24-28 Campbell St
Sydney NSW 2000
All mail to
GPO Box 4009
Sydney NSW 2001
T 13 13 65
ausgrid.com.au

19 January 2026

Dr Kris Funston
Executive General Manager
Australian Energy Regulator

Submitted via email: vic2026@aer.gov.au

Dear Dr Funston

AER's draft decisions on Victorian electricity distribution determinations 2026-31 and DNSPs' revised proposals

Ausgrid is pleased to provide this submission on the consultation on the Australian Energy Regulator's (**AER**) draft decisions on Victorian electricity distribution determinations for 2026-31 (**draft decisions**) and the revised proposals submitted by these Distribution Network Service Providers (**DNSPs**) (**revised proposals**). Ausgrid operates a shared electricity network that powers over 4 million Australians living and working in an over 22,000 km^2 area from Sydney's CBD to the Upper Hunter in NSW.

Ausgrid has considered the AER's draft decisions and while there are several areas of concern, we only comment on two specific issues in this submission. This is because they relate to the fundamental principles of the regulatory framework and because they may have wider implications. The first is the AER's treatment of insurance operational expenditure (**opex**) out-performance under the Efficiency Benefit Sharing Scheme (**EBSS**) and the second is the AER's updated classification of the rental of distribution assets to third parties for installing electric vehicle (**EV**) chargers as a negotiated distribution service.

Our submission makes the following key points:

- **Amending the insurance opex allowances of the Victorian DNSPs retrospectively raises important questions about the integrity of the ex-ante incentive framework that the AER administers.** Such amendments engender regulatory uncertainty for all DNSPs across broader expenditure areas, with potential implications for the effectiveness of incentives to promote efficient cost management and longer-term consumer outcomes.
- **Classifying distribution asset rental for EV charging as a negotiated distribution service for the Victorian DNSPs warrants careful consideration.** Applying this new service classification approach would create an overlap between mutually exclusive service classifications (negotiated distribution services and unregulated services) for similar distribution asset rental services for different technologies (EV charging and telecommunications). Further, the AER should clarify how this new service classification would be operationalised under ring-fencing arrangements which do not allow related electricity service providers (**RESP**) to deliver negotiated distribution services.

We have provided further information on our response in **Appendix A**. Please contact Tom Clark, Senior Regulatory Advisor, via [redacted] should you wish to discuss our submission further.

Regards,

[redacted]

Timothy Jarratt

Group Executive, External Affairs & Strategy

Appendix A: Ausgrid's response to Draft Decisions and Revised Proposals

Treatment of insurance opex out-performance

Ausgrid position: The AER's draft decisions raise important questions about the integrity of the ex-ante incentive framework. In particular, if confidence in the stability of ex-ante incentives is undermined, this may increase regulatory uncertainty for DNSPs more broadly, with potential implications for incentives to pursue efficiency initiatives and, ultimately, consumer outcomes.

In the draft decisions the AER has made revenue adjustments to address a material difference between the approved allowance for insurance opex and the (lower) actual expenditure for the 2021-2026 regulatory period. As described by the Victorian DNSPs' legal advisor, the AER has taken a three-step process to make this amendment in its draft decision:[1]

1. *a non-recurrent cost adjustment included in base year opex, which increases each of the Victorian DNSPs' opex allowances in each year of the 2026 – 2031 RCP (referred to by the AER as a 'base year non-recurrent efficiency gain'), which it says is in an amount equal to the DNSP's underspend on insurance premiums in the base year (e.g. insurance premiums forecast in the base year less actual insurance premiums in that year);*
2. *a negative step change adjustment, calculated as the difference between the premium allowance and actual premium in the final year, that decreases each of the Victorian DNSPs' opex allowances in each year of the 2026 – 2031 RCP; and*
3. *an adjustment to the calculation of the EBSS carryover amounts arising from the application of the EBSS during the 2021 – 2026 RCP, to reflect the non-recurrent efficiency gain adjustment made to base year opex in forecasting opex for the 2026 – 2031 RCP.*

Taken together, the AER's three-step process leads to a lower opex allowance in the 2026-31 regulatory period and returns all out-performance from the previous period to consumers (while the DNSPs keep the time value of money).

The AER justifies this decision by identifying that the efficiency gain has been driven by market factors outside the control of the Victorian DNSPs (rather than actions by the businesses) and that this level of expenditure will be not sustained into the future. At the same time, the AER does not acknowledge the prudent expenditure and mitigation strategies taken by the business to limit their insurance liability. For instance, the businesses changed their coverage limits for bushfire liability following detailed risk modelling and actively tested the insurance market.

Our concern is that the adjustments made by the AER amount to an ex-post 'clawback' of insurance premium out-performance from the previous period. More significantly, Ausgrid is concerned about the implications of this approach for the integrity and effectiveness of the ex-ante incentive regime more broadly.

