

Ring-Fencing Guideline – Electricity Distribution November 2016

Waiver Applications by Essential Energy

This document contains three waivers submitted by Essential Energy to the AER on September 14, 2017 in relation to the Ring Fencing Guideline. These waivers are:

- **Reclassification of Services** – a number of services have been reclassified as alternative control services in the 2019-2024 Framework and Approach for Essential Energy. This waiver requests the functional separation obligations be waived for these services until the 2019-2024 F&A comes into effect on 1 July, 2019. Essential Energy will be including all these services within their 2019-2024 Alternative Control Regulatory Proposal;
- **Technical Training Contestable Courses** – Essential Energy conducts several notionally contestable technical training courses for internal staff and external parties. The waiver requests the functional separation obligations be waived for this service but only in specified locations in regional and remote NSW where Essential Energy contends there are a lack of alternative providers of these courses;
- **Provider of Last Resort** – Essential Energy has decided that it won't be forming an affiliated entity to deliver contestable services. 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 no existing competition. In order to protect these communities and ensure these services are available to all regional and remote customers this waiver requests a waiver of Ring Fencing obligations to allow Essential to act as a provider of last resort across our footprint.

September 2017



Ring-Fencing Guideline – Electricity Distribution November 2016

Waiver Application by Essential Energy: Classification of Services Waiver

September 2017



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1. Introduction

This paper outlines Essential Energy's application for a waiver of clauses 4.2 and 4.4.1(a) 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, office and staff registers and service providers for *contestable electricity services* provided by a *related electricity service provider*.

Essential Energy applies for a waiver of the obligations contained in clauses 4.2 and 4.4.1(a) of the Guideline to allow Essential Energy to provide a number of minor services without being required to comply with these obligations until the 2020-2024 Classification of Services comes into effect, whereupon these services will be reclassified as alternative control services. As a result, the waiver is transitional in nature until the 2019-24 Classification of Services comes into force on July 1, 2019.

Essential Energy submits that complying with clauses 4.2 and 4.4.1(a) of the Guideline, which would require the separation of offices, staff and branding/promotion for these services from regulated offices, staff and branding/promotion, and amendments to any new or varied agreements with service providers, would result in increased costs for customers for no public benefit.

2. Description of services

A number of services have been reclassified through the development and finalisation of the 'Framework and approach – Ausgrid, Endeavour Energy and Essential Energy, Regulatory control period commencing 1 July 2019'. In addition, there are a number of new ancillary service price items Essential Energy will be including within its 2019-2024 Regulatory proposal due to the introduction of the Ring Fencing Guideline. The services subject to this waiver application, which are currently unclassified, are:

1. The following services included within Standard Control Services within the service group 'Common Distribution Services' in the 2019-2024 service classification table:
 - a. Emergency recoverable works;
 - b. Activities related to 'shared asset facilitation' of distributor assets; and
 - c. Rectification of a simple customer fault (e.g. fuse) relating to a life support customer
2. The following services included within Ancillary Services in the 2019-2024 service classification table:
 - a. Service group 'Access Permits, oversight and facilitation' - provision of approved materials/equipment to ASPs for connection assets that will become part of the shared distribution network (also known as 'Sale of Stock to ASP's');
 - b. Service group 'Rectification works to maintain network safety' – rectification of overhead line and vegetation defects where the customer has failed to do so which pose an unacceptable risk to safety, network reliability or bushfire;
 - c. Service group 'Network Safety Services' – services including de-energisation of distribution mains to allow for safe approach where it has been identified that exclusion distances cannot be maintained (for example third party vegetation clearing, construction work and crane operation), provision of Essential Energy field staff to perform site safety supervision to unauthorised personnel performing work near the DNSP's assets such as EE staff performing role of access permit recipient (for example, council digging near electrical assets or construction work within clearances) and provision of construction staff by DNSP to complete construction work related to safety services such as the removal of overhead mains (for example, to facilitate the removal of vegetation)
 - d. Service group 'Provision of training to third parties for network related access' - **Entry into Electrical Station Course** - Legislation requires Essential Energy to control access to our electrical stations to suitably trained and authorised persons. This course:

