regulatory control period. Alternative control is a typical classification for any above standard connection provided by a DNSP.

Our draft decision is to grant the waivers sought for this service.

- The following DNSPs have applied for waivers in this category: Ausgrid; AusNet; CitiPower and Powercor; Jemena; and United Energy.<sup>19</sup>

#### (f) **Network related training courses**

DNSPs provide training to staff, their contractors and third parties for various reasons. These include internal training, training of contractors and training to unrelated third parties. Each raises different ring-fencing issues.

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Energy: Classification of services, September 2017, pp. 1-8; SA Power Networks' negotiated distribution services, August 2017, pp.1-5; TasNetworks, Ring-fencing waiver application, July 2017, pp.1-14; United Energy, United Energy ring fencing waiver application, August 2017, pp.1-15.

<sup>18</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19; CitiPower and Powercor, CitiPower and Powercor ring-fencing waiver application, May 2017, pp.1-12; Endeavour Energy, Ring-fencing waiver application, September 2017, pp. 1-8; United Energy, United Energy ring fencing waiver application, August 2017, pp.1-15.

<sup>19</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19; AusNet Services, Ring-fencing Guideline Electricity Distribution: Unregulated and negotiated services – Waiver application, July 2017, pp. 1-23; CitiPower and Powercor, CitiPower and Powercor ring-fencing waiver application, May 2017, pp.1-12; Jemena Electricity Networks (Vic) Ltd, Ring-fencing Guideline waiver application, July 2017, pp.1-9; United Energy, United Energy ring fencing waiver application, August 2017, pp.1-15.

Internal training of staff (not offered outside of a DNSP) is not a service but is rather an input to the provision of a service. Therefore it does not need to be classified.

Training offered on fee for service basis is a service. If training is provided to third parties in order to do work on the distribution network, the training may qualify as a distribution service that could be classified. Training that does not constitute a distribution service would most likely need to be offered by a third party or an affiliate of DNSP, which is a requirement of the Guideline.

A number of DNSPs currently offer training courses that are not subject to regulation. Where these courses qualify as distribution services and are to be offered on a fee for service basis, we agree that there is a strong argument for these services to be classified as alternative control at the next Determination.

Our draft decision is to grant the waivers sought for this service.

- The following DNSPs have applied for waivers in this category: Ausgrid; Endeavour Energy; Energex; Essential Energy; Ergon Energy; TasNetworks.<sup>20</sup>

#### **(g) High load escorts**

This service involves scoping appropriate routes and accompanying vehicles and lifting of network wires to allow passage of high vehicles. The services are typically offered at a request from a customer on fee for service basis. In some jurisdictions, these services are not regulated. That is, the service is an unclassified distribution service.

As this service must be authorised by a DNSP and in most cases will be provided by a DNSP, an alternative control service classification is highly likely going forward (where not already classified as such).

Our draft decision is to grant the waivers sought for this service.

- The following DNSPs have applied for waivers in this category: Ausgrid; Energex; Ergon Energy; SA Power Networks; TasNetworks.<sup>21</sup>

#### **(h) Rental and hire services**

This refers to rental of DNSP-owned property (e.g. plant hire and asset leasing). Under the Shared Asset Guideline, DNSPs are permitted to generate unregulated revenues from lease

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<sup>20</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19; Endeavour Energy, Ring-fencing waiver application, September 2017, pp. 1-8; Energex, Energex ring-fencing waiver application: AER Ring-fencing Guideline, July 2017, pp.1-16; Essential Energy, Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: Classification of services, September 2017, pp. 1-8; Ergon Energy Network, Ring-fencing waiver applications, 31 July, pp.1-39; TasNetworks, Ring-fencing waiver application, July 2017, pp.1-14.

<sup>21</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19; SA Power Networks' negotiated distribution services, August 2017, pp.1-5; Energex ring-fencing waiver application: AER Ring-fencing Guideline, July 2017, pp.1-16; Ergon Energy Network, Ring-fencing waiver applications, 31 July, pp.1-39; TasNetworks, Ring-fencing waiver application, July 2017, pp.1-14.

of regulated assets, where doing so does not prejudice the delivery of direct control services. An example of this is use of distribution network poles for provision of fibre optic telecommunications cables. In this case, the pole is a shared asset. The Shared Asset Guideline also allows for unregulated revenues to be used as an offset to reduce the DNSP's regulated revenues, so that customers can also share in the benefits that DNSPs accrue from rental and hire of regulated assets.

Only DNSPs can make their own assets available for lease in order to realise cost-saving benefits of sharing assets. The Explanatory Statement states that: "*Our intention is that whenever a regulated distribution asset is used (i.e. made available by a DNSP to an affiliated entity or third party) for any purpose, the actual "asset provision service" that the DNSP provides will not be classified (as a direct control or negotiated distribution service) but will be treated as an unregulated distribution service.*"<sup>22</sup> The F&As for DNSPs in NSW, ACT and Tasmania also mark distribution asset rental for reclassification from not classified to unclassified distribution service in the upcoming regulatory control period.

Our draft decision is to grant the waivers sought for this service.

- DNSPs that have applied for waivers in this category: Ausgrid; Energex; Ergon Energy; Essential Energy.<sup>23</sup>

#### (i) **Property services**

This refers to customer requests for the DNSP to undertake conveyancing property searches, conduct easement negotiations, or purchase negotiations. Under the 2017 Framework and Approaches for NSW, ACT and Tasmania, property tenure services and conveyancing inquiry services are classified as an alternative control service, and we expect that this classification will apply across all DNSPs for upcoming Determinations.

Our draft decision is to grant the waivers sought for this service.

- DNSPs that have applied for waivers in this category: Essential Energy; Energex; Ergon Energy.<sup>24</sup>

#### (j) **Possum guards**

This refers to provision of line guards to prevent access by possums, roof rats and other animals to power lines. While the guards themselves can be sourced from a competitive market, installations of possum guards on to the network is an important part of the DNSPs

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<sup>22</sup> AER, *Electricity Distribution Ring-fencing Guideline Explanatory Statement*, November 2016, p. 80.

<sup>23</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19; Essential Energy, Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: Classification of services, July 2017, pp. 1-8; Energex, Energex ring-fencing waiver application: AER Ring-fencing Guideline, July 2017, pp.1-16; Ergon Energy Network, Ring-fencing waiver applications, 31 July, pp.1-39.

<sup>24</sup> Essential Energy, Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: Classification of services, July 2017, pp. 1-8; Energex, Energex ring-fencing waiver application: AER Ring-fencing Guideline, July 2017, pp.1-16; Ergon Energy Network, Ring-fencing waiver applications, 31 July, pp.1-39.



role in maintaining line security and safety, as possums on lines can sometimes cause outages that require DNSP crew to visit the line to rectify the outage.

Our draft decision is to grant the waivers sought for this service.

- DNSPs that have applied for waivers in this category: United Energy.<sup>25</sup>

#### (k) **Sale of inventory**

The “sale of inventory” typically refers to sale of stock from a DNSP to property developers but also includes third parties like accredited service providers. In many cases, a property developer integrates this inventory item into a piece of network connection infrastructure and subsequently gifts that connection infrastructure back to the DNSP to form part of the regulated distribution network. Another example is where an Accredited Service Provider (ASP) constructs a connection asset for a large customer using materials purchased from a DNSP.

In the recent NSW F&A for the 2019-24 period we considered this issue. In summary, our approach is:

1. ‘Provision of approved materials/equipment to ASPs for connection assets that will become part of the shared distribution network’ is an alternative control service.
2. ‘Sale of inventory’ in a more general sense has been changed from being an unregulated distribution service in the current regulatory control period, to being a non-distribution service for the next regulatory control period. Therefore, sale of goods and materials that are not destined to form part of the DNSP’s network would be ring-fenced from the DNSP and be subject to legal and functional separation.
3. Scrap sales and other disposals are not services at all.

Our draft decision is to grant the waivers sought for this service.

- The following DNSPs have applied for waivers in this category: Energex, Essential Energy, Ergon Energy.<sup>26</sup>

#### (l) **Networks safety services**

This service includes a range of activities that DNSPs undertake to ensure the safety of the network, including:

- Provision of traffic controls by the DNSP when required
- Fitting of tiger tails (high-visibility covers for overhead live power lines)

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<sup>25</sup> United Energy, *United Energy ring fencing waiver application*, August 2017, pp.1-15.

<sup>26</sup> Energex, *Energex ring-fencing waiver application: AER Ring-fencing Guideline*, July 2017, pp.1-16; Essential Energy, *Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: Classification of services*, July 2017, pp. 1-8; Ergon Energy Network, *Ring-fencing waiver applications*, 31 July, pp.1-39.



- De-energising wires for safe approach (e.g. for tree pruning)
- Neutral integrity test (a test to prevent electric shocks and damage to property when connecting an installation to the network)
- Determining the cause of a customer fault where there may be a safety impact on the network or related component.

High load escorts (covered separately above) are also part of this broad network safety services classification.

Maintenance of network safety through the activities listed above is not contestable and can only be provided by the DNSP. We anticipate that network safety services we be reclassified as alternative control (potentially contestable) in upcoming Determinations.

Our draft decision is to grant the waivers sought for this service.

- The following DNSPs have applied for this waiver: Ausgrid, Endeavour Energy, Essential Energy, TasNetworks.<sup>27</sup>

#### (m) **Rectification works to maintain network safety**

This service involves inspecting and managing customer vegetation prior to the summer bushfire season and aerial mains defects. Inspection of vegetation for bushfire management is a network safety service that can only be provided by the DNSP. Therefore we expect to classify this service as ACS in upcoming Determinations.

Our draft decision is to grant the waivers sought for this service.

- The following DNSPs have applied for waivers in this category: Ausgrid; Endeavour Energy; Essential Energy.<sup>28</sup>

#### (n) **Planned interruption – customer requested**

This refers to cases where a customer requests to reschedule a planned interruption by the DNSP, and agrees to fund the additional cost of performing the planned interruption outside of normal business hours. As this is a service that can be only provided by DNSPs we expect to classify this service as ACS in upcoming determinations.

Our draft decision is to grant the waivers sought for this service.

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<sup>27</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19; Endeavour Energy, Ring-fencing waiver application, September 2017, pp. 1-8; Essential Energy, Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: Classification of services, July 2017, pp. 1-8; TasNetworks, Ring-fencing waiver application, July 2017, pp.1-14.

<sup>28</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19; Endeavour Energy, Ring-fencing waiver application, September 2017, pp. 1-8; Essential Energy, Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: Classification of services, July 2017, pp. 1-8.

- The following DNSPs have applied for waivers in this category: Ausgrid; Endeavour Energy; TasNetworks.<sup>29</sup>

#### (o) **Customer-initiated asset relocations**

This refers to relocation of assets that form part of the distribution network in circumstances where the relocation was initiative by a third party (including a customer) and could impact the safety or security of the network.

As this is a service that can only be provided by DNSPs we expect to classify this as ACS (specific monopoly service) in upcoming Determinations.

Our draft decision is to grant the waivers sought for this service.

- The following DNSPs have applied for waivers in this category: Ausgrid; Endeavour Energy; SA Power Networks.<sup>30</sup>

#### (p) **Termination of cable at zone substation - DNSP required performance**

This refers to termination of cable at zone substations and first join out, where a work health and safety assessment determines that an ASP should not be given the required access to the zone substation, and where the connection is fully dedicated to the specific customer connection. We expect that this service will be classified as ACS (specific monopoly service) for upcoming regulatory Determinations.

Our draft decision is to grant the waivers sought for this service.

- The following DNSPs have applied for waivers in this category: Ausgrid; Endeavour Energy.<sup>31</sup>

#### (q) **Inspection services**

This includes inspection and reinspection by a DNSP of private electrical wiring work undertaken by an electrical contractor, and inspection of privately owned LV and HV network infrastructure. As this assurance work can only be done by DNSPs, we expect to classify this as an alternative control service in upcoming Determinations.

Our draft decision is to grant the waivers sought for this service.

- The following DNSPs have applied for waivers in this category: TasNetworks.<sup>32</sup>

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<sup>29</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19; Endeavour Energy, Ring-fencing waiver application, September 2017, pp. 1-8; TasNetworks, Ring-fencing waiver application, July 2017, pp.1-14.

<sup>30</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19; Endeavour Energy, Ring-fencing waiver application, September 2017, pp. 1-8; SA Power Networks' negotiated distribution services, August 2017, pp.1-5.

<sup>31</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19; Endeavour Energy, Ring-fencing waiver application, September 2017, pp. 1-8.

<sup>32</sup> TasNetworks, *Ring-fencing waiver application*, July 2017, pp.1-14.

**(r) Supply restoration for life support customers**

This is where a DNSP receives a supply outage complaint and upon investigation finds that the problem is not related to the network but fixes it in order to ensure continuation of essential services to life support customers. According to the July 2017 NSW F&A, classifications for “simple customer faults ... relating to a life support customer” are already classified as standard control services (being covered under ‘network services’ in the Determination for the current regulatory control period 2015-2019 for Ausgrid, Essential Energy, and Endeavour Energy), and will remain so for the next regulatory control period.<sup>33</sup>

In their waiver application, Ausgrid makes a distinction between ‘simple restoration work’ (defined by Ausgrid as taking less than 15 minutes to complete and using minimal materials) and ‘complex restoration work’ (taking greater than 15 minutes to complete, using expensive materials). For example, according to Ausgrid, replacement of a fuse would be a typical example of simple restoration work, while repairing an element in a hot water service might be an example of complex restoration work.<sup>34</sup>

The AER takes a different interpretation of “simple customer faults ... relating to a life support customer”. We believe that this service should encompass any situation where the DNSP is called upon to restore power supply that is critical to the operation of a life support machine. Ausgrid’s definition of ‘simple life restoration work’ is measured in time (15 minutes or less) and materials (‘minimal materials’). In our opinion, this obscures the purpose of this service, which is to oblige the DNSP to restore power supply to life support machines in all cases as a matter of first priority, regardless of how long or involved this might be. All such work should be part of the DNSP’s regulated services, meaning that the cost of supplying this service is shared across all users of the network.

Work to restore power to other circuits or appliances on the premises of a life support customer beyond what is necessary to ensure the operation of a life support machine (e.g. repairing a hot water service) is contestable, does not related to the immediate health of the life support customer, and should therefore be the responsibility of third party retailers or electrical services providers.

‘Simple’ supply restoration for a life support customer (that is supply restoration to enable continue use of a life support machine) is already a standard control service. Therefore simple supply restoration for a life support customer requires no waiver. We believe that ‘complex’ supply restoration for a life support customer (that is supply restoration beyond what is necessary for continued use of a life support machine) should remain a contestable service. As such, we do not intend to classify this service in upcoming Determinations.

Our draft decision is therefore not to grant the waivers sought for supply restoration for life support customers.

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<sup>33</sup> AER, Framework and approach – Ausgrid, Endeavour Energy and Essential Energy: Regulatory control period commencing 1 July 2019, July 2017, p. 92.

<sup>34</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 14-15.

- The following DNSPs have applied for waivers in this category: Ausgrid, Essential Energy.<sup>35</sup>

#### (s) **Supply restoration services for non-life support customers**

According to the NSW F&A, a DNSP can identify a fault following detection from a network-issued device, but rectification work is limited to distribution networks infrastructure or simple restoration work for life support customers.<sup>36</sup> This means that both simple and complex restoration work for non-life support customers should be a contestable service.

Ausgrid has contended that customers in their service area may be unable to source supply restoration services from contestable markets outside of business hours, and that this could endanger the health and safety of those customers. At the most extreme, a supply outage on Christmas Eve or at the commencement of Easter Break would result in that customer being without power supply for several days, assuming their retailer could not perform call-outs out of business hours. Ausgrid states that staffing separation associated with supply restoration would mean that Ausgrid staff called out to investigate a customer outage would not be able to restore supply, resulting in a duplication of call out costs, should this service be transitioned to a new affiliated entity (AE).

The approach that Ausgrid is seeking is clearly in breach of the Guideline. The services in relation to non-life support customers are non-distribution services and should be functionally separated from the regulated services Ausgrid provides to customers. Ausgrid has some latitude to provide services to life support customers in emergency circumstances (as a standard control service). Otherwise, Ausgrid should refrain from the provision of contestable services alongside the provision of regulated services to avoid the harm that ring-fencing is designed to prevent.

We acknowledge that in some circumstances, customers may be inconvenienced when a DNSP advises it cannot assist a customer as it may have done in the past. Ausgrid staff may also find it difficult to not offer services to users if they have previously done so. This will be a matter for Ausgrid to address through staff training.

Our draft decision is not to grant the waiver application sought for this service.

- The following DNSP has applied for a waiver in this category: Ausgrid.<sup>37</sup>

#### (t) **SA Power Networks negotiated services**

SA Power Networks has requested that all of the services currently classified as negotiated services be granted a waiver from the functional separation obligations of the Guideline, until

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<sup>35</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19 ; Essential Energy, Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: Classification of services, July 2017, pp. 1-8.

<sup>36</sup> AER, Framework and approach – Ausgrid, Endeavour Energy and Essential Energy: Regulatory control period commencing 1 July 2019, July 2017, pp.92, 96.

<sup>37</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19.

the commencement of the next regulatory control period starting 1 July 2020. Many of the negotiated services for which SA Power Networks has requested the waiver for, are already covered above. Those not already covered are listed in Attachment A.

SA Power Network's approach to its waiver application – to seek a waiver from the Guideline's functional separation obligations for all of its negotiated services, has drawn a critical response in submissions to the AER. In particular, submissions from Origin Energy, AGL and the Australian Energy Council have stated that SA Power Networks has failed to provide detailed reasoning as to why the services for which they have applied for a waiver should be exempted from the Guideline's obligations.<sup>38</sup>

We propose to grant SA Power Networks a waiver for the above services and services already discussed in other sections of this paper. Notwithstanding submissions from Origin Energy, AGL, and the AEC<sup>39</sup>, we consider that SA Power Networks faces a number of jurisdictional arrangements that distinguish it from other DNSPs. Moreover, as noted in the Ring-fencing Guideline Explanatory Statement, SA Power Networks currently provides a large number of negotiated services compared to other DNSPs.<sup>40</sup> Many of SA Power Networks' negotiated services are classified as alternative control services in other jurisdictions. We expect that these services are likely to be reclassified in line with other states in upcoming Determinations. In this case, SA Power Networks would be likely to experience unnecessary costs if the waiver were not granted.

Our draft decision is to grant the waivers sought for these services.

## 2.2 Assessment

As indicated, in most case cases above our draft decision is to grant the waivers sought by DNSPs for services for which there is a reasonable case for reclassification in the next Determination. We do not propose to grant waiver applications for services that are already classified as standard control services or for waiver applications for supply restoration services to non-life-support customers. While we cannot pre-empt the outcome of future Determinations, where we consider there is a case for a service previously listed to be reclassified, we propose to grant a waiver.

The AER has already considered the reclassification issues within the work undertaken for Tasmanian, NSW and ACT DNSPs.<sup>41</sup> Absent special circumstances, we consider that this work is likely to be extended to all jurisdictions.

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<sup>38</sup> Origin Energy, Submission on ring-fencing waiver applications, August 2016, p.4; AEC, Australian Energy Council draft submission on applications for waiver from the Distribution Ring-Fencing Guidelines, August 2017, p.7; AGL, Submission on ring-fencing waivers, September 2017, p.3.

<sup>39</sup> Ibid

<sup>40</sup> AER, Ring-fencing Guideline - Explanatory Statement, November 2016, p. 74.

<sup>41</sup> AER, Framework and approach – Ausgrid, Endeavour Energy and Essential Energy: Regulatory control period commencing 1 July 2019, July 2017; AER, Framework and approach – TasNetworks electricity distribution and transmission – Regulatory control period commencing 1 July 2019, July 2017; AER, Framework and approach – ActewAGL – Regulatory control period commencing 1 July 2019, July 2017.

Our draft decision to grant waivers from legal and functional separation for the services as indicated above is likely to support the National Electricity Objective (**NEO**) by promoting efficient investment in and efficient operation and use of electricity services, in the long term interests of electricity consumers. Current service classifications have been determined by considering the range of services provided by the DNSP that require revenue or pricing regulation by the AER. Current service classifications therefore do not encompass services provided by DNSPs where there is no need for price or revenue regulation, but where the shared nature of the network nonetheless limits the potential for a competitive market to deliver that service.

Demanding that DNSPs legally and/or functionally separate these services, simply because their classification has yet to be considered in the context of ring-fencing, would not provide efficiency or electricity price benefits to consumers. From a consumer perspective, it makes sense to avoid costs associated with ring-fencing if the AER has already accepted that certain services are not contestable or can be considered as distribution services, and could be re-classified to better align with the obligations of the Ring-fencing Guideline. This being the case, it appears unlikely that granting the waivers would result in any significant potential for discrimination that would be outweighed by the costs to the DNSPs of complying with those obligations.

We also accept that in the absence of waivers the DNSPs would be likely to incur costs from having to separate offices, staff and branding for the relevant services, in order to be compliant with the Guideline by 1 January 2018. If the services are then reclassified as direct control at the end of the regulatory control period, the DNSPs would then incur further costs from merging them back into the distribution businesses after reclassification. It is not clear that these costs would be passed on to consumers. Nevertheless, we are satisfied that the services are likely to be reclassified and we consider the benefit to electricity consumers of DNSPs complying with the Guideline without a waiver, is likely to be outweighed by the costs they may incur in doing so.

## 2.2.1 Submissions on reclassification of services

In general, we agree with AGL's submission that waivers may introduce additional uncertainty to the electricity distribution ring-fencing regime, which would not be in the long term interests of consumers.<sup>42</sup> We also agree with the Australian Energy Council that waivers should only be granted under exceptional circumstances, and with Origin Energy's position that a waiver from ring-fencing requirements should not be granted lightly.<sup>43</sup>

A number of submissions recognise that where services have already been flagged for reclassification under a published Framework and Approach for a DNSP, granting a waiver to bridge the period between 1 January 2018 and the commencement of the next regulatory

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<sup>42</sup> AGL, Submission on CitiPower and Powercor ring-fencing waiver application, June 2017, p.2; Origin Energy, Submission on CitiPower and Powercor ring-fencing waiver application, June 2017

<sup>43</sup> AEC, Australian Energy Council draft submission on applications for waiver from the Electricity Distribution Ring-fencing Guidelines, August 2017 p.2



control period reduces costs without harming contestable markets.<sup>44</sup> The AEC also states that where there is a “high likelihood that there will be ... a change in the classification of a service in a forthcoming regulatory control period”, this provides a reasonable basis for a waiver.<sup>45</sup> However, AGL has contended that, for DNSPs where F&As for the next regulatory control period do not yet exist, granting waivers effectively anticipates reclassification decisions that are several years in the future.<sup>46</sup> Red Energy and Lumo Energy oppose the reclassification waivers with the exception of when the DNSPs can demonstrate a net benefit to consumers.<sup>47</sup>

Given there appears to be a case for the services listed above to be reclassified, in this instance we consider a waiver for these services would actually reduce confusion. We have considered these ring-fencing waivers in light of the Guideline's provisions, taking into account all available information and in light of the long-term interests of consumers as required by the NEO.

