

# Jemena Electricity Networks (Vic) Ltd

## Ring-fencing Guideline waiver application

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## GLOSSARY

2016-20 distribution determination	Jemena distribution determination – final decision, 2016 to 2020, May 2016
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
CAM	Cost Allocation Methodology
Current regulatory period	1 January 2016 to 31 December 2020
DNSP	Distribution Network Service Provider
Guideline	Electricity Distribution Ring-fencing Guideline, November 2016
JEN	Jemena Electricity Networks (Vic) Ltd
Licence	Electricity Distribution Licence (Vic)
NEO	National Electricity Objective
NER	National Electricity Rules
Other distribution services	Distribution services other than direct control services

# Overview

## Who is Jemena Electricity Networks?

The Jemena Electricity Network (**JEN, we or us**) is a 6,300 km network of poles, transformers and wires that delivers electricity to more than 330,000 homes and business in north-west Melbourne.

## Why are we required to comply with the AER's ring fencing-guideline?

Distribution businesses like us deliver electricity to homes and businesses throughout our network. The Australian Energy Regulator (**AER**) considers these services are monopoly in nature and classifies them as direct control services (**DCS**).

In addition to these monopoly services, we also provide some other distribution services such as new public lighting and emergency recoverable works services.

To promote the development of competition between providers of some electricity services, a Ring-fencing Guideline (**Guideline**) has been put in place by the AER to establish a level playing field for all providers of contestable electricity services (**CES**). Broadly, these requirements prevent us from discriminating in favour of our own business (or affiliated businesses) and cross-subsidising between monopoly services and contestable electricity services.

## What ring-fencing obligations do we need to comply with?

The AER's Guideline sets out a number of ring-fencing obligations which we must comply with from 1 January 2018. For a summary of all these obligations, refer to section 4.2 of our July 2017 ring-fencing compliance status report to the AER. Of significance to this waiver application are two of these obligations:

- staff sharing—we must ensure relevant staff who have access to some types of JEN's electricity information are not involved in the marketing of both monopoly and contestable electricity services; and
- physical separation—we must ensure relevant staff who provide direct control services are located in separate offices (or separate secure areas) to our staff who provide contestable electricity services.

## Why are we seeking a waiver?

When the AER last classified the services that we provide and determined how they are to be regulated, it identified that a number of our services should be classified as negotiated and unclassified services—with these categories of service falling within the Guideline's definition of other distribution services. The Guideline did not exist at the time of this determination, however, for these services we must now comply with the

Guideline's physical separation and staff-sharing restrictions, including ring-fencing these other distribution services from our direct control services.

Despite the AER's previous classification of these other distribution services, in practice, they can only be provided by us—there is either no current or prospective scope to open these services to competition. This is often due to safety requirements that restrict who can work on (or near) our electrical equipment; for example, street lights which are attached to our power poles. As there is no real scope for competition, these other distribution services display essentially the same characteristics as direct control service.

For these services, we are seeking a waiver from just two of the Guideline's obligations: staff sharing and physical separation, to allow us to provide these other distribution services using the same staff and offices as our direct control services. We do not seek to use JEN to compete with providers of contestable electricity services through this waiver.

We are only seeking this waiver until the current regulatory period ends in December 2020, when the AER will be able to re-classify these services in light of the new ring-fencing requirements. JEN is not currently seeking a waiver of any other ring-fencing provisions—such as legal separation—as we expect to comply with these, and consider doing so is unlikely to impose material costs on our customers given the services we provide. For further information about our approach to complying with the Guideline, please refer to our July 2017 Ring-fencing compliance status report to the AER.

*We consider the ring-fencing of other distribution services would increase the cost of providing them—and therefore their prices—but would not generate benefits such as enhanced competition for customers.*

## What are the customer benefits of the waiver?

We do not have the ability to cross-subsidise when providing these other distribution services, due to the AER's cost allocation requirements and the fact that there are no alternative providers of these services. If we were required to ring-fence these services, it would increase the costs of providing them, which would ultimately flow through to higher prices for customers.

