Energex Ring-Fencing Waiver Applications

AER Ring-Fencing Guideline

Energex Limited
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energex
positive energy

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Glossary of terms

Defined term	Definition
Affiliated Entity	In relation to a DNSP, means a legal entity: a) which is a direct or indirect shareholder in the DNSP or otherwise has a direct or indirect legal or equitable interest in the DNSP; b) in which the DNSP is a direct or indirect shareholder or otherwise has a direct or indirect legal or equitable interest; or c) in which a legal entity referred to in paragraph (a) or (b) is a direct or indirect shareholder or otherwise has a direct or indirect legal or equitable interest.
Alternative control service (ACS)	A distribution service that is a direct control service but not a standard control service.
Compliance Strategy	Document that sets out the strategic approach that Energex is taking to compliance with the Guideline.
Contestable electricity services (CES)	Other distribution services and other electricity services.
Direct Control Service (DCS)	An electricity network service which the National Electricity Rules (NER) specify as a service, the price for which the AER specifies in an Energex determination as a service the price for which, or the revenue to be earned from which, must be regulated under the Energex determination.
Distribution Network Service Provider (DNSP)	A person who engages in the activity of owning, controlling, or operating a distribution system and is registered as a network service provider (i.e. Energex).
Distribution service	A service provided by means of, or in connection with, a distribution system.
Electricity services	Services that are necessary or incidental to the supply of electricity to consumers of electricity, including the generation of electricity; electricity network services; the sale of electricity (relevant to definition of electricity information).
Other distribution services (ODS)	A distribution services other than direct control services. Note: As Energex does not provide negotiated distribution services this applies only to distribution services that are not classified (i.e. unclassified distribution services*).*
Other Electricity Services (OES)	Services for the supply of electricity or that are necessary or incidental to the supply of electricity, other than transmission services or distribution services.
Other Services	Services other than transmission services or distribution services.
Related Electricity Service Provider (RESP)	In relation to a DNSP, includes an Affiliated Entity of the DNSP; and the part of the DNSP that provides contestable electricity services.
Standard Control Service (SCS)	A direct control service that is subject to a control mechanism based on Energex's total revenue requirement.
Unclassified Distribution Service (UDS)	This is not a defined term in the National Electricity Law (NEL) or Rules, or through the AER's Framework and Approach. However, an unclassified distribution service is a distribution service that is not classified as a direct control service or a negotiated distribution service by the AER.

Overview

Energex builds, operates and maintains the electricity distribution network in the growing region of South East Queensland which includes the major urban areas of Brisbane, Gold Coast, Sunshine Coast, Logan, Ipswich, Redlands and Moreton Bay. Energex's electricity distribution area runs from the New South Wales border north to Gympie and west to the base of the Great Dividing Range, providing distribution services to almost 1.4 million domestic and business connections, and delivering electricity to a population base of around 3.4 million people.

In December 2015, the Queensland Government announced that it would merge its two government owned electricity corporations (GOCs), Ergon Energy and Energex. On 1 July 2016, the Queensland Government established Energy Queensland (EQL) as a sole parent company, with Energex and Ergon Energy as subsidiaries. These reforms were implemented to create a corporate structure that achieves operational efficiencies, provides customers with greater choice, more control over their energy usage and access to innovative technology and delivers more stable energy bills.

Energex is committed to achieving compliance with the Australian Energy Regulator's (AER) Ring-Fencing Guideline (Guideline) by 1 January 2018, supported by a small number of proposed waivers which are outlined in this waiver applications document. These waivers are intended to address temporary administrative and practical delivery issues and should be considered in conjunction with Energex's ring-fencing compliance strategy which further demonstrates Energex's commitment to compliance.

In developing its ring-fencing compliance strategy and related waiver applications, Energex has considered the impact of different implementation options on its customers and communities. This has resulted in a compliance approach that seeks to minimise costs through a pragmatic approach to implementation while still achieving compliance with the Guideline's requirements and objectives. Striking this balance means Energex will be able to minimise the impact on customers and the community.

> *We are committed to delivering on our purpose – 'to safely deliver secure, affordable and sustainable energy solutions with our communities and customers'.*

Waivers are allowed under the Guideline for four key obligations:

- Legal separation
- Staffing separation
- Locational separation
- Branding and cross-promotion obligations.