The AER's previous decision that the ex-ante regime would apply for insurance opex allowances

During the 2021-26 revenue determination process, the Victorian DNSPs proposed to include both an insurance opex step change and insurance premium nominated cost pass through event. This strategy sought to manage the uncertainty in relation to bushfire risk and the cost impact on insurance premiums through the cost pass through mechanism in the National Electricity Rules (**NER**).

When deliberating on its final decisions in 2021, the AER considered:

[1] Jemena, *Revised Proposal 2026-31 - Attachment 06-06 John Middleton Legal Opinion for Victorian DNSP Insurance Opex*, 1 December 2025, p 1-2.

- the feasibility of estimating the prudent and efficient insurance premiums over the coming regulatory period, given the level of uncertainty of what would be required; and
- whether these costs should be recovered through a step change or the cost pass through mechanism.

The AER explicitly elected to reject the nominated cost pass through event and approve the step change because:

> *We consider on balance that the long term interests of consumers is better served if the appropriate incentives remain with the businesses to actively work to moderate expected increases in insurance premiums over the next regulatory control period.*[2]

By taking that position, the AER made clear that:

- the insurance premiums represented an ongoing cost (irrespective of the forecast uncertainty); and
- the cost should be managed actively by the businesses by way of the ex-ante incentive regime, rather than passively managed through the cost pass through mechanism.

The Victorian DNSPs then operated on the basis of this decision for the 2021-26 regulatory period. Ausgrid considers that it is unreasonable that the DNSPs should now be subject to another standard.

The integrity of the ex-ante incentive framework and regulatory uncertainty

The ex-ante incentive framework operates to allocate effectively to deliver efficient outcomes for consumers. A predictable framework allows network businesses to make investments and operational decisions to improve efficiency and drive better outcomes over each five year regulatory period.

As discussed above, the AER elected to apply the ex-ante incentive framework for insurance opex and *not* to apply a mechanism to manage uncertainty in the insurance opex forecast by using a nominated pass through event. The Victorian DNSPs were not guaranteed to recover their actual opex costs for the previous regulatory period and operated under the expectation that they would be assessed against to their forecast opex allowances. This meant that they were incentivised to deliver against that allowance and retain a share of the efficiency benefits achieved. It also meant that if the costs were higher than anticipated, they would face a share of the penalty.

The AER's draft decision instead effectively mimics a cost-of-service regime by implementing a "negative pass through" and in doing so is retrospectively amending a past decision. This raises the question for all DNSPs as to whether the AER will make ex-post amendments in relation to out-performance of any other expenditure allowance. The effectiveness of the ex-ante incentive regime requires industry confidence that efficiency rewards and penalties will be applied according to the regulatory framework.

Ausgrid encourages the AER to weigh up the regulatory uncertainty that this draft decision engenders and whether it is ultimately in the best interests of consumers. More broadly, we encourage the AER to consider the wider findings put by the Victorian DNSPs' legal and economic advisors, the Hon. John Middleton AM KC (DLA Piper) and Brendan Quach (HoustonKemp), regarding whether the decision is permissible and consistent with good regulatory practice.[3]

---

[2] AER, Final decision, AusNet Services 2021–26 - Attachment 6: Operating expenditure, April 2021, p 53.

[3] Jemena, *Revised Proposal 2026-31 - Attachment 06-06 John Middleton Legal Opinion for Victorian DNSP Insurance Opex*, 1 December 2025; *Revised Proposal 2026-31 - Attachment 06-07 HoustonKemp Victorian DNSP insurance premiums*, 1 December 2025.

Classification of the rental of distribution assets to third parties for installing EV chargers

Ausgrid position: The AER's draft decision to classify distribution asset rental for EV charging as a negotiated distribution service in Victoria warrants careful consideration. The shared asset facilitation framework is operating efficiently for this purpose for Ausgrid and it provides material financial benefits to our broader customer base. Applying this new approach would lead to overlapping frameworks for similar services, and it is also not clear how negotiated distribution services could be delivered by a RESP.

In its draft decision, the AER observed a change in circumstances related to distribution asset rental services to third-parties to host EV charging infrastructure (**EVCI**). In its judgment, the AER saw this as sufficiently material to warrant a departure from the service classification previously adopted in the Framework and Approach published for the Victorian DNSPs in July 2024. In its draft decision, the AER notes EVCI proponents in Victoria have raised concerns regarding the variability, transparency and fairness of access pricing and other terms of pole rental.

The AER's draft decision is to classify a new negotiated distribution service:[4]

> *Distribution asset rental: Rental of distribution assets (e.g. poles) to third parties for the installation of electric vehicle (EV) chargers or associated hardware.*

In Victoria, leasing of access to shared distribution assets for alternative purposes, like affixing EVCI or telecommunication technology, has been an unregulated service. The AER views the unregulated classification as no longer appropriate for EVCI because kerbside EV chargers are attractive for commercial applications, but distribution poles are a monopoly asset.