Several submissions stated that the DNSPs should have undertaken a quantitative cost-benefit analysis to demonstrate that there will be a net benefit to the consumer and submitted these analyses with their waiver applications.<sup>48</sup>

For reclassification of services waivers the AER does not consider quantitative cost-benefit analyses necessary for ring-fencing decision-making. Determining whether there may be reasonable grounds to reclassify a service in the future involves a fundamental test of whether that service is currently contestable or could become so in the future, taking into account local conditions faced by each DNSP where necessary. Where the service has natural monopoly characteristics, the AER is satisfied that detailed quantitative analysis is not required.

The Australian Energy Council has submitted that several DNSPs have applied for waivers from Guideline obligations whose scope goes beyond what is necessary to continue delivering a service that has been flagged for reclassification as a standard control service in the future.<sup>49</sup> For example, the AEC points out that United Energy has applied for a waiver for branding and cross promotion (clause 4.2.3(a)(ii) of the Guideline), although United Energy's application has state that it does not actively promote or pursue services such as installation, repair and maintenance of watchman lights and new stand alone and green field public lighting.

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<sup>44</sup> AGL, Submission on ring-fencing waiver applications, September 2017, p.3; PIAC, Submission on ring-fencing waiver applications for NSW distribution network service providers, August 2017, p.1.

<sup>45</sup> AEC, Australian Energy Council draft submission on applications for waivers from the Distribution Ring-fencing Guideline, August 2017, p. 3.

<sup>46</sup> AGL Energy, *Submission on ring-fencing waiver applications*, September 2017. p. 2.

<sup>47</sup> Red Energy and Lumo Energy, *Submission regarding Ring-fencing waiver applications*, August 2017 p.1; Red Energy and Lumo Energy, Submission on CitiPower and Powercor ring fencing waiver application - May 2017, June 2017, p.1

<sup>48</sup> AEC, Australian Energy Council draft submission on applications for waiver from the Electricity Distribution Ring-fencing Guidelines, August 2017; Red Energy and Lumo Energy, Submission regarding Ring-fencing waiver applications, August 2017 p. 2.

<sup>49</sup> AEC, Australian Energy Council draft submission on applications for waiver from the Electricity Distribution Ring-fencing Guidelines, August 2017, p. 4.

Our position is that, where there is a reasonable case for a service to be reclassified as a standard control service in the future, we will grant a temporary waiver from all functional and legal separation obligations under the Guideline, until the start of the next regulatory control period.

The AEC has also submitted that United Energy, AusNet, and Jemena have sought exemptions for services that are broadly or generally defined, without identifying more precisely what it is about that service that can be provided by the DNSP only and limiting their waiver applications to those activities.<sup>50</sup> In particular, the AEC has submitted that the definition of 'nightvision services' and 'nightwatchman lights' in many waiver applications has been too broadly defined. The AEC has also submitted that 'security lights' as defined in the final Framework and Approach for the NSW DNSP may not be sufficiently clear in delineating the circumstances under which provision of security lights should be provided by a DNSP as a standard control service.

We have considered the services that we believe are likely to be reclassified in upcoming Determinations in the descriptions above. We recognise that the AER, DNSPs and industry stakeholders must reconsider service classifications in light of the new ring-fencing responsibilities that service classification can trigger. We have provided waivers for categories of services where we consider there is a reasonable case for reclassification, but recognise that more work is needed to formalise service classifications in upcoming DNSP Determinations, including definitions of services classifications. We would encourage the AEC and other stakeholders to be involved in service classification consultation for DNSP Determinations, to ensure that the service classification for nightwatchman lights/security lights appropriately delineates DNSP standard control services. We believe that public consultation on service classification for DNSP Determinations is the most appropriate avenue to ensure service classifications are accurate and clear.

The remainder of the regulatory control period for each DNSP is an appropriate length of time to grant these waivers, since a decision on classification of services will be made at the end of that period.

## 2.2.2 Submissions on type 1-4 metering

In relation to metering, Origin submitted that there are no meters classified as type 4 meters in place for small customers in Victoria, with the exception of those where a retailer has historically been the financially responsible market participant and continues in this role. Origin also submitted that type 1-3 metering services are a contestable activity and not provided by the regulated business.<sup>51</sup> On this basis, Origin submitted that there was no need for a waiver for the provision of type 1-4 metering services.

In their further submission, CitiPower and Powercor submitted:

...we do not operate a metering business that competes for type 1-4 metering services and we do not expect this waiver to cover any such activities. Rather, as a DNSP (not a

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<sup>50</sup> Ibid.

<sup>51</sup> Origin Energy, *Submission to CitiPower and Powercor ring-fencing waiver application*, June 2017, p. 2.



meter provider) we receive type 1-4 metering data from metering data providers for period billing and to make the data available to customers upon request as required by the National Electricity Rules (NER). At the next determination we will seek clarification from the AER whether the service as described is captured by this 'Collection of meter data, processing and storage of meter data, and provision of access to meter data for type 1-4 metering installations (excluding smart meters)' service, or whether it is captured by the 'Network Services' group of standard control services. In the meantime we are seeking this waiver to ensure we meet ring fencing obligations in our provision of this service as required by the NER.<sup>52</sup>

The AER is satisfied that DNSP data services for type 1-4 meters as required under the rules or other jurisdictional requirements may need to be classified for future Determinations.

### 2.2.3 Submissions on 'sale of inventory'

Ergon Energy, Energex and Essential Energy have applied for waivers for sale of inventory. We received a number of submissions from electricity manufacturers and suppliers and one submission from the National Electrical and Communications Association in relation to the broader issue of DNSP on-selling of inventory.<sup>53</sup>

These submissions suggested DNSPs (not just Energex and Ergon Energy) are buying supply materials (such as cables or poles) from manufacturers and suppliers at a bulk discount price, then on-selling significant quantities into contestable markets at discounted price (including to their own DNSP commercial business), undercutting their competitors.

The submissions have further claimed that DNSPs can use their ability to set specifications for goods and materials used on their network to favour one tenderer or supplier (and revoke approvals for competing tenders and suppliers). The submissions state that this forces third party service providers undertaking connection services on a network to buy materials from a single source or supplier to the detriment of other suppliers and manufacturers in the market. The AER has not verified these complaints.

Our draft decision is to grant the waiver to the extent that inventory items will become part of the shared distribution network. That is, we propose to grant a waiver where the service involves the provision of goods/materials that will form part of the shared network. We do not propose to grant a waiver for where the DNSP is offering goods more generally into a competitive market. Scrap sales do not require a waiver because we do not consider this to be a service.

Specifically, our draft decision proposes to grant the waiver permitting ring-fencing treatment as if the service was ACS for a service relating to the:

- 'Provision of approved materials/equipment to third parties for connection assets that will become part of the shared distribution network' is an alternative control service.

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<sup>52</sup> CitiPower and Powercor, *Response to questions on CitiPower and Powercor waiver application*, June 2017, p. 4.

<sup>53</sup> These submissions have come from All Round Supplies, Budget Fasteners and Tools, MV Technology Solutions, Nexans Olex, Sicame Australia, and the National Electrical and Communications Association.

Our draft decision adopts the same approach as that in NSW. The ability of a DNSP to potentially misuse market power in a competitive market—a concern raised in some submissions—raises competition issues that are addressed by the ACCC. Our task is to ensure that the distribution services offered by DNSPs are appropriately classified and, if need be, subject to regulation. In regard to on-selling services, we can fix a maximum price but we cannot prevent a DNSP selling these products at less than the capped price we have set.

In some circumstances, we might consider on-selling services to be a non-distribution service. This might be the case if the goods and service did not ultimately form part of the DNSP's distribution system. Or we might consider the service to be a material commercial activity undertaken by the DNSP that is not incidental to the provision of direct control services.

## **2.3 Other reclassification waiver applications**

We received a number of waiver applications that we do not intend to grant because no waivers were necessary under DNSP Determinations for the current regulatory control period.

Our draft decision is to not to grant these waiver applications on the basis that a waiver is not necessary.

In some cases, DNSPs took a very conservative approach to the submission of waivers, requesting waivers for reclassification of services when those services were in fact already standard control as indicated in DNSP Determinations and F&As. Ausgrid and Essential Energy's applications in regard to supply restoration services for life-support customers has already been discussed above in this context. Where DNSPs have requested waivers for other services that are already standard control services this has been noted in each case in the DNSP summary tables at Attachment A.

### 3 Waiver Group 2 – Legal / functional separation

This group of waiver applications are all related to delays (beyond 1 January 2018) to implement the relocation of certain business activities from a DNSP to an affiliate. The waivers, therefore, are seeking our agreement for the DNSPs to waive compliance with the Guideline requirements for legal and/or functional separation, for a short period of time. Without a waiver, these businesses will be not compliant on and after 1 January 2018.

There are eight waivers that fall under this grouping. Of these, five (Ausgrid, Endeavour Energy, Ergon Energy, Energex and TasNetworks) are requesting six months to transition services to affiliated entities.

Essential Energy and TasNetworks are requesting waivers to 30 June 2019 and 1 July 2019 respectively to allow time to transition the ownership and management of type 1-4 meters to the retailers.

AusNet is requesting a waiver to allow it to continue to provide services to Mt Baw Baw ski fields under a contract with the Victorian Government. These waiver applications are discussed in respective order below.

#### 3.1 Ausgrid, Endeavour Energy, Ergon Energy, Energex and TasNetworks – 6 month transitional waiver applications

Ausgrid, Endeavour Energy, Ergon Energy, Energex and TasNetworks all provide 'Other Services', loosely defined as services that are neither electricity distribution nor transmissions services, which fall outside of their core distribution service offering. Such services are required to be ring-fenced out of the DNSPs to ensure compliance with the Guideline.

The businesses are all currently in varying stages of restructure and establishing affiliated entities which would then undertake these 'Other Services'. They are all requesting an additional six months to complete the transition.

Ausgrid currently provides a range of services, not classified as distribution services, which will be transferred to an affiliated entity once fully established and resourced. Functional separation of these services is planned to be complete by 1 January 2018 - a six month transitional waiver is being sought for legal separation only.<sup>54</sup>

Endeavour Energy currently provides a number of services that have been classified as unregulated distribution services and a number of services that are currently unclassified, such as transformer workshop and field services. Endeavour is actively seeking to move these services to an affiliated entity and hopes to complete the transition by 31 December

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<sup>54</sup> Ausgrid Ring-fencing Guideline Waiver Applications, July 2017, p. 10.

2017, but states that some processes, including approvals from Commonwealth authorities have uncertain timeframes.<sup>55</sup>

Ergon Energy and Energex have previously established an affiliated entity; Energy Impact, which provides network support services to the two DNSPs. Ergon Energy and Energex are novating their existing contracts for non-distribution services to Energy Impact, some of which are not likely to be completed by 1 January 2018. Ergon Energy and Energex are seeking a six month waiver for legal separation only. They plan to meet their obligations for functional separation under the Guideline.<sup>56</sup>

TasNetworks is seeking to establish a new legal affiliated entity to provide four non-distribution services currently provided by the organisation.<sup>57</sup> These services are:

- External Telecommunications;
- External Data Centres;
- External IT Services; and
- Operational and maintenance support for isolated distribution networks not part of NEM.

### 3.1.1 Description of waiver applications

The waiver applications seek to allow the businesses to continue to provide 'Other Services' until such time as they are able to completely transfer these services to affiliated entities.

In the case of Ergon Energy and Energex, there are some contracts for Other Services which may not be novated by January 1, 2018. A six month delay will allow them sufficient time to complete the novation of these contracts.

Ausgrid and TasNetworks are requesting an additional six months to allow them sufficient time to establish new affiliated entities. In both cases, the establishment and resourcing of an affiliated entity is not likely to be completed by 1 January 2018 and the businesses are requesting additional time to complete the process.

Endeavour Energy is seeking a waiver from the Guideline's legal separation of other services until 30 June 2018 to provide additional time to secure approvals from Commonwealth authorities for the establishment of a separate legal entity.

The waivers, if granted, would expire by 1 July 2018.

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<sup>55</sup> Endeavour Energy - Ring-fencing waiver application, September 2017, p. 6.

<sup>56</sup> Ergon Energy and Energex Ring-fencing waiver applications, July 2017, pp. 12 and p. 9 (respectively).

<sup>57</sup> TasNetworks, Ring-fencing Waiver applications, July 2017, p. 9.

## 3.2

### 3.3 Essential Energy and TasNetworks – contestable meters (Type 1-4)

Essential Energy and TasNetworks are seeking temporary waivers in respect to the obligations under the functional separation provisions of the Guideline so they can continue to provide type 1-4 contestable metering services for a number of residual meters.

Both Essential Energy and TasNetworks are making efforts to exit the contestable market for these services, however, due to circumstances beyond their control, the DNSPs find themselves with a number of residual meters yet to be transferred to retailers. Neither DNSP is currently competing in this market for new customers.<sup>58</sup>

Essential Energy has around 100 type 4 meters remaining on their books which require action from the retailer before they can be transferred. Of these, 39 are de-energised meters where there are no current active customers, 66 are active meters, 40 of which require replacement and are not being charged for. The remaining 26 are still being charged to retailers. Finally there are 8 National Meter Identifiers within Essential Energy's substations.<sup>59</sup> Essential Energy has made requests of the retailers to churn all active meters off their books. Revenue from the metering service is not material.

TasNetworks is the meter provider and owner of around 3000 type 1-4 meters connected to its network. The retailer, Aurora Energy, is the responsible person, who has planned to assume ownership of these meters progressively over the next two years.<sup>60</sup>

Further information sought from TasNetworks and the retailer Aurora Energy indicate that transfer of ownership of meters from one meter provider to another can be achieved either by sale of the existing meter or physical replacement of the existing meter.<sup>61</sup> Therefore the costs of complying with the Guideline, with respect to the DNSPs exiting the metering services market would fall to retailers or consumers.

The DNSPs are seeking a waiver to allow the retailers, or a new meter provider, time to assume responsibility for the outstanding meters, allowing the DNSPs to exit the contestable market.

Without a waiver, the DNSPs will be in breach of the functional separation provisions of the Guideline on 1 January 2018.

#### 3.3.1 Description of waiver applications

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<sup>58</sup> TasNetworks, Ring-fencing Waiver applications, July 2017, p. 12 & Essential Energy, Ring-fencing guideline: Waiver application - residual contestable meters, July 2017, p. 3

<sup>59</sup> Essential Energy, Ring-fencing guideline: Waiver application - residual contestable meters, July 2017, p. 3.

<sup>60</sup> TasNetworks, Ring-fencing Waiver applications, July 2017, p. 12.

<sup>61</sup> Aurora Energy, Submission to TasNetworks ring-fencing waiver application: Type 1-4 legacy meters - meter provider role, August 2017, p.1.

Essential Energy and TasNetworks are seeking for waivers from the functional separation provisions contained in clause 4.2 which relate to offices, staff, branding and promotions. This will allow them to continue to provide type 1-4 metering services until such time as they can completely exit the market.

They are also seeking a waiver and under 4.4.1 of the Guideline to exempt the conduct of service providers who assist them in providing the service.

If granted, the waivers will cover the remainder of the current regulatory control period and expire by 1 July 2019.

### **3.4 AusNet – Mt Baw Baw**

AusNet has requested a waiver for its standalone electricity network at Mt Baw Baw. This network provides an integrated electricity generation, distribution and retail service to the Mt Baw Baw ski fields. The network is not part of the NEM. The service is offered under a contract to the Victorian Government. It is not contestable while the contract for service is in operation. The isolated network provides a service that extends beyond distribution to generation and retailing – so is not a distribution service.

Under the Ring-fencing Guideline, this service would be treated as a non-distribution service. This reflects the non-network nature of the services (which include generation and retail) as not being connected to the NEM. Consequently, the service should not be provided by a DNSP (although a waiver may be sought).

If legally separated from AusNet, the provider of this service would be regarded as a related electricity service provider to AusNet and would be subject to non-discrimination obligations of the Guideline.

The contract expires in May 2020.

If the waiver is not granted, AusNet will be in breach of both legal (clause 3.1) and functional (clause 4.2.3(i) - Branding and cross promotion) provisions of the Guideline.

#### **3.4.1 Description of waiver application**

AusNet seeks a waiver of the Guideline's legal separation (clause 3.1) and branding obligations (clause 4.2.3(i)) in relation to the services it provides at Mt Baw Baw. The services are subject to state-based retail price regulation and AusNet considers it is practical to continue providing the services for the remainder of the contract period. AusNet will review whether it continues to provide these services post-2020 and, if it does, has advised that it will be offered under a new contract from a separate legal entity.

AusNet is not seeking a waiver of other functional separation provisions of the Guideline under 4.2.3(ii) and 4.2.3(iii) relating to advertising and cross-promotion of contestable electricity services.

AusNet is seeking a temporary waiver for its existing contract which expires in 2020.

## 3.5 Assessment

### 3.5.1 Ausgrid, Endeavour Energy, Ergon Energy, Energex and TasNetworks – 6 month transitional waivers

We are satisfied that the DNSPs are making substantial efforts to achieve compliance with the Guideline. They have either established, or have advanced plans to establish, separate legal affiliated entities to provide the contestable services the DNSPs are currently providing. We are also satisfied that there are legitimate reasons why the businesses need a further six months in order to fully comply with Guideline in this respect. In this instance, we consider there is likely to be benefit from granting a short transitional waiver. .

We understand the concerns made in a submission by the Public Interest Advocacy Centre (PIAC), in relation to Ausgrid, that a waiver should only be granted in the case that "*Ausgrid's inability to set up and resource its Affiliated Entity is not the result of its own inefficiencies or poor decisions in implementing its compliance obligations*".<sup>62</sup> We have applied this concern more generally and have sought additional information from the DNSPs to outline their timelines to complete full compliance with respect to their legal separation obligations. This also accords with a recommendation made in the Australian Energy Council's (AEC) submission, that granting any waiver should be conditional on a clear identification of the steps to be taken, the timeline for these, and reporting to the AER against the timeline.<sup>63</sup>

We agree with PIAC that the proposed waiver does not seem to result in any material harm and note that they do not oppose, in the case of Ausgrid, a waiver being granted where the circumstances are beyond the DNSPs control.<sup>64</sup> We also acknowledge the AEC's view where they expressed disappointment, given the timeframes available, that Energex has not already completed, and in some cases is yet to start, the steps in their implementation plan<sup>65</sup>. It is important that DNSPs become compliant with the Guideline as soon as practical.

Despite this, our assessment is that if the waivers are not granted, it would force businesses to cease providing services or to bring forward their activities to ensure compliance by 1 January 2018, which could have adverse customer impacts. Businesses have flagged that potential impacts would not be in the interests of the NEO to the extent that they could include increased costs to the businesses which would be passed on to customers and possibly impact reliability of services.

Submissions were generally not in favour of granting the DNSPs an extension of time to transition to full compliance with regard to their legal separation obligations.

- the AEC does not support TasNetworks' waiver application on the basis that the services TasNetworks has listed are not described in detail that would allow analysis of the effects of the waiver if granted. Further, the AEC suggested that if the waiver is

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<sup>62</sup> PIAC, Submission on Ring-fencing waiver applications for NSW Distribution Network Service Providers, August 2017, p. 1,

<sup>63</sup> AEC, draft submission on applications for waiver from the distribution Ring-fencing Guideline, August 2017, p. 3.

<sup>64</sup> PIAC, Submission on Ring-fencing waiver applications for NSW Distribution Network Service Providers, August 2017, p. 1.

<sup>65</sup> AEC, draft submission on applications for waiver from the distribution Ring-fencing Guideline, August 2017, pp. 4-5.



granted, it should be subject to conditions that TasNetworks report to the AER on the progress of various milestones<sup>66</sup>.

- Red and Lumo Energy, subsidiaries of Australian Hydro Limited, strongly objected to DNSP waiver applications for legal separation purposes on the basis that waivers should be granted in a rare set of limited circumstances, such as where a waiver is required under law<sup>67</sup>
- Origin Energy does not support the granting of any waiver with respect to the novation of contracts. In their view, waivers should only be granted in extenuating circumstances, which in their assessment, Ergon Energy has not demonstrated<sup>68</sup>.
- AGL considers that networks have had sufficient time to ensure their compliance with the Guideline, and that any transitional waiver should be limited to 3 months.<sup>69</sup>

However, it is the AER's view that, in the circumstances in which these businesses find themselves, an additional six month period for complying with the Guideline is reasonable and appropriate.

In these circumstances, the nature of these waivers is short-term, the harm from granting a waiver is limited, and granting the waivers will assist the DNSPs to become compliant over the long-term. As a result, it is our view that we should grant the waivers for the six month term requested by the DNSPs. However, we will ask DNSPs to submit to us a timetable regarding timelines and milestones to full compliance with their legal separation obligations.

Our draft decision is to grant these waivers.

We welcome submissions on this approach.

### **3.5.2 Essential Energy and TasNetworks – contestable meters (Type 1-4)**

We propose to grant these waivers, as applied for, for the remainder of the current regulatory control period, ending in 2019. We consider that allowing the DNSPs to continue to provide the service using their existing offices, staff, branding and promotions, for a limited time until they can completely exit the market, will support the NEO in terms of price and security of supply for retail customers.

The DNSPs are actively in the process of withdrawing from the metering market and transferring the outstanding meters to retailers. The costs, that may be incurred should the retailers be “forced” to accept responsibility for the meters sooner than they have otherwise planned, are potentially significant.

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<sup>66</sup> Ibid, p.7.

<sup>67</sup> Red Energy and Lumo Energy, Submission regarding Ring-fencing waiver applications, August 2017 p. 3.

<sup>68</sup> Origin Energy, Submission on Ring-fencing applications, August 2017, p. 2.

<sup>69</sup> AGL, Submission on ring-fencing waiver applications, August 2017, p. 3.



There is no potential for discrimination, as both DNSPs have taken independent commercial decisions prior to the commencement of the Ring-fencing Guideline to exit the contestable metering market.

Furthermore, in the case of Essential Energy, there is likely to be no benefit to electricity consumers if Essential Energy was to functionally separate the provision of residual type 4 contestable meter services, as Essential Energy has already withdrawn from this service. The AEC submitted that the issue, in relation to Essential Energy, is of such an immaterial nature that no waiver is required. Instead they suggest that all remaining type 4 meters could be classified non-compliant on 1 January 2018, thereby placing an obligation on retailers to exchange the meters and promptly appoint a metering provider. They also suggest that the AER could issue a No Action letter to address the non-compliance issue.<sup>70</sup>

Likewise, AGL also suggested alternatives to granting a waiver which included providing a no action letter or allowing the DNSPs to be non-compliant on 1 January 2018.<sup>71</sup>

TasNetworks has also made substantial steps to withdraw from the market. They will not actively pursue opportunities (either as a DNSP or through an affiliated entity) in the type 1-4 meter space. Furthermore, they have committed to not becoming the meter provider for any type 1-4 meters from 1 December, 2017.

As a result, the gains from forcing functional separation to manage the complete withdrawal from the market would be limited. Conversely, the costs of functional separation to manage the transition are likely to be considerable if the transition were accelerated to meeting the 1 January, 2018 deadline, and would likely be passed on to consumers.

Aurora Energy, which will gradually take over from TasNetworks as the meter provider for the 3,000 legacy meters, made a submission supporting TasNetworks' waiver application. The submission stated that a waiver is in the interests of Tasmanian customers in terms of avoiding unnecessary costs and disruption by allowing sufficient time to make alternative metering arrangements for these customers<sup>72</sup>.

The aim of granting waivers is to take into consideration any legitimate constraints DNSPs may face in becoming compliant with the Guideline as soon as practical. In the case of Essential Energy and TasNetworks, the constraints they face in becoming compliant are the actions they are waiting on other parties to take. It is the AER's consideration that forcing retailers to take the actions sooner than they have otherwise planned will have adverse impacts on customers.

