12 June 2025

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

Lodged electronically to AERringfencing@aer.gov.au

Dear Ms Jolly,

CitiPower, Powercor and United Energy Ring-fencing Waiver Application for Kerbside EV Charging Infrastructure

Nexa Advisory welcomes the opportunity to contribute to the CitiPower, Powercor, and United Energy (CPU) Ring-fencing waiver consultation being undertaken by the Australian Energy Regulator (AER).

Nexa is an advisory firm with an unwavering focus to accelerate the clean energy transition in a way that provides secure, reliable, and affordable power for consumers of all types. Nexa Advisory is a team of experienced specialists in the energy market, policy and regulation design, stakeholder engagement, and advocacy. We work with public and private clients including renewable energy developers, investors and climate impact philanthropists to help them get Australia's clean energy transition done.

Nexa has recently worked with several retailers, EV Charging Infrastructure (EVCI) providers and innovative consumer energy providers in addressing the barriers to competitive delivery of these services, building on our previous work in unlocking Consumer Energy Resources (CER)[1]. We consider that a key outcome of the EVCI buildout is to prioritise user experience and meeting the needs of EV drivers and charging customers.

At the outset, we remind the AER of the need for ring-fencing, and the objectives of the Ring-fencing Guideline (electricity distribution), being to:

- promote the National Electricity Objective by providing for the accounting and functional separation of the provision of direct control services by Distribution Network Service Provider's (DNSPs) from the provision of other services by them, or by their affiliated entities; and to
- promote competition in the provision of electricity services[2].

This framework prevents DNSPs from cross-subsidising contestable activities with revenue earned from electricity customers from regulated services. Further, the Guideline operates to ensure that the regulated electricity DNSPs do not exercise their monopoly powers by

[1] Nexa Advisory, Accelerating Consumer Energy in Australia, May 2024
[2] AER, Ring-fencing Guideline Electricity Distribution, February 2025

separating regulated activities from competitive business activities, to support competitive markets and protect electricity consumers.

However, this framework is currently being eroded by waivers granted by the AER for community batteries and EVCI[3].

The case has not been made - there is no evidence of market failure

Nexa Advisory does not support the CPU ring-fencing waiver to directly own and maintain 100 kerbside EV chargers. We consider that there is no evidence of market insufficiency; the level of competitive Charging Point Operator (CPO) providers demonstrates clearly there is no market failure, but rather that these providers face challenges in delivering these solutions. Additionally, the proposed trial waiver risks distorting competition in the EVCI sector. The application fails to recognise the shortcomings of the existing network planning and regulatory frameworks – namely poor network data transparency – which currently prevent third-party EVCI businesses from competing on equal footing.

Without proper regulatory safeguards, DNSP involvement in contestable markets such as EVCI risks distorting competition and reducing innovation. If allowed to progress unchecked and without clear evidence of market failure, this risks the expansion of DNSP-owned EVCI and overinvestment in charging points that impose unnecessary costs on energy consumers.

The existing regulatory arrangements are failing to protect energy consumers from regulated monopoly networks

The current ring-fencing guidelines and arrangements are failing to protect energy consumers, this is due to the lack of enforcement and monitoring applied by the AER. This is evident from the approval of waiver applications by the AER over the years. While there has been consultation, there has been limited consideration by the AER of concerns and issues raised from a wide range of stakeholders over the years. This is a critical issue that suggests either the AER does not have the appropriate resources to manage this process appropriately, or there is a clear failure in the framework.

This waiver will set a precedent for further erosion of ring-fencing provisions – through either additional 'trials', expanded geographical area coverage under the trial, or extension of the period of the waiver[4]. As such, we consider granting this waiver creates a real risk of monopoly electricity network businesses further encroaching into the competitive market of EVCI.

