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Essential Energy ring-fencing waiver application for EV charging infrastructure

AGL Energy (AGL) welcomes the opportunity to comment on the Australian Energy Regulator's consultation on Essential Energy's ring-fencing waiver application to support its proposed ARENA-funded Plug and Play electric vehicle charging infrastructure trial.

Overview

AGL does not support Essential Energy's ring-fencing waiver application as proposed. The waiver relates to Stream 2 of its ARENA-funded Plug and Play trial, under which Essential Energy would own, install, maintain and lease 300 EV chargers embedded in composite streetlight and distribution poles in regional NSW. The concern is that Stream 2 would give a regulated monopoly business ownership and control of infrastructure used to provide contestable EV charging services, including site selection, infrastructure access, maintenance and leasing arrangements.

ARENA grant funding, shareholder funding and no RAB recovery reduce some risks, but do not resolve the ring-fencing concern. If any waiver is granted, it should be narrow, time-limited, include open and non-discriminatory access arrangements, and be subject to enforceable conditions. Regional EV charging should be supported through DNSP enablement and market-led deployment, not expanded DNSP ownership. Competition is the primary mechanism for delivering efficient investment, innovation and better outcomes for EV drivers and energy customers, while helping minimise unnecessary costs that may ultimately be borne by consumers.

Essential Energy has not demonstrated that DNSP ownership is necessary

The waiver application is a material intervention in a contestable market and should only be granted where there is clear evidence that DNSP ownership is necessary and proportionate. AGL accepts that Essential Energy has identified challenges associated with regional kerbside EV charging deployment, including low utilisation, higher delivery costs, connection complexity and uncertainty regarding future demand. However, barriers to deployment do not automatically establish that DNSP ownership and leasing of charging infrastructure is required.

Many of the issues identified in the application relate to network information, pole suitability, site enablement, connection processes, metering and coordination between councils, CPOs and other market participants. These are areas where DNSPs can play an important enabling role without owning charging assets. DNSP enablement, rather than DNSP ownership, is the appropriate role for a regulated monopoly business in supporting EV charging deployment.

The proposed two-stream trial reinforces this distinction. Stream 1 tests whether reducing site-selection and connection barriers for third-party providers is sufficient to stimulate market participation without Essential Energy owning chargers. That is directly relevant to whether DNSP ownership and leasing under Stream 2 is necessary and proportionate.

Stream 1 also raises a broader question about the role of public funding. If the objective is to support third-party deployment, AGL considers there should be a strong preference for directing public funding to market participants rather than channelling that funding through a DSNP-led deployment model.

The fact that Stream 2 would be funded through ARENA and shareholder funding, rather than the RAB, reduces some risks but does not resolve the ownership question. Even without regulated network funding, DNSP ownership can influence market development through control of sites, infrastructure access, maintenance and leasing arrangements. Essential Energy should demonstrate not only that deployment barriers exist, but why less intrusive models would be insufficient and what ownership under Stream 2 would deliver that a market-led approach cannot. On the material provided, that case has not been made.

The waiver risks extending DNSP roles in contestable EV charging markets

AGL is concerned by the increasing expansion of DNSP roles beyond traditional monopoly network services and into contestable markets, including EV charging, community batteries and other consumer energy resources. This trend is evident in a growing number of ring-fencing waiver applications and reform proposals. These developments may support aspects of the energy transition in the short term, but they risk increasing long-term costs and limiting the benefits of competition for consumers. Preserving clear boundaries between monopoly network services and contestable markets helps ensure customers benefit from competitive pressure to deliver efficient services, innovative products and lower overall costs.

EV charging does not have natural monopoly characteristics. It is a contestable service in which providers compete through price, location, reliability, charging speed, payment options and customer experience. Competition between providers is what drives better service quality, greater innovation and more efficient outcomes for customers.

Competitive discipline is undermined where a regulated monopoly participates using advantages that exist only because of its monopoly position, including access to poles, network information, connection processes, maintenance capability, field resources and local relationships. These are not efficiencies earned in the EV charging market and should not be leveraged in a contestable market.

The risk is not limited to the sites covered by the waiver. Each intervention can create precedent, raise barriers to entry and weaken incentives for private businesses to invest in new products, services and business models. Consumer harm may not always be immediately visible. It can appear as investment not made, competitors not entering, products not developed, innovation that does not occur and reduced competitive pressure to improve services and lower costs. Over time, these effects can leave customers with fewer choices and poorer outcomes than would otherwise occur in a competitive market.

