

Ms Stephanie Jolly
Executive General Manager
Consumer, Policy and Markets Division
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Lodged electronically to AERringfencing@aer.gov.au

Dear Ms Jolly,

Essential Energy Ring-fencing Waiver Application for an EV Charging Infrastructure Trial

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

Nexa is an advisory firm with an unwavering focus to accelerate the clean energy transition in a way that provides secure, reliable, and affordable power for consumers of all types. Nexa Advisory is a team of experienced specialists in the energy market, policy and regulation design, stakeholder engagement, and advocacy. We work with public and private clients including renewable energy developers, investors and climate impact philanthropists to help them get Australia's clean energy transition done.

Nexa supports the objective of accelerating the rollout of public electric vehicle (EV) charging infrastructure. In particular to support regional communities, renters, households without access to off-street parking, fleets, visitors, and drivers undertaking longer journeys. Public charging will be essential to building consumer confidence in EV adoption.

However, we believe accelerating EV charging should not come at the expense of competition, consumer protection, or the integrity of ring-fencing arrangements.

Distribution Network Service Providers (DNSPs) have an important role in enabling the EV charging rollout, via efficient connections, providing network data, supporting make-ready works, and ensuring safe operation of their network assets. However, EV charging infrastructure is a contestable transport-related service. As such, regulated monopoly DNSPs should not, by default, own, control, or select contestable EV charging assets.

Essential Energy's application for a Ring-fencing Guideline waiver is narrower and better structured than some previous DNSP-led proposals. Its features reduce some risks to competition and consumers, but they do not remove Nexa Advisory's core concerns.

Nexa Advisory does not support the AER granting Essential Energy's waiver in its current form.

Executive summary

Nexa Advisory considers that the approval of Essential Energy's ring-fencing waiver application would pose a risk to consumers and competition at this time because it would:

- allow a regulated monopoly network business to own, install, maintain and lease EV charging infrastructure in a contestable market;
- do so at a time when the Australian Energy Market Commission (AEMC) is considering related rule changes on DNSP-led EV charging, including Nexa's rule change proposal to strengthen ring-fencing and require demonstrated market failure before DNSPs provide contestable Consumer Energy Resources (CER) and energy services, and the AER's own review of the Ring-fencing Guideline.

Essential Energy's proposes two streams of charging infrastructure rollout:

- Stream 1 - would reduce connection and site-selection barriers for third-party owned chargers across approximately 1,000 distribution pole locations and does not require a waiver.
- Stream 2 - would involve approximately 300 Essential Energy-owned, in-asset chargers in regional NSW and is the subject of the waiver application.

Essential Energy proposes that Stream 2 would have the following elements:

- funded through the Australian Renewable Energy Agency (ARENA) and shareholders, with no recovery through the Regulatory Asset Base (RAB).
- retail charging services, including pricing, billing and customer engagement, would remain with Charging Point Operators (CPOs) and retailers.
- the waiver would be time-bound, expiring on 30 June 2033.

While the above elements of the proposed Stream 2 would reduce some risks to consumers and competition, Nexa Advisory believes the sequencing and principles matter.

In particular, if the AER continues to grant individual waivers before the broader rules and guidelines are settled, it risks creating a de facto policy position through precedent. This would undermine the integrity of the AEMC rule change process and the AER's own review of ring-fencing protections.

In addition, we believe that the case for market failure has also not been sufficiently made. Essential Energy points to low numbers of pole-mounted chargers in its distribution area, regional EV adoption gaps, and commercial deployment challenges. These issues may demonstrate barriers to deployment. They do not, on their own, demonstrate that DNSP ownership of charging assets is necessary, efficient, or in the long-term interests of consumers.

Moreover, many of the barriers identified by Essential Energy are barriers that DNSPs themselves are best placed to fix without owning chargers. For instance, via network data transparency, pole suitability information, site enablement, faster connections, standardised access terms, efficient make-ready works and suitable tariffs.

As a consequence of the above, Nexa Advisory believes that the AER should only consider the waiver application (for Stream 2) once Stream 1 has been tested and independently assessed.