There are three waivers that Energex seeks from the AER:

- Service classification – a temporary waiver for the remainder of the 2015-20 regulatory control period from the legal separation, office, staff, and branding and promotions obligations relevant to a range of services flagged for reclassification in the 2020-25 regulatory control period.
- Novation of contracts to an Affiliated Entity (AE) – a short term waiver to facilitate Energex's transition to compliance with the Guideline given timeframes and preconditions for novating contracts associated with the delivery of Other Services to the AE.

- Uniform and fleet branding for Contestable Electricity Services (CES) – a waiver from branding separation obligations relating to its provision of services which are classified under the Guideline as CES.

Energex would welcome the opportunity to discuss these waiver applications in more detail or to provide any required clarifications. Any queries should be directed to:

General Manager Regulation and Pricing
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1 Service classification

Energex is seeking a temporary waiver for the remainder of the 2015-20 regulatory control period from the legal separation, office, staff, and branding and promotions obligations relevant to a range of services flagged for reclassification in the forthcoming regulatory control period. The waiver would expire once new service classifications take effect, as part of Energex's 2020-25 regulatory determination.

1.1 Description of service

A DNSP's service classifications underpin the ring-fencing obligations that it must comply with for a particular regulatory control period. Energex's current service classifications, which apply to the 2015-20 regulatory control period, were established prior to the Guideline's development.

Energex provides a number of services that are classified by the AER as unclassified distribution services (UDS) for the 2015-20 regulatory control period. Recent analysis of the services indicates that there are three services which would potentially be more appropriately classified as direct control services (DCS):

- Emergency recoverable works – work to repair damage to the distribution network caused by third parties
- Watchman lights – unmetered lights mounted on a customer's property or a distribution pole for security purposes
- High load escorts – scope of an appropriate route and lift of wires to allow passage of high vehicles, as requested by a customer.

Clauses 4.2.1, 4.2.2 and 4.2.3 of the Guideline require these services to be functionally separated, meaning that separation of staff, office and branding is required. Further, the part of Energex providing these services would be considered to be a Related Electricity Service Provider (RESP) under the Guideline and subject to discrimination, information access and disclosure obligations.

Energex also undertakes a number of activities which are not classified as distribution services and therefore are unregulated services for the 2015-20 regulatory control period. Where appropriate, these will be provided by an affiliated entity (AE) of Energex to achieve compliance. However, Energex considers that the following services are likely distribution services and their classification should be reconsidered for the next regulatory control period:

- Rental and hire services – rental of distributor-owned property (e.g. plant hire and asset leasing)
- Property services – customer request for the distributor to undertake conveyancing property searches, conduct easement negotiations or purchase negotiations
- Sale of inventory – sale of inventory to developers and suppliers of developers where these items are subsequently gifted to Energex as part of a network connection.
- Training to external party services – training of contractors/third parties to permit them to access and work on Energex's distribution network/other network service provider's networks or training of contractors/third parties to permit them to access and undertake work on non-network related assets.

Under clause 3.1 of the Guideline:

- these services cannot be provided by Energex, but can be provided by a separate legal entity, referred to under the Guideline as an AE.
- the provision of staff and/or offices to the AE are subject to the functional separation obligations, including staff, office, branding and information separation requirements, as described above.

Energex is performing preparatory work for its forthcoming regulatory control period, and is considering the reclassification of certain services, informed by:

- preliminary analysis of its services, which indicates that a different classification would be more appropriate
- the AER's final Framework and Approach (F&A) for NSW.

1.1.1 Appropriateness of current classification

Sale of inventory and property services are not classified by the AER as distribution services, however re-examination of activities that make up this service indicates that they may be more appropriately classified as a distribution service. For sale of inventory this is considered appropriate because these services relate to sales of network assets to third parties, which are in many instances then gifted back to Energex to form part of the regulated distribution network. For property services, customer requests relate to services that only Energex, as the distribution business is able to action, meaning that these should be considered as distribution services.