The shared asset facilitation framework is operating efficiently for Ausgrid and provides material benefits to our broader customer base

Ausgrid currently leases access to our distribution network assets for secondary purposes not regulated under the NER, consistent with the AER's Shared Asset Guidelines. The facilitation of shared assets operates as a standard control service and generates unregulated revenues above our revenue cap. It enables Ausgrid to provide access to our shared assets for other important infrastructure such as fibre optic cable, 5G modules and EV charging.

To date, Ausgrid has leased access to our assets for 285 pole-mounted kerbside EV chargers and 30 kiosk-mounted charging stations. This is around half of all kerbside EV chargers installed in NSW. The NSW Government's Electric Vehicle Kerbside Charging Grants have been the key driver of installing kerbside chargers in NSW, rather than the commercial market. A further 66 kerbside EV chargers are already licensed to be built on Ausgrid assets under Round 2 of the NSW Government's grants program. The full outcomes of Round 2, with figures for how many additional EV chargers will be funded, is due to be published by the NSW Government in early 2026. We have worked productively with EVCI providers. Pole rental fees have been negotiated with EVCI providers as an unregulated service in the same standard way as we do for telecommunications and other infrastructure hosted on our assets.

The shared asset facilitation framework provides financial benefits to Ausgrid's broader customer base. Under the framework, where unregulated revenues earned from the shared asset facilitation exceed 1% of annual regulated revenues from standard control services, a cost reduction equal to 10% of the unregulated revenues is provided to customers. Ausgrid will return around $15.7m (real FY24) over the 2024-29 regulatory period to customers through lower network tariffs from unregulated services for pole and duct rental for telecommunications and EVCI. We would expect the amount of revenue from pole rental for EVCI

[4] AER, *Draft decision AusNet Services, Jemena, CitiPower, Powercor and United Energy electricity distribution determinations 1 July 2026 – 30 June 2031 Attachment 11 – Service classification*, September 2025, p 4.

to grow over time in line with continued interest in kerbside charging technology, but the related financial benefit to customers under the shared asset framework would be lost under a negotiated services approach.

The service classification approach will lead to overlapping frameworks for similar services

The AER has elected to make a narrow service classification for EV charging and related infrastructure rather than for distribution asset rental generally. At a principle level, this is at odds with the AER's classification approach to classify services in groupings rather than individually.[5]

The proposed service classification creates a situation where mutually exclusive frameworks (negotiated services and shared asset facilitation of unregulated services) will be applied in a way that directly overlaps. For instance, the access to a single distribution pole could be rented to one third-party to install an EV charger and to another third-party to install a 5G module, yet the classification, and therefore applicable frameworks, of these services would be different. In this case, the former service would have revenues determined through the Negotiating Framework, while the latter would be unregulated. It is not clear why they should be treated differently when it is the same service.

It is unclear how the new negotiated distribution service classification would operate under the current ring-fencing guidelines

The AER noted that when applying the negotiated distribution service classification for distribution asset rental that there would be no change from a ring-fencing perspective.[6] This implies that the service would need to be provided by a RESP that would be functionally separated from the DNSP, as negotiated distribution services could only be provided by DNSP with a ring-fencing waiver under the AER's Ring-fencing Guideline Electricity Distribution.

The implementation of this arrangement (without using a ring-fencing waiver) needs to be clarified considering at least two complicating issues. First, Ausgrid agrees with Jemena that the AER should identify how this arrangement will operate when the Negotiating Framework applies to the DNSP (not the RESP) and the DNSP's negotiations with the Service Provider.[7]

Second, the AER should outline how the functional separation would be operationalised. Currently, Ausgrid does not have a RESP to provide activities related to shared asset facilitation because these are classified as a standard control service. Shared asset facilitation refers to administrative costs of providing the unregulated service of renting access to distribution assets. If classified as a negotiated distribution service, the RESP may require information held by the DNSP related to the shared network assets to deliver the services. This would require new information sharing arrangements with the RESP and permission for physical access may be needed. In Ausgrid's case, it would also mean that staff that are currently funded under standard control services, and who undertake negotiations for distribution asset rent for EV chargers, would need to be reassigned to a RESP which would create inefficiencies.

[5] AER, *Electricity Distribution Service Classification Guideline*, August 2022, p 5.

[6] AER, *Draft decision AusNet Services, Jemena, CitiPower, Powercor and United Energy electricity distribution determinations 1 July 2026 – 30 June 2031 Attachment 11 – Service classification*, September 2025, p 5.

[7] Jemena, Revised Proposal 2026-31, 1 December 2025, p 25.