If reducing site selection and connection barriers is sufficient to unlock CPO-led delivery, then DNSP ownership of chargers is unnecessary.

In this context, the AER must also consider what new elements this waiver would test that are not already be achieved through Stream 1, or through the CitiPower, Powercor and United Energy EV charging waiver, the PLUS ES waiver, the Ausgrid Community Power Network waiver, or other DNSP-led CER trials.

If the AER proceeds to grant the waiver despite these concerns, it is imperative that it be narrow, conditional, time-limited and subject to strict reporting, audit and market-testing obligations. At a minimum, the AER should apply conditions at least equivalent to those imposed on the CitiPower, Powercor and United Energy EV charging waiver and Ausgrid's Community Power Network trial waiver, with additional safeguards reflecting the scale, duration and precedent risk of Essential Energy's proposal.

Key recommendations

Nexa recommends that the AER:

- 1. Refuse the waiver in its current form.**
- 2. Avoid making waiver decisions that pre-empt the AEMC's related EV charging and ring-fencing rule change processes, or the AER's own review of the Ring-fencing Guideline.**
- 3. Defer any decision on Stream 2 until Stream 1 has been tested and independently assessed.** Stream 2 should not proceed until there is evidence that reducing connection and site-selection barriers is insufficient to unlock CPO-led delivery.
- 4. Require Essential Energy to demonstrate clear, location-specific market failure before any DNSP-owned charger is deployed.**
- 5. Require Essential Energy to publish network data, pole suitability information, hosting capacity information and connection timeframes** that would allow CPOs, councils and communities to identify and deliver viable sites without DNSP ownership.
- 6. Require all site selection to be CPO-led or, at minimum, CPO-validated, council-supported and customer-informed.**
- 7. Require success to be measured by outcomes for EV drivers,** including utilisation, reliability, pricing, customer experience, accessibility and evidence of EV uptake, not simply the rollout of infrastructure.
- 8. Prohibit any recovery of Stream 2 costs through regulated network charges, the RAB, demand management mechanisms, shared asset treatment or future regulatory proposals.**
- 9. Prohibit Essential Energy or any related entity from providing retail charging, setting prices, billing customers, managing customer accounts, or receiving preferential access to trial sites, data or infrastructure.**
- 10. Require transparent tendering for CPO access,** with publication of selection criteria, site bundles, lease terms and unsuccessful site categories.
- 11. Require performance reporting on utilisation, uptime, pricing, reliability, customer outcomes, CPO participation, complaints, connection timeframes, costs, lease revenue and evidence of any subsequent market entry.**
- 12. Require independent audit of cost allocation, procurement, site selection, related-party dealings and compliance with ring-fencing conditions.**

13. Require a clear exit pathway, including transfer, sale, decommissioning or transition to contestable ownership at the end of the waiver period.

Detail in support of Nexa Advisory's recommendations

1. The AER should not allow waiver decisions to substitute for rule changes

The Essential Energy waiver is not occurring in isolation. There are several related policy and regulatory processes underway that go directly to the question of whether DNSPs should own, control or provide infrastructure access services for EV charging assets.

These include the Energy Networks Association (ENA) rule change proposal to allow kerbside EV chargers to be treated as regulated distribution services, the Commonwealth DCCEEW's rule change proposal to enable DNSPs to play a greater role in public EV charging infrastructure on a last-resort basis, Nexa Advisory's rule change proposal to strengthen ring-fencing and limit DNSP provision of contestable services to circumstances where there is demonstrated market failure.

It is particularly important to note that the AER is also separately reviewing the Ring-fencing Guideline.

As such, it would be inappropriate for the AER to allow individual waiver decisions to establish a practical precedent before those broader rule change processes are complete.

If, in due course, the review finds that the Guideline is not currently providing sufficient protection against DNSP expansion into contestable markets, the appropriate response would be to strengthen the framework, not grant waivers that erode it.

2. Stream 2 is not justified while broader AEMC reforms are underway

Further, and related to point 1 above, the AEMC is currently considering reforms relevant to EV charging, consumer energy resources, network tariffs, network data, distribution planning and the role of DNSPs. These processes go directly to whether, when and how DNSPs should be permitted to participate in contestable energy services.

