

Application for a ring-fencing waiver

Negotiated distribution services

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1. Summary

1.1 Introduction

CitiPower, Powercor and United Energy (CPU) are distribution network service providers (DNSPs) operating in Victoria. CPU intend to offer negotiated distribution services and this application relates to the functional separation obligations that arise from CPU's proposed operating model for the delivery of these negotiated services.

CPU intend to deliver electric vehicle charging infrastructure (EVCI) and hot water negotiated services through an internal related electricity service provider (RESP) that is organisationally separate from the teams that deliver the network's regulated direct control services. However, for reasons of cost and operational efficiency, that internal team will:

- continue to be located at the same office;
- be promoted to customers through the network's existing websites and customer portals, being the same online channels used for standard connection applications and referred to by the same contact centre that handles connections enquiries.

We are therefore seeking a waiver from clauses in section 4 of the Australian Energy Regulator's (AER's) Ring-fencing Guideline (Electricity Distribution) (the Guideline), being the functional separation requirements relating to offices (clause 4.2.1) and branding, advertising and promotions (clause 4.2.3), to the extent those requirements would otherwise apply to CPU's delivery of EVCI and hot water negotiated services in the manner described above.

We are not seeking a waiver from clause 3.1 (legal separation), as EVCI and hot water negotiated services are distribution services that CPU are permitted to provide directly under the Guideline. Nor are we seeking a waiver from clause 4.1 (the obligation not to discriminate) as the networks will continue to comply with that obligation in full, as set out in section 2.4.3 below.

1.2 Background to the negotiated services offering

EVCI and hot water control services have recently been classified as negotiated distribution services. As negotiated distribution services, they are direct control services that are priced and delivered in accordance with CPU's AER-approved negotiating framework.

This reclassification reflects the nature of these services as distribution services provided by CPU, rather than services offered in a contestable market by an affiliated RESP. Consistent with the negotiating framework, CPU will therefore provide these services through an internal RESP, rather than through an affiliated RESP. This approach more appropriately aligns the delivery model with the regulatory classification of the services, while allowing CPU to provide them as part of its regulated distribution business.

CPU considers that clause 4.2 of the Guideline is directed to managing the risks that arise where an affiliated RESP operates in a contestable market, rather than where negotiated distribution services are delivered through an internal RESP structure contemplated by the negotiating framework. As these services are not provided by an affiliated RESP, CPU considers that clauses 4.2.1(a) to 4.2.3(a) of the Guideline should not, in substance, apply to their delivery in the same way they apply to a genuinely separate contestable business. CPU is nevertheless seeking this waiver to remove any doubt and place its compliance position beyond question, noting that, for internal governance purposes, the team delivering these services is structured in a manner similar to an affiliated RESP.

CPU's connections business processes a high volume of standard connection applications each year through established systems, including its website, online portal, IT platform and contact centre. Applications for EVCI and hot water negotiated services follow a materially similar process, involving an online application, technical assessment against network capacity and safety requirements, scheduling, and physical works. Accordingly, CPU considers it is significantly more efficient and cost-

effective for customers for both categories of applications to be managed through the same systems and customer interfaces, rather than requiring a separate set of infrastructure to be established and maintained solely for negotiated distribution services.

1.3 Proposed delivery model for negotiated services

To support the delivery of negotiated distribution services while giving effect to the objectives of the Guideline wherever practicable, CPU has established a dedicated operating model for EVCI and hot water negotiated services.

The team responsible for delivering negotiated services has been organisationally separated from CPU's direct control services, including the standard connections business. The negotiated services team forms part of a separate business unit, operates from a separate office floor, has no operational involvement in the delivery of direct control services and is responsible solely for the assessment and delivery of negotiated distribution services.

The negotiated services team reports through a separate management structure to a different General Manager to the connections team, providing clear governance and accountability arrangements that minimise the potential for cross-subsidisation, preferential treatment or discriminatory conduct. These arrangements have been implemented to reflect the underlying objectives of the Guideline, notwithstanding that the services are provided through an internal RESP rather than an affiliated RESP.

