



FINAL DECISION
AusNet Services,
CitiPower/Powercor,
United Energy,
Jemena Electricity
Networks
Ring-fencing Waiver
Variation
Reclassification of Services

October 2020

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Shortened Forms

Shortened Form	Extended Form
AER	Australian Energy Regulator
AusNet	AusNet Services
DNSP	Distribution Network Service Provider
Final Determination	Regulated electricity network businesses must periodically apply to the AER to assess their revenue requirements (typically, every five years)
Jemena	Jemena Electricity Network
NEO	National Electricity Objective
NER	National Electricity Rules

1 Summary

The AER has decided to grant ring-fencing waiver variations, effective on 1 January 2021, to exempt AusNet Services (AusNet), CitiPower/Powercor, United Energy and Jemena Electricity Network (Jemena), from specified ring-fencing obligations in relation to the provision of certain negotiated and unregulated distribution services. The waiver variation extends the expiry date of a number of existing waivers, originally granted in 2017, by six months from 31 December 2020 to 30 June 2021.

1.1 Background

In December 2017 we granted a range of waivers ahead of the commencement of the Electricity Distribution Ring-fencing Guideline (the Guideline). This included waivers for a number of services that we considered may be reclassified as regulated direct control services in a distributor's next revenue determination ('reclassification of services' waivers). For the Victorian Distribution Network Service Providers (DNSPs), the waivers were granted until the end of the 2016-20 regulatory control period, which was expected to be 31 December 2020.

In April 2019 the Victorian Government indicated its intention to move from calendar year to financial year to align with other NEM jurisdictions for the electricity distribution determination regulatory control period. This would extend the current regulatory control period for Victorian DNSPs by six months from 31 December 2020 to 30 June 2021.

On 24 July 2020, Jemena applied to extend its 'reclassification of services' waivers to align with the amended regulatory control period. On 19 August 2020, AusNet, CitiPower/Powercor and United Energy also requested six month extensions to their respective 'reclassification of services' waivers.

This Final Decision extends the waivers to align with a six month extension to the Victorian DNSPs' current regulatory control period. We consider there is little to no harm to customers or contestable markets for electricity services resulting from these DNSPs continuing to provide these services. Our reasons are set out in this Final Decision.

2 About ring-fencing

Ring-fencing separates the regulated and contestable parts of a DNSP's network business via legal separation and functional separation obligations. Ring-fencing facilitates competition in contestable markets and makes regulation more effective in markets that are not contestable. It aims to provide a level playing field for third party providers in new and existing markets for contestable services.¹ Without ring-fencing, there is a risk that a DNSP might cross-subsidise unregulated electricity services with revenue earned from the provision of distribution services. There is also a risk that a DNSP might discriminate in favour of an affiliate that provides unregulated electricity services, potentially harming competition in contestable markets. Such outcomes could lead to less efficient prices for operation and use of both regulated and contestable electricity services and restrict the development of competition in contestable markets.

The Ring-fencing Guideline recognises that strict adherence to the ring-fencing obligations might, in some circumstances, result in outcomes that are not in the interests of consumers. This is why the Guideline makes provision for ring-fencing waivers. Waivers provide the ring-fencing framework with flexibility by allowing DNSPs exemptions, subject to AER approval. We consider that waivers are not to form part of a business as usual approach but may be considered where alternatives are inappropriate. DNSPs will normally be expected to achieve compliance with the Guideline's obligations.²

Clause 5.3.2 of the Guideline states that, in assessing a waiver application and deciding whether to grant a waiver (subject to any conditions) or refuse to grant a waiver, we must have regard to:

- i. the National Electricity Objective (NEO)
- ii. the potential for cross-subsidisation and discrimination if the waiver is granted or refused and
- iii. whether the benefit, or likely benefit, to electricity consumers of the DNSP complying with the obligation (including any benefit or likely benefit from increased competition) would be outweighed by the cost to the DNSP of complying with that obligation.