Essential Energy is asking the AER to approve a seven-year waiver, to 30 June 2033, for a model that could influence future service classification and DNSP roles.

As well as pre-empting the outcomes of those broader reforms, it risks creating 'facts on the ground' - once DNSP-owned infrastructure is installed, it becomes harder for regulators to unwind the role, even if later reforms conclude that contestable delivery is preferable.

There is no demonstrated urgency that requires this intervention to proceed before those reforms are settled.

3. The waiver does not test anything materially new

Essential Energy frames its proposal as a controlled, evidence-based trial. However, the application does not clearly identify what new learning the AER, ARENA, consumers, or market participants would receive from this waiver that is not already being tested through other DNSP-led EV charging and CER trials.

The AER should ask:

- What specific question does this waiver answer that is not already being addressed by the CitiPower, Powercor and United Energy waiver?
- What does Essential Energy’s proposed Stream 2 model test that could not be tested through Stream 1?
- Why does the trial need 300 DNSP-owned chargers to answer that question?
- Why does the trial require a seven-year waiver to 30 June 2033?
- What would count as success or failure?
- How will the AER determine whether the waiver delivered consumer benefit, rather than simply infrastructure deployment?
- How will the AER distinguish between a lack of market interest and a market that has not been given equal access to network data, transparent connection processes and efficient tariffs?

As context, we note that the CitiPower, Powercor and United Energy waiver already raises the central question of whether DNSP-facilitated kerbside EV charging can be delivered in a way that does not distort competition. The Ausgrid Community Power Network waiver raises similar issues around DNSP involvement in contestable consumer energy infrastructure.

Essential Energy’s proposal involves different technology and a different geography, but the application should be refused unless the AER can clearly identify incremental regulatory and consumer learning arising from the Stream 2 trial.

4. The case for market failure has not been sufficiently made

Nexa recognises that regional NSW faces genuine EV charging challenges. Regional communities should not be left behind in the transport transition. However, the presence of regional charging gaps does not automatically justify DNSP ownership of charging infrastructure.

Essential Energy’s application relies heavily on the proposition that kerbside charging in regional areas is underdeveloped and that commercial deployment has not occurred at scale. It notes that the Essential Energy network has only 20 pole-mounted chargers in active service, mostly on the east coast of NSW, and that it has facilitated all current pole-mounted chargers in its footprint.

However, there is a critical distinction between:

Issue	Regulatory implication
A market that has not yet scaled because barriers remain	Remove barriers, improve data, streamline connections and support CPO-led delivery
A genuine market failure requiring monopoly intervention	Requires a high evidentiary threshold, location-specific proof and a least-distortionary test

Nexa Advisory would suggest that the barriers identified in this case include site selection complexity, connection costs, access to suitable poles, council engagement, low utilisation, uncertainty around demand and operating challenges in dispersed locations.

Many of these are exactly the areas where DNSPs can support the market without owning chargers. The appropriate first-order solution is DNSP-enabled competition, not DNSP-led ownership.

5. Stream 1 should be tested before Stream 2 is approved

The most important feature of Essential Energy's proposal is the two-stream structure.

Stream 1 does not require a waiver and is intended to reduce site-selection and connection barriers across approximately 1,000 pole locations for third-party deployment. Essential Energy's role under Stream 1 is limited to facilitating connections and enabling access to suitable locations, with charging infrastructure owned and operated by contestable providers.

Stream 2, which requires the waiver, would allow Essential Energy to own, install and maintain approximately 300 in-asset chargers and lease access to CPOs.

Essential Energy describes this structure as a controlled comparison. Nexa agrees that this comparison could be valuable. However, in order for the comparison to be genuine, the AER should require a staged approach:

1. Stream 1 should proceed first.
2. Essential Energy should publish clear data on site suitability, CPO engagement, connection enquiries, connection approvals, timeframes, costs and barriers.
3. CPOs and councils should be given a reasonable opportunity to select sites in partnership with Essential and deliver sites under a CPO-led model.
4. Only where a location-specific market failure remains after that process should Stream 2 be considered.
5. Any Stream 2 deployment should be limited to those locations where an independent and transparent market test has failed.