But because there is no scope for competition in these other distribution services, ring-fencing won't help to develop competition for these services. Ring-fencing would therefore impose costs without generating any benefits, which we believe is not in our customers' long-term interests. We are therefore seeking this waiver to allow our services to be provided efficiently now and into the future and prevent customers bearing unnecessary costs.

## 1. INTRODUCTION

As a distribution network service provider (**DNSP**), Jemena Electricity Networks (Vic) Ltd (**JEN**) is bound by the obligations set out in the Australian Energy Regulator's (**AER**) Electricity Distribution Ring-fencing Guideline (November 2016) (**Guideline**).

The objective of the Guideline is to promote competition in the provision of contestable electricity services by introducing obligations to prevent:

- cross-subsidisation between distribution services and other services
- discrimination in favour of a related electricity service provider that provides contestable electricity services.

DNSPs must comply with obligations set out in the Guideline as soon as reasonably practicable, and in any case by 1 January 2018. However, in some circumstances, compliance by a DNSP with some of the Guideline's obligations may impose more costs than benefits for consumers—in these cases, it may not be in customers' long-term interests to require a DNSP to comply with these obligations. To this end, clause 5 of the Guideline provides for a DNSP to apply to the AER for a waiver of specific Guideline obligations. In assessing a DNSP's waiver application, the AER must have regard to:<sup>2</sup>

- the National Electricity Objective (**NEO**)
- the potential for cross-subsidisation and discrimination if a waiver was to be granted or refused
- the potential benefit, or likely benefit, to consumers of the DNSP complying with the obligation (including any benefit, or likely benefit, from increased competition) and the cost to the DNSP of complying with the obligation.

Under this provision, JEN is applying for waivers from some of the Guideline obligations in relation to five of the services JEN currently provides which have been classified by the AER<sup>3</sup> as negotiated services or are outlined in the service classification as being unclassified (**other distribution services**) for the 2016-20 regulatory control period (**current regulatory period**). We are seeking a waiver for these services for the remainder of the current regulatory period to allow JEN to continue to deliver these services using our current staff, systems and processes, in line with the AER's service classification for the current regulatory period—which was established prior to the Guideline placing restrictions on the provision of other distribution services by DNSPs.

As explained below, we consider the potential for (and any impact of) cross-subsidisation and discrimination would be negligible if JEN was to continue to provide these services without complying with the Guideline's functional separation obligations, and that the costs of JEN complying with these obligations in relation to such services would outweigh any benefits to electricity consumers. We therefore consider that waiving these obligations would be consistent with the NEO.

Consistent with the requirements of clause 5.2 of the Guideline, this document sets out:

- a) the obligations in respect of which JEN is applying for waivers
- b) the reasons JEN is applying for waivers
- c) the details of the services in relation to which JEN is applying for waivers

<sup>2</sup> Guideline, clause 5.3.2(a).

<sup>3</sup> See AER, Final decision – Jemena distribution determination 2016 to 2020, May 2016 (**2016-20 distribution determination**), Attachment 13 – Classification of services.

- d) the proposed commencement and expiry dates of the waivers, including the reasons for those dates
- e) the costs associated with JEN complying with the relevant obligation if the waivers were to be refused
- f) the regulatory control period to which the waivers would apply
- g) additional measures JEN proposes to undertake if the waivers were granted
- h) the reasons JEN considers the waivers should be granted.

This document should be read alongside JEN's Ring-fencing guideline implementation project status report to the AER (July 2017), which outlines our approach to complying with the Guideline. As outlined in JEN's compliance progress report, Jemena continues to conduct a brand strategy review in light of the Guideline's branding obligations. Subject to the outcome of this review, JEN may make a further waiver application under the Guideline during the second half of 2017.

