



Ring-Fencing Guideline Electricity Distribution

**Unregulated and Negotiated Services -
Waiver application**



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Chapter**1 Waiver Application**

Introduction

AusNet Electricity Services Pty Ltd (AES) submits the below waiver applications in accordance with Section 5 of the Electricity Distribution Ring-fencing Guideline (the Guideline) for the provision of negotiated and unclassified distribution services. AES is seeking a waiver from these restrictions because current service classifications were not made with ring fencing in mind and as a result, ring fencing provisions do not fit well with these existing classifications.

In the 2016-2020 Victorian Framework and Approach paper, the Australian Energy Regulator (AER) contemplated that AES has a role to play in each of these services and so a continuation of these arrangements, until at least the start of the next regulatory period is appropriate. The best time to contemplate any change to these services is when the AER next considers service classification as part of the 2021-2025 Framework and Approach paper. We note that the AER's approach to service classification is evolving, for example in the New South Wales (NSW) Framework and Approach the negotiated classification has not been applied and we anticipate that this evolution may continue in the next Victorian distribution determination. Additionally, the Australian Energy Markets Commission (AEMC) is considering a rule change request from the Coalition of Australian Governments that if adopted, would require the AER to develop a service classification guideline.¹ In this environment, we do not consider that implementing the Guideline should override the AER's existing service classification decision in a manner that prevents AES providing services in accordance with the AER's revenue determination, in this regulatory period.

Section 5 (the Guideline) sets out the process and requirements when seeking a Waiver under the Guideline. In deciding whether to approve this waiver application the AER must have regard to:

- i. the National Electricity Objective;
- ii. the potential for cross-subsidisation and discrimination if the waiver is granted or refused;
- 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; and

may:

- i. have regard to any other matter it considers relevant;
- ii. request from the DNSP any further information the AER considers appropriate;
- iii. invite public submissions on the application; and
- iv. otherwise conduct such consultation as it considers appropriate with any person.

This waiver application sets out the information required by the AER to assess these applications and demonstrates that granting a waiver until the end of the current regulatory control period is the appropriate course of action in the circumstances. Waivers are sought for the following services:

1. Alteration and relocation of distributor public lighting assets – Negotiated Service
2. New public lights (that is, new lighting types not subject to a regulated charge and new public lighting at greenfield sites) – Negotiated Service
3. Reserve feeder construction – Negotiated Service
4. Emergency recoverable works – Unclassified Service
5. Installation, repair and maintenance of watchman lights – Unclassified Service

¹ National Electricity Amendment (Contestability of energy services) Rule 2016

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1 Negotiated or Unclassified services not requiring waivers

There are a number of services classified by the AER in the Victorian DNSPs 2016-20 revenue determinations as negotiated and unclassified distribution services. We have examined each service and considered whether a waiver is necessary. We identified a number of services where we consider no waiver or action is required and these are set out in Table 1 below:

Table 1 Unclassified or negotiated services – where no waiver is required.

Service	Reason
Supply enhancement at customer request – Unclassified Service	This was not classified by the AER because it is not provided in Victoria under this service classification. This type of request is offered under a different service classification in accordance with our distribution determination.
Installation, operation, repair & maintenance, and replacement of type 1-4 metering installations (excluding smart meters) – Unclassified Service	<p>AES does not provide this service, rather it is provided on a contestable basis by the relevant contestable metering provider.</p> <p>AES does have an affiliated service provider, Select Solutions, that provides this service. AES is ring-fenced from this service.</p>
Collection of meter data, processing and storage of meter data, and provision of access to meter data for type 1-4 metering installations (excluding smart meters) – Unclassified Service	<p>AES does not provide this service – rather it is provided on a contestable basis by the relevant contestable metering provider.</p> <p>AES does have an affiliated service provider, Select Solutions, that provides this service. AES is ring-fenced from this service.</p>
Installation, operation, repair & maintenance, and replacement of type 5-6 metering installations (including smart meters) to new customers – Unclassified Service	<p>This service classification is only relevant where the services are provided in a contestable manner. This service is described in the Victorian Framework and Approach as follows:</p> <p><i>Under the AEMC's Power of Choice Review (discussed further below) it has been proposed to expand competition in metering services. Rule changes to give effect to this policy are under active consideration. As this service will be competitive when introduced the appropriate classification is 'unclassified'. This classification will apply to new metering installations supplied under a competitive framework and involves the provision of metering services by retailers and other parties but not distributors as monopoly service providers. It will therefore not apply to metering installations supplied under the monopoly service arrangements. It will apply to services provided to new customers and to any replacement of an existing meter (except where a meter is supplied as a restoration service).</i></p> <p>The Victorian Government has made a decision to defer the implementation of metering contestability in Victoria. Accordingly, AES does not anticipate offering this service in the current regulatory period and so no waiver is required.</p>

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Service	Reason
Provision of possum guards	AES does not provide this service and so no waiver is required.

2 Waiver 1 - Alteration and relocation of distributor public lighting assets – Negotiated Service

AES provides Public Lighting services to local councils and other authorities such as Vic Roads. These services are provided in accordance with the Victorian Public Lighting Code which is available on the Essential Services Commission's website, www.esc.vic.gov.au.

The alteration and relocation of DNSP public lighting assets involves the removal of existing assets and their replacement with either upgraded assets in the same location or installation of similar or upgraded assets in another location. Instances of this type of work may include the realignment of poles and lights to allow for changes to a roadway alignment, the relocation of a lighting installation to allow access to a property, or other similar changes to the lighting assets.