This is a more disciplined approach would allow a reasonable opportunity for Stream 1 to demonstrate (or not) whether barrier removal is sufficient, and is therefore better aligned with the long-term interests of consumers.

6. Stream 1 must be CPO-led or CPO-validated

Stream 1 is where Essential Energy can add the greatest value, by testing what the market can deliver when the DNSP removes the barriers it controls i.e. CPOs are given transparent network information, practical site options, faster connections and efficient access terms. As such, Stream 1 should not be designed primarily around Essential Energy-selected locations, and it must be genuinely co-designed with CPOs.

Essential Energy should work directly with CPOs, councils and local communities to identify the 1,000 locations. CPOs should also be involved in determining the appropriate charging technology, site configuration, customer interface and operating model.

This matters because CPOs understand EV driver behaviour, payment systems, utilisation, reliability requirements, pricing, maintenance, customer support and charging technology. A DNSP-led site selection process risks prioritising network convenience over customer convenience.

The AER should require Stream 1 to include:

- an open call for CPO-nominated sites;
- publication of hosting capacity and constraint data;
- transparent connection cost estimates;
- standardised pole access and facility access arrangements;
- clear service level agreements for connection timeframes;
- tariff options suitable for low-utilisation early-stage sites;
- council and community input;
- reporting on why sites were accepted or rejected; and
- publication of lessons for broader CPO deployment.

7. DNSP-selected sites without a proper means test will distort the trial

Essential Energy's application proposes that Stream 2 sites would be targeted at locations where commercial deployment has not occurred, and that those with active commercial intent would generally be excluded.

This is a positive principle, but these aspects are not sufficient to determine 'market failure'.

The absence of an existing charger may indicate that:

- the location is not useful for EV drivers;
- the site is not commercially sensible;
- connection costs are too high;
- the tariff structure is unsuitable;
- the DNSP has not provided sufficient network data;
- council approvals are unclear;
- demand is too low at this stage; or
- a different charging technology or nearby location would be better.

The AER should require a formal, independently auditable test before any Stream 2 charger is deployed. At minimum, Essential Energy should be required to demonstrate that:

1. the site was first offered through Stream 1 or an equivalent open market process;
2. CPOs had access to the same network data and site information as Essential Energy;
3. CPOs were given reasonable time to respond;
4. the reasons for non-participation were documented;
5. the barriers were not caused by DNSP-controlled processes, such as connection delays, opaque costs or unavailable data;
6. the site has a credible EV driver use case;
7. expected utilisation and consumer benefit are reasonable;
8. council and community input supports the location; and
9. DNSP ownership is the least-distortionary option available.

8. Success must be measured by EV driver outcomes, not charger rollout

The objective of EV charging policy is to deliver reliable, affordable, accessible and well-used charging services that meet the needs of EV drivers and support confidence in EV uptake. The number of installed chargers is not a measure of consumer benefit.

Essential Energy's application repeatedly refers to deployment, infrastructure availability, market participation and regional access. However, a trial that installs 300 chargers but records low utilisation, poor user experience or no measurable impact on EV uptake should not be considered successful.

In addition, Essential Energy says the trial will generate insights into consumer demand, infrastructure utilisation, market response, shared infrastructure, delivery coordination and regulatory treatment. But, the application also states that the trial does not establish prescriptive performance benchmarks or success thresholds.

This is a major weakness. A waiver that permits a regulated monopoly network business to enter an adjacent contestable market must have clear, measurable and enforceable consumer benefit tests. Without those tests, the AER cannot assess whether the trial is in the long-term interests of consumers.

