



# Decision

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

December 2017

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AER Reference: 61887, D17/139681

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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   |
| BSI                   | Bass Strait Islands   |
| 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 2.0, October 2017            |
| MC                    | Metering Coordinator  |
| 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:<br>(a) transmission services; or   |

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

(b) distribution services  
within the meaning of the Guideline.

PIAC

Public Interest Advocacy Centre

SCS

standard control services

UDS

unregulated distribution services, being distribution services  
that either have been classified as unregulated distribution  
services or that have not been classified at all.



## Summary

We released our 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, we consider 2017 to be a transitional year, in which DNSPs can work towards full compliance with the Guideline.

Early in 2017, we identified the need for some amendments to the Guideline and have conducted a separate Guideline amendment process concurrent with the waiver application process. This decision on the ring-fencing waivers has been determined using the amended version of the Electricity Distribution 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 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.<sup>1</sup> In these circumstances, DNSPs have applied for waivers of a more enduring nature. However, all waivers are only granted for a finite period, and must be reapplied for upon expiration, which provides an opportunity for review before 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>2</sup>

The Guideline is legally binding on the DNSPs. DNSPs are expected to comply with the Guideline. In this decision we have decided to grant many of the waiver applications made by DNSPs, particularly those that relate to short-term measures designed to achieve full compliance with the Guideline within the next few years. 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. We consider this approach is consistent with the exceptional nature of waivers. We acknowledge the concerns raised in submissions that the number of waivers proposed to be granted suggests a less than robust approach to ring-fencing. However, we think it is appropriate to offer some short-term flexibility, in order to reduce the costs of ring-fencing compliance, if longer term ring-fencing compliance can be achieved with little or no additional cost to consumers.

On 17 October 2017, we issued our draft decision and sought submissions from interested parties to assist us in making our final assessment. We received 24 submissions, from retailers, service providers, industry associations, consumer groups, distributors and government agencies. Some of the submissions were supportive, while others opposed our draft decision. Some suggested alterations such as restricting proposed waivers, imposing

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<sup>1</sup> See, for example, waivers for regional service delivery

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

conditions, or expanding the waivers by adding additional services or extending the duration. We have accepted some of these suggestions and rejected others. Ultimately, we have decided to grant the waivers proposed in our draft determination but have adjusted the terms of some of them.

Many of the waiver applications we received from different DNSPs were very similar. As in our draft decision on these waivers, for ease of assessment and to reduce duplication, we have categorised the waiver applications into six main bundles or 'groups'.

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

We have decided 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 have decided 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 have decided 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 have decided 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 more quickly than what had been proposed.

### **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, in these instances there seems to be little benefit from requiring compliance with the Guideline at present. As a result, we have decided to grant these waivers, but subject to review within defined periods.

### **Waiver Group 5 – ActewAGL 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 in the development of the Ring-fencing

Guideline, as an example of where a waiver from legal separation is likely to be appropriate.<sup>3</sup> We have decided to grant these waivers. In relation to the third application, ActewAGL seeks a long-term waiver. We have decided to grant ActewAGL a short-term waiver to continue to own and operate its unregulated compressed natural gas refuelling facility. This waiver is subject to submission by ActewAGL, and approval by the AER, of a revised cost allocation methodology 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 whether a continuation of the waiver would be appropriate.

### **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 have decided 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 have decided not to grant Ergon Energy's application for a waiver to provide support staff and services from its Cairns depot to Barcaldine power station on the basis that a waiver is not required.

Essential Energy 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 is to treat these services as Alternative Control Services (**ACS**). We have therefore decided to grant Essential Energy a temporary waiver with the intention of reclassifying the services as ACS, which would take effect at the start of the next regulatory control period. We consider that this approach, combined with the controls Essential Energy will put in place, which ensure that it only provides these services if there are no alternative service providers willing to operate, provides a safety net for Essential Energy's customers in regional areas.

### **Late waiver applications**

After the draft decision was published we received late waiver applications from three DNSPs.

SA Power Networks applied for a waiver from the legal separation obligations under clause 3.1 of Guideline to allow additional time to transfer 20 construction and maintenance contracts to its affiliate, Enerven. SA Power Networks has been advised that transfer of these contracts would create tax liabilities that exceed the cost pass-through threshold. No submissions on the application were received during the short consultation period between 6 November and 13 November. We have decided to grant the waiver consistent with our approach on other short-term transitional waivers.

TasNetworks applied for two temporary, short-term waivers from the functional separation obligations under clause 4.2 of the Guideline. Given the short-term nature of the waivers requested, we have decided to grant the waivers.

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<sup>3</sup> AER, Ring-fencing Guideline - Electricity Distribution Explanatory Statement, November 2016, pp. 20- 24.

Essential Energy applied for waivers from legal and functional separation obligations under clauses 3.1 and 4.2 of the Guideline for the reclassification of certain services to be treated as alternative control services. Given that the services requested have already been the subject of approved waivers for other DNSPs or are already ACS, we believe that Essential Energy's late waiver application did not require a public consultation. We have decided to grant the waiver on that basis.

### **Our approach**

Our decision generally grants short-term, transitional waivers to DNSPs for the reclassification of services, legal/functional separation and branding waiver groups, to allow those DNSPs additional time to become fully compliant with the Guideline. We note some stakeholder submissions suggested that we should take a strict approach to the compliance deadline of 1 January 2018. We are mindful of the importance of network businesses complying with their obligations to minimise harms to competitive markets and we have decided 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 and the potential harms in the interim are not significant.

This decision has been determined based on an amended version of the Electricity Distribution Ring-fencing Guideline (October 2017), which clarified a number of terms and corrected a number of unintended interpretations.

# 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>4</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>5</sup> The Guideline took effect across the National Electricity Market (**NEM**) on 1 December 2016, replacing jurisdictional ring-fencing guidelines.<sup>6</sup> Each DNSP must comply with all of the obligations of the Guideline as soon as reasonably practicable and by no later than 1 January 2018.<sup>7</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 decision considers the merits of all these waiver applications and the submissions received from interested parties. Where our decision is to grant a waiver, or to grant a waiver

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<sup>4</sup> AER, Electricity Distribution Ring-fencing Guideline Explanatory Statement, November 2016, p. 1.

<sup>5</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>6</sup> Clause 6.17.1 of the National Electricity Rules obliges all DNSPs to comply with the Guideline.

<sup>7</sup> As required by clause 7.1(a) of the Guideline.

subject to conditions, our approval is limited to the circumstances and conduct set out in the waiver applications (and as further limited by any of the conditions specified). The 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>8</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 prepared a draft decision for consultation with interested parties. After the consultation period ended, we published this final decision on the waiver applications, including the terms and conditions of waivers we have granted.

We 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 waivers from the Guideline, and assessments will likely 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>9</sup>

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<sup>8</sup> AER, Electricity Distribution Ring-fencing Guideline Explanatory Statement, November 2016, p. 6.

<sup>9</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 2018. 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>10</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>11</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>12</sup>

We also indicated that our intention is generally not to grant waivers other than in specific circumstances.<sup>13</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 making meaningful efforts to achieve compliance with the Guideline, by seeking an outcome that is practical (particularly having regard to any compliance costs that are only relevant in the short term) and ensures long-term compliance with the Guideline.

Submissions to waiver applications from some industry stakeholders suggested we must take a strict approach to the granting of waivers. For example, Origin Energy, AGL 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>14</sup> AGL also submitted that the AER should only grant waivers "if and only if, the waiver can unconditionally improve the NEO". While these approaches to waiver assessment do have merits, we consider that the more qualitative and practical considerations set out above are also relevant and appropriate matters for us to take into account.

### 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, we consider the six waiver groups:

Waiver Group 1 – Reclassification of services

Waiver Group 2 – Legal / functional separation

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<sup>10</sup> AER, Electricity Distribution Ring-fencing Guideline Explanatory Statement, November 2016, pp. 55, 58.

<sup>11</sup> Ibid., p. 55.

<sup>12</sup> Ibid., pp. 6, 59, 74.

<sup>13</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>14</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 3 – Branding

Waiver Group 4 – Regional service delivery

Waiver Group 5 – ActewAGL gas businesses

Waiver Group 6 – Regional offices

Accordingly, the assessment discussion in the next sections is presented in relation to these groups.

## 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  |
| Late waiver application received from SA Power Networks   | 30 October 2017  |
| Draft decision on SA Power Networks late waiver application published, invitation for submission to draft decision addendum | 6 November 2017  |
| Submissions to draft decision close   | 13 November 2017 |
| Submissions to SA Power Networks draft decision addendum close  | 20 November 2017 |
| Late waiver applications received from TasNetworks  | 21 November 2017 |
| Submissions to TasNetworks late waiver applications close   | 1 December 2017  |
| Final decision published, waiver notices issued   | 18 December 2017 |

## 2 Waiver Group 1 – Reclassification of services

Compliance with the AER Ring-fencing Guideline imposes different regulatory obligations on electricity distributors compared with previous state-based ring-fencing arrangements. The Guideline obliges all DNSPs operating in the NEM to ring-fence services depending on how the services are classified. Service classifications determine which services a DNSP provides will be subject to price regulation and how the costs incurred in providing the service will be recovered from customers. Services the AER chooses not to classify are unregulated.

| Classification                            |                             | Description  | Regulatory treatment  |
|---|-----------------------------|--|---|
| <b>Direct control service</b>             | Standard control service    | Services that are central to electricity supply and therefore relied on by most (if not all) customers such as building and maintaining the shared distribution network.<br><br>Most distribution services are classified as standard control. | We regulate these services by determining prices or an overall cap on the amount of revenue that may be earned for all standard control services.<br><br>The costs associated with these services are shared by all customers via their regular electricity bill. |
|   | Alternative control service | Customer specific or customer requested services. These services may also have potential for provision on a competitive basis rather than only by the local distributor.   | We set service specific prices to provide a reasonable opportunity to enable the distributor to recover the efficient cost of each service from customers using that service.   |
| <b>Negotiated service</b>                 |                             | Services we consider require a less prescriptive regulatory approach because all relevant parties have sufficient countervailing market power to negotiate the provision of those services.  | Distributors and customers are able to negotiate service and price according to a framework established by the NER. We are available to arbitrate if necessary.   |
| <b>Unclassified distribution services</b> |                             | Distribution services that are contestable will not be classified.   | We have no role in regulating these services.   |
| <b>Non-distribution services</b>          |                             | Services that are not distribution services. <sup>15</sup>   | We have no role in regulating these services.   |

Source: AER

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.<sup>16</sup> 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 (ACS) functionally separate

<sup>15</sup> The NER defines a distribution service as a service provided by means of, or in connection with, a distribution system.

Services that do not fit this definition are non-distribution services. NER, Chapter 10, glossary.

<sup>16</sup> AER, Ring Fencing Guideline - Electricity Distribution, 3.1(a)

from any other distribution service that it provides.<sup>17</sup> 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 (ActewAGL being the only exception) 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 exempt a service from the legal and functional separation requirements of the Guideline where there is a strong case that it will be reclassified at the DNSPs next distribution determination.

Many of the services referred to in the 'reclassification of services' group of waiver applications have already been considered in the recently published Framework and Approaches (**F&A**) for DNSPs in NSW, ACT and Tasmania.<sup>18</sup> The service classifications in these F&As, which are to be finalised in determinations to be made in 2019, are a good indication of possible future regulatory treatment. 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.

As indicated in the sections below, in most cases we have decided to grant the waivers sought by DNSPs for services for which there is a reasonable case for reclassification in their next determinations. We have not granted waiver applications for services that are already classified as direct control service 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 to be reclassified, we have granted a waiver.

The AER has already considered the reclassification issues within the work undertaken for Tasmanian, NSW and ACT DNSPs.<sup>19</sup> Absent special circumstances; we consider that this work is likely to be extended to all jurisdictions.

Our 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

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<sup>17</sup> AER, Ring Fencing Guideline - Electricity Distribution, 4.1(c)(i)

<sup>18</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.

<sup>19</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.

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 is likely to accept that particular services are not contestable and may in future be regulated. This being the case, it appears unlikely that granting the waivers from legal and / or functional separation would result in any significant potential for harm (such as an adverse impact on competition). We note that the non-discrimination obligations in clause 4.1 of the Guideline continue to apply.

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. Granting waivers to services where there is a strong case that they may be reclassified in the future could result in cost savings for DNSPs, as they would not have to incur 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. Potentially, this could also benefit consumers (in a sense) if costs that might have otherwise been passed through to consumers are avoided. We are satisfied that where services are likely to be reclassified, as indicated in the following section, 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.

A number of submissions have been made in support of granting waivers for services where the AER considers there to be a strong case for reclassification at the next determination for that DNSP.<sup>20</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>21</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>22</sup> Red and Lumo Energy oppose the reclassification waivers, contending that decisions on reclassification of services should be made through the determination process for each DNSP, and that the ring-fencing waivers effectively prejudice future decision making in that context.<sup>23</sup>

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<sup>20</sup> Master Electricians Australia, Draft Decision - DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, November 2017, p.1; 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>21</sup> AEC, Australian Energy Council draft submission on applications for waivers from the Distribution Ring-fencing Guideline, August 2017, p. 3.

<sup>22</sup> AGL Energy, *Submission on ring-fencing waiver applications*, September 2017. p. 2; AGL, Re. Draft Decision: DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, December 2017, p. 2.

<sup>23</sup> Red Energy and Lumo Energy, AER Ring-fencing waiver applications: Draft Decision; November 2017, p. 1-2; Red Energy and Lumo Energy, *Submission regarding Ring-fencing waiver applications*, August 2017 p.1; Red Energy and Lumo

Where there is a case for services to be reclassified we consider a waiver for these services would actually reduce confusion, regulatory burden and costs to consumers. On balance, by providing waivers where we consider the potential harm to be low, we minimise the risk of disruption to both consumers and future regulatory processes. On the other hand, were we to deny waivers we would effectively impose a definite cost on consumers (the cost of compliance) to avoid an uncertain cost (the potential harms to competition). Therefore, granting reclassification waivers that allow DNSPs to undertake their existing operations with minimal disruption, with conditions and altered timeframes where appropriate, is our preferred approach. 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.

If a service for which we have decided to grant a reclassification waiver is subsequently not reclassified through the F&A and revenue determination process, each relevant DNSP will either need to comply with the Guideline from the waiver expiry date or seek a further waiver. It is highly likely that the grounds on which any further waiver is sought will need to be grounds other than the prospect of future reclassification).

The AEC 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>24</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 stated that it does not actively promote or pursue services such as installation, repair and maintenance of watchman lights and new stand alone and greenfield public lighting.

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

We consider 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.

## 2.1 Waiver descriptions and our decisions

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, notes submissions we have received on DNSP waiver applications, and indicates our decisions in relation to those waivers.

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<sup>24</sup> Energy, Submission on CitiPower and Powercor ring fencing waiver application - May 2017, June 2017, p.1  
AEC, Australian Energy Council draft submission on applications for waiver from the Electricity Distribution Ring-fencing Guidelines, August 2017, p. 4.

## 2.1.1 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 classified as alternative control services (**ACS**) in most jurisdictions. However, in some jurisdictions, these services or aspects of these services are classified as negotiated distribution services or as unregulated 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 customers. 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 offered as negotiated distribution services. As with public lighting, we will consider reclassifying nightwatchman lights as ACS in future. Subject to the view of stakeholders, this would make the regulatory approach to nightwatchman lights consistent with our approach to public lighting.

- Our 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; Energex; Essential Energy; Ergon Energy; Jemena; TasNetworks; SA Power Networks; United Energy.<sup>25</sup>

A submission from the National Electrical and Communications Association (NECA) stated that public lighting and nightwatchman lights often involve asset relocations, and that asset relocations are contestable in NSW.<sup>26</sup> Moving of street lights and nightwatchman lights, in NSW, could indeed be tendered to an Accredited Service Provider (**ASP**)<sup>27</sup> in line with the broader framework for asset relocation works, where the DNSP makes an assessment and decides that relocation of the asset does not have network safety impacts that justify the DNSP performing the relocation itself. However, public lighting and nightwatchman lights as a distribution service also involves construction, asset relocation (when necessary),

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<sup>25</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; Energex, Energex ring-fencing waiver application, July 2017, pp.1-8; Essential Energy, Ring-Fencing Guideline – Electricity Distribution November 2016 Waiver application by Essential Energy: LED street lighting, 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.

<sup>26</sup> NECA, NECA submissions on the AER's Draft decision: DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, November 2017, p. 8

<sup>27</sup> An Accredited Service Provider scheme operates in NSW, ASPs undertake contestable work on the electricity network. For additional information see: <https://www.resourcesandenergy.nsw.gov.au/energy-supply-industry/pipelines-electricity-gas-networks/network-connections/contestable-works>

operations and maintenance, and billing to customers, such as local councils. In many cases, nightwatchman and street lights are inherently tied to the network meaning that DNSPs supply this suite of activities together.

