



Ref: AF: C2124044

8 November 2017

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

Dear Mr Pattas

Response to AER's Draft Decision – Ring Fencing Waivers

Essential Energy is pleased to submit our response to the AER's draft decision on our Ring Fencing waivers. We have structured our response in alignment with the table at Attachment A of the draft decision called 'DNSP waiver applications and AER draft decisions – summary by DNSP'. In general we support the majority of the AER's decisions in the draft waiver subject to the items noted below.

Waiver Application no. 2: Water Access Agreement – Clarence Valley Council

Whilst not related directly to the outcome of the AER's draft decision for this waiver we note that the agreement with Clarence Valley Council is a cost sharing agreement for the sharing of maintenance costs for the assets associated with allowing the Council to access water, not an agreement for the sale of water as referenced on page 52 of the AER's draft decision.

Waiver Application no. 6: Reclassification of Services

There were a number of different services referenced in this waiver. This section only deals with those services that Essential Energy has comments on.

Access permits, oversight and facilitation – sale of stock to ASPs

On page 76 of the AER's draft decision and in Attachment A (pg 21 of Attachment A) the AER notes that our waiver for 'sale of stock to ASP's' has been rejected. Attachment A has a comment '*This service is already ACS for the current regulatory control period and does not require a waiver*'.

However, on pages 24 and 33 of the draft decision the AER indicates that the waiver for sale of stock to ASP's is approved.

Sale of stock to ASPs is not a current ACS service for Essential Energy. As such, we believe that the references to rejecting the waiver on page 76 and in Attachment A are incorrect and should be changed to reflect approval of a waiver for this service as per the references on pages 24 and 33.

Additional reclassification services identified since the original submission of this waiver

Since our original waiver was submitted for a number of services that we are intending to have reclassified as ACS via the 2019-2024 Regulatory Proposal we have identified a further four services we intend putting forward in our Regulatory Proposal as ACS's. We ask that consideration is given in your final waiver decision to adding these four additional services into the waiver, otherwise we will need to submit an additional waiver. Note that two of the services, 'Planned Interruption – Customer Requested' and 'Customer Initiated Asset Relocations' have already had waivers submitted by other DNSP's with the AER proposing to approve them in their draft decision. The four services are:

1. Test Access Permit Fee – under the Network Asset Testing and Commissioning CEOP5125 procedure, the need to perform Insulation Resistance (IR) tests using voltage greater than 1000V (HV) is required. Under the Electrical Safety Rules CEOP8030 (7.5) and the Access Permit Procedure CEOP2045 (3.4.2), this work must be performed under a 'Test Access Permit'. This work can be performed by ASPs but the equipment required to perform the test is relatively expensive and ASPs may request Essential Energy provide this service instead of being required to purchase the equipment themselves as they are only likely to require it for a small number of jobs. This service falls under service group Contestable Network Commissioning & Decommissioning service group;
2. Environmental Impact Assessment Training - ASP's are required to have completed this training for their environmental assessments to be determined by Essential Energy. This service falls under service group 'Provision of training to 3rd parties for network related access';
3. Planned Interruption: Customer requested - where the customer requests to move a DSNP planned interruption and agrees to fund the additional cost of performing the associated planned distribution work outside of normal business hours. This is a specific service group within the 2019-2024 final F&A;
4. Customer initiated asset relocations – Design and construction of customer funded (contestable) asset relocations by Essential Energy in circumstances where the relocation works was initiated by a third party (including a customer); and could impact the safety or security of the network. This is a specific service group within the 2019-2024 final F&A.

Waiver application no. 8: Provider of Last Resort

We submitted the provider of last resort waiver as we were concerned about the impact our decision to withdraw from offering contestable services would have on regional and remote customers who may not have access to any alternate service providers. Following the submission of our waiver we had several discussions with the AER on the scope and operation of this service. We elaborate further below on a number of issues related to this waiver.

Services covered by waiver

The AER indicated that they wanted a defined list of services to which this waiver would apply. This list was not in the originally submitted waiver submitted to the AER but was included in the AER's draft decision following an e-mail response from Essential Energy. To confirm, the services covered by this waiver are:

- All services allowed for under the NSW ASP Scheme including:
 - Level 1 customer connection services including both overhead and underground, and including related network extensions or augmentations;
 - Level 2 services such as disconnect and reconnect, work on underground service conductors, and work on overhead service conductors; and
 - Level 3 design services for both overhead and underground network electricity assets;
- Customer initiated asset relocations; and
- Inspection, maintenance and testing of customer assets including HV assets (this is for standard distribution and sub-transmission type assets and excludes emerging technology assets such as PV, batteries, etc).