Additionally, there are currently limited obligations for the AER and DNSPs (i.e., CPU) to report on any performance objectives of any waivers granted. The AER must impose clear reporting obligations around this performance – including outcomes of the trial and transparency around

[3] AER, Decision - Ring-fencing Class Waiver for Batteries funded under the Community Batteries for Household Solar Program, February 2023

[4] We note that recent removal of maximum term limit on waivers, made under the Electricity Distribution Ring-fencing Guideline Version 4, set a precedent for such an extension.

the network data and technical impacts of the trial chargers being made publicly available to inform competitive EVCI players.

As part of this waiver assessment, the AER must demonstrate that this is in the long-term interest of energy consumers. This must include a clear case as to how the 'supposed' benefits of this investment by CPU aligns with consumer preferences and does not create unnecessary financial burden on energy consumers.

We note CPU's intention to utilise the Demand Management Innovation Allowance (DMIA) to fund this trial. This does not align with the core innovation principle of this mechanism[5]; these solutions can be delivered by competitive third-party providers if barriers - such as network data transparency and information sharing – were addressed.

Key recommendations

Rather than allow the continued erosion of ring-fencing provisions - which are intended to maintain competition - we urge the AER to:

1. **uphold and reinforce ring-fencing obligations** to ensure that regulated DNSP businesses cannot own EVCI and other assets which can be delivered competitively;
2. **monitor and enforce ring-fencing provision and the behaviour of DNSPs and affiliated businesses** – including and not limited to whether affiliated businesses and third parties are treated equally when connecting to the distribution network; and
3. **cease the consideration of further waivers** until it assesses the impact of those already granted. This would allow time to assess the effectiveness of these models before further waivers are granted, such as for public EV charging.

The AER should be focused on the performance of DNSPs with regard to connections. In addition to the above recommendations to improve the regulatory framework, there are several practical actions which the AER should take to improve the competitive delivery of these solutions:

4. **strengthen network data transparency obligations,** requiring DNSPs to publish network data relevant to hosting capacity, congestion and constraint locations to level the playing field for competitive third-party providers – as well as within infrastructure planning undertaken by local councils and community groups.
5. **streamline grid connections and reduce cost** for new parties connecting to the network by developing standardised, transparent connection timeframes for DNSPs in negotiating Service Level Agreements (SLA) with connecting parties.
6. **Develop tariffs that recognise smart infrastructure,** undertaking reform to enable: innovative tariffs such as energy-only charges for new, low utilisation sites; solar soak incentives; and load control incentives during critical events. Innovative tariffs should be available for both low and high utilisation sites.

[5] AER, Demand management innovation allowance mechanism, December 2017

The remainder of our submission further details the abovementioned challenges and recommendations.

This waiver does not address the challenges faced by third-party EVCI providers – namely in negotiating access and connecting to distribution networks

There is currently no market failure in the EVCI sector, but rather, several challenges faced by third party providers of these solutions. This is the result of a regulatory framework which has failed to provide necessary oversight of the operation and performance of DNSPs – particularly in facilitating connections and access to the electricity network.

Nexa Advisory has consistently raised concerns about the challenges that third-party EVCI providers face when connecting to electricity networks, particularly DNSPs[6]. These include:

- significant delays in securing connections;
- a lack of transparency and access to network data; and
- inflexible tariff structures, which can result in costly projects and delays and inhibit the economic viability of charging infrastructure points.

In particular, the application of inflexible 'traditional' tariff structures for public EV charging remains a key barrier to public charging providers developing commercially viable projects[7].

For widespread EV adoption, consumers need confidence in the accessibility and reliability of EV charging. State and Federal governments are providing funding to support the growth of EV charging infrastructure, however, ensuring timely, cost-effective access to electricity supply is crucial for building this EV infrastructure. The lengthy and costly process of securing power supply from DNSPs remains a significant bottleneck in EVCI deployment and has the potential to increase costs for consumers. The CPU waiver application itself highlights the challenges faced by third-party operators include "regulatory delays and the complexity of obtaining necessary approvals… as operators must navigate complex regulatory frameworks that can delay the rollout of infrastructure."

Additionally, the absence of publicly available hosting capacity data entrenches the advantage of DNSPs over competitive third-party providers.

