TESLA

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Australian Energy Regulator

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Via email: [redacted]

RE: Call for input - Review of the Ring-fencing Guideline (electricity distribution) v4 and Shared Asset Guideline v2

Thank you for the opportunity to respond to this call for input. Tesla makes and sells electric vehicles, and makes and installs home and grid-scale batteries, including the Powerwall and the Wall Connector. In Australia we are also a licensed electricity retailer, and we help run several of the country's largest virtual power plants, pooling the stored energy in tens of thousands of customer-owned home batteries. We therefore have a direct interest in how the line between regulated network activity and contestable energy services is drawn, and in how well ring-fencing holds that line.

Our primary message is about sequencing, not substance. This review starts before the question it depends on has been answered. The AEMC's Electricity Network Regulation Review (ENRR) Package 1 will decide what services DNSPs should be allowed to provide, including the rule changes proposed by Nexa Advisory (ERC0437) and Energy Networks Australia (ERC0435). This guideline review has correctly put that question out of scope, on the basis it belongs to the ENRR. But almost every question this review does ask, the treatment of multi-use assets, how far functional separation should flex for DNSP-affiliated services, how shared asset benefit-sharing should work for batteries and EV charging, only has a stable answer once the ENRR has settled what DNSPs are permitted to do in the first place. Running the two processes in parallel, with this review reaching a final decision in December 2026, risks the AER locking in guideline settings that the ENRR then has to unwind or contradict.

We recognise the AER did not choose this timing in isolation, and that there are genuine, near-term problems with how the current guidelines are operating, particularly the growing reliance on the ring-fencing waiver framework to manage DNSP entry into battery, EV charging and other adjacent markets. Our position is accordingly a staged one:

- Tesla's primary position is to sequence the reviews. The AER should treat this call for input as an issue-identification exercise only and should defer any final decision that presumes an answer on DNSP service scope until the AEMC's ENRR Package 1 has reached at least a draft position. A final guideline decision in December 2026, running well ahead of the ENRR, risks the tail wagging the dog.

- Contingent position if the AER proceeds regardless. Our answers to Questions 1 to 5 below set out where we think the guidelines should move now. These answers are drawn from the same position Tesla has put to the AEMC on Package 1 and reflect our support for the Nexa Advisory rule change (ERC0437), and our opposition to the Energy Networks Australia rule change (ERC0435).

We would welcome further engagement with the AER on drafting, implementation sequencing and the practical application of these guidelines.

Yours sincerely,

[redacted]

Part A - Why sequencing matters

Before turning to the five questions, we want to explain the sequencing concern in a bit more depth, because it shapes almost everything else in this submission.

The guidelines review has carved out the one question that actually settles the rest

The call for input is explicit that service classification, and “what services DNSPs should be able to provide”, is out of scope for this review because it belongs to Package 1 of the AEMC's ENRR. We agree that is the right home for that question. But nearly every in-scope question in this call for input is downstream of it:

- Whether functional separation obligations are “disproportionate” for a DNSP-affiliated service depends on whether that service should be a contestable one at all. If the ENRR decides DNSPs should not own or operate batteries and EV chargers, the proportionality question about staff- and information-sharing for that activity mostly falls away.
- How multi-use assets should be treated under the Shared Asset Guideline, and what sharing ratios are appropriate, depends on how much of that asset's use the ENRR ultimately treats as a legitimate regulated function versus a contestable one.
- The waiver framework's role depends on how many waivers should exist to begin with. If ERC0437 is adopted and last-resort criteria are codified in the Rules, the guideline's own waiver provisions need to be rebuilt around that test, not patched ahead of it.

A December 2026 final decision is the wrong shape for this problem

The ENRR Consultation Paper and Terms of Reference are only settling in mid-2026, and Package 1, which covers scope of monopoly regulation, service classification, ring-fencing and the treatment of multi-use assets, is scheduled to run well beyond this guideline review's December 2026 final decision. If the AER finalises guideline changes first, one of two things happens: either the changes anticipate an ENRR outcome that has not yet been tested through that process's own consultation, or the changes are made on the current, contested service-scope settings and then need to be revisited within a year regardless of what the ENRR decides. Neither outcome serves the “clarity, enforceability and practical operation” objective this review has set for itself.

This is not an argument for delay for its own sake

We are not suggesting the AER do nothing. The call for input itself notes the number of concurrent consultations and reform processes running across the sector, and the burden that places on stakeholders providing input to more than one at once. A staged approach, call for input and issue mapping now, substantive guideline changes once the ENRR has landed on service scope, reduces that burden rather than adding to it, and produces one coherent settlement instead of two that may not agree with each other.

Part B - Responses to the call for input questions

Question 1: Have we accurately described the key changes occurring in distribution networks and the broader energy system?

Broadly, yes. The call for input's account of rising CER volumes, two-way power flows, the emerging DSO role and DNSPs' growing footprint in batteries and EV charging matches what we see in the market. One addition we would make: the call for input should name the sequencing relationship with the ENRR as a change in its own right. The scope, decision-making authority and timing of a second, related process is itself a material development that this review needs to describe and manage, not simply note in passing.