As with other customer initiated works the construction is contestable and public lighting customers are able to engage any approved third party contractor to undertake these works. However, these assets are ultimately gifted back to AusNet Services. Importantly, there are aspects of this work that cannot be performed by third parties. This includes approval of the design and the updating of AES's records. If AES did not offer these aspects of this service, then it is not possible for customers to access third party providers as they would be altering our assets without our consent.

2.1 The obligation in respect of which the DNSP is applying for a waiver

We request a waiver under Clause 4.2.3(i) of the guideline, which requires that a DNSP:

- must use branding for its direct control services that is independent and separate from the branding used by a related electricity service provider, such that a reasonable person would not infer from the respective branding that the DNSP and the related electricity service provider are related.

A waiver under this clause would allow AES to continue providing this service. We do not require a waiver under clauses 4.2.3(ii) and 4.2.3(iii), which require a DNSP:

- 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).
- must not advertise or promote services provided by a related electricity service provider.

As noted below, we do not actively advertise or compete to provide this service and it appears infeasible that we would breach these provisions when providing these services. Regardless, we are not requesting a waiver from these clauses, these provisions would remain in force and we are prevented from engaging in this conduct.

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2.2 The reasons why the DNSP is applying for the waiver

This service relates to the alteration of assets owned by AES. In deciding to classify this service as a negotiated distribution service, the AER noted that:²

*While the Victorian distributors do not have a legislative monopoly over these services, a monopoly position exists to some extent. This is because the Victorian distributors own the majority of public lighting assets. That is, other parties would need access to poles and easements for instance to hang their own public lighting assets. However, the Victorian distributors own and control such supporting infrastructure. There are also safety restrictions on the qualifications of electrical workers in close proximity to overhead power lines. **Therefore, similar to network services, ownership of network assets restricts the operation, maintenance, alteration or relocation of public lighting services to the Victorian distributors.** Based on the above analysis, our preliminary position is to classify public lighting services, excluding emerging technology, as direct control services*

Whilst much of this service can be offered by third parties and we do not have a legislative monopoly, there are limitations on the third party provision of this service. Importantly there are some aspects that can only be performed by AusNet Services. Particularly, we would be unable to approve design plans and take other necessary steps for the assets to be gifted back to AusNet Services. As such, we consider it necessary that AES continues to provide this service to customers.

The AER gave thorough consideration to the classification of this service as part of the previous distribution determination and applied a service classification that supported AES (as a regulated entity) providing this service. In developing the ring-fencing guideline, the AER indicated that in light of the new Guideline it may re-consider service classifications in future distribution determinations. The AER stated:³

In particular, we note existing service classifications may not be the most suitable in the context of our new national ring-fencing approach. We are unable to adjust service classifications until a DNSP's next distribution determination.

We note that in the context of the NSW Framework & Approach for 2019-2024 the AER's decision was to classify all public lighting services as alternative control.⁴ There may be merit in classifying this service as alternative control at the next distribution determination. However, we consider it important that this decision is thoroughly considered and consulted upon as part of the next distribution determination.

Accordingly, we consider that a waiver should be provided to allow the continuation of this service within this regulatory period.

2.3 The proposed commencement date and expiry date (if any) of the waiver and the reasons for those dates

We note that the Guideline commenced on 1 December 2016, but the Guideline allows that despite this commencement date:

a DNSP must fully comply each of the obligations in clauses 3 and 4 of this Guideline in respect of its existing services as soon as reasonably practicable, having regard to the likely costs of having to fully comply with those obligations any sooner, but in any event must fully comply with those obligations by no later than 1 January 2018.

Accordingly, we propose that the commencement date is the date that the AER approves this waiver or no later than 1 January 2018. Further, we propose the expiry date of the 31 December 2020, which is the last day of the current regulatory period. We anticipate a permanent solution will be implemented as part of the next distribution determination.

² AER preliminary Framework & Approach 2016-20

³ Electricity distribution Ring-fencing Guideline Explanatory statement November 2016

⁴ Framework and approach - Ausgrid, Endeavour Energy and Essential Energy - Regulatory control period commencing 1 July 2019

- March 2017. pp. 104

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2.4 Details of the costs associated with the DNSP complying with the obligation if the waiver of the obligation were refused

If AES is not granted a waiver, then AES would need to cease to provide this service, which would be inconsistent with the distribution determination which anticipates that we would provide this service. Additionally, ceasing to provide this service would also prevent third parties from providing this service as we would be unable to approve design plans and take other necessary steps for the assets to be gifted back to AusNet Services.

As there are limitations on the third party provision of this service, this would result in a reduction of this service being offered to public lighting customers. Whilst not directly imposing an additional cost, this reduced service offering may give rise to safety impacts and is detrimental to Victorian public lighting customers.

2.5 Any additional measures the DNSP proposes to undertake if the waiver were granted

Our implementation approach sets out a detailed response on how we will comply with the ring fencing guideline. We are implementing a range of changes to our business including:

- Updating or creating policies, procedures and a reporting and compliance framework;
- Training staff;
- Establishing a new Ring-fencing policy;
- Clear communication to our employees on the operational change requirements; and
- Modify existing business arrangements for compliance.

2.6 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

A waiver should be granted in this case because granting a waiver is a short term measure that is consistent with the objectives of the Guideline and with the AER's current revenue determination for AusNet Services. This waiver should be provided until the beginning of the next regulatory period, when the AER has an opportunity to re-consider the issue in detail and make a decision about the appropriate service classification. There may be merit in classifying this service as alternative control at the next distribution determination. This would allow AES to continue providing this service, in compliance with the Guideline and with appropriate controls.

