

**Ring-Fencing Guideline – Electricity
Distribution Version 2 October 2017**
Application by Essential Energy to amend
waiver: Contestable Technical Training
Courses

July 2019



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1. Introduction

This paper outlines Essential Energy's application to amend the waiver granted by the AER for Essential Energy's technical training service for the delivery of three notionally contestable training courses. The amendment seeks to include three additional locations being Armidale, Culcairn and Glenn Innes to the approved waiver. The amendments are reflected in this updated waiver application and for ease of identification are highlighted yellow. The application requests a waiver of clause 4.2 of the Ring Fencing Guideline – Electricity Distribution (Guideline) which requires a Distribution Network Service Provider (DNSP) to comply with obligations relating to physical separation, staff separation, branding and cross promotion and office and staff registers between its direct control services and contestable electricity services provided by a related electricity service provider.

Essential Energy submits that:

- > there is no competitive market for these services in regional New South Wales and a waiver will protect customers requiring this service in the specific locations requested; and
- > complying with section 4.2 of the Guideline, which would require the separation of offices, staff and branding/promotion of those employees managing or assisting with the delivery of the Technical Training service from regulated offices, staff and branding/promotion, would result in increased costs for customers for no public benefit.

2. Description of service – Contestable Technical Training Courses

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

- > **Accredited Service Provider (ASP) Initial & Refresher Training** - This training supports the need for national mobility of the Electricity Supply Industry (ESI) workforce and provides a standardised approach for workers to gain and maintain Authorisation to work on or near electrical supply industry networks. Essential Energy offers initial and re-assessment training days, aligned to National Units of Competency to eligible ESI workers who conduct contestable work. This course is a contestable training course offered by other providers in NSW;
- > **Work Near Overhead Powerlines (WNP) Initial & Refresher Training** - Contact with overhead powerlines is a serious risk and is one of the largest single causes of fatalities associated with mobile plant and equipment. Aligning to the WorkCover NSW Code of Practice 2006 - Work Near Overhead Powerlines, training is offered as either Initial Training for new entrants or annual Refresher Training to existing workers. The WorkCover Code of Practice aims to protect the health and safety of persons by managing the risks associated with work near overhead powerlines and includes references to legislative obligations of persons conducting a business or undertaking (PCBU), officers and workers who are required to work in close proximity to overhead powerlines. Once successfully completed, accredited workers will be able to work to reduced clearances in accordance with the WNP Code. To remain compliant to the WorkCover Code, annual refresher training is required. This course is a contestable training course offered by other providers in NSW;
- > **Safe Work Practices Initial & Refresher Training** - Businesses that have high voltage assets connected to distribution networks must comply with the Electricity Supply (Safety & Network Management Plans) Regulation 2008, the Work Health and Safety Act 2011 and Section 7 of the Service and Installation Rules NSW 2006. In addition, incorrect operation of HV assets can have an impact on Essential Energy's Subtransmission and distribution networks and has the potential to cause outages that affect other customers. Knowing the requirements, correct processes and keeping employees safe is a significant part of compliance which is why Essential Energy offers Safe Work Practices training to organisations. The 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.

In assessing options available in order to achieve compliance with the Ring Fencing Guideline, Essential Energy has determined that continuing to offer the same (small) volume of services would not justify the cost to customers of creating and running a functionally separated business post 1 January 2018.

However, we are concerned about the possibility of this decision leading to reduced services and increased costs to those customers in regional locations where there is limited or no existing competition. The other identified providers of these training courses are all located in the Sydney basin or in the Hunter Valley of NSW and therefore those customers in most of regional NSW may not have ready access to these services at an affordable price should Essential Energy entirely withdraw from offering them.

Our 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.

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

Essential Energy requests the AER's approval of the proposed solution which involves granting a waiver of clause 4.2 for the delivery of the courses noted above in the following specific locations only where there is a lack of ready access to these courses:

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

3. Description of waiver being sought

3.1 Obligation subject of this waiver

As required by the National Electricity Rules (NER) under clause 6.17.2, the AER published the Ring-Fencing Guideline – Electricity Distribution in November 2016. Clause 6.17.1 of the NER requires DNSP's to comply with the Guideline.

The clauses within section 4.2 of the Guideline require DNSP's to functionally separate the offices, staff and branding/cross-promotion of direct control services from contestable electricity services. Clause 4.2.5 of the Guideline permit a DNSP to apply for a waiver of these obligations.

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

3.2 Proposed waiver commencement date and expiry date

Essential Energy requests that the waiver be granted from 1 December 2016 (the commencement date of the Guideline) with an expiry date of 30 June 2024 (the end of the next regulatory control period) as allowed for by clause 5.3.4(b). 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.

3.3 Regulatory control periods to which the waiver applies

The requested waiver will cover the remainder of the 2014-19 regulatory control period as well as the full 2019-24 regulatory control period.

4. Legislative arrangements for waivers

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

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

5. Grounds for seeking a waiver

5.1 Reasons for seeking a waiver

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

5.2 Reasons for the AER to grant the waiver

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

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

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

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

The Explanatory Statement goes on to say on page 58: 'We expect some waivers will be inconsequential in nature' and 'In assessing a waiver application it is important that we have flexibility in how we choose to assess an

application on a case by case basis, to ensure we provide procedural fairness for each application, while minimising unnecessary administrative and compliance burdens.’