In most jurisdictions, nightwatchman lights and public lighting are already ACS, meaning that the DNSP must deliver the service to a customer at a price that is regulated by the AER. An ACS service classification is appropriate for services that retain strong monopoly characteristics, but where there is a potential for competition to develop over time. Where a DNSP delivers public lighting and nightwatchman lighting at a regulated price, there is also an opportunity for private service providers to offer alternative competitive pricing to nightwatchman and street lighting customers. We anticipate that street lighting and nightwatchman lights will be classified as ACS across all jurisdictions through upcoming determinations, where they are not already, and therefore our decision is to grant a waiver to relevant DNSPs for this service until the commencement of the next regulatory control period. We note that an ASP scheme is in operation in NSW, where ASPs undertake contestable work on the electricity network. Contestability of services in NSW is determined by the State Government and not the AER. Our role is to take the extent of contestability already present in the market and define an appropriate level of regulation. We therefore encourage NECA to engage with the State government on contestability of services, and with the AER on services classifications through the determination process.

### 2.1.2 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 is concerned with maintenance of a secure, safe and reliable network on an emergency or unplanned basis. 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 have decided to grant the waivers that DNSPs have sought in regard to this service.

- Our decision is to grant the waivers sought for these services. The following DNSPs have applied for this waiver: Ausgrid; AusNet; CitiPower and Powercor; Endeavour Energy; Energex; Essential Energy; Ergon Energy; Jemena.<sup>28</sup>

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<sup>28</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; Energex, Energex ring-fencing waiver application, July 2017,

In its submission, NECA has raised concerns that DNSPs may exploit a waiver for emergency recoverable works by classifying repairs to their networks as being emergencies caused by damage to the network from third parties, when in fact those damages might not have been caused by third parties and may have been foreseeable.<sup>29</sup>

Where damage is genuinely caused by third parties, this waiver allows DNSPs to make repairs to the network as a matter of urgency. Should DNSPs seek to classify routine or foreseeable repairs as being 'emergency works', we would encourage NECA to lodge complaints with the New South Wales Government, which administers the ASP scheme, or the AER.

### 2.1.3 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 ACS in existing determinations. This includes:

- meter recovery and disposal
- provision, installation and maintenance of meters, manual meter reading, and data meter handling for large customers (consumption of >160MWh/annum)
- 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. Note that Ausgrid applied for a waiver from legal separation only for "type 5-6 data management to other electricity distributors" and some "contestable metering support roles",

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pp.1-8: 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>29</sup> NECA, NECA submissions on the AER's Draft decision: DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, November 2017, p. 12



with the expectation that this service will be reclassified as UDS at the next determination. We agree this is a distribution service. However, we note that a distribution service (like metering services) can be provided by a DNSP and therefore legal separation is not required. We note, however that the functional separation obligation applies to these services—that is, staff and office sharing and branding restrictions.

To the extent these services remain a DNSP responsibility, we expect they will be changed (if need be) from unregulated to ACS at the next regulatory control period. A number of the above services have already been considered in the July 2017 F&As for NSW, ACT and Tasmania DNSPs.<sup>30</sup>

- Our 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; United Energy.<sup>31</sup>

A submission from Origin Energy on CitiPower and Powercor's waiver application with respect to type 1-4 metering raised questions over whether a waiver for type 1-4 metering services are necessary for Victorian DNSPs.<sup>32</sup> A further submission from CitiPower and Powercor clarified that they do not intend to compete for type 1-4 metering services and would not expect the waiver to cover any such activities. Rather, CitiPower and Powercor seek a waiver to cover their activities associated with making metering data available to customers upon request as required under the NER. CitiPower and Powercor have signalled their intention to seek further clarification on the service classification of metering data at the next determination.<sup>33</sup> The AER has received no further submissions on classification of metering services following publication of the draft decision, and we have therefore decided to grant this waiver.

#### 2.1.4 Non-standard connections, customer-requested supply enhancements, and augmentations

These distribution services are provided in 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. Non-standard connection services have been classified as UDS

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<sup>30</sup> AER, Framework and approach – Ausgrid, Endeavour Energy and Essential Energy: Regulatory control period commencing 1 July 2019, July 2017, pp.99-100; AER, Framework and approach – TasNetworks electricity distribution and transmission – Regulatory control period commencing 1 July 2019, July 2017, pp.83-85; AER, Framework and approach – ActewAGL – Regulatory control period commencing 1 July 2019, July 2017, pp. 86-88.

<sup>31</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 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>32</sup> Origin Energy, *Submission to CitiPower and Powercor ring-fencing waiver application*, June 2017, p. 2.

<sup>33</sup> CitiPower and Powercor, *Response to questions on CitiPower and Powercor waiver application*, June 2017, p. 4.

in the most recent F&As for NSW DNSPs.<sup>34</sup> However, we consider that non-standard connections, customer requested supply enhancements and network augmentations associated with customer connections could be provided by the DNSP as an ACS service under specific conditions, where contestability is not practically possible or where DNSPs are required to carry out work themselves to ensure the safety of the network.

CitiPower and Powercor have applied for a waiver to provide non-standard connection services in circumstances where the customer has waived their right to conduct a tender for contestable elements of the connection service or where the works form part of the distribution network.<sup>35</sup> They have sought the waiver for the entirety of the current regulatory control period, until 2020. We are satisfied that, in the circumstance where this waiver will apply, there will be no harm to consumers. We anticipate the classification of this service will be clarified for the next regulatory control period and that no extension to the waiver would be required.

Endeavour Energy has requested a waiver for certain connection services that are at present unregulated services. The waiver would result in these services being treated as if they were ACS for ring-fencing purposes. These include premises connection assets type C and augmentations type D. Both services are concerned with customer requested connection or network enhancements that are above standard design requirements. The F&A for the forthcoming for NSW regulatory control period (2019-2024) proposes to reclassify these services as ACS.<sup>36</sup> Neither of these services is contestable. We are satisfied that a waiver for these services should be granted until the revised classification for these services is implemented in the next regulatory control period. The waiver will mean that a 'business-as-usual' approach can be adopted by Endeavour Energy until the commencement of the next regulatory control period at which time the new classification will determine the ring-fencing obligations applying to these services.

Ausgrid has applied for a waiver for non-standard connection services that would allow that service to be treated as UDS for the remainder of the current regulatory control period (ending June 2019).<sup>37</sup> A service that is not classified is still subject to the functional separation obligations of the Guideline. However, as a distribution service, legal separation is not required. We agree with Ausgrid that these services are most likely to be distribution services. When a DNSP commences offering a new distribution service within a regulatory control period that service becomes by default an unregulated distribution service until the next determination, when it is considered for classification purposes by the AER. For a service that is likely to remain unclassified, no legal separation waiver is required.

United Energy has applied for a waiver for supply enhancements at a customer's request, where customers request a service to a higher standard than the least cost technically

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<sup>34</sup> AER, Framework and approach – Ausgrid, Endeavour Energy and Essential Energy: Regulatory control period commencing 1 July 2019, July 2017, p. 103.

<sup>35</sup> CitiPower and Powercor, Ring Fencing Waiver Application, May 2017, pp. 7.

<sup>36</sup> AER, Framework and approach – Ausgrid, Endeavour Energy and Essential Energy: Regulatory control period commencing 1 July 2019, July 2017, p. 101.

<sup>37</sup> Ausgrid, Ausgrid waiver applications, July 2017, p. 6.

acceptable level of service.<sup>38</sup> This service was not classified during the current regulatory control period. United Energy is of the view that the service should be classified as ACS in the next regulatory control period, and has applied for a waiver for the current regulatory control period ending 31 December 2020.

Our decision is to:

- Grant CitiPower and Powercor's waiver applications for non-standard connection services. This waiver allows those services to be treated as ACS in situations where the customer has waived their right to conduct a tender for contestable elements of the connection service or where the works form part of the distribution network.<sup>39</sup>
- Grant Endeavour Energy's waiver application for premises connection assets C. customer requested above standard design and distributor required performance, and augmentations - D. customer requested above standard design or distributor required performance. This waiver allows those services to be treated as if they were ACS for the rest of the current regulatory control period.<sup>40</sup>
- Reject Ausgrid's waiver application for all non-standard connection service on the basis a waiver is not needed.<sup>41</sup>
- Grant United Energy's waiver application for supply enhancements at a customer's request. This waiver allows those services to be treated as if they were ACS for the rest of the current regulatory control period.<sup>42</sup>

### 2.1.5 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 distribution service to ACS for the next regulatory control period. Alternative control service is a typical classification for any above-standard connection provided by a DNSP where safety, reliability and security are critical considerations.

- On this basis, our 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; United Energy.<sup>43</sup>

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<sup>38</sup> United Energy, United Energy ring fencing waiver application, August 2017, p.6.

<sup>39</sup> CitiPower and Powercor, CitiPower and Powercor ring-fencing waiver application, May 2017, pp.1-12.

<sup>40</sup> Endeavour Energy, Ring-fencing waiver application, September 2017, pp. 1-8.

<sup>41</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19.

<sup>42</sup> United Energy, United Energy ring fencing waiver application, August 2017, p.6

<sup>43</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.

## 2.1.6 Network related training courses

DNSPs provide training to staff, their contractors and third parties for various reasons. There are four kinds of training relevant to these waiver applications: (1) training for internal staff; (2) network related training courses (the subject of the waiver applications) for contractors to work on the distribution network that only the DNSP can provide, and; (3) any training related to the distribution network, including for electrical contractors or ASPs, that does not need to be delivered exclusively by DNSPs (as a precondition for network access); (4) all other training that is not related to work on the distribution network. Each raises different ring-fencing issues.

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.

DNSPs may provide training to electrical contractors, other third party providers and ASPs where contractors require a specific set of learning outcomes in order to obtain a distributor's network access authorisation. This can include training that is necessary to demonstrate competency in the distributor's electrical safety rules or to undertake switching on the distributor's network. Generally, this is the sort of training that only the DNSP can provide because it relates to the DNSP's systems and procedures. In the NSW, ACT and Tasmania F&As, these training services are slated for reclassification as ACS at the start of the next regulatory control period, and would not need to be functionally or legally separated.<sup>44</sup>

DNSPs may provide training that is related to work on the distribution network (and is therefore a distribution service), but which is not necessary to gain network access authorisation and does not need to be delivered by the DNSP only. The AER expects this training to be reclassified as an unclassified distribution service in upcoming determinations (as per the F&As for NSW, ACT and Tasmanian DNSPs). Therefore this sort of training will need to be functionally, but not legally separated.<sup>45</sup>

Any other training that is not a distribution service must be provided by a legally separate affiliated entity, if at all.

Essential Energy applied for a waiver for one training course only, "Entry in electrical station course" in their waiver application of September 2017. In their submission to the AER's draft decision, Essential Energy requested a waiver from any legal and functional separation requirements for an additional course, "Environmental impact assessment training". ASPs are required to have completed this training for their environmental assessments to be determined by Essential Energy. We consider that both the "Entry into electrical station" course and the "Environmental impact assessment training" course are courses that only the

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<sup>44</sup> AER, Framework and approach – Ausgrid, Endeavour Energy and Essential Energy: Regulatory control period commencing 1 July 2019, July 2017, p. 98; AER, Framework and approach – TasNetworks electricity distribution and transmission – Regulatory control period commencing 1 July 2019, July 2017, p. 82; AER, Framework and approach – ActewAGL – Regulatory control period commencing 1 July 2019, July 2017, p. 85

<sup>45</sup> AER, Framework and approach – Ausgrid, Endeavour Energy and Essential Energy: Regulatory control period commencing 1 July 2019, July 2017, p. 104; AER, Framework and approach – TasNetworks electricity distribution and transmission – Regulatory control period commencing 1 July 2019, July 2017, p. 87; AER, Framework and approach – ActewAGL – Regulatory control period commencing 1 July 2019, July 2017, p. 90

DNSP can deliver as a precondition to ASPs or electrical contractors to gain network access authorisation. Instead of initiating a separate process for Essential Energy's late waiver application for the "Environmental impact assessment training" course, we include it in this broader consideration of DNSP-provided training that is necessary for electrical contractors and ASPs to obtain network access authorisation.

- Our decision is to grant the waivers sought for network related training courses, which we expect will be reclassified as ACS at upcoming determinations. The following DNSPs have applied for waivers in this category: Ausgrid; Endeavour Energy; Energex; Essential Energy; Ergon Energy; TasNetworks.<sup>46</sup>

In its submission, IAC Safety Services emphasised the need for a clear distinction between contestable training and assessment services (that can be obtained from third party training organisations), and training and assessment that impact or relate to the safety, reliability or security of the network (that can only be delivered by the DNSP). IAC raises concerns over the waiver in the AER's Draft Decision saying "*should a waiver to contestable works training and assessing be granted, a risk exists that private providers may withdraw from the market.*"<sup>47</sup>

In response to IAC's submission, we have further clarified what is included in the waiver for provision of network-related training courses until the next commencement of the next regulatory control period on 1 July 2019. This waiver only applies to the provision of training to electrical contractors and service providers (such as ASPs) that is necessary to obtain a network access authorisation and which can only be delivered by the DNSP. This waiver does not apply in the following circumstances:

- internal training of DNSP staff (which is an input into direct control services and does not need to be classified).
- training that is related to the distribution network but can be delivered by any appropriate training organisations (not just the DNSP). We expect that training courses of this sort will be treated as an unregulated distribution service at upcoming determinations, and will be subject to functional (but not legal) separation.
- training courses that are not directly related to the provision of distribution services. Training courses of this sort would need to be legally separated from the DNSP.

Our position on service classification for network-related training courses has been considered in the Framework and Approaches for NSW, ACT and Tasmanian DNSPs. We encourage further input from stakeholders on network related training courses through the determination process at which time the classifications of service will be finalised for the 2019-2024 regulatory control period.

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<sup>46</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>47</sup> IAC Safety Services, IAC Safety Services Submission, November 2017, p. 4

IAC further expressed concerns that some NSW DNSPs may not be in a position to comply with the Ring-fencing Guideline with respect to provision of training services, given their historic investment in delivery of training courses. The AER requested and received comments from Ausgrid via email.<sup>48</sup> Ausgrid confirmed that in the past they have provided training to three groups: (1) internal staff; (2) ASPs and contractors, and; (3) the external market. Ausgrid has confirmed that they intend to cease providing training services to the external market.

### 2.1.7 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 the request of a customer on a fee for service basis. In some jurisdictions, these services are an unregulated distribution service.

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

- Our 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>49</sup>

### 2.1.8 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 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*

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<sup>48</sup> Ausgrid - email submission, Re. IAC Safety Services submission on ring-fencing waivers for training courses, November 2017

<sup>49</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.

*DNSP provides will not be classified (as a direct control or negotiated distribution service) but will be treated as an unregulated distribution service.*<sup>50</sup> The F&As for DNSPs in NSW, ACT and Tasmania also propose that distribution asset rental be regarded as an unregulated distribution service in the forthcoming regulatory control period.

Our 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>51</sup>

### 2.1.9 Property services

This refers to customer requests for a 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 ACS, and we expect that this classification will apply across all DNSPs for upcoming determinations.

- Our decision is to grant the waivers sought for this service. DNSPs that have applied for waivers in this category: Energex; Ergon Energy.<sup>52</sup>

### 2.1.10 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 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 decision is to grant the waivers sought for this service. DNSPs that have applied for waivers in this category: United Energy.<sup>53</sup>

### 2.1.11 Sale of inventory

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<sup>50</sup> AER, *Electricity Distribution Ring-fencing Guideline Explanatory Statement*, November 2016 , p. 80.

<sup>51</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>52</sup> 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>53</sup> United Energy, *United Energy ring fencing waiver application*, August 2017, pp.1-15.

The 'sale of inventory' typically refers to sale of stock from a DNSP to ASPs and electrical contractors or their clients or order to build new network connections (for example for new property developments). 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.

We considered this issue in our F&A for the NSW distributors for 2019-24.<sup>54</sup> In summary, our approach is:

'Provision of approved materials/equipment to ASPs for connection assets that will become part of the shared distribution network' is an ACS.

'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, the sale of goods and materials that are not destined to form part of the DNSP's network will be required to be ring-fenced from the DNSP and will be subject to legal and functional separation.

Scrap sales and other disposals are not services at all.

- Our 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>55</sup>

We received a number of submissions from electricity manufacturers and suppliers, electrical contractors and ASPs, and one industry body (NECA) in relation to the broader issue of DNSP on-selling of inventory.<sup>56</sup>

DNSP's are permitted to sell materials as scrap as a normal part of inventory and asset management. This can include, but it not limited to, on-selling of used or obsolete materials or sale of new materials that were originally purchased with the intention of being used to provide distribution services, but which were found to be excess to the DNSP's requirements or were at end of asset life. As inventory management, 'sale of scrap' is not service that we consider, if offered by DNSPs to customers. It is therefore not a service that either requires classification or would that be subject to ring-fencing.