- i. addresses the underpinning knowledge and outlines the responsibilities of people who are authorised to enter our electrical stations
 - ii. covers all electrical stations including zone substations, padmounts and ground type substations.
 - iii. acts as both an initial training and a refresher course, with refresher training being required every 2 years
 - iv. must be successfully completed for a person to become authorised including demonstrating required safe work practices, and the ability to identify and minimise risks whilst in these environment
 - v. is a monopoly course with no current approved ancillary service fee.
3. The following services included within Metering Services in the 2019-2024 service classification table which are required due to the implementation of Power of Choice legislation by December 4, 2017:
 - a. Service group 'Emergency maintenance of failed metering equipment not owned by the distributor (contestable meters)';
 - b. Service group 'Meter recovery and disposal – type 5 and 6 (legacy meters)'; and
 - c. Service group 'Distributor arranged outage for purposes of replacing meter'.

Development of pricing for each of the above services or service groups is currently underway as part of our 2019-2024 Regulatory Submission.

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 sections 4.2 and 4.4.1(a) of the Guideline require *DNSP*'s to functionally separate the offices, staff and branding/cross-promotion of direct control services from contestable electricity services, and ensure any new or varied agreements with service providers include provisions requiring the service provider to comply with the Ring Fencing Guideline. Clause 4.2.5 and 4.4.2 of the Guideline permit a *DNSP* to apply for a waiver of these obligations.

Essential Energy is seeking a waiver of clauses 4.2 and 4.4.1(a) with regards to the above services.

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 2019 (the end of the current regulatory control period). These dates have been selected to allow the waiver to be in operation until Essential Energy's 2020-2024 Classification of Services comes into effect whereupon these services will be reclassified as standard control or alternative control services.

3.3 Regulatory control periods to which the waiver applies

The requested waiver will cover the remainder of the 2015-2019 regulatory control period only.

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 clauses 4.2 and 4.4.1(a) of the Guideline as achieving compliance will incur administrative costs that outweigh the benefit or likely benefit to the public. The reclassification of these services as standard control or alternative control services starting 1 July 2019 will make these services fully compliant with the Guideline at that time.

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:

- i. The National Electricity Objective;
- ii. The potential for cross-subsidisation and discrimination if the waiver is granted or refused;
- iii. 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 these services meets the criteria set by the AER for the granting of a waiver for the following reasons:

- The final Framework and Approach document released by the AER in July 2017 includes all of these services as standard control or alternative control services;
- The granting of the waiver will support the National Electricity Objective as the proposed reclassification to standard control or alternative control will result in an appropriate level of regulation being applied to protect consumers and result in no ring fencing obligations for these services. The National Electricity Objective is further protected until the reclassification by the existence of a whole of business Cost Allocation Method (CAM) and accounting separation of these services within Essential Energy’s financial system;
- There is no potential for discrimination given the regulatory framework that DNSP’s operate under in the delivery of these services and the fact that the AER is proposing to classify these services as standard control or alternative control services;
- Customers will benefit from the reclassification of these services to standard control or alternative control as an appropriate level of regulation will be applied to the pricing of these services.
- The functional separation (including a rebranding exercise) of those services above delivered by field staff would be extremely difficult given the small size of each of these services and the geographic distribution of the workforce that provides them. In addition, there is likely to be no benefit to electricity consumers in Essential Energy complying with the functional separation obligations for the provision of these services;
- The costs of compliance with the obligations are likely to be considerable. Meeting the obligations would require costs to be incurred in a number of different areas including the separation of staff managing and performing the services from staff conducting regulated 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 (or written-off) over the two financial years between gaining full compliance with the Ring Fencing Guideline and reclassification of the service as an alternative control service;
- There is likely to be no impact on contestable markets should this waiver be granted given the lack of competition currently in the market for these services.

5.3 Cost associated with complying with the obligation under clauses 4.2 and 4.4.1(a)

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 these services 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 these services and regulated services; and
- Costs related to rebranding/advertising – a new brand would need to be created and implemented for these services including a new website.

These costs, including the brand and website, would then be made redundant on July 1, 2019 when the new classification of services comes into force.