The delivery of EVCI and hot water negotiated services nevertheless requires limited interaction with CPU's regulated network operations. Before an application can be assessed or an offer made, the negotiated services team must obtain network safety, engineering and capacity information from the relevant direct control service areas. This information is essential to determine whether the proposed connection or control service can be accommodated without adversely affecting network safety, reliability, security or power quality and to identify any augmentation or operating constraints that may apply. The exchange of this information is inherent in the provision of negotiated distribution services and cannot reasonably be eliminated without preventing CPU from safely assessing and delivering those services.

Accordingly, CPU has implemented functional separation to the greatest extent reasonably practicable, while recognising that limited information sharing is operationally necessary to enable the safe and efficient delivery of negotiated distribution services. The waivers sought in this application relate only to those obligations that cannot reasonably be complied without creating unnecessary duplication of systems, processes and personnel, increasing costs for customers and reducing the efficient delivery of negotiated distribution services. CPU considers that its operating model appropriately balances the objectives of the Guideline with the efficient provision of regulated negotiated services.

2. Description of waiver being sought

2.1 Obligations for which a waiver is sought and why a waiver is needed

Section 4 of the Guideline sets out functional separation requirements that apply where a DNSP has a RESP providing contestable electricity services alongside the DNSP's direct control services. We are seeking a waiver from two specific obligations in clause 4.2, summarised in the table below and discussed in further detail after the table.

Clause	Obligation	Why a waiver is sought
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4.2.1(a) (Physical separation/co-location)	Subject to this clause 4.2.1, in providing direct control services, a DNSP must use offices that are separate from any offices from which a related electricity service provider provides contestable electricity services.	The internal team delivering EVCI and hot water negotiated services will be located on a separate floor from the connections team and those providing direct control services, but in the same building. Requiring separate premises would impose costs with no corresponding benefit to customers.
4.2.3(a) (Branding and cross-promotion)	A DNSP: - i must use branding for its direct control services that is independent and separate from the branding used by a related electricity service provider for contestable electricity services, such that a reasonable person would not infer from the respective branding that the DNSP and the related electricity service provider are related; - ii must not advertise or promote its direct control services and its contestable electricity services that are not direct control services together (including by way of cross-advertisement or cross-promotion); - iii must not advertise or promote contestable electricity services provided by a related electricity service provider other than the DNSP itself.	EVCI and hot water negotiated services will be promoted through the network's existing websites, application portals and contact centre, rather than a separately branded channel, to avoid customer confusion and the cost of building and maintaining duplicate digital and customer-facing infrastructure.

Clause 4.2.1(a) — Offices

Requiring the internal RESP team to operate from premises separate from the regulated business would impose an accommodation cost on the networks that is disproportionate to any benefit to electricity customers.

The internal RESP team has been separated from business units providing direct control services and will be located on a separate floor to those providing direct control services. As we are proposing to have EVCI and hot water negotiated services provided by an internal RESP rather than a legally separate affiliated contestable business, the proposed operating model substantially mitigates the risks of cross subsidisation and discrimination through the governance and control measures outlined in this application.

We accordingly seek a waiver from clause 4.2.1(a).

Clause 4.2.3(a) — Branding, advertising and promotions

The Networks propose to make EVCI and hot water negotiated services available to customers through the same websites and online application portals already used for standard connection applications and to have contact centre staff direct callers to those portals. Customers are accustomed to a single point of contact for connection-related matters and directing them to a separately branded channel for negotiated services would be likely to cause confusion rather than assist customers. Building and maintaining a separately branded website and portals solely to satisfy clause 4.2.3 would impose an ongoing cost that is not justified given the nature of the services in question.

We also note that clause 4.2.3(a)iii prohibits a DNSP from advertising or promoting contestable electricity services provided by a RESP other than the DNSP itself. On its terms, this obligation is directed at promotion of the contestable services of a separate related entity and does not, in our view, extend to a DNSP promoting services that it provides directly. As the internal RESP delivering EVCI and hot water negotiated services forms part of the DNSP itself, we consider there is a reasonable basis to conclude that clause 4.2.3 (a)iii may not need to be included as part of this waiver application.