All Round Supplies raised concerns that some DNSPs may be selling materials to electrical contractors and ASPs in excess of reasonable sale of scrap, and are doing so in competition with other materials suppliers in the market.<sup>57</sup> The AER expects that DNSPs will purchase

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<sup>54</sup> AER, Framework and approach – Ausgrid, Endeavour Energy and Essential Energy: Regulatory control period commencing 1 July 2019, July 2017

<sup>55</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.

<sup>56</sup> All Round Supplies, Submission on Draft Waiver to Ring-fencing Guideline, November 2017; NECA, NECA submissions on the AER's Draft decision: DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, November 2017; Prysmian Group, Prysmian submission addressing - Draft decision of "DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline October 2017", November 2017; Sicame Australia, Submission re. AER Ring-fencing Guideline, November 2017

<sup>57</sup> All Round Supplies, Submission on Draft Waiver to Ring-fencing Guideline, November 2017, p. 2; NECA, NECA



materials for use on the shared distribution network with the intention that all of those materials will likely be used, and not with the intention that a portion of those materials will be on-sold to electrical contractors and ASPs (excepting where those materials will be sold and then returned as part of the shared network via a new network connection, which is discussed below). We expect DNSPs to only on-sell excess materials as scrap that they have legitimately purchased in excess of the needs of the distribution network.

The waiver granted to Energex, Ergon and Essential allows the DNSPs to provide materials for connection works that will then be gifted or otherwise incorporated back into the shared network. We expect that this will be reclassified as an ACS service in upcoming determinations and will be subject to price regulation by the AER. The intent of waivers for this service is to allow DNSPs to continue to provide this service to electrical contractors and ASPs.

All Round Supplies, NECA and Prysmian have raised concerns that is not possible to know at the point of sale whether materials sold by DNSPs will be gifted back to the distribution network, or whether materials will be used by an ASP, or other third party service provider, on another network.<sup>58</sup> They have submitted that DNSPs may sell materials in excess of what is needed for connection assets on their network and in doing so enter into competition with other materials suppliers. The AER expects that DNSPs will be aware of new connections to their network and the requirements contractors and ASPs may have for DNSP-supplied materials in order to build those connections, and that the risk of inadvertent oversupply of materials by the DNSP is minimal.

It is possible that DNSPs could purposefully sell materials, to contractors and ASPs, in volumes that are in excess of reasonable supply necessary for inclusion on the shared network or in excess of reasonable inventory management needs associated with sale of scrap. Where industry stakeholders believe DNSPs may be supplying materials with intentions that go beyond the genuine sale of scrap or supply of materials for network connection infrastructure, we encourage stakeholder to first approach DNSPs with their concerns, and then, if the issue remains unresolved, contact the AER. The AER will be in a stronger position to act on complaints where it is clear that the complainant has sought a response from the relevant DNSP before approaching us, and where complaints are accompanied by evidence.

Prysmian expressed concern that material sales by some DNSPs have indeed extended beyond reasonable sale of scrap or sale of materials for connection assets to be returned to the shared network in the past.<sup>59</sup> We expect that all other sale of inventory will be a non-

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submissions on the AER's Draft decision: DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, November 2017;

<sup>58</sup> All Round Supplies, Submission on Draft Waiver to Ring-fencing Guideline, November 2017, p. 2-3; NECA, NECA submissions on the AER's Draft decision: DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, November 2017, p. 17; Prysmian Group, Prysmian submission addressing - Draft decision of "DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline October 2017", November 2017; Sicame Australia, Submission re. AER Ring-fencing Guideline, November 2017

<sup>59</sup> Prysmian Group, Prysmian submission addressing - Draft decision of "DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline October 2017", November 2017

distribution service in upcoming determinations, necessitating legal separation from the DNSP. In response to submissions, the AER sought and received updates from a number of DNSPs with respect to their compliance planning around material sales. SA Power Networks, Ergon Energy and Energex have confirmed that they will be legally separating unregulated material sales into legally separate affiliated entities.

NECA also raised a number of issues in relation to supply of materials by DNSPs that go beyond the ring-fencing regime. NECA expressed concern that DNSPs' affiliated entities that sell materials competitively may be able to access materials procurement contracts by the DNSP, and get the same pricing as the DNSP.<sup>60</sup> There is an important distinction to be made between a DNSP selling materials to an AE, and an AE procuring materials on the same contract as a sister company such as a DNSP. If a DNSP were to procure materials and on-sell those materials to its AE at a lower price than other similar companies, this could be a case of discrimination, which would contravene DNSP obligations under the Ring-fencing Guideline. However, there is nothing in the Guideline that prevents an affiliated entity of a DNSP from purchasing materials on the same contract as a DNSP, as part of bulk procurement by a group of related companies. As DNSPs often buy materials in large volumes they have the ability to negotiate favourable terms and conditions for the supply of material that may be accessed by their affiliates. This means that DNSP affiliated entities may get access to favourable pricing that their smaller competitors cannot.

The Guideline does not seek to remove any advantage that an affiliated entity may hold where that advantage is not achieved by cross-subsidy or discrimination by the DNSP. The fact that an affiliated entity may be able to benefit from the economies of scale associated with material procurements by other sister companies (including the DNSP) does not in and of itself constitute a cross-subsidy. NECA has also raised concern that the way that a DNSP approves materials for use on the network disadvantages electrical contractors and independent materials suppliers.<sup>61</sup> Regulating the way a DNSP approves materials for use on the network is beyond the scope of the Ring-fencing Guideline, except where the DNSP has clearly discriminated in favour of an affiliated entity in doing so.

We consider that granting a waiver for sale of inventory to electrical contractors or ASPs, where that inventory will become part of the shared network as a connection asset, will enable DNSPs to ensure the safety of the network in keeping with the NEO. We recognise widespread concern amongst materials suppliers and electrical contractors with respect to DNSP sale of materials. Should market participants encounter behaviour that they believe goes beyond legitimate sale of scrap or supply of materials to electrical contractors and ASPs that will become part of the shared network, we would encourage those market participants to first approach the DNSPs themselves, and then the AER with their concerns.

## 2.1.12 Network safety services

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<sup>60</sup> NECA, NECA submissions on the AER's Draft decision: DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, November 2017, p. 17-18

<sup>61</sup> NECA, NECA submissions on the AER's Draft decision: DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, November 2017, p. 17-18

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)
- 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 will be reclassified as ACS (potentially contestable) in upcoming determinations.

- Our 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>62</sup>

### 2.1.13 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 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>63</sup>

### 2.1.14 Planned interruption – customer requested

This is a specific service group within the 2019-2024 final F&A; it 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

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<sup>62</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>63</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.

this is a service that can be only provided by DNSPs, we expect to classify this service as ACS in upcoming determinations.

In its submission on our draft decision, Essential Energy submitted an application to waive any legal and functional separation obligations under the Guideline for four additional services.<sup>64</sup> One of these services was for customer requested planned interruptions. As Essential Energy's late waiver application for this service was the same as waiver applications for this service already considered previously, we have decided not to carry out a separate process and instead consider Essential Energy's late waiver application in this decision.

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

- The following DNSPs have applied for waivers in this category: Ausgrid; Endeavour Energy; TasNetworks; Essential Energy.<sup>65</sup>

### 2.1.15 Customer-initiated asset relocations

This refers to 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 on the safety or security of the network. Customer-requested asset relocations can take place under a number of circumstances, such as to accommodate road or construction works, improve the visual amenity of an area, or remove obstructing assets at a site. Note that customer initiated asset relocations where a DNSP concludes that there are no potential safety impacts on the network is not a regulated service.

In its submission on our draft decision, Essential Energy submitted an application to waive any legal and functional separation obligations under the Guideline for customer-initiated asset relocations as well as three other services.<sup>66</sup> This is a specific service group within the 2019-2024 final F&A. As Essential Energy's late waiver application for this service was the same as waiver applications for this service already considered previously, we have decided not to pursue a separate process for this waiver application and instead consider Essential Energy's late waiver application in this decision.

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 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; Essential Energy.<sup>67</sup>

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<sup>64</sup> Essential Energy, Response to AER's Draft Decision - Ring fencing waivers, November 2017, p.2.

<sup>65</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; Essential Energy, Response to AER's Draft Decision - Ring fencing waivers, November 2017, p.2.

<sup>66</sup> Essential Energy, Response to AER's Draft Decision - Ring fencing waivers, November 2017, p.2.

<sup>67</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19; Endeavour Energy, Ring-fencing waiver application, September

In its submission, NECA advocated that DNSPs have too much discretion over what asset relocations should be contestable and what asset relocations have safety impacts that justify the DNSP doing the relocation itself.<sup>68</sup> NECA also raised concerns that there is inconsistency in the way that DNSPs apply network impact tests for asset relocations, which determine whether or not a relocation can be performed by a third party electrical contractor or ASP.<sup>69</sup> The way that a DNSP determines what asset relocations might impact the safety and operation of the distribution network and communicates that decision-making to the broader market is an issue that goes beyond the scope of ring-fencing. Our decision is therefore to grant waivers for these services with no additional requirements around DNSP network safety and impact assessments. If NECA believes that DNSPs are consistently misapplying network safety and impact assessments to asset relocations, this is a concern that should be directed to the relevant DNSP in the first instance. Ongoing concerns about such behaviour can be brought to the attention of the AER with, if possible, supporting evidence.

### 2.1.16 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 decision is to grant the waivers sought for this service. The following DNSPs have applied for waivers in this category: Ausgrid; Endeavour Energy.<sup>70</sup>

### 2.1.17 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 low voltage and high voltage network infrastructure. As this assurance work can only be done by DNSPs, we expect to classify this as ACS in upcoming determinations.

- Our decision is to grant the waivers sought for this service. The following DNSPs have applied for waivers in this category: TasNetworks.<sup>71</sup>

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2017, pp. 1-8; SA Power Networks' negotiated distribution services, August 2017, pp.1-5; Essential Energy, Response to AER's Draft Decision - Ring fencing waivers, November 2017, p. 2.

<sup>68</sup> NECA, NECA submissions on the AER's Draft decision: DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, November 2017, p. 13.

<sup>69</sup> Ibid.

<sup>70</sup> Ausgrid, Ausgrid waiver applications, July 2017, pp. 1-19; Endeavour Energy, Ring-fencing waiver application, September 2017, pp. 1-8.

## 2.1.18 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>72</sup>

In its 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>73</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 impact on 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 continued 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.

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<sup>71</sup> TasNetworks, *Ring-fencing waiver application*, July 2017, pp.1-14.

<sup>72</sup> AER, *Framework and approach – Ausgrid, Endeavour Energy and Essential Energy: Regulatory control period commencing 1 July 2019*, July 2017, p. 92.

<sup>73</sup> Ausgrid, *Ausgrid waiver applications*, July 2017, pp. 14-15.

- Our decision is not to grant the waivers sought for supply restoration for life support customers. The following DNSPs have applied for waivers in this category: Ausgrid, Essential Energy.<sup>74</sup>

### 2.1.19 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 network infrastructure or simple restoration work for life support customers.<sup>75</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 its 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 could result in that customer being without power supply for several days, assuming their retailer or an electrical contractor 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.

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 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>76</sup>

In its submission on our draft decision, Ausgrid raised the concern that the AER's rejection of its waiver application to provide supply restoration for non-life support customers outside of normal business hours might pose a "*genuine risk to a wide array of customers*".<sup>77</sup> In

<sup>74</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>75</sup> AER, Framework and approach – Ausgrid, Endeavour Energy and Essential Energy: Regulatory control period commencing 1 July 2019, July 2017, pp.92, 96.

<sup>76</sup> Ausgrid, *Ausgrid waiver applications*, July 2017, pp. 1-19.

<sup>77</sup> Ausgrid, Submission on AER's Draft Ring-fencing waiver applications, November 2017

particular, Ausgrid highlighted that rural customers may not be able to access supply restoration services quickly, and that aged and mobility impaired customers may be at risk if they are unable to call on Ausgrid to restore power supply. Ausgrid has further submitted that its proposed approach of providing supply restoration to non-life support customers outside of business hours meets the NEO by ensuring that supply restoration is provided in the quickest and most efficient way.<sup>78</sup>

The AER is cognisant of the difficulties some customers may face obtaining supply restoration services, particularly where those customers may be in rural areas where there is a limited number of electrical contractors or access to retailer support staff, or where customers may need power to be restored quickly due to health reasons. However, we believe that contestable markets (i.e. retailers or electricians) can meet supply restoration needs for non-life support customers in all but exceptional circumstances. Ausgrid can enable the functioning of this contestable market by undertaking a proactive programme of communication with its customers and staff training to ensure that supply restoration services are not provided by the DNSP for non-life support customers.

### 2.1.20 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 the commencement of the next regulatory control period, starting 1 July 2020. These are:

- non-standard network services;
- non-standard connection services;
- new and upgraded connection point services;
- non-standard small customer metering services;
- large customer metering services;
- public lighting services;
- stand-by and temporary supply services;
- asset relocation, temporary disconnection and temporary line insulation services;
- embedded generation services, and;
- a wide range of 'other services' (listed in attachment A of SA Power Networks' waiver application).

Many of the negotiated services for which SA Power Networks has requested the waiver are already covered in the sections above.

SA Power Networks' 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

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<sup>78</sup> Ibid.



critical response in submissions to the AER. In particular, submissions from Origin Energy, AGL and the Australian Energy Council (**AEC**) have stated that SA Power Networks has failed to provide detailed reasoning as to why the services for which it has applied for a waiver should be exempted from the Guideline's obligations.<sup>79</sup>

We have decided 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>80</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>81</sup> Many of SA Power Networks' negotiated services are classified as ACS 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 decision is to grant the waivers sought for these services.

### 2.1.21 Test Access Permit Fee

In its submission on our draft decision, Essential Energy applied to waive requirements for functional and legal separation for four additional services, one of which was test access permits.<sup>82</sup> Under the Network Asset Testing and Commissioning CEOP5125 procedure insulation resistance tests using voltage greater than 1000V (HV) is required. Under Electrical Safety Rules COEP8030 (7.5) and Access Permit Procedure COEP2045 (3.4.2), this must be performed under 'Test Access Permit'. As the equipment required to perform this test is relatively expensive, ASPs may request that Essential Energy provide this service. This service currently falls under the service category "Contestable network commissioning and decommissioning". This service is classified as ACS in the current determination, but as this is a test access permits that Essential Energy commenced offering after the AER made its determination for the current regulatory control period, the regulated fee structure for test access permits is yet to be determined. This fee structure will be determined in the upcoming regulatory control period, commencing in July 2019. As this service is closely related to an ACS group of services, there would be no benefit to imposing functional and legal separation obligations on Essential Energy's delivery of this service.

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<sup>79</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; AGL, Re. Draft Decision: DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, December 2017, p. 2.

<sup>80</sup> Ibid

<sup>81</sup> AER, Ring-fencing Guideline - Explanatory Statement, November 2016, p. 74.

<sup>82</sup> Essential Energy, Response to AER's Draft Decision - Ring fencing waivers, November 2017, p.2.

- Our decision is to grant this waiver application. The following DNSP has applied for a waiver in this category: Essential Energy.<sup>83</sup>

## 2.2 Additional Essential Energy Waiver applications

In its submission on the draft decision, Essential Energy requested additional waivers for four services:

- Test Access Permit Fee;
- Environmental Impact Assessment Training;
- Planned Interruption: Customer requested, and;
- Customer initiated asset relocations –where the relocation works was initiated by a third party (including a customer); and could impact the safety or security of the network.

We have elected not to publish a draft decision on this waiver application before making our final decision. Essential Energy's late waiver application concerns:

- services for which waivers have already been granted to other DNSPs in our draft decision (including customer requestion planned interruptions and customer-initiated asset relocations)
- activities under service classifications for which broader waivers have already been granted to other DNSPs (we granted waivers for broader network-related training courses in our draft decision, and we consider that Essential Energy's waiver application for Environmental Impact Assessment Training courses falls under this broad service category), or
- activities under service classifications that are already ACS (including test access permit fees).

We consider that granting a waiver for these services without first publishing a draft decision is appropriate in this case.

## 2.3 Other reclassification waiver applications

We received a number of waiver applications that we have decided not to grant because no waivers were necessary under DNSP determinations for the current regulatory control period. Ausgrid, Essential Energy and TasNetworks applied for reclassification of services waivers where none were required.<sup>84</sup> We have identified where waivers for specific services have been rejected on these grounds in section 9 of this final decision.

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

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<sup>83</sup> Ibid.

<sup>84</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, September 2017, pp. 1-8; TasNetworks, Ring-fencing waiver application, July 2017, pp.1-14.

Energy's applications in regard to supply restoration services for life-support customers have already been discussed above in this context.<sup>85</sup>

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<sup>85</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.

