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[redacted]

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GPO Box 520
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RE: Tesla Submission – CPU Ring-Fencing Waiver Application for Kerbside EV Charging Infrastructure

Dear Ms Jolly,

Tesla appreciates the opportunity to provide a submission to the Australian Energy Regulator's (AER) consultation on the application by CitiPower, Powercor and United Energy (CPU) for a waiver under the *Ring-fencing Guideline (Electricity Distribution)*.

We strongly support the goal of accelerating equitable access to public electric vehicle charging infrastructure (EVCI), particularly in locations underserved by current market activity. However, we do not support the waiver as proposed. We believe the trial fails to demonstrate genuine market failure, poses material risks to competition, and ultimately undermines the long-term development of a level playing field for third-party providers, a foundational principle of the ring-fencing framework.

CPU asserts that the waiver would expedite charger rollout and deliver cost efficiencies, particularly in regional and suburban areas. They further propose that the trial would yield valuable network data and insights into demand responsiveness, while relying on a "user pays" recovery model that does not draw on regulated revenues. Yet the application offers no substantiated evidence of failed market engagement, nor a transparent cost framework. In the absence of such evidence, it is unclear why CPU has not sought delivery via commercial partnerships, particularly when third-party providers are actively deploying similar infrastructure in comparable environments. If CPU's commercial case is strong, and the trial is truly user-pays and unregulated, there should be no barrier to undertaking this activity via their unregulated arm.

As the AER has rightly highlighted, the ring-fencing regime exists to prevent DNSPs from leveraging their monopoly position to gain unfair advantage in contestable markets. DNSPs benefit from control over critical infrastructure such as poles, substations and local network data, as well as preferred access to planning and scheduling processes. Without rigorous separation, these advantages can distort competitive dynamics, even if revenues are notionally unregulated.

The CPU application also appears to conflate the causes of charging under-deployment. If there is a market insufficiency, it lies not in a lack of commercial interest, but rather in DNSP-controlled barriers: limited visibility of hosting capacity, delays in connection approvals, and inconsistent or unaffordable access charges. Addressing these root causes through regulatory reform (as currently being worked on under the National Consumer Energy Resources (CER) Roadmap) is where DNSPs can most constructively support EV uptake.

Importantly, Tesla acknowledges the AER's consultative approach to this issue. Your stated focus, to assess whether CPU's involvement can deliver outcomes in the long-term interests of customers, without crowding out competition is the correct one. In that spirit, our submission outlines:

- Two case studies – a cautionary tale from Maryland and success in the Netherlands
- Why CPU has not demonstrated a compelling case for a waiver,
- The structural advantages DNSPs possess and how they risk harming emerging EV charging markets, and
- The inadequacy of CPU's cost recovery framework, and the risk of indirect cross-subsidisation.

Should the AER nonetheless proceed with a waiver, we have recommended a robust set of conditions to mitigate competitive harm, ensure cost transparency, and support future regulatory learnings.

Public EV charging is essential to Australia's decarbonisation agenda, but it must be delivered through frameworks that empower innovation and protect consumer interests. DNSPs have a vital role to play as enablers of market-led solutions. They should not be permitted to act as default providers in the absence of proven market failure.

A deployment of 100 slow kerbside chargers across Victoria's expansive CPU network area represents a fractional increase in public charging availability. According to the Electric Vehicle Council and AER figures, Australia already has well over 3,000 public chargers. Adding 100 chargers (without guarantees on high utilisation, uptime, or accessibility) will not meaningfully resolve the "chicken-and-egg" problem for EV uptake.

The AER explicitly says this trial is not a review of DNSPs' broader role. In other words, this is not the avenue to determine whether DNSPs should have a larger role in EV charging. If the AER's intention is to support broader policy development around the DNSP role in EVCI, that should occur through a systematic, future-focused reform process, not through a one-off waiver. The current Guideline sets a clear test, and CPU has not passed it.

We thank the AER for the opportunity to engage in this process and would welcome further dialogue or participation in any future workshops.

Kind regards

Tesla Energy Policy Team

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Case Study A: Maryland – A Cautionary Tale on Utility-Owned Public EV Charging

The experience in Maryland provides a concrete international example of the risks associated with regulated monopoly utilities entering the EV charging market. In 2019, the Maryland Public Service Commission authorised utility investment in EV infrastructure, including utility-owned public charging stations. Several years into the program, independent analyses by regulators and consumer advocates have revealed deeply concerning outcomes.