Sale of scrap is also treated as a non-distribution service under the service classification decision. However, further analysis suggests that this is not a service, but a supporting activity carried out as part of network services (i.e. as a standard control services (SCS)). This is because, where assets form part of the regulated network, the sale is treated as a disposal under the roll forward of the Regulatory Asset Base (RAB) and with revenue recognised separately in the statutory accounts. As this activity is immaterial and incidental to the provision of network services, Energex considers that until the next regulatory determination period, it would be more appropriate that sale of scrap is treated as not a service.

1.1.2 Consideration of NSW Final Framework and Approach

Energex notes that the AER's final F&A decision for the NSW DNSPs gives effect to the reclassification of a number of existing unclassified services or unregulated services or unclassified services to DCS or unclassified distribution services for the 2019-24 regulatory control period. However, as noted previously, Energex is yet to consult the business and its customers on whether to seek reclassifications of services as part of the forthcoming regulatory control period.

1.1.3 Proposed interim treatment of services

Under the Guideline, UDS and non-distribution services are both contestable electricity services (CES), which means they must be functionally separated from the part of Energex that provides DCS. In addition, non-distribution services must be legally separate from Energex. Energex has considered its current service classifications and identified several that it will potentially seek to have reclassified as part of the 2020-25 regulatory control period. As discussed in section 1.3.1, implementing changes to achieve legal and functional separation for the remainder of the current regulatory control period will incur costs that will exceed any benefits to customers. On this basis, Energex proposes to seek an interim waiver from the obligations (i.e. treat them as if they have been reclassified), as reflected in Table 1-1:

Services	Current classification	Proposed treatment
Emergency recoverable works	UDS	DCS
Watchman lights	UDS	DCS
High load escorts	UDS	DCS
Property services	Non-distribution	DCS
Training services to external parties	Non-distribution	DCS
Sale of inventory	Non-distribution	UDS
Rental and hire services	Non-distribution	UDS

Table 1-1 Proposed treatment for the remainder of the 2015-20 regulatory control period

Treating these services as if they have been reclassified for the remainder of the current regulatory control period would result in different ring-fencing implementation requirements applying to Energex:

- Emergency recoverable works, watchman lights, high load escorts and training services would not be subject to functional separation requirements within Energex
- Property services, sale of inventory and rental and hire services could continue to be provided by Energex.

1.2 Description of waiver

Energex is seeking a temporary waiver commencing on 1 January 2018 and expiring on 31 June 2020 (i.e. for the remainder of the 2015-20 regulatory control period) from the legal separation, office, staff, and branding and promotions obligations relevant to a range of services flagged for potential reclassification in the forthcoming regulatory control period. The waiver would expire once new service classifications take effect, as part of Energex's 2020-25 regulatory determination.

1.3 Rationale for waiver

1.3.1 Costs

Depending on the AER's service classifications for Energex in its 2020-25 determination, any changes to business practices made now to comply with the Guideline would only be required for a 30 month transitional period and would either be unnecessary or unsuitable (and therefore required to be unwound) in the 2020-25 regulatory control period. This is inconsistent with achievement of the National Electricity Objective.

Energex estimates that the cost to implement these changes, including staff duplication and relocation, rebranding of assets, systems access control and any actions to subsequently reverse ring-fencing arrangements, would far outweigh any benefit derived for customers for this period, particularly given the potential lack of competition for some of these services.

DCS customers will benefit from lower costs as a consequence of the proposed waiver as Energex would not unnecessarily incur costs of complying with ring-fencing obligations for the remainder of the current regulatory control period for these services, and the costs of reversing the arrangements for the next regulatory control period when service classifications are reviewed.

1.3.2 Competition

Energex notes that the AER indicated in the Guideline Explanatory Statement[1], that some current service classifications may not be the most suitable in the context of the new national ring-fencing approach and are likely to change classification in the DNSPs' next regulatory control periods. Energex further notes that the AER has proposed reclassification of some services under the Preliminary Framework and Approach for NSW. The competitive environment for each of the services in Queensland, including the potential similarities with the services in the NSW final F&A is discussed in turn below.

There are no competitors for emergency recoverable works, as these services relate to repairs on the distribution network and only Energex is able to perform this work. Energex notes that the AER's NSW final F&A decision is to reclassify these services as SCS in recognition that the services are provided in connection with a DNSP's distribution system and it would be extremely difficult for a competitor to provide this service.

