AUSTRALIAN ENERGY COUNCIL

Ms Stephanie Jolly
Executive General Manager, Consumer, Policy and Markets Division
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

12 June 2025

Submitted electronically: AERringfencing@aer.gov.au

Dear Ms Jolly,

CitiPower, Powercor, and United Energy (CPU) waiver application from clauses 3.1(b) and 4.2 of the Ring Fencing Guideline.

The Australian Energy Council ('AEC') welcomes the opportunity to comment on the CitiPower, Powercor, and United Energy (CPU) waiver application from clauses 3.1(b) and 4.2 of the Ring Fencing Guideline.

The AEC is the peak industry body for electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. AEC members generate and sell energy to over 10 million homes and businesses and are major investors in renewable energy generation. The AEC supports reaching net-zero by 2050 as well as a 55 percent emissions reduction target by 2035 and is committed to delivering the energy transition for the benefit of consumers.

Whilst not in the scope of the AER's consultation, it is worth noting that the barriers and enablers to an accelerated market rollout of kerbside EVCI infrastructure are not addressed by CPU application. It is worth examining that the slower rollout of market led kerbside EVCI may also be a function of:

- DNSP requirements for bespoke negotiated connection agreements.
- No universal pole mounting access (or ground mounted) framework.
- No performance guarantees on DNSP connection or response times.
- A lack of EV distribution charging tariffs.
- No standard published connection charges for third party kerbside EVCI, and
- No obligations to publish specific site data.

Though the list barriers is longer than this. The CPU justifications therefore should be tested against what would have occurred had each of these been addressed, and the enablers available to address market insufficiencies, given that the DNSP could directly address them. The benefits to consumers of market enabling approaches such as these should readily outweigh those of short-term economies of scope that lead to long term monopoly entrenchment.

Our understanding of the application

The AER has been asked to assess whether Citipower, Powercor and United Energy (CPU) should be granted a waiver from ring-fencing obligations to trial the installation and maintenance of 100 kerbside

[redacted]
W energycouncil.com.au

ABN 926 084 953 07

electric vehicle (EV) chargers across its distribution network, citing potential market insufficiencies and benefits to consumers versus risks to competition**.**

CPU argues that there are gaps in public EV charging infrastructure, especially in suburban and regional Victoria, and that third parties have not adequately addressed these due to lack of investment or market viability. CPU believes its role could help:

- Accelerate charger rollout
- Collect network data to support better planning
- Provide cost-effective EV charging infrastructure without burdening customer bills.

CPU is applying for a waiver from provisions that separate regulated and unregulated activities.

- CPU notes that DNSPs are normally restricted from providing contestable services like public EV charging due to cross-subsidisation and discrimination risks.
- CPU believes that its proposal cannot proceed without being able to cross subsidise its activities and discriminate against other competitive providers.

Potential risks to competition.

There are potential risks to competition that are explored. CPU's entry into EV charging could crowd out third-party providers, undermine competition, or enable even further use of its monopoly position unfairly where:

- Site selection methods based on high EV ownership do not necessarily indicate insufficient charging infrastructure. These areas may already be well served or soon to be targeted by competitive parties. Conversely low EV uptake may be due to a lack of chargers.
- Equity, inequality and regional accessibility is insufficiently considered against high EV ownership, which often correlates with affluent, urban demographics.
- Access to infrastructure and data risk occurs where CPU uses or withholds its proprietary network data to outcompete others.

Whilst the AER consults the consultation gives the impression that the AER presupposes a waiver will be granted by seeking feedback in its consultation on what conditions should be imposed to safeguard against harm and ensure transparency presupposes. This is disappointing as the waiver application must adequately address the core question as to any net and long term benefits to consumers and the impact on competition, and our concern is that this is out of focus. It is clear that the monopoly advantage is not neutralised in the CPU proposal, and that the real barriers to kerbside EVCI are not being considered.

Whilst outside the scope of this review, the AEC suggest an alternative trial framework that maintains market neutrality while realistically assessing the infrastructure gaps. Regulated EVCI should be being considered in the context of a review of a market making, not a market evading, rules framework. This would consider the necessary enablers to a competitive rollout such as:

- Standardised LV EVCI kerbside connection agreements.
- Standardised pole mounting access agreements.
- Obligation to connect time frames, such as guaranteed connection/response times.
- EV distribution charging tariffs.

[redacted]
[redacted]
W energycouncil.com.au

ABN 926 084 953 07

- Standard published connection charges for third party kerbside EVCI recovered as a Distribution Service, and
- Obligations to publish specific data similar to that sought by Energy Consumers Australia in their Integrated Distribution System Planning Rule Change Request.

