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Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

By electronic lodgement:

AER Consultation Paper. Essential Energy Ring-Fencing Waiver for EV Charging Infrastructure Trial.

The Clean Energy Council (CEC) welcomes the opportunity to provide input on the Australian Energy Regulator's (AER) consultation regarding Essential Energy's application for a ring-fencing waiver to support its proposed EV charging infrastructure trial in regional New South Wales.

Executive Summary

The CEC recognises both the importance of accelerating EV charging availability in regional and remote areas and the potential value of generating shared learnings to inform future regulatory and market development. The Essential Energy proposal speaks to a persistent policy challenge: *how to facilitate infrastructure deployment in areas where commercial incentives alone have not yet delivered effective consumer outcomes.*

However, the CEC emphasises that any waiver from ring-fencing obligations must be tightly scoped, evidence based and accompanied by strong safeguards. The AER's approach in the CitiPower, Powercor and United Energy (CPU) decision provides a relevant and appropriate precedent. In that case, the AER permitted a limited trial while imposing conditions to protect competition, ensure transparency and maximise public value from the trial's outputs.

Our submission adopts a similar framework. We consider that Essential Energy's proposal contains several strengths, particularly its focus on regional markets and its two-stream design, which provides a structured way to test whether DNSP led intervention is required.

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At the same time, the proposal raises important risks relating to competitive neutrality, cross subsidisation and the potential to deter private investment. The CEC therefore accepts a waiver only where it is conditioned to ensure that it targets genuine market gaps, maintains a level playing field, and generates transparent and publicly accessible evidence to inform future decisions.

Responses to Consultation Questions

Question 1

"Essential Energy states its trial aims to test whether a DNSP-led kerbside EV charging infrastructure roll-out, leveraging its existing maintenance staff and composite pole assets, can benefit the EV charging market in regional NSW. What are your views on the proposed trial design, its stated objectives, and its alignment with the NEO (i.e. promoting the long-term interest of customers)? Please provide examples or evidence to support your view."

The CEC considers that the proposed trial has the potential to support the National Electricity Objective, particularly by improving access to services and supporting efficient investment in regions where commercial deployment is limited. The focus on underserved regional and remote communities aligns with the long-term interests of consumers, particularly in addressing inequities in current access to EV charging infrastructure.

The trial's two stream design is a notable strength. By testing both the impact of enabling third party deployment and the role of DNSP led infrastructure, the proposal directly addresses the question of whether market barriers can be resolved without ongoing DNSP involvement. This reflects a more evidence based approach to intervention.

That said, the contribution to the NEO depends heavily on the trial remaining tightly targeted. Without clear boundaries, there is a risk that DNSP involvement could displace efficient private investment or distort emerging market dynamics.

Question 2

"What are your views on the practical insights and learnings that Essential Energy states can be gained – which include learnings on EV purchasing behaviours and

adoption, infrastructure utilisation, and conditions required for commercially viable market delivery in regional areas. Do you agree these learnings are beneficial for the industry and customers? Why or why not?"

The CEC agrees that the proposed learnings would be valuable for both industry and consumers. There is still a limited evidence base on EV charging demand and utilisation in regional contexts, and improved data in this area would support better network planning and public charging infrastructure policy design.

However, the value of these insights depends on how they are generated and shared. It is important that the trial is designed with clearly defined learning objectives, consistent data collection methodologies and a commitment to transparent reporting. Without these elements, the trial risks producing insights that are not sufficiently robust or broadly useful.

In line with consumer perspectives articulated in previous processes, the CEC considers that data derived from DNSP led trials should be treated as a public good and made widely accessible.

Question 3

"What are your views on Essential Energy's statement that its two stream trial (for which this waiver would enable 'stream 2') represents a 'controlled comparison to assess whether infrastructure enablement alone is sufficient, or whether targeted shared infrastructure is required to overcome coordination constraints in a persistently thin market'?"