#### Draft 2017 Guideline amendments

We note that the AER released draft amendments to the Guideline for consultation shortly before JEN submitted this application, and that any amendments are not expected to be finalised until October 2017.<sup>4</sup> JEN is broadly supportive of the AER's proposed amendments, and has prepared this application on the basis that the draft amendments to the Guideline would ultimately be made by the AER. Should there be any material changes to these amendments when the final Guideline is published, JEN may need to make a further waiver application.

#### Confidentiality

JEN does not claim confidentiality over any part of this application document.

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<sup>4</sup> AER, Draft Amended Ring-fencing Guideline – Electricity Distribution, July 2017.

## 2. DETAILS OF WAIVER APPLICATION

### 2.1 OBLIGATIONS SOUGHT TO BE WAIVED

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JEN is seeking a waiver of the obligations listed below in respect of the other distribution services outlined in section 2.3:

- clause 4.2.1—physical separation/co-location
- clause 4.2.2—staff sharing.

### 2.2 REASONS FOR APPLICATION

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JEN, as a DNSP, provides a number of services to customers. Under the National Electricity Rules (**NER**), the AER may classify the services JEN provides, which determines the nature and extent of economic regulation applicable to those services.

In JEN's 2016-20 distribution determination, many of the services we provide are classified as direct control services, however some of the services JEN provides fall within the Guideline's definition of **other distribution services**—that is, these services have been classified by the AER as negotiated services or are unclassified.

Under the current service classification, the Guideline requires that JEN:

- cannot use the same office<sup>5</sup> to provide direct control services and other distribution services (clause 4.2.1)
- cannot use the same staff<sup>6</sup> to provide or market direct control services and other distribution services (clause 4.2.2).

For the current regulatory period, JEN's regulatory allowances, Cost Allocation Methodology (**CAM**), organisational structures, processes and systems have all been constructed around the current service classification, in which it was not envisaged that functional separation obligations of this nature would apply to JEN—particularly given that a number of these services exhibit monopoly characteristics.<sup>7</sup> JEN therefore currently provides these other distribution services without using separate offices or staff to those we use to provide direct control services.

As set out in sections 2.5 and 2.8 of this application:

- the waiving of the functional separation obligations listed above in respect of a select group of JEN's other distribution services is highly unlikely to impact competition for the provision of these services, given there is generally no competition for the provision of these services at present, and it is unlikely competition would emerge for the provision of these services in between the present and the end of the current regulatory period
- JEN has no ability to cross-subsidise in providing these services
- JEN would incur additional costs if it was required to comply with the obligations, which would ultimately be passed on to customers

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<sup>5</sup> Within the Guideline's definition of 'office'.

<sup>6</sup> Other than where clause 4.2.2(b) applies.

<sup>7</sup> The Guideline's explanatory statement notes the AER will consider reclassifying current negotiated or unclassified services which exhibit monopoly characteristics at the next opportunity, in light of the Guideline's obligations.



- the granting of waivers will facilitate the continued provision of these services to customers safely and at an efficient cost, consistent with the National Electricity Objective (**NEO**).

JEN is therefore seeking a waiver of these obligations to enable it to continue to provide a select range of other distribution services listed in section 2.3 for the remainder of the current regulatory period without using separate offices or staff to those it uses to provide direct control services—consistent with the AER’s service classification decision in the 2016-20 distribution determination.<sup>8</sup>

### 2.3 SERVICES IN RELATION TO WHICH JEN IS SEEKING A WAIVER

JEN is seeking a waiver from the Guideline obligations set out in section 2.1 in respect of the five services set out below. These services are largely non-contestable as they often have strong natural monopoly characteristics and some are provided by JEN in very limited or specific circumstances such as when the service involves a connection to our electricity network where, for safety reasons, other service providers cannot undertake these works.

