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13 June 2025

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**Re: Ring-fencing waiver application for an EV charging infrastructure trial from CitiPower, Powercor, and United Energy**

Red Energy and Lumo Energy welcome the opportunity to comment on the application from CitiPower, Powercor, and United Energy (CPU) for a waiver from sections 3.1(b) (other services) and 4.2 (functional separation of offices, staff, branding, and promotions) of the *Ring Fencing Guideline* for electricity distribution (the guideline). CPU seeks a waiver to provide and maintain 100 kerbside EV chargers within their network as part of a trial until mid-2031.

The Australian Energy Regulator (AER) assesses waiver requests according to Clause 5.3.2 of its guideline, taking into account the National Electricity Objective (NEO), the risk of cross-subsidisation and discrimination, and whether the benefits of DNSP adherence outweigh the costs for consumers. The guideline also permits the AER to consider other relevant factors when reviewing a waiver application.

Red Energy and Lumo do not support CPU's request for a waiver and do not agree with CPU's (unsupported) assertion of unmet demand, coverage gaps and a broader EV charger market failure. In our view, any perceived deficiency in the rollout of charging infrastructure to this point is as likely to be a function of competitive providers' inability to gain access to network infrastructure on reasonable commercial terms or within a reasonable timeframe.

We encourage the AER to analyse this issue further as it progresses this review. CPU needs to provide a stronger basis for claiming there is evidence of a market insufficiency. This could involve independent economic advice that clearly demonstrates the market's inability to resolve identified issues. An alternative explanation may be that this market remains in its early stages, that the current level and location of infrastructure reflects short term demand, or that there are other obstacles to expansion.

Moreover, approving this waiver and allowing CPU to operate in the EV charger market would create a bad precedent and has high potential for cross-subsidisation and / or discrimination. This would hinder competition and crowd out the competitive market. Any EV charger trial should only occur through a separate legal entity with the appropriate functional, and accounting

separation. This would be consistent with the initial intent of the ring-fencing framework under which the AER would only grant waivers in very limited circumstances to maintain the integrity of contestable energy markets.<sup>1</sup>

### **Cross subsidisation**

We see a risk of a risk of cross-subsidisation between CPU's primary operations and its EV charger business if the AER permits CPU's entry into this market. This is hard to avoid in large, intricate organisations with complex cost structures and with entities that operate across different parts of the energy supply chain.

CPU argues its EV charger trial won't generate regulated revenue from its customers because the costs would be recovered through a 'user pays' being the charge point operator. Consequently, they assert no cross-subsidisation from other customers will occur. While CPU intends to allocate only directly related maintenance expenses to the (EV charging infrastructure – or EVCI) for the use of its resources, the flexibility afforded to them to allocate maintenance costs may allow them to do this in a way that gives them a competitive advantage.

As a more general point, the allocation of costs among related entities is complex and there may be some merit in the AER undertaking a further review of its "Cost Allocation Guidelines" in the context of the energy transition. A competitive market will support the energy transition by delivering efficient and customer-focused service offerings, provided the regulatory framework is competitively neutral.

### **Discrimination**

Granting CPU's waiver would create an uneven playing field that disadvantages third-party EV charging providers. This is an unavoidable consequence of allowing a service provider to simultaneously offer a core service to competitive services providers, one of which is a related entity. We have heard anecdotes of third party providers facing lengthy and costly connection studies, long delays to connect, and inflated connection and network infrastructure leasing fees.

The lack of experience of CPU's procedures for addressing connection request conflicts from external entities could exacerbate these problems. CPU's data access could provide a strategic advantage by identifying profitable, high-demand locations for targeted marketing and expansion. This level of market insight would not be available to competitors, significantly hindering their ability to effectively compete in the long term. These issues should be the focus of further analysis by the AER.

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<sup>1</sup> AER Ring-fencing Guideline Fact Sheet - 30 November 2016 p. 2 " There are two specific circumstances in which we are likely to grant a waiver from legal separation obligations. First, in relation to other services provided by a DNSP that are also regulated services, whether regulated by us or by another economic regulator. Second, in relation to services that a DNSP is required by law to provide



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### **Crowding out**

AER approval of CPU's ring-fencing waiver presents substantial risks to third-party EV charging providers. The prospect of competing with a monopolistic network service provider such as CPU may discourage new market entrants and potentially displace existing providers. This expectation may also elevate debt financing costs for third-party providers due to lender apprehension. CPU, as a regulated monopoly, would undoubtedly have access to more affordable financing than the competitive third-party EV charger market.

Furthermore, CPU's waiver could foster unfair competition through other mechanisms. External third parties might face prolonged connection delays, expensive feasibility assessments, and higher access charges. Cross-subsidization of CPU's EV charging services could disadvantage competitors, giving CPU an operational edge. CPU's existing access to data regarding profitable, high-demand locations would also provide an unfair advantage, enabling its expansion at the expense of other businesses.

### **About Red and Lumo**

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, New South Wales, Queensland and South Australia and the ACT to over 1.5 million customers. Should you wish to discuss aspects or have any further enquiries regarding this submission, please call Con Noutso, Regulatory Manager, on [REDACTED].

Yours sincerely

**Geoff Hargreaves**

Manager - Regulatory Affairs

**Red Energy Pty Ltd**

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