These obstacles are the direct result of the current governance and regulatory frameworks favouring incumbent DNSPs, limiting the evolution and competitiveness of new entrants and the development of consumer-centric technology solutions. We have previously discussed that despite the monitoring efforts by the Australian Competition and Consumer Commission (ACCC) and AER, there is a gap in the monitoring efforts of competition and innovation of CER – including EV infrastructure.[8]

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[6] Nexa Advisory, Accelerating Consumer Energy in Australia, April 2024
[7] Evie Networks, Submission on NSW DNSPs' 2024-2029 Pricing Proposals, May 2023
[8] Nexa Advisory, Submission on the Select Committee on Energy Planning and Regulation in Australia, October 2024

To address this, the AER must better monitor and enforce ring-fencing provisions, ensuring non-discrimination in the connection of affiliated businesses compared to third parties.

One waiver sets a precedent, two signals a concern, three establishes a trend of the AER's continued erosion of ring-fencing provisions

We consider the AER has now set a dangerous precedent in granting the recent PLUS ES waiver to allow 1,000 kerbside, pole-mounted EV chargers across New South Wales and South Australia. This risks further DNSP involvement in competitive markets, exploiting their regulated monopoly positions to compete with third parties, communities and consumer energy service providers[9].

This is despite the poor track record and missing incentives for these businesses to efficiently deliver the best outcomes for consumers in these services. For example, in the assessment of the recent Community Batteries for Household Solar program - for which the AER granted a Class Waiver for DNSPs[10] – it was found that "network batteries were more expensive on average than non-network (behind-the-meter) batteries" with a weighted average cost of $2,300 compared to $1,330 per kWh ($2,240 vs $1,270 per kWh unweighted)', where weighted by the number of batteries across projects. This reflects that services provided by regulated monopoly businesses are inherently less consumer-centric than those provided by competitive markets.

In our submission to the AER on the proposed Ring-Fencing Class Waiver for Community Batteries[11], we strongly opposed the AER's class waiver for DNSPs, which we consider set the wrong precedent for distributed and consumer energy resources (including EVCI) which can and should be delivered competitively.

We agree with the AER's statement in the current consultation paper that "it is unclear if CPU's proposal stands up to the claim that DNSPs can deliver EVCIs more cost-effectively than third-parties, thereby providing lower-cost EV charging services to end-users."

Therefore, although the current waiver proposal is limited to 100 sites and until 2031, granting this waiver will establish a trend that erodes competition and consumer outcomes. This will not only disadvantage third-party proponents but also risk slowing the pace of EV infrastructure deployment, undermining broader decarbonisation and electrification objectives.

[9] AER, AER grants trial waiver for innovative kerbside EV chargers, 6 March 2025
[10] AER, Batteries funded under the Commonwealth Government's Community Batteries for Household Solar Program - Ring-fencing class waiver, February 2023
[11] Nexa Advisory, Initiation notice - Ring-fencing class waiver Community batteries funded under the Commonwealth Government's Community Batteries for Household Solar Program, January 2023

Maintaining competition through strong ring-fencing protections is critical for long-term consumer interests

We reiterate that the AER itself acknowledged in its Ring-Fencing Guideline that DNSP-led projects without sufficient controls could "risk the foreclosure of other players" and would "not be in the long-term interest of consumers".[12]

Critically, all aspects of EVCI are contestable and open to competition, supported by strong and effective monopoly regulation of DNSPs to ensure open access to the network and regulated assets owned by DNSPs which are ultimately paid for by consumers.

Competition is the single most effective way to give EV drivers abundant, affordable and user-friendly charging infrastructure. International evidence shows that when multiple charge-point operators can invest on equal terms, rollout is faster, costs are lower, and service quality is higher[13].

Conversely, DNSP-led deployment inherently lacks the service and cost incentives for efficient and consumer-centric delivery of EV charging infrastructure. This gives rise to the need for economic regulation of price, service and access for distribution networks, as well as ring-fencing to ensure regulated monopoly businesses do not exploit their position in adjacent unregulated markets, like public EV charging.