The AER should require success to be assessed against EV driver outcomes, including:

Outcome area	Required measure
Utilisation	Number of charging sessions, kWh delivered, repeat usage, utilisation by time of day and season
Reliability	Uptime, fault response time, outage frequency and duration
Accessibility	Whether sites are convenient, safe, visible, accessible and suitable for regional users
Pricing	Charging price compared with comparable CPO-operated kerbside, destination and fast-charging sites
Customer experience	Ease of use, payment options, roaming, complaints and customer satisfaction
EV uptake	Evidence that charger availability contributed to increased regional EV adoption
Competition	Whether the trial increased or reduced CPO investment outside trial sites
Market development	Whether CPOs gained useful data, site access and commercial pathways beyond DNSP-owned assets
Value for money	Cost per charger, cost per session, cost per kWh delivered and cost per demonstrated consumer benefit

If these measures are not reported publicly and independently reviewed, the trial will not provide a credible evidentiary basis for future regulatory decisions.

9. Essential Energy has not provided sufficient evidence that its chosen locations will drive EV uptake

Essential Energy's application asserts that regional kerbside charging is underserved and that intervention is needed to address a 'chicken-and-egg' problem between EV uptake and charging availability.

However, the application does not provide sufficient site-level evidence that the locations it proposes to select will lead to increased EV adoption or meaningful EV driver benefits.

The AER should require Essential Energy to provide, for each proposed location or bundle of locations:

- current EV registrations and projected EV uptake;
- local traffic volumes and dwell times;
- proximity to shops, services, workplaces, tourism routes and accommodation;
- availability of alternative public charging;
- evidence of community or council need;
- likely utilisation and revenue;
- connection cost and network capacity;
- evidence of CPO engagement;
- evidence that CPOs were offered a fair opportunity to deploy;
- reasons why CPO delivery is not viable; and
- why the proposed technology is the most appropriate for EV drivers.

Without this evidence, DNSP site selection risks distorting the results of the trial. Poorly chosen sites may show low utilisation and then be used to argue that the market has failed.

Alternatively, attractive sites may be captured by the DNSP, crowding out competitive investment. Either of these outcomes would be a poor basis for future regulatory decisions.

10. Regional equity does not require monopoly ownership

Nexa supports the objective of improving access to EV charging in regional NSW. Regional consumers should be able to participate in the benefits of electrification, lower transport costs, and emissions reduction.

However, regional equity should not be used as a broad justification for expanding regulated monopoly businesses into contestable markets.

The consumer interest is served only by building chargers in the right places, at efficient cost, with reliable service, transparent pricing, strong customer support, and sustainable competition over time.

As such, charger site selection is not only a network engineering question. It is also a transport, consumer, land-use, safety, accessibility, tourism and commercial question. A location that is convenient for a DNSP may not serve EV drivers - it may not be visible, safe, close to amenities, accessible for all users, suitable for visitor dwell times, or aligned with travel patterns.

This is why site selection should be customer-led, CPO-led or CPO-validated, and council-supported. DNSPs should provide network information and connection support. They should not control the site pipeline by default.

11. The proposed asset replacement link creates a risk of network-led site selection

Essential Energy proposes that Stream 2 infrastructure be deployed primarily within composite streetlight poles, supplied via underground connections and installed as part of an existing asset replacement program. The application states that deployment is limited to locations where poles are being replaced at end-of-life, rather than being broadly available across all potential sites.

This may reduce incremental installation costs and allow the trial to test in-asset charging technology. However, it also exacerbates the risks highlighted in point 10 above, that a site will be selected because it aligns with Essential Energy's asset replacement program, rather than because it represents the best location for EV drivers or the strongest consumer need.

This risk is particularly acute in regional areas where public charging infrastructure must serve multiple functions: local residents without off-street parking, visitors, regional tourism, fleets, essential services and journey enablement.

If the AER approves the waiver, it should require Essential Energy to demonstrate that each Stream 2 site satisfies both a network suitability test and a transport/customer suitability test.

At minimum, each site should be assessed against:

- demonstrated local or journey charging need;
- absence of active CPO commercial intent;
- council support;
- safe access and parking arrangements;
- proximity to amenities or relevant dwell-time locations;
- accessibility for different vehicle types and users;
- expected utilisation and value for money;
- consistency with local transport and land-use planning;
- evidence that CPO-led delivery was tested first; and
- evidence that the site is not being selected primarily because it is convenient for Essential Energy.

12. The waiver risks wasting taxpayer funds if it does not deliver measurable EV driver benefits

Essential Energy states that Stream 2 will be funded by an ARENA grant and Essential Energy shareholders, with no costs included in the RAB or recovered from regulated customers.