Granting the waiver will result in the lowest cost provision of service to these customers and has no identifiable harms to public lighting customers.

In making its decision the AER 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;
- 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.

We have set out our consideration against each of these criteria below.

2.6.1 National Electricity Objective

The NEO is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—

- (a) price, quality, safety, reliability and security of supply of electricity; and

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- (b) the reliability, safety and security of the national electricity system.

We consider that receiving a waiver to continue to provide these services is in accordance with the NEO. Regulatory certainty promotes the efficient use of electricity services as it allows DNSPs and customers to source services on a consistent basis over time. We note that without the AER providing a waiver, AES will be unable to continue providing this service to customers. Third parties would also, consequentially, be prevented from providing these services and this will result in a reduced availability of these services. This would not be in the interest of consumers and so is not consistent with the NEO.

2.6.2 The potential for cross-subsidisation and discrimination if the waiver is granted

The Guideline seeks to address two potential harms with two separate sets of obligations for DNSPs:

- First, the Guideline addresses the risk of a DNSP cross-subsidising other services with revenue earned from provision of distribution (and transmission) services. It does this through legal separation of the DNSP, which may only provide distribution (and transmission) services, from affiliated entities that may provide other electricity services. The legal separation obligation is supported by other obligations for the DNSP to maintain separate accounts, follow defined cost allocation methods (CAMs) and be able to report on transactions between itself and its affiliates.
- Second, the Guideline addresses the risk of a DNSP favouring its own negotiated services or other distribution services, or an affiliated entity's other electricity services, in contestable markets. The Guideline does this by imposing behavioural obligations on DNSPs, including restrictions on sharing and co-locating staff, information and on co-branding of advertising materials.

Costs are captured on this negotiated service under an appropriate work code in our accounting system. As such, robust accounting separation and appropriate cost allocation already exist for this service and there is no risk of cross subsidisation with customers of the regulated network.

In regards to risk of a DNSP favouring its own negotiated services, we note that:

- We do not actively advertise or compete to provide this service – to the degree that this service is provided, customers are approaching us directly. The volume of work undertaken in this space is not material.

The AER has previously acknowledged the technical and safety barriers to greater competition in the provision of this service. The use of AES branding is unlikely to create material additional barriers for parties seeking to enter this market. As such, we consider that there is little risk of us discriminating in favour of our negotiated service over other providers.

2.6.3 Cost Benefit of granting the Waiver

We note that the cost involved in not receiving the waiver is that AES will be unable to continue to provide this service and that there is limited provision by third parties. As the counterfactual, providing this temporary waiver allows AES to continue to provide this service until the AER has had an opportunity to reconsider the classification of this service at the next distribution determination.

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3 Waiver 2 - New public lights (that is, new lighting types not subject to a regulated charge and new public lighting at greenfield sites) – Negotiated Service

AES provides Public Lighting services to local councils and other authorities such as Vic Roads. These services are provided in accordance with Victorian Public Lighting Code which is available on the Essential Services Commission's website, www.esc.vic.gov.au.

Lighting infrastructure in new estates, residential and commercial, is generally installed by the developer that is responsible for the construction of public use assets within the estate. Where the specification is to the Victorian Electricity Supply Industry (VESI) standards, the assets will be gifted to AES on completion. AES can also provide this service on request. However, we do not actively compete for work in this area and consider ourselves a supplier of last resort for these services.

3.1 The obligation in respect of which the DNSP is applying for a waiver

We request a waiver under Clause 4.2.3(i) of the guideline, which requires that a DNSP:

- must use branding for its direct control services that is independent and separate from the branding used by a related electricity service provider, such that a reasonable person would not infer from the respective branding that the DNSP and the related electricity service provider are related.

A waiver under this clause would allow AES to continue providing this service. We do not require a waiver under clauses 4.2.3(ii) and 4.2.3(iii), which require a DNSP:

- 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).
- must not advertise or promote services provided by a related electricity service provider.

As noted below, we do not actively advertise or compete to provide this service and it appears infeasible that we would breach these provisions when providing these services. Regardless, we are not requesting a waiver from these clauses, these provisions would remain in force and we are prevented from engaging in this conduct.

3.2 The reasons why the DNSP is applying for the waiver

We note that the market for the provision of new public lighting assets is workably competitive with the majority of the work already being provided by third parties. However, we request the waiver so that we can continue to provide this service as a constructor of last resort for the remainder of this regulatory period and for consistency with the AER's recent revenue determination for AES.

The AER gave thorough consideration to the classification of this service as part of AES's previous distribution determination and applied a service classification that supported AES (as a regulated entity) providing this service. The AER found:

There also remains a case for some regulatory oversight. This supports our overall view the service should be classified.

Were the service to be moved to either standard control or alternative control we believe the effect would be to add an additional layer of economic regulation to the factors which currently slow the adoption of emerging technologies. Consequently, we consider the emerging technologies and greenfield sites service should continue to be a negotiated service.

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The introduction of the Guideline introduces additional complexity into the decision regarding the appropriate service classification. We note that in the context of the NSW Framework & Approach for 2019-2024, the AER's decision was to classify all public lighting services as alternative control.⁵ There may be merit in classifying this service as alternative control at the next distribution determination. In developing the Guideline, the AER indicated that some of its existing service classifications may not be appropriate and that it may re-consider service classifications in future distribution determinations. The AER stated:⁶

In particular, we note existing service classifications may not be the most suitable in the context of our new national ring-fencing approach. We are unable to adjust service classifications until a DNSP's next distribution determination.