Monopoly control of potentially contestable services brings higher prices, lower quality, fewer choices, reduced efficiency and low innovation.

Our detailed response to the consultation paper follows.

1. There is No Evidence of a Market Failure

CPU claims a "market insufficiency" in public EV charging, especially in regional and suburban Victoria, but provides limited empirical evidence to prove that third-party providers are unable or unwilling to fill the gap, or any introspection on its own role hampering third party connections. In any research and analysis, flaws are errors or limitations in study design or results, and gaps are unexplored ideas or unaddressed questions. These are addressed here:

- What is missing is clear data on failed tenders, rejected proposals, or unmet demand in specific locations. CPU claims it does not seek to restrict, or prohibit, other EVCI providers from participating in the EVCI market. They expect, and assume, other EVCI providers will have their own plans and strategies for deploying infrastructure. However, intent is not relevant. The AER sought further detail on the CPU business strategy for the EVCI – i.e. costings and funding arrangements, and what would happen if the EVCIs is loss-making overall. In its final supplementary paper CPU has not addressed these adequately. There is no qualitative assessment of potential benefits, costs, and risks to convince stakeholders of its value; and this is not a foundation for evidence based decision making. There is no data on resource allocation. The waiver application is just an idea and a summation of the parts of the regulatory framework that could be used to fund this idea. That is neither an analysis nor a business case.
- Our concern is that when CPU supply and own and operate kerbside EVCI assets, competitive neutrality in the provision of these services to customers is compromised. This is because CPU can in practice access (amongst other things) the network support benefits far more easily than other participants in the market, allowing them to offer the customer services at a lower cost. Over time, this asymmetry could allow CPU to dominate the market for kerbside EVCI services in their own service areas, denying existing and future generations of customers the dynamic benefits of effective competition. Pole mounted chargers not only compete with other forms of kerbside charging but also other EV charging markets. In our view the CPU submission has not addressed whether or not these dynamic benefits outweigh any short-term gains to customers from obtaining CPU provided services.
- There is very unclear causality: High EV ownership ≠ underserved market and is not a market failure. Areas with high EV uptake might already be targeted by private operators. The priority to achieve this outcome is unclear, and we remain of the view that services that are contestable should be contestable. Any activity other than the conveyance of energy should in our view be subjected to competitive markets.

[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
W energycouncil.com.au

ABN 926 084 953 07

2. The Unsubstantiated Cost-Effectiveness Claim

This is a very serious flaw in the application. CPU claims it can deliver EV chargers more cheaply and efficiently than third parties, leveraging scale and scope advantages, but provides no cost breakdown or comparative data. CPU note that "it is difficult in 2025 to guess what the market for EVCI and more generally, growth in EV ownership will be in 2031. Technology, government policy, regulation and consumer sentiment all move quickly and it maybe that the EVCI we install in 2025 will be redundant." This is a systematic risk that needs to be assessed in the form that the AER sought via the costings and funding arrangements, and what would happen if the EVCIs is loss-making overall, that in our view the supplementary application/s has still not been adequately addressed. This systematic risk has not been addressed. This is also the very systematic risks that markets and not monopolies are better at addressing.

CPU has avoided providing financial projections (such as cost per unit estimates for installation and maintenance), cost-benefit analysis (such as benchmark comparisons to third party deployments), and return on investment (ROI) calculations. Without these, the claim of cost effectiveness is untested and unverifiable. CPU has only generally described how (by what method) it would allocate its costs and how it proposes to recover its costs via reference to (for example) the DMIA within the regulatory framework, presumably in order for it to avoid systematic risk.

3. Potential for Anti-Competitive Behavior

As monopoly DNSPs, CPU controls access to poles, connection approvals, and network data, each giving it a structural advantage over competitors. CPU has not provided any guarantees to prevent:

- Prioritization of CPU-owned EVCI assets in planning.
- Charging lower access fees (internal transfer costs) than third parties must pay.
- Using its proprietary network data to outcompete others.

This risks the creation of autonomous path dependency, where the future development and regulation of ring fenced kerbside EVCI is influenced by the pre-existing regulatory frameworks and practices of the systems they are built upon, rather than a purely optimal, autonomous approach to future development.

The self reporting nature of ring fencing waiver compliance is problematic to both consumer and market confidence. So, in determining whether to grant the waiver, the AER should identify what incentives, penalties and indicators and periodic reporting could be implemented to effectively enable an independent third party ensure the networks' inherent monopoly power and incentives are checked. These independently verifiable reports would include assessments that other providers and customers receive access, services and prices that are the same or better than the DNSP provides to its related entity.