Competition is limited for watchman light services given that these services typically rely on the use of network assets, although they are for the customer's individual security reasons. There is some potential for competition, as a customer could install their own pole or potentially use a pole or building owned by a third party. However, it is understood that a robust market for these services does not currently exist. The AER's NSW final F&A decision is to reclassify this service as an ACS. This classification does not preclude provision of this service by a third party.

Although there is potentially competition for some aspects of high load escort services, there are some activities, such as lifting wires, which can only be performed by Energex because they relate to the safe operation of the network. In relation to the competitive aspects of high load escort services, Energex's current practice is to offer this service as a 'provider of last resort' where there is no market

[1] Ring-fencing Guideline Explanatory Statement, p 4

and customers are not able to procure the service elsewhere. Energex notes that the AER's NSW final F&A decision to reclassify this service as an ACS as part of Network Safety Services.

Property services include instances where customers request that Energex conducts easement or purchase negotiations. Treating this service as if it is reclassified as a DCS would not have an impact on competition, as it relates to information about the distribution system that is only held by Energex.

Energex considers there a limited number of registered training organisations (RTO) that provide the specialist training services that Energex delivers to ensure its workforce and contractors (that access and work on our network/ access and work on network related assets) operate safely, efficiently and effectively. There are reasonably high barriers to entry given the costs associated with establishing and maintaining a RTO. Moreover, Energex notes that the AER's NSW final F&A decision is to classify training of contractors to work on the network as a DCS.

The AER indicated that the provision of distribution asset services (rental and hire services) will be classified as an UDS for all DNSPs' forthcoming regulatory control periods. This is on the basis that only a distribution business is in a position to make its assets available for lease and it would be excessively costly for another provider to construct these assets.

Sale of inventory relates to the sale of assets to developers which, in most instances, will ultimately form part of the distribution network. By making inventory available for sale to developers, Energex increases the volume of inventory that it purchases which lowers the average cost per item, benefiting customers overall. The activity is immaterial and incidental to providing network services. The use of inventory provided by Energex ensures compatibility and contributes to the safe and efficient use of the network. Therefore, Energex considers this service falls within the National Electricity Rules (NER) definition of a distribution service and should be reclassified for the 2020-25 regulatory control period.

As noted above, Energex does not consider that the sale of scrap is a service and instead is an activity under network services, which occurs when a regulated asset is disposed of and reflected in the roll forward of the RAB. There is no competition for this activity, as it relates to sale of Energex's scrap.

1.3.3 Discrimination and cross-subsidy

Energex's Cost Allocation Methodology (CAM) ensures there is no cross-subsidisation within distribution services, and between distribution and other services. The CAM will be applied to ensure that only distribution costs are allocated and attributed to distribution services. Further, accounts will be auditable under the Guideline.

Energex considers there is no opportunity for staff providing DCS to discriminate in favour of Energex or an AE's CES business because the services that will be reclassified are not considered contestable services. Indeed some of these services are more appropriately viewed as activities undertaken during the course of providing DCS.

1.3.4 National Electricity Objective

This waiver is consistent with the National Electricity Objective as it will promote efficient investment in electricity services for the long term interests of consumers of electricity in respect of price. This is because it will prevent Energex from having to incur inefficient expenditure to implement temporary changes to achieve compliance with the Guideline, which would likely be unwound in 30 months.

1.4 Compliance matrix

Clause	Waiver requirement	Waiver application reference
5.2 DNSP's application for a waiver		
(a)	The obligation in respect of which the DNSP is applying for a waiver	1.2
(b)	The reasons why the DNSP is applying for the waiver	0
(c)	Details of the service, or services, in relation to which the DNSP is applying for the waiver	1.1
(d)	The proposed commencement date and expiry date (if any) of the waiver and the reasons for those dates	1.2
(e)	Details of the costs associated with the DNSP complying with the obligation if the waiver of the obligation were refused	1.3.1
(f)	The regulatory control period(s) to which the waiver would apply	1.2
(g)	Any additional measures the DNSP proposes to undertake if the waiver were granted	N/a
(h)	The reasons why the DNSP considers the waiver should be granted with reference to the matters specific in clause 5.3.2(a), including the benefits, or likely benefits, of the grant of the waiver to electricity consumers	1.3.4
5.3.2 The AER's assessment of the waiver application		
(a) Subject to clause 5.3.3(a), must have regard to:		
5.3.2(a)(i)	The National Electricity Objective	1.3.4
5.3.2(a)(ii)	The potential for cross-subsidisation and discrimination if the waiver is granted or refused	1.3.3
5.3.2(a)(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 the obligation	1.3.1