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

This group of waiver applications are all related to delays (beyond 1 January 2018) in relocating 'Other Services' (i.e. non-distribution services) from a DNSP to an affiliate, or in cease providing services altogether. The applications seek waivers in respect of compliance with the Guideline requirements for legal and/or functional separation for particular services for a period of time. Without a waiver, these businesses will either have to cease providing the services or not be compliant with the Guideline from 1 January 2018.

There are eleven waivers that fall under this grouping. Of these, five DNSPs, Ausgrid, Endeavour Energy, Ergon Energy, Energex and TasNetworks, requested six-month waivers, from the legal separation obligations of the Guideline, to transition services to affiliated entities.

Essential Energy and TasNetworks requested 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 requested a waiver to allow it to continue to provide services to Mt Baw Baw ski fields under a contract with the Victorian Government.

Our draft decision was to accept the waivers as proposed, on the basis that the waivers would be in the interests of consumers and that the additional time requested by the DNSPs was reasonable and appropriate. In the Draft Decision we considered that existing protections, such as the approved cost allocation methods contain the risk of cross subsidies.

We received a number of waiver applications after our draft decision was published in September. SA Power Networks submitted a waiver application on 31 October 2017, seeking additional time (until 30 September 2018) to complete transfer of some services to its affiliate, Enerven Energy Infrastructure Pty Ltd (**Enerven**).

TasNetworks made a request for two additional waivers on 22 November 2017. The first was a waiver to continue to provide metering support services, to ensure continuity of service provision during the introduction of metering contestability, until May 2018. The second late waiver submission was to allow TasNetworks a short waiver, ending 30 June 2018, allowing them to complete their contract to provide operation and maintenance support services to the Bass Strait Islands.

Our final decisions on this group of waivers, as well as submissions received on our draft decision, are discussed below.

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

Our decision is to grant Ausgrid, Endeavour Energy, Ergon Energy, Energex and TasNetworks with the temporary, short-term waiver from the legal separation obligations, under Clause 3.1 of the Guideline, as requested.

Ausgrid, Endeavour Energy, Ergon Energy, Energex and TasNetworks all provide ‘Other Services’, that is, services that are neither electricity distribution nor transmissions services. These services cannot be provided by a DNSP unless a waiver has been approved (refer clause 3.1(b) of the Guideline).

The DNSPs who applied for these waivers are all currently in varying stages of restructure and establishing affiliated entities which would then undertake the services to which these waivers relate. Each DNSP's ring-fencing compliance plan is available from our website. The DNSPs each requested a six-month waiver 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. Ausgrid is working towards full compliance as soon as practicable, but faces challenges arising from their industrial relations environment and statutory obligations, including requirements for a consultation process with unions and employees. A short-term, temporary waiver for six months will provide some additional time to complete this process. 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>86</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 Energy is actively seeking to move these services to an affiliated entity and hopes to complete the transition by 31 December 2017, but states that some processes, including approvals from Commonwealth authorities have uncertain timeframes. A short-term, temporary waiver will assist Endeavour Energy address the residual risk that delays to the approval process may occur.<sup>87</sup> Endeavour Energy has applied for a six-month transitional waiver for legal separation only.

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. A short-term, temporary waiver will ensure Ergon Energy and Energex have sufficient time to ensure that all contracts for Other Services are novated to their affiliated entity. Ergon Energy and Energex are seeking a

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<sup>86</sup> Ausgrid Ring-fencing Guideline Waiver Applications, July 2017, p. 10.

<sup>87</sup> Endeavour Energy - Ring-fencing waiver application, September 2017, p. 6.

six-month waiver for legal separation only. They plan to meet their obligations for functional separation under the Guideline by 1 January 2018.<sup>88</sup>

TasNetworks is seeking to establish a new legal affiliated entity to provide three non-distribution services currently provided by the organisation.<sup>89</sup> These services are:

- External Telecommunications;
- External Data Centres; and
- External IT Services

TasNetworks applied for a six-month transitional waiver from the legal separation obligations, under clause 3.1 of the Guideline in order to establish the new legal entity.

The waiver applications seek to allow the businesses to continue to provide non-distribution services until such time as they are able to completely transfer these services to affiliated entities. We have decided to grant waivers of the legal separation obligations under clause 3.1 of the Guideline in respect of all the waiver applications described above. These waivers will expire on 1 July 2018.

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

Our decision is to grant Essential Energy and TasNetworks with a waiver from the functional separation obligations under clause 4.2 and 4.4.1(a) of the Guideline, which relate to offices, staff, branding and promotions, and office and staff registers, 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>90</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, and 66 are active meters, 40 of which require replacement and are not being charged for. The remaining 26 meters are still being charged to retailers. Finally, there are eight National Meter Identifiers within Essential Energy's substations.<sup>91</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 currently the meter provider and owner of around 3000 type 1-4 meters connected to its network. The retailer, Aurora Energy, is the Responsible Person (as defined

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<sup>88</sup> Ergon Energy and Energex Ring-fencing waiver applications, July 2017, pp. 12 and p. 9 (respectively).

<sup>89</sup> TasNetworks, Ring-fencing Waiver applications, July 2017, p. 9.

<sup>90</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>91</sup> Essential Energy, Ring-fencing guideline: Waiver application - residual contestable meters, July 2017, p. 3.

in the NER), who has planned to assume ownership of these meters progressively over the next two years.<sup>92</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>93</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, more 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.

### **3.2.1 Description of waiver applications**

Essential Energy and TasNetworks sought waivers from the functional separation provisions contained in clause 4.2 of the Guideline, which relate to offices, staff, branding and promotions, and office and staff registers.

Essential Energy and TasNetworks also sought waivers from their obligations under clause 4.4.1(a) of the Guideline, relating to conduct of service providers.

The DNSPs sought waivers to cover the remainder of the current regulatory control period, expiring by 1 July 2019.

## **3.3 AusNet – Mt Baw Baw**

Our decision is to grant AusNet with a waiver from the legal (clause 3.1) and functional separation functional (clause 4.2.3(a)i. - Branding) obligations of the Guideline.

AusNet 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 it is not a distribution service. The contract expires in May 2020.

Under the 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. Consequently, the service should not be provided by a DNSP (although a waiver may be sought).

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<sup>92</sup> TasNetworks, Ring-fencing Waiver applications, July 2017, p. 12.

<sup>93</sup> Aurora Energy, Submission to TasNetworks ring-fencing waiver application: Type 1-4 legacy meters - meter provider role, August 2017, p.1.

### 3.3.1 Description of waiver application

AusNet applied for a waiver of the Guideline's legal separation (clause 3.1) and branding (clause 4.2.3(a)i) obligations 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(a)ii. and 4.2.3(a)iii. relating to advertising and cross-promotion of contestable electricity services.

AusNet sought a waiver for the duration of its existing contract, which expires in 2020.

## 3.4 SA Power Networks maintenance and construction contracts

Our decision is to grant SA Power Networks with a temporary waiver from the legal separation obligations, under clause 3.1, of the Guideline as requested.

SA Power Networks has a number of existing infrastructure maintenance and construction projects which have post 1 January 2018 completion dates. Under the Guideline, these are classified as non-distribution services, which are to be ring-fenced away from DNSPs. Future contracts of this nature will be entered into by SA Power Network's newly-formed affiliate Enerven.

SA Power Networks submitted that it had intended to transfer the 20 construction and maintenance contracts to its affiliate, Enerven, before 1 January 2018.<sup>94</sup> However, it has been advised that these transfers could create tax liabilities that would exceed the cost pass-through threshold. SA Power Networks submits it has sought a Private Binding Ruling from the Australian Taxation Office (**ATO**). SA Power Networks submitted it has not yet secured this ruling and it is becoming more likely that a ruling, and SA Power Networks' subsequent requisite negotiations with customers, will not be able to be successfully completed before 1 January 2018<sup>95</sup>.

### 3.4.1 Description of waiver application

SA Power Networks applied for a waiver from its obligations under clause 3.1 (legal separation) of the Guideline. SA Power Networks has requested that the waiver commence as soon as possible and no later than 1 January 2018, and expire on 30 September 2018.<sup>96</sup>

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<sup>94</sup> We note that SA Power Networks has provided to us the confidential details of these contracts.

<sup>95</sup> SA Power Networks - Application for waiver from AER Ring-fencing Guideline - Legal Separation: Other Services (maintenance and construction contracts), October 2017, Cover letter.

<sup>96</sup> Available at [https://www.aer.gov.au/system/files/SAPN%20-%20Ring-fencing%20waiver%20application%20-%2030%20October\\_0.pdf](https://www.aer.gov.au/system/files/SAPN%20-%20Ring-fencing%20waiver%20application%20-%2030%20October_0.pdf)



If the waiver is granted, SA Power Networks submits that it will continue to provide the contracted services until either:

- the contracts terminate (many of the contracts will expire prior to 30 September 2018, in which case no negotiation and transfer would be required), or
- the ATO has provided SA Power Networks with a favourable ruling, enabling it to commence customer negotiations and transfer the contracts to Enerven without incurring tax liabilities, or
- the ATO has provided SA Power Networks with an unfavourable ruling, at which point, SA Power Networks will consider whether to apply for further waivers or take an alternative course of action.

In its application, SA Power Networks submitted that granting the waiver would prevent it from incurring tax liabilities from transferring the contracts prior to 1 January and would prevent these costs being passed through to consumers. Further, SA Power Networks submitted that not imposing legal separation for these contracts for a short-term period will not in any way advantage an SA Power Networks' affiliate, as the contracts were won in competitive markets and for services which are currently being provided. They are therefore not contestable until the existing contracts expire. SA Power Networks submitted that there will be no risk of cross-subsidy because it has a cost allocation methodology in place. It submits that there will be no risk of discrimination in favour of an affiliate because it will still be subject to the functional separation provisions of the Guideline. SA Power Networks also submitted that delivery of the services under contract has already been rebranded as Enerven<sup>97</sup>.

SA Power Networks submitted that granting the waiver will promote efficient operation and use of electricity services for the long-term interests of electricity consumers, specifically in regard to a lower price. It submitted that complying with clause 3.1 of the Guideline in relation to the 20 construction and maintenance contracts would not result in any benefit to consumers.

### 3.5 TasNetworks - metering support services

Our decision is to grant TasNetworks with a temporary, short-term waiver from their functional separation obligations under clause 4.2 of the Guideline relating to offices, staff, branding and promotions, and office and staff registers.

Following commercial considerations, TasNetworks has opted not to become a Metering Coordinator (**MC**) for type 4 meters. The new MC appointed by the retailer, Aurora Energy (Aurora), will have responsibility for the vast majority of type 4 meters installed in Tasmania from 1 December 2017.

Metering support services are contestable and unregulated and as such cannot be provided by a DNSP without a waiver. With the exception of performing the Metering Provider role for a small number of type 1 – 4 legacy meters, as discussed in the previous section,

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<sup>97</sup> Ibid, pp 2-4

TasNetworks will not provide services in the contestable metering market from 1 December 2017.

However, TasNetworks submits that it has become apparent, through negotiations with Aurora and relevant market participants, that some metering support services may not be sufficiently established in Tasmania by 1 December 2017 to deliver optimal customer service outcomes.

### 3.5.1 Description of waiver application

TasNetworks made a late request for a waiver from the functional separation obligations contained in clause 4.2 of the Guideline, relating to offices, staff, branding and promotions, and office and staff registers. The waiver, expiring 31 May 2018, would allow TasNetworks to perform a temporary supporting role for metering services while a competitive metering services provider is being established<sup>98</sup>.

The DNSP is working with Aurora, the contestable metering service provider, and other relevant market participants, to support them while they establish services in a regional market where they have not previously provided small customer metering services.

The metering support services, provided by TasNetworks under the waiver, may include:

- Fault restoration;
- New connections/installations;
- Disconnections and site alterations; and
- Meter reading (for non-communications enabled type 4A meters).

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<sup>98</sup> TasNetworks - Ring-fencing waiver application, November 2017, pp 3-4

## 3.6 TasNetworks - operation and maintenance support services to the Bass Strait Islands

Our decision is to grant TasNetworks with a temporary, short-term waiver from their functional separation obligations under clause 4.2 of the Guideline relating to offices, staff, branding and promotions, and office and staff registers.

TasNetworks currently has an operating and maintenance contract with Hydro Tasmania, owner and operator of the standalone electricity distribution systems on King Island and Flinders Island, collectively known as the Bass Strait Islands (**BSI**). The contract includes operating and maintenance support services including asset management services, IT systems and asset data systems and customer service roles.

The contract expires in March 2018. Hydro Tasmania has recently indicated an intention to put a number of support services, under the current contract, out to competitive tender<sup>99</sup>.

The existing contract with Hydro Tasmania covers the following services:

- Asset Management
- Asset Data and IT Management
- Network Design and Procedures
- Workforce Training and Accreditation
- Work Standards Procedures and Audit
- Back-up labour
- Cable PI
- Logistics
- Meter Data Service
- Equipment Testing
- Fleet Management
- Fault Centre
- Regulatory Reporting

These are non-distribution services which are required to be ring-fenced away from the DNSP to ensure compliance with the Guideline.

### 3.6.1 Description of waiver application

TasNetworks applied for a waiver in respect to the obligations under the functional separation provisions contained in clause 4.2 of the Guideline, relating to offices, staff,

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<sup>99</sup> Ibid, p. 7.

branding and promotions, and office and staff registers for operation and maintenance support services to the BSI.

The waiver requested is temporary, with an expiration date of 30 June 2018.

TasNetworks submitted that granting a temporary waiver will give Hydro Tasmania sufficient time to enter into new contractual arrangements with contestable energy service providers on favourable terms.

## 3.7 Assessment

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

Our decision is to grant the waivers as requested. We remain satisfied that the DNSPs are making substantial efforts to achieve compliance with the Guideline. They have either established, or have advanced plans to establish, legally separate affiliated entities to provide the contestable services the DNSPs initially provided. We are also satisfied that there are legitimate reasons relating to the time and effort required to establish new business that explain why the businesses need up to 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-term transitional waiver.

We understand the concerns made in a submission by the National Electricity and Communications Association (NECA) that a six-month transitional waiver may allow the DNSP to re-enter the contestable works market<sup>100</sup>. NECA submitted that the waiver may provide opportunities for DNSPs to "*unfairly entrench themselves in the contestable works market in NSW, as they will have six months to undercut the competition (ASPs) and drive them out of the contestable works market.*"

While the granting of a waiver does allow for a 'business as usual' approach for the duration of the waiver, the waiver that we have decided to grant is limited to existing services. The waiver does not allow the DNSPs to commence provision of new contestable services or services that were not already being provided by the DNSP on the Guideline implementation date of 1 December 2016.

We note that the NECA submission, on legal and functional separation, mainly relates to the NSW-based DNSPs, Ausgrid and Endeavour Energy. Ausgrid has applied for a waiver for legal separation only and has pledged to comply with all functional obligations in relation to Other Services by 1 January 2018.<sup>101</sup> This implies that, after 1 January 2018, Ausgrid cannot use its staff, offices, branding or promotions to obtain contracts for non-distribution services (Other Services). Likewise, Endeavour Energy's waiver application is for legal separation only. It will use separate staff, offices, brand, etc. for all non-distribution services

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<sup>100</sup> NECA, Submission on the AER's draft decision: DNS applications for waivers from the Electricity Distribution Ring-fencing Guideline, November 2017, p. 6.

<sup>101</sup> Ausgrid Ring-fencing Guideline Waiver Application, July 2017, p. 10.

from 1 January 2018<sup>102</sup>. Since the Other Services in question will be functionally separated, there is no potential for discrimination. Accordingly, we believe the harm from granting a waiver in this instance to be very low.

In their initial submission to waiver applications, the Public Interest Advocacy Centre (PIAC) in relation to Ausgrid's application, submitted 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>103</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's) 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>104</sup>

In a further submission on our draft decision, PIAC indicated support for the AER's assessment, and considers it appropriate in the case of NSW DNSPs to grant the waivers<sup>105</sup>.

We continue to acknowledge the AEC's view in its initial submission, where it 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>106</sup>. It is important that DNSPs become compliant with the Guideline as soon as practicable.

Our assessment remains that rejecting these waiver applications 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 on our draft decision in respect to granting the DNSPs an extension of time to transition to full compliance with regard to their legal separation obligations were mixed:

- the AEC was disappointed by the approach of the draft decision, preferring that waivers be issued only in exceptional circumstances provided applications pass a critical assessment test.
- Red Energy and Lumo Energy, subsidiaries of Australian Hydro Limited, continue to voice their strong objection to need to issue DNSPs with 6 month transitional waivers, which they submit have arisen due to the DNSPs own inefficiencies.<sup>107</sup>

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<sup>102</sup> Endeavour Energy - Ring-fencing waiver application, September 2017, p. 7.

<sup>103</sup> PIAC, Submission on Ring-fencing waiver applications for NSW Distribution Network Service Providers, August 2017, p. 1.