The National Electricity Objective is protected by the existence of Essential Energy's whole of business Cost Allocation Method (CAM) and accounting separation of the service while they finalise withdrawal from this service. As a result, the harm from granting a waiver is very

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<sup>70</sup> AEC, Submission on applications for waiver from the distribution Ring-fencing Guideline, August 2017, p. 6.

<sup>71</sup> AGL Energy, Submission on Ring-fencing waiver applications, September 2017, p. 4.

<sup>72</sup> Aurora Energy, Submission on TasNetworks Ring-fencing waiver application: Type 1-4 legacy meters - Meter provider role, August 2017, p. 1.

limited and a 'no action letter' for non-compliance would not assist either DNSP become fully compliant any sooner.

Our draft decision is to grant the waivers sought for this service.

### **3.5.3 AusNet – Mt Baw Baw**

We propose to grant the waiver to allow AusNet to continue to own and operate the LPG and electrical supply service to the Mt Baw Baw ski fields. The waiver would also allow AusNet to use its brand in offering these services thereby avoiding the costs of rebranding the assets in accordance with the Guideline.

Granting AusNet a waiver to continue to provide these services at Mt Baw Baw for the remainder of the contract period will ensure there is no disruption to the service in terms of price, quality, safety, reliability and security of supply in accordance with the NEO.

Legal separation would provide better protection against cross-subsidies compared with the arrangements proposed under the waiver. However, our assessment indicates that the risk of cross subsidisation is no greater than has been the case under the Victorian ring-fencing Guidelines.

As the proposed waiver is only temporary, these arrangements will cease at the end of the existing contract at which time the waiver will also end. Should AusNet wish to continue to provide these services, full compliance would be required under any new contractual arrangements. Any discrimination issues are not considered to be relevant because the contract, while it remains in operation, is not open to competition and hence no alternative service providers are disadvantaged. Granting the waiver will therefore avoid implementation costs of legal and brand separation required to maintain compliance with the Guideline. The AER did not receive any submissions on AusNet's Mt Baw Baw application.

Our draft decision is to grant the waiver sought for this service.

## 4 Waiver group 3 - Branding

This group of waivers is concerned with the use of a DNSP's brand in the provision of unregulated electricity services beyond the 1 January deadline for compliance.

The waiver applications are:

1. CitiPower and Powercor – Powercor Network Services, CitiPower and Powercor brands
2. Energex and Ergon Energy – other energy services and unclassified distribution services
3. Ergon Energy – Hayman Island

The sections below describe the waivers requested, our assessment of DNSPs' claims, and our preliminary position on whether the waivers should be granted.

### 4.1 CitiPower and Powercor – Powercor Network Services, CitiPower and Powercor brands

CitiPower and Powercor seek two waivers relating to use of its brand in regard to the provision of services until the end of 2020.

First, CitiPower and Powercor are seeking a waiver from the obligation to use branding that is independent and separate from branding used by a related electricity service provider. This would allow their affiliated entity; Powercor Network Services, to continue to provide unregulated services under that name until December 2020 (the remainder of the current regulatory control period).<sup>73</sup> The waiver would provide CitiPower and Powercor more time to finish phasing out Powercor Network Services branded items (and rebranding Powercor Network Services itself) without retiring materials early. According to CitiPower and Powercor, no new materials are being created with the Powercor Network Services branding and all Powercor Network Services materials would be rebranded by the end of the waiver period.

Second, CitiPower and Powercor seek a waiver from obligations to use independent branding and also the obligations not to advertise or promote contestable electricity services. Under the Guideline, CitiPower and Powercor are able to share their staff with Powercor Network Services.<sup>74</sup> However, there are restrictions on cross promotion that would mean shared staff cannot use CitiPower or Powercor branded uniforms and materials. The waiver would allow CitiPower and Powercor staff to continue to use CitiPower and Powercor branded materials while providing services through Powercor Network Services. CitiPower and Powercor branding would be removed or covered up with separately branded materials by the end of the waiver period.

CitiPower and Powercor proposed to restrict the waivers in a number of ways:

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<sup>73</sup> CitiPower and Powercor, *Waiver applications*, May 2017, pp. 8-9.

<sup>74</sup> CitiPower and Powercor, *Waiver applications*, May 2017, pp. 10-11.

- the CitiPower, Powercor and Powercor Network Services brands would not be used at the time of tendering for contestable electricity services, and they may only be used for large commercial and industrial customers, and
- staff branded CitiPower and Powercor may not promote the services of the contestable service provider.

#### 4.1.1 Description of waiver applications

The waivers only relate to functional separation obligations and so there is no potential for cross-subsidy. Potential for discrimination is minimised by the proposed restrictions. These ensure that the DNSPs' brands cannot be used to influence customers at the time of tender and that the brands are only used for customers who are unlikely to assume the use of the DNSP's brand means the contestable service provider is the same entity.

CitiPower and Powercor seek a waiver of around three years.<sup>75</sup> If the waiver is not granted, CitiPower and Powercor have stated that they are likely to face significant costs from retiring uniforms early and bringing forward rebranding of fleet, contracts and the Powercor Network Services business. These costs are likely to be passed on to consumers, which would not be in the interests of the NEO.

In this case, there is unlikely to be benefit to consumers from CitiPower and Powercor complying with the branding obligations of the Guideline. However, there is likely to be detriment to consumers if the waivers are not granted.

We note that CitiPower and Powercor have demonstrated they are actively working toward compliance by the end of the waiver period. They have provided a detailed work timetable showing each milestone towards compliance, the dates they will be achieved and how. CitiPower and Powercor have also demonstrated they are likely to achieve compliance for many of the materials ahead a year of the requested waiver expiry date. This suggests that CitiPower and Powercor may be seeking a longer duration than needed. While this may allow for flexibility, we note the concerns of interested parties about the length of time it is taking DNSPs to comply with the branding obligations and whether this evidences a lack of commitment to achieving compliance.

## 4.2 Energex and Ergon Energy – other electricity services and unclassified distribution services

Energex and Ergon Energy each seek a waiver from the Guideline's branding and cross-promotion obligations to allow them to continue use Energex and Ergon Energy branding on uniforms and fleet used in the provision of contestable electricity services, being 'other electricity services' and 'unclassified distribution services'.

#### 4.2.1 Description of waiver application

These other electricity services that are the subject of these waiver applications are:

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<sup>75</sup> CitiPower and Powercor, *Waiver applications*, May 2017, pp. 9-11.

- Test, inspect and calibrate services
- Contracting services to other network service provider
- Operation and maintenance of customer assets
- Equipment services
- Construction and sale of modular substations

The unclassified distribution services that are the subject of the waiver applications are type 1-4 contestable metering services. In addition, Ergon Energy seeks a waiver for provision of a connection services to Hayman Island, which is also an unclassified distribution service and is discussed separately below. Energex and Ergon Energy seek waivers until the end of the next regulatory control period (June 2025).

Energex and Ergon Energy have stated that they will comply with all other Guideline obligations for the provision of the other electricity services listed above and UDS type 1-4 metering services, including transferring the services to an affiliated entity (Metering Dynamics) and separating staff, offices and information sharing for this service. Energex and Ergon Energy have stated that they will transfer the other electricity services listed above to AEs within the EQL Group, including Energy Impact, Metering Dynamics and Nexium, while type 1-4 metering services will be transferred to Metering Dynamics. The affiliated entities' separate branding will be used for communications, marketing, invoicing and website design.

However, Energex and Ergon each submitted that they face significant challenges to rebrand uniforms and fleet and will not be able to fully comply until 2025. They intend to use best endeavours to achieve compliance ahead of this time, including transitioning to new branding over time, starting with the uniforms of staff in larger, non-regional depots. They would provide updates on progress towards compliance with the branding obligations as part of their annual compliance reports.

Energex and Ergon Energy submitted that they have made significant investment in Energex-branded and Ergon-branded uniforms, and it is most cost-effective for this supply of uniforms to be exhausted before new uniforms are acquired. The DNSPs submitted that they must consult with their employees before rebranding uniforms and fleet, which can take a significant period of time, with no guarantee that the trialled items will be approved. Energex and Ergon Energy submitted they undertook trials to introduce new uniforms only recently and it would not be a prudent use of funds to commence another consultation process so soon. Even once a new uniform is approved, there will also be manufacturing time for the new materials.<sup>76</sup>

Energex and Ergon Energy intend to begin replacing uniforms from 2020, starting with the larger, non-regional depots and progressing to all others by no later than June 2025. They submitted they are working to identify any risks of discrimination and will implement (as yet undefined) measures to mitigate these risks.

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<sup>76</sup> Ergon Energy, Waiver applications, July 2017, p. 35-37; Energex, *Waiver applications*, July 2017, pp. 13-15.

## 4.3 Ergon Energy – Hayman Island

Ergon Energy owns an undersea cable that provides a connection service from Hayman Island to the Ergon Energy network and is a UDS. Ergon Energy has a customer connection agreement with the operator of Hayman Island (Mulpha Australia Limited), which means that this service is not contestable. It expects to be compliant with all Guideline obligations by 1 January 2018, except branding and cross-promotion.<sup>77</sup>

### 4.3.1 Description of waiver application

Ergon Energy seeks a waiver to continue to provide the connection services under the Ergon Energy brand until the contract expires. Essentially, the waiver would mean that Ergon Energy would not have to rebrand its fleet or uniforms used in the provision of services to Hayman Island until a new contract was developed.

Ergon Energy submitted that its only non-compliant branded materials will be uniforms and fleet. It will provide the connection service through an affiliated entity, Energy Impact, with separate branding for communications, marketing, material and website design. It will be compliant with all other obligations of the Guideline for the provision of UDS and other electricity services to Hayman Island.

## 4.4 Assessment

### 4.4.1 CitiPower and Powercor – Powercor Network Services, CitiPower and Powercor brands

We are satisfied that CitiPower and Powercor are making substantial efforts to achieve compliance and have demonstrated there is a reasonable case to extend the transitional period to achieve compliance with respect to branding of certain services. We consider granting the waiver is likely to result in less harm to the interests of consumers than if the waiver is not granted. However, we note there is evidence that CitiPower and Powercor are likely to be able to comply within two years, rather than the three years requested.

In their joint submission, Red Energy and Lumo Energy suggested that the Powercor Network Services brand would be likely to prejudice the competitiveness of the market markets for unregulated services, as Power Network Services has been active in the market and has potentially developed brand awareness and loyalty.<sup>78</sup> We note that CitiPower and Powercor have restricted its proposed waivers in such a way as to restrict use of its brand in tendering for new contracts, and not use its brand in providing services to residential customers. Combined with the short term nature of the waiver, we are satisfied the harm that might result from use of the Powercor brand is minimal. Conversely, we consider the costs that might be incurred by CitiPower and Powercor to achieve compliance with the Guideline by 1 January 2018 would result in little or no associated benefit.

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<sup>77</sup> Ergon Energy, Waiver applications, July 2017, p 35-37; Energex, *Waiver applications*, July 2017, p. 36.

<sup>78</sup> Red Energy and Lumo Energy, *Submission to CitiPower and Powercor Ring-fencing Waiver application*, June 2017, p. 2.



Nevertheless, we propose to grant the waivers for two years rather than three as proposed. This adjustment to the period of the waiver is consistent with the views expressed by AGL, which considered that the period of time CitiPower and Powercor have sought for their rebranding waivers are disproportionate to the anticipated impacts that this would have on the emergence of a competitive market.<sup>79</sup> Shortening of the waiver will signal to CitiPower and Powercor, and other interested parties, that we expect compliance to be achieved with the Guideline as soon as reasonably practicable. The waivers would be subject to the conditions as proposed in CitiPower and Powercor's waiver application.

#### **4.4.2 Energex and Ergon Energy – other electricity services and unclassified distribution services**

We note that Energex and Ergon Energy are seeking waivers for “the maximum period available” – more than seven years – to achieve branding compliance for these the other energy service and metering services that are the subject of their waivers.<sup>80</sup> While it is possible that the transition period has not been enough time for the DNSPs to implement the requirement for these services, it is not clear to us that such a long duration is warranted.

We consider uniforms could reasonably be expected to wear out in less than seven years. This view is supported by Origin Energy's assessment that new production runs for new branding and logos could be established without material increase in costs, much of the equipment in question has an economic lifespan well within the transition period proposed by Ergon Energy and Energex, and in some instances the uniforms and brandings of AEs are already established.<sup>81</sup> We are not convinced that rebranding uniforms would require trials, as the only aspect of the clothing that would need to change is the logo. We agree with the AEC's assessment that Energex appears to have overstated what would be required to bring itself into compliance with branding obligations with respect to employee uniforms.<sup>82</sup>

It appears reasonably achievable for Energex and Ergon Energy to transition away from branded materials toward staged compliance well before the proposed expiry date in 2025. Further, they could limit the potential scope of the waivers (as CitiPower and Powercor have done) in their branding waiver application. It would be useful if Energex and Ergon Energy developed a staged timetable for achieving compliance in support of their waiver application.

As with the CitiPower and Powercor branding waver application, we expect Energex and Ergon Energy would incur costs to comply with the branding restrictions in the Guideline. Accordingly, it is prudent for the DNSPs to design means by which these costs can be reduced, particularly if the potential harm caused by cross-promotion can be mitigated. As the cost of complying with the branding obligation for type 1-4 metering services is unlikely to be material, we consider that a waiver is reasonable, at least for a short period of time. In

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<sup>79</sup> AGL Energy, Submission to CitiPower and Powercor, *Ring-fencing Waiver application*, June 2017, p. 2.

<sup>80</sup> Ergon Energy, Waiver applications, July 2017, p 36; Energex, *Waiver applications*, July 2017, p. 15.

<sup>81</sup> Origin Energy, Submission to Energex and Ergon Energy Waiver application, p. 3.

<sup>82</sup> AEC, Australian Energy Council draft submission on applications for waiver from the Distribution Ring-fencing Guideline, August 2017, p. 5.



contrast, the likelihood of harm to consumers increases with the duration of the waiver. We note that no other DNSPs have sought branding waivers for such a long duration.

We propose to grant the waivers subject to conditions, including a shorter duration and a requirement to provide a compliance timetable. We also are interested in stakeholders views with respect to a waiver duration of two years. We expect that, if Energex and Ergon Energy have justification for a longer duration, they will respond to this draft decision with evidence to support that request. This approach is consistent with our position on CitiPower and Powercor's waiver applications.

#### **4.4.3 Ergon Energy – Hayman Island**

The undersea cable to Hayman Island is an unregulated service. This would normally require functional separation of Ergon Energy staff and those providing this service. As this service is provided under an existing long term contract, we consider there is little risk of discrimination caused by cross promotion.

Rejecting the waiver would impose costs with no offsetting benefit. This would result in higher costs that could be passed on to Ergon Energy's distribution consumers. This would not be consistent with the NEO.

When the existing Hayman Island undersea cable contract expires, the service should be functionally separated from Ergon Energy. Until that time, we propose a waiver be granted to avoid imposition of unnecessary costs. The waiver, if granted, would expire at the end of the 2020-25 regulatory control period, or at the expiration of the existing contract, whichever occurs first. No submissions were received in regard to this waiver application.

Our draft decision is to grant the waiver sought for this service subject to an expiry date of 30 June 2015, or expiration of the existing contract, whichever occurs first.

## 5 Waiver group 4 - Regional service delivery

This group of waivers is concerned with services provided in regional areas by Ergon Energy and Essential Energy. These services are offered on a commercial but not competitive basis. All are subject to final price regulation by the respective state governments in support of regional communities. Ergon Energy and Essential Energy are seeking waivers that would allow those DNSPs or a same branded affiliate to offer these services.

The waivers listed below are described and assessed in the subsequent sections.

1. Ergon Energy—Isolated systems
2. Ergon Energy—Ergon Energy Queensland (electricity retailer)
3. Essential Energy—Essential Water
4. Essential Energy—Water access

The DNSPs are seeking these waivers on an on-going basis. While the waivers would be reviewed prior to each Determination, it is reasonable to assume these waivers might be rolled over – at least until state government policies change.

### 5.1 Ergon Energy—Isolated systems

Ergon Energy operates thirty three isolated electricity systems that involve generation, distribution and retail services to customers under the Ergon Energy brand in remote areas of Queensland. Prices for these services are regulated and significantly subsidised by the Queensland Government. Ergon Energy argues there is no competition to provide these services as state government subsidies (community service obligation (CSO) payments) are only available to Ergon Energy.<sup>83</sup>

While the isolated systems employ distribution systems, the services would be best described as non-distribution services because they include generation and retail functions. The Guideline requires that these services are provided by a separate legal entity and would impose functional separation including restrictions on staff and office sharing and the requirement to provide these services with a distinctly separate brand.

#### 5.1.1 Description of waiver application

Ergon Energy is seeking a waiver to continue to offer these services, using its own brand and to continue to use its distribution staff to provide these services in remote areas of Queensland. According to Ergon Energy, cross-subsidies will be avoided through the continued operation of its existing CAM. Further, the absence of any competition means that there is no risk of harm due to discrimination in favour of an affiliate.

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<sup>83</sup> Ergon Energy, *Ring-fencing waiver application*, July 2017, p. 25.

The Queensland Competition Authority granted Ergon Energy a waiver to operate these systems in the early 2000s. The proposed waiver would allow Ergon Energy to retain the current service provision arrangements.

## 5.2 Ergon Energy—Ergon Energy Queensland (electricity retailer)

Ergon Energy Queensland (EEQ) is a non-competing electricity retailer. EEQ offers subsidised electricity to consumers in Ergon Energy's distribution area. Retail prices in Ergon Energy's distribution area are regulated by the Queensland Competition Authority (QCA). Operating losses incurred by EEQ are met through a community service obligation payment from the Queensland Government. We understand that EEQ intends to operate as a separate legal entity to Ergon Energy.<sup>84</sup>

### 5.2.1 Description of waiver application

Ergon Energy is seeking a waiver from the branding requirements of the Guideline in order to continue to use the Ergon Energy brand for its retailer.

Ergon Energy submitted that cross-subsidies will be avoided through the continued operation of its existing CAM, which is inclusive of EEQ.

According to Ergon Energy, as EEQ is regulated and consumers have no choice of retailer, there is no risk that EEQ would be able to take advantage of shared use of the Ergon Energy brand. Ergon Energy submitted it will abide by the office and staff sharing restrictions in the Guideline.<sup>85</sup>

## 5.3 Essential Energy—Essential Water

Essential Energy (trading as Essential Water) is a water supply authority providing water, sewage, liquid trade waste and other miscellaneous services in the far west of NSW. As a non-distribution service, the Guideline requires this service to be legally and functionally separated from the DNSP. The water supply services are used by around 10,000 customers in the far west of NSW, in the Broken Hill region.

### 5.3.1 Description of waiver application

Essential Energy is seeking a waiver from legal and functional separation obligations to avoid to the costs of establishing a separate legal entity for Essential Water's customers. It considers there would be no benefit from doing so. Essential Energy notes the prices for its water services are regulated, meaning there is no opportunity to misuse market power, and the risk of cross-subsidies are addressed through its CAM.

The prices for services offered by Essential Water are regulated by the Independent Pricing and Regulatory Tribunal (IPART). According to Essential Energy, its CAM separates the

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<sup>84</sup> Ergon Energy, *Ring-fencing waiver application*, July 2017, p. 16.

<sup>85</sup> Ergon Energy, *Ring-fencing waiver application*, July 2017, p. 17.

costs it incurs in providing water supply services from its costs associated with electricity distribution services, ensuring cross subsidies are avoided.

Essential Energy is seeking a waiver for the 'longest duration possible', being to the end of the 2020-25 regulatory control period. Essential Energy does not foresee any changes to the Essential Water service during that timeframe.

## **5.4 Essential Energy—Water Access**

Essential Energy (trading as Essential Water) is the owner of the Nymboida Power Station, a hydroelectric power station with a dual function water extraction licence to extract water for electricity generation and the supply of potable water to the Clarence Valley Council. The power station is no longer operational. However, Essential Water still uses its water licence to extract water for sale to the Clarence Valley Council. Essential Energy is negotiating with the Clarence Valley Council for purchase of the licence and water extraction rights.

### **5.4.1 Description of waiver application**

Essential Energy is applying for a waiver from legal and functional separation in order to continue to provide this service. Essential Energy submitted that the revenue generated from this service does not justify the costs of establishing a new legal entity. Similarly, Essential Energy submitted that the cost of separation would create additional costs to distribution customers with no associated benefit.

The waiver is being sought for the 'longest duration possible' (2019-24 regulatory control period). They do not foresee any changes other than a possible transfer of this service to another party – being the Clarence Valley Council.

## **5.5 Assessment**

### **5.5.1 Essential Energy – Essential Water and Water Access – and Ergon Energy – Isolated systems**

The Guideline aims to separate the provision of regulated services from the provision of contestable electricity services by a DNSP or its affiliates. With respect to this group of waivers, we consider none of the services are offered into competitive markets. We therefore consider that granting the waivers is not likely to result in significant harm.

Essential Energy and Ergon Energy have CAMs that encompass the relevant services. Consequently, there is reduced risk of cross-subsidy.

As these services are regulated monopolies, harm to potential competitors is not a relevant consideration. There appear to be few if any benefits from imposing the ring-fencing obligations that impose functional separation.

We consider that imposing a requirement for legal and/or functional separation would impose additional costs on these businesses with no obvious offsetting benefit and costs would be likely to be met by consumers.

In its submission, AGL Energy supported granting Essential Energy a waiver from legal separation with regard to its water distribution service.<sup>86</sup>

We consider the cost of complying with the Guideline is likely to exceed the benefits and it is therefore likely to be appropriate to grant the waivers. We note that the waivers will be granted for a limited duration and will be reviewed prior to the next Determination in 2024.

### 5.5.2 Ergon Energy – Ergon Energy Queensland (electricity retailer)

The AER received a number of submissions in relation to Ergon Energy's application to waive branding separation obligations for its Ergon Energy Queensland retail brand. A submission from Origin Energy accepted that granting a waiver to allow EEQ to continue to operate under its current brand will not have an impact on competition for retail contracts in Ergon Energy's service area, because EEQ is a non-competing retailer, cannot actively compete for new customers, and is restricted to supplying standard contracts.<sup>87</sup> However, submissions from Origin Energy and the AEC note that this does not preclude EEQ from providing behind the meter services both in the Ergon Energy network area and anywhere else in the National Electricity Market.<sup>88</sup> There is a competitive market for behind-the-meter batteries, solar PV, and solar PV power purchase agreements (PPAs) in the Ergon Energy distribution network.<sup>89</sup>

The AEC has proposed that, should a waiver be granted the trigger for the waiver coming to an end should be when EEQ begins to offer solar PV or any other behind the meter services to retail customers, rather than a change in the legislative framework that limits retail competition in Ergon Energy's service area.<sup>90</sup> Origin Energy has suggested that any waiver should be conditional on use of the EEQ branding for the provision of retail services under standard retail contracts only.

Ergon Energy made representations to the AER in early 2017, to the effect that it may not be acceptable to company shareholder to change the name of EEQ. It should be noted that, if state governments consider that a waiver should be granted, there is a risk they could seek a derogation to produce the same effect.

Ergon Energy's role in providing these services seems to be guided by state government policy rather than a commercial decision. Further, it is not clear that Ergon Energy has discretion to cease provision of these services.