#### *Alteration and relocation of distributor public lighting assets*

This service is currently classified as a negotiated service. Under its Electricity Distribution Licence (**Licence**), JEN is obliged to make an offer to provide public lighting services.<sup>9</sup> As the Guideline places restrictions on information sharing between parts of a DNSP which provide direct control and contestable electricity services, JEN (when approached by a customer as a DNSP) would be conflicted from complying with this Licence obligation, absent the waiver. As this service involves the alteration of JEN’s network and public lighting assets and usually also requires works near overhead lines or in our ‘no-go zones’, only JEN is able to provide this service. There is, therefore, no competition or likelihood of competition emerging, for the provision of this service.

#### *New public lights (that is, new lighting types not subject to a regulated charge and new public lighting at greenfield sites)*

This service is currently classified as a negotiated service. Under its Licence, JEN is obliged to make an offer to provide public lighting services.<sup>10</sup> Due to the Guideline’s restrictions on information sharing between parts of a DNSP which provide direct control and contestable electricity services, JEN (when approached by a customer as a DNSP) would be conflicted from complying with this Licence obligation, absent the waiver.

This service embodies two distinct public lighting services:

#### *New lighting types not subject to a regulated charge*

This service involves the provision of public lighting for light types that do not appear on JEN’s public lighting charges list, which was set out by the AER in the 2016-20 distribution determination (**Public Lighting Type Schedule**).<sup>11</sup> New types of public lighting technology may emerge during a regulatory period, however neither JEN nor the AER are able to insert new light types into the Public Lighting Type Schedule after it is determined.<sup>12</sup>

<sup>8</sup> AER, Final decision – Jemena distribution determination 2016 to 2020 – Attachment 13 – Classification of Services, May 2016

<sup>9</sup> Essential Services Commission, Electricity Distribution Licence – Jemena Electricity Networks (Vic) Ltd, section 10.1.

<sup>10</sup> Ibid, section 10.1.

<sup>11</sup> AER, Final decision – Jemena distribution determination 2016 to 2020 – Attachment 16 – Alternative Control Services, May 2016, Table 16.3, Public Lighting Charges.

<sup>12</sup> This situation occurred during the previous regulatory period, when energy-efficient LED lighting technology developed rapidly and was taken up by councils, yet was not listed on the previous Public Lighting Type Schedule.

Requests from customers for public lighting services to be delivered using these new technologies will therefore fall under the definition of this service.<sup>13</sup> Only JEN is able to provide this service as:

- we must approve any new lighting technology to be technically fit for connection to the electricity distribution network
- this service may involve works near overhead lines or in our 'no-go zones'.

There is, therefore, no competition or likelihood of competition emerging for the provision of this service.

### *New public lighting at greenfield sites*

Greenfield rollouts of new public lighting assets are fully contestable. Although JEN provides offers for greenfield public lighting rollouts upon request (consistent with our Licence obligation, see above), the vast majority of these offers are not taken up by customers, and as such, JEN rarely provides this service. JEN does not actively promote the fact that we provide this service.

### *Reserve feeder construction*

This service is currently classified as a negotiated service. The construction of reserve feeders in JEN's network has some monopoly characteristics, as key parts of the work involved in constructing a reserve feeder (including network tie-in works and any necessary upstream augmentation to JEN's network) must be undertaken by JEN. JEN rarely provides this service, with less than three new instances provided in the last five years.

### *Emergency recoverable works*

This service is currently unclassified. This service relates to the recovery of costs from third parties who have caused damage to JEN's electricity distribution network. This is a service which only JEN can provide as money recovered from parties who damage the shared electrical network is used to offset the emergency response expenditure which would otherwise be borne by customers of JEN's standard control services. Furthermore, the works to repair the network damage itself must be performed by JEN, as they involve works within 'no-go zones' and typically must be performed under emergency conditions. There is therefore no potential for competition to emerge for the provision of this service.

### *Installation, repair, and maintenance of watchman lights*

This service is currently unclassified. Provision of watchman lighting services connected to JEN's poles<sup>14</sup> has strong monopoly characteristics, due to the proximity of these assets to JEN's overhead lines and other electrical equipment or within the 'no go zone', meaning that JEN is the only party able to safely undertake works on these assets. There is therefore no competition, or likelihood of competition emerging, for the provision of watchman lighting services that are attached to JEN's assets. JEN rarely provides new watchman light services.