2 Novation of contracts to an Affiliated Entity

Lead times and preconditions for the novation of contracts associated with the delivery of Other Services to Energy Impact is likely to mean that Energex will not be able to effectively transfer services, and therefore comply with legal separation obligations for some Other Services by 1 January 2018. A short term waiver, for a period of 6 months, is sought to facilitate Energex's transfer to compliance with the Guideline.

2.1 Description of service

Energex provides the following non-distribution services, treated under the Guideline as Other Services:

- Test, inspect and calibrate services
- Contracting services to other network service providers
- Equipment services
- Operation and maintenance of customer assets
- Demand-side management advisory services for customers (as opposed to services undertaken for direct control services).

Given the prohibition on providing Other Services, Energex will cease its provision of these services and Energy Impact will assume accountability for the delivery of these services. As part of this transfer process, customer and third party contracts associated with the delivery of Other Services by Energex will need to be novated from Energex to Energy Impact, a separate legal entity.

The novation of contracts is dependent on:

- the finalisation of the EQL group corporate structure, which is yet to receive shareholding Minister's approval, and Energy Impact's service offerings
- changes to the Energy Impact constitution to allow services to be transferred.

2.2 Description of waiver

Although Energex will commence novating contracts to Energy Impact, once the final structure and services are determined, the lead times required mean that some contracts may not be novated by 1 January 2018. This means that there may be some Other Services that Energex will need to continue to provide after this date.

Energex is therefore seeking a waiver from legal separation obligations that apply to the Other Services listed above that it is currently providing, commencing on 1 January 2018 and expiring on 30 June 2018. This would allow Energex to continue to provide these services for three months until the contracts are novated. Although Energex will use best endeavours to novate all contracts by 1 July 2018, the position of third parties is as yet unknown. If Energex has to enter into re-negotiations that delay novation of a contract beyond the 1 July 2018, the business may be required to seek an extension of this waiver.

Importantly, Energex is not seeking a waiver from staffing and locational separation in relation to these services, and will comply with obligations relating to discrimination and information access and disclosure.

2.3 Rationale for waiver

2.3.1 Cost

Obtaining a waiver is critical to smoothing the transition to compliance for Other Services. In the absence of a waiver, Energex may either find itself with a potential breach of the Guideline or breach of the terms and conditions of a contract if it is unable to provide certain services.

Temporarily ceasing the service until it can be transferred to Energy Impact would result in foregone revenue, actions relating to the breach of contractual obligations and adverse electricity customer impacts. The costs in this scenario would outweigh the benefits of a waiver not being approved.

2.3.2 Discrimination and cross subsidisation

By 1 January 2018, Energex will meet its functional separation requirements in relation to the Other Services that are the subject of this waiver and this will mitigate any risks of discrimination that could occur. This will involve seeking a waiver from the AER to allow the provision of DCS and Other Services under the Energex brand and the implementation of compliance measures to:

- Ensure that it does not share staff or offices for providing DCS and Other Services, unless an exemption applies.
- Only provide information to the part of the business that provides Other Services in accordance with Guideline restrictions
- Ensure that there is no opportunity to discriminate against competitors for the provision of the Other Services.

The application of Energex's CAM will ensure that costs associated with the Other Services are not subsidised by those associated with DCS provided by Energex. The CAM ensures that costs are allocated and attributed to distribution services, and between distribution services, in accordance with the Cost Allocation Principles under the National Electricity Rules.

By 1 January 2018, Energex will have established internal accounting procedures to demonstrate the nature and extent of transactions for Other Services. These will be provided to the AER if requested to provide comfort that no cross-subsidisation is occurring.