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<sup>86</sup> AGL Energy Limited, *Re Ring-fencing waiver applications*, September 2017, p. 3.

<sup>87</sup> Origin Energy, Submission on ring-fencing waiver applications, August 2016, p. 2.

<sup>88</sup> AEC, Australian Energy Council draft submission on applications for waiver from the Distribution Ring-Fencing Guideline, August 2017, p.6; Origin Energy, Submission on ring-fencing waiver applications, August 2016, p. 2.

<sup>89</sup> Origin Energy, Submission on ring-fencing waiver applications, August 2016, p. 2.

<sup>90</sup> AEC, Australian Energy Council draft submission on applications for waiver from the Distribution Ring-Fencing Guideline, August 2017, p. 6.

Many of the harms that ring-fencing is seeking to avoid are already covered. For example, the potential for cross-subsidies are managed by Ergon Energy's CAM, which already encompass these services. In addition, EEQ is already legally separated from Ergon Energy,

Our draft decision is to grant Ergon Energy's application to waive branding separation obligations for the EEQ brand, subject to two conditions:

- This waiver will expire at the end of the next regulatory control period on 30 June 2025 or in the event of legislative change that introduces retail competition into Ergon Energy's distribution area, whichever comes first.
- This waiver will apply only to use of the EEQ brand for services that relate to the provision of standard retail contracts in the Ergon Energy distribution network. Behind-the-meter contestable services will be specifically excluded from this waiver. Accordingly, they will need to have separate branding from Ergon Energy, such that no reasonable person would infer that Ergon Energy and any AE delivering contestable services are related.

It is our view that the conditions imposed on the waiver would satisfy the concerns of stakeholders as well as our own. The benefits of imposing ring-fencing obligations, including branding restrictions, in this instance, seem to be negligible, while the costs of rebranding are potentially substantial, and would likely be passed on to customers. Furthermore, these services are regulated monopolies; therefore, harm to potential competitors is not a relevant consideration.

## 6 Waiver group 5 – ActewAGL gas businesses

Aside from its electricity distribution network in the ACT, ActewAGL Distribution (AAD) also operates three gas businesses. All of these businesses operate within the same legal entity as the electricity distribution business.

AAD is seeking a waiver<sup>91</sup> from legal separation for the following three businesses and also seeks to allow AAD to continue to provide the gas services from within the same legal entity as its electricity distribution services:

- Regulated (covered) gas distribution pipelines in the ACT and Queanbeyan – Palerang area (ACT Gas Network) – this is a covered pipeline under Part 9 of National Gas Rules.
- Unregulated natural gas distribution pipelines in the Nowra network (Nowra Gas Network) – uncovered pipeline.
- An unregulated compressed natural gas refuelling facility in Fyshwick, a suburb of the ACT (CNG Refuelling Facility).

Each of the gas services are non-distribution services and the Guideline requires that they should therefore be offered through a separate legal entity from AAD's regulated electricity distribution business.

We note that the gas pipeline is a regulated business - the AER is responsible for the regulation of the gas pipeline in the ACT under the National Gas Law.<sup>92</sup>

The uncovered Nowra Gas Network pipeline is subject to the new Vertigan gas regulatory framework (the Vertigan framework).<sup>93</sup> This business serves a small number of residential customers with low levels of gas consumption and low revenues, which are very small compared to electricity distribution services revenues.

AAD submitted that the CNG Refuelling Facility is a small business generating immaterial revenue and is currently marginally unprofitable. AAD submitted that the cost increase at the margin of operating this facility if required to operate this through a separate legal entity would render it financially unviable. AAD submitted that, if the waiver is not granted, it is likely to close the CNG Refuelling Facility, to the detriment of gas powered vehicle users in Canberra. Customers using the CNG Refuelling Facility include operators of delivery trucks, concrete vendors and a limited number of large private vehicles.

AAD submitted that there are no competitors in the markets for any of the three components of its gas businesses.<sup>94</sup> Combined, the three businesses generate revenues of around 22%

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<sup>91</sup> ActewAGL, *Application for Waiver*, July 2017.

<sup>92</sup> Part 9 of the National Gas Rules apply to covered pipelines, such as AAD's pipelines in the ACT and Queanbeyan-Palerang region.

<sup>93</sup> *National Gas (South Australia) Pipelines Access-Arbitration) Amendment Act 2017 (SA)*.

<sup>94</sup> ActewAGL, *Application for Waiver*, July 2017, pp. 3-6.



of revenues from the electricity network services, Nowra gas Network being 1.2% and CNG refuelling being 0.03%.<sup>95</sup>

### 6.1.1 Description of waiver applications

ADD is seeking a waiver from legal separation for the three businesses, which would allow it to continue to operate its gas business as it does at present. While, in practice, the waiver would be reviewed every five years, in effect, AAD is seeking a permanent ring-fencing waiver arrangement for these businesses.

## 6.2 Assessment

We note that the Guideline does not require AAD to functionally separate the three gas businesses, since the businesses do not offer contestable electricity services. However, the Guideline does require AAD to legally separate Other Services from its distribution and transmission business.

In our Ring-fencing Guideline Explanatory Statement, we noted that we may accept a waiver from legal separation if a DNSP offers a non-distribution service that is regulated and where its CAM is inclusive of the non-distribution business. In this case, risk of cross-subsidy is limited if adequate transparency is provided through the CAM and if the DNSP is offering services that are not contestable.

We consider this situation is likely to be applicable for AAD's ACT Gas Network, since business is regulated and has a CAM that accounts for the regulated gas services offered by AAD. We note that AAD has also offered to make revisions to its CAM to improve the transparency of treatment of its gas businesses.

AGL Energy submitted that it supports granting a waiver for this business.<sup>96</sup> Red Energy and Lumo Energy submitted that they objected to DNSP waiver applications for legal separation, except in rare circumstances (but did not comment on whether this waiver application would be one of those circumstances).<sup>97</sup>

With respect to the Nowra Gas Network, AAD submitted that the new Vertigan framework will address the lack of regulation of these networks. We consider the application of the Vertigan framework is likely to minimise the risk that AAD would be incentivised to cross-subsidise the Nowra Gas Network from its ACT Gas Network. Subject to revisions to AAD's existing CAM to make the Nowra Gas Network more explicitly included, we consider the risk of cross subsidy is adequately addressed. The Vertigan financial disclosure obligations are currently being developed and will be reported on by late 2019. Once the reporting regime is in place, it will allow for further assessment of whether information under the Vertigan regime contributes to preventing cross subsidies.

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<sup>95</sup> Ibid. p. 9.

<sup>96</sup> AGL Energy Limited, *Re Ring-fencing waiver applications*, September 2017, p. 3.

<sup>97</sup> Red Energy and Lumo Energy, *Ring Fencing Waiver Applications*, August 2017, p. 3.

No submissions were received on the Nowra Gas Network component of the waiver application.

We therefore propose to:

- Grant the waiver for the ACT Gas Network
- Grant the waiver for the Nowra Gas Network, with a review of the waiver to be undertaken before the commencement of the 2024-29 Determination.

We note that the CNG Refuelling Facility is a contestable and unregulated business. However, AAD submitted that the CNG Refuelling Facility is unprofitable and potentially loss-making. It submitted that if the waiver is not granted, it may decide to close the refuelling business. ADD stated that this could result in some vehicles not being able to access compressed natural gas.<sup>98</sup>

No submissions were received on this component of the waiver.

We propose to grant AAD a short-term waiver, expiring 30 June 2019, to allow AAD to continue to own and operate the CNG refuelling business. This will allow AAD time to submit a revised CAM for ensuring and demonstrating that costs are separated between the different businesses (including the CNG refuelling business), thereby addressing the risk of cross subsidy in relation to the CNG refuelling business. This short-term waiver will allow for the market for CNG refuelling to be reassessed to ascertain the presence of competition and other options available.

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<sup>98</sup> ActewAGL, *Application for Waiver, July 2017*, p. 8.

## 7 Waiver Group 6 - Regional offices

This group of waivers is concerned with the application of the Guideline in areas where competition may be limited or not exist, due to the locations in which some services may be demanded, even though a service may be contestable. The Guideline includes regional office exemption clauses to address this characteristic found typically in regional and rural areas.

Regional offices are where a DNSP is permitted to share an office with one of its affiliates offering constable services. In the absence of a waiver, the Guideline prohibits office and staff because of the risk that the affiliate would benefit from the sharing of these resources. The risk stems from the commercial opportunities that might arise from potential flows of information between the DNSP and its affiliate to the disadvantage of competitors of the affiliate. In some instances we may accept that these risks are minimal, perhaps because the DNSP's affiliate does not face competition from other parties. Where a regional office waiver is granted, the affiliate may share staff and office facilities with its affiliate and certain restrictions on branding and cross promotion are lifted as well. We have received two waiver applications in regard to 'regional offices' and one for 'service provider of last resort' to regional communities.

These are:

- Ergon Energy's waiver application in respect of applying the regional office exemptions to Mareeba and Charters Towers, and
- Ergon Energy's waiver application in respect of sharing staff with its affiliate, Ergon Energy Queensland (EEQ), for the purpose of delivering non-distribution services to the Barcaldine Power Station.
- Essential Energy's waiver application in respect of acting as a 'provider of last resort' to regional communities.

The sections below describe the particular circumstances and the waivers the DNSPs are seeking, along with the assessment and our draft decision.

### 7.1 Ergon Energy—Mareeba and Charters Towers

Mareeba and Charters Towers do not meet the definition of regional offices because of their proximity to large regional towns, yet their large service areas mean it would not be efficient to meet the Guideline obligations.

The Guideline defines a regional office as an office that has less than 25,000 connection points within a 100km radius of that office.<sup>99</sup> Mareeba is located within 100 km of Cairns (where there are more than 25,000 connection points) but services only 9,200 connection points within a 100 km radius of the depot. The Mareeba depot boundary has a total of 28,700 connection points across its 230,000 square km area. However, Only 7 per cent of

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<sup>99</sup> AER, Electricity Distribution Ring-fencing Guideline Version 2.0, October 2017, clause 1.4.

connections within a 100 km radius of the Mareeba depot are serviced by the Mareeba depot.<sup>100</sup>

Charters Towers is located some 108 km from Townsville (where there are more than 25,000 connection points) but services only 5,600 connection points across a 55,000 square km area. However due to its proximity to Townsville, there are a further 30,600 connection points within a 100 km radius of the Charters Towers depot which are serviced by other depots. Only 15 per cent of connections within a 100 km radius of the Charters Towers depot are serviced by the Charters Towers depot.

Ergon Energy has submitted that there is currently no or very limited competition with respect to contestable electricity services provided within the Mareeba and Charters Towers depot boundaries. It suggests that it would be more cost-effective to achieve compliance by ceasing to provide contestable energy services from the Mareeba and Charters Towers depots. However, this is not an option because Ergon Energy is effectively the 'supplier of last resort' for some customers within these depot boundaries.<sup>101</sup>

Ergon Energy claimed it would be inefficiently costly to establish a functionally separated team to provide contestable electricity services to Mareeba and Charters Towers. In the absence of a waiver, Ergon Energy would need to send separate regulated and contestable service crews to a customer's premises over distances of, say, 150 km to comply with staff separation obligations. Ergon Energy claims this would result in inefficient use of resources and higher costs, as well as increased wait times faced by the customer.

### **7.1.1 Description of waiver application and assessment**

Ergon Energy is seeking a waiver to allow the offices at Mareeba and Charters Towers to be classified as regional offices for the purposes of the Guideline. This would allow the application of the Guideline's regional office exemptions for office, staff, branding and cross-promotion obligations to these locations.

If granted, the waiver would apply to the provision of contestable electricity services from the Mareeba and Charters Towers depots. This relates primarily to services which are unclassified distribution services, which may be contestable but not face competition in the market due to their isolated location.

Ergon Energy anticipates the need to exempt the Mareeba and Charters Towers depots from the Guideline on an ongoing basis, but has sought a waiver only until the end of the 2020-25 regulatory control period in order to allow reassessment at that time.

Ergon Energy considers granting the waiver will not raise the potential for discrimination because there are no competitors to discriminate against. We note that Ergon Energy did not provide any detailed evidence in support of this claim. In particular, we consider Ergon Energy could identify the nature of electricity services that are available from third party service providers in Charters Towers and Mareeba.

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<sup>100</sup> Ergon Energy Ring-fencing Guideline; Waiver applications, July 2017, p. 20.

<sup>101</sup> Ergon Energy, Ring-fencing Guideline; Waiver applications, July 2017, p. 22.

In its submission, Origin Energy lent some support to Ergon Energy's claim inasmuch as they recognised that "...*there are likely to be certain contestable services where there are no viable providers other than Ergon*". However, Origin Energy also submitted that there are other services for which they contest in certain localities within the region through a related service provider. Accordingly, Origin suggests that a conditional waiver could apply to contestable services in front of and including the customer's connection point, or, subject to the presence of competition, the metering point.<sup>102</sup>

Where there is a genuine lack of competition, we agree with Ergon Energy's claim that the approval of the waiver would promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to reliability and security of supply of electricity. This is because customers would be likely to face higher wait times for services if separate crews need to be dispatched to perform regulated and contestable electrical work. Ergon Energy would also incur higher costs, which would likely be passed onto customers.

We support the development of effective competition for electricity services wherever this is feasible. Where competition is feasible we would not offer waivers to DNSPs from ring-fencing obligations. Where effective competition is not feasible, regional office waivers permit a DNSP and its affiliate to share resources. It should be noted that regional office waivers are subject to review and can be varied or revoked under clause 5.6 of the Guideline.

We appreciate that Ergon Energy offers services in regional areas where competition may be limited or non-existent. Rejecting the waiver application could result in higher operating costs and inefficiencies. However, it is important that we test the existence of competition to avoid granting a waiver that could harm the potential development of competitive markets.

We propose granting the waiver for Mareeba and Charters Towers to be classified as Regional Offices on condition that the waiver only applies for the provision of the following services:

- Contestable metering services, including installation, testing, faults and repairs
- Pole installation, replacement and repairs on customer property.

This is consistent with Origin Energy's suggestion that a conditional waiver could apply for contestable services in front and including the customer's connection point, or, subject to the presence of competition, the metering point.<sup>103</sup>

Approving this waiver (for the services defined above) would enable these contestable services to be provided by co-located and shared staff from these particular depots under the Ergon Energy brand. The waiver would be in effect until the end of the 2020-25 regulatory control period or until such time as alternative service providers can demonstrate a competitive offering for these services in Charters Towers and Mareeba.

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<sup>102</sup> Origin Energy, Submission to Ring-fencing waiver applications, August 2017, p. 3.

<sup>103</sup> Origin Energy, Submission to Ring-fencing waiver applications, August 2017, p. 3.

We are satisfied the waiver is consistent with the NEO with respect to reliability and security of supply of electricity at least cost. This draft decision provides an opportunity for us to test the claims of little or no competition in these areas. We invite current or prospective competitors as well as other stakeholders to make submissions to this draft decision.

While we propose to grant the waiver Ergon Energy is seeking, it can later be withdrawn. We have discretion to review or revoke a DNSP's exemption by providing the DNSP with at least 40 days' notice that it is considering doing so.

## 7.2 Ergon Energy—Barcaldine

Ergon Energy Queensland (EEQ), a non-competing electricity retailer, providing retail services to non-market customers in Ergon Energy's distribution area. EEQ is a legally separate affiliate of Ergon Energy which shares its brand with the DNSP. EEQ operates a power station at Barcaldine Queensland. Staff separation between Ergon Energy staff based at Barcaldine and EEQ is not required because the Ergon Energy staff are sourced from a 'regional office' as defined under the Guideline. 'Regional office' staff can be shared with an affiliate, reflecting the likely absence of competition to services offered by affiliates from remote locations.

Ergon Energy supplements its staff in Barcaldine with staff from its Cairns office, from time to time, for relief purposes such as during annual leave. Staff provided from the Cairns depot only perform operational and maintenance activities within the grounds of the Power Station and have no external functions, nor do they perform services for any of Ergon Energy's distribution customers. The Cairns depot is not a regional office as defined in the Guideline. Ergon Energy is seeking a waiver to allow staff from Cairns to supplement its staff in Barcaldine during periods of annual leave.

There are only five staff located at Ergon Energy's Barcaldine depot, including a casual cleaner and a support officer. As a result, the requirement to backfill staff due to annual shutdown and refurbishment, as well as annual leave requirements is limited to two Cairns-based staff once a year for two weeks and one Cairns-based staff member for two weeks every two months.<sup>104</sup>

### 7.2.1 Description of waiver application and assessment

Ergon Energy is seeking a waiver from legal separation so that that it may continue to operate the power station until this function is fully transferred to EEQ or another legal entity. The waiver has been requested until 2025. However, Ergon Energy has indicated its intention to transfer the function well before this time.<sup>105</sup>

In making the waiver application, Ergon Energy has taken a very conservative approach. Ultimately, our assessment is that a waiver is not required in this instance.

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<sup>104</sup> Ergon Energy Ring-fencing Guideline; Waiver applications, July 2017, p. 30.

<sup>105</sup> Ergon Energy Ring-fencing Guideline; Waiver applications, July 2017, p. 30.

When considering the need for a waiver, we are required to take into account a number of factors. In particular, that:

- As Barcaldine is a regional office under the definitions of the guideline, EEQ's operations are exempt from the obligations relating to legal and functional separation.
- The obligations related to staff sharing (Clause 4.2.2) in the Guideline state that "a DNSP must ensure that its staff involved in the provision or marketing of direct control services are not also involved in the provision or marketing of contestable electricity services by a related electricity service provider". These staff are only involved in operational and maintenance activities at Barcaldine and as a result do not have an opportunity to use any electricity information they may glean from their roles to engage in conduct that is contrary to the DNSP's obligations under clause 4.1 of the Guideline. Thus, the exception in clause 4.2.2(b)i.b. of the Guideline applies.
- The obligations related to branding (clause 4.2.3) could apply to the Cairns-based staff wearing their Ergon Energy branded uniforms in the performance of their duties at Barcaldine. However, as theirs is a specialised role operating entirely within the precincts of the Barcaldine Power Station, with no external exposure, they are not using that brand in the sense contemplated by the Guideline. Therefore, there is no opportunity for cross-promotion of the brand.

On this basis, we are satisfied that Ergon Energy does not require a waiver in order to provide staff from the Cairns depot to the support the Barcaldine Power Station at various times during the year.

Our draft decision is not to grant the waiver application on the basis that it is not required.

### **7.3 Essential Energy – regional service delivery**

In September 2017, we received a waiver application from Essential Energy that referred to a number of contestable services to customers in regional communities where there is limited or no competition. Essential Energy referred to these as "provider of last resort" services. The contestable services included in this waiver application are offered where no other service provider is willing to offer services at a reasonable price and/or on reasonable terms.

Essential Energy indicated it had decided against setting up a separate affiliated entity to provide these services as the volume of work provided would not justify the cost of creating and running a functionally separated business.<sup>106</sup> Essential Energy noted that not all the regional communities in which Essential Energy offers these services would meet the definition for regional office exemptions allowed for in the Guideline. However, Essential Energy submitted that a waiver would be required to ensure that regional and remote customers do not lose access to services given Essential Energy's decision not to form a contestable business.

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<sup>106</sup> Essential Energy, Waiver application: Provider of last resort, September 2017, p. 3.



Essential Energy suggested that, in the absence of a waiver, service availability could reduce and costs would increase to affected customers, mostly in regional NSW.<sup>107</sup>

Essential Energy's concern for regional communities is focussed on two key issues:

- Lack of access to affordable services – where only a single competitive provider exists; or
- Lack of access to timely services – where providers advise customers that they are unable to perform the works requested in a timely manner due to a lack of service providers.<sup>108</sup>

### 7.3.1 Description of waiver application and assessment

Essential Energy is seeking a waiver that would allow it to offer unregulated contestable services where alternative service providers are unwilling or unable to offer service on a timely and affordable basis to customers. In its waiver application, Essential Energy sought scope to identify and provide services allowed for under the NSW Accredited Service Provider Scheme<sup>109</sup> on a 'service provider of last resort' basis. This scheme is designed to encourage the competitive provision of services across NSW by third parties rather than by regulated monopolies like Essential Energy. See Attachment A for a list of services that Essential Energy would like to offer on this basis.

If granted, the waiver would cover the remainder of the current regulatory period as well as the forthcoming 2019-2024 regulatory control period. Essential Energy expects it will be required to offer the services covered by this proposed waiver over this whole period.<sup>110</sup>

In assessing this waiver application, we accept, at least at face value, that the intent of Essential Energy's waiver application is to ensure customers in regional areas of NSW are not denied services at a reasonable price and/or on reasonable terms. We appreciate that, particularly in regional areas, customers' access to some services may be variable due to the sometimes limited number of accredited service providers available at any one time.<sup>111</sup>

Notwithstanding Essential Energy's intentions, we are uncomfortable with the waiver as proposed. If accepted, the waiver would grant Essential Energy too much discretion to decide whether or not customers had access to services from third parties at a reasonable price and on reasonable terms. Further, there is a risk is that if the waiver was granted, Essential Energy's presence in the market could drive away competition—becoming a self-fulfilling prophecy. This assessment by competitors could be based on the perception (real or otherwise) that Essential Energy is willing to provide services even where it is not commercially viable to do so.

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<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> <http://www.resourcesandenergy.nsw.gov.au/energy-supply-industry/pipelines-electricity-gas-networks/network-connections/contestable-works>

<sup>110</sup> Essential Energy – Waiver application: Provider of last resort, September 2017, p. 4.

<sup>111</sup> Essential Energy – Waiver application: Provider of last resort, September 2017, p. 5.

In our view, a decision as to whether there are sufficient alternative service providers to offer a service on a reasonable basis (or otherwise) is one that belongs to us as an impartial decision maker. For Essential Energy, there is a commercial incentive that could influence a DNSP were it free to make the decision.

The Guideline includes clauses to address situations where there is limited competition in regional areas. In particular, where alternative service providers are not available, a waiver can be granted under the Guideline for a regional office, allowing a DNSP to offer services without incurring the costs relating to legal or functional separation. However, Essential Energy argued these waiver arrangements are not sufficiently flexible with respect to the circumstance faced by customers in its distribution area. Essential Energy argued there is great variability in markets. For example, from time to time, service providers may be unavailable in some regional areas perhaps due to capacity constraints, or prices could be affected by an absence of competition. In these instances, Essential Energy argued it should be able to operate as a service provider of last resort. This would mean that, on some occasions, Essential Energy would allow third parties to provide the unregulated services while on other occasions Essential Energy would provide the services because it considered that no other service provider could or would at a reasonable price and terms.

As noted, we do not think it appropriate to provide Essential Energy with the discretion to decide if it should operate as a service provider of last resort. Instead, we consider an alternative control Service (ACS) classification is better suited to services where competition is developing. If the services covered by the waiver application were offered by Essential Energy on an alternative control basis, the prices for the service would be regulated by us. Essential Energy would be free to offer or not offer the services while third parties would be able to see the price they are required to compete with. However, the classification or reclassification of services only occurs at the time of the Determination every 5 years. With respect to the current regulatory period, it is not possible to change classification. However, we are able to offer a waiver (a 'reclassification waiver') as per waiver group 1, which will allow Essential Energy to continue to offer services to customers on the same basis that it does at present.