Furthermore, we note that watchman lighting services attached to distribution system assets are only one type of security lighting available to customers, and that there are providers who offer contestable security lighting services that is not attached to JEN's poles. JEN does not offer watchman lighting services other than those attached to our network assets, and therefore we do not seek to directly compete with providers of contestable security lighting services.

<sup>13</sup> Whereas light types set out in the Public Lighting Type Schedule will fall within the definition of the specified alternative control service.

<sup>14</sup> Whilst watchman lighting services can be provided by JEN or contestable service providers, the provision of this service by JEN (and is the subject of this waiver) is limited to the circumstances where the service is provided when directly connected to JEN's electrical network.

### 2.3.1 SERVICES JEN IS NOT SEEKING WAIVERS IN RESPECT TO

The 2016-20 distribution determination also lists the following as unclassified services:

- supply enhancement at customer request
- provision of possum guards
- installation, operation, repair & maintenance, and replacement of type 1-4 metering installations (excluding smart meters)
- 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).

JEN does not provide these services and therefore is not seeking waivers in respect to these services.

We also note that the 2016-20 distribution determination classifies ‘Installation, operation, repair & maintenance, and replacement of type 5-6 metering installations (including smart meters) to new customers’ as an unclassified service. The reference to ‘new customers’ in this service description relates to the provision of this service at the commencement date of metering competition in Victoria.<sup>15</sup> JEN is not applying for a waiver in respect of this service for the current regulatory period on two grounds:

- JEN *will not provide unregulated* types 5 and 6 and smart metering services (although this decision does not preclude one of JEN’s related electricity service providers from providing this service)
- until the time that contestability of types 5 and 6 and smart metering services in Victoria commences, this service remains an alternative control service rather than an unclassified service.<sup>16</sup> As the Victorian Government has announced that contestability of types 5 and 6 and smart metering services in Victoria will not commence before 2021, JEN will continue to provide the ‘Installation, operation, repair & maintenance, and replacement of type 5-6 metering installations (including smart meters)’ as an alternative control (regulated) service for the remainder of the 2016-20 regulatory control period.

## 2.4 PROPOSED COMMENCEMENT AND EXPIRY DATES OF WAIVER

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For the five services listed in section 2.3 that JEN is seeking waivers, JEN proposes the waivers commence on 1 January 2018—being the date by which JEN must comply with all obligations under the Guideline. JEN also proposes these waivers expire on 31 December 2020—being the last day of the current regulatory period under which the five services listed in section 2.3 that JEN is seeking waivers are classified as other distribution services.

## 2.5 COST OF COMPLIANCE WITH RELEVANT OBLIGATIONS

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JEN currently provides, and has long provided<sup>17</sup>, its other distribution services without any restrictions on the sharing of staff or offices between other distribution services and direct control services. JEN therefore has well-

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<sup>15</sup> AER, Final decision – Jemena distribution determination 2016 to 2020 – Attachment 13 – Classification of Services, May 2016, table 13.1.

<sup>16</sup> AER, Final decision – Jemena distribution determination 2016 to 2020 – Attachment 13 – Classification of Services, May 2016, table 13.1.

<sup>17</sup> Many of these services had been provided by JEN consistent with the jurisdictional regime which applied prior to the NER.

established organisational structures, processes and systems which support the efficient—and in some cases, integrated—delivery of direct control services and other distribution services.