<sup>104</sup> AEC, draft submission on applications for waiver from the distribution Ring-fencing Guideline, August 2017, p. 3.

<sup>105</sup> PIAC, Submission on draft decision on DNSP ring-fencing waiver applications, November 2017, p. 1

<sup>106</sup> AEC, submission on AER draft decision on applications for waiver from the distribution Ring-fencing Guideline, November 2017, pp. 1-2.

<sup>107</sup> Red Energy and Lumo Energy, Draft Decision: AER ring-fencing waiver applications, November 2017 p. 2.

- Master Electricians Australia (MEA), supports the decision to grant these businesses a six month transitional waiver, but submits that further revisions of this timeframe should not be considered. Furthermore, it is their view that these DNSPs should submit a report mid-way through the term (1 April 2018) detailing the progress on separation, with the report made public<sup>108</sup>.
- Origin Energy restated their preference for applications for waivers to be evidence-based and that the benefits and costs to consumers should be demonstrated, not asserted<sup>109</sup>.
- AGL considered that businesses have already had sufficient time to comply with the Guideline and legally separate contestable businesses. They suggested that the AER should set stricter deadlines for compliance and urged the AER to make it clear to the market that no further time extensions will be granted beyond the six-month transitional period sought by Ausgrid Endeavour Energy, Ergon Energy, Energex, and TasNetworks.<sup>110</sup>

It is the AER's view that an additional six month period for complying with the Guideline is reasonable and appropriate. Any subsequent requests to extend these waivers beyond six months to enable more time to complete legal separation would need to demonstrate serious extenuating circumstances beyond the control of the DNSP for the AER to take such a request into consideration.

The waivers described are short-term, the harm from granting the waivers is limited, and granting the waivers will assist the DNSPs to become compliant with the Guideline in an orderly and cost effective manner.

Our decision is to grant these waivers for six months.

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

We have decided 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. In addition, Essential Energy submitted that the NEO is further protected by the existence of Essential Energy's whole of business CAM and accounting separation of the service while they finalise withdrawal from this service.

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.

<sup>108</sup> Master Electricians Australia, Submission on draft decision - DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, p. 1

<sup>109</sup> Origin Energy, Submission on Ring-fencing waiver applications, November 2017, p. 1.

<sup>110</sup> AGL, Re. Draft Decision: DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, December 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 are likely to be no benefits 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. Submissions on the draft decision from stakeholders on these metering issues were limited to a single short email from an Accredited Service Provider which supported Essential Energy's presence in the marketplace.<sup>111</sup>

In their submission on the waiver applications, 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>112</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>113</sup>

TasNetworks has also made substantial steps to withdraw from the market. It will not actively pursue opportunities (either as a DNSP or through an affiliated entity) in the type 1-4 meter space. Furthermore, it has 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 by the compliance deadline 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. Aurora Energy submitted 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>114</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 practicable. 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

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<sup>111</sup> Mr Peter Clements - email submission, Changes to ASP to deliver contestable works, November 2017.

<sup>112</sup> AEC, Submission on applications for waiver from the distribution Ring-fencing Guideline, August 2017, p. 6.

<sup>113</sup> AGL Energy, Submission on Ring-fencing waiver applications, September 2017, p. 4.

<sup>114</sup> Aurora Energy, Submission on TasNetworks Ring-fencing waiver application: Type 1-4 legacy meters - Meter provider role, August 2017, p. 1.

impacts on customers. As a result, the harm from granting a waiver in these circumstances is very limited. Our decision is to grant the waivers sought for this service.

### **3.7.3 AusNet – Mt Baw Baw**

We have decided 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. 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 requested 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 with the Guideline 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 our draft decision in regard to the AusNet's Mt Baw Baw application.

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

### **3.7.4 SA Power Networks maintenance and construction contracts**

Our decision is to grant the waiver to allow SA Power Networks to continue to deliver existing contracts without legal separation. This waiver will expire on 30 September 2018. On the basis of the information before us, we agree with SA Power Networks' assessment that granting the requested waiver is likely to support the National Electricity Objective and is not likely to result in any potential for cross-subsidy or discrimination. If SA Power Networks incurred a significant tax liability for transferring the 20 contracts, these costs could be likely to be passed on to consumers (subject to our acceptance and approval of such a cost pass through application). We note that not granting the waiver would not be likely to result in any benefits to consumers, given the short-term nature of the waiver. This would mean customers would face higher costs, but without any requisite benefits from a more competitive provision of services.

We also note that the proposed waiver duration is short-term and the effect of the waiver is essentially to delay the legal transfer of the contracts to Enerven. This circumstance is therefore very similar to our draft decision to grant waivers to Ausgrid, Endeavour Energy,



Energex, Ergon Energy and TasNetworks, which are seeking waivers to accommodate delays in the transfer of contestable services to affiliated service providers.<sup>115</sup>

We did not receive any submissions in response to our draft decision, which proposed to grant the requested waiver. Our decision, therefore, is to grant this waiver on the condition that SA Power Networks transfer the contracts as soon as practicable after receiving a favourable ruling from the ATO.

### **3.7.5 TasNetworks - metering support services**

Our decision is to grant TasNetworks a waiver to provide metering support services on a temporary basis while the contestable provider and other market participants establish operations in this market. We are satisfied, given the information before us, that granting a waiver to allow TasNetworks to provide temporary metering support services, until 31 May 2018, is likely to support the NEO. The waiver is in the long-term interests of consumers by giving the retailer and the MC time establish the full suite of competitive metering services in a new market, while having access to TasNetworks' support services in the interim.

TasNetworks submitted that without their support to assist market participants to transition to the new arrangements, there is a risk that customers will experience service delay and inconvenience, including risks to timeliness of new customer connections and service alterations.<sup>116</sup> It is our consideration that the harm from granting a waiver is limited in the short-term and is likely to have benefits for competitive offerings in the longer term.

However, we acknowledge that due to the lateness of the application, there have been limited opportunities for stakeholders to respond to TasNetworks' application. In the short period that was open for submissions, we did not receive any. Therefore, the decision could only be made with respect to the information before us. As set out above, we have arrived at our decision this by weighing up the likely harm from granting a waiver against the likely benefits. We also note that we may vary or revoke a waiver at our discretion, so long as we have provided the DNSP with 40 days' notice of our intention to do so.

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

### **3.7.6 TasNetworks - operation and maintenance support services to the Bass Strait Islands**

Our decision is to grant a temporary waiver for TasNetworks to continue to provide this service for the duration of the contract and for a short time after, to allow for a smooth transition to a new provider. The BSI standalone network is not part of the NEM. The service is offered under a contract to Hydro Tasmania, therefore it is not contestable while the contract for service is in operation. There is a degree of uncertainty regarding which of the services currently being provided by TasNetworks are likely to go out to competitive tender

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<sup>115</sup> Please see our draft decision, p. 35, available at [https://www.aer.gov.au/system/files/AER%20-%20Ring-fencing%20waiver%20applications%20draft%20decision%20-%20October%202017\\_5.pdf](https://www.aer.gov.au/system/files/AER%20-%20Ring-fencing%20waiver%20applications%20draft%20decision%20-%20October%202017_5.pdf)

<sup>116</sup> TasNetworks, Ring Fencing Waiver Application, November 2017, p.4.

at the expiry of the existing contract and whether TasNetworks is likely to be involved in the provision of any services to the BSI in the future. Hydro Tasmania has indicated an intention to manage distribution services within their own business at the end of the contract.<sup>117</sup>

The waiver requested is for a short duration and the likely harm from granting a waiver is limited. Granting TasNetworks a waiver to continue to provide services on the existing contract will ensure that there is no disruption to the service after the compliance deadline passes, in terms of price, quality, safety, reliability and security of supply, in accordance with the NEO. The existing contract supports scale efficiencies for the BSI and therefore puts downward pressure on prices. Granting the waiver for a short period past the expiry of the existing contract will allow TasNetworks to finalise business arrangements to support Hydro Tasmania moving forward.

Hydro Tasmania submitted that operations on the BSI would be significantly impacted along with customer service issues and safety risk arising, if the waiver was not granted.<sup>118</sup> In addition to that, the cost of TasNetworks ceasing to provide services to the BSI on 1 January 2018 would impose additional costs on Hydro Tasmania. Furthermore, given the scope of services provided by TasNetworks, it is unlikely that the required capability could be established in contracts with new service providers, at favourable terms, before this date. Without TasNetworks' assistance in transitioning to new commercial arrangements, for the provision of these services, there is a risk that customers on the BSI would experience delays and inconvenience, in addition to deterioration in the quality and reliability of the service. These possible outcomes are not in the interests of the NEO.

It is our conclusion that granting the waiver is in the long-term interests of consumers, particularly customers of the BSI.

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

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<sup>117</sup> Hydro Tasmania - Submission to TasNetworks ring-fencing waiver for Bass Strait Islands, 30 November 2017.

<sup>118</sup> *Ibid.*

## 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 2018 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 unregulated distribution services
3. Ergon Energy – Hayman Island

The sections below describe the waivers requested, our assessment of DNSPs' claims, and our decision on whether to grant the waivers.

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

Our decision is to grant CitiPower and Powercor the branding waivers requested for a reduced duration.

CitiPower and Powercor sought two waivers relating to use of their brands in the provision of contestable electricity services until the end of 2020.

First, CitiPower and Powercor sought 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>119</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 sought a waiver from their obligations to use independent branding and 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>120</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.

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<sup>119</sup> CitiPower and Powercor, *Waiver applications*, May 2017, pp. 8-9.

<sup>120</sup> CitiPower and Powercor, *Waiver applications*, May 2017, pp. 10-11.

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

- 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>121</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 a year ahead 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**

Our decision is to grant Energex and Ergon Energy the branding waivers requested for a reduced duration.

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

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<sup>121</sup> CitiPower and Powercor, *Waiver applications*, May 2017, pp. 9-11.

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:

- 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 service to Hayman Island, which is also an unregulated 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 affiliated entities 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 would be used for communications, marketing, invoicing and website design.

However, Energex and Ergon Energy 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 Energy-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>122</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.

### 4.3 Ergon Energy – Hayman Island

Our decision is to grant Ergon Energy the requested branding waiver for services to 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>123</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 separate any of its branding or promotions for the contracted services to Hayman Island until a new contract was developed.<sup>124</sup>

## 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 of June 2017, Red Energy and Lumo Energy suggested that the Powercor Network Services brand would be likely to prejudice the competitiveness of the

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<sup>122</sup> Ergon Energy, Waiver applications, July 2017, p. 35-37; Energex, *Waiver applications*, July 2017, pp. 13-15.

<sup>123</sup> Ergon Energy, Waiver applications, July 2017, p 35-37; Energex, *Waiver applications*, July 2017, p. 36.

<sup>124</sup> In its submission of 14 November 2017, Ergon Energy submitted that our draft decision incorrectly referred to Ergon Energy only seeking a waiver in respect of its uniforms and fleet on the basis of the connection services being provided through an affiliated entity, with separate branding for communications, marketing material and website design. Ergon Energy submitted that its waiver application was in fact made in respect of "the full branding and cross promotion obligations under the Guideline". We acknowledge and correct this error in the description of the waiver sought. .

markets for unregulated services, as Powercor Network Services has been active in the market and has potentially developed brand awareness and loyalty.<sup>125</sup>

Red Energy and Lumo Energy also provided a submission in response to the draft determination. They reiterated their earlier points and objected to our draft decision to grant waivers to CitiPower and Powercor.<sup>126</sup>

In particular, Red Energy and Lumo Energy also submitted that the use of CitiPower branding when performing non-direct control services for commercial and industrial customers is likely to unfairly prejudice the market for those services in the near term. They noted that other DNSPs have faced similar branding issues but not required waivers.

We note that CitiPower and Powercor have restricted their proposed waivers so that their brands will not be used in tendering for new contracts or in providing services to residential customers and small businesses. We also note that commercial and industrial customers are more likely to be Combined with the short-term nature of the waiver, we are satisfied the harm that might result from use of the CitiPower and Powercor brands 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.

Nevertheless, we have decided to grant the waivers for two years rather than the three years requested. 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 is disproportionate to the anticipated impacts that this would have on the emergence of a competitive market.<sup>127</sup> In its subsequent submission, AGL supported the shorter timeframes and tighter limitations we have placed on branding waivers, but suggested that a two-year period is a generous timeframe given the unfair competitive advantage that use of a DNSP's branding can provide to an affiliate entity.<sup>128</sup> We consider that granting the waivers for a shorter duration will signal to CitiPower and Powercor, and other interested parties, that we expect compliance with the Guideline to be achieved as soon as reasonably practicable. The waivers are subject to the conditions proposed in CitiPower and Powercor's waiver application.

#### **4.4.2 Energex and Ergon Energy – other electricity services and unregulated 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 the other energy services and metering services that are the subject of their waivers.<sup>129</sup> While it is possible

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<sup>125</sup> Red Energy and Lumo Energy, *Submission to CitiPower and Powercor Ring-fencing Waiver application*, June 2017, p. 2.

<sup>126</sup> Red Energy and Lumo Energy, *Submission to AER ring-fencing waiver applications: Draft Decision*, 13 November 2017, pp. 2-3.

<sup>127</sup> AGL Energy, *Submission to CitiPower and Powercor, Ring-fencing Waiver application*, June 2017, p. 2.

<sup>128</sup> AGL, *Re. Draft Decision: DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline*, December 2017, p. 2.

<sup>129</sup> Ergon Energy, *Waiver applications, July 2017*, p 36; Energex, *Waiver applications, July 2017*, p. 15.

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 brands of affiliated entities are already established.<sup>130</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>131</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. We consider it would also be useful if Energex and Ergon Energy developed a staged timetable for achieving compliance in support of their waiver application.

As with CitiPower and Powercor's 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 minimised, 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 likely to be material, we consider that a waiver is reasonable, at least for a short period of time. In 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.

In our draft decision, we proposed to grant the waivers subject to conditions, including a shorter duration and a requirement to provide us with a compliance timetable.

Red Energy and Lumo Energy opposed granting branding waivers to Energex and Ergon Energy. They submitted that rebranding can be done with ease and does not require uniform trials and significant costs. As with CitiPower and Powercor, Red Energy and Lumo Energy observed that other DNSPs have been able to comply with the Guideline's branding obligations without the need for waivers.<sup>132</sup>

Origin Energy broadly advocated for a stricter response to DNSPs' waiver applications. It supported our proposal to reduce the duration of any branding waiver granted to Energex

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<sup>130</sup> Origin Energy, *Submission to Energex and Ergon Energy Waiver application*, August 2017, p. 3.

<sup>131</sup> AEC, *Australian Energy Council draft submission on applications for waiver from the Distribution Ring-fencing Guideline*, August 2017, p. 5.

<sup>132</sup> Red Energy and Lumo Energy, *Submission to AER ring-fencing waiver applications: Draft Decision*, 13 November 2017, p. 3.



and Ergon Energy from seven years to two years.<sup>133</sup> We sought interested parties' views on this shorter duration.

Master Electricians Australia submitted that they opposed even a two-year waiver for Energex and Ergon. They submitted that it should not take two years to re-brand uniforms, which may be replaced as often as every 12 months. Master Electricians Australia also submitted that Ergon's claims about the difficulties it faced in relation to negotiations with staff were at best overstated.<sup>134</sup>

We have decided to grant the waivers as set out in section 9, with Energex and Ergon Energy each being granted a conditional waiver for two years only.

#### **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, we expect the service will be functionally separated from Ergon Energy. Until that time, we have decided to grant a waiver to avoid imposition of unnecessary costs. The waiver will 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.

We have decided to grant Ergon Energy a waiver until 30 June 2025, or expiration of contract if sooner, from its obligations under clause 4.2.3 of the Guideline. This waiver will allow Ergon Energy to continue to provide a connection service to Hayman Island under the existing long-term contract.

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<sup>133</sup> Origin Energy, *Submission to ring-fencing waiver applications draft decision*, 14 November 2017, p. 2.

<sup>134</sup> Master Electricians Australia, *Submission to Draft Decision: - DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline*, 8 November 2017, p. 2.

## 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 have sought waivers that would allow them, 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 sought 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

Our decision is to grant Ergon Energy a waiver from the legal and functional separation obligations, under clauses 3.1 and 4.2 of the Guideline.

In their original waiver application, Ergon Energy listed thirty four unregulated isolated networks for which it was seeking waivers to continue operations.<sup>135</sup> This was subsequently increased to thirty five in their submission to our draft decision, to include the Mount Isa-Cloncurry supply network.<sup>136</sup> These isolated electricity networks involve generation, distribution and/or 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 the state government's Uniform Tariff Policy ensures subsidised power supply to customers in its distribution areas (including isolated systems), and those subsidies (community service obligation (CSO) payments) are only available to Ergon Energy.<sup>137</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 and our assessment

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<sup>135</sup> Ergon Energy, Ring-fencing waiver application, July 2017, p. 25.