5.4 Additional measures to be undertaken on granting of waiver

Essential Energy does not propose any additional measures to be undertaken on the granting of this waiver but reaffirms its commitment to the maintenance of a CAM that covers all services offered by the business and accounting separation of the service in Essential Energy's financial system.

6. Summary

Essential Energy submits that a waiver of clauses 4.2 and 4.4.1(a) of the Guideline is justified on the basis that:

1. There are no issues of competition given the barriers to entry in providing these services and the resulting lack of competition as highlighted by the AER's intent to reclassify these services as either standard control or alternative control as per the final Framework and approach paper released by the AER – as such, Essential Energy maintains that reclassification as standard control or alternative control provides the best approach for customers;
2. The likely public benefits of achieving compliance with clauses 4.2 and 4.4.1(a) of the Guideline are negligible or non-existent; and
3. The administrative costs resulting from achieving compliance with clauses 4.2 and 4.4.1(a) of the Guideline (that will be avoided if the requirement is waived) outweigh the benefit of achieving compliance, especially considering the reclassification of these services as standard control or alternative control from 1 July, 2019.

Essential Energy therefore submits that the granting of a waiver to clauses 4.2 and 4.4.1(a) 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

Ring-Fencing Guideline – Electricity Distribution November 2016

Waiver Application by Essential Energy: Contestable Technical Training Courses

September 2017



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1. Introduction

This paper outlines Essential Energy's application for a waiver for Essential Energy's technical training service for the delivery of three notionally contestable training courses. 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, Ballina, Bathurst, Bingara, Blayney, Braidwood, Broadwater, Broken Hill, Bulahdelah, Buronga, Cobar, Cobram, Coffs Harbour, Condon, Corowa, Deniliquin, Dubbo, Eden, Ewingsdale, Goulburn, Goondiwindi, Grafton, Griffith, Harwood, Hay, Holbrook, Inglewood, Inverell, Kempsey, Leeton, Lismore, Marulan, Mittagong, Moree, Moruya, Mulwala, Murwillumbah, Nambucca Heads, Narrabri, Orange, Parkes, Queanbeyan, Tamworth, Taree, Temora, Tweed Heads, Uki, Wagga, Walcha, Wyallda, Young; 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 *DN*SP's to comply with the Guideline.

The clauses within section 4.2 of the Guideline require *DN*SP'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 *DN*SP 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 2015-2019 regulatory control period as well as the full 2020-2024 regulatory control period.

4. Legislative arrangements for waivers

Clause 5.2 states that 'a *DNISP* 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 *DNISP*'s application, including:

- a) The obligation in respect of which the *DNISP* is applying for a waiver;
- b) The reasons why the *DNISP* is applying for the waiver;
- c) Details of the service, or services, in relation to which the *DNISP* 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 *DNISP* 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 *DNISP* proposes to undertake if the waiver were granted; and
- h) The reasons why the *DNISP* 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:

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

Ring-Fencing Guideline – Electricity Distribution November 2016

Waiver Application by Essential Energy: Provider of Last Resort

September 2017



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1. Introduction

This paper outlines Essential Energy's application for a waiver of clauses 3.1, 4.2 and 4.4.1(a) of the Ring Fencing Guideline – Electricity Distribution (Guideline) which requires a Distribution Network Service Provider (DNSP) to comply with obligations relating to legal separation, physical separation, staff separation, branding and cross promotion, office and staff registers, and supplier contracts between its *direct control services* and *contestable electricity services* provided by a *related electricity service provider*.

Essential Energy applies for a waiver of the obligations contained in clauses 3.1, 4.2 and 4.4.1(a) of the Guideline to allow Essential Energy to act as a provider of last resort without being required to comply with these obligations.

Essential Energy submits that this waiver is required to ensure that regional and remote customers do not lose total access to services given Essential Energy's decision not to form a contestable business and the restrictions this would place on Essential Energy's ability to deliver these services under the Ring Fencing Guideline.

2. Description of service – Provider of Last Resort

In assessing options available to achieve compliance with the Ring Fencing Guideline, Essential Energy has determined that continuing to offer the same (small) volume of contestable 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 no existing competition. For example, Essential Energy has largely withdrawn from competing for works under the contestable ASP Scheme over the last five years but continues to deliver a small number of jobs for customers who contact Essential Energy as they are unable to source any alternate suppliers of these services in the open market.

