Jemena Electricity Networks (Vic) Ltd

Ring-fencing Waiver Request

Pole rental for electric vehicle charging infrastructure

1. Introduction

Jemena Electricity Networks (Vic) Ltd. (**JEN**) is seeking a ring-fencing waiver in order to provide pole rental for electrical vehicle charging infrastructure (**EVCI**). As part of the draft and final decision for the 2026-31 regulatory control period (**next regulatory period**), the Australian Energy Regulator (**AER**) has classified the EVCI service as a negotiated service. By extension to the ring-fencing guideline, this requires the EVCI service to be provided by a related electricity service provider (**RESP**).

JEN considers that by providing this service directly in our capacity as a distribution network service provider (**DNSP**) we can offer a better customer service experience to those searching for and procuring pole rental for EVCI services and avoid unnecessary costs which would otherwise be borne by requesting customers. To this end, we are seeking a waiver to the obligations listed in Clause 4.2 of the Ring-fencing Guidelines,[1] so that we may offer pole rental for EVCI without incurring the prohibitive costs of forming and operating a RESP and giving customers a more direct channel to engage in negotiating for these services.

Section 2 of this submission expands on the context of our request, followed by Section 3 which lists the obligations for which we seek the waiver and outlines the customer benefits of the AER granting this waiver.

[1] The AER, '*Ring-fencing Guideline Electricity Distribution Version 4*', February 2025, cl. 4.2

2. Background

As part of the AER's final decision for JEN's 2026 – 2031 Electricity Distribution Price Review (**EDPR**), it has introduced pole rental for EVCI as a negotiated service. While this service had not been included in the initial Framework and Approach Paper, the AER noted the emergence of third-party interest in using DNSPs' poles to host charging infrastructure as part of its draft decision. This increasing interest equates to a material change in circumstances, which the AER used as the basis for introducing the new distribution negotiated service.[2]

In making its final decision, the AER considered the market benefits and the potential risk of market failure and/or monopoly behaviour. Ultimately, the AER considered that classifying pole rental for EVCI as a negotiated service would amount to a 'soft start' to regulating this service while the market develops.[3]

Jemena supports this change and the classification of pole rental for EVCI services. However, it considers that several barriers remain when assessed against the AER's ring-fencing guideline, particularly in relation to implementing the changes necessary to provide these services.

The ring-fencing guideline defines *other distribution services* as:

> *distribution services other than direct control services. [Note: This definition includes negotiated distribution services and distribution services that are not classified.*

That is, negotiated services—which includes *pole rental for EVCI*—are considered as an *other distribution service.*

Further, the ring-fencing guideline classifies *other distribution services*, as a contestable electricity service, and JEN, as DNSP, is precluded from providing a contestable electricity service under the usual operation of the ring-fencing guideline. From a practical point of view, JEN can provide the *pole rental for EVCI* through the EDPR service classification, however, is prevented from doing so under the ring-fencing guideline.

There are some provisions within the ring-fencing guideline around functional separation that remove restrictions in certain circumstances, however, we do not consider these are sufficiently clear in the case of the *pole rental for EVCI* service.

The lack of clarity in noted in the AER's 'Call for input Review of the Ring-fencing guideline (electricity distribution) v4 and Shared Asset Guideline v2', where the review paper states:

> *Stakeholders raised concerns that some obligations in the guidelines are ambiguous or difficult to apply to emerging scenarios.*

We also find this issue raised to be the case in this new service classification.

To address these barriers, we are seeking a waiver of several functional separation in the ring-fencing guideline, so that we can provide the service as contemplated through the EDPR service classification decision.

2 The AER, Draft decision, AusNet Services, Jemena, CitiPower, Powercor and United Energy electricity distribution determinations, Att 11, pg. 3

3 The AER, Draft decision, AusNet Services, Jemena, CitiPower, Powercor and United Energy electricity distribution determinations, Att 11, pg. 5

3. Description of waiver being sought

To ensure compliance with ring-fencing guideline requirements, and to also provide the *pole rental for EVCI* service—which is classified as a negotiated distribution service—we are seeking a waiver from several functional separation obligations. We outline the these in detail below.

3.1 Obligations for which we seek a waiver

Clause 4.2 of the ring-fencing guideline includes several functional separation obligations which DNSPs must abide by if they also have a RESP providing contestable electricity services. To facilitate pole rental for EVCI as a service JEN seeks a waiver for the following obligations.

Clause 4.2.1 – Physical separation/co-location

A DNSP must use offices that are separate to a RESP providing contestable electricity services. While the ring-fencing guideline does not require this office be a separate building, it must at the very least have separate and secure access which staff working for the RESP cannot access.[4]

Clause 4.2.2 – Staff Sharing

A DNSP must ensure staff who are involved with the provision or marketing of direct control services are not also involved in the provision or marketing of contestable services provided by the RESP.[5]

Clause 4.2.3 – Branding and cross-promotion

A DNSP must use separate and independent branding for direct control services and must avoid advertising or cross promoting the RESP. A reasonable person should not infer that the RESP and DNSP are related entities.[6]

3.2 Why a waiver is required

To comply with the AER's Electricity Distribution Service Classification Guideline and the AER's ring-fencing Guideline, JEN would be required to form a functionally separate RESP.[7] The benefits of this separation are negligible when providing *pole rental for EVCI* service (based on expected uptake volumes), disincentives DNSPs from providing the service and would mean significant additional costs and administrative hurdles for requesting customers.