The AER's consultation to date has demonstrated the risks of this trial waiver; there is lacking evidence that DNSP-led delivery is more cost efficient, particularly when considering connection charges

The AER's consultation through three workshops highlighted the case for and risks of EVCI being owned by CPU. The discussion in these workshops (published in transcripts by AER) demonstrates serious concerns about competitive neutrality given CPU's control over pole access, pricing, network planning and metering arrangements – particularly when combined with their use of regulated systems and cost advantages.

Of note, we are concerned by the claims of CPU delivering these chargers at a lower cost than competitive third-party EVCI providers. When discussing the proposed business model and costs[14], CPU's Daniel Bye stated:

> *we won't incur those FAA [facilities access agreement] charges because we don't charge ourselves to have assets on our poles... we can install [EV chargers] aside from FAA rates for a much lower cost today.*

This raises concerns around the cost claims and non-discrimination – given that the omission of FAA charges provides an unfair advantage in assessing the cost of this infrastructure,

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[12] AER, Electricity distribution Ring-fencing Guideline Explanatory Statement, November 2021, p.30
[13] U.K. Government, Department of Transport, Government response to the CMA's Electric vehicle charging market study, March 2022
[14] AER, AER workshop on the CitiPower, Powercor, UnitedEnergy ring-fencing waiver for EV charging infrastructure – government, consumers and consumer interest groups, 8 May 2025

compared to those delivered competitively by third-party providers which will incur these charges.

Additionally, there is limited transparency around negotiations over FAA charges. We consider that at a minimum, these charges should be made public – with a longer-term view of standardising these charges to facilitate a lower cost, streamlined connection process for third party ECVI providers.

Network data transparency is needed to maximise consumer benefits and ensure competitive neutrality

DNSPs possess monopoly access to critical network data, including locational information and hosting capacity constraints which is critical to the integration of distributed and consumer energy resources – including EV charging infrastructure. However, third parties - including community groups and local councils - do not have adequate access to the network data needed to support delivery of third party-owned infrastructure. This places third parties and communities at a disadvantage in comparison to DNSPs as they are dependent on the DNSP sharing its network data.

The current role of DNSPs to identify and forecast distribution network need, with no requirement to share that network data with other market participants, means that it is not possible to identify where and how non-DNSP-led investments (such as EVCI) could offer value.

This information asymmetry benefits the DNSP, creating the potential for discrimination, which is notoriously difficult to demonstrate under the Guideline given the broad nature of the obligation. But if the AER and federal and state governments are genuinely interested in accelerating the rollout of EV charging, then this information asymmetry needs to be urgently resolved, with DNSPs sharing publicly the locations that maximise the opportunities for third-party and community-led charging solutions.

Concluding remarks

If the AER continues this concerning trend and grants the CPU waiver, it must at a minimum include conditions and reporting obligations for CPU to support broader competition. Building on the waiver conditions mentioned by the AER in Section 3.5 of the Consultation Paper, these should include:

- Upholding a strict limit of 100 chargers;
- A mandated divestment or removal of chargers by mid-2031, ensuring these are not rolled into CPU's Regulated Asset Base;
- Cost transparency, including capital and operating expenditures incurred under the trial
- Transparency of charger utilisation;
- Network data transparency, with site-level hosting capacity, constraints and demand as a key outcome of the trial;
- Independent review of the CPU connection process to ensure non-discrimination.
- Branding and cross-promotion limitations (as per Ring-fencing Guideline); and

- Independent, public review of consumer benefits, competition impacts and network planning insights – as a key outcome of the trial.

Thank you for the opportunity to provide a submission to this consultation. We welcome the opportunity to further discuss any aspect of our submission - please contact either myself or Jordan Ferrari, Director - Policy and Analysis, [redacted]

Yours Sincerely,

Stephanie Bashir
CEO and Principal
Nexa Advisory