The CEC supports the principle of a controlled comparison. This approach allows for a structured assessment of whether DNSP intervention is necessary or whether improved market enablement is sufficient to deliver outcomes. This is an appropriate and proportionate way to test the presence of market failure. It avoids presupposing a role for DNSPs and instead focuses on generating evidence.

The effectiveness of this approach will depend on ensuring that both streams of the trial are implemented and evaluated in a consistent and transparent manner, allowing for meaningful comparison and credible conclusions.

Question 4

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“What are your views on the proposed cost recovery method for the trial, which involves Essential Energy recovering its full costs, benchmarked against market rates, from the charge point operator that leases its EV charging infrastructure? Do you believe there are potential risks of cross subsidisation under this model?”

The proposed cost recovery model is appropriate in principle for the trial, particularly given the commitment to full cost recovery and benchmarking against market rates. These elements are consistent with approaches previously accepted by the AER.

However, the CEC considers that risks of cross-subsidisation cannot be dismissed. Benchmarking processes may lack transparency, and there may be inherent advantages associated with DNSP ownership of infrastructure and access to internal capabilities.

To address these risks, there should be clear requirements for transparency in cost allocation, supported by independent audit and reporting. The CEC acknowledges that benchmarking against market rates may be challenging in practice where comparable commercial arrangements are not publicly available. Accordingly, any cost recovery framework should be accompanied by sufficient transparency to demonstrate that charges are reasonable, cost reflective and consistent with the objectives of the trial.

The CEC also considers that competitive neutrality could be assessed for this specific application through outcomes rather than requiring identical commercial arrangements in all circumstances. The key safeguards are that costs are transparently allocated, trial activities remain separated from regulated revenue, no costs are recovered from regulated customers, and appropriate reporting and audit arrangements are in place. These measures would help ensure that DNSP involvement does not confer an undue advantage or result in cross-subsidisation.

Question 5

“Essential Energy states it intends to offer sites or ‘site bundles’ to eligible providers who would be assessed against a set of selection criteria (including capability, delivery approach, and alignment with trial objectives). What are your views on the proposed procurement / tendering process for making sites and ‘site bundles’ available to third party charge point operators to operate the chargers? To what extent might there be potential discrimination or competition concerns associated with the proposed process, and how might these be addressed?”

The proposed procurement framework is a sensible starting point, but it must be accompanied by strong safeguards to address potential risks of discrimination.

Given the DNSP's control over essential infrastructure, there is an inherent risk that procurement processes could favour particular operators or create indirect barriers to participation. These risks are particularly relevant in emerging markets where investment confidence is sensitive to perceived fairness and transparency.

The CEC considers that procurement processes should be clearly defined, publicly documented and subject to transparent evaluation criteria. The outcomes of tender processes should also be reported in a manner that demonstrates that the market has been genuinely tested and that selection decisions are consistent with the stated objectives.

Question 6

"What are your views on Essential Energy's proposed method of selecting the composite poles for installing its EV chargers – that is, for the chargers to be sited in locations where composite poles are being replaced as part of its asset replacement program?"

Aligning charger deployment with asset replacement programs is likely to reduce upfront costs and improve delivery efficiency. This is a practical and potentially beneficial aspect of the proposal.

However, this approach should not be the sole determinant of site selection. There is a risk that deployment could occur in locations that do not reflect underlying demand or where commercial deployment may otherwise have been viable.

To mitigate this risk, the methodology for site selection should be transparent and supported by the evidence that the chosen locations represent areas of unmet need and most importantly are unlikely to be served by the market.

Question 7

"What do you think the impact of Essential Energy's trial on market competition might be, given its trial will be contained to remote NSW within its distribution area? Do you believe the mitigations that Essential Energy has proposed (i.e. targeting unmet need,

not reserving sites with commercial plans, and prioritising facilitation of third party connections) will avoid harm to competition?"

The CEC considers that the trial presents identifiable competition risks, even within a regional and relatively small scale context. These risks include the potential for preferential treatment, information advantages and the impacts on investor confidence.