We would also highlight, since the call for input's own waiver data makes the point better than we can, that DNSP participation in batteries has grown quickly without matching evidence of consumer benefit. The call for input reports that of roughly 265 MWh of battery capacity approved through waivers, only around 39 MWh (about 15 per cent) had been energised as at the most recent reporting, and that of the capacity that has been used, around 99 per cent of usage has been by leasing partners for their own commercial purposes, with only around 1 per cent used for the DNSP network support function that was the basis for granting the waiver in the first place. That is directly relevant context for how much weight the guidelines review should place on the waiver framework as a safe, temporary bridge versus a mechanism that is being used far more broadly, and for far longer than its stated purpose.

Question 2: Have we accurately reflected the concerns raised by stakeholders regarding the guidelines? Are there additional issues we should consider?

The summary of stakeholder feedback is a fair reflection of the range of views, including the tension between stakeholders who want stronger functional separation and DNSPs who consider some separation requirements disproportionate. We would add one issue that the summary understates: the call for input records that 47 waiver applications or related matters were assessed between 2022 and 2025, rising from 10 in 2022 to 19 in 2025, compared with 43 waivers in the prior five years, 80 per cent of which were transitional arrangements now largely expired. That is not incremental growth in a stable mechanism; it is a shift from a transitional tool to a routine one, without a matching update to the test the AER applies to grant one.

We support Nexa Advisory's characterisation of this problem, which is the basis for the ERC0437 rule change: the current waiver framework asks the AER to weigh costs and benefits to the network by making the application, not to test affirmatively that the waiver will not harm the competitive market it is carving into. Each individual waiver may look reasonable in isolation. The cumulative effect, visible in the AER's own numbers, is a ring-fence that is being worn down one exception at a time.

Question 3: Are there relevant experiences, case studies, examples or evidence that would help illustrate these issues or inform this review?

A clear example from our own experience that is directly relevant to the functional separation and waiver questions in scope. Cost evidence on network-led versus competitive delivery of community batteries. Publicly available cost analysis has found network-led community battery deployments costing in the order of $2,300 per kWh, compared with roughly $1,330 per kWh for behind-the-meter alternatives delivered competitively. This is relevant to the shared asset and multi-use asset questions in this call for input: it suggests that where DNSPs deploy batteries under a regulated cost-recovery model, the price discipline a competitive market would normally provide is muted, and consumers should not be assumed to be better off simply because the asset sits inside the regulated business.

Question 4: Do you consider the scope of this review to be appropriate? Are there additional areas of focus you believe should be included?

As set out in our cover letter, our primary position is that the review's scope is reasonable as an issue-identification exercise, but the timeline to a final decision is not appropriate while the ENRR remains open on service classification. We recommend the AER:

- Use Stage 1 and Stage 2 (call for input and draft decision) to map issues and test options, consistent with the current timeline.
- Hold the final decision or explicitly frame it as interim and subject to revisiting, until the ENRR Package 1 has reached at least a draft position on service classification and the treatment of multi-use assets.

If the AER proceeds to a final decision on the current timeline regardless, we recommend the scope of that decision be built around the same principles as the Nexa Advisory rule change, to the extent they can be implemented through the guidelines without a Rules change:

- <u>Waiver test</u>: replace the current cost-benefit-to-the-network framing with an affirmative test that a waiver will not cause competitive harm, including a requirement to evidence that a competitive market genuinely cannot deliver the relevant service.
- <u>Class and streamlined waivers</u>: narrow or re-evaluate the streamlined battery waiver process specifically, given the utilisation and benefit evidence discussed under Question 1 does not yet support treating DNSP battery ownership as a low-risk, repeatable category.
- <u>Affiliate dealings and shared staff</u>: tighten the functional separation provisions on shared staff, information access and operational systems, rather than relaxing them for reasons of administrative burden, given stakeholder evidence that shared staff have access to information and customer relationships that unaffiliated competitors cannot replicate.

- Branding and cross-promotion: close the gap the call for input itself identifies, by setting clearer guardrails on DNSP and affiliate branding and representation, consistent with Nexa's proposed strengthening of branding separation.
- Reporting and transparency: adopt stronger, standardised public reporting on waiver conditions, compliance outcomes and the use of regulated assets and capabilities to support other services, consistent with Nexa's proposed reporting and enforcement transparency measures.

We do not support extending the review's scope to reach service classification questions by another route, for example by using shared asset sharing ratios or waiver criteria to informally decide what DNSPs should be allowed to do. That would pre-empt the ENRR through the guidelines rather than through the process designed to answer that question.

Question 5: Do you have suggestions on ways to make it easier for stakeholders to effectively engage with the review process?

- Publish an explicit statement of how this review's timeline relates to the ENRR Package 1 timeline, including what happens to any final decision made here if the ENRR later reaches a different conclusion on service scope.
- Where practical, hold at least one joint or back-to-back stakeholder workshop with the AEMC's ENRR engagement, given the significant overlap in both subject matter and stakeholder base. The same consumer representatives, DNSPs, unaffiliated service providers and industry bodies are being asked to engage with both processes separately.
- Signal early which issues raised in this call for input the AER considers can be resolved through the guidelines alone, and which it considers depend on the ENRR outcome, so stakeholders can target their draft decision submissions accordingly.