<sup>136</sup> Ergon Energy, Submission - Ring-fencing waiver application draft decision, November 2017.

<sup>137</sup> Ergon Energy, *Ring-fencing waiver application*, July 2017, p. 25.

Ergon Energy is seeking a waiver from the legal separation (clause 3.1) and functional separation (clause 4.2) obligations of the Guideline so that it can continue to offer these services. This would involve continuing to use its own brand, and 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.

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.

In making our assessment, we have taken into account a range of factors; of particular importance among these is the harm that would be caused by granting a waiver. As these services are regulated monopolies, harm to potential competitors is not a relevant consideration. Granting the waiver supports the NEO in terms of price and security of supply for retail customers in these isolated networks. Ergon Energy have made efforts to ensure that there is no cross-subsidisation issues associated with this waiver as costs will be allocated to isolated systems in accordance with its CAM and the Cost Allocation Principles set out in the National Electricity Rules. Separate accounts will be maintained to ensure clear and transparent demonstration of this. As a result, there appears to be few if any benefits from imposing the ring-fencing obligations for legal and functional separation on these isolated systems.

The waiver would allow Ergon Energy to continue to own and operate the thirty five isolated electricity networks using its offices, staff branding and promotions until June 2015<sup>138</sup>, or until there is a change in regulatory arrangements, such that they are no longer determined by the Queensland Government.

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

Our decision is to grant Ergon Energy a waiver from its obligations under clause 4.2.3 of the Guideline to allow it to continue to use the Ergon Energy brand for its retailer, Ergon Energy Queensland (**EEQ**).

EEQ is a non-competing electricity retailer. EEQ offers electricity to non-market customers in Ergon Energy's distribution area at a uniform tariff regulated by the Queensland Competition Authority and subsidised through a CSO payment from the Queensland Government. We understand that EEQ intends to operate as a separate legal entity to Ergon Energy.<sup>139</sup>

### 5.2.1 Description of waiver application and our assessment

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<sup>138</sup> The next regulatory period; 1 July 2020 - 30 June 2025.

<sup>139</sup> Ergon Energy, *Ring-fencing waiver application*, July 2017, p. 16.

Ergon Energy applied for a waiver from the branding and promotional obligations, under clause 4.2.3 of the Guideline, in order to continue to use the Ergon Energy brand for its affiliated retailer, EEQ. Ergon Energy has stated that under this waiver both entities would continue to use the 'Ergon Energy' brand, with some differentiation between the two organisations with respect to the associated colours. Under the Guideline, Ergon Energy must use a brand that is independent and separate from the brand used by an affiliated entity.<sup>140</sup>

Ergon Energy will be fully compliant, with respect to EEQ, with its obligations relating to legal and functional separation (staff and office sharing) by the compliance deadline of 1 January 2018. As a result, Ergon Energy submits that it will not have the opportunity to cross-subsidise the operations of EEQ. In addition, cross-subsidies are avoided through the continued operation of Ergon Energy's 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>141</sup>

In assessing this application, we took into account that EEQ is a non-competing electricity retailer servicing non-market customers. Ergon Energy does not actively acquire new market customers. Essentially, this means it does not compete against other retailers for customers. EEQ is also unable to offer market contracts to customers. It can only offer standard retail contracts under the National Energy Retail Rules, and must sell to its customers at a tariff that is set by the Queensland Competition Commission, in line with Queensland's Uniform Tariff Policy. In selling electricity to retail customers at a uniform tariff rate, EEQ is significantly subsidised by the Queensland Government in the form of Community Service Obligation (CSO) payments, without which Ergon Energy would operate at a loss. We consider that: (1) Ergon Energy does not compete with other retailers to actively acquire new customers, and; (2) Ergon Energy cannot compete with other retailers by providing discounts or market contracts, and can only offer prices as determined by the Queensland Competition Authority. Therefore we consider that granting a waiver for continued use of the EEQ brand for the provision of services under standard retail contracts will have limited anti-competitive effects.

EEQ's role in providing retail services under standard retail contracts 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. As noted by Red Energy and Lumo Energy in their submission, the Queensland government has announced under the Affordable Energy Plan that it will remove the non-reversion policy for small customers in Ergon Energy's service area. The repeal of this policy means that once a small customer switches from EEQ to another retail provider, that customer will now be able to switch back to EEQ at a later date.<sup>142</sup> As this policy has yet to come into force it is difficult to assess the

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<sup>140</sup> AER Ring-fencing Guideline Electricity Distribution, Version 2, October 2017, p.15.

<sup>141</sup> Ergon Energy, *Ring-fencing waiver application*, July 2017, p. 17.

<sup>142</sup> Red Energy and Lumo Energy, AER Ring-fencing waiver applications: Draft Decision; November 2017, p. 1.

impact of the repeal of the non-reversion policy on retail choice in Ergon Energy's distribution area. If EEQ commences active customer acquisition in competition with other retailers, for whatever reason, we would reconsider this waiver.

In their submission on our draft decision, Red and Lumo Energy strongly suggested that we take into account, in our final decision, the Queensland Government's intentions to further contestability in the regional Queensland area.<sup>143</sup>

If retail choice develops in Ergon Energy's service area over time, the AER has the power to revoke any waiver on 40 days' notice.

Submissions pointed out that while there is no substantial retail competition in Ergon Energy's service areas, there is a competitive market for behind-the-meter services.<sup>144</sup> Our draft decision granted Ergon Energy a waiver to use the EEQ brand for the provision of standard retail contracts only, and specifically excluded provision of behind the meter services from the waiver. Red and Lumo Energy support our decision to exclude behind the meter service.<sup>145</sup> In response to the draft decision, a submission from Master Electricians Australia suggested that the AER should, in its final decision provide an indicative list of services classified as "behind the meter".<sup>146</sup>

The waiver allows use of the EEQ brand only for the continued provision of services under standard retail contracts. The AER is satisfied that this is sufficient to protect contestable markets, but we have specifically mentioned that the waiver is not granted for behind-the-meter services for the sake of additional clarity. An attempt by us to go further than this and provide a list of what services we consider to be encompassed in the term 'behind the meter' would not add any further substantive restrictions to the waiver and may quickly become out of date given the pace of change in the behind the meter services market. Therefore, we have not added our own definition of 'behind-the-meter' to the waiver.

In its submission, Master Electricians further suggested that the AER should mandate that any DNSP that is contemplating establishing a new affiliate entity submit for AER approval all related entity plans, including marketing and branding prior to the affiliated entity being launched. The AER has the authority to regulate DNSPs but not affiliate entities of DNSPs (under chapter 6 of the NER). We cannot approve or otherwise comment on the actions of affiliated entities, except where they involve a DNSP's obligations under the Ring-fencing Guideline.

The potential for cross-subsidies between Ergon Energy and EEQ are managed by Ergon Energy's CAM, which already encompass these services. In addition, EEQ is already legally separated from Ergon Energy.

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<sup>143</sup> Ibid p.2.

<sup>144</sup> Origin Energy, Submission on ring-fencing waiver applications, August 2016, p. 2; 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>145</sup> Red Energy and Lumo Energy, AER Ring-fencing waiver applications: Draft Decision; November 2017, p. 3.

<sup>146</sup> MEA, Submission on DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, November 2017, pp 3-4.

Our 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 removes EEQ's inability to offer market contracts to all market customers in Queensland, whichever comes first.
- This waiver will apply only to use of the EEQ brand for services that relate to the provision of services under standard retail contracts in the Ergon Energy distribution network. Other services not associated with the provision of standard retail contracts, including behind-the-meter contestable services must be delivered using a separate brand.

## 5.3 Essential Energy—Essential Water

Our decision is to grant Essential Energy with a waiver from its legal and functional separation obligations, under clauses 3.1, 4.2 of the Guideline. We also grant Essential Energy a waiver with respect to the conduct of its service providers (clause 4.4.1(a)). This waiver will allow Essential Energy to continue to provide a water supply service.

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, unless a waiver is granted. 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 and our assessment

Essential Energy applied for a waiver from legal and functional separation obligations, under clauses 3.1 and 4.2 of the Guideline, 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. To complement these waivers, they also applied for a waiver under 4.4.1(a), conduct of service providers

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 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.

In assessing this application, we gave weight to the argument that as this service is a regulated monopoly. As a result, 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.

At its core, the Ring Fencing guideline aims to prevent competitive harm, by ensuring that DNSP affiliates compete on an even playing field with independent operators. If there are no competitors, and competition does not seem likely to arise due to government policy or other factors, the benefits to consumers from imposing the guideline's requirements are likely to be very limited. Therefore, 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 submissions, MEA agreed with our draft decision on the waiver in full.<sup>147</sup>

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

## 5.4 Essential Energy—Water Access

Our decision is to grant Essential Energy with a waiver from its legal and functional separation obligations, under clauses 3.1, 4.2 of the Guideline. We also grant Essential Energy a waiver with respect to the conduct of its service providers (clause 4.4.1(a)). This waiver will allow Essential Energy, and its service providers, to continue to operate its water access agreement with the Clarence Valley Council.

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 the Clarence Valley Council under a cost sharing arrangement.<sup>148</sup> 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 and our assessment

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' (that is, until the end of the 2019-24 regulatory control period). Essential Energy does not foresee any changes other than a possible transfer of this service to another party, being the Clarence Valley Council.

In our assessment we considered the impact of granting a waiver on the competition, or the potential for it to develop. As with the Essential Water business, this is a monopoly service,

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<sup>147</sup> MEA, Submission on DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, November 2017, p.3.

<sup>148</sup> Essential Energy, Response to AER's Draft Decision - Ring-fencing Waiver, November 2017, p.1.

there are no competitors while the service is under licence and so harm to potential competitors is not a relevant factor. There appear to be few if any benefits from imposing the functional separation obligations under the Guideline. We therefore consider that granting the waivers is not likely to result in significant harm.

Granting a waiver is consistent with the NEO, as the waiver will avoid incurring inefficient expenditure, which would be passed on to consumers.

We consider the cost of complying with the Guideline is likely to exceed any benefits and it is therefore appropriate to grant the waiver as requested. The waiver will be reviewed prior to the next determination in 2024.



## 6 Waiver group 5 – ActewAGL gas businesses

Our decision is to grant ActewAGL Distribution (**AAD**) a waiver until 30 June 2024 for its ACT Gas Network and its Nowra Gas Network, and until 30 June 2019 for its CNG Refuelling Facility.

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

AAD sought a waiver<sup>149</sup> from legal separation for the following three businesses, and also sought permission 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 above gas services is a non-distribution service 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 covered ACT Gas Network 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>150</sup>

The uncovered Nowra Gas Network pipeline is subject to the new Vertigan gas regulatory framework (the Vertigan framework).<sup>151</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.

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<sup>149</sup> ActewAGL, *Application for Waiver*, July 2017.

<sup>150</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>151</sup> *National Gas (South Australia) Pipelines Access-Arbitration) Amendment Act 2017 (SA)*.

ADD submitted that there are no competitors in the markets for any of the three components of its gas businesses.<sup>152</sup> Combined, the three businesses generate revenues of around 22% of revenues from the electricity network services, the Nowra Gas Network being 1.2% and the CNG Refuelling Facility being 0.03%.<sup>153</sup>

### 6.1.1 Description of waiver applications

ADD is seeking a waiver from legal separation for the three businesses until 30 June 2024, 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 the 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>154</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>155</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

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<sup>152</sup> ActewAGL, Application for Waiver, July 2017, pp. 3-6.

<sup>153</sup> Ibid. p. 9.

<sup>154</sup> AGL Energy Limited, *Re Ring-fencing waiver applications*, September 2017, p. 3.

<sup>155</sup> Red Energy and Lumo Energy, *Ring Fencing Waiver Applications*, August 2017, p. 3.

in place, it will allow for further assessment of whether information under the Vertigan regime contributes to preventing cross subsidies.

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

In response to our draft decision, we received a submission from the ACT Civil and Administrative Tribunal (ACAT). ACAT supported our draft decision to grant a conditional waiver to AAD in respect of the ACT Gas Network. It also supported the conditions we proposed for that waiver. ACAT made no comment on either the Nowra Gas Network or the CNG Refuelling Facility waiver applications.<sup>156</sup>

We also received a submission from Red Energy and Lumo Energy, which submitted they are comfortable with the AER granting legal and functional waivers to AAD for its gas pipeline businesses.<sup>157</sup> We note that AAD has only applied for, and we only proposed to grant, waiver from the legal separation provisions of the Guideline.

Master Electricians Australia submitted that it supported our draft decision regarding all three of AAD's gas businesses.<sup>158</sup>

We have decided to grant the waiver for the ACT Gas Network and 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. AAD stated that this could result in some vehicles not being able to access compressed natural gas.<sup>159</sup>

Red and Lumo Energy submitted that they did not support our draft decision to grant AAD a short-term waiver from legal and functional separation for its CNG Refuelling Facility. They submitted that, under the arrangements proposed in our draft decision, the two gas pipeline businesses could potentially cross subsidise the CNG Refuelling Facility. Red and Lumo Energy noted that requiring AAD to submit a revised CAM may satisfy concerns regarding the cross-subsidisation of the CNG Refuelling Facility, but it does not go far enough. They did not provide further explanation or suggest what further actions were required.

We note that AAD's revised CAM will show how costs are allocated between its businesses. It is therefore not possible for AAD to cross-subsidise its CNG Refuelling Facility without showing this in its CAM. If this occurs, we may revoke the waivers granted or take other

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<sup>156</sup> ACT Civil and Administrative Tribunal, *Response to Draft Decision on Ring-Fencing Waiver Applications*, 6 November 2017, p. 1.

<sup>157</sup> Red Energy and Lumo Energy, *Submission to AER Ring fencing waiver applications: Draft Decision*, 13 November 2017, pp. 3-4.

<sup>158</sup> Master Electricians Australia, *Submission to Draft Decision: DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline*, 8 November 2017, p. 3.

<sup>159</sup> ActewAGL, *Application for Waiver, July 2017*, p. 8.

action as appropriate. We also note that the limited duration proposed for the CNG Refuelling Facility waiver.

We have decided 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 to us a revised CAM for ensuring and demonstrating that costs are separated between the different businesses (including the CNG Refuelling Facility), thereby addressing the risk of cross-subsidy in relation to the CNG Refuelling Facility. 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.

## 7 Waiver Group 6 - Regional offices

This group of waivers is concerned with the application of the Guideline in areas where competition for contestable services may be limited or non-existent, due to the remote or regional locations in which some services may be demanded. The Guideline includes regional office exemption clauses to address this characteristic found typically in regional and rural areas. Specifically, 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>160</sup> However, the Guideline's definition of a regional office may not cover all areas where lack of competition means that a regulated DNSP is the only service provider available.

A 'regional office' waiver permits a DNSP to share an office, staff, and branding, with an affiliate offering constable services. Normally, unless an office meets the definition of a regional office, DNSP staff must be physically separated from an affiliate offering contestable electricity services. In some instances, we may accept that these risks are minimal, perhaps because the DNSP's affiliate does not face competition from other parties in practice. Where a 'regional offices' waiver is granted, the DNSP may share staff and office facilities with its affiliated entity and certain restrictions on branding and cross promotion are lifted as well.

We received two waiver applications in regard to 'regional offices' and one that Essential Energy refers to 'service provider of last resort'.

These are:

- Ergon Energy's waiver application in respect of applying the regional office exemptions to Mareeba and Charters Towers.
- Ergon Energy's waiver application in respect of sharing staff with its affiliated entity, 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.

### 7.1 Ergon Energy—Mareeba and Charters Towers

Our decision is to grant Ergon Energy with a waiver to allow the offices at Mareeba and Charters Towers to be classified as regional offices for the purposes of the Guideline. This will allow the application of the Guideline's regional office exemptions for office, staff, branding and cross-promotion obligations to the activities of those two offices in.

Mareeba and Charters Towers do not meet the definition of regional offices, within the meaning of the Guideline, because of their proximity to large regional towns. However, their large service areas mean it would not be efficient to meet the Guideline's office, staff, and branding separation obligations.

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<sup>160</sup> AER, Electricity Distribution Ring-fencing Guideline Version 2.0, October 2017, clause 1.4.

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>161</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 connections within a 100 km radius of the Mareeba depot are serviced by the Mareeba depot.<sup>162</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 suggested 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, in practice, the only local supplier for some customers within these depot boundaries.<sup>163</sup> The cost of providing services to these customers would be significantly higher if required to be done from Mareeba or Charters Towers respectively.

Ergon Energy claimed it would be inefficient and costly to establish a functionally separate 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 our assessment**

The waiver will apply to the provision of contestable electricity services from the Mareeba and Charters Towers depots. This relates primarily to services that are unregulated distribution services and would ordinarily be contestable, but for which there is no practical competition due to the remote location of the service provider.