Nexa Advisory does not believe this removes the public interest concern.

ARENA grants are taxpayer funded. As such, they should be used to test genuinely new, scalable and consumer-beneficial models. They should not be used to duplicate learnings already being examined through other network-led trials, particularly where the proposal risks distorting a contestable market.

The AER should require ARENA-funded trials involving DNSPs to meet a higher threshold. Public funding should only be used where there is a clear, independently tested and evidence-based case that no less-distortionary option is available.

13. The real barriers are network data, connections, and tariffs

Many of the issues identified in Essential Energy's application are evidence that third-party providers face barriers caused or shaped by the current network regulatory framework, not of market failure.

As we have highlighted in previous submissions and reports¹, those barriers include:

- lack of transparent hosting capacity data;
- lack of pole suitability information;
- slow or uncertain connection processes;
- unclear site enablement requirements;
- council coordination challenges;
- connection cost uncertainty;
- inefficient or unsuitable tariffs for low-utilisation early-stage chargers; and
- information asymmetry between DNSPs and CPOs.

These are all matters DNSPs can help solve without owning chargers.

The AER's focus should therefore be on requiring Essential Energy to:

- publish hosting capacity data;
- publish site-level network constraint information;
- publish pole suitability information;
- streamline connection processes;
- provide standardised connection timeframes;
- make facility access charges transparent;
- provide fair and non-discriminatory access to poles and streetlight infrastructure;
- develop tariffs suitable for low-utilisation EV charging sites; and
- report publicly on CPO connection performance.

Network data transparency is the key reform. The AER should require it before approving DNSP-owned infrastructure.

14. Competitive neutrality concerns remain

Essential Energy says it will not provide retail charging services, set prices, bill customers or manage customer accounts. That is welcome, but it does not eliminate competitive neutrality concerns.

¹ Nexa Advisory, [AEMC Facilitating EV Charging Infrastructure rollout under Cth Grants submission](#), June 2026; Nexa Advisory, [Victorian Legislative Council Inquiry into Electricity Supply for Electric Vehicles submission](#), October 2025

The competitive advantage of a DNSP arises from control over network assets, network data, site suitability information, connection processes, maintenance capabilities, asset replacement programs and local government engagement.

Even without retailing, Essential Energy key competitive advantages that can materially shape the contestable market. Including:

- control over network data;
- control over connection processes;
- knowledge of hosting capacity and constraints;
- control over asset replacement programs;
- use of existing depots, staff and systems;
- control over poles and streetlights;
- lower internal transaction costs than third-party providers; and
- ability to select locations before competitors have equivalent information.

The AER should not accept claims of lower cost or greater efficiency unless all costs, including equivalent access charges, staff costs, overheads, maintenance costs, asset replacement costs, data systems and opportunity costs, are transparently reported and independently audited.

15. No regulated cost recovery must be absolute and enduring

The AER states that Stream 2 will be funded by ARENA and its own shareholders funding, with no regulated expenditure and no recovery of costs from network customers. It also states that Stream 2 infrastructure will not be included in the RAB.

The AER should ensure this is done, with binding conditions, so that electricity consumers do not subsidise assets used by a subset of transport users:

The AER should impose strict conditions that:

- no Stream 2 capital, operating, maintenance, replacement, IT, project management, overhead, depreciation, financing, fault response or administration costs may be recovered from regulated network charges;
- no Stream 2 costs may be included in the RAB;
- no Stream 2 costs may be recovered through future regulatory proposals;
- no Stream 2 costs may be recovered through demand management allowances or innovation allowances;
- no regulated staff, systems, depots or assets may subsidise Stream 2 unless costs are fully allocated and transparently recovered from unregulated funding;
- lease fees must be transparent and cost-reflective;
- all cost allocation must be independently audited; and
- the AER should publish annual compliance reporting.

16. The waiver duration is too long without staged review points

Essential Energy seeks a waiver until 30 June 2033. This is a significant period for an immature market that is changing rapidly, and in the context of ongoing regulatory and framework reform.