Therefore, we propose to grant Essential Energy a reclassification waiver on the basis there is a prima facie case for the services that were to be covered by a "provider of last resort" waiver to be reclassified as ACS. The waiver would only extend to the commencement of the next regulatory control period. Further, the waiver would be restricted to the circumstances set out by Essential Energy in its waiver application.

We consider that this approach, combined with Essential Energy's stated intent to offer these services only if there are no alternative service providers willing to operate, provides a basis on which these services can continue to be offered by Essential Energy until the new classification for these services (including the scope of the services that will be within this new classification) is established.

We seek stakeholder feedback on this draft decision, in particular regarding the circumstances in which a service might be provided appropriately as a last resort service, and whether there might be an objective test that could be applied to identify when the service is being provided.

Our draft decision is to treat this waiver application as being for a reclassification waiver (as per waiver group 1) for provision of last resort services. This means that for the remainder of the current regulatory control period, these services will be treated—for ring-fencing purposes—as if they are ACS services. The conditions under which the services would be provided are to be defined through the public consultation process and will be published in our final decision.

## 7.4 Essential Energy - Technical training courses

Essential Energy currently offers three notionally contestable technical training courses to 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:

1. **Accredited Service Provider Initial & 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.
2. **Work Near Overhead Powerlines (WNP) Initial & Refresher Training** - Work Near Overhead Powerlines, training is offered as either Initial Training for new entrants or annual Refresher Training to existing workers. Once successfully completed, accredited workers will be able to work to reduced clearances in accordance with the WNP Code. To remain compliant with the WorkCover Code, annual refresher training is required. This course is a contestable training course offered by other providers in NSW.
3. **Safe Work Practices Initial & Refresher Training** - This course provides participants with the knowledge to carry out safe work practices including identifying electrical and mechanical hazards specific to high voltage substations, precautions that must be taken when working on and near the infrastructure, how to avoid safety issues through the use of personal protective equipment and awareness of rescue procedures in the event an incident occurs. This course is a contestable training course offered by other providers in NSW.<sup>112</sup>

Essential Energy's concern is that, if it withdrew from these services in order to comply with the Guideline, ASPs in regional areas where there is limited or no competition might experience a reduction of services and increased costs of accessing training. Essential Energy's concern for regional communities where there may be a lack of competition can be categorised into two main areas:

- Lack of access to affordable services – where only a single competitive provider exists and abuses their market power or where service providers may be located a significant distance away and mobilisation becomes a significant cost; and

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<sup>112</sup> Essential Energy, Waiver application - Contestable Technical Training Courses, September 2017, p. 3.

- Lack of access to timely services – where providers advise customers that they are unable to perform the services requested in a timely manner and there is a lack of alternative suppliers.

#### 7.4.1 Description of waiver application and assessment

Essential Energy is seeking a waiver that would allow it to continue to offer the above mentioned contestable training services. The waiver would be in relation to their obligations under clause 4.2 for functional separation of contestable electricity services. To ensure that these services are not offered in areas where significant levels of competition exist, Essential Energy has offered to restrict its service offering to localities, where there is limited access to these courses.<sup>113</sup> The areas identified are:

- **Within Essential Energy’s footprint:** Albury, Ballina, Bathurst, Bingara, Blayney, Braidwood, Broadwater, Broken Hill, Bulahdelah, Buronga, Cobar, Cobram, Coffs Harbour, Condon, Corowa, Deniliquin, Dubbo, Eden, Ewingsdale, 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, Walcha, Wialda, Young; and
- **Outside Essential Energy’s footprint** (in regional Victoria): Wodonga, Echuca, Bendigo and Swan Hill (for customers based outside of Essential Energy's footprint but authorised to work on the Essential Energy network).

Essential Energy has requested that the waiver be granted with an expiry date of 30 June 2024. These dates have been selected to allow the waiver to be in operation for the longest duration possible given Essential Energy does not foresee any change in the service during that timeframe.

Where there is a genuine lack of competition for these services, we agree with Essential Energy's claim that granting the waiver would support the NEO as it will protect consumers in those locations where these courses are not offered by a functioning competitive market. We support the development of effective competition for electricity services wherever this is feasible. Where competition is feasible we would not offer waivers to DNSPs from ring-fencing obligations. Where effective competition is not feasible, a waiver would allow customers to receive these training services in a timely manner and at competitive rates.

If we do not grant the waiver application, Essential Energy has submitted it will exit the contestable training market.<sup>114</sup> The likely impact of that decision could result in loss of access to the courses for some customers, higher training course prices for others, or significant travel and accommodation costs, for ASP contractors and their employees, to attend locations where an alternative provider currently conducts training. However, it is important that we test the existence of competition to avoid granting a waiver that could harm the potential development of competitive markets.

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<sup>113</sup> Ibid., p. 4.

<sup>114</sup> Essential Energy - Waiver application - Contestable Technical Training Courses, September 2017, p. 4.

We propose to grant the waiver, with an expiry date of 30 June 2024 under strict conditions that Essential Energy may only provide these contestable services in the regional localities they have identified. Essential Energy's waiver application with regard to these services was received after submissions closed. As a result, we note that stakeholders, including competitors have not had the opportunity to comment on this proposal.

This draft decision provides an opportunity for us to test the claims of little or no competition in these areas. We invite current or prospective competitors as well as other stakeholders to make submissions to this draft decision.

While we propose to grant the waiver Essential Energy is seeking, we note that we may review or revoke a waiver, at our discretion, by providing the DNSP with at least 40 days' notice that we are considering doing so.

## 8 No action letters

Two DNSPs asked us to issue them letters guaranteeing the AER will not take any action (a **No Action Letter**) in relation to certain conduct:

- CitiPower and Powercor requested a No Action Letter to exempt them from all obligations of the Guideline in relation to their single operating model<sup>115</sup>
- TasNetworks requested a No Action Letter to exempt them from obligations under clauses 4.3.2 and 4.3.3 of the Guideline in relation to the IT system TasNetworks shares with its new legal entity.<sup>116</sup>

These No Action Letters would apply on an ongoing basis, or until such time as they were revoked.

### 8.1.1 TasNetworks

TasNetworks has sought a No Action Letter in relation to clauses 4.3.2 (Protection of confidential information) and 4.3.3 (Disclosure of information) of the Guideline.

Broadly, these obligations require a DNSP to<sup>117</sup>:

- keep confidential information confidential
- only use confidential information for the purposes for which it was acquired or generated
- not disclose confidential information to any person unless particular conditions are met.

Prior to the introduction of the Guideline, TasNetworks provided a number of services that generate external, non-regulated revenue. These 'other distribution services' include

- external telecommunications
- external data centres
- external IT services, and
- operation and maintenance support for isolated distribution networks not part of the NEM (Bass Strait Islands).

TasNetworks intends to separate these services and proposes to create a new, legally separate entity to provide them. The new legal entity would not provide contestable electricity services. TasNetworks seeks to share IT systems with its new legal entity but considers there is a risk that, in doing so, it may breach clauses 4.3.2 and 4.3.3 of the Guideline. This is because it interprets those clauses to mean that information must be kept confidential even from a legal entity not providing contestable electricity services.

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<sup>115</sup> CitiPower and Powercor, *CitiPower and Powercor Ring Fencing Waiver Application May 2017*, p. 12.

<sup>116</sup> TasNetworks, *TasNetworks Ring-fencing Waiver Applications July 2017*, p. 15.

<sup>117</sup> Please refer to clauses 4.3.2 and 4.3.3 of the Guideline for full details.

TasNetworks submitted that the new shared IT system was established as part of the single operating model introduced when TasNetworks was created in 2014. It submitted that duplicating the system to ensure separation from its new legal entity would be costly and would not provide significant benefit. This is because the new legal entity does not provide contestable electricity services. TasNetworks submitted that it will put in place appropriate controls to ensure that confidential information is handled in a correct manner when dealing with external parties (as is currently the case). It also submitted that, should the new legal entity begin to provide contestable electricity services, then the No Action Letter would cease to apply and the business would need to take appropriate steps to ensure confidential information was retained only within the DNSP. It submitted that the No Action Letter would only be applicable for information flows between the DNSP and the newly established entity (an entity not providing contestable electricity services).

Clause 4.3.1 of the Guideline states that 'confidential information' means electricity information, acquired or generated by a DNSP in connection with its provision of direct control services, that is not already publicly available.

Clause 1.4 of the Guideline defines 'electricity information' as information about electricity networks, electricity customers or electricity services, other than:

- (a) aggregated financial information; or
- (b) other service performance information;

that does not relate to an identifiable customer or class of customer.

Our view is that if a DNSP does not protect confidential information in the manner required by the Guideline, there is a risk that the DNSP could confer an anti-competitive advantage on a competitor or potential competitor of a RESP.

We note that TasNetworks intends that its separate legal entity will not provide contestable electricity services. However, we consider that operations and maintenance support for isolated distribution networks not part of the NEM (Bass Strait Islands) is likely to be a contestable energy service. In our view, this service is better classified as an 'other electricity service'. We consider issuing a No Action Letter in respect of these services would be likely to confer an anti-competitive advantage upon TasNetworks' new legal entity.

We also note that TasNetworks intends to put in place appropriate controls for dealing with external parties. However, it is not clear to us that TasNetworks can put in place appropriate controls to ensure that confidential information within its shared IT system is not accessible to staff of the separate legal entity. It is also not clear to us that the cost of putting these controls in place would outweigh the likely benefits of complying with the Guideline in this instance.

We propose not to issue TasNetworks a No Action Letter in this case.

### **8.1.2 CitiPower and Powercor**

CitiPower and Powercor are each regulated DNSPs, meaning the Guideline only permits them to provide direct control distribution services. Neither DNSP provides contestable



electricity services. They submitted that they hold separate licenses but essentially operate as a single business with shared management, employees and systems.

We note that the Guideline's original definition of a 'related electricity service provider' included an 'affiliated entity', and the Guideline's original definition of an 'affiliated entity' included a legal entity that has a legal or equitable interest in the DNSP (or vice versa).<sup>118</sup> At the time of lodging their waiver application, without an amendment or exemption, CitiPower and Powercor were likely to be in breach of a number of provisions of the Guideline by virtue of their single business model.

CitiPower and Powercor submitted that this is not the intended effect of the Guideline.<sup>119</sup> They submitted that it would therefore be appropriate for the AER to either amend the Guideline or issue No Action Letter regarding this conduct. CitiPower and Powercor submitted a No Action Letter would be more appropriate than a waiver because it would be difficult to individually identify all the activities necessary to be included in the waiver, and waivers may not be available for all activities.

In their Ring Fencing Compliance Strategy, CitiPower and Powercor submitted that, if their waiver applications and No Action Letter request are unsuccessful, they will potentially incur additional costs from immediate re-branding actions, including rebranding approximately 916 vehicles and uniforms and safety equipment for 660 field service staff, and changing email domain, website, and legal and consumer documentation.<sup>120</sup>

CitiPower and Powercor submitted their use of a single business model:

- does not result in any consumer or market harms
- promotes efficiencies
- has no impact on affiliated entities.

We note that CitiPower and Powercor are both regulated DNSPs, with separate cost allocation methodologies. They do not provide contestable services and there is no potential for cross-subsidisation or discrimination. We therefore consider that forcing them to separate their businesses is likely to be costly and without commensurate benefit to the public. This would not be in the interests of the NEO. We note that no interested parties have objected to the CitiPower and Powercor's requested exemption for their single business model.

As a result of our 2017 Guideline amendment process, we have amended the Guideline such that CitiPower and Powercor will be able to continue using their single business model without breaching the Guideline.

We therefore propose not to issue CitiPower and Powercor a No Action Letter at this time.

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<sup>118</sup> Please refer to clause 1.4 of the Guideline (November 2016) for full details and provisions.

<sup>119</sup> CitiPower and Powercor, *CitiPower and Powercor Ring Fencing Waiver Application May 2017*, p. 12.

<sup>120</sup> CitiPower and Powercor, *CitiPower and Powercor Ring Fencing Compliance Strategy, May 2017*, p. 16. This document was submitted to the AER in May 2017 and made publicly available together with CitiPower and Powercor's ring-fencing waiver application.

## 9 Draft decision

Clause 5.3.1 of the Guideline states that the AER may make a decision to either:

- grant the waiver subject to any conditions the AER considers appropriate, or
- grant the waiver as an interim waiver subject to any conditions the AER considers appropriate, or
- refuse to grant the waiver.

We note that our draft decision is made on the basis of the information submitted to us by the DNSPs in their respective applications and submissions. We note that the proposed waivers apply only in the circumstances and under the conditions described to us by each of the DNSPs in those documents. The proposed waivers would not apply in any other circumstances. Aside from where waivers apply, we expect that all DNSPs will comply with the Guideline in all other circumstances, and in all other respects.

### **ActewAGL**

- We propose to grant ActewAGL a waiver until 30 June 2024, the end of the 2019-24 regulatory control period, from its obligations under clause 3.1(b) of the Guideline, to allow ActewAGL to continue to own and operate its ACT Gas Network and its Nowra Gas Network. We propose to grant the waiver on the condition that the CAM be updated to:
  - reflect the requirements of the Guideline; and
  - explicitly account for the ACT Gas Network, the Nowra Gas Network and the CNG Refuelling Facility and any changes to ActewAGL's organisational structure arising from the creation of separate legal entities.
- We propose to grant ActewAGL a waiver until 31 December 2019, from its obligations under clause 3.1(b) of the Guideline, to allow ActewAGL to continue to own and operate its CNG Refuelling Facility at Fyshwick.

### **Ausgrid**

- We propose to grant Ausgrid a waiver until 30 June 2019 from its obligations under clauses 3.1, 4.2.1, 4.2.2 and 4.2.3 of the Guideline in relation the following services:
  - public lighting and nightwatchman lights
  - network safety services
  - reserve feeder construction
  - high load escorts
  - rectification works to maintain network safety
  - planned interruption – customer requested
  - training course for third parties – related to network access
  - customer-initiated asset relocations

- termination of cable at zone substation - DNSP required performance
- minor and legacy metering services
- rental and hire services
- non-standard connections.
- Ausgrid also applied for other waivers for reclassification of services, which we propose not to grant because the services are already classified ACS and no waiver is required. For a full list see Attachment A.
- We propose to grant Ausgrid a waiver until 1 July 2018 from its obligations under clause 3.1 of the Guideline to allow Ausgrid additional time to establish its Affiliated Entity and implement resourcing arrangements to move its Other Services to the Affiliated Entity.
- We propose not to grant Ausgrid's waiver application for an exemption from the obligations under clauses 3.1, 4.2.1, 4.2.2, 4.2.3 of the Guideline in relation to supply restoration services for non-life support customers.

#### **AusNet**

- We propose to grant AusNet a waiver until 31 December 2020 from their obligations under clauses 3.1, 4.2.1, 4.2.2 and 4.2.3 of the Guideline in relation to the following services:
  - public lighting and nightwatchman lights
  - emergency recoverable works
  - reserve feeder construction.
- We propose to grant AusNet a waiver until 15 May 2020 from their obligations under clauses 3.1(b) and 4.2.3(a)i of the Guideline for the provision of electricity services to Mt Baw Baw.

#### **CitiPower and Powercor**

- We propose to grant CitiPower and Powercor a waiver until 31 December 2020 from their obligations under clauses 4.2.1, 4.2.2 and 4.2.3 of the Guideline in relation to the prospective reclassification of the following services:
  - public lighting and nightwatchman lights
  - reserve feeder construction
  - minor and legacy metering services
  - emergency recoverable works
  - non-standard connections.
- We propose to grant CitiPower and Powercor a waiver until 31 December 2019 (two years instead of the three years requested), from their obligations under clause 4.2.3(a)i. of the Guideline for the use of the Powercor Network Services branding and under clause 4.2.3(a) of the Guideline for the use of CitiPower and Powercor branding, on the conditions that these brands are not used at the time of tendering for services, they are

only used in the provision of services to large commercial and industrial customers, and no new materials are made with the Powercor Network Services brand.

- We do not propose to grant CitiPower and Powercor a No Action Letter in relation to their single operating model. Amendments to the Guideline ensure that Citipower and Powercor can continue to operate as a single entity without breaching the Guideline.

### **Endeavour Energy**

- We propose to grant Endeavour Energy a waiver until 30 June 2019 from their obligations under clauses 3.1 and 4.2 of the Guideline in relation to the prospective reclassification of the following services:
  - emergency recoverable works
  - public lighting and nightwatchman lights
  - networks safety services
  - high load escorts
  - minor and legacy metering services
  - rectification works to maintain network safety
  - planned interruption – customer requested
  - network related training courses
  - customer-initiated asset relocations
  - non-standard connections and customer-requested supply enhancements
  - termination of cable at zone substation - DNSP required performance
- We propose to grant Endeavour Energy a waiver until 30 June 2018 from their obligations under clause 3.1 of the Guideline to allow Endeavour Energy additional time to establish its Affiliated Entity and implement resourcing arrangements to move the Other Services to the Affiliated Entity.

### **Energex**

- We propose to grant Energex a waiver until 30 June 2020 from their obligations under clauses 3.1 and 4.2.1, 4.2.2 and 4.2.3 of the Guideline in relation to the prospective reclassification of the following services:
  - emergency recoverable works
  - public lighting and nightwatchman lights
  - high load escorts
  - property services
  - network related training courses
  - rental and hire services
  - sale of inventory

- We propose to grant Energex a waiver until 30 June 2018 from their obligations under clause 3.1 of the Guideline to allow Energex additional time to novate existing contracts for Other Services to their affiliated entity; Energy Impact Pty Ltd.
- We propose to grant Energex a waiver until 31 December 2019 (two years rather than the seven and a half requested) from their obligations under clause 4.2.3 to allow them to continue use Energex and Ergon Energy branding on uniforms and fleet used in the provision of the following other services:
  - test, inspect and calibrate services
  - contracting services to other network service providers
  - operation and maintenance of customer assets
  - equipment services
  - training to external parties

on condition that Energex provides us with a comprehensive timetable for achieving compliance.

### **Ergon Energy**

- We propose to grant Ergon Energy a waiver until 30 June 2020 from their obligations under clauses 3.1 and 4.2.1, 4.2.2 and 4.2.3 of the Guideline in relation to the prospective reclassification of the following services:
  - emergency recoverable works
  - public lighting and nightwatchman lights
  - high load escorts
  - property services
  - network related training courses
  - rental and hire services
  - sale of inventory
- We propose to grant Ergon Energy a waiver until 30 June 2018 from their obligations under clause 3.1 of the Guideline to allow Ergon Energy additional time to novate existing contracts for Other Services to their affiliated entity; Energy Impact Pty Ltd.
- We propose to grant Ergon Energy a waiver until 30 June 2025 from their obligations under clause 4.2.3 of the Guideline to allow Ergon Energy to continue to use the Ergon Energy brand for its retailer; Ergon Energy Queensland (EEQ). We propose to grant the waiver on the condition that:
  - Use of the EEQ brand is restricted to services that relate to the provision of standard retail contracts in the Ergon Energy distribution network. Behind-the-meter contestable services are specifically excluded from this waiver and must have separate branding from Ergon Energy, such that no reasonable person would infer that Ergon Energy and any AE delivering contestable services are related.

- We propose to grant Ergon Energy a waiver until 30 June 2025 from their obligations under clauses 4.2.1(b)iii, 4.2.2(b)iii and 4.2.3(b)ii of the Guideline to allow the offices at Mareeba and Charters Towers to be classified as regional offices for the purposes of the Guideline.
- We propose to grant Ergon Energy a waiver until 30 June 2025 from their obligations under clauses 3.1(a), 4.2.1(a), 4.2.2(a) and 4.2.3(a) of the Guideline. This waiver will allow Ergon Energy to continue to offer generation, distribution and retail services, using its own brand and distribution staff in remote areas of Queensland.
- We propose to reject Ergon Energy 's application for a waiver from their obligations under clauses 3.1(b), 3.1(d)iii, clause 4.2.1(a), 4.2.2(a) and 4.2.3(a) to supply Cairns-based staff to the Barcaldine Power station on the basis that a waiver is not required.
- We propose to grant Ergon Energy a waiver until 31 December 2019 (two years rather than the seven and a half requested) from their obligations under clause 4.2.3 to allow them to continue use Energex and Ergon Energy branding on uniforms and fleet used in the provision of the following other services:
  - Type 1-4 metering services
  - test, inspect and calibrate services
  - contracting services to other network service providers
  - operation and maintenance of customer assets
  - equipment services
  - training to external parties

on condition that Ergon Energy provides us with a comprehensive timetable for achieving compliance.
- We propose to grant Ergon Energy a waiver until 30 June 2025, or expiration of contract if sooner, from their obligations under clause 4.2.3 of the Guideline. This waiver will allow Ergon Energy to continue to provide a connection service under long-term contract, to Hayman Island.

### **Essential Energy**

- We propose to grant Essential Energy a waiver until 1 July 2019 from their obligations under clauses 3.1 and 4.2.1, 4.2.2 4.2.3, 4.2.4 and 4.4.1(a) of the Guideline in relation to the prospective reclassification of the following services:
  - public lighting and nightwatchman lights
  - emergency recoverable works
  - rental and hire services
  - rectifications works to maintain network safety
  - network safety services
  - network related training courses

- minor and legacy metering services.
- Essential Energy also applied for other waivers for reclassification of services, which were rejected on the basis that the services are already classified either SCS or ACS and no waiver is required. For a full list see Attachment A.
- We propose to grant Essential Energy a waiver until 30 June 2024 from their obligations under clauses 3.1, 4.2.1, 4.2.2, 4.2.3, 4.2.4 and 4.4.1(a) of the Guideline. This waiver will allow Essential Energy to continue to use its water licence to extract water for sale to the Clarence Valley Council.
- We propose to grant Essential Energy a waiver until 30 June 2024 from their obligations under clauses 3.1, 4.2.1, 4.2.2, 4.2.3, 4.2.4 and 4.4.1(a) of the Guideline. This waiver will allow Essential Energy to continue to own and operate Essential Water, a water supply authority providing water, sewage, liquid trade waste and other miscellaneous services in the far west of NSW.
- We propose to grant Essential Energy a waiver until 30 June 2019 from their obligations under clauses 4.2.1, 4.2.2, 4.2.3, 4.2.4 and 4.4.1(a) of the Guideline. This waiver will allow Essential Energy to continue to provide type 1-4 metering services until such time as they can completely exit the market.
- We propose not to grant Essential Energy's waiver application for provider of last resort services as submitted. Instead we propose to treat the waiver application as a reclassification waiver for ACS services. As a result, we propose to grant Essential Energy a waiver until 1 July 2019 from their obligations under clauses 3.1 and 4.2.1, 4.2.2, 4.2.3, 4.2.4 and 4.4.1(a) of the Guideline which will allow them to continue providing these services as if they were classified as ACS.
- We propose to grant Essential Energy a waiver until 30 June 2024 from their obligations under clauses 4.2.1, 4.2.2, 4.2.3 and 4.2.4 of the Guideline. This waiver will allow Essential Energy to continue to provide certain contestable training courses to Accredited Service Providers on a very limited basis. See Attachment A for additional details.

### **Jemena**

- We propose to grant Jemena a waiver until 31 December 2020 from their obligations under clauses 4.2.1 and 4.2.2 of the Guideline in relation to the prospective reclassification of the following services:
  - public lighting and nightwatchman lights
  - reserve feeder construction
  - emergency recoverable works.