2.3.3 Supporting compliance activities

As discussed above, Energex plans to meet the remaining obligations applying to its Other Services, either through a branding waiver, or through the implementation of compliance measures.

Table 2-1 illustrates the key activities associated with novating contracts and transferring services from Energex to Energy Impact, and demonstrates that it is anticipated to take a further three months from Day 1 for all applicable contracts to be identified and novated to Energy Impact.

Date	Milestone
Aug 2017	Finalisation of the EQL group company structure and commence identification of impacted contracts
Sep 2017	Review of contract terms and conditions
Oct 2017	Changes to Energy Impact constitution (subject to multiple Board and shareholder approvals)
Nov 2017	Commence negotiation of novations with third parties (subject to there not being any significant re-negotiation of terms)
Dec 2017	Where possible, execute deeds of novation for impacted contracts
Feb 2018	Continue negotiation of novations for outstanding contracts
Jun 2018	Transfer of contracts to the Energy Impact and provision of Other Services by Energy Impact

Table 2-1 High level implementation plan

2.3.4 National Electricity Objective

This waiver is consistent with the National Electricity Objective as it will promote efficient investment in electricity services for the long term interests of consumers of electricity with respect to:

- price, given that ceasing to provide the services could have cost impacts for Energex
- safety, given that the Other Services relate to testing, operating and maintaining assets and training services which contribute to safety objectives for the Energex network and on other networks
- reliability, given that a temporary hold on Other Services by Energex could impact customers relying on these services to operate assets or train staff.

2.4 Compliance matrix

Clause	Waiver requirement	Waiver application reference
5.2 DNSP's application for a waiver		
(a)	The obligation in respect of which the DNSP is applying for a waiver	2.2
(b)	The reasons why the DNSP is applying for the waiver	2.3
(c)	Details of the service, or services, in relation to which the DNSP is applying for the waiver	2.1
(d)	The proposed commencement date and expiry date (if any) of the waiver and the reasons for those dates	2.2
(e)	Details of the costs associated with the DNSP complying with the obligation if the waiver of the obligation were refused	2.3.1
(f)	The regulatory control period(s) to which the waiver would apply	2.2
(g)	Any additional measures the DNSP proposes to undertake if the waiver were granted	2.3.3
(h)	The reasons why the DNSP considers the waiver should be granted with reference to the matters specific in clause 5.3.2(a), including the benefits, or likely benefits, of the grant of the waiver to electricity consumers	2.3.4
5.3.2 The AER's assessment of the waiver application		
(a) Subject to clause 5.3.3(a), must have regard to:		
5.3.2(a)(i)	The National Electricity Objective	2.3.4
5.3.2(a)(ii)	The potential for cross-subsidisation and discrimination if the waiver is granted or refused	2.3.2
5.3.2(a)(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 the obligation	2.3.1

3 Branding for CES - 2025

Energex is seeking a waiver from branding separation obligations relating to instances where staff perform services which are CES, that is, any service which is an Unclassified Distribution Service (UDS) or Other Electricity Service (OES) under the Guideline. This waiver is made on the basis that there are a range of practical challenges and constraints associated with introducing new branding.

3.1 Description of service

Energex currently provides a range of UDS and OES which will be impacted by the Guideline, and Energex will not be able to fully comply with its obligations in respect of branding and cross-promotions.

3.1.1 OES

Energex currently provides the following OES and these are the subject of this application:

- Test, inspect and calibrate services
- Contracting services to other network service providers
- Operation and maintenance of customer assets
- Training to external parties
- Equipment services.

Energex will transfer its OES to AEs. AEs within the EQL Group include Energy Impact, Metering Dynamics and Nexium. Most OES will be provided by Energy Impact under an independent brand.

Energex will ensure that staff and locations for these services are only shared where exemptions apply; that Confidential Information is only disclosed to an AE in accordance with the Guideline; and that it does not discriminate against any competitors of its AE. It will therefore be compliant with all obligations with the exception of branding and cross-promotion obligations.