It is important that this decision is thoroughly considered and consulted upon as part of the next distribution determination. Accordingly, we consider that a waiver should be provided to allow the continuation of this service within this regulatory period.

3.3 The proposed commencement date and expiry date (if any) of the waiver and the reasons for those dates

We note that the Guideline commenced on 1 December 2016, but the Guideline allows that despite this commencement date:

a DNSP must fully comply each of the obligations in clauses 3 and 4 of this Guideline in respect of its existing services as soon as reasonably practicable, having regard to the likely costs of having to fully comply with those obligations any sooner, but in any event must fully comply with those obligations by no later than 1 January 2018.

Accordingly, we propose that the commencement date is the date that the AER approves this waiver or no later than 1 January 2018. Further, we propose the expiry date of the 31 December 2020, which is the last day of the current regulatory period. We anticipate a permanent solution will be implemented as part of the next distribution determination.

3.4 Details of the costs associated with the DNSP complying with the obligation if the waiver of the obligation were refused

If AES is not provided a waiver, then AES would need to cease to provide this service. We do not actively compete for work in this area and consider ourselves a supplier of last resort for these services. In doing so, we effectively provide a cap on the price that this service can be offered in the market and the experience shows that developers are generally choosing alternative providers. However, if we cease to provide this service, there is a risk that reduced competition will drive prices higher for Victorian public lighting customers.

3.5 Any additional measures the DNSP proposes to undertake if the waiver were granted

Our implementation approach sets out a detailed response on how we will comply with the ring fencing guideline. We are implementing a range of changes to our business including:

- Updating or creating policies, procedures and a reporting and compliance framework;
- Training staff;
- Establishing a new Ring-fencing policy;
- Clear communication to our employees on the operational change requirements; and

⁵ Framework and approach - Ausgrid, Endeavour Energy and Essential Energy - Regulatory control period commencing 1 July 2019 - March 2017. pp. 103

⁶ Electricity distribution Ring-fencing Guideline Explanatory statement November 2016

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- Modify existing business arrangements for compliance.

3.6 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

A waiver should be granted in this case because granting a waiver is a short term measure that is consistent with the objectives of the Guideline. This waiver should be provided until the beginning of the next regulatory period, when the AER has an opportunity to re-consider the issue in detail and make a decision about the appropriate service classification. There may be merit in classifying this service as alternative control at the next distribution determination. This would allow AES to continue providing this service, in compliance with the Guideline and with appropriate controls.

Granting the waiver results in the lowest cost provision of service to these customers and has no identifiable harms to public lighting customers, AES or customers of its regulated network. In making its decision the AER must have regard to:

- i. the NEO;
- ii. the potential for cross-subsidisation and discrimination if the waiver is granted or refused;
- 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.

We have set out our consideration against each of these criteria below.

3.6.1 National Electricity Objective

The NEO is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

We consider that receiving a waiver to continue to providing these services is in accordance with the NEO. Regulatory certainty promotes the efficient use of electricity services as it allows DNSPs and customers to source services in a consistent basis over time. We consider removing this service from the market, without careful consideration would run counter to this objective. We consider that we effectively place a cap on the price of these services and if we withdrew from offering this service, this may result in increased prices and less choice for these customers.

3.6.2 The potential for cross-subsidisation and discrimination if the waiver is granted

The Guideline seeks to address two potential harms with two separate sets of obligations for DNSPs:

- First, the Guideline addresses the risk of a DNSP cross-subsidising other services with revenue earned from provision of distribution (and transmission) services. It does this through legal separation of the DNSP, which may only provide distribution (and transmission) services, from affiliated entities that may provide other electricity services. The legal separation obligation is supported by other obligations for the DNSP to maintain separate accounts, follow defined cost allocation methods (CAMs) and be able to report on transactions between itself and its affiliates.
- Second, the Guideline addresses the risk of a DNSP favouring its own negotiated services or other distribution services, or an affiliated entity's other electricity services, in contestable markets. The

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Guideline does this by imposing behavioural obligations on DNSPs, including restrictions on sharing and co-locating staff, information and on co-branding of advertising materials.

Costs for this service are captured on this negotiated service under an appropriate work code in our accounting system. As such, robust accounting separation and appropriate cost allocation already exist for this service so there is no risk of cross subsidisation with customers of the regulated network. In regards to risk of a DNSP favouring its own negotiated services, we note that there is a workably competitive market for these services and that we do not actively advertise or compete to provide this service. As such, we consider that there is little risk of us discriminating in favour of our negotiated service over other providers.

3.6.3 Cost Benefit of granting the Waiver

We note that the cost involved in not receiving the waiver is that we will be unable to continue to provide this service. This will reflect a reduction in choice for these customers and may result in increased prices. As the counterfactual, providing this temporary waiver allows AES to continue to provide this service until the AER has had an opportunity to reconsider the classification of this service at the next distribution determination.

4 Waiver 3 - Reserve feeder construction – Negotiated Service

A reserve feeder is a second connection from a distributor to a customer. The provision of a Reserve Feeder is a competing option as it is an alternative to other solutions that the customer may have available to them. In accordance with the Victorian framework the customer is able to obtain prices from third parties for design and construction of any new assets required. These services are only provided to large industrial and commercial customers.