According to the Maryland Office of People's Counsel (OPC), more than 78% of total EV program costs—almost $40 million—went to utility-owned charging stations, yet these stations demonstrated extremely poor utilisation, often below 3%. Worse still, they generated less than 3% of their costs in revenue, creating a significant cost burden on non-EV-driving electricity customers.[1]

Performance has also been found to be unacceptable. A recent public commentary highlighted that Tesla-operated chargers in Maryland delivered 99.6% uptime, while utility-operated chargers by BGE and Delmarva Power delivered just 33% and 31% uptime, respectively.[2]

Crucially, Maryland's ratepayer advocate concluded that utility ownership of public charging stations was not in customers' interests. The OPC recommended that instead of owning chargers, utilities should support cost-minimisation solutions that enhance third-party access, reduce upgrade costs, and enable competitive delivery—particularly in underserved locations like multi-dwelling units.

This mirrors the risk profile in the current Australian context. If DNSPs like CPU are allowed to own and operate public EV infrastructure, even under a pilot, there is a strong possibility that:

- Costs will outweigh customer benefit,
- Underutilised assets will be socialised,
- Reliability and customer experience will suffer, and
- Competitive investment will be discouraged.

The Maryland experience reinforces the AER's caution and affirms the value of maintaining strict ring-fencing separation while supporting DNSPs to fulfil their legitimate roles: ensuring access, visibility, and fair connections—not owning and operating the infrastructure itself.

[1] https://content.govdelivery.com/accounts/MDOPC/bulletins/39a2744#:~:text=The%20utilities'%20EV%20pilot%20programs,customers%20pay%20for%20those%20losses.

[2] https://marylandmatters.org/2025/04/19/time-to-pull-the-plug-on-utility-run-ev-charger-program/

Case Study B: The Netherlands putting consumers in the 'driver's seat'

The Netherlands provides a compelling example of how governments and regulated entities can support public EV charging infrastructure without direct ownership, through a market-driven, on-demand model.

In this model, local municipalities act as coordinators, and distribution system operators (DSOs) focus on network access and data provision, not infrastructure ownership. Crucially, EV charging infrastructure is deployed only when and where it is needed, based on requests by EV drivers or data-driven forecasts of future demand.

A customer can apply online for a charging station near their home or work location, if they live or work in the municipality, do not have a parking lot, there is no charging station within 200 meters walking distance, they own a full electric or plug-in hybrid vehicle and as well as several other eligibility criteria.

This approach ensures that chargers are installed in response to actual usage needs, for example, where EV drivers lack access to home charging. Once a request is validated, the site is opened to competitive tender, and a private operator installs and maintains the charging station under open-access conditions.

Key outcomes of this model include:

- Avoidance of stranded assets, as chargers are only installed when there is local demand,
- Efficient capital use, as investments follow user behaviour, not forecasts,
- Preservation of competition, since the infrastructure is operated by third parties under fair and transparent processes, and
- High reliability and customer satisfaction, driven by service innovation and uptime incentives

The Dutch on-demand model stands in stark contrast to the CPU proposal, where the DNSP selects and owns infrastructure ahead of proven demand, with no competitive procurement. While CPU claims to serve underserved areas, there is no process for EV drivers or communities to formally trigger deployment — nor a requirement to prove demand before installation.

Example for the Municipality of Rotterdam: https://www.laadpaalnodig.nl/rotterdam

Response to Consultation Paper Questions

Question 1: Do you agree that CPU has demonstrated there is a market insufficiency in the kerbside EV charging market in the areas they propose to deploy the EVCI?

Tesla does not believe CPU has adequately demonstrated the existence of a genuine market insufficiency in the areas proposed. While coverage gaps persist—particularly for apartment dwellers and in some regional areas—these do not in themselves constitute market failure. CPU's application relies on assumptions drawn from EV registration data rather than evidence that private investment has been attempted and failed. There is no record of unsuccessful tenders, rejected partnership offers, or other indicators that commercial operators are unwilling or unable to enter these locations. Moreover, many of the real barriers to broader EVCI deployment—such as opaque hosting capacity data, inconsistent pole access charges, and slow DNSP-led connection processes—are within the control of DNSPs like CPU. These procedural and regulatory frictions should be addressed systemically, rather than used as justification for DNSP ownership of contestable infrastructure.