Clause 5.3.2 of the Guideline also states that we may have regard to any other matter we consider relevant. Some of the factors we have considered in granting past waivers are detailed in our Explanatory Statement to the Guideline, and our Decision on DNSP Applications for Waivers from the Electricity Distribution Ring-fencing Guideline.³

The Guideline obliges all DNSPs operating in the NEM to ring-fence services depending on how the services are classified. Services are classified by the AER as either 'direct control' (and further as 'standard control' or 'alternative control') distribution services, negotiated

¹ AER, *Electricity Distribution Ring-fencing Guideline Explanatory Statement*, November 2016, p.1.

² AER, *Electricity Distribution Ring-fencing Guideline Explanatory Statement*, November 2016, p.6.

³ AER, *Decision: DNSP Applications for Waivers from the Electricity Distribution Ring-fencing Guideline*, December 2017, p.15-17.

distribution services, or unregulated services at the commencement of each revenue determination as part of the Framework and Approach. Under the Guideline, a DNSP must functionally separate provision of direct control services from other contestable electricity services.⁴

⁴ Electricity Distribution Ring-fencing Guideline Version 2, October 2017, cl 4.1(b)(i).

3 Waiver applications

3.1 Original waivers

In December 2017 we granted 'reclassification of services' waivers to a number of DNSPs, including Victorian DNSPs under clause 5.2 of the Guideline (in our original waiver decision).⁵ These waivers were granted where we considered that some services would likely be reclassified as regulated direct control services as part of the DNSPs' next revenue determination. The waivers allowed DNSPs to continue to provide these kinds of services to bridge the period between the Guideline compliance deadline of 1 January 2018 and the commencement of each DNSP's next regulatory control period.

3.2 Scope of the waivers

In December 2017 we granted waivers to Victorian DNSPs for the following services:

- **Public lighting and nightwatchman lights.** These services include the provision, alteration and relocation of public lighting, as well as new types (technologies) of public lighting. Nightwatchman lights are public lighting used to improve security, such as to illuminate a customer's premises. We granted waivers to AusNet, CitiPower/Powercor Jemena, and United Energy in respect of these services.⁶
- **Emergency recovery works.** This service is concerned with repairs to the distribution network required as a result of damage caused by a third party. The works are recoverable because the third party is liable. As the damage is to a DNSP's network assets, the work is not contestable. We granted waivers to AusNet, CitiPower/Powercor, and Jemena.⁷
- **Reserve feeder construction.** This service refers to a customer request for construction of a second connection from the distribution network to the customer. We granted waivers to AusNet, CitiPower/Powercor, Jemena, and United Energy.⁸
- **Minor and legacy metering services.** This covers services in relation to data handling for type 1-4 contestable meters, and for new services for type 5 and 6 meters. This service also covers a number of general metering services, such as DNSP-arranged outages for the purpose of replacing a meter, correction of metering and billing data, and meter disposal. It also includes the operation and maintenance of legacy pre-payment meters and, where applicable, time switch adjustment for customers with non-AMI meters. We granted waivers to CitiPower/Powercor and United Energy.⁹

⁵ AER, Decision DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, 18 December 2017.

⁶ AER, Decision DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, 18 December 2017, p. 22.

⁷ AER, Decision DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, 18 December 2017, p. 23.

⁸ AER, Decision DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, 18 December 2017, p. 27.

⁹ AER, Decision DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, 18 December 2017, pp. 24-25.

- **Non-standard connections, customer-requested supply enhancements, and augmentations.** These distribution services are provided in situations where a customer requests a connection or an enhancement to an existing connection at a higher standard than the least cost technically acceptable standard. This service also includes customer or third-party requested asset relocations. We granted waiver to CitiPower/Powercor and United Energy.¹⁰
- **Possum guards.** This refers to provision of line guards to prevent access by possums, roof rats and other animals to power lines. While the guards themselves can be sourced from a competitive market, installations of possum guards on to the network is an important part of the DNSPs role in maintaining line security and safety, as possums on lines can sometimes cause outages that require DNSP crew to visit the line to rectify the outage. We granted a waiver to United Energy.¹¹

The waivers exempted the DNSPs from complying with obligations under cl. 4.2 of the Guideline.