### **SA Power Networks**

- We propose to grant SA Power Networks a waiver until 30 June 2020 from their obligations under clause 4.2 and 4.4.1(a) of the Guideline in relation to the prospective reclassification of all services currently classified as negotiated services. These services are:



- Non-standard network services
- Non-standard small customer metering services
- Large customer metering services
- Stand-by and temporary supply services
- Embedded generation services
- Other services. 'Other services' not already covered in the analysis above are:
  - Some metering services that SA Power Networks is required to provide under the Electricity Metering Code or the NER
  - Provision of ... (ii) measurement devices; (iii) protection systems, and (iv) pole attachments, ducts or conduits (for telecommunications services)
  - Costs incurred by SA Power Networks as a result of a customer not complying with SA Power Networks' standard connection and supply contract or other obligation
  - Additional costs incurred by SA Power Networks where service provision could not be undertaken and/or completed as planned due to the actions, or inaction, of a customer or their agent
  - Provision of a television or radio interference investigation where it is determined that the distribution system is not the cause of the interference
  - Provision of information to distribution network users or third parties not related to connection enquiries
  - Cost recovery associated with supply larceny, including the costs associated with repairing or replacing damaged equipment and investigation costs where SA Power Networks determines that larceny of supply has occurred
  - Third-party connection work charges for work not undertaken by SA Power Networks
  - Provision of access permits or clearance to work on or near the distribution system
  - Off-peak conversion services
  - Work required for network tariff change requests
  - Recovery of debt collection costs
  - Negotiation for the provision of services
  - Attendance at the customer's premises to perform a statutory right where access is prevented
  - Provision of relevant regional energy consumption data to Local Government Councils
  - Third-party funded network upgrades, enhancements or other improvements including 'make-ready' work for NBN Co

## **TasNetworks**

- We propose to grant TasNetworks a waiver until 30 June 2020 from their obligations under clauses 4.2.1, 4.2.2 4.2.3, and 4.4.1(a) of the Guideline in relation to the prospective reclassification of the following services:
  - high load escorts
  - public lighting and nightwatchman lights
  - network safety services
  - planned interruption – customer requested
  - inspection services
  - minor and legacy metering services
  - network related training courses.
- TasNetworks also applied for other waivers for reclassification of services, which were rejected on the basis that the services are already classified ACS and no waiver is required. For a full list see Attachment A.
- We propose to grant TasNetworks a waiver until 30 June 2018 from their obligations under clause 3.1 of the Guideline to allow TasNetworks additional time to establish an affiliated entity and transfer all contestable services to that entity.
- We propose to grant TasNetworks a waiver until 30 June 2019 from their obligations under clauses 4.2.1, 4.2.2, 4.2.3, 4.4.1(a) to continue to provide type 1-4 metering services until such time as they can completely exit the market.
- We do not propose to issue TasNetworks with a No Action Letter for the shared use of IT systems with their affiliate.

## **United Energy**

- We propose to grant United Energy a waiver until 31 December 2020 from their obligations under clauses 4.2.1, 4.2.2 4.2.3, and 4.4.1(a) of the Guideline in relation to the prospective reclassification of the following services:
  - public lighting and nightwatchman lights
  - reserve feeder construction
  - possum guards
  - minor and legacy metering services
  - non-standard connections and customer-requested supply.

We invite submissions from interested parties in relation to this draft decision. After consideration of any submissions, we will prepare our final decision.

# DNBP waiver applications and AER draft decisions – summary by DNBP

## ActewAGL

ActewAGL has applied for one waiver:

1. A seven year waiver from legal separation of ActewAGL Distribution’s gas businesses. ActewAGL has applied for a waiver that would expire in 2024, at the end of the next regulatory control period, but with a view to a reassessment and extension of the waiver for the period following 2024.

This waiver application and the AER’s draft decision are summarised in the table below:

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
<b>Waiver application no. 1</b>		Conditionally approve waiver application	
Legal separation (clause 3.1(b))	Ownership of natural gas distribution pipelines located in the ACT and Queanbeyan-Palerang council area.	Conditionally approve subject to: - Revision of Cost Allocation Methodology (CAM) to reflect the requirements of the Guideline and changes to the organisational structure arising from the creation of one or more separate legal entities.	See section 6
	Ownership of natural gas distribution pipelines located in the Nowra network in the Shoalhaven local government area on the NSW south coast.	Conditionally approve subject to: - Revision of CAM to reflect the requirements of the Guideline and changes to the organisational structure arising from the creation of one or more separate legal entities.	See section 6
	Ownership of a compressed natural gas (CNG) refuelling facility in the Canberra suburb of Fyshwick.	Conditionally approve: - Shorter duration than requested: two years, expiring on 31 December 2019.	See section 6

Source: ActewAGL, *Application for waiver from AER Ring-fencing Guideline – Electricity Distribution – Legal separation of ActewAGL’s Distribution gas business*, July 2017, pp. 1-11.

## Ausgrid

Ausgrid has applied for three waivers, which are summarised in the table below:

1. Waiver no. 1: An 18-month waiver from legal separation, physical separation, staff sharing, and branding and cross-promotion obligations to allow the treatment of certain services under the Guideline as if the service classifications that are anticipated to apply at the commencement of the next regulatory control period were in operation. If granted, the waiver would expire on 1 July 2019.
2. Waiver no. 2: A six-month waiver from legal separation for Ausgrid to continue to provide Other Services while it resolves resourcing issues for its Affiliated Entity. If granted, the waiver would expire on 1 July 2018.
3. Waiver no. 3: A seven-and-a-half year waiver from legal separation, physical separation, staff sharing, and branding and cross-promotion obligations, which would allow Ausgrid to provide specific restoration services (Other Services) under limited circumstances. If granted, Ausgrid’s application would see this waiver expire on 30 June 2024.

These waiver applications and the AER’s draft decision are summarised in the table below:

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
<b>Waiver application no. 1</b>		Conditionally approve waiver application	
Legal separation (clause 3.1) Physical separation/ co-location (clause 4.2.1) Staff sharing (clause 4.2.2) Branding and cross-promotion (clause 4.2.3)	Services that Ausgrid submits are currently not classified, but which Ausgrid expects will be reclassified as ACS according to the Framework and Approach for Ausgrid, Endeavour Energy, and Essential Energy for the regulatory control period commencing 1 July 2019.	Approve waiver application for all services, except for those services that are already direct control services (services for which a waiver is rejected are indicated below).	
	- Design related services. This service includes the provision of engineering consulting.	Reject	This service is already ACS for the current regulatory control period

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
			and does not require a waiver (subset of 'design related services').
	<ul style="list-style-type: none"> <li>- Access permits, oversight and facilitation. This service includes: (1) Facilitation of generator connection and operation on the network; (2) Facilitation of activities within clearances of distributor's assets, including physical and electrical isolation of assets; (3) Provision of approved materials/equipment to ASPs for connection asset that will becoming part of the shared network; (4) Specialist services where the design or construction is non-standard, technically complex or environmentally sensitive and any enquiries related to distributor assets; (5) Assessing an application from an ASP or manufacturer to consider approval of alternative material and equipment items that are not specified in the Approved Materials List.</li> </ul>	Reject	This service is already ACS for the current regulatory control period and does not require a waiver.
	<ul style="list-style-type: none"> <li>- Network safety services. This service includes: (1) Provision of traffic controls by the distributor where required; (2) Fitting of tiger tails and high load escort; (3) De-energising wires for safe approach (e.g. for tree pruning); (4) Neutral integrity test; (5) Work undertaken to determine the cause of a customer fault where there may be a safety impact on the network or related component.</li> </ul>	Approve	See section 2 <i>network safety services and high load escorts</i>
	<ul style="list-style-type: none"> <li>- Rectification works to maintain network safety. This service includes work involved in managing and resolving pre-summer bush fire inspection of customer vegetation or aerial mains defect where the customer has failed to do so.</li> </ul>	Approve	See section 2 <i>rectification works to maintain network safety</i>
	<ul style="list-style-type: none"> <li>- Planned interruption – customer requested. This service includes where a customer requests to move a planned interruption with agreement to fund the additional costs of performing this distribution service outside of normal business hours.</li> </ul>	Approve	See section 2 <i>planned interruption – customer requested</i>

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
	- Training. This service includes provision of training to third parties for network related access.	Approve	See section 2 <i>training course for third parties – related to network access</i>
	- Customer initiated asset relocation works. This service includes relocation of assets that form part of the distribution network in circumstances where the relocation was initiated by a third party (including a customer) and could impact the safety or security of the network.	Approve	See section 2 <i>customer -initiated asset relocations</i>
	- Termination of cable at zone substation – distributor required performance. This service includes the termination of cable at zone substations and first join out, where a work health and safety assessment determines that an ASP should not be given the required access to the zone substation and the connection is fully dedicated to the specific customer connection.	Approve	See section 2 <i>termination of cable at zone substation – distributor required performance</i>
	- Meter recovery and disposal – type 5 and 6. This service includes removal of a current transformer (CT) type 5 or 6 meter where a permanent disconnection has been requested by the customer or their agent.	Approve	See section 2 <i>minor and legacy metering services</i>
	- Emergency meter maintenance. This service includes where a distributor has been called out due to a power outage cause by external metering provider’s equipment failure and distributor has had to restore power to the customer’s premises. This fee will also be levied when a metering provider has requested the distributor to check a potentially faulty network connection and no fault is found.	Reject	This service is already ACS for the current regulatory control period and does not require a waiver.
	- Distributor arranged outage for the purpose of replacing the meter. This service includes, at the request of a retailer or metering coordinator, providing notification to affected customers and facilitate the disconnection/reconnection of customer metering installations where a retailer planned interruption cannot be conducted	Approve	See section 2 <i>minor and legacy metering services</i>

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
	<ul style="list-style-type: none"> <li>- Meter consumption data. This service includes customer requested provision of data in excess of requirements under rule 28 of the NERR.</li> </ul>	Approve	See section 2 <i>minor and legacy metering services</i>
Physical separation/ co-location (clause 4.2.1) Staff sharing (clause 4.2.2) Branding and cross-promotion (clause 4.2.3)	<p>Services that are currently UDS, but which are anticipated to be classified as ACS in the forthcoming regulatory control period:</p> <ul style="list-style-type: none"> <li>- Security light (Lighting Solutions) services.</li> </ul>	Approve	See section 2 <i>public lighting and nightwatchman lights</i>
Legal separation (clause 3.1)	<p>Services that are currently not classified, but are anticipated to be classified as UDS in the forthcoming regulatory control period:</p> <ul style="list-style-type: none"> <li>- Distribution asset rental. This service includes rental of distribution assets to third parties (e.g. office space rental, pole and duct rental etc.).</li> <li>- Contestable metering support roles. This service includes metering coordinator (except where the DNSP is the initial metering coordinator), metering data provider and metering provider for meters installed or replaced after 1 December 2017.</li> <li>- Non-standard connection services. This service includes: (1) Asset relocations requested by a third party (including a customer) which are unlikely to impact on the safety or security of the network; (2) Conversion to aerial bundled cable (i.e. reducing the number of overhead lines by combining them); (3) Reserve or duplicate supply (beyond what a DNSP is required to provide); (4) Unless a work health and safety assessment determines that an ASP should not be give the required access, termination of cable at zone substations and first join out (where the connection is fully dedicated to the specific customers connecting).</li> <li>- Type 5-6 meter data management to other electricity distributors. This service includes the provision of type 5-6 meter data management to other distributors.</li> </ul>	Approve	<p>See section 2 <i>rental and hire services</i></p> <p>See section 2 <i>minor and legacy metering services</i></p> <p>See section 2 <i>non-standard connections and customer-requested supply enhancements and reserve feeder construction and customer-initiated asset relocations</i></p> <p>See section 2 <i>minor and legacy metering services</i></p>



Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
<b>Waiver application no. 2</b>		Approve waiver application	
Legal separation (clause 3.1)	<p>Other services, including:</p> <ul style="list-style-type: none"> <li>- Metering services. Including: (1) Billing services for embedded networks management; (2) Web graphics and associated analysis of embedded networks.</li> <li>- Network test. Including: (1) High power testing; (2) Not distribution network related; (3) Fault location on other networks; (4) Chemical and calibration laboratories.</li> <li>- Asset relocations</li> <li>- Major infrastructure projects</li> <li>- General contracting</li> <li>- Asset ownership/non-regulated</li> <li>- Transmission. Including: (1) oil-filled cables on other networks; (2) Maintenance on third part installations</li> <li>- Illumination consulting</li> <li>- Contestable construction works</li> <li>- Customer connections – Sydney Water Neutral Networks Testing</li> <li>- Telco fibre and asset construction</li> </ul>	Approve	See section 3 <i>Ausgrid, Endeavour Energy, Ergon, Energex and TasNetworks – 6 month transitional waiver</i>
<b>Waiver application no. 3</b>		Reject	
<p>Legal separation (clause 3.1)</p> <p>Physical separation/ co-location (clause 4.2.1)</p> <p>Staff sharing (clause 4.2.2)</p> <p>Branding and cross-promotion (clause 4.2.3)</p>	<ul style="list-style-type: none"> <li>- Simple power supply restoration work for life support customers</li> <li>- Complex power supply restoration work for life support customers</li> <li>- Simple power supply restoration work for non-life support customers, out of business hours</li> <li>- Complex power supply restoration work for non-life support customers, out of business hours</li> </ul>	Reject	<p>See section 2 <i>supply restoration services for non-life support customers</i></p> <p>Simple customer fault relating to a life support customer is already SCS.</p>

Source: Ausgrid, *Ausgrid waiver applications*, July 2017, pp. 1-19; AER, 2017, *Framework and Approach Ausgrid, Endeavour Energy and Essential Energy: Regulatory control period commencing 1 July 2019*, July 2017, pp. 92.

## AusNet Services

AusNet has applied for two waivers:

1. Waiver no. 1: A three year waiver for branding obligations under the Guideline for services that AusNet expects will be reclassified as direct control services in the next regulatory control period. If granted, AusNet's application would see this waiver expire on 31 December 2020.
2. Waiver no. 2: A three year waiver for legal separation obligations and branding obligations for the Mt Baw Baw Power Reticulation Agreement with the Alpine Resorts Commission. If granted, AusNet's application would see this waiver expire on 31 December 2020.

These waiver applications and the AER's draft decision are summarised in the table below:

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
<b>Waiver application no. 1</b>		Approve waiver application	
Branding and cross-promotion (clause 4.2.3(a).i.)	- Alteration and relocation of distributor public lighting assets	Approve	See section 2 <i>public lighting and nightwatchman lights</i>
	- New public lights - not subject to regulated charge and greenfield sites		
	- Reserve feeder construction		See section 2 <i>reserve feeder construction</i>
	- Emergency recoverable works		See section 2 <i>emergency recoverable works</i>
	- Installation, repair and maintenance of watchman lights		See section 2 <i>public lighting and nightwatchman lights</i>
<b>Waiver application no. 2</b>		Approve waiver application	

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
Legal separation (clause 3.1(b)) Branding and cross-promotion (clause 4.2.3(a)i)	Provision of services to the Alpine Resorts Commission (ARC) under a Power Reticulation Agreement dating from 1997 for AusNet Electricity Services to build, own, operate and supply LPG and electrical energy at Mt Baw Baw in Eastern Victoria.	Approve	See section 3 <i>AusNet – Mt Baw Baw</i>

Source: AusNet Services, *Ring-fencing Guideline Electricity Distribution: Unregulated and negotiated services – Waiver application*, July 2017, pp. 1-23; AusNet Services, *Ring-fencing Guideline Electricity Distribution: Mt Baw Baw waiver application*, July 2017, pp. 1-9; AER, 2017, *Framework and Approach Ausgrid, Endeavour Energy and Essential Energy: Regulatory control period commencing 1 July 2019*, July 2017, pp. 91-104

## Citipower/Powercor

Citipower/Powercor has applied for three waivers:

1. Waiver no. 1: A three year waiver from physical separation/co-location, staff sharing, and branding and cross-promotion obligations for negotiated and unclassified services expected to be reclassified at the next Determination. If granted, CitiPower/Powercor's application would see this waiver expire on 31 December 2020.
2. Waiver no. 2: A three year waiver from branding obligations in relation to use of the Power Network Services (PNS) brand. If granted, CitiPower/Powercor's application would see this waiver expire on 31 December 2020.
3. Waiver no. 3: A three year waiver from branding and cross-promotion obligations to use CitiPower and Powercor branding under limited circumstances. If granted, CitiPower/Powercor's application would see this waiver expire on 31 December 2020.

These waiver applications and the AER's draft decision are summarised in the table below:

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
<b>Waiver application no. 1</b>		Approve waiver application	
Physical separation/ co-location (clause 4.2.1)	Selected negotiated distribution services and unclassified distribution services:	Approve	

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
Staff sharing (clause 4.2.2) Branding and cross-promotion (clause 4.2.3)	<ul style="list-style-type: none"> <li>- Alteration and relocation of distributor public lighting assets. This service includes to public lights are already connected to (and forming part of) the distribution system that are altered or relocated at a customer's request.</li> <li>- New public lights – that is, new lighting types not subject to a regulated charge and new public lighting at greenfield sites. This service includes provision of new lighting when developers of greenfield sites directly approach CitiPower/Powercor, or where there is an absence of other service providers in that area.</li> <li>- Reserve feeder construction. This service includes where a customer requests a second connection from the distribution network as their preferred way to secure energy supply.</li> <li>- Collection of meter data, processing and storage of meter data, and provision of access to meter data for type 1-4 metering installations (excluding smart meters)</li> <li>- Emergency recoverable works. This service includes recovery of cost and repair of damage to the network caused by third parties.</li> <li>- Installation, repair, and maintenance of watchman lights. This service includes provision of watchman lights to local council to assist with public safety.</li> <li>- Non-standard connections. This service includes connections that are delivered to a higher standard than the least cost technically acceptable standard at a customer's request.</li> </ul>		<p>See section 2 <i>public lighting and nightwatchman lights</i></p> <p>See section 2 <i>public lighting and nightwatchman lights</i></p> <p>See section 2 <i>reserve feeder construction</i></p> <p>See section 2 <i>minor and legacy metering services</i></p> <p>See section 2 <i>emergency recoverable works</i></p> <p>See section 2 <i>public lighting and nightwatchman lights</i></p> <p>See section 2 <i>non-standard connections and customer-requested supply enhancements</i></p>
<b>Waiver application no. 2</b>		Conditionally approve waiver application	
Branding and cross-promotion (clause 4.2.3(a).i.)	<ul style="list-style-type: none"> <li>- Use of Powercor name in the “Powercor Network Services” (PNS) brand when performing field work for large commercial and industrial customers. The brands would not be used at the time of tender and</li> </ul>	Conditionally approve: <ul style="list-style-type: none"> <li>- Shorter duration than requested: two</li> </ul>	See section 4 <i>CitiPower and Powercor – Powercor Network</i>

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
	no new materials will be created with the PNS brand.	years, expiring on 31 December 2019.	<i>Services, CitiPower and Powercor brands</i>
<b>Waiver application no. 3</b>		Conditionally approve the waiver application	
Branding and cross-promotion (clause 4.2.3(a))	Use of the CitiPower and Powercor brands when performing field work for third parties and affiliates (i.e. non-direct control services), where the works are solely for large commercial and industrial customers. The brands would not be used at the time of tender and staff would not promote contestable electricity services.	Conditionally approve: - Shorter duration than requested: two years, expiring on 31 December 2019.	See section 4 <i>Powercor Networks Services, CitiPower and Powercor brands</i>

Source: CitiPower and Powercor, *CitiPower and Powercor ring-fencing waiver application*, May 2017, pp.1-12

## Endeavour Energy

Endeavour Energy has applied for three waivers:

1. An 18 month waiver from legal separation, physical separation/co-location, staff sharing, branding and cross-promotion for services that its considers likely to be reclassified as either standard control services or alternative control services for the 2019-2024 regulatory control period. If granted, Endeavour Energy's application would see this waiver expire on 30 June 2019.
2. A further 18 month waiver from legal separation, physical separation/co-location, staff sharing, branding and cross-promotion for new services that Endeavour has started to provide in the current regulatory control period for 2015-2019. If granted, Endeavour Energy's application would see this waiver expire on 30 June 2019.
3. A 6 month waiver from legal separation of a number of unregulated distribution services and unclassified services. If granted, Endeavour Energy's application would see this waiver expire on 30 June 2018.

Waiver application no. 1 was submitted to the AER in July 2017. Waivers applications 2 and 3 were submitted to the AER in September 2017.