3.2.1 In the absence of a waiver providing pole rental for EVCI would require disproportionate costs. This would ultimately be borne by pole rental customers.

In order to provide negotiated services, JEN would be required to form a RESP which is functionally but not legally separate entity.[8] This would require significant costs not currently contemplated by JEN including; marketing/branding services, recruitment costs, incremental resource and support costs, retrofitting office space etc. These costs reflect the regulatory burden and an inefficient duplication, rather than the costs of delivering a new service/capability. These costs would be significantly reduced if JEN were able to make use of existing capabilities within our business, allowing us to leverage economies of scope and scale.

As noted by the AER in its final decision, negotiated services *can* be provided by a RESP.[9] The significant sunk cost involved in forming a RESP and complying with the ring-fencing guideline requirements is a significant

4 The AER, '*Ring-fencing Guideline Electricity Distribution Version 4'*, February 2025, cl. 4.2

5 The AER, '*Ring-fencing Guideline Electricity Distribution Version 4'*, February 2025, cl. 4.2

6 The AER, '*Ring-fencing Guideline Electricity Distribution Version 4'*, February 2025, cl. 4.2

7 The AER, '*Electricity Distribution Service Classification Guideline'*, April 2022, pg. 9

8 This ensures the negotiating framework, approved as part of the EDPR process applies to the service

9 NER, cl. 6.2.1(c)(4).

financial barrier on JEN for offering this service. The significant costs arising from the AER's decision disincentivise DNSPs from providing this service.

3.2.2 A waiver would encourage market development

If JEN were to form a RESP to provide this service, in order to comply with the functional separation requirements, JEN would need to ensure that no reasonable person would infer a link between JEN and the newly formed RESP. This would mean that if a service seeker reached out to JEN to discuss pole rental, JEN would be required to refuse their request, so as not to confer an advantage to the RESP.

Pole rental customers would be required to identify and engage with a RESP who is largely unknown in the public domain. This provides an additional hurdle to market development and would lead to inefficiencies for EV charging providers. Additionally, in the absence of waiver EV charging providers would be required to engage in two separate, parallel processes for a single pole rental. One, with the newly created RESP to facilitate pole rental for EVCI and one with JEN to seek connection approval, the potential frustrations arising from this has been noted in responses to the AER's draft decision.[10]. Again, this barrier has unintended consequences which would stifle market development.

3.3 Proposed waiver period

We propose the waiver to commence upon 1st July 2026 and remain in place until the end of the regulatory control period. We will then reassess the need for the waiver as part of our 2031 – 2036 EDPR proposal.

3.4 Grounds for seeking a waiver

We consider that the costs of JEN complying with the ring-fencing guideline far outweighs any benefits electricity customers may receive from our compliance. Indeed, we consider that JEN's compliance with the ring-fencing Guideline will likely result in detriments to electricity customers, rather than benefit.

Below, we outline how this waiver application complies with the requirements as set out in the ring-fencing guideline.

Clause	Description	Response
5.2 (a)	the obligation in respect of which the DNSP is applying for a waiver	JEN is seeking a waiver for obligations relating to: -clause 4.2.1 physical separation -clause 4.2.2 staff sharing -clause 4.2.3 physical separation/co-location
5.2 (b)	the reasons why the DNSP is applying for the waiver	This waiver is required to ensure the costs of JEN providing this service are not prohibitive and do not present market barriers to EV charging service providers.
5.2 (c)	details of the service, or services, in relation to which the DNSP is applying for the waiver	Pole rental for EVCI
5.2 (d)	the proposed commencement date and expiry date (if any) of the waiver and the reasons for those dates	1st July 2026 – 30th June 2031 to align with the coming Victorian Regulatory Control Period
5.2 (e)	details of the costs associated with the DNSP complying with the obligation if the waiver of the obligation were refused	In the absence of a waiver JEN would incur costs including but not limited to: marketing/branding services, accounting separation, recruitment costs, and,

10 AGL - Submission - Victorian electricity distribution proposals 2026-31 - January 2026.pdf

Clause	Description	Response
		retrofitting office space These costs are representative of a regulatory burden, and would not add unnecessary costs to the service provided.
5.2 (f)	the regulatory control period(s) to which the waiver would apply	1st July 2026 – 30th June 2031
5.2 (g)	any additional measures the DNSP proposes to undertake if the waiver were granted	JEN believes the reporting required as part of our negotiated services framework is sufficient to guard against customer harm
5.2 (h)	the reasons why the DNSP considers the waiver should be granted with reference to the matters specified in clause 5.3.2(a), including the benefits, or likely benefits, of the grant of the waiver to electricity consumers.	Granting this waiver will allow JEN to support this fledgling market, without passing undue and unaffordable to costs to end customers. This is in the long-term interests of customers and also contributes to the reduction of emissions, which is in line with the National Energy Objectives (NEO).