The fact that the waiver is framed as a trial does not remove these risks. Temporary DNSP participation can still influence investment decisions, establish early site control and shape expectations about future interventions.

The proposed leasing model does not remove competition risks

Essential Energy proposes to lease the EV charging infrastructure to third-party CPOs rather than provide retail charging services itself. That model may reduce some competition concerns, but it does not remove them.

The central concern remains that Essential Energy would still own and control infrastructure used to provide contestable EV charging services. Essential Energy would control site access, maintenance, timing, bundling and leasing arrangements.

ARENA funding, shareholder funding, cost allocation, lease charges, benchmarking, transparent tendering and non-discriminatory access are relevant safeguards. However, they do not remove the risk that monopoly-derived advantages could influence outcomes in a contestable market.

For example, differences in information, timing, site bundling, maintenance response or access conditions could affect competition between CPOs, even where decisions are made transparently and in good faith.

The proposed leasing model may affect how the service is operated, but it does not remove the competition risks created by DNSP ownership and control of the infrastructure.

Pole replacement should not determine EV charging site selection

Essential Energy proposes that Stream 2 chargers would be installed only where composite poles are being replaced at end-of-life. While this may reduce overlap with some commercially attractive sites, asset replacement programs optimise network replacement and safety outcomes, not public EV charging locations.

Charging infrastructure should be located based on driver demand, accessibility, safety, amenity, reliability and likely utilisation. A technically convenient network location may still be a poor charging location if it is inconvenient or not aligned with driver behaviour.

Low utilisation at network-selected sites should not be treated as evidence that market-led deployment has failed.

CPOs and retailers need scope to differentiate through location, pricing, customer experience, charging speed and integration with broader energy offers. A model where charger locations are selected and controlled by the DNSP may reduce opportunities for competitors to differentiate and increase reliance on DNSP-controlled sites.

A waiver to 2033 goes beyond what is needed for the proposed trial

AGL acknowledges Essential Energy’s explanation that the proposed waiver period is intended to support deployment, operation, data collection, reporting, knowledge sharing and future regulatory consideration. However, the consultation paper notes that ARENA’s estimated end date for the Plug and Play trial is 31 October 2028, while Essential Energy seeks a waiver to 30 June 2033. That period would extend well beyond deployment and initial observation.

The trial should not create a default pathway for Essential Energy to retain ownership and control of contestable charging infrastructure until 2033. If a waiver is granted, the AER should require an earlier review and a clear transition pathway.

In AGL's view, any waiver should require an independent review by 31 December 2028, with Essential Energy required to commence a transfer, divestment or novation process by 30 June 2029. Ownership and control of the chargers should be transferred out of DNSP hands by 31 December 2029 unless the AER is satisfied that a short extension is strictly necessary to protect consumers or complete an orderly transfer.

Any waiver should be tightly confined and subject to enforceable conditions

AGL does not support the waiver being granted as proposed. If the AER is minded to grant any waiver, it should be tightly confined, time-limited and subject to enforceable conditions that prevent ongoing DNSP ownership and control.

At a minimum, the AER should require transparent market testing for each Stream 2 site, open and non-discriminatory access, no preferential treatment for any related entity or individual CPO, and objective criteria for identifying active commercial intent.

The AER should also require clear separation between regulated network activities and contestable charging infrastructure activities, including transparent cost allocation, auditable records, published site criteria, transparent tender outcomes, lease terms and reporting on CPO and council interactions.

Reporting should cover deployment, site selection, tender participation, utilisation, reliability, maintenance, costs, access terms, lease revenues and whether the trial has enabled or displaced CPO-led deployment. The AER should also require an exit pathway that prevents a permanent DNSP-owned charging platform.

Conclusion

Essential Energy has not demonstrated that the waiver is necessary or proportionate, or that DNSP ownership and leasing would deliver benefits that outweigh the competition impacts. In AGL's view, protecting competition in emerging EV charging markets is important because it supports efficient investment, innovation and better long-term outcomes for energy customers and EV drivers. Until Stream 1 has tested whether reducing deployment barriers can support market-led investment, the case for ownership under Stream 2 remains unproven.

For these reasons, the AER should refuse the waiver as proposed. If the AER does not refuse the waiver, any approval should be narrow, time-limited, include open and non-discriminatory access arrangements, and require transparent site selection, no practical exclusivity, no regulated cost recovery, and a clear pathway out of DNSP ownership.

If you have any questions about this submission, please contact Anton King at
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Yours sincerely,

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