4. Poorly Defined Site Selection Methodology

CPU claim that the initial 80 sites were "determined based on internal analysis of locations with high levels of electric vehicle (EV) ownership. Consideration was also given to the availability of off-street parking and achieving a balance of metropolitan and regional areas." CPU says it will install chargers in "high-EV-demand" areas but does not define:

- How "demand" is measured.
- How it will avoid duplicating infrastructure.

[redacted]
W energycouncil.com.au

- Whether other providers are already planning deployment there.

How demand is measured is a key issue. In its recent rule change request to the AEMC, Energy Consumers Australia make the clear point that:

> *Developers of distributed energy resources (DER), such as community battery and EV charging providers, don't have visibility over the network to know where these investments are needed or where there is sufficient hosting capacity. There is currently an information asymmetry between networks and other parties on the best places for community batteries and EV charging. It is imperative that all parties have equal access to information on network limits and opportunities.*

And whilst not the specific subject of the CPU application, it is exactly the problem. This current arrangement where CPU possesses better information than third parties chills investment, creating market failures and imbalances. CPU proposes to resolve an unsubstantiated case that there is a shortfall in market led kerbside EVCI rollout through this ring fencing waiver application by:

- Maintaining its information asymmetry,
- Creating an autonomous path dependency, and
- Crowding out third party investment.

Unintentionally of course, but inevitably building a monopoly position that brings higher prices, lower quality, fewer choices, reduced efficiency and low innovation - outcomes borne out by over a century of economic theory and practice.

5. Minimal Financial Transparency

CPU proposes to cap investment at $1.2 million, with an expected $200k/year revenue. In our assessment CPU attempts to trivialize the scale of the investments. The nominated purpose of the trial is to develop insights, data and learnings from the EVCI deployment, that CPU can:

- Plan for and identify suitable locations;
- Plans for its network to be able to support EV chargers;
- Considers the needs of EV charging operators and networks costs.

Whilst CPU propose to capture costs in the trial, they have not explicitly disclosed unit costs, cost recovery models, or their breakeven analysis. There is no clarity on maintenance costs, or on the contract terms with any charge point operators, nor any price structure for end users. Pretty fundamental requirements.

There is further inconsistency in the assessment of financial transparency in the consultation. Whilst the AER highlights that customers will not be paying for this in the RAB, and that costs will be recovered by users, CPU maintains the possibility of accessing DMIA funding for part of the funding. While CPU promises to share insights, it does not specify its metrics, timelines, or transparency standards. In particular there is no specific commitment to publish:

- Real-time usage data
- Network impacts
- Site selection criteria

This limits the trial's broader value and makes accountability difficult. In our view this lack of transparency and accountability weakens any claim that the trial will be financially sustainable and not

[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
W energycouncil.com.au

ABN 926 084 953 07

cross-subsidised. CPU's exit plan ("sell assets to third parties if no long-term role is approved") is vague and conditional. It is unclear what happens to chargers if no buyer is found and the risk that their public EV infrastructure may be stranded or fall into disrepair post-trial.

6. Weak Justification for Ring-Fencing Waiver

CPUs application claims that

> *The benefits to electricity customers of the networks complying with the Ringfencing Guideline are likely minimal, and do not outweigh the costs that the networks will incur. Further, if the networks are required to comply with the Ringfencing Guideline, electricity customers will likely be worse off, including by paying higher prices for EV charging services given the loss of efficiencies that could be achieved if the networks could utilise their regulated business and staff to supply these services.and resource.*

The most serious flaw in the CPU waiver application is these unsubstantiated cost effectiveness claims. What is proposed is a significant relaxations of safeguards, and CPU does not convincingly argue that the waiver is the least harmful way to proceed.

7. Summary of Key Gaps in CPU's Case

Issue	**Flaw**
Market failure	Poorly evidenced, vague justification.
Cost-effectiveness	No comparative analysis or financial transparency.
Competition risks	Monopoly advantages not neutralized. No firm commitments or metrics around data or transparency.
Site selection	Lacks method and risks misallocation, crowding out.
Exit plan	Unclear, trivialised and creates potential stranded assets.
Ring-fencing	Seeks broad exemptions with weak justification.

These key gaps demonstrate the need for stronger evidence, stricter waiver conditions, or possibly an alternative trial framework that maintains market neutrality while addressing infrastructure gaps.

[redacted]
[redacted]
W energycouncil.com.au

ABN 926 084 953 07

Any questions regarding this submission should be directed to the undersigned at [redacted]

Yours sincerely,

David Markham
Manager DER and Networks Policy
Australian Energy Council

[redacted]

[redacted]
W energycouncil.com.au

ABN 926 084 953 07