Independent international analysis reinforces the risks of DNSP ownership of EV chargers. A 2023 white paper by Grid Strategies, *Serving Customers Best: The Benefits of Competitive EV Charging Stations*, concludes that utility-owned charging networks are consistently less efficient, offer fewer customer-centric features, and introduce significant risks of cost-shifting to other consumers. The paper notes that monopoly utilities have limited incentive to innovate or optimise customer experience and that their participation in EV charging markets has generally been contrary to the public interest. These findings align with the AER's own concerns around cross-subsidisation, discrimination, and the long-term development of competitive CER markets.

Question 2: Do you agree that CPU's trial could provide customer benefits that outweigh any potential costs?

We do not consider that CPU's proposed trial delivers sufficient customer benefit to justify the waiver. The deployment of 100 chargers is not significant enough to meaningfully impact EV uptake in Victoria, particularly given the scale of the network and the number of EVs projected to enter the market over the next five years. The trial duplicates outcomes that could already be achieved through partnerships with commercial providers, particularly in terms of data gathering and infrastructure testing. In contrast, the waiver introduces material risks: it undermines competitive neutrality, creates a precedent for DNSP market entry, and may deter third-party investment by enabling a regulated monopoly to participate in contestable services under more favourable conditions. The benefits, even if realised, are modest and do not justify the erosion of the ring-fencing framework.

We believe that the trial may have a negative impact on EV charging rollout not only in Victoria, but also nationally. If approved, the waiver will signal to the market that DNSPs can obtain exemptions to directly compete with CPOs, which will create uncertainty in the long-term integratory of the regulatory framework. This uncertainty will have real world flow on effects by deterring investment in the future, raising the risk profile of CPO businesses and potentially present a barrier to access capital, particularly for projects in regions where DNSPs are rolling out.

Question 3: Are there alternative ways to address the market insufficiency identified by CPU that do not require a waiver from the Ring-fencing Guideline?

Yes, there are several effective and lower-risk alternatives that can address EVCI rollout challenges without compromising the Ring-fencing Guideline. The most impactful steps include the publication of dynamic, publicly accessible hosting capacity maps; the establishment of clear and binding service-level agreements for charger connections; and transparent, non-discriminatory pricing for pole access. In addition, targeted government grants or tenders could be used to incentivise private investment in genuinely underserved areas. These measures would reduce transaction costs, improve certainty for commercial providers, and accelerate infrastructure rollout—without enabling DNSPs to directly own or operate in competitive markets.

Question 4: Do you consider that the CPU's proposal poses a risk to competition in the EV charging market?

Yes, the proposal poses a significant risk to competition. As the monopoly network provider, CPU has enduring advantages that no private provider can replicate—such as access to proprietary network data, preferential access to pole infrastructure, and internalised costs that third-party charge point operators (CPOs) must pay. Even if CPU does not intentionally discriminate, the structural asymmetry undermines the principle of a level playing field. The risk is particularly acute in an emerging market like kerbside EV charging, where early investment decisions shape long-term competitive dynamics. DNSP participation now, even on a trial basis, will deter private capital, crowd out innovation, and entrench DNSP influence in what should be a diverse and competitive ecosystem.

Question 5: Do you consider that CPU's proposal poses a risk of cross-subsidisation of its EVCI trial?

Yes, Tesla is concerned that the risk of cross-subsidisation remains significant, despite CPU's claims that the trial will be fully funded through a "user pays" model. The application does not include detailed cost allocation data or independent verification of how staff time, vehicle use, or other shared operational costs will be attributed solely to the EVCI trial. The potential use of shareholder capital, combined with possible drawdown from innovation funds like the DMIA, creates ambiguity over how costs are tracked and whether consumers of regulated services may ultimately bear them. Without transparent cost reporting and ring-fenced accounting, there is a real risk that CPU's competitive advantage will be bolstered by indirect subsidy.

But even if DNSPs report transparently on costs, they still retain control over unexpected charges that third party CPOs are expected to routinely absorb and have done so in Victoria (i.e. night works, vegetation removal, etc). For example, costs have been completely variable, ranging anywhere between $0 to just under $300,000 for various unexpected costs that are passed on to the CPO. Given the extremely opaque pricing model the DNSPs use, comparing fairness on costs (even if disclosed) proves impossible. In our experience, these costs occur

a lot more frequently in Australia in comparison to the rest of the Asia-Pacific and are rarely contestable. As such, a trial such as the one proposed, a DNSP could simply omit chargers for itself, creating the artificial cost advantage referred to throughout, that private operators could not match and would not be visible to the AER.

Question 6: Are there any specific aspects of CPU's proposal that raise particular concerns for you, if a waiver were granted?