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 works 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 is seeking a waiver of Ring Fencing obligations to allow us to act as a provider of last resort to ensure that timely, quality and affordable services are accessible to all communities in our network footprint.

Essential Energy requests that this waiver covers all services currently offered by Essential Energy including (but not limited to) construction and maintenance services, connections works, customer initiated recoverable works (augmentation or relocation of assets, etc), HV and LV asset maintenance and testing, wet plant hire, etc. Note that services related to new or emerging technology are not currently offered by Essential Energy and are specifically excluded from this waiver.

Note that the waiver from legal separation is required as some current services, such as customer HV asset testing and maintenance, are classified as 'Other Electricity Services' under the Guideline.

Without a waiver Essential Energy would not be able to provide these 'provider of last resort' services to customers and customers would be left with no available supplier.

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 sections 3.1, 4.2 and 4.4.1(a) of the Guideline require *DNSP*'s to legally separate some services, functionally separate the offices, staff and branding/cross-promotion of direct control services from contestable electricity services, and ensure any new or varied agreements with service providers include provisions requiring the service provider to comply with the Ring Fencing Guideline. Clause 4.2.5 and 4.4.2 of the Guideline permit a *DNSP* to apply for a waiver of these obligations.

Essential Energy is seeking a waiver of clauses 3.1, 4.2 and 4.4.1(a) with regards to services supplied as a 'supplier of last resort'.

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 2015-2019 regulatory control period as well as the full 2020-2024 regulatory control period.

4. Legislative arrangements for waivers

Clause 5.2 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 this Guideline. Furthermore, this clause states an application for waiver must contain all information and materials necessary to support the *DNSP*'s application, including:

- a) The obligation in respect of which the *DNSP* is applying for a waiver;
- b) The reasons why the *DNSP* is applying for the waiver;
- c) Details of the service, or services, in relation to which the *DNSP* 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 *DNSP* 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 *DNSP* proposes to undertake if the waiver were granted; and
- h) The reasons why the *DNSP* 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 clauses 3.1, 4.2 and 4.4.1(a) of the Guideline to ensure that customers can access all services in situations where the competitive market does not meet customer requirements.

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:

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

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 DNSP 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 legal and functional separation obligations to be waived for services supplied as a 'supplier of last resort' 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 those customers who are unable to access certain services due to a weak or non-existent competitive market. The National Electricity Objective is further protected by the existence of a whole of business Cost Allocation Method (CAM) and accounting separation of any works delivered under the provider of last resort waiver within Essential Energy's financial system;
- There is no potential for discrimination given Essential Energy is only proposing to offer this service where the competitive market does not meet customer requirements;
- Customers will benefit from the waiver as it provides a service 'safety-net' should the competitive market fall short of customers' requirements. Should the waiver not be granted Essential Energy would not be able to provide this service and customers would be unable to access these services from any supplier;
- There will be no impact on contestable markets should this waiver be granted given the services will only be offered where no other provider is willing to offer the services.

5.3 Cost associated with complying with the obligation under clauses 3.1, 4.2 and 4.4.1(a)

There would be no cost to Essential Energy should the waiver not be granted as we a decision to not to create a contestable business has been made. The impact would be that Essential Energy would not be able to act as a provider of last resort for customers and therefore they would not be able to access the services they require from any market participant.

5.4 Additional measures to be undertaken on granting of waiver

Essential Energy does not propose any additional measures to be undertaken on the granting of this waiver but reaffirms its commitment to the maintenance of a CAM that covers all services offered by the business and accounting separation of any works delivered by Essential Energy as a supplier of last resort in Essential Energy's financial system.

6. Summary

Essential Energy submits that a waiver of clauses 3.1, 4.2 and 4.4.1(a) of the Guideline is justified on the basis that:

1. There are no issues of competition given the services will only be offered where the customer is unable to access the service in the contestable market;
2. It is in the long-term interests of consumers that they have access to the services they require. Not granting this waiver would result in Essential Energy to not being able to offer these services where the contestable has not met customer requirements.

Essential Energy therefore submits that the granting of a waiver to clauses 3.1, 4.2 and 4.4.1(a) 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