Whilst much of this service can be offered by third parties and we do not have a legislative monopoly, there are limitations on the third party provision of this service. Importantly there are some aspects that can only be performed by AusNet Services. These assets are ultimately gifted back to AusNet Services and so we remain responsible for approval of the design and the updating of our records. If we do not offer at least these aspects of this service, then it is not possible for customers to access third party providers.

We note that there is a second service 'reserve feeder maintenance', which is classified as alternative control. This relates to the ongoing operation of these assets once they have been constructed. No action is required in respect of this service.

4.1 The obligation in respect of which the DNSP is applying for a waiver

We request a waiver under Clause 4.2.3(i) of the guideline, which requires that a DNSP:

- must use branding for its direct control services that is independent and separate from the branding used by a related electricity service provider, such that a reasonable person would not infer from the respective branding that the DNSP and the related electricity service provider are related.

A waiver under this clause would allow the AES to continue providing this service, consistent with the AER's most recent revenue determination.

We do not require a waiver under clauses 4.2.3(ii) and 4.2.3(iii), which require a DNSP:

- 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).

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- must not advertise or promote services provided by a related electricity service provider.

As noted below, we do not actively advertise or compete to provide this service and it appears infeasible that we would breach these provisions when providing these services. Regardless, we are not requesting a waiver from these clauses, these provisions would remain in force and we are prevented from engaging in this conduct.

4.2 The reasons why the DNSP is applying for the waiver

We request the waiver so that we can continue to provide this service for the remainder of this regulatory period. This is not a common service offering, though we are currently progressing the construction of a reserve feeder for a customer. We note that AES is not required to deliver most of this service including the design and construction. However, there are aspects which are not contestable including design approval, the tie-in and any necessary augmentation.

If we had to cease offering this service, this would also prevent third parties from providing this service as we would be unable to approve design plans and take other necessary steps for the assets to be gifted back to AusNet Services.

The AER gave thorough consideration to the classification of this service as part of the previous distribution determination and applied a service classification that supported AES (as a regulated entity) providing this service. In doing so the AER noted:

We considered whether this activity should be unclassified but, as there is a limited competition for this service we have accepted AusNet Services' proposal that it should be a negotiated service.

In developing the ring-fencing guideline, the AER indicated that some of its existing service classifications may not be appropriate and that it may re-consider service classifications in future distribution determinations. The AER stated:

In particular, we note existing service classifications may not be the most suitable in the context of our new national ring-fencing approach. We are unable to adjust service classifications until a DNSP's next distribution determination.

There may be merit in classifying this service as alternative control at the next distribution determination. It is important that this decision is thoroughly considered and consulted upon as part of that distribution determination. Accordingly, we consider that a waiver should be provided to allow the continuation of this service within this regulatory period, until this decision is made at the appropriate time.

4.3 The proposed commencement date and expiry date (if any) of the waiver and the reasons for those dates

We note that the Guideline commenced on 1 December 2016, but the Guideline allows that despite this commencement date:

a DNSP must fully comply each of the obligations in clauses 3 and 4 of this Guideline in respect of its existing services as soon as reasonably practicable, having regard to the likely costs of having to fully comply with those obligations any sooner, but in any event must fully comply with those obligations by no later than 1 January 2018.

Accordingly, we propose that the commencement date is the date that the AER approves this waiver or no later than 1 January 2018. Further, we propose the expiry date of the 31 December 2020, which is the last day of the current regulatory period. We anticipate a permanent solution will be implemented as part of the next distribution determination.

Unregulated and Negotiated Services - Waiver application

4.4 Details of the costs associated with the DNSP complying with the obligation if the waiver of the obligation were refused

If AES is not provided a waiver, then AES would cease to provide this service. We note that we do not actively compete for work in this area and consider ourselves a supplier of last resort for these services. In doing so, we effectively provide a cap on the price that this service can be offered in the market and the experience shows that developers are generally choosing alternative providers.

If we cease to provide this service, there is a risk that reduced competition will drive prices higher for customers seeking the construction of reserve feeders.

4.5 Any additional measures the DNSP proposes to undertake if the waiver were granted

Our implementation approach sets out a detailed response on how we will comply with the ring fencing guideline. We are implementing a range of changes to our business including:

- Updating or creating policies, procedures and a reporting and compliance framework;
- Training staff;
- Establishing a new Ring-fencing policy;
- Clear communication to our employees on the operational change requirements; and
- Modify existing business arrangements for compliance.

4.6 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

A waiver should be granted in this case because granting a waiver is a short term measure that is consistent with the objectives of the Guideline. This waiver should be provided until the beginning of the next regulatory period, when the AER has an opportunity to re-consider the issue in detail and make a decision about the appropriate service classification. There may be merit in classifying this service as alternative control at the next distribution determination. This would allow AES to continue providing this service, in compliance with the Guideline and with appropriate controls.

We consider granting the waiver results in the lowest cost provision of service to these customers and has no identifiable harms customers requiring a reserve feeder, AES or customers of its regulated network.

In making its decision the AER must have regard to:

- i. the NEO;
- ii. the potential for cross-subsidisation and discrimination if the waiver is granted or refused;
- 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.

We have set out our consideration against each of these criteria below.

