



12 January 2023

Mr Mark Feather
General Manager
Australian Energy Regulator
GPO Box 520
Melbourne, VIC, 3001

Email: AERringfencing@aer.gov.au

Dear Mr Feather,

RE: SUBMISSION TO AER PROPOSED RING-FENCING CLASS WAIVER

Origin Energy (Origin) appreciates the opportunity to provide a submission to the Australian Energy Regulator (AER) in relation to the proposed distribution ring-fencing class waiver for batteries funded under the Commonwealth Government's Community Batteries for Household Solar Program (Community Batteries Program).

We consider it premature to contemplate the application of a class waiver for DNSP-led community batteries at this time. The application of a class waiver assumes projects are for the same purpose or projects are sufficiently similar to be covered under a single waiver. While the broad intent of the Community Batteries Program is clear, the Program design is yet to be articulated, including for example, the size and location of batteries. Similarly, details are yet to be provided on the grant conditions, including whether the conditions are likely to influence (or bias) which party provides the batteries. In the absence of detailed program information, it is not possible to determine if the competition issues associated with the individual battery projects are sufficiently comparable to warrant application of a class waiver.

We question why the AER would consider the application of a class waiver in the absence of the above program information. Any consideration of a class waiver should be deferred until the design and application of the Community Batteries Program is known.

Notwithstanding the lack of detail regarding the Community Batteries Program, we consider that the long-term interests of consumers are best served through fostering the development of the competitive market. Third-party provision of battery services obtained through a competitive process should be preferred above DNSP involvement in the market.

We consider that the application of a class waiver at this time may inadvertently bias the provision of batteries in favour of DNSPs (at the expense of third-party providers). The provision of community battery services is in the relatively early stages and the AER has only limited experience in the assessment of associated DNSP ring-fencing waiver applications. We are concerned that DNSPs will skew the case for battery provision in their favour by virtue of their network ownership and associated information asymmetry. Further, DNSPs are able to use their economies of scale to potentially offer cost-effective provision options. This may provide cost benefits in the short-term but has the potential to displace genuine competitive provision to the long-term detriment of customers. It is important that the AER remain focused on long-term benefits associated with robust competitive provision, rather than potential short-term gains.

We are concerned that even with the best of intentions, it will be difficult for the AER to guarantee that a truly level playing field exists for the provision of community batteries. While the revised ring-fencing guideline includes a new requirement to address potential discriminatory behaviour by DNSPs, we consider it will be difficult for the AER to practically assess if DNSPs discriminate against competitive battery providers. Given the potential size of the Community Batteries Program, we consider it necessary for the AER to provide detail on the information it will require to review discriminatory behaviour and how this will be assessed.

The potential impact on competitive provision and long-term consumer outcomes means that any ring-fencing waiver should be carefully considered and assessed. We consider that a class waiver may be too broad to cover individual circumstances and may inadvertently facilitate provision of community batteries by DNSPs at the expense of third-party providers. To justify the application of a class waiver, we consider the AER needs to demonstrate that individual projects are sufficiently similar and competition issues across the individual projects can be addressed via a single class waiver as opposed to individual (or grouped) waiver applications. In the absence of detailed program information, it is not clear that a class waiver will adequately address ring-fencing concerns.

We propose that any discussion of a class waiver for DNSP batteries funded by the Community Batteries Program be delayed until specific program details are available. At that time, the AER will be in a better position to determine if individual projects are sufficiently similar such that the application of a class waiver is justifiable.

If you have any questions regarding this submission, please contact Gary Davies in the first instance at

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Yours sincerely

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Sean Greenup
Group Manager Regulatory Policy

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