These waiver applications and the AER's draft decisions are summarised in the table below:

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
<b>Waiver application no. 1</b>		Approve waiver application	
Legal separation (clause 3.1) Physical separation/ co-location (clause 4.2.1) Staff sharing (clause 4.2.2) Branding and cross-promotion (clause 4.2.3)	<p>Services that are currently unclassified, but which Endeavour Energy expects will be reclassified as per the Framework and Approach for Ausgrid, Endeavour Energy, and Essential Energy for the regulatory control period commencing 1 July 2019:</p> <ul style="list-style-type: none"> <li>- Emergency recoverable works. According to Endeavour Energy, activities under this service include works to repair damage to the distribution network caused by a third party. Under the Framework and Approach, this service will be reclassified from UCS to SCS.</li> <li>- Security lights (night watch). According to Endeavour Energy, activities under this service include provision of customer requested flood lighting services (private security and flood lighting services). Under the Framework and Approach, this service will be reclassified from UCS to ACS (potentially contestable).</li> </ul>	Approve	<p>See section 2 <i>emergency recoverable works</i></p> <p>See section 2 <i>public lighting and nightwatchman lights</i></p>
<b>Waiver application no. 2</b>		Approve waiver application	
Legal separation (clause 3.1) Physical separation/ co-location (clause 4.2.1) Staff sharing (clause 4.2.2) Branding and cross-promotion (clause 4.2.3)	<p>Service that are due to be reclassified as ACS under the Framework and Approach for Ausgrid, Endeavour Energy, and Essential Energy for the regulatory control period commencing 1 July 2019:</p> <ul style="list-style-type: none"> <li>- Network safety services. According to Endeavour Energy, this includes provision of traffic control services, fitting of tiger tails, high-load escort, de-energising wires for safe approach (e.g. tree pruning), work undertaken to determine the cause of a customer fault where there may be a safety impact on the network or related component, and neutral integrity testing.</li> <li>- Rectification works to maintain network safety. According to Endeavour Energy, this service includes managing and resolving pre-summer bush fire inspection of customer vegetation defects or aerial mains, where the customer has failed to do so.</li> <li>- Planned interruption – customer requested. Where the customer requests</li> </ul>	Approve	<p>See section 2 <i>network safety services and high load escorts</i></p> <p>See section 2 <i>rectification works to maintain network safety</i></p> <p>See section 2 <i>planned</i></p>

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
	to move a planned interruption and agrees to fund the additional cost of performing this distribution service outside of normal business hours.		<i>interruption – customer requested</i>
	- Provision of training to third parties for network related access. According to Endeavour Energy, this encompasses training services provided to third parties that result in a set of learning outcomes that are required to obtain a distribution network access authorisation specific to a distributor’s network		<i>See section 2 network training courses for third parties</i>
	- Customer initiated asset relocations. According to Endeavour Energy, this includes relocation of assets that form part of the distribution network in circumstances where the relocation was initiated by a third party (e.g. a customer) and could impact the safety or security of the network.		<i>See section 2 customer-initiated asset relocations</i>
	- Termination of cable at zone substation – distributor required performance. According to Endeavour Energy, this includes termination of cable at zone substation and first join-out where a work and safety assessment determines that an ASP should not be given the required access to the zone substation and the connection is fully dedicated to the specific customer connecting.		<i>See section 2 termination of cable at zone substation – distributor required performance</i>
	- Premises connection assets – C: Customer required above standard design and distributor required performance. According to Endeavour Energy, this includes any additions or upgrades to the connection assets located on the customer’s premises which are contestable (but excludes all metering services). This service also include partial design and construction of connection assets where a customer requests that connection assets are designed and constructed to an increased standard (beyond that required by the distributors’ standards and policies), and where those works are designed and constructed by the distributor (as a result of safety, reliability or security reasons).		<i>See section 2 non-standard connections and customer-requested supply enhancements</i>
	- Augmentations – D: Customer requested above standard design and distributor required performance. According to Endeavour Energy, this includes any shared network enlargement/enhancement undertaken by a distributor where a customer requests that assets are designed and constructed to an increased standard (beyond that required by the distributors’ standards and policies).		<i>See section 2 non-standard connections and customer-requested supply enhancements</i>



Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
	<ul style="list-style-type: none"> <li>- Meter recovery and disposal – type 5 and 6 (legacy meters). According to Endeavour Energy, this includes: (1) at the request of the customer or their agent to remove and dispose of type 5 or 6 current transformer (CT) meters where a permanent disconnection has been requested, and; (2) disposing of type 5 or 6 whole current (WC) meters which may otherwise be removed and disposed of by the incoming metering provider.</li> <li>- Distributor arrange outage for the purposes of the replacing the meter. According to Endeavour Energy, this include, at the request of a retailer or metering coordinator, providing notification to affected customers and facilitating the disconnection/reconnection of customer metering installations where a retailer planned interruption cannot be conducted.</li> </ul>		<p>See section 2 <i>minor and legacy metering services</i></p> <p>See section 2 <i>minor and legacy metering services</i></p>
Waiver application no. 3		Approve the waiver application	
Legal separation (clause 3.1)	<p>Services that are already unregulated services and will remain so in the next regulatory control period commencing 1 July 2019:</p> <ul style="list-style-type: none"> <li>- Connection of premises to the distribution network funded by the customer and undertaken by an ASP.</li> <li>- Extension to the network to reach a customer's premise that is funded by the customer and undertaken by an ASP.</li> <li>- Provision of types 1-4 meters, meter installation, meter servicing and repairs, meter reading and data management services.</li> <li>- Installation of types 5-6 meters</li> </ul> <p>All services not classified by the AER in the Framework and Approach for Ausgrid, Endeavour Energy and Essential Energy.</p>		See section 3

Sources: Endeavour Energy, *Ring-fencing waiver application*, July 2017, pp. 1-5; Endeavour Energy, *Ring-fencing waiver application*, September 2017, pp. 1-8; AER, 2017, *Framework and Approach Ausgrid, Endeavour Energy and Essential Energy: Regulatory control period commencing 1 July 2019*, July 2017, pp. 91-104

## Energex

Energex has applied for three waivers:

1. A two-and-a-half year waiver from legal separation, physical separation/co-location, staff sharing, and branding and cross-promotion obligations for a range of services flagged for reclassification in the forthcoming regulatory control period. If granted, Energex's application would see this waiver expire on 30 June 2020.
2. A 6 month waiver from legal separation to allow delayed novation of contracts for other services to Energex's affiliate entity. If granted, Energex's application would see this waiver expire on 30 June 2018.
3. A seven-and-a-half year waiver from branding and cross-promotion obligations for uniforms and fleet associated with the provision of contestable services that will be transferred to affiliate entities as of 1 January 2018. If granted, Energex's application would see this waiver expire on 30 June 2025.

These waiver applications and the AER's draft decision are summarised in the table below:

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
<b>Waiver application no. 1</b>		Approve waiver application	
Legal separation (clause 3.1) Physical separation/ co-location (clause 4.2.1) Staff sharing (clause 4.2.2) Branding and cross-promotion (clause 4.2.3)	<p>Services that are currently UDS but which Energex considers would be more appropriately reclassified as direct control services in the regulatory control period commencing 1 July 2020:</p> <ul style="list-style-type: none"> <li>- Emergency recoverable works. According to Energex, activities under this service include work to repair damage to the distribution network caused by third parties.</li> <li>- Watchman lights. According to Energex, activities under this service include unmetered lights mounted on a customer's property or a distribution pole for security purposes.</li> <li>- High load escorts. According to Energex, activities under this service in scope scoping an appropriate route and lifting wires to allow passage of high vehicles, as requested by a customer.</li> </ul>	Approve	<p>See section 2 <i>emergency recoverable works</i></p> <p>See section 2 <i>nightwatchman lights</i></p> <p>See section 2 <i>high load escorts</i></p>
	Services that are currently not classified as distribution services but which Energex considers would be more appropriately reclassified as a	Approve	

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
	<p>distribution service in the regulatory control period commencing 1 July 2020:</p> <ul style="list-style-type: none"> <li>- Property services. According to Energex, activities under this service include customer request for the distributor to undertake conveyancing property searches, conduct easement negotiations or purchase negotiations.</li> <li>- Training to external party services. According to Energex, activities under this service include training of contractors/third parties to permit them to access and work on Energex's distribution network/other network service provider's networks or training of contractors/third parties to permit them to access and undertake work on non-network related assets.</li> </ul>		<p>See section 2 <i>property services</i></p> <p>See section 2 <i>training sources for third parties</i></p>
	<p>Services that are current non-distribution services but which Energex considers would be more appropriately reclassified as an unclassified distribution service in the regulatory control period commencing 1 July 2020:</p> <ul style="list-style-type: none"> <li>- Rental and hire services. According to Energex, activities under this service include rental of distributor-owned property (e.g. plant hire and leasing)</li> <li>- Sale of inventory. According to Energex, activities under this service include sale of inventory to developers and suppliers of developers where these items are subsequently gifted to Energex as part of a network connection.</li> </ul>	Approve	<p>See section 2 <i>rental and hire services</i></p> <p>See section 2 <i>sale of inventory</i></p>
<b>Waiver no. 2</b>		Approve waiver application	
Legal separation (clause 3.1)	<p>Transfer (novation) of contracts for other services from Energex to Energy Impact (an affiliate entity of Energex). Services include:</p> <ul style="list-style-type: none"> <li>- Test, inspect and calibrate services</li> <li>- Contracting services to other network service providers</li> <li>- Equipment services</li> </ul>	Approve	<p>See section 3 <i>Ausgrid, Endeavour Energy, Ergon, Energy and TasNetworks – 6 months transitional waivers</i></p>

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
	<ul style="list-style-type: none"> <li>- Operation and maintenance of customer assets</li> <li>- Demand-side management advisory services for customers (as opposed to services undertake for direct control services).</li> </ul>		
<b>Waiver application no. 3</b>		Conditionally approve waiver application	
Branding and cross-promotion (clause 4.2.3)	Branding on staff uniforms and vehicle fleets only, where associated with the performance of the following other services: <ul style="list-style-type: none"> <li>- Test, inspect and calibrate services</li> <li>- Contracting services to other network service providers</li> <li>- Operation and maintenance of customer assets</li> <li>- Equipment services</li> <li>- Training to external parties.</li> </ul>	Conditionally approve subject to: <ul style="list-style-type: none"> <li>- Shorter duration than requested: The AER only grants this waiver for two years, expiring on 31 December 2019</li> <li>- Energex must submit a compliance timetable to detail planned actions to comply with the two year timeframe.</li> </ul>	<i>See section 3 Energex and Ergon Energy – other energy services and classification distribution services</i>
	Use of Ergon Energy brand on uniforms and vehicle fleets only, for the provision of the following other unclassified distribution service (UDS): <ul style="list-style-type: none"> <li>- Type 1-4 contestable metering services, ownership and operation of which will be transferred to Ergon Energy’s affiliate entity (Metering Dynamics)</li> </ul>	Conditionally approve subject to: <ul style="list-style-type: none"> <li>- Shorter duration than requested: The AER only grants this waiver for two years, expiring on 31 December 2019</li> </ul>	<i>Energex and Ergon Energy – other energy services and classification distribution services</i>
	In addition, Energex would seek a waiver for branding on uniforms and fleet for any services listed in waiver no. 1 (the service reclassification waiver), should the waiver not be granted by the AER.	Not applicable	The AER’s draft decision is to approve waiver application no. 1

Source: Energex, *Energex ring-fencing waiver application: AER Ring-fencing Guideline*, July 2017, pp.1-16

## Essential Energy

Essential Energy has applied for 8 waivers:

1. A six-and-a-half year waiver for legal separation and functional separation of Essential Water, and obligations on the conduct of service providers to Essential Water. If approved, Essential Energy's application would see this waiver expire on 30 June 2024.
2. A six-and-a-half year waiver for legal separation, functional separation, and obligations on the conduct of service providers regarding a water access agreement with the Clarence Valley Council. If approved, Essential Energy's application would see this waiver expire on 30 June 2024.
3. An 18 month waiver from functional separation and obligations on the conduct for service providers for contestable services for 100 type 4 legacy meters. If approved, Essential Energy's application would see this waiver expire on 30 June 2019.
4. An 18 month waiver from functional separation and obligations on the conduct of service providers for LED streetlighting, which Essential Energy expects will be reclassified as ACS from 1 July 2019 as per the final Framework and Approach for Ausgrid, Endeavour Energy, and Essential Energy for the next regulatory control period. If approved, Essential Energy's application would see this waiver expire on 30 June 2019.
5. An 18 month waiver from functional separation and obligations on the conduct of service providers for nightvision services, which Essential Energy expects will be reclassified as ACS from 1 July 2019 as per the final Framework and Approach for Ausgrid, Endeavour Energy, and Essential Energy for the regulatory control period commencing 1 July 2019. If approved, Essential Energy's application would see this waiver expire on 30 June 2019.
6. An 18 month waiver from functional separation for a number of service that Essential Energy expects will be reclassified as ACS from 1 July 2019 as per the final Framework and Approach for Ausgrid, Endeavour Energy, and Essential Energy for the next regulatory control period. If approved, Essential Energy's application would see this waiver expire on 30 June 2019.
7. A six-an-a-half year waiver from physical separation/co-location, staff sharing, and branding and cross-promotion obligations for contestable technical training courses for internal staff and external parties delivered in specific locations where Essential Energy contends there is a lack of alternative providers of these courses. If approved, Essential Energy's application would see this waiver expire on 30 June 2024.
8. A six-and-half waiver from legal separation, functional separation, and obligations on the conduct of service providers for provider-of-last-resort services. If approved, Essential Energy's application would see this waiver expire on 30 June 2024.

Waivers number 1-5 were submitted to the AER in July 2017. Waivers number 6, 7 and 8 were submitted to the AER in September 2017.

These waiver applications and the AER's draft decision are summarised in the table below:

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
<b>Waiver application no. 1</b>		Approve waiver application	
<p>Legal separation (clause 3.1)</p> <p>Physical separation/ co-location (clause 4.2.1)</p> <p>Staff sharing (clause 4.2.2)</p> <p>Branding and cross-promotion (clause 4.2.3)</p> <p>Office and staff registers (clause 4.2.4)</p> <p>Conduct of service providers (clause 4.4.1(a))</p>	<p>Essential Energy (trading as Essential Water) is a water supply authority as prescribed by the <i>Water Management Act 2000 (NSW)</i> and it obliged to exercise the functions conferred or imposed upon it under that Act. This waiver applies to all water supply services supply by Essential Water to the Broken Hill local government area, the Stephen's Creek, Umberumberka Creek, and Yancowinna Creek Special Areas, the localities of Menindee and Sunset Strip, and the land over which the Menindee to Stephens Creek pipeline is situated.</p> <p>Services that are currently UDS but which Energex considers would be more appropriately reclassified as direct control services in the regulatory control period commencing 1 July 2020:</p>	Approve	See section 5 <i>Essential Energy – Essential Water</i>
<b>Waiver application no. 2</b>		Approve waiver application	
<p>Legal separation (clause 3.1)</p> <p>Physical separation/ co-location (clause 4.2.1)</p> <p>Staff sharing (clause 4.2.2)</p> <p>Branding and cross-promotion (clause 4.2.3)</p> <p>Office and staff registers (clause 4.2.4)</p> <p>Conduct of service providers (clause 4.4.1(a))</p>	<p>Provision of a water access agreement to the Clarence Valley Council. The agreement covers generation of hydro-electric power from the Nymboida Power Station and supply of potable water from the Nymboida River Weir under a water extraction licence held by Essential Energy and its predecessors. The Nymboida Power Station is no longer operational but has heritage significance and is listed under Section 170 of the NSW Heritage Act.</p>	Approve	See section 5 <i>Essential Energy – Water Access</i>
<b>Waiver application no. 3</b>		Approve the waiver application	
<p>Physical separation/ co-location (clause 4.2.1)</p>	<p>Provision of the following services for 100 type 4 meters, which remain as a legacy from when Essential Energy's predecessor organisations</p>	Approve	See section 3 <i>Essential Energy and TasNetworks –</i>

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
Staff sharing (clause 4.2.2) Branding and cross-promotion (clause 4.2.3) Office and staff registers (clause 4.2.4) Conduct of service providers (clause 4.4.1(a))	provided type 4 metering on a contestable basis, or in providing metering systems on a contractual basis under legacy connection agreements: <ul style="list-style-type: none"> <li>- De-energised meters. Essential Energy currently maintains control 39 de-energised meters where there are no current active customers.</li> <li>- 34 are meters with 2G communications systems which are no longer supported and are unable to be read remotely. Essential is awaiting action retailers to transfer the remaining 5 meters to the retailer's own books.</li> <li>- Active meters. Essential Energy currently services 66 active meters, 40 of which contain 2G communications and can no longer be remotely read. Essential is awaiting retailers to transfer these meters to the retailer's own books.</li> <li>- Generators. Essential Energy has 8 National Metering Identifiers (NMI's) for measuring electricity injected into the network from a number of generators. These meters are located in Essential Energy substations. Essential is awaiting retailers to transfer these meters to the retailer's own books.</li> </ul>		<i>contestable meters (Type 1-4)</i>
<b>Waiver application no. 4</b>		Approve the waiver application	
Physical separation/ co-location (clause 4.2.1) Staff sharing (clause 4.2.2) Branding and cross-promotion (clause 4.2.3) Office and staff registers (clause 4.2.4) Conduct of service providers (clause 4.4.1(a))	Provision of LED streetlighting, including: <ul style="list-style-type: none"> <li>- Meeting public lighting customer and local community need for effective lighting, reliability, energy efficiency and environmental governance.</li> <li>- Maintain a safe public lighting system that is compliant with AS/NZS 1158</li> <li>- Fulfil regulatory requirements as well as those of NSW Department of Industry, including the NSW Public Lighting Code (the Code)</li> <li>- Minimise the costs to Essential Energy and our public lighting customers</li> </ul>	Approve	See section 2 <i>public lighting and nightwatchman lights</i>



Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
<b>Waiver application no. 5</b>		Approve the waiver application	
Physical separation/ co-location (clause 4.2.1) Staff sharing (clause 4.2.2) Branding and cross-promotion (clause 4.2.3) Office and staff registers (clause 4.2.4) Conduct of service providers (clause 4.4.1(a))	Provision of night vision services, including: <ul style="list-style-type: none"> <li>- Provision of floodlighting to illuminate areas that do not have adequate public lighting</li> <li>- Installation of floodlights on poles to improve the security of a commercial business, illuminate public monuments and heritage buildings, or provide lighting of a car park.</li> </ul>	Approve	See section 2 <i>public lighting and nightwatchman lights</i>
<b>Waiver application no. 6</b>		Conditionally approve the waiver application	
Physical separation/ co-location (clause 4.2.1) Staff sharing (clause 4.2.2) Branding and cross-promotion (clause 4.2.3) Office and staff registers (clause 4.2.4) Conduct of service providers (clause 4.4.1(a))	Provision of services that are currently unclassified, but which Essential Energy expects will be reclassified as SCS in the Determination for the 2019-2024 regulatory control period: <ul style="list-style-type: none"> <li>- Emergency recoverable works</li> <li>- Activities related to 'shared asset facilitation' of distributor assets</li> <li>- Rectification of simple customer fault (e.g. fuse) related to a life support customer</li> </ul>	Approve waiver application for all services, except for those services that are already direct control services (rejection of waiver for these services indicated below).  Approve  Approve  Reject	See section 2 <i>emergency recoverable works</i>  See section 2 <i>rental and hire services</i>  See section 2 <i>supply restoration services</i> Simple customer fault

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
			related to a life support customer is already SCS.
	- Access permits, oversight and facilitation. According to Essential Energy, activities under this service include provision of approved material/equipment to ASPs for connection assets that will become part of the shared distribution network (also known as 'sale of stock to ASPs')	Reject	This service is already ACS for the current regulatory control period and does not require a waiver.
	- Rectification works to maintain network safety. According to Essential Energy, activities under this service include rectification of overhead line and vegetation defects where the customer has failed to do so which pose an unacceptable risk to safety, network reliability, or bushfire.	Approve	See section 2 <i>rectifications works to maintain network safety</i>
	- Network safety service. According to Essential Energy, activities under this service include de-energisation of distribution mains to allow for safe approach, provision of Essential Energy field staff to perform site safety supervision to unauthorised personnel performing work near the DNSP's assets, and provision of construction staff by DNSP to complete construction work related to safety services such as the removal of overhead mains.	Approve	See section 2 <i>network safety services</i>
	- Provision of training to third parties for network related access, specifically the <i>Entry into electrical station course</i> .	Approve	See section 2 <i>training sources for third parties</i>
	- Emergency maintenance of failed metering equipment not owned by the distributors (contestable meters)	Reject	This service is already ACS for the current regulatory control period and does not require a waiver.
	- Meter recovery and disposal – type 5 and 6 (legacy meters)	Approve	See section 2 <i>minor and legacy metering services</i>
	- Distributor arranged outage for the purposes of replacing meter	Approve	See section 2 <i>minor and legacy metering services</i>

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
<b>Waiver application no. 7</b>		Approve the waiver application	
Physical separation/ co-location (clause 4.2.1) Staff sharing (clause 4.2.2) Branding and cross-promotion (clause 4.2.3)	<p>Provision of contestable training courses to accredited service providers (ASPs) or those who work on or near the network:</p> <ul style="list-style-type: none"> <li>- Accredited Service Provider (ASP) Initial &amp; Refresher Training</li> <li>- Work Near Overhead Powerlines (WNP) Initial &amp; Refresher Training</li> <li>- Safe Work Practices Initial &amp; Refresher Training</li> </ul> <p>Delivery of the above courses to be restricted to specific locations where there is a lack of ready access to these courses:</p> <ul style="list-style-type: none"> <li>- Within Essential Energy's footprint: Albury, Ballina, Bathurst, Bingara, Blayney, Braidwood, Broadwater, Broken Hill, Bulahdelah, Buronga, Cobar, Cobram, Coffs Harbour, Condon, Corowa, Deniliquin, Dubbo, Eden, Ewingsdale, 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, Walcha, Wyallda, Young</li> <li>- Outside Essential Energy's footprint: Wodonga, Echuca, Bendigo and Swan Hill (for customers based outside of our footprint but authorised to work on the Essential Energy network).</li> </ul>	Approve	See section 7 <i>Essential Energy – Technical training contestable courses</i>
<b>Waiver application no. 8</b>		<b>Conditionally approve the waiver application</b>	
Legal separation (clause 3.1) Physical separation/ co-location (clause 4.2.1) Staff sharing (clause 4.2.2)	<p>Provider of last resort services for customers in regional communities that may be left with no available supplier. Essential Energy has advised the AER that the services that it intends would be covered by this waiver are:</p> <ul style="list-style-type: none"> <li>- All services allowed for under the NSW ASP Scheme including: <ul style="list-style-type: none"> <li>(1) Level 1 customer connection services including both overhead</li> </ul> </li> </ul>	Approve, based on the expectation that these services will be addressed in	See section 7 <i>Essential Energy – Regional service delivery</i>

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
Branding and cross-promotion (clause 4.2.3) Office and staff registers (clause 4.2.4) Conduct of service providers (clause 4.4.1(a))	and underground, and including related network extensions or augmentations; (2) Level 2 services such as disconnect and reconnect, work on underground service conductors, work on overhead service conductors; (3) Level 3 design services for both overhead and underground network electricity assets - Customer initiated asset relocations - Inspection, maintenance and testing of customer assets including HV assets (this is for standard distribution system type assets and excludes emerging technology assets such as PV, batteries etc.).	reclassification of services as ACS for the upcoming Determination.	

Sources: Essential Energy, *Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: Essential Water*, July 2017, pp. 1-9; Essential Energy, *Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: Water access agreement*, July 2017, pp. 1-8; Essential Energy, *Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: Residual contestable meters*, July 2017, pp. 1-7; Essential Energy, *Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: LED streetlighting*, July 2017, pp. 1-7; Essential Energy, *Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: Nightvision service*, July 2017, pp. 1-8; Essential Energy, *Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: Classification of services*, September 2017, pp. 1-8; Essential Energy, *Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: Contestable technical training courses*, September 2017, pp. 1-8; Essential Energy, *Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: Provider of last resort*, September 2017, pp. 1-8

## Ergon Energy

Ergon Energy has applied for seven waivers:

1. A two-and-a-half year waiver from legal separation, physical separation/co-location, staff separation, and branding and cross-promotion obligations for a range of services flagged for reclassification in the forthcoming regulatory control period. If granted, Ergon Energy's application would see this waiver expire on 30 June 2020.
2. A 6 month waiver from legal separation to allow delayed novation of contracts for other services to Ergon Energy's affiliate entity. If granted, Ergon Energy's application would see this waiver expire on 30 June 2018.
3. A permanent waiver from branding and cross-promotion obligations to allow continued use of the Ergon Energy Qld (EEQ) brand for the provision of retailer services. If granted, Ergon Energy's application would see this waiver continue indefinitely.

4. A seven-and-a-half year waiver that would allow the Mareeba and Charters Towers depots to be classified as regional offices under the Guideline, allowing the application of regional office exemptions for physical separation/co-location, staff sharing, and branding and cross-promotion obligations. If approved, Ergon Energy’s application would see this waiver expire on 30 June 2025.
5. A permanent waiver from legal separation, physical separation/co-location, staff separation, and branding and cross-promotion obligations for services provided to customers in Ergon Energy’s isolated systems. If granted, Ergon Energy’s application would only cease should there be a change in regulatory arrangements such that the basis upon which services are provided in isolated system are no longer determined by the Queensland Government.
6. A seven-and-a-half year waiver from physical separation/co-location, staff separation, and branding and cross-promotion obligations for non-distribution services (operational and maintenance activities) to the Barcaldine Power Station. Ergon Energy’s application would see this waiver expire on 30 June 2025.
7. A seven-and-a-half year waiver from branding and cross-promotion obligations such that uniforms and vehicle fleet used to deliver contestable energy services can continue to bear Ergon Energy branding. Under this waiver application, Ergon energy also seeks to waive branding and cross-promotion obligations such that staff can continue to provide services to Hayman Island under the Ergon Energy brand for the duration of a contract with Mulpha Australia Limited for connection services to Hayman Island. If granted, Ergon Energy’s application would see this waiver expire on 30 June 2025.