In terms of meeting branding and cross-promotion obligations, the provision of these services will be supported by separate branding which will be used for communications from the AE, marketing material, invoicing, and website design. Due to significant challenges associated with rebranding uniforms and fleet, Energex will not be able to fully comply in relation to these obligations until 30 June 2025). Energex will use best endeavours to achieve compliance in advance of the waiver end date, including transitioning to the new branding over time, focussing on high demand service delivery areas initially.

3.1.2 UDS

Energex provides one UDS which is the subject of this waiver, that is, Type 1-4 metering services which are contestable metering services.

Type 1-4 metering services will be treated consistently with the OES services set out above. That is, functional separation such as staffing, office, information separations will be implemented; and Type 1-4 metering services will also be transferred from Energex to affiliated entity, Metering Dynamics.

In relation to the Guideline's branding and cross-promotion obligations, the provision of these services will be supported by separate 'Metering Dynamics' branding which will be used for communications, marketing material, invoicing, and website design regarding type 1-4 metering. Due to the significant challenges associated with rebranding uniforms and fleet, Energex will not be able to fully comply with these obligations until 30 June 2025. As above, Energex will use best endeavours to achieve compliance in advance of the waiver end date, including transitioning to new branding over time.

It is noted that Energex provides UDS in relation to emergency recoverable works, watchman lights and high load escorts. However, Energex is currently considering whether these services should be reclassified in the next regulatory control period and is seeking a separate transitional waiver that would treat the services for ring-fencing purposes as if the classifications already apply.

To the extent that the service classification waiver application is not successful, Energex would also seek to include these in this waiver application. That is, Energex would seek to provide these services under the Energex brand.

3.2 Description of waiver

Energex is seeking a partial waiver from its branding and cross-promotion obligations such that uniforms and fleet used to deliver CES can continue to bear Energex branding (i.e. the branding used to deliver DCS) from 1 January 2018 until 30 June 2025. Energex will work to replace uniforms with Energex branding starting with its workforce in its larger, non-regional depots from 2020 and will continue to progress through its workforce to all depots by no later than 30 June 2025.

3.3 Rationale for waiver

3.3.1 Cost

Energex has made a significant investment in Energex branded uniforms, which means it is most cost effective for this supply of uniforms to be exhausted before new uniforms are acquired.

3.3.2 Employee negotiations

Employee uniforms serve to provide protection to employees in harsh and hazardous conditions, with design, colour and fabrics all being a key factor in the suitability of the uniform. Given these factors, it is therefore incumbent upon Energex to work closely with and consult with employees, internal and external stakeholders when considering changes to existing uniforms and/or branding on vehicles.

Consultation must be undertaken in good faith, which typically takes a considerable period of time and would include significant trials of proposed uniforms across the State and also across a range of climatic seasonal conditions. Such consultation and trials take a significant period of time (it can take 12 months to trial uniform items and items may not pass trial). Energex has only recently completed a consultation process to introduce new uniforms. It would not be prudent use of funds to commence another consultation process to replace uniforms and fleet branding so soon after the recent process.

Energex therefore plans to work with suppliers and to consult with employees and stakeholders at the time the uniform contract expires toward the end of this regulatory control period. Energex anticipates that there will be a transition period, once a new uniform contract has been entered into and existing stocks have been depleted, before newly branded uniforms and fleet can be implemented across the business.

In addition to the contractual issues that will influence the speed with which Energex can implement new branding, there are also operational constraints, which cannot be overcome by assigning additional resources. For example, there would be a minimum manufacturing time, over which Energex has limited control.

Energex will commence the transition once it has new procurement arrangements are in place, following the expiry of existing contracts. Energex will replace uniforms with Energex branding starting with its workforce in its larger, non-regional depots and continuing to progress through its workforce to all depots by no later than 30 June 2025.

3.3.3 Discrimination and cross subsidisation

There will be no cross-subsidisation issues associated with this waiver as legal separation will be established for OES. In conjunction with this Energex will set up accounts to ensure clear and transparent accounting which will demonstrate the nature and extent of transactions between Energex and its AEs. For both the OES and UDS, the application of Energex's CAM will ensure that costs are appropriately allocated and attributed and that cross-subsidisation does not occur.