Further, the Guideline expressly provides in clause 4.2.3(b)ii that clause 4.2.3(a)i does not apply to branding used in connection with the use of an asset of the DNSP by a part of the DNSP that provides contestable electricity services, where that asset is also simultaneously used by the DNSP to provide direct control services, provided that doing so does not materially prejudice the provision of direct control services by the DNSP. The use of CPU's websites, online application portals and contact centre for both direct controls services and contestable electricity services is not considered by CPU to materially prejudice the delivery of any other direct control services and we consider that this exception provides a further independent basis for the AER to conclude that CPU's proposed approach is consistent with clause 4.2.3(a)i.

Even if our networks were to adopt entirely new branding, they would still be required to use the legal company name on all public documents as a requirement of the Corporations Act 2001. This would make the connection between contestable services and direct control services readily apparent to customers. This shows that requiring the use of separate brands for both services in this context would be more likely to confuse customers than benefit customers or competition.

We nonetheless seek a waiver from clause 4.2.3(a) to remove any doubt on these points.

2.2 Details of the negotiated services

Electric vehicle charging infrastructure: CPU proposes to provide EVCI on distribution poles as a negotiated distribution service. Customers and third parties seeking EVCI will submit applications through the networks' existing online application portal. To avoid unnecessary duplication and costs, applications will utilise the same customer-facing websites, IT systems and business processes as standard connection applications.

Hot water: CPU propose to offer hot water control arrangements as a negotiated distribution service, delivered by the same internal team, systems and customer channels described above.

While these shared systems and processes provide an efficient customer interface, CPU has implemented functional separation between the personnel responsible for negotiated distribution services and those responsible for direct control services. Applications for negotiated services are assessed and managed by a dedicated negotiated services team that has no responsibilities for the delivery of direct control services. This team operates independently within a separate business unit and management structure, ensuring that the separation is achieved through governance and decision-making, while continuing to leverage common systems and processes where this is operationally efficient

2.3 Proposed waiver commencement and end date

We propose that the waiver commence on the date it is granted by the AER and continue for so long as CPU offer EVCI and hot water as negotiated distribution services in the manner described in this application, or until the Guideline is amended to specifically address the functional separation (if any) that should apply between a DNSP's negotiated distribution services and its other direct control services, whichever occurs first. This is consistent with the AER's discretion, following the February 2025 amendments to the Guideline, to determine the duration of a waiver rather than being bound by a maximum term. If the Guideline is amended in a way that is relevant to this waiver, CPU will engage with the AER on the continued need for, or scope of, the waiver at that time.

2.4 Reasons why the waiver should be granted

2.4.1 Customer benefit and the National Electricity Objective

Granting the waiver will promote the National Electricity Objective by enabling CPU to deliver negotiated EVCI and hot water services in a manner that is efficient, cost-effective and responsive to customer needs, while maintaining appropriate governance arrangements to manage the risks of discrimination and cross-subsidisation.

Delivering these negotiated services through CPU's existing offices, systems, customer channels and operational processes enables the networks to leverage established capability and infrastructure, rather than requiring the development and ongoing maintenance of duplicate premises, systems, branding and customer interfaces. Avoiding this unnecessary duplication reduces the cost of delivering negotiated services and ultimately benefits customers by minimising the costs associated with supporting Victoria's energy transition.

The proposed operating model also provides a simpler and more seamless customer experience. Customers seeking negotiated services will continue to access the same trusted websites, online application portals and contact centre that they already use for network connection services. This provides a single point of contact, reduces customer confusion and ensures applications can be managed through established processes that customers are familiar with, rather than requiring customers to navigate separate organisations, branding or application pathways for services that are intrinsically linked to the electricity distribution network.

The waiver supports the timely deployment of EV charging infrastructure and hot water control services, which are critical enablers of electrification, flexible demand and more efficient utilisation of the distribution network. Delays associated with establishing duplicate systems and business functions would increase costs and slow the rollout of these services, reducing benefits to customers and the broader electricity system.

Importantly, the waiver does not diminish the protections intended by the Guideline. CPU has implemented functional separation wherever reasonably practicable through dedicated governance arrangements, separate reporting lines and independent management of negotiated services. The waiver is limited to those obligations where strict compliance prohibits the use of an internal RESP for these services and would require unnecessary duplication of systems and customer interfaces without delivering any corresponding benefit to competition or customers.