Ensuring we only act as a last resort

We also submitted an outline of the operation of the service to the AER via e-mail aimed at ensuring that we were truly acting in a capacity of provider of last resort. Our proposal was:

- referring customers at the first point of contact to the listing of ASPs maintained by the NSW Government;
- requiring customers who are unable to find any ASP to do the job to complete a form on our website which will ask them for information such as a description of job, location information, any specific timing requirements, and which ASPs they have sought quotes from;

- posting proposed jobs on our website and providing ASPs with 1-2 weeks to register interest in undertaking the work;
- Essential Energy would undertake the work only if no interest is registered by ASPs.

Queensland Network

A small section of the Essential Energy network falls into the south western part of Queensland. There is no ASP Scheme in Queensland and NSW ASPs are therefore not licenced to perform work in Queensland. As a result only Essential Energy is able to perform Level 2 ASP Scheme works in this part of our network. We propose extending the provider of last resort waiver (and future ANS pricing items under this service) to work provided in our Queensland footprint but exempting customers from having to fill out the form or posting these jobs on our external website as per the Provider of Last Resort process outlined in the section above.

Additional protections for customers

While the Provider of Last Resort waiver ensures that all customers have access to these services, members of our Customer Advisory Group (CAG) recently voiced concern over the significant costs that customers living in remote locations have to pay to secure the services of qualified tradesmen, especially when the tradesman is the only supplier in a specific location and can set the price for the local market, or where the closest provider is a significant distance from the customer. This could lead to customers paying significantly higher costs for services from the market when Essential Energy has appropriately qualified resources located locally who could deliver the service for a lower price if we were allowed to offer these same services.

As a result we have developed a number of additional controls that could be included in the final waiver decision to mitigate these risks. These controls could include:

- restricting distance in the Provider of Last Resort waiver (i.e. providers would have to be within 100km of the closest Essential Energy depot). This could be restricted to jobs under a certain dollar threshold, or restricted to certain types of minor jobs;
- amending the Provider of Last Resort waiver to apply in instances where customers can only get one quote (i.e. Essential Energy would effectively provide the competition if only one quote is available from the market);
- publishing a price guideline on the Essential Energy's website to help customers assess whether they are getting value for money (i.e. cost of conducting simple services and a per km cost of travel);
- leveraging the regional office exemption available within the Ring Fencing Guideline – this exemption covers approximately 30 per cent of Essential Energy's depots, mainly in the west of the state. This would allow us to actively quote for services within regional offices and use the Provider of Last Resort only in non-regional offices.

Seeking input from all stakeholders

We want to make sure all stakeholders have an opportunity to comment on our provider of last resort waiver. As a result we have communicated with all ASPs and electrical contractors authorised to work within our network, NECA (the national representative body for ASPs and electrical contractors), members of our CAG, PIAC, NSW Farmers Federation, Irrigators NSW, Energy Consumers Australia, as well as all local councils and Government MPs within our footprint. We have asked these stakeholders to comment on the waiver itself, our proposed operation of the waiver and our proposed additional customer protections.

Additional timeframe for compliance with regards to the provider of last resort service

At the time of submitting the provider of last resort waiver we were not envisaging operating the service under a set of conditions or that the final decisions on waivers would be pushed back to December 18. Given we won't know what conditions might be included in the final waiver decision to be released on 18 December 2017, and full compliance with the Guideline is required by 1 January 2018, we request that we have an additional six (6) months to become compliant with regards to the provider of last resort service (note – we will be compliant on 1 January 2018 for all other aspects of the Guideline).

We could mandate that the business ceases delivery of any jobs related to the services covered by this waiver until the process incorporating all the conditions within the final waiver is operational, however we believe this will leave some customers without access to these services with no provider of last resort for the length of time it takes to get the process operational. Instead, given the already low volume of works we deliver of these contestable services, and the fact we don't advertise these services, we believe it is a better customer outcome if we are able to continue to offer these services for no longer than six additional months until the new process for the provider of last resort waiver is operational.

Final Waiver Conditions

We believe the conditions of operation that we have proposed for the provider of last resort waiver provide a balance between transparency and ensuring the market has an opportunity to provide all contestable service across our footprint, and ensuring customers have a safety net should they not be able to access services from the market.