4.6.1 National Electricity Objective

The NEO is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

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We consider that receiving a waiver to continue to providing these services is in accordance with the NEO. Regulatory certainty promotes the efficient use of electricity services as it allows DNSPs and customers to source services in a consistent basis over time. We note that we consider that we effectively place a cap on the price of these services and if we withdrew from offering this service, this may result in increased prices and less choice for these customers. Additionally, by ceasing this service, this would prevent third parties from providing this service as we would be unable to approve design plans and take other necessary steps for the assets to be gifted back to AusNet Services.

We note that whilst this service is used infrequently, we are currently progressing such a project with a customer. If a waiver is not provided, then we would need to halt this project pushing additional costs onto this customer to find an additional provider. We do not consider this outcome would be consistent with the NEO.

The customers accessing this service are necessarily large customers with significant electrical needs. Accordingly they should have the expertise to procure these services either through AES, other accredited providers or utilising non-network solutions. Accordingly we see no harm in continuing to provide these services.

4.6.2 The potential for cross-subsidisation and discrimination if the waiver is granted

The Guideline seeks to address two potential harms with two separate sets of obligations for DNSPs:

- First, the Guideline addresses the risk of a DNSP cross-subsidising other services with revenue earned from provision of distribution (and transmission) services. It does this through legal separation of the DNSP, which may only provide distribution (and transmission) services, from affiliated entities that may provide other electricity services. The legal separation obligation is supported by other obligations for the DNSP to maintain separate accounts, follow defined cost allocation methods (CAMs) and be able to report on transactions between itself and its affiliates.
- Second, the Guideline addresses the risk of a DNSP favouring its own negotiated services or other distribution services, or an affiliated entity's other electricity services, in contestable markets. The Guideline does this by imposing behavioural obligations on DNSPs, including restrictions on sharing and co-locating staff, information and on co-branding of advertising materials.

Costs for this service are captured on this negotiated service under an appropriate work code in our accounting system. As such, robust accounting separation and appropriate cost allocation already exist for this service so there is no risk of cross subsidisation with customers of the regulated network.

In regards to risk of a DNSP favouring its own negotiated services, we note that there is a workably competitive market for these services and that we do not actively advertise or compete to provide this service. As such, we consider that there is little risk of us discriminating in favour of our negotiated service over other providers.

4.6.3 Cost Benefit of granting the Waiver

We note that the cost involved in not receiving the waiver is that we will be unable to continue to provide this service and by ceasing this service, this would prevent third parties from providing this service. This will result in large customers being unable to access these services if they require them.

As the counterfactual, providing this temporary waiver allows AES to continue to provide this service as provided for in the AER's revenue determination for AES, until the AER has had an opportunity to reconsider the classification of this service at the next distribution determination.

Unregulated and Negotiated Services - Waiver application

5 Waiver 4 - Emergency recoverable works – Unclassified Service

The Victorian Framework and Approach paper for the 2016-20 regulatory period sets out that 'Emergency recoverable works' relate to the distributors' emergency work to repair damage following a person's act or omission, for which that person is liable. This service is distinct from 'Emergency Works' where there is no identified liable third party.

5.1 The obligation in respect of which the DNSP is applying for a waiver

We request a waiver under Clause 4.2.3(i) of the guideline, which requires that a DNSP:

- must use branding for its direct control services that is independent and separate from the branding used by a related electricity service provider, such that a reasonable person would not infer from the respective branding that the DNSP and the related electricity service provider are related.

A waiver under this clause would allow AES to provide this service with its existing field crew. We note that it is not practical to have a second set of unbranded field crew ready to respond only to a subset of emergency situations.

We do not require a waiver under clauses 4.2.3(ii) and 4.2.3(iii), which require a DNSP:

- 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).
- must not advertise or promote services provided by a related electricity service provider.

As noted below, we do not actively advertise or compete to provide this service and it appears infeasible that we would breach these provisions when providing these services. Regardless, we are not requesting a waiver from these clauses, these provisions would remain in force and we are prevented from engaging in this conduct.

5.2 The reasons why the DNSP is applying for the waiver

The classification of emergency recoverable works as unclassified results in a distinction in the source of funding of these works in comparison to emergency works.⁷ By not classifying emergency recoverable works, distributors are not able to recover costs for these services from customers of direct control services. Rather, to be compensated for damage to the network caused by an identifiable party, distributors must seek to recover costs from that party. The AER considered this will establish the right incentives for each distributor to pursue costs from parties responsible for damage to distribution network assets. Importantly, the AER had no intention that these services would be provided on a contestable basis or in any manner other than provision by the DNSP. The AER has stated that:

Distributors carry out emergency recoverable works as part of the normal maintenance and repair to the network to ensure the safe and reliable supply of electricity. Only a distributor may perform these types of repairs on its assets. Given that these services are provided in connection with a distribution system, we consider emergency recoverable works are a distribution service.

As such, it is clear that this service (emergency recoverable works) is one that can only be provided by AES. In this circumstance, it is impractical that the provision of this service could be ring fenced from AES standard control services.

⁷ 'Emergency works' relate to repairing the distribution network after damage to restore or maintain electricity supply. Repairing damage caused by a storm is an example of such works.

Unregulated and Negotiated Services - Waiver application

Importantly, the AER re-considered the classification of Emergency Recoverable Works in the context of the NSW Framework & Approach for 2019-2024. The AER noted that:

However, following the introduction of our ring-fencing guideline, classifying this service as an unregulated distribution service would require it to be ring-fenced.

....

Therefore, our preliminary position is for emergency recoverable works to be subsumed into the common distribution services group and classified as a direct control and standard control service.