Accordingly, granting the waiver will:

- avoid unnecessary costs associated with duplicating offices, IT systems, customer channels and business processes
- minimise costs that would ultimately be borne by customers while supporting efficient delivery of negotiated distribution services
- provide customers with a simple, familiar and consistent experience through a single application pathway and point of contact
- enable faster deployment of EVCI and hot water control services, supporting electrification, customer choice and more efficient utilisation of the electricity network
- maintain established engineering, safety and network assessment processes, ensuring negotiated services continue to be delivered safely and reliably
- achieve the objectives of the Ring-fencing Guideline through proportionate governance arrangements without imposing costs that outweigh any incremental competition benefit.

CPU considers these outcomes are consistent with the long-term interests of customers by promoting the efficient investment and operation of electricity services for the long-term interests of customers with respect to price, quality, safety, reliability and security of supply.

2.4.2 Costs if the waiver is not granted

If the waiver is not granted, CPU would need to build and maintain a separate IT system capable of restricting staff access by application type, secure separate office accommodation for the negotiated services team and build and maintain a separately branded website and promotional presence. CPU believes the connections and negotiated services application processes are functionally the same and there is no operational or customer benefit that would justify treating them as if they were entirely separate businesses.

This duplication would increase the cost of delivering negotiated services without providing any corresponding improvement in competition, customer choice or service quality. The additional costs would ultimately be borne by customers, either through higher negotiated service charges or increased operating costs.

The other cost if the waiver is not granted is that the networks would delay or reconsider the roll-out of EVCI and hot water as negotiated services, to the detriment of customers seeking to access them and slowing electrification to customers and the broader electricity system.

2.4.3 Additional measures in support of the waiver

Non-discrimination: the networks will continue to comply in full with clause 4.1 of the Guideline. Negotiated service applications will be processed in the order they are received, on the same basis as standard connection applications and there will be no favour to any related party in the provision of EVCI or hot water services.

Cost allocation: costs associated with the shared team, systems, offices and customer channels will continue to be allocated between negotiated services and other direct control services in accordance with CPU's AER-approved Cost Allocation Methodology and will be reported on through the annual ring-fencing compliance report.

Information sharing for safe connections: delivering EVCI and hot water negotiated services safely requires some exchange of network information (for example, load and capacity data) between the negotiated services team and the connections and network planning teams. This is not a matter for which CPU is seeking a waiver — clause 4.3 of the Guideline (information access and disclosure) cannot be waived. CPU confirms that any such information will only be shared and used to the extent necessary for the safe and reliable connection of EVCI and hot water equipment to the network, consistent with the existing information access and disclosure requirements of the Guideline and will not be shared or used for any other commercial purpose.

Staff and office registers: to the extent staff or offices are shared between teams, CPU will maintain and update the staff and office registers as already required under the Guideline and will report on this sharing in their annual ring-fencing compliance report.

3. Conclusion

We consider it appropriate for the AER to grant a waiver from clauses 4.2.1(a) and 4.2.3(a) of the Guideline in respect of CPU's delivery of EVCI and hot water negotiated services by an internal RESP, having regard to the matters set out in clause 5.3.2(a) of the Guideline, namely:

- the National Electricity Objective;
- the potential for cross-subsidisation and discrimination if the waiver is granted or refused; and
- whether the benefit, or likely benefit, to electricity customers of the networks complying with the obligations would be outweighed by the cost to the networks of complying with those obligations.

As EVCI and hot water are negotiated distribution services being proposed to be delivered directly by the networks, rather than services of an independent contestable business, the risk of cross-subsidisation or discrimination that section 4.2 is intended to address is limited and is in any event addressed through CPU's continued compliance with clause 4.1 in its entirety, the applicable Cost Allocation Methodology and the Guideline's information access and disclosure requirements. By contrast, the cost to the networks of complying with clauses 4.2.1(a) and 4.2.3(a), namely building duplicate premises, IT systems and branding for services that are, in substance, an extension of the network's existing connections function, would be material and would not be undertaken, likely delaying or reducing the availability of EVCI and hot water negotiated services to Victorian electricity customers.

For these reasons, CPU are asking that the AER grant a waiver from clauses 4.2.1(a) and 4.2.3(a) of the Guideline, on the terms set out in this application.