There are several aspects of the proposal that raise concern. First, the proposed duration of the trial (extending to mid-2031) is excessively long and unjustified for a deployment of just 100 chargers. A trial of this scale could reasonably be executed, evaluated, and sunsetted within 18 – 24 months. Second, the proposal lacks a clear and enforceable exit plan should CPU not continue in the market, including how assets would be divested, transferred, or decommissioned. Third, the site selection process appears subjective and opaque, with insufficient evidence that CPU will avoid high-demand locations where commercial providers may already be planning investment. Lastly, there is no clear mechanism to benchmark CPU's connection processes against third-party experiences, which increases the risk of discriminatory delay.

Question 7: What information or data would you like CPU to provide to better justify the waiver?

To support a more informed evaluation of the waiver application, CPU should provide evidence of attempted and failed third-party engagement, such as tenders, partnerships, or government funding bids. It should also supply site-level financial modelling, including expected capital and operating costs, forecast utilisation rates, and projected returns. CPU should disclose detailed criteria for site selection, engagement protocols with councils or governments, and comparative analysis of its delivery costs versus those of private operators. In the absence of this data, the claimed benefits of the trial cannot be meaningfully tested against the potential risks.

Question 8: What are your views on the potential for CPU to discriminate against third-party EV charging service providers?

Tesla views the risk of discrimination as both real and significant. Even if unintentional, DNSPs have the ability to influence connection timing, cost, and viability through control over pole access, approvals, and internal resourcing. Without mandated transparency and performance benchmarking, there is little recourse for third parties that may face unjustified delays or rejections. The use of internal staff and infrastructure by CPU, coupled with a lack of parity in data access and pricing, further compounds this risk. Functional separation requirements alone are insufficient in practice to prevent subtle but impactful forms of competitive discrimination.

Question 9: Would the conditions above be fit for purpose, if a waiver is granted? Which are higher or lower priority?

While the AER's proposed conditions are helpful, we do not believe that any set of conditions in this circumstance can neutralise the inherent power imbalance. In cases where a market insufficiency has been clearly demonstrated, this may not be impactful enough to outweigh benefits of a waiver. However, as previously mentioned that threshold has not been met.

The advantages a DNSP holds as a monopoly provider of distribution services (pole access, scheduling works, network data and connection approvals) cannot be separated from their role even with proposed conditions by the AER. The fundamental asymmetry is the reason ring-fencing rules and guidelines exist in the first place. In our view, the conditions would not be fit for purpose and the only way to preserve the integrity of the competitive market is to not approve the waiver.

Question 10: What other conditions should be placed on the waiver, if granted, to prevent discrimination or to preserve fair market competition, and maximise the benefits from the trial?

If a waiver is to be granted, the highest priority should be placed on transparent site selection, enforceable non-discrimination measures (including connection benchmarks), and strict cost allocation rules with independent auditing. The requirement to publish operational data, including uptime, utilisation, and customer access metrics, is also critical. Lower-priority conditions might include cybersecurity requirements and general tendering processes, which are important but secondary to preserving competitive neutrality and transparency.

Tesla also recommends several additional conditions. These include: capping the waiver at 18 - 24 months with no automatic extension; mandating the publication of real-time hosting capacity maps accessible via open API; requiring an independent audit of CPU's interactions with unaffiliated CPOs; prohibiting the inclusion of any trial-related costs in the RAB under any circumstances; and creating a formal process for competitive transfer or retirement of trial assets at the conclusion of the project. These conditions are necessary to prevent distortions, enable effective oversight, and ensure that the trial, if allowed to proceed, contributes meaningfully to industry development without entrenching DNSP dominance.

Question 11: What data should CPU share as a minimum and are there specific metrics that should be used – for example, specific metrics for measuring connection times?

At a minimum, CPU should publicly report site-level data on capital expenditure, annual operating costs, charger utilisation (sessions per day, average kWh per session), charger uptime, outage frequency and duration, and maintenance response times. It should also report on network impacts such as voltage deviations and transformer loading where applicable. Importantly, CPU must publish full connection timeframes: from application to approval, and from approval to energisation, disaggregated by site. This analysis should be published accompanied by comparative connection timeframes achieved by private industry and if there are discrepancies, CPU should be compelled to provide reasoning. These metrics will allow

regulators, competitors, and the public to benchmark DNSP performance and ensure the trial is not used to unfairly advantage CPU's infrastructure over third-party offerings.