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

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<sup>161</sup> AER, Electricity Distribution Ring-fencing Guideline Version 2.0, October 2017, clause 1.4.

<sup>162</sup> Ergon Energy Ring-fencing Guideline; Waiver applications, July 2017, p. 20.

<sup>163</sup> Ergon Energy, Ring-fencing Guideline; Waiver applications, July 2017, p. 22.

Ergon Energy submitted that granting the waiver will not raise the potential for discrimination because there are no competitors to discriminate against.<sup>164</sup> We note that Ergon Energy did not provide any detailed evidence in support of this claim. In particular, we consider Ergon Energy could have identified the nature of electricity services that are available from third party service providers in Charters Towers and Mareeba.

In its submission on the original waiver application, 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 Origin Energy competes 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>165</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 electricity consumers 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 be unlikely to grant waivers to DNSPs from ring-fencing obligations. Where effective competition is not feasible, regional office waivers will permit a DNSP and its affiliated entity to share resources. We appreciate that Ergon Energy offers services in regional areas where competition may be limited or non-existent. We consider that the requested waiver is unlikely to raise the potential for cross-subsidy or discrimination. Rejecting the waiver application could result in higher operating costs and inefficiencies that would outweigh the benefits to consumers from compliance with the functional separation obligations of the Guideline. 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.

In our draft decision, we invited submissions from current or prospective market competitors as well as other stakeholders on our proposed approach. Two submissions on our draft decision mentioned Ergon Energy's application for a regional offices waiver. Red and Lumo reinforced the importance of the AER determining whether there is any competition, or the potential for competition to develop prior to making a decision to grant a waiver<sup>166</sup>. Master Electricians Australia supported granting the waiver, but expressed a concern about the boundaries of the depots changing or being reconfigured to the detriment of competition.

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<sup>164</sup> Ibid

<sup>165</sup> Origin Energy, Submission to Ring-fencing waiver applications, August 2017, p. 3.

<sup>166</sup> Red and Lumo Energy - Submission on draft decision: AER ring-fencing waiver applications, November 2017, p.4.

They suggested further conditions be imposed to require Ergon Energy to submit a new waiver application in the event of any potential boundary realignment.<sup>167</sup>

We did not receive any submissions from existing or potential competitors in this region. It is important that competition be allowed to develop where it is feasible and that waivers are not granted that could harm the potential development of competitive markets. To this end we have decided to grant Ergon Energy a waiver for Mareeba and Charters Towers to be classified as regional offices on condition that the waiver only applies to 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>168</sup>

The waiver enables these contestable services to be provided by co-located and shared staff from the Mareeba and Charters Towers depots under the Ergon Energy brand. The waiver will be valid 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. The AER may, in its absolute discretion and at any time, vary or revoke a DNSP's waiver (including varying the terms and / or conditions of a DNSPs waiver) as long as it has given the DNSP at least 40 days' notice that it is considering doing so.<sup>169</sup>

## 7.2 Ergon Energy—Barcaldine

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

Ergon Energy Queensland (EEQ) is 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 that shares its brand with the DNSP. EEQ operates a power station at Barcaldine Queensland. Separation of Ergon Energy staff based at Barcaldine 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

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<sup>167</sup> MEA - Submission on draft decision: DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, November 2017, p.3.

<sup>168</sup> Origin Energy, Submission to Ring-fencing waiver applications, August 2017, p. 3.

<sup>169</sup> Ring-fencing Guideline Version 2 – October 2017, p.20.



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 for relief purposes.

Ergon Energy submitted that there are only five staff located at Ergon Energy's Barcaldine depot, including a casual cleaner and a support officer. As a result, to accommodate periods such as annual shutdown, refurbishment, and annual leave, two Cairns-based staff backfill for Barcaldine staff once a year for two weeks and one Cairns-based staff member backfills for Barcaldine staff for two weeks every two months.<sup>170</sup>

### 7.2.1 Description of waiver application and our assessment

Our assessment is that a waiver is not required in this instance. Ergon Energy was seeking a waiver from legal separation so that that it could continue to operate the power station until this function is fully transferred to EEQ or another legal entity. The waiver requested was to expire in 2025. However, Ergon Energy indicated its intention to transfer the function well before this time.<sup>171</sup>

In making the waiver application, Ergon Energy took a very conservative approach.

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.

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<sup>170</sup> Ergon Energy Ring-fencing Guideline; Waiver applications, July 2017, p. 30.

<sup>171</sup> Ergon Energy Ring-fencing Guideline; Waiver applications, July 2017, p. 30.

## 7.3 Essential Energy – regional service delivery

Our decision is to grant Essential Energy a reclassification waiver until the end of the current regulatory period on 30 June 2019. This is on the basis that the services which were proposed to be offered under a waiver of "service provider of last resort" are more appropriately classified as an alternative control service (ACS). We expect that services of this sort will likely be reclassified as ACS at Essential Energy's next determination.

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. Essential Energy submitted that the contestable services included in their waiver application were offered where no other service provider is willing to offer services at a reasonable price and/or on reasonable terms.<sup>172</sup>

This assertion was contested in several stakeholder submissions on our draft decision. For example, Country Powerline Constructions, an ASP operating across regional NSW from a base in Dubbo, states that it is unaware of customers not being able to receive services for network connection at competitive prices.<sup>173</sup> Energy Serve, an ASP also based in Dubbo, submits that the waiver should not be allowed on the basis that there is no "weak or non-existent competitive market" for connection work in any area of NSW, as claimed by Essential Energy in their waiver application. Furthermore, they submit that market competition has grown significantly and service levels have improved since Essential Energy's withdrawal from the market 10 years ago.<sup>174</sup> JLE Electrical, an ASP also operating in the Dubbo region, made a submission supporting Energy Serve and claimed that they are not aware of any situation where a customer has not been able to obtain competitive network services due to their remote location. JLE Electrical submitted that it and many other ASPs "travel the footprint of the Authority".<sup>175</sup>

In seeking to address the issue it identified, 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>176</sup> Essential Energy noted that not all of 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.

Essential Energy's decision not to establish an affiliated entity was supported by PBS Power Services, a Level 1 & 3 ASP operating out of Moama NSW, who suggested that ASPs have higher service standards than DNSPs. PBS Power Services also acknowledged Essential

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<sup>172</sup> Essential Energy, Waiver application: Provider of last resort, September 2017, p. 3.

<sup>173</sup> Country Powerline Constructions, Jeff Temesvary email submission to AER in relation to Electricity ring-fencing Guideline Provider of last resort.

<sup>174</sup> Energy Serve - Submission on Essential Energy waiver application - provider of last resort, November 2017, p.2.

<sup>175</sup> JLE Electrical - Submission Provider of last resort, November 2017.

<sup>176</sup> Essential Energy, Waiver application: Provider of last resort, September 2017, p. 3

Energy for referring customers to the ASPs, though he suggested that Essential Energy could have better processes in place to guide customers through the connection process.

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>177</sup>

### 7.3.1 Description of waiver application and our assessment

Essential Energy applied for a waiver that would allow it to offer unregulated contestable services where ASPs 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>178</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.

The services covered by this waiver are:

- All services allowed for under the NSW ASP Scheme including:
  - Level 1 customer connection services including both overhead and underground, and including related network extensions or augmentations;
  - Level 2 services such as disconnect and reconnect, work on underground service conductors, and work on overhead service conductors; and
  - Level 3 design services for both overhead and underground network electricity assets;
- Customer initiated asset relocations; and
- Inspection, maintenance and testing of customer assets including high voltage assets (this is for standard distribution and sub-transmission type assets and excludes emerging technology assets such as PV, batteries, etc.).

In its application, Essential Energy applied for a waiver to cover the remainder of the current regulatory control period as well as the forthcoming 2019-2024 regulatory control period.<sup>179</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,

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<sup>177</sup> Ibid.

<sup>178</sup> <http://www.resourcesandenergy.nsw.gov.au/energy-supply-industry/pipelines-electricity-gas-networks/network-connections/contestable-works>

<sup>179</sup> Essential Energy – Waiver application: Provider of last resort, September 2017, p. 4.

particularly in regional areas, customers' access to some services may be variable due to the sometimes limited number of ASPs available at any one time.<sup>180</sup>

In our draft decision, we stated that, notwithstanding Essential Energy's intentions, we remained 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 was a risk that if the waiver was granted, Essential Energy's presence in the market could deter 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. NECA, in their submission to our draft decision, echoed these concerns.<sup>181</sup>

In a subsequent submission, Essential Energy provided a list of controls they would be willing to implement. These include:

- referring customers at the first point of contact to the listing of ASPs maintained by the NSW Government;
- requiring customers who are unable to find any ASP to do the job to complete a form on Essential Energy's website which will ask them for information such as a description of job, location information, any specific timing requirements, and which ASPs they have sought quotes from;
- posting proposed jobs on our website and providing ASPs with 1-2 weeks to register interest in undertaking the work;
- Essential Energy would undertake the work only if no interest is registered by ASPs.<sup>182</sup>

To address concerns raised by their Customer Advisory Group - over the significant costs that customers living in remote locations have to pay to secure the services of qualified tradesmen, Essential Energy offered some additional controls. Of the controls submitted, we suggest they implement the following:

- publishing a price guideline on the Essential Energy's website to help customers assess whether they are getting value for money (i.e. cost of conducting simple services and a per km cost of travel); and
- leveraging the regional office exemption available within the Ring Fencing Guideline – this exemption covers approximately 30 per cent of Essential Energy's depots, mainly in the west of the state.

As noted, we do not think it appropriate to provide Essential Energy with the discretion to decide if and where it should operate as a service provider of last resort. Instead, we consider an ACS classification is better suited to services where competition is developing. An ACS classification for these services would increase transparency, for both customers

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<sup>180</sup> Essential Energy – Waiver application: Provider of last resort, September 2017, p. 5.

<sup>181</sup> NECA - Submission on the AER's draft decision: DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline. November 2017, p.21.

<sup>182</sup> Essential Energy - Response to the AER's draft Decision - ring-fencing waivers, November 2017, p.2.

and competing ASPs. Prices for ACS services are set by the AER on a full cost recovery basis, which allows the distributor to recover the efficient cost of providing the service. These prices are publicly available, providing competitors complete transparency regarding the prices DNSPs can charge.

However, the classification or reclassification of services only occurs at the time of the determination every 5 years. With respect to the current regulatory control 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 until the next determination.

Therefore, we have decided to grant Essential Energy a reclassification waiver on the basis there is a prima facie case for a number of services to be reclassified as ACS in the next regulatory period. The waiver would only be valid until the end of the current regulatory control period, ending 30 June 2019. We accept the controls that Essential Energy has suggested and request that they implement them as soon as reasonably practicable.

We consider that this approach, combined with Essential Energy's stated intent to offer these services only if there are no other 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.

The approach Essential Energy has outlined, which ensures price transparency and that ASPs effectively have first right of refusal over contestable works requested by customers in regional locations provides a safety net for customers and opportunities for ASPs. In his submission on the draft decision, Mr Darren Jackson, an ASP based in Bourke, supported the controls, regarding transparency and referral of work to ASPs that Essential Energy has suggested putting in place. His main concern was how these changes will be implemented to ensure that all contestable works are sent out to the market to quote on.<sup>183</sup> Southern Cross Electrical Contractors, based in Wagga Wagga expressed similar concerns in his submission on the draft decision. Southern Cross Electrical Contractors also questioned Essential Energy's definition of competition and queried what is to stop the DNSP from "abusing their market power".<sup>184</sup>

In response to these concerns, it is important to note that any waivers granted by the AER can be reviewed, changed or revoked by providing the DNSP with 40 days' notice of its intention to do so.<sup>185</sup> The AER relies on feedback from the market to confirm whether DNSPs are operating within the Guideline and according to waivers they have been issued. The Ring-fencing compliance team will investigate any reports from the market of operations that may not be in compliance of the Guideline, with ability to enforce compliance and/or review any waivers issued as deemed necessary.

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<sup>183</sup> Mr Darren Jackson - Email Submission on Ring-fencing: ASP in rural areas November 2017.

<sup>184</sup> Southern Cross Electrical Contractors - Email Submission, Essential Energy - Ring-fencing guideline, November 2017.

<sup>185</sup> Ring-fencing Guideline Version 2 – October 2017, p.20.

There were submissions from ASPs that were made in support of Essential Energy operating in the contestable market space. FHW Electrical indicated that they have "no problem" with competing with the DNSP and welcomed their presence in the marketplace. Furthermore they said that the DNSP could often do work that the ASPs cannot.<sup>186</sup> An independent submission from Mr Peter Clements indicated that Essential Energy's presence in the contestable works market was helpful for his firm in scheduling jobs.<sup>187</sup>

We are satisfied that the waiver we are granting, along with the controls Essential Energy has agreed to implement, will ensure that competition in the regions will continue to grow, while providing a safety net for consumers.

- Our decision is to treat this waiver application as being for a reclassification waiver (as per waiver group 1) for provision of certain contestable services. This means that, for the remainder of the current regulatory control period, ending 30 June 2019, these services will be treated—for ring-fencing purposes only—as if they are ACS services. Essential Energy proposed a number of 'controls' to provide assurance the services would be provided on the basis as set out in its waiver applications. We agree these actions would assist in reducing any harm to potential competitors these should be implemented as soon as practicable. While we have not explicitly repeated these controls as conditions of the waiver, we note that the waivers are granted on the basis of the information provided in each DNSP's applications and only apply for the conduct and in the circumstances described to us by the DNSP. We expect that Essential Energy will behave as described in its application. We expect Essential Energy to report on the application of this waiver in its annual compliance report.

## 7.4 Essential Energy - Technical training courses

Our decision is to grant to waiver requested, subject to certain conditions. 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:

5. **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.
6. **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.

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<sup>186</sup> FHW Electrical - emailed Submission to AER Ring-fencing guidelines, November 2017.

<sup>187</sup> Mr Peter Clements - email Submission - Changes to ASP to deliver contestable works, November 2017.

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.

7. **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>188</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
- 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 our assessment

Essential Energy applied for 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>189</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, Warialda, 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).

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<sup>188</sup> Essential Energy, Waiver application - Contestable Technical Training Courses, September 2017, p. 3.

<sup>189</sup> Ibid., p. 4.

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 are unlikely to grant 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 reasonable cost.

If we do not grant the waiver application, Essential Energy has submitted it will exit the contestable training market.<sup>190</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.

Our draft decision proposed 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. We noted that Essential Energy's waiver application with regard to these services was received after submissions closed and we sought interested parties' submissions on this matter in response to our draft decision.

We received support for Essential Energy's application from a number of ASPs. For example, JLE Electrical expressed frustration with the difficulty and expense of trying to book staff into training courses with other Registered Training Organisations (RTOs). They suggested that all ASPs would suffer if the courses were not offered by Essential Energy. FHW Electrical expressed strong support for the training services offered by Essential Energy. It stated that the added costs of travel, accommodation and the time involved to attend training in a city location, makes the local training provided by Essential Energy a better option.<sup>191</sup> Likewise, PBS Power Services was supportive of the training provided by Essential Energy; being able to complete training without the need for long distance travel or accommodation is particularly appealing.<sup>192</sup>

We also received a submission from IAC Safety Services, an RTO specialising in training services for the electricity supply industry, based on the Central Coast of NSW. IAC's submission claimed that they are already providing training services to locations identified in Essential Energy's application. While IAC do not have training premises' located in the localities specified, they do offer and provide on-site training services. IAC's travel and

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<sup>190</sup> Essential Energy - Waiver application - Contestable Technical Training Courses, September 2017, p. 4.

<sup>191</sup> FHW Electrical - emailed Submission to AER Ring-fencing guidelines, November 2017.

<sup>192</sup> PBS Power Services - Submission - Essential Energy - AER Ring-fencing Guideline - opportunity for ASPs to comment, November 2017.



accommodation costs are shared amongst attending ASPs and according to IAC, often work out cheaper than the ASPs sending students to attend outside of their local communities. According to IAC; *"It will never be possible to expect training and assessment services to be available to accommodate all regional areas of NSW. Some customers will always have the need to arrange travel to major region centres to attend training and assessment"*.<sup>193</sup>

IAC also indicated its willingness to expand its services into regional NSW and is committed to working directly with Essential Energy to meet ASP's training and assessment requirements.<sup>194</sup> In seeking to understand the extent to which competitive training services are available, we sought additional information from IAC regarding the regional locations as well as the courses they have provided to date. We are still awaiting their response, which we will take into consideration in any future reconsideration of the scope of the waiver under which Essential Energy is allowed to provide contestable training services (including any reconsideration of the regional localities at which it is allowed to do so).