If the AER grants the waiver, it should impose conditions that impose staged review points and step-in rights, including:

- an initial approval period limited to site preparation and early deployment;
- a mandatory review before any material rollout beyond an initial tranche;
- a review once Stream 1 results become available;
- a review after 12 months of operational data;
- an ability for the AER to pause, vary or revoke the waiver if competition concerns arise;
- a requirement that no new sites be added after a specified date without further approval;
- a hard expiry date with no presumption of renewal; and
- a clear transition plan for the end of the trial.

The AER should also prohibit Essential Energy from using the waiver as evidence to support future service classification of EV charging infrastructure as a regulated distribution service, unless the trial data is independently assessed and publicly available.

Critical Conditions in the Event of Waiver Approval

Nexa Advisory's primary position is that the AER should reject the waiver in its current form. However, if the AER is minded to approve it, the waiver must include stringent conditions.

At minimum, the AER should apply conditions at least equivalent to those applied to the CitiPower, Powercor and United Energy waiver and the Ausgrid Community Power Network waiver, and strengthen them for Essential Energy's proposal given its scale and proposed seven-year duration.

Proposed waiver conditions

Condition	Requirement
1. Scope limitation	The waiver must be limited to the specific Stream 2 service described in the application: providing access to Essential Energy-owned in-asset EV charging infrastructure for third-party operation. It must not allow Essential Energy to retail electricity, provide customer-facing charging services, set prices, bill EV drivers, manage customer accounts, provide managed charging or demand response services, expand into DC fast charging or destination charging, provide broader EV charging infrastructure services, classify EV charging as a regulated distribution service, or recover costs through regulated charges.
2. No regulated cost recovery	The waiver must prohibit any cost recovery from regulated electricity customers, directly or indirectly. Essential Energy should provide annual audited statements confirming that Stream 2 costs have not been allocated to regulated services, included in the RAB, recovered through network tariffs, or cross-subsidised by regulated systems, staff or assets.
3. Market testing before deployment	Before any Stream 2 charger is deployed, Essential Energy must demonstrate that the site was offered through Stream 1 or an equivalent market enablement process, relevant network and site information was

Condition	Requirement
	made available to CPOs, CPO-led deployment was tested, no CPO has active commercial intent to deploy at that location, council and community input supports the location, and DNSP ownership is the least distortive option.
4. Transparent site selection	Essential Energy should publish site selection criteria and report on how each site satisfies them. Site selection should include network suitability, transport usefulness, consumer need, council support, accessibility, safety, amenity and value for money.
5. CPO access and procurement	Access to sites or site bundles should be offered through transparent, open and competitive procurement. Essential Energy should publish tender criteria, standard access terms, lease principles, site bundle design and conflict management arrangements.
6. No preferential access	Essential Energy must not provide preferential treatment to any CPO, retailer, related entity or affiliate. This should apply to site information, technical data, connection timing, fault response, lease terms, procurement, customer data and future opportunities.
7. Information sharing	Essential Energy should publish data necessary to inform future market development, including utilisation, uptime, costs, lease revenue, connection timeframes, CPO participation, site selection outcomes, customer outcomes and evidence of whether Stream 1 unlocked CPO-led deployment.
8. Independent audit	The AER should require independent audit of cost allocation, procurement, non-discrimination, site selection and compliance with waiver conditions.
9. Ring-fencing compliance reporting	Essential Energy should report annually on compliance with ring-fencing obligations and waiver conditions, including any related-party dealings, complaints, disputes, connection performance and corrective actions.
10. Exit and transition	Essential Energy should publish an exit strategy before deployment commences. This should include how assets will be transferred, sold, decommissioned, or transitioned to contestable ownership or operation at the end of the waiver.
11. No precedent	The waiver should expressly state that approval does not establish or provide precedent for an ongoing DNSP role in EV charging infrastructure and must not be relied upon as evidence supporting regulated service classification.
12. Staged review	The waiver should be subject to staged AER review points, including after Stream 1 deployment, after the first tranche of Stream 2 sites, and after 12 months of operational data.