3.3 Waiver variations

Due to the Victorian determinations aligning with a financial year end, there is now a six month gap between the end of the original waiver, 31 December 2020, and the next regulatory control period, 1 July 2021. On 24 July 2020, Jemena applied to extend its 'reclassification of services' waiver to align with the amended regulatory control period. AusNet, CitiPower/Powercor and United Energy followed on 19 August 2020 seeking a similar waiver variation. The DNSPs have requested to extend the waiver expiry dates from 31 December 2020 to 30 June 2021, reflecting the anticipated change to Victorian DNSPs' regulatory control periods.

¹⁰ AER, Decision DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, 18 December 2017, pp. 25-27.

¹¹ AER, Decision DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, 18 December 2017, p. 31.

4 Assessment

In assessing AusNet's, CitiPower/Powercor's, United Energy's and Jemena's waiver variations to extend the waiver expiry deadline, we have considered the factors outlined in Clause 5.3.2 of the Ring-fencing Guideline:

- 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 consumers of the DNSP complying with the obligation would be outweighed by the cost of the DNSP of complying with that obligation.

In addition to this, we have also considered:

- the impact of the Victorian DNSPs' regulatory period change;
- the likely cost of compliance to AusNet's, CitiPower/Powercor's, United Energy's and Jemena's customers and/or the business; and
- potential harms to contestable markets from allowing AusNet, CitiPower/Powercor, United Energy and Jemena to continue to provide these services.

4.1 Victorian DNSPs regulatory period change

In April 2019 the Victorian Minister for Energy, Environment and Climate Change advised the AER and the Victorian distribution businesses of the Government's intention to change the timing of the annual Victorian electricity and gas network prices changes. The change would bring Victoria into alignment with the other NEM jurisdictions to operate on a financial – rather than calendar – year basis.

The change, which requires passage through Victorian parliament to give effect through legislation, is to extend the current regulatory control period by six months and change the commencement of the next regulatory control period to 1 July 2021. In May 2019, the Chair of the AER sent a letter to the Victorian distribution businesses stating that the AER was comfortable with the businesses delaying the submission of their regulatory proposals.¹²

4.2 The National Electricity Objective, and the potential for cross-subsidisation and discrimination

For the same reasons as those set out in our original waiver decisions, we consider that varying AusNet's, CitiPower/Powercor's, United Energy's and Jemena's waivers to allow an additional six-months:

- is likely to be consistent with the National Electricity Objective; and

¹² Chair of the AER, *Letter from AER to Victorian DNSPs - Re: Victorian Government intention to change the electricity distribution regulatory year from a calendar to financial year*, 30 May 2019.

- is unlikely to give rise to the potential for cross-subsidisation and discrimination.¹³

4.3 Balance of benefits and detriments from complying

We consider that there will be no material benefits from rejecting the waiver variation applications and requiring AusNet, CitiPower/Powercor, United Energy and Jemena to comply with their ring-fencing obligations.

We consulted on reclassifying the above services as direct control services in November 2018 by seeking stakeholder submissions on our Preliminary Framework and Approach for the Victorian 2021-2026 revenue determinations. We did not receive any submissions in relation to reclassifying these services.

If the waiver is refused, AusNet, CitiPower/Powercor, United Energy and Jemena would be required to either cease providing these services for a period of six months or to functionally separate provision of these services under cl. 4.2 the Guideline. This would result in further costs to the DNSPs if these services were subsequently reclassified as direct control services in our Final Determination for the 2021-26 regulatory control period. Additionally, there would be detriment to customers if the DNSPs opted to temporarily cease providing these services. Complying with the Guideline would therefore result in detriment to electricity customers.

In these circumstances, the benefits for consumers of AusNet, CitiPower/Powercor, United Energy and Jemena complying with the Guideline would not outweigh the costs of AusNet, CitiPower/Powercor, United Energy and Jemena of doing so.

4.4 Cost of compliance to Victorian DNSPs

Absent a six-month extension of these waivers, the DNSPs may choose to provide these services through a functionally separate affiliate for a period of six months until our Final Determination takes effect on 1 July 2021 and these services are reclassified as direct control services. Functional separation would impose avoidable cost on the DNSPs. Alternatively, the DNSPs could provide these services in breach of the Guideline, creating compliance risk for the DNSPs.