It should be noted that at times Essential Energy helps facilitate the market by providing services at the request of ASPs and electrical contractors where their licence does not allow them to provide full services to customers for specific jobs and where no other ASP with the correct licence conditions are located.

We would like to stress that we believe that the conditions of operation approved in the final waiver should be reasonable and not make the job of offering to provide services to customers who otherwise couldn't access these services so onerous that it effectively forces us to withdraw from offering these services anyway.

Section 4.4 of the Ring-Fencing Guideline - Service Providers

Essential Energy made a submission to the AER regarding section 4.4 Service Providers for the consultation on the amendments to the Ring Fencing Guideline. Our concern was that the amended section 4.4.1, whilst narrowed from the original Guideline, could still be interpreted too broadly and captures a whole lot of contracts that Essential Energy has with unrelated third-party vendors that were agreed following open market tenders with arms-length commercial terms for the delivery of standard control services to Essential Energy such as our vegetation management contracts.

Inclusion of clauses in these types of contracts requiring third parties to implement Ring Fencing within their own businesses would provide no benefit to competition and would lead to increased contract costs and therefore increased customer pricing. The fact we are going out to market for these services actually supports increased competition rather than if we were to deliver those services internally instead. As a result, it is difficult to understand how this would be in the long-term interests of customers. In our submission we proposed possible alterations to the clause in an attempt to exclude these types of contracts.

However, the AER made no amendment to section 4.4 in their final amended Guideline.

In follow-up discussions with the AER we were advised that we were taking too broad an interpretation of the clause and the intent was not to capture these types of clauses. However, we remain concerned that an independent assessor may make the same interpretation of the clause as we do, and without formal clarification from the AER, we will be required to submit a waiver to ensure we are compliant with the Guideline.

Basis of Essential Energy's Interpretation

In our reading of the clause it is clear that the clause applies to contracts for the delivery of standard control services to the DNSP. Clause 4.4.1 of the Guideline states 'the provision of services to the DNSP that enable or assist the DNSP to supply **direct control services**' – as such the clause clearly targets supply of direct control services by a third-party provider to a DNSP which includes standard control services.

In addition, the explanatory statement says '*Red Energy and Lumo Energy....submitted that the proposed change [to the clause] is unnecessary as it is obvious that the clause is intended to apply to contracts relating to the supply of direct control services*' which includes standard control services.

The explanatory statement also mentions vegetation management specifically but actually makes it sound like these contracts should be captured by the clause: '*There may be agreements that relate to*

services where the provider does not perform any of the DNSP's functions but nonetheless facilitates the DNSP's provision of direct control services. For example, where a contractor is engaged by a DNSP to undertake vegetation management. In this case the reference to 'direct control services' mirrors the clause in the Guideline and therefore suggests that third party contracts for the supply of vegetation management services to the DNSP should fall under the Guideline's obligations.

In our discussions it was mentioned that vegetation management could be considered an input, not a service, and therefore wouldn't be captured by the Guideline. However, the F&A doesn't make any differentiation between service and input, and refers to 'Common distribution services...is the suite of services...that includes...the planning, design, repair, maintenance, construction and operation of the distribution network'...this would imply vegetation management is a service, not an input.

The only activities actually excluded as per the explanatory statement are cleaning services and security services which are described as non-distribution services.

Request for Clarification

We have a large number of contracts of a similar nature to the vegetation management contracts that could be interpreted to be 'the provision of services to the DNSP that enable or assist the DNSP to supply **direct control services**'. These include contracts for:

- Service mains replacement;
- Streetlight replacement;
- FI Relay replacement;
- Transmission and distribution line construction and maintenance;
- Asset inspection;
- Meter reading;
- Aerial inspection and LiDAR; and
- Project works such as civil works, electrical works, trenching and underboring, traffic control, asbestos removal, Geotech surveys and demolition.

We request the AER provide further clarification or interpretation of this clause to enable Essential Energy to assess whether current contracts and new contracts are captured by clause 4.4.1. Without additional clarification Essential Energy will be forced to submit an additional waiver to ensure compliance with the Guideline.

Should you have any questions regarding our submission, then please do not hesitate to contact Natalie Lindsay, Manager Network Regulation, on 02 6589 8419.

Alternatively, if I can be of any assistance, please call me on 02 6589 8702.

Yours sincerely



Gary Humphreys
Executive General Manager Regulation and Innovation