We consider that it is appropriate that a waiver is granted in this regulatory period to allow AES to continue to provide this service. There may be merit in classifying this service as alternative control at the next distribution determination.

5.3 The proposed commencement date and expiry date (if any) of the waiver and the reasons for those dates

We note that the Guideline commenced on 1 December 2016, but the Guideline allows that despite this commencement date:

a DNSP must fully comply each of the obligations in clauses 3 and 4 of this Guideline in respect of its existing services as soon as reasonably practicable, having regard to the likely costs of having to fully comply with those obligations any sooner, but in any event must fully comply with those obligations by no later than 1 January 2018.

Accordingly, we propose that the commencement date is the date that the AER approves this waiver or no later than 1 January 2018. Further, we propose the expiry date of the 31 December 2020, which is the last day of the current regulatory period. We anticipate a permanent solution will be implemented as part of the next distribution determination.

5.4 Details of the costs associated with the DNSP complying with the obligation if the waiver of the obligation were refused

As noted above, it is impractical that the provision of this service could be ring-fenced. We are not able to distinguish between the different service classifications at the time the work needs to be done. In responding to an emergency, our field crew needs to respond quickly to ensure public safety and then restore electricity supply. Any assessment of liability (and by extension service classification) would occur after an appropriate emergency response has been undertaken. Accordingly, even if a waiver is not provided, we would need to maintain our existing emergency response procedures.

5.5 Any additional measures the DNSP proposes to undertake if the waiver were granted

Our implementation approach sets out a detailed response on how we will comply with the ring fencing guideline. We are implementing a range of changes to our business including:

- Updating or creating policies, procedures and a reporting and compliance framework;
- Training staff;
- Establishing a new Ring-fencing policy;
- Clear communication to our employees on the operational change requirements; and
- Modify existing business arrangements for compliance.

Unregulated and Negotiated Services - Waiver application

5.6 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

A waiver should be granted in this case because granting a waiver is a short term measure that is consistent with the objectives of the Guideline. This waiver should be provided until the beginning of the next regulatory period, when the AER has an opportunity to re-consider the issue in detail and make a decision about the appropriate service classification. There may be merit in classifying this service as alternative control at the next distribution determination, removing the distinction from emergency works.

In making its decision on whether to provide a waiver the AER must have regard to:

- i. the NEO;
- ii. the potential for cross-subsidisation and discrimination if the waiver is granted or refused;
- 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.

We have set out our consideration against each of these criteria below.

5.6.1 National Electricity Objective

The NEO is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

We consider that receiving a waiver to continue to providing these services is in accordance with the NEO. The AER applied an unclassified service classification to provide AES an incentive to recover the costs of these works from identifiable third parties. Providing the waiver preserves these incentives for the remainder of the regulatory control period and ensures that customers of our direct control services do not cover the cost of repairs caused by liable third parties.

5.6.2 The potential for cross-subsidisation and discrimination if the waiver is granted

The Guideline seeks to address two potential harms with two separate sets of obligations for DNSPs:

- First, the Guideline addresses the risk of a DNSP cross-subsidising other services with revenue earned from provision of distribution (and transmission) services. It does this through legal separation of the DNSP, which may only provide distribution (and transmission) services, from affiliated entities that may provide other electricity services. The legal separation obligation is supported by other obligations for the DNSP to maintain separate accounts, follow defined cost allocation methods (CAMs) and be able to report on transactions between itself and its affiliates.
- Second, the Guideline addresses the risk of a DNSP favouring its own negotiated services or other distribution services, or an affiliated entity's other electricity services, in contestable markets. The Guideline does this by imposing behavioural obligations on DNSPs, including restrictions on sharing and co-locating staff, information and on co-branding of advertising materials.

Costs for this service are captured on this negotiated service under an appropriate work code in our accounting system. As such, robust accounting separation and appropriate cost allocation already exist for this service so there is no risk of cross subsidisation with customers of the regulated network. This is not a contestable service and as such it is not possible for us favour our services or affiliated entities or their services above other entities.

Unregulated and Negotiated Services - Waiver application

5.6.3 Cost Benefit of granting the Waiver

We do not consider it practical to comply with the Guideline if a waiver is not provided. We will need to maintain our existing approach to emergency response and operate in breach of the Guideline.

6 Waiver 5 - Installation, repair and maintenance of watchman lights – Unclassified Service

Watchmen lights are security flood lights owned and operated by AES, which are mounted on one of AES' poles and pointed towards a customer's premises. They are either operated on a timed basis or utilise a light sensor. We have a standard set of luminaires, terms and conditions, and an application form for customers to fill out. However this service is not advertised or promoted on our website. We consider that this is a legacy service, which is still occasionally requested by customers and only provided when specifically requested. With advances in lighting technology, there are generally better and more flexible options available to customers and we anticipate a continuing decline in the volume of this service.

6.1 The obligation in respect of which the DNSP is applying for a waiver

We request a waiver under Clause 4.2.3(i) of the guideline, which requires that a DNSP:

- must use branding for its direct control services that is independent and separate from the branding used by a related electricity service provider, such that a reasonable person would not infer from the respective branding that the DNSP and the related electricity service provider are related.

A waiver under this clause would allow the AES to continue to provide this service. We do not require a waiver under clauses 4.2.3(ii) and 4.2.3(iii), which require a DNSP:

- 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).
- must not advertise or promote services provided by a related electricity service provider.

As noted below, we do not actively advertise or compete to provide this service and it appears infeasible that we would breach these provisions when providing these services. Regardless, we are not requesting a waiver from these clauses, these provisions would remain in force and we are prevented from engaging in this conduct.