Energex will comply with the non-discrimination obligation under the Guideline for all services. It is investigating its activities in relation to UDS and OES to identify any risk areas which might give rise to discrimination against competitors for these services and their customers. It will implement measures to mitigate the risk of any breaches under the Guideline.

3.3.4 Supporting compliance activities

Should the AER approve Energex's waiver application, Energex will provide the AER with updates on its progress to compliance with its branding obligation for CES services. Energex will report as part of its annual compliance report key compliance activities undertaken each year. As noted above, in line with Energex's commitment to compliance, the focus will be on high demand service delivery areas initially with full compliance expected by 2025. The implementation of new branding will be supported by significant training for impacted staff to ensure awareness of the compliance obligations.

3.3.5 National Electricity Objective

This waiver is consistent with the National Electricity Objective as it will promote efficient investment in electricity services for the long term interests of consumers of electricity with respect to price. This is on the basis that it will mitigate the costs of replacing Energex's uniforms and fleet in order to rebrand.

3.4 Compliance matrix

Clause	Waiver requirement	Waiver application reference
5.2 DNSP's application for a waiver		
(a)	The obligation in respect of which the DNSP is applying for a waiver	3.2
(b)	The reasons why the DNSP is applying for the waiver	3.3
(c)	Details of the service, or services, in relation to which the DNSP is applying for the waiver	3.1
(d)	The proposed commencement date and expiry date (if any) of the waiver and the reasons for those dates	3.2
(e)	Details of the costs associated with the DNSP complying with the obligation if the waiver of the obligation were refused	3.3.1
(f)	The regulatory control period(s) to which the waiver would apply	3.2
(g)	Any additional measures the DNSP proposes to undertake if the waiver were granted	3.3.4
(h)	The reasons why the DNSP considers the waiver should be granted with reference to the matters specific in clause 5.3.2(a), including the benefits, or likely benefits, of the grant of the waiver to electricity consumers	3.3.5
5.3.2 The AER's assessment of the waiver application		
(a) Subject to clause 5.3.3(a), must have regard to:		
5.3.2(a)(i)	The National Electricity Objective	3.3.5
5.3.2(a)(ii)	The potential for cross-subsidisation and discrimination if the waiver is granted or refused	3.3.3
5.3.2(a)(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 the obligation	3.3.1

Queensland Government

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Our reference: CTS 20989/17

Mr Chris Pattas
General Manager, Networks
Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001

Dear Mr Pattas

Re: Energex and Ergon Energy Ring-fencing Waiver applications

I am writing to support Energex and Ergon Energy's (Ergon) request for the Australian Energy Regulator's (AER) consideration of its applications for waivers in respect of their obligations under the Ring-Fencing Guideline - Electricity Distribution, November 2016 (Guideline).

The Queensland Government understands the importance of the national ring-fencing arrangements to ensure separation of the competitive and regulated parts of network businesses. We recognise strong ring-fencing arrangements are an essential part of supporting the development of competitive markets and providing clarity and a level playing field for all energy services providers, while encouraging innovation and efficient investment in energy services.

I am assured that Energex and Ergon Energy are committed to best endeavours to become fully compliant with the Guideline by the required date of 1 January 2018. However, the waiver applications they have submitted recognise there are some significant business changes and costs involved in achieving full compliance, and that the unique operating environment faced by Ergon in some cases means the cost of compliance is likely to outweigh any benefits.

A number of these waiver applications relate only to Ergon and are due to the business' unique operating environment, being a regional distributor affiliated with a non-competitive electricity retail business. The other waivers being sought by Energex and Ergon are transitional in nature and are sought to provide time to implement specific compliance measures that they consider are unable to be achieved by 1 January 2018.

I understand this approach is consistent with the AER's intention that the waiver process provides flexibility to accommodate the unique operating environment of regional network businesses, as well as allow for a transition to full compliance over time.

However I acknowledge that waiver applications are subject to public consultation and that the AER's decision will ultimately be subject to consideration of the full range of stakeholder views. I also recognise that the AER may decide to revoke a waiver at any time.

If you require further information please contact Catherine Cussen, General Manager – Regulation. Governance and Analytics on (07) 3199 4923.

Yours sincerely

1/8/17

Phil Richardson
Acting Deputy Director-General (Energy)
Department of Energy and Water Supply