Essential Energy’s waiver request for the functional separation obligations to be waived for the three technical training courses in the locations specified in section 2 service meets the criteria set by the AER for the granting of a waiver for the following reasons:

- > The granting of the waiver will support the National Electricity Objective as it will protect consumers in those locations where these courses are not offered by a functioning competitive market. Not allowing the waiver will mean that Essential Energy will not be able to offer this service in these areas and is likely to result in customers not being able to access the course, only being able to access the course at substantially increased rates or being forced to incur significant travel and accommodation costs to send their employee to those locations where an alternative provider currently conducts training;
- > The potential for discrimination is reduced due to Essential Energy only requesting a waiver in specified regional locations that aren’t currently adequately serviced;
- > The potential for cross-subsidisation is removed by existence of a whole of business Cost Allocation Methodology (CAM) and the accounting separation of this service from standard control;
- > Customers will benefit from the approval of the waiver as it will fill a gap in the contestable market that would otherwise be left by the withdrawal of Essential Energy from providing this service to regional and remote areas not currently serviced by another provider;
- > The costs of compliance with the obligation would be higher than the value derived by the business from delivering the small volume of services currently delivered in those locations. Meeting the obligation would require costs to be incurred in a number of different areas including the separation of staff managing the service from staff conducting regulated training activity and new office accommodation (or expense refitting existing office accommodation) as well as a rebranding exercise and possible IT costs. These costs would need to be recouped from the small number of customers currently engaging Essential Energy for this service. Essential Energy is not concerned with actively competing in the contestable training market but with providing a service to customers who would otherwise not have access in a competitive market to this service. As a result, the most likely approach from Essential Energy should the waiver not be approved is to cease the provision of this service in these locations;
- > There is likely to be no impact on contestable markets should this waiver be granted given the lack of competition currently in the market in regional and remote areas.

5.3 Cost associated with complying with the obligation under clauses 4.2

The ring-fencing obligations are an additional layer of regulatory compliance that is not without cost. The additional costs involved with the functional separation of those staff performing management and administrative functions for the contestable courses within the Technical Training Service would need to be passed onto the customers. Such additional costs include:

- > Costs related to separation of employee office space – this may require partitioning off sections of already leased or owned property or leasing/purchasing new office space. Fit-out costs would be required as well as additional security access measures if partitioning currently leased/owned space. Additional leased or owned office space would also incur additional ongoing costs that would need to be funded by customers;
- > Costs related to the separation of staff between regulated training activity and contestable training activity – costs would be incurred in separating out an employee to manage the business. The role would not be a full-time role; and
- > Costs related to rebranding/advertising – a new brand would need to be created and implemented for the Technical Training service including new website.

Regulated training activity (i.e. training of internal staff or external staff in monopoly courses) comprises approximately 90% of the Technical Training group’s time. A requirement to functionally separate the contestable training services from the regulated training services would be uncommercial given that in total these tasks would not fill a single full-time role. As a result, if this waiver is not approved Essential Energy would likely discontinue this service in the additional areas requested rather than set up a ring-fenced business group to deliver the contestable activity.

5.4 Additional measures to be undertaken on granting of waiver

Essential Energy proposes no additional measures to be undertaken on the granting of this waiver but reaffirms its commitment to the following existing protections:

- > Maintenance of a CAM that covers all services offered by the business, including the contestable services offered by the Technical Training team;
- > Maintenance of accounting separation of the contestable training courses offered by the Technical Training team; and
- > Other obligations under the Guideline, such as the discrimination and information sharing provisions, that cannot be waived.

6. Summary

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

1. There are no issues of competition given the lack of competition for these courses in regional New South Wales;
2. The likely public benefits of rejecting the waiver are negligible or non-existent. In fact, the likely impact would be a reduction in services for those customers in those areas of the Essential Energy footprint that don't have access to this service from other providers; and
3. The administrative costs resulting from achieving compliance with clause 4.2 of the Guideline (that will be avoided if the requirement is waived) outweigh the benefit of achieving compliance.

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

Appendix 1 - Waiver Information Compliance Checklist

Required Information as per Clause 5.2	Section
The obligation in respect of which the <i>DNISP</i> is applying for a waiver	3.1
The reasons why the <i>DNISP</i> is applying for the waiver	5.1
Details of the service, or services, in relation to which the <i>DNISP</i> is applying for the waiver	2
The proposed commencement date and expiry date (if any) of the waiver and the reasons for those dates	3.2
Details of the costs associated with the <i>DNISP</i> complying with the obligation if the waiver of the obligation were refused	5.3
The <i>regulatory control period(s)</i> to which the waiver would apply	3.3
Any additional measures the <i>DNISP</i> proposes to undertake if the waiver were granted	5.4
The reasons why the <i>DNISP</i> considers the waiver should be granted with reference to the matters specified in clause 5.3.2(a), including the benefits, or likely benefits, of the grant of the waiver to electricity consumers	5.2