4.5 Cost of compliance to customers

Absent a six-month extension of these waivers, the DNSPs may choose to stop providing these services to customers. Some of these services, such as a lack of public lighting, could have detrimental effects to a wide range of customers.

4.6 Duration

AusNet, CitiPower/Powercor, United Energy and Jemena have applied to extend the waiver expiry date to 30 June 2021, from 31 December 2020.

¹³ AER, *DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline - Final Decision*, December 2017.

4.7 Public Consultation

Under clause 5.3.2(b)(iii) of the Guideline, the AER may invite public submissions on a waiver application, but it is not required to do so in all cases.

We have decided to grant variations to extend the waivers without further public consultation.

The group of original waiver applications and draft decisions were subject to public consultation in August 2017 and November 2017, respectively. We received one submission from NECA related to contestable works in NSW, and no submissions addressing reclassification of these services for Victorian DNSPs.¹⁴

We consulted further on the appropriate classification of these services by seeking stakeholder comment on our Preliminary Framework and Approach in November 2018. Our Final Framework and Approach indicated that we will reclassify these services as direct control services in the Victorian DNSP's revenue determination for 2021-26.¹⁵

Since granting the original waiver, no stakeholders have raised concerns with us about the operation of the waiver and the DNSPs have complied with the terms of the waiver.

4.8 Conclusion

We consider the cost to customers of compliance by AusNet, CitiPower/Powercor, United Energy and Jemena with the Guideline substantially outweighs the benefits that customers may receive from the waiver variation being granted. We also consider that there is low possibility for cross subsidisation and discrimination if the waiver variations are granted. For these reasons, we consider that varying the waivers to extend their expiry date will promote the NEO. Our decision is to vary the waivers by extending them to 30 June 2021.

¹⁴ NECA, *Submission to ring-fencing waiver draft decision*, 13 November 2017.

¹⁵ AER, *Preliminary F&A Victorian 2021-25 determinations*, September 2018.

5 Decision

We have decided to vary waivers from AusNet Services, CitiPower/Powercor, United Energy and Jemena Electricity Network, by extending the expiry date of the waivers to 30 June 2021.

AusNet Services is granted a waiver from its obligations under clauses 3.1, 4.2.2 and 4.2.3 of the Guideline in relation to the following services:

- public lighting and nightwatchman lights (including: alteration and relocation of distributor public lighting assets; new public lights, and; installation, repair and maintenance of watchman lights)
- emergency recoverable works
- reserve feeder construction

CitiPower/Powercor is granted a waiver from its obligations under clauses 4.2.1, 4.2.2 and 4.2.3 of the Guideline in relation to the following services:

- public lighting and nightwatchman lights (including: alteration and relocation of distributor public lighting assets; new public lights)
- reserve feeder construction
- minor and legacy metering services (including: collection of meter data, processing of meter data, and provision of access to meter data for type 1-4 metering installation (excluding smart meters), and; installation, repair and maintenance of watchman lights)
- emergency recoverable works
- non-standard connections

United Energy is granted a waiver from its obligations under clauses 4.2.1, 4.2.2, 4.2.3, and 4.4.1(a) of the Guideline in relation to the following services:

- public lighting and watchman lights (this includes: new stand alone and green field public lighting; alteration and relocation of public lighting assets, and; installation, repair and maintenance of watchman lighting)
- reserve feeder construction
- possum guards
- minor and legacy metering services (this includes: metering time switch adjustment for customers with non-AMI meters; customer access to metering data, type 1-4 metering installations; legacy type 5-6 metering services for customers who consume more than 160MWh per annum, and; transitional metering service arrangements for +160MWhpa customers and embedded network customers)

- non-standard connections, customer-requested supply enhancements, and augmentations

Jemena Electricity Network is granted a waiver from its obligations under clauses 4.2.1 and 4.2.2 of the Guideline in relation to the following services:

- public lighting and nightwatchman lights (this includes: alteration and relocation of distributor lighting assets; new public lights; new lighting types not subject to a regulated charge, and; installation, repair and maintenance of watchman lights)
- reserve feeder construction
- emergency recoverable works