6.2 The reasons why the DNSP is applying for the waiver

We request the waiver so that we can continue to provide this service for the remainder of this regulatory period. We note that this is not a common service offering, but regardless, we are occasionally contacted by customers seeking this service and we consider that it is appropriate to continue to do so if requested.

In developing the ring-fencing guideline, the AER indicated that some of its existing service classifications may not be appropriate and that it may re-consider service classifications in future distribution determinations. The AER stated:

In particular, we note existing service classifications may not be the most suitable in the context of our new national ring-fencing approach. We are unable to adjust service classifications until a DNSP's next distribution determination.

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We note that in the context of the NSW Framework & Approach for 2019-2024, the AER created a new Security Lights service, which it classified as alternative control.⁸ There may be merit in classifying this service as alternative control at the next distribution determination. We consider it important that this decision is thoroughly considered and consulted upon as part of that distribution determination.

6.3 The proposed commencement date and expiry date (if any) of the waiver and the reasons for those dates

We note that the Guideline commenced on 1 December 2016, but the Guideline allows that despite this commencement date:

a DNSP must fully comply each of the obligations in clauses 3 and 4 of this Guideline in respect of its existing services as soon as reasonably practicable, having regard to the likely costs of having to fully comply with those obligations any sooner, but in any event must fully comply with those obligations by no later than 1 January 2018.

Accordingly, we propose that the commencement date is the date that the AER approves this waiver or no later than 1 January 2018. Further, we propose the expiry date of the 31 December 2020, which is the last day of the current regulatory period. We anticipate a permanent solution will be implemented as part of the next distribution determination.

6.4 Details of the costs associated with the DNSP complying with the obligation if the waiver of the obligation were refused

If AES is not provided a waiver, then AES would cease to provide this as a new service. We note that we do not actively compete for work in this area and only provide this service on request. Whilst we note that commercial alternatives likely exist, to the degree that this service is still valued by a subset of customers we do not consider it appropriate to remove choice from these customers without proper consideration.

6.5 Any additional measures the DNSP proposes to undertake if the waiver were granted

Our implementation approach sets out a detailed response on how we will comply with the ring fencing guideline. We are implementing a range of changes to our business including:

- Updating or creating policies, procedures and a reporting and compliance framework
- Training staff;
- Establishing a new Ring-fencing policy;
- Clear communication to our employees on the operational change requirements; and
- Modify existing business arrangements for compliance.

6.6 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

A waiver should be granted in this case because granting a waiver is a short term measure that is consistent with the objectives of the Guideline. This waiver should be provided until the beginning of the next regulatory period, when the AER has an opportunity to re-consider the issue in detail and make a decision about the appropriate service classification. There may be merit in classifying this service as alternative control at the next distribution determination. This would allow AES to continue providing this service, in compliance with the Guideline and with appropriate controls.

In making its decision on whether to provide a waiver the AER must have regard to:

⁸ Framework and approach - Ausgrid, Endeavour Energy and Essential Energy - Regulatory control period commencing 1 July 2019 - March 2017. pp. 98

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- i. the NEO;
- ii. the potential for cross-subsidisation and discrimination if the waiver is granted or refused;
- 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.

We have set out our consideration against each of these criteria below.

6.6.1 National Electricity Objective

The NEO is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

We consider that receiving a waiver to continue to providing these services is in accordance with the NEO. The waiver allows us to continue offering this service to customers who request it for the remainder of this regulatory period and potentially continue offering this service in future regulatory periods (if the AER decides a different service classification is appropriate). Removing services from the market, without detailed consideration of the consequences would not be consistent with the NEO.

6.6.2 The potential for cross-subsidisation and discrimination if the waiver is granted

The Guideline seeks to address two potential harms with two separate sets of obligations for DNSPs:

- First, the Guideline addresses the risk of a DNSP cross-subsidising other services with revenue earned from the provision of distribution (and transmission) services. It does this through legal separation of the DNSP, which may only provide distribution (and transmission) services, from affiliated entities that may provide other electricity services. The legal separation obligation is supported by other obligations for the DNSP to maintain separate accounts, follow defined cost allocation methods (CAMs) and be able to report on transactions between itself and its affiliates.
- Second, the Guideline addresses the risk of a DNSP favouring its own negotiated services or other distribution services, or an affiliated entity's other electricity services, in contestable markets. The Guideline does this by imposing behavioural obligations on DNSPs, including restrictions on sharing and co-locating staff, information and on co-branding of advertising materials.

Costs for this service are captured on this unclassified service under an appropriate work code in our accounting system. As such, robust accounting separation and appropriate cost allocation already exist for this service so there is no risk of cross subsidisation with customers of the regulated network.

In regards to risk of a DNSP favouring its own unclassified services, we consider there are commercial alternatives and a competitive market for these services. Further, we do not actively advertise or compete to provide this service. As such, we consider that there is little risk of us discriminating in favour of our unclassified service over other providers.

6.6.3 Cost Benefit of granting the Waiver

We note that the cost involved in not receiving the waiver is that we will be unable to continue to provide this service to customers who request it. Whilst they should be able to source commercial alternatives, this still represents a reduction in choice for these customers.

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As the counterfactual, providing this temporary waiver allows AES to continue to provide this service consistent with the AER's revenue determination until the AER has had an opportunity to reconsider the classification of this service at the next distribution determination. This preserves customers' ability to request this service if they require.