The mitigations proposed by Essential Energy are appropriate and do go some way toward addressing these concerns. However, they should be reinforced through enforceable conditions, including transparency requirements and ongoing reporting.

On balance, the CEC considers that the risks to competition can be managed if the trial remains tightly scoped and subject to robust oversight.

Question 8

"What are your views on Essential Energy's contention that public EV charging in regional and remote areas is underdeveloped?"

The CEC broadly agrees that EV charging infrastructure in regional and remote areas remains underdeveloped relative to metropolitan markets. Factors such as lower utilisation, higher capital costs and operational challenges contribute to this outcome.

However, it is important that this assessment is supported by robust evidence. It is also necessary to distinguish between genuine market failure and the barriers that may arise from regulatory or network processes.

Question 9

"What are your views on the proposed model, with third party ownership and operation of DNSP-owned, embedded EV charging infrastructure assets? What are your views on the potential role of this business model in the EV charging market?"

The proposed model represents a legitimate approach to testing alternative market structures. It has the potential to combine the operational efficiencies of DNSPs with competitive delivery of customer facing services.

However, the CEC emphasises that this model should be tested on a trial basis and not assumed to be the preferred long term outcome. Its appropriateness will depend on the evidence generated regarding costs, performance and competition impacts.

Other methods for addressing the viability gap, such as concessional rebates to market providers of EVCI in the same place, are also plausible.

Question 10

“What are your views on the proposed waiver duration of up to 30 June 2033 (approx. 7 years), which is beyond the ARENA funding agreement end date of July 2028? Essential Energy states this is to facilitate time for full infrastructure deployment, a meaningful period of operation and data collection, and reporting and knowledge-sharing of trial learnings.”

The proposed duration appears longer than necessary to achieve the stated objectives. While there is merit in allowing sufficient time for deployment, operation and data collection, an extended waiver risks entrenching DNSP involvement beyond what is required for a trial.

The CEC acknowledges Essential Energy's view that infrastructure deployment may not be completed until close to the end of the ARENA funding period and that a longer operating period may be necessary to assess impacts on EV adoption and market development in regional and remote communities, where uptake is likely to occur more slowly than in metropolitan areas.

However, the CEC considers that a shorter initial duration, aligned with the core trial period, would be more appropriate. Any extension should be contingent on demonstrated outcomes, publication of interim learnings, and a clear case for continued intervention. There is no specific consumer advantage in either alignment with a regulatory period or unnecessarily prolonged DNSP participation. We reiterate that for the CPU trial, a period of approximately 5.5 to 6 years was considered sufficient for deployment and meaningful operational data collection.

If the AER determines that a longer waiver period is warranted because they accept Essentials view that longer operating period may be necessary to assess impacts on EV adoption and market development in regional and remote communities, it should also consider incorporating a formal mid-term review to assess whether the trial remains consistent with its objectives and whether ongoing DNSP involvement continues to be justified

Question 11

"What are your views on the information, data and learnings that Essential Energy's trial should generate and share to support broader industry development and inform future policy and regulatory decisions? If the waiver is granted, are there particular reporting requirements or waiver conditions the AER should impose—for example, on charger installation and deployment progress, site selection criteria, tender outcomes, and the format and frequency of commercial, technical and performance reporting?"

The CEC considers the generation and sharing of data to be a central justification for granting a waiver.

The trial should produce comprehensive information on deployment, utilisation, pricing, performance and market participation. This information should be public and published regularly in a standardised and accessible format.

Transparency in these areas is critical to ensuring that the trial contributes to broader industry development, promotes competitive participants confidence in the trial, and supports informed regulatory decision making.

Conclusion

The CEC supports the consideration of a waiver for a targeted, time limited trial that addresses genuine gaps in regional EV charging infrastructure. However, this support is contingent on the application of strong safeguards to protect competition, ensure transparency and maximise public value from the trial.

The AER's approach in the CPU decision provides an appropriate framework for assessing and conditioning this proposal, and the CEC encourages a consistent application of those principles in this (Essentials) case.

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