These waiver applications and the AER’s draft decision are summarised in the table below:

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
<b>Waiver application no. 1</b>		Approve waiver application	
Legal separation (clause 3.1) Physical separation/ co-location (clause 4.2.1) Staff sharing (clause 4.2.2) Branding and cross-promotion (clause 4.2.3)	<p>Services that are currently UDS but which Energex considers would be more appropriately reclassified as direct control services in the regulatory control period commencing 1 July 2020:</p> <ul style="list-style-type: none"> <li>- Emergency recoverable works. According to Energex, activities under this service include work to repair damage to the distribution network caused by third parties.</li> <li>- Watchman lights. According to Energex, activities under this service include unmetered lights mounted on a customer’s property or a distribution pole for security purposes.</li> </ul>	Approve	<p>See section 2 <i>emergency recoverable works</i></p> <p>See section 2 <i>public lighting and nightwatchman lights</i></p>

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
	<ul style="list-style-type: none"> <li>- High load escorts. According to Energex, activities under this service in scope scoping an appropriate route and lifting wires to allow passage of high vehicles, as requested by a customer.</li> </ul>		See section 2 <i>high load escorts</i>
	<p>Services that are currently not classified as distribution services but which Energex considers would be more appropriately reclassified as a distribution service in the regulatory control period commencing 1 July 2020:</p>	Approve	
	<ul style="list-style-type: none"> <li>- Property services. According to Energex, activities under this service include customer request for the distributor to undertake conveyancing property searches, conduct easement negotiations or purchase negotiations.</li> </ul>		See section 2 <i>property services</i>
	<ul style="list-style-type: none"> <li>- Training to external party services. According to Energex, activities under this service include training of contractors/third parties to permit them to access and work on Energex’s distribution network/other network service provider’s networks or training of contractors/third parties to permit them to access and undertake work on non-network related assets.</li> </ul>		See section 2 <i>network related training courses</i>
	<p>Services that are currently non-distribution services but which Energex considers would be more appropriately reclassified as unclassified distribution services in the regulatory control period commencing 1 July 2020:</p>	Approve	
	<ul style="list-style-type: none"> <li>- Rental and hire services. According to Energex, activities under this service include rental of distributor-owned property (e.g. plant hire and leasing)</li> </ul>		See section 2 <i>rental and hire services</i>
	<ul style="list-style-type: none"> <li>- Sale of inventory. According to Energex, activities under this service include sale of inventory to developers and suppliers of developers where these items are subsequently gifted to Energex as part of a network connection.</li> </ul>		See section 2 <i>sale of inventory</i>

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
<b>Waiver application no. 2</b>		Approve waiver application	
Legal separation (clause 3.1)	<p>Transfer (novation) of contracts for other services from Ergon Energy to Energy Impact (an affiliate entity of Energex). Services include:</p> <ul style="list-style-type: none"> <li>- Test, inspect and calibrate services</li> <li>- Contracting services to other network service providers</li> <li>- Equipment services</li> <li>- Operation and maintenance of customer assets</li> <li>- Construction and sale of modular substations</li> <li>- Demand-side management advisory services for customers (as opposed to services undertake for direct control services).</li> </ul>	Approve	See section 3 <i>Ausgrid, Endeavour Energy, Ergon, Energy and TasNetworks – 6 months transitional waivers</i>
<b>Waiver application no. 3</b>		Conditionally approve the waiver application	
Branding and cross-promotion (clause 4.2.3)	Retail services provided to non-market customers in Ergon Energy's distribution area under the brand Ergon Energy Qld (EEQ). EEQ is a non-competing retailer that is required to offer regulated prices set by the Queensland Competition Authority under the Queensland Government's uniform tariff policy.	<p>Conditionally approve: Shorter duration than requested:</p> <ul style="list-style-type: none"> <li>- Shorter duration than requested: two years, expiring on 30 June 2025 or introduction of retail competition into Ergon Energy's distribution network area, whichever happens first.</li> </ul>	See section 5 <i>Ergon Energy – Ergon Energy Qld (EEQ)</i>
<b>Waiver application no. 4</b>		Approve the waiver application	



Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
<p>Allow the Mareeba and Charters Towers depots to be classified as regional offices for the purposes of the Guideline, allow the application of the Guideline's regional office exemptions for the following clauses:</p> <ul style="list-style-type: none"> <li>- Physical separation/ co-location (clause 4.2.1(b)iii)</li> <li>- Staff sharing (clause 4.2.2(b)iii)</li> <li>- Branding and cross-promotion (clause 4.2.3(b)ii)</li> </ul>	<p>Provision of contestable energy services from within the Mareeba and Charters Towers depots. Mareeba is located within 100km of Cairns (where there are more than 25,000 connection points) but services 9,200 connection points within a 100km radius of the depot. The depot boundary has a total of 28,700 connection points across its 230,000km<sup>2</sup> area. The Charters Towers depot is located 108km from Townsville (where there are more than 25,000 connection points) but services only 5,600 connection points across a 55,000km<sup>2</sup> area.</p>	Approve	See section 7 <i>Mareeba and Charters Towers</i>
<b>Waiver application no. 5</b>		Conditionally approve the waiver	
<p>Legal separation (clause 3.1(a)) Physical separation/ co-location (clause 4.2.1(a)) Staff sharing (clause 4.2.2(a)) Branding and cross-promotion (clause 4.2.3(a))</p>	<p>Provision of generation and distribution services for 34 isolated networks and 33 power stations supplying electricity to remote communities. These services are regulated by the Queensland Government.</p>	<p>Conditionally approve:</p> <ul style="list-style-type: none"> <li>- Shorter duration than requested: seven and a half years, expiring on 30 June 2025</li> </ul>	See section 5 <i>Ergon Energy – Isolated systems</i>
<b>Waiver application no. 6</b>		Reject the waiver application	
<p>Legal separation – other services (clause 3.1(b))</p>	<p>Provision of Ergon Energy staff from the Cairns depot (which is not a regional office as per the definition in the Guideline) to EEQ's (Ergon Energy's affiliate entity) Barcaldine depot in order to conduct</p>	Reject	A waiver is not required under the Guidelines in this case. See section xx[G6]

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
Legal separation – provision of staff to a related service provider or another legal entity (clause 3.1(d)iii) Physical separation/ co-location (clause 4.2.1(a)) Staff sharing (clause 4.2.2(a)) Branding and cross-promotion (clause 4.2.3(a))	operations and maintenance activities for Barcaldine Power Station. This includes a casual cleaner and a support officer from the Cairns depot to provide the following: <ul style="list-style-type: none"> <li>- Support during the annual shutdown of the power station</li> <li>- Relief to back fill Barcaldine staff during periods of annual leave – there are only five staff located at the Barcaldine depot</li> <li>- Maintenance planning and scheduling activities</li> <li>- Safety, environmental, and audit support.</li> </ul>		<i>Ergon Energy – Barcaldine services</i>
<b>Waiver application no. 7</b>		Conditionally approve the waiver application	
Branding and cross-promotion (clause 4.2.3)	Use of Ergon Energy brand on uniforms and vehicle fleets only, for the provision of the following other energy services: <ul style="list-style-type: none"> <li>- Test, inspect and calibrate services</li> <li>- Contracting services to other network service providers</li> <li>- Equipment services</li> <li>- Operation and maintenance of customer assets</li> <li>- Construction and sale of modular substations.</li> </ul>	Conditionally approve subject to: <ul style="list-style-type: none"> <li>- Shorter duration than requested: two years, expiring on 31 December 2019</li> <li>- Ergon Energy must submit a compliance timetable to detail planned actions to comply with the two year timeframe.</li> </ul>	<i>See section 4 Energex and Ergon Energy – other energy services and unclassified distribution services</i>
	Use of Ergon Energy brand on uniforms and vehicle fleets only, for the provision of the following other unclassified distribution service (UDS): <ul style="list-style-type: none"> <li>- Type 1-4 contestable metering services, ownership and operation of which will be transferred to Ergon Energy’s affiliate entity (Metering Dynamics)</li> <li>- A connection service from the Ergon Energy network to</li> </ul>	Conditionally approve subject to: <ul style="list-style-type: none"> <li>- Shorter duration than requested: two years, expiring on 31 December 2019</li> <li>- Ergon Energy must</li> </ul>	<i>See section 4 Energex and Ergon Energy – other energy services and unclassified distribution services</i>

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
	Hayman Island via an unregulated undersea cable for the duration of the current services contract with Mulpha.	submit a compliance timetable to detail planned actions to comply with the two year timeframe.	
	<p>Use of Ergon Energy brand on uniforms and vehicle fleets only, for the provision of the following other unclassified distribution service (UDS):</p> <ul style="list-style-type: none"> <li>- A connection service from the Ergon Energy network to Hayman Island via an unregulated undersea cable for the duration of the current services contract with Mulpha.</li> </ul>	<p>Conditionally approve subject to:</p> <ul style="list-style-type: none"> <li>- Shorter duration than requested: seven and a half years, expiring on 30 June 2025, or until contract expiration, whichever happens first.</li> </ul>	See section 4 <i>Ergon Energy brand – Hayman Island</i>
	In addition, Ergon would seek to include services related to services that Ergon considers should be reclassified in the next regulatory control period (waiver no. 1), isolated systems (waiver no. 5), and Barcaldine (waiver no. 6), should those other waiver applications be unsuccessful.	Not applicable	<p>The AER’s draft decision approves Ergon Energy’s waiver applications for service reclassification (no. 1) and isolated systems (waiver no. 5).</p> <p>The AER has rejected Ergon Energy’s waiver application for Barcaldine (waiver no.6) because no waiver is required.</p>

Source: Ergon Energy Network, *Ring-fencing waiver applications*, 31 July, pp.1-39

## Jemena Electricity Networks

Jemena Electricity Networks (Vic) Ltd. (JEN) has applied for one waiver:

1. A two-year waiver from physical separation/co-location and staff sharing for services that JEN judges that there is either no current or prospective scope for competition, but which were classified as a NDS or UDS in the Determination for the regulatory control period 2016-2020.

This waiver application and the AER's draft decision are summarised in the table below:

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
<b>Waiver no. 1</b>		Approve waiver application	
Physical separation/ co-location (clause 4.2.1) Staff sharing (clause 4.2.2)	<p>Services that JEN considers are not contestable and could be reclassified for the next regulatory control period:</p> <ul style="list-style-type: none"> <li>- Alternation and relocation of distributor lighting assets. Activities under this service include the alteration of Jemena's network and public lighting assets, and usually requires works near overhead lines or in Jemena's 'no-go zone'.</li> <li>- New public lights (that is, new lighting types not subject to a regulated charge and new public lighting at greenfield sites)</li> <li>- New lighting types not subject to a regulated charge</li> <li>- Reserve feeder construction. Activities under this service include network tie-in works and any necessary upstream augmentation to JEN's network.</li> <li>- Emergency recoverable works. Activities under this service include recovery of money from parties who damage the shared electrical network to offset the emergency response expenditure which would otherwise be borne by customers of JEN's standard control services, and works to repair the network, including within 'no go zones' and under emergency conditions.</li> </ul>	Approve	<p>See section 2 <i>public lighting and nightwatchman lights</i></p> <p>See section 2 <i>public lighting and nightwatchman lights</i></p> <p>See section 2 <i>public lighting and nightwatchman lights</i></p> <p>See section 2 <i>reserve feeder construction</i></p> <p>See section 2 <i>emergency recoverable works</i></p>

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
	<ul style="list-style-type: none"> <li>- Installation, repair and maintenance of watchman lights. Activities under this service include provision of watchman lights connected to JEN poles, including working in proximity to JEN's overhead lines or within 'no go zones'.</li> </ul>		See section 2 <i>public lighting and nightwatchman lights</i>

Source: Jemena Electricity Networks (Vic) Ltd, *Ring-fencing Guideline waiver application*, July 2017, pp.1-9

## SA Power Networks

SA Power Networks (SAPN) has applied for one waiver:

1. A two-and-a-half year waiver for NDS where SAPN believes that it is highly probably that those services will be reclassified at the SAPN 2020 revenue determination, which would remove the need to functionally separate them from SAPN's direct control services.

This waiver application and the AER's draft decision are summarised in the table below:

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
<b>Waiver application no. 1</b>		Approve	
Physical separation/ co-location (clause 4.2.1) Staff sharing (clause 4.2.2) Branding and cross-promotion (clause 4.2.3) Conduct of service providers (clause 4.4.1(a))	All NDS currently allowed to be offered and provided by SAPN, with the exception of some metering services (type 1-4 metering). Detailed descriptions of the following services are available at Attachment 13 of the <i>AER SA Power Networks Distribution Determination – Final Decision</i> :	Approve	
	<ul style="list-style-type: none"> <li>- Non-standard network services</li> <li>- Non-standard connection services</li> <li>- New and upgrading connection point services</li> </ul>		See section 2 <i>SA Power Networks negotiated services</i>

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
	<ul style="list-style-type: none"> <li>- Non-standard small customer metering services</li> <li>- Large customer metering services</li> <li>- Stand-by and temporary supply services</li> <li>- Asset relocation, temporary disconnection and temporary line insulation services</li> <li>- Embedded generation services</li> <li>- Other services</li> </ul>		
	<ul style="list-style-type: none"> <li>- Public lighting services</li> </ul>		See section 2 <i>public lighting and nightwatchman lights</i>

Sources: SA Power Networks, *Application for waiver from AER Ring-fencing Guideline – Electricity Distribution: SA Power Networks’ negotiated distribution services*, August 2017, pp.1-5; AER, *SA Power Networks – Determination 2015-2020 Final decision*, October 2015, pp. 13-16-13-21

## TasNetworks

TasNetworks has applied for three waivers:

1. A 18 month waiver from functional separation and obligations on the conduct of service providers for services likely to be reclassified in the next regulatory control period. If approved, TasNetworks’ application would see this waiver expire on 30 June 2019.
2. A six-month waiver from --for a transition to a new operating model and legal structure, including establishing a new separately legal entity and transferring contestable services into the new AE. If approved, TasNetworks’ application would see this waiver expire on 30 June 2018.
3. An 18 month waiver to allow TasNetworks to provide type 1-4 metering services and allow additional time to transition these meters over to a new metering provider (Aurora Energy). If grants, TasNetworks’ application would see this waiver expire on 30 June 2019.

In addition to this, TasNetworks seeks a no Action Letter in relation to the protection of confidential information and disclosure of information obligations in relation to an IT system shared with a new legally separated entity.

These waiver applications and No Action Letter request and the AER’s draft decision are summarised in the table below:

Guideline obligations for which waiver/no action letter is sought	Services/activities for which waiver/no action letter is sought	AER draft decision	Justification
<b>Waiver application no. 1</b>		Conditionally approve waiver application	
Physical separation/ co-location (clause 4.2.1) Staff sharing (clause 4.2.2) Branding and cross-promotion (clause 4.2.3) Conduct of service providers (clause 4.4.1(a))	<p>Services to be reclassified from UDS to ACS or SCS under the AER <i>Framework and Approach – TasNetworks electricity transmission and distribution – Regulatory control period commencing 1 July 2019</i>:</p> <ul style="list-style-type: none"> <li>- Network safety services. Activities under this service include provision of traffic control services by the distributor where required, fitting of tiger tails, high load escort, night watch (private security and flood lighting services)</li> <li>- Planned interruption – customer requested. Activities under this service include customer requests for TasNetworks to move a planned interruption and agreed to fund the additional cost of performing this distribution service outside of normal business hours.</li> <li>- Inspection services – private electrical installations. Activities under this service include inspection of and reinspection by a distribution or private electrical writing work undertaken by an electrical contractor, and private inspection of privately owned LV and HV network infrastructure.</li> <li>- Inspection of private assets under Tasmanian Government direction. Activities under this service include private pole inspections (Tasmanian Government stipulated as common distribution service).</li> </ul>	<p>Approve waiver application for all services, except for those services that are already direct control services (rejection of waiver for these services indicated below).</p> <p>Approve</p> <p>Approve</p> <p>Approve</p> <p>Reject</p>	<p>See section 2 <i>high load escorts and public lighting and nightwatchman lights and network safety services</i></p> <p>See section 2 <i>planned interruption – customer requested</i></p> <p>See section 2 <i>inspection services</i></p> <p>This service is already ACS in the current regulatory control period and does not require a waiver.</p>



Guideline obligations for which waiver/no action letter is sought	Services/activities for which waiver/no action letter is sought	AER draft decision	Justification
	<ul style="list-style-type: none"> <li>- Miscellaneous metering services. Activities under this service include various new metering services as a result of the Power of Choice Reforms, such as: (1) meter recovery and disposal – type 5 and 6 current transformer metering; (2) distributor arranged outage for the purpose of replacing a meter; (3) correction of metering and market billing data, and; (4) meter disposal.</li> </ul>	Approve	See section 2 <i>minor and legacy metering services</i>
	<ul style="list-style-type: none"> <li>- Legacy pre-payment meters. Activities under this service include the operation and maintenance of legacy pre-payment meters, and associated services as a specific service for retailers.</li> </ul>	Approve	See section 2 <i>minor and legacy metering services</i>
	<ul style="list-style-type: none"> <li>- Registered participant support services. Activities include services and information provided by the distributor and proposed market participant associated with connection arrangements and agreements made under Chapter 5 of the NER.</li> </ul>	Reject	This service is already ACS for the current regulatory control period does not require a waiver.
	<ul style="list-style-type: none"> <li>- Site inspection. Activities include site inspection services in order to determine the nature of the connections service sought by the connection applicant.</li> </ul>	Reject	This service is already ACS for the current regulatory control period does not require a waiver.
	<ul style="list-style-type: none"> <li>- Public lighting. Activities include provision, construction and maintenance of public lighting and emerging public lighting technology</li> </ul>	Approve	See section 2 <i>public lighting and nightwatchman lights</i>
	<ul style="list-style-type: none"> <li>- Provision of electrical training to third parties. Activities include the provision of distribution network related training services to third parties.</li> </ul>	Approve	See section 2 <i>training course for third parties – related to network access</i>
<b>Waiver application no. 2</b>		Approve waiver application	
Legal separation (clause 3.1)	<p>The following contestable services:</p> <ul style="list-style-type: none"> <li>- External telecommunications services</li> </ul>	Approve	See section 3 <i>Ausgrid, Endeavour Energy, Ergon, Energex and TasNetworks</i>

Guideline obligations for which waiver/no action letter is sought	Services/activities for which waiver/no action letter is sought	AER draft decision	Justification
	<ul style="list-style-type: none"> <li>- External data centre services</li> <li>- External IT services</li> <li>- Operational and maintenance support for isolated distribution networks not part of the NEM (Bass Strait Islands)</li> </ul>		– 6 month transitional waiver
<b>Waiver application no. 3</b>		Approve waiver application	
Physical separation/ co-location (clause 4.2.1) Staff sharing (clause 4.2.2) Branding and cross-promotion (clause 4.2.3) Office and staff registers (clause 4.2.4) Conduct of service providers (clause 4.4.1(a))	TasNetworks seeks to continue to be the metering provider (MP) for 3,000 type 1-4 distribution meters with an expectation that this role will be gradually transferred to Aurora Energy over the waiver period. The following actions would trigger an end to TasNetworks transitional role as MP for individual meters: <ul style="list-style-type: none"> <li>- Communications fault</li> <li>- Meter fault</li> <li>- Retail contract ends or is renewed with customers</li> <li>- Meter test is required</li> <li>- Metering coordinator (MC) engaged a different/new meter data provider (MDP)</li> </ul>	Approve	See section 3 <i>Essential Energy and TasNetworks – contestable meters (Type 1-4)</i>
<b>No Action Letter</b>		Reject	
Protection of confidential information (clause 4.3.2) Disclosure of information (clause 4.3.3)	TasNetworks states that the shared IT system between TasNetworks and new legally separate affiliate being established to provide non-electricity contestable services (telecommunications, data, IT, Bass Strait Islands O&M - see waiver no. 2) raises the risk of a technical breach of confidential information and disclosure of information obligations.	Reject	The AER does not agree that operations and maintenance support for isolated distribution networks not part of the NEM (Bass Strait Islands) is not a contestable energy service. The AER believes this service is better classified as an ‘other electricity service’. Granting

Guideline obligations for which waiver/no action letter is sought	Services/activities for which waiver/no action letter is sought	AER draft decision	Justification
			this No Action Letter would potentially confer a competitive advantage upon TasNetwork's AE in providing this contestable electricity service on an ongoing basis. This goes against the purpose of the Guideline.

Sources: TasNetworks, *Ring-fencing waiver application*, July 2017, pp.1-15; TasNetworks, *Ring-fencing compliance plan and waiver applications*, July 2017, p. 22; AER, *Framework and Approach – TasNetworks electricity transmission and distribution – Regulatory control period commencing 1 July 2019*, July 2017, pp. 76-87

## United Energy

United Energy has applied for one waiver:

1. A three-year waiver from physical separation/co-location, staff sharing, and branding and cross-promotion obligations for negotiated distribution services, unclassified distribution services, and unregulated distribution services, so that United Energy can provide those services on the same basis as before the Ring-fencing Guidelines took effect on 1 December 2016.

This waiver application and the AER's draft decision are summarised in the table below:

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
<b>Waiver application no. 1</b>		Approve waiver application	
Physical separation/ co-location (clause 4.2.1)	Services that are currently UDS or NDS, but which United Energy considered may be reclassified for the next regulatory control period:	Approve	

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
Staff sharing (clause 4.2.2) Branding and cross-promotion (clause 4.2.3) Conduct of service providers (clause 4.4.1(a))	<ul style="list-style-type: none"> <li>- Public lighting – new stand alone and green field public lighting.</li> <li>- Public lighting – alternation and relocation of public lighting assets</li>   <li>- Installation, repair and maintenance of watchman lighting</li> <li>- Reserve feeder construction</li> <li>- Possum guards</li> <li>- Supply enhancements at a customer’s request</li>             Other metering services that have not been classified by the AER but which United Energy considers should be reclassified as UDS, including:           <ul style="list-style-type: none"> <li>- Metering time switch adjustment for customers with non-AMI meters.</li> <li>- Customer access to metering data, type 1-4 metering installations.</li> <li>- Legacy type 5-6 metering services for customers who consume more than 160MWh per annum, including the provision, installation and maintenance of the meter and the manual reading data collection, data processing and storage and provision of the metering data to the market.</li> <li>- Transitional metering service arrangements for +160MWhpa customers and embedded network customers. This involves</li> </ul> </ul>		<p>See section 2 <i>public lighting and nightwatchman lights</i></p> <p>See section 2 <i>public lighting and nightwatchman lights</i></p> <p>See section 2 <i>public lighting and nightwatchman lights</i></p> <p>See section 2 <i>reserve feeder construction</i></p> <p>See section 2 <i>possum guards</i></p> <p>See section 2 <i>non-standard connections and customer-requested supply enhancements</i></p> <p>See section 2 <i>minor and legacy metering services</i></p>

Guideline obligations for which waiver is sought	Services/activities for which waiver is sought	AER draft decision	Justification
	<p>provision of legacy metering services for customers who consume less than 160MWh per annum and have a manually read type 5 or 6 meter, then grow to the large classification (&gt;160MWh) in the NEM, but for whom retailers have not yet taken action to replace those meters with a type 4 competitively provided meter. It also involved provision of retailer requested metering for child meters in embedded networks who may have type 5 or Victorian AMI type 5 meters, where: (1) retailers have chosen not to pursue a type 4 competitively provided meter, and; (2) United Energy is waiting on action from the retailer to replace the meter.</p>		

Source: United Energy, *United Energy ring fencing waiver application*, August 2017, pp.1-15