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6 August 2026

Ms Clare Savage
Chair
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Submitted electronically

Dear Ms Savage,

**Re: Review of the Ring-fencing guideline (electricity distribution) v4 & Shared asset guideline v2**

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to submit to the Australian Energy Regulator's (AER's) Review of the *Ring-fencing Guideline (Electricity Distribution) v4* and *Shared Asset Guideline v2*.

The AER will be aware that the core objective of the *Ring-fencing Guideline* was to mandate that Distribution Network Service Providers (DNSPs) implement strict legal, accounting, and functional separation between their regulated distribution activities and competitive services.

Since then, the National Electricity Market (NEM) has undergone a major transformation, accelerated by technology advancements, evolving business models and extensive adoption of Consumer Energy Resources (CER). In this environment, robust ring fencing arrangements are essential to ensure a level playing field in contestable markets where competitive providers and DNSP affiliates can compete in a competitively neutral manner for the benefit of all consumers. In light of these developments, evaluation of the Guidelines is timely to ensure they remain fit for purpose.

We see three important areas for this review. Firstly, the overlapping timelines of this review with the Australian Energy Market Commission's (the Commission's) Electricity Network Regulation Review (ENRR). The overlap between this review and the Commission's ENRR creates some uncertainty about the regulatory and investment framework. Our preference would be for a more aligned and collaborative approach by the AER and Commission. The latter should review and clarify whether rule-level amendments to the National Electricity Rules (NER) are warranted, drawing on the AER's expertise and experience administering the framework. The current non-sequential approach risks the AER updating guidelines only for the Commission to modify them at some future point.

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The second is the high percentage of waiver approvals that the AER has granted under the current framework. Thirdly, uncertainty about the long term impact of these waivers (on competition and innovation, for example). This arises from a lack of transparency or rigorous ex-post assessment that explicitly considers how shared assets are used in contestable markets and the extent of any cross subsidisation.

**Use of waivers from the Ring-fencing Guideline**

Since the introduction of the Guideline in 2016, the waiver process has evolved to include 'class' and 'expedited' pathways. The AER made the decision to streamline the application process and it has coincided with a higher level of approvals. We would welcome an evaluation by the AER of whether these alternative pathways (particularly the expedited approach), remain aligned with the core objectives of the Guideline and continue to deliver a net benefit for consumers. We have also recommended the Commission cover this in the ENRR.

We note that the AER focused heavily on compliance in the initial years of the Guideline from 2017–2021. Waivers for legal separation were generally restricted to specific situations where a DNSP faced a legal mandate to provide a service. While transitional waivers proved beneficial for DNSPs in the initial implementation phase, a strong focus on compliance helped ensure clear operational separation, which served to support fair competition and mitigate cross-subsidisation risks. It gave confidence to retailers and to consumers.

In contrast, the AER has approved a notably higher volume of prominent ring-fencing applications for electricity distribution across various services between 2022 and 2025. This follows the AER's decision to allow for expedited waivers. The streamlined approach appears to have been a response to policy objectives to facilitate the rapid deployment of distribution-level battery energy storage systems (BESS).

Our concern, however, is that accelerated approval processes potentially reduce the depth of analysis, limiting the AER's ability to determine whether the network proposal is addressing a significant market failure. In the case of batteries, for example, it is not clear that the competitive sector would have failed to deliver the appropriate level of investment that policymakers were seeking or if it faced similar policy settings. This review provides an opportunity for the AER to reassess whether the two pathways limit its ability to undertake the appropriate level of analysis.

**Enhanced ex post evaluation**

We see a further opportunity to build confidence in the framework through more rigorous ex-post evaluation of the administration of individual waivers and their specific and collective impact on competition. More specifically, we encourage the AER to consider more active and transparent tracking of compliance obligations. One of the key issues is how DNSPs use shared assets in competitive markets. A further issue is the treatment of shared assets at the end of the waiver period including, for example, whether they are incorporated into the Regulated Asset Base, with all consumers contributing to cost recovery. Greater clarity about the practical operation of the framework would serve the long term interests of consumers and send a strong signal to the competitive market.

The AER developed a revised approach to managing cross-subsidisation for multiservice assets in 2023. This mechanism uses a forecast split between regulated and contestable revenues that is established at the time of the investment decision. The framework does not allow for adjustments to cost allocations for regulated and contestable services that account for actual revenue outcomes after the waiver is granted. Under this approach, if the revenue recovered from actual contestable revenues exceeded the forecast it will result in a cross-subsidisation of these contestable services. Furthermore, there is not sufficient scrutiny of market outcomes after the event to determine if this has occurred.

We also see a potential lack of clarity about the impact of the request by Ausgrid for two primary waivers for its $110.4m to $186.7m Community Power Network (CPN) trial under the AER sandboxing framework. The AER would be aware that Ausgrid requested two primary waivers including:

- *Revenue Re-opener (NER cl. 6.6.5):* Reopening of its revenue determination. The AER rejected this, preventing cost recovery from other customers via regulated charges.
- *Ring-Fencing Relaxation (NER cl. 6.17.1):* Request to own and operate up to 70 MW of solar and 130 MWh of battery assets, which the AER approved for five years.

This is a substantial investment with the potential to impact the costs that all Ausgrid customers face. More generally, the consequences of a misuse of shared assets are more severe when applied to higher-value transactions with a substantial capacity to distort market dynamics.

The nature and extent of the market failure that Ausgrid is seeking to address remains unclear. Moreover, the AER's rejection of Ausgrid's request to recover costs from existing customers compelled Ausgrid to seek funding from other sources, rather than investing its own capital and placing that at risk. Funding from the Australian Renewable Energy Agency now enables the trial to continue until the next reset period but there remains a possibility that Ausgrid will attempt to integrate the project into its Regulated Asset Base during the next regulatory reset.

Alternatively, they may try to include a proportionate share of project assets that provide regulated services into their Regulated Asset Base. The basis for the first option would be unclear under the Electricity Distribution Service Classification Guideline and the second option would allow DNSPs to cross subsidise their competitive services. Both options would have a

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significant impact on customer bills and on future investment by competitive service providers. In our view, this project creates a concerning precedent for the efficiency of future investment and for the transition more generally.

The AER can use this review to develop a more transparent and rigorous assessment framework for the use of assets and their treatment at the end of a waiver period.

**About Red and Lumo**

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, New South Wales, Queensland, South Australia, and the ACT to over 1.4 million customers. Should you wish to discuss aspects or have any further enquiries regarding this submission, please call Con Noutso, Regulatory Manager, on [redacted].

Yours sincerely

[redacted]

**Geoff Hargreaves**
Manager - Regulatory Affairs
**Red Energy Pty Ltd**
**Lumo Energy (Australia) Pty Ltd**