Response to AER consultation areas

The following repeats the information above, structured according to the AER's specific consultation areas, and is included for completeness and reference.

National Electricity Objective (NEO)

The proposed waiver should be assessed against the long-term interests of consumers, not only near-term deployment.

Improving regional access to EV charging may support consumer outcomes and emissions reduction. However, the NEO also requires efficient investment, efficient operation and efficient use of electricity services.

A waiver that allows a regulated monopoly business to own contestable charging infrastructure may undermine efficient investment if it crowds out CPOs, distorts site selection, entrenches information asymmetry, or normalises DNSP ownership before market barriers have been addressed.

The AER should therefore require a much stronger demonstration that DNSP ownership is necessary, proportionate and least distortive. The more efficient pathway is to remove barriers to CPO-led deployment first.

Practical insights and learnings

The proposed trial may generate useful insights. However, useful learnings do not, by themselves, justify a waiver.

The AER should distinguish between learnings that require DNSP ownership and learnings that can be generated through Stream 1 or CPO-led deployment. Insights on utilisation, EV adoption, site suitability, connection barriers, tariff design and CPO participation can largely be generated without DNSP ownership of chargers.

If Stream 2 proceeds, all learnings should be made public in a way that supports the broader market, not only Essential Energy or the AER.

Two-stream trial design

The two-stream structure is useful, but only if staged properly. Stream 1 should be treated as the primary test of whether barrier removal enables market delivery. Stream 2 should not proceed until Stream 1 has been tested and shown to be insufficient in specific locations.

If both streams proceed at the same time, the comparison will be less meaningful and may distort the market before the evidence is available.

Cost recovery and cross-subsidisation

Essential Energy's commitment not to recover costs from regulated customers is essential. However, it must be converted into binding waiver conditions, supported by audit and public reporting.

The AER should also consider indirect cross-subsidisation risks, including use of regulated staff, depots, systems, data, planning tools, procurement capability, asset replacement programs and maintenance capability.

Procurement and tendering

The proposed procurement process requires stronger safeguards. Site bundles can support deployment in lower-utilisation areas, but they can also reduce competition if bundles are too large, too opaque or favour incumbent providers.

The AER should require Essential Energy to design procurement in a way that supports diverse market participation and avoids concentrating access in a small number of providers.

Site selection

Site selection should not be driven by Essential Energy's asset replacement program alone. End-of-life pole replacement may lower installation costs, but it is not a proxy for consumer need or transport value.

The AER should require a consumer and transport suitability assessment for each site, supported by council input and CPO validation.

Duration and information sharing

A waiver to 30 June 2033 is too long without staged reviews. The AER should impose review points, reporting obligations and the ability to vary or revoke the waiver if the trial is distorting competition or if market-led delivery becomes viable.

Information sharing should be public, timely and useful to the market.

Conclusion

Nexa supports the objective of improving EV charging access in regional NSW. We also acknowledge that Essential Energy's proposal contains stronger safeguards than some other DNSP-led proposals, particularly the stated exclusion of regulated cost recovery and the preservation of customer-facing services for CPOs and retailers.

However, the waiver would still allow a regulated monopoly network business to own, install, maintain and lease EV charging infrastructure in a contestable market. This should remain the exception, not the default.

The AER should not grant the waiver in its current form. It should require Stream 1 to be tested first, require clear evidence of location-specific market failure, and avoid pre-empting the AEMC's related rule change processes and the AER's own Ring-fencing Guideline review.

If the AER proceeds, the waiver must be narrow, conditional, time-limited and subject to strict market testing, cost allocation, reporting, audit and exit requirements. At a minimum, the AER should apply conditions at least equivalent to those applied to the CPU and Ausgrid waivers, with additional safeguards reflecting the risks of Essential Energy's proposed in-asset, DNSP-owned charging model.



The clean transport transition will be faster, cheaper and more durable if it is built on competition, consumer need, transparent network access and strong ring-fencing protections. DNSPs should enable that market. They should not be allowed to define it.

Thank you for the opportunity to provide input into the Consultation Paper. We welcome the opportunity to further discuss any aspect of our submission.

Yours sincerely,

Stephanie Bashir

CEO

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