On the basis of the information available, regarding the availability of contestable training services in certain regional locations, our decision is to grant Essential Energy with a waiver to continue providing these services on the basis that waivers can be reviewed at a later date. According to Clause 5.5 a) of the Guideline:

- the AER may, in its absolute discretion and at any time, vary or revoke a DNSP's waiver (including varying the terms and / or conditions of a DNSP's waiver), as long as it has given the DNSP at least 40 days' notice that it is considering doing so.<sup>195</sup>
- Our decision is to grant the waiver, with an expiry date of 30 June 2024, on condition that Essential Energy only provides these contestable services in the regional localities it has identified.

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<sup>193</sup> IAC Safety Services - Submission on Ring-fencing waiver applications - November 2017 p. 9

<sup>194</sup> Ibid.

<sup>195</sup> Ring-fencing Guideline Version 2 – October 2017, p.20.

## 8 Other issues

Two DNSPs asked us to issue 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>196</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>197</sup>

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

Essential Energy also sought clarification regarding Clause 4.4.1 of the Guideline.

### 8.1 TasNetworks

Our decision is to not issue TasNetworks a No Action Letter.

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>198</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

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<sup>196</sup> CitiPower and Powercor, *CitiPower and Powercor Ring Fencing Waiver Application May 2017*, p. 12.

<sup>197</sup> TasNetworks, *TasNetworks Ring-fencing Waiver Applications July 2017*, p. 15.

<sup>198</sup> Please refer to clauses 4.3.2 and 4.3.3 of the Guideline for full details.

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.

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 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 cannot 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 did not receive any submissions from interested parties in relation to these requests for No Action Letters.

On this basis, we have decided not to issue TasNetworks the requested No Action Letter.

## 8.2 CitiPower and Powercor

Our decision is to not issue CitiPower and Powercor a No Action Letter.

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>199</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>200</sup> They submitted that it would therefore be appropriate for the AER to either amend the Guideline or issue a 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>201</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.

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<sup>199</sup> Please refer to clause 1.4 of the Guideline (November 2016) for full details and provisions.

<sup>200</sup> CitiPower and Powercor, *CitiPower and Powercor Ring Fencing Waiver Application May 2017*, p. 12.

<sup>201</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.

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 have therefore decided not to issue CitiPower and Powercor a No Action Letter at this time.

### **8.3 Essential Energy - Service Providers**

In their submission on our draft decision, Essential Energy sought clarification with respect to Clause 4.4.1 of the Guideline. Their concern is that this clause could be interpreted too broadly to include services providers who are contracted on commercial terms to assist in the delivery of standard control services, such as vegetation management.<sup>202</sup>

The intention of this section is to ensure that all service providers who are acting in behalf of DNSPs in the market, assisting to provide direct or standard control services, do so as if they are the DNSP, having proper regard to ring-fencing obligations under the Guideline.<sup>203</sup> For example, service providers who have access to electricity information to provide services must ensure that their use of information is ring-fenced away from the service provider's other market activities. Clause 4.4.1 is not designed to capture service providers such as vegetation management contractors, security guards and cleaners etc. who do not have access to electricity information and whose access to such information would not provide opportunities for discrimination or other advantages for the DNSP in the marketplace. We believe that most contractors providing services for DNSPs, as opposed as on behalf of DNSPs, would easily comply with clause 4.4.1 of the Guideline.

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<sup>202</sup> Essential Energy - Response to AER's draft decision - ring-fencing waivers, November 2017, p.4.

<sup>203</sup> AER Ring-fencing Guideline Electricity Distribution, Version 2, October 2017, pp.16 -18.

## 9 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.

Our 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 waivers apply only in the circumstances and under the conditions described to us by each of the DNSPs in those documents. The waivers do 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 Distribution**

- We grant ActewAGL Distribution a waiver from 18 December 2017 until 30 June 2024 from its obligations under clause 3.1(b) of the Guideline, to allow ActewAGL Distribution to continue to own and operate its ACT Gas Network and its Nowra Gas Network. We grant this waiver on the condition that ActewAGL Distribution submit to us by 1 July 2018 a cost allocation methodology 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 Distribution's organisational structure arising from the creation of separate legal entities.
- We grant ActewAGL Distribution a waiver from 18 December 2017 until 31 December 2019, from its obligations under clause 3.1(b) of the Guideline, to allow ActewAGL Distribution to continue to own and operate its CNG Refuelling Facility at Fyshwick.

### **Ausgrid**

- We grant Ausgrid a waiver until from 18 December 2017 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 (including security light services)
  - 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 (including: meter recovery and disposal - type 5 and 6; distributor arranged outage for the purpose of replacing the meter, and; meter consumptions data)
  - rental and hire services (this covers activities related to 'shared asset facilitation' of distributor assets)
  - emergency recoverable works.
- We do not grant Ausgrid a waiver for other services for which it has sought reclassification of service waivers, because the services are already either classified as ACS or UDS (as intended) and no waiver is required. These services are: design related services (already ACS); access permits, oversight and facilitation (already ACS); supply restoration services for life support customers (already ACS); emergency meter maintenance (already ACS), non-standard connections (already UDS); contestable metering support roles (already UDS); and provision of type 5-6 data management to other electricity distributors (already UDS).
  - We do not grant Ausgrid a waiver for supply restoration services for non-life support customers as this an 'other service' and we do not intend to reclassify this service at the next determination.
  - We grant Ausgrid a waiver from 18 December 2017 until 1 July 2018 from its obligations under clause 3.1 (legal separation) 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.

#### **AusNet**

- We grant AusNet a waiver from 18 December 2017 until 31 December 2020 from its 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 (including: alteration and relocation of distributor public lighting assets; new public lights, and; installation, repair and maintenance of watchman lights)
  - emergency recoverable works
  - reserve feeder construction.
- We grant AusNet a waiver from 18 December 2017 until 15 May 2020 from its 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 grant CitiPower and Powercor a waiver from 18 December 2017 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 (including: alteration and relocation of distributor public lighting assets; new public lights)
  - reserve feeder construction
  - minor and legacy metering services (including: collection of meter data, processing of meter data, and provision of access to meter data for type 1-4 metering installation (excluding smart meters), and; installation, repair and maintenance of watchman lights)
  - emergency recoverable works
  - non-standard connections.
- We grant CitiPower and Powercor a waiver from 18 December 2017 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 condition that: the Powercor Network Services, CitiPower and Powercor brands are not used at the time of responding to tenders for non-direct control services; in the provision of non-direct control services (other than those services for which a waiver has been granted), the Powercor Network Services, CitiPower and Powercor brands are only used for large commercial and industrial customers; staff branded CitiPower and Powercor may not promote the services of CitiPower's/ Powercor's contestable service provider; and with the exception of basic forms required for administration, no new advertising, promotional or branding materials, including uniforms, are to be made with the Powercor Network Services brand.
  - We will not be providing to 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 grant Endeavour Energy a waiver from 18 December 2017 until 30 June 2019 from its 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 (this includes: security lights - night watch)
  - networks safety services
  - minor and legacy metering services (this includes: meter recovery and disposal - type 5 and 6 (legacy meters), and; distributor arranged outage for the purposes of replacing the meter)
  - rectification works to maintain network safety
  - planned interruption – customer requested



- network related training courses
- customer-initiated asset relocations
- non-standard connections, customer-requested supply enhancements and augmentations (this includes: premises connection assets - C, and; augmentations - D)
- termination of cable at zone substation - DNSP required performance.
- We grant Endeavour Energy a waiver from 18 December 2017 until 30 June 2018 from its 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 grant Energex a waiver until 30 June 2020 from its 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 grant Energex a waiver from 18 December 2017 until 30 June 2018 from its obligations under clause 3.1 of the Guideline to allow Energex additional time to novate existing contracts for Other Services to its affiliated entity, Energy Impact Pty Ltd. This is on condition that Energex include in its first annual ring-fencing compliance report to the AER a timetable showing how it has transitioned to full compliance with its legal separation obligations.
- We grant Energex a waiver from 18 December 2017 until 31 December 2019 (two years rather than the seven and a half requested) from its obligations under clause 4.2.3 of the Guideline to allow it to continue use Energex 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
  - type 1-4 metering services

We anticipate that Energex will provide an update on their progress in their Annual Compliance Report in 2018. We do not expect any extension to this waiver will be required.

### **Ergon Energy**

- We grant Ergon Energy a waiver from 18 December 2017 until 30 June 2020 from its 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 grant Ergon Energy a waiver from 18 December 2017 until 30 June 2018 from its obligations under clauses 3.1 of the Guideline to allow Ergon Energy additional time to novate existing contracts for Other Services to its affiliated entity, Energy Impact Pty Ltd.
- We grant Ergon Energy a waiver from 18 December 2017 until 30 June 2025 (or at the event of legislative change that removes EEQ's inability to offer market contracts to all market customers in Queensland, whichever comes first) from its 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 grant this 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 affiliated entity delivering contestable services are related. We expect that Ergon Energy will provide an update on its progress in its Annual Compliance Report in 2018. We do not expect any extension to this waiver will be required.
- We grant Ergon Energy a waiver from 18 December 2017 until 30 June 2025 from its obligations under clauses 4.2.1(a), 4.2.2(a) and 4.2.3(a)i. 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 grant Ergon Energy a waiver from 18 December 2017 until 30 June 2025 from its obligations under clauses 3.1(b), 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 expect that Ergon Energy will provide an update on their progress in their Annual Compliance Report in 2018.
- We do not grant Ergon Energy's application for a waiver from its 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 grant Ergon Energy a waiver from 18 December 2017 until 31 December 2019 (two years rather than the seven and a half requested) from its obligations under clause 4.2.3 of the Guideline to allow it to continue to use Ergon Energy branding on uniforms and fleet used in the provision of the following other services and unregulated distribution 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
  - construction and maintenance of modular substations
  - training to external parties - network related training courses

on the condition that Ergon Energy provides us a detailed update on its progress to achieving compliance in its Annual Compliance Report in 2018. We do not expect any extension to this waiver will be required.

- We grant Ergon Energy a waiver from 18 December 2017 until 30 June 2025, or expiration of contract if sooner, from its 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 grant Essential Energy a waiver from 18 December 2017 until 1 July 2019 from its 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 (including: provision of LED street lighting; provision of nightvision services)
  - emergency recoverable works
  - rental and hire services (this covers activities related to 'shared asset facilitation' of distributor assets)
  - rectifications works to maintain network safety
  - network safety services
  - network related training courses
  - minor and legacy metering services (this includes distributor arranged outage for the purposes of replacing meter)
  - sale of inventory (this covers 'sale of stock to ASPs')
  - test access permit fee

- environmental impact assessment training
- customer requested planned interruption services
- customer initiated asset relocations.

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. These services were: supply restoration for life support customers (already ACS), and; emergency maintenance of failed metering equipment not owned by the distributors (contestable meters) (already ACS).

- We grant Essential Energy a waiver from 18 December 2017 until 30 June 2024 from its 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 to allow Essential Energy to continue to use its water licence in its maintenance cost sharing arrangement between Essential Energy and the Clarence Valley Council.
- We grant Essential Energy a waiver from 18 December 2017 until 30 June 2024 from its 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 to 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 grant Essential Energy a waiver from 18 December 2017 until 30 June 2019 from its obligations under clauses 4.2.1, 4.2.2, 4.2.3, 4.2.4 and 4.4.1(a) of the Guideline to allow Essential Energy to continue to provide type 1-4 metering services until such time as they can completely exit the market.
- We do not grant Essential Energy's waiver application for the services referred to as "provider of last resort services" as submitted. Instead we have decided to treat the application as being for a reclassification waiver for ACS services. As a result, we grant Essential Energy a waiver from 18 December 2017 until 1 July 2019 from its 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, which will allow Essential Energy to continue providing these services as if they are classified ACS.

The services covered by this waiver are:

- All services allowed for under the NSW ASP Scheme including:
  - Level 1 customer connection services including both overhead and underground, and including related network extensions or augmentations;
  - Level 2 services such as disconnect and reconnect, work on underground service conductors, and work on overhead service conductors; and
  - Level 3 design services for both overhead and underground network electricity assets;
- Customer initiated asset relocations; and
- Inspection, maintenance and testing of customer assets including high voltage assets (this includes standard distribution and sub-transmission type assets and excludes emerging technology assets such as PV, batteries, etc.).

The waiver is limited to the circumstances and conduct set out in the waiver application and subsequent submissions. It does not extend to any other conduct or circumstances.

- We grant Essential Energy a waiver from 18 December 2017 until 30 June 2024 from its obligations under clauses 4.2.1, 4.2.2, 4.2.3 and 4.2.4 of the Guideline to allow Essential Energy to continue to provide Accredited Service Provider Initial & Refresher Training, Work Near Overhead Powerlines (WNP) Initial & Refresher Training and Safe Work Practices Initial & Refresher Training to Accredited Service Providers on a very limited basis. This is on the condition that Essential Energy will only provide these contestable services in 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, Wodonga, Echuca, Bendigo and Swan Hill.

### **Jemena**

- We grant Jemena a waiver from 18 December 2017 until 31 December 2020 from its obligations under clauses 4.2.1 and 4.2.2 of the Guideline to continue to provide the following services:
  - public lighting and nightwatchman lights (this includes: alteration and relocation of distributor lighting assets; new public lights; new lighting types not subject to a regulated charge, and; installation, repair and maintenance of watchman lights)
  - reserve feeder construction
  - emergency recoverable works.

### **SA Power Networks**

- We grant SA Power Networks a waiver from 18 December 2017 until 30 June 2020 from its 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 connection services;
  - new and upgraded connection point services;
  - non-standard small customer metering services;
  - large customer metering services;
  - public lighting services;
  - stand-by and temporary supply services;
  - asset relocation, temporary disconnection and temporary line insulation services;
  - embedded generation services, and;

- Other services (see Appendix A of SA Power Networks' waiver application for a full list of these services).<sup>204</sup>
- We grant SA Power Networks a waiver from 18 December 2017 to 30 September 2018 from its obligations under clause 3.1 of the Guideline to continue to provide Other Services currently supplied under 20 construction and maintenance contracts while it awaits a private binding ruling from the ATO. This is on the condition that SA Power Networks will transfer the contracts as soon as practicable after receiving a favourable ruling from the ATO.

### **TasNetworks**

- We grant TasNetworks a waiver from 18 December 2017 until 30 June 2019 from its obligations under clauses 4.2.1, 4.2.2, 4.2.3, 4.2.4 and 4.4.1(a) of the Guideline in relation to 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. These services are:
  - Inspection of private assets under Tasmanian Government direction: “private pole inspection directed by Tasmanian Government”, which is already standard control under the service group “network services” (or “common distribution services” in the most recent TasNetworks F&A)
  - Registered participant support services: “registered participant support services associated with connection arrangements and agreements made under Chapter 5 of the NER”, which are already alternative control under the service group “connection application related services”.
  - Site inspection: “Site inspection in order to determine the nature of the connection service sought by the connection applicant and ongoing co-ordination for larger projects”, which is already alternative control under the service group “connection application related services”.
- We grant TasNetworks a waiver from 18 December 2017 until 30 June 2018 from its obligations under clause 3.1 of the Guideline to allow TasNetworks additional time to

<sup>204</sup> SA Power Networks, Application for waiver from AER Ring-fencing Guideline - Electricity Distribution: SA Power Networks' Negotiated Distribution Services, August 2017, p. 5.

establish an affiliated entity and transfer all contestable services to that entity.

- We grant TasNetworks a waiver from 18 December 2017 until 30 June 2019 from its obligations under clauses 4.2.1, 4.2.2, 4.2.3, 4.2.4 and 4.4.1(a) to continue to provide type 1-4 metering services until such time as TasNetworks can completely exit the market.
- We will not be providing to TasNetworks a No Action Letter for the shared use of IT systems with its affiliate.
- We grant TasNetworks a waiver from 18 December 2017 until 31 May 2018 from its obligations under clauses 4.2.1, 4.2.2, 4.2.3 and 4.2.4 of the Guideline to continue to provide metering support services to Aurora Energy under contract in Tasmania.
- We grant TasNetworks a waiver from 18 December 2017 to 30 June 2018 from its obligations under clauses 4.2.1, 4.2.2, 4.2.3, 4.2.4 and 4.4.1(a) of the Guideline to continue to provide operations and maintenance support services to the Bass Strait Islands under its existing contract with Hydro Tasmania.

### **United Energy**

- We grant United Energy a waiver from 18 December 2017 until 31 December 2020 from its obligations under clauses 4.2.1, 4.2.2, 4.2.3, and 4.4.1(a) of the Guideline to continue to provide the following services:
  - public lighting and watchman lights (this includes: new stand alone and green field public lighting; alteration and relocation of public lighting assets, and; installation, repair and maintenance of watchman lighting)
  - reserve feeder construction
  - possum guards
  - minor and legacy metering services (this includes: metering time switch adjustment for customers with non-AMI meters; customer access to metering data, type 1-4 metering installations; legacy type 5-6 metering services for customers who consume more than 160MWh per annum, and; transitional metering service arrangements for +160MWhpa customers and embedded network customers)
  - non-standard connections, customer-requested supply enhancements, and augmentations.