JEN will incur a wide range of costs if it was required to comply with the obligations from which it is seeking a waiver, including in relation to the following activities:

- identifying staff involved in the provision of both direct control services and the services which are the subject of this waiver application, and where necessary, making additional changes to roles and business processes to ensure that JEN is able to comply with the staff separation obligation in respect of the services which are the subject of this waiver application. In some cases, this may require the hiring of additional staff (where staff may currently be partly involved in the provision of both service types), resulting in a loss of synergies and increase in the costs of providing both direct control services and the services which are the subject of this waiver application
- locating staff involved in the provision of the services which are the subject of this waiver application in a separate office (or access-controlled section of an office) to staff involved in the provision of direct control services. Again, this will result in an increase in office costs necessary to provide electricity services that are the subject of this application and a decrease in the utilisation (a loss of efficiency<sup>18</sup>) of offices necessary to provide direct control services
- separation of efficient and usual business practices for providing quotes for activities where, for example, for a property developers who often request a new connection (a direct control service) offer packaged with a quote for new public lighting (a negotiated service)
- further restructuring its operations including descoping accounting systems, management systems, controls, processes and procedures
- incurring costs for the removal of in situ assets used to provide services to customers (such as watchman lights) while making sure that safety is not compromised and ensuring customers are not obtaining the service free of charge (which would otherwise be counter to the cross-subsidisation principle inherent in the Guideline).

Furthermore, as we have previously communicated to the AER through our ring-fencing compliance status reports<sup>19</sup>, JEN has designed and is implementing its compliance program on the assumption that the AER will grant waivers in respect of these other distribution services that are the subject of this waiver application for the remainder of the current regulatory period. This position was taken following the positive discussions held with the AER in relation to the difficulties of ring-fencing the services for which we are seeking waivers. Whilst we recognise those discussions with the AER were not an endorsement of being successful at obtaining a waiver at the time, we took sufficient comfort that there was a strong possibility of having waivers granted. Therefore, should these waivers not be granted, JEN will incur substantially higher costs to comply with the requirements by 1 January 2018 as these costs have not been considered in the implementation project, and also because of the shortened timeframe necessary to be compliant with the obligations.

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<sup>18</sup> It should be noted that a loss of efficiency occurs because office space is not directly scalable in proportion to the services provided. A loss of efficiency in the provision of direct control services or those services that are the subject of this applications would not be in the long-term interests of customers, either collectively or individually.

<sup>19</sup> JEN, Ring fencing guideline – implementation project: Status report to the Australian Energy Regulator, 28 April 2017, p. 12.

## 2.6 REGULATORY CONTROL PERIOD FOR WAIVER

JEN proposes this waiver would apply during the current regulatory period (1 January 2016 to 31 December 2020).

We note the AER's March 2017 preliminary framework and approach for the NSW electricity distributors flags its intention to consider changes to the current classification of some services in light of the Guideline's obligations in relation to negotiated and unclassified services<sup>20</sup>. Noting some jurisdictional differences between NSW and Victorian arrangements, JEN looks forward to engaging with the AER ahead of the next regulatory period to considering whether changes to the classification of these negotiated and unclassified services is necessary in the context of the Guideline's functional separation obligations, with a view to minimising the need for DNSPs to seek waivers from functional separation obligations for services where there is little or no prospect of competition (and therefore no net benefit in applying ring-fencing obligations).

## 2.7 ADDITIONAL MEASURES JEN PROPOSES TO UNDERTAKE

JEN does not propose to undertake any additional measures if this waiver was to be granted. JEN has undertaken a thorough analysis of the legal and regulatory framework (at both a jurisdictional and national level), business processes and customer expectations and has concluded that it has done everything it could in the context of the operating constraints to continue providing the services which are the subject of this application without causing a substantial and disproportionate increase in costs in the provision of these services.

Further, and in particular where there are conflicts between the Guideline and Licence obligations, there are no other possible courses of action that JEN can undertake to resolve the conflicts other than to seek a waiver or a change to the Licence. In JEN's views the most efficient and timely action between these alternatives is to seek a waiver; the alternative (a variation to the Licence) is riskier, more costly and unlikely to be completed by the 1 January 2018 compliance date.

## 2.8 BENEFITS TO CONSUMERS OF WAIVER

The objective of the Guideline is to promote the NEO by providing for the accounting and functional separation of the provision of direct control services by DNSPs from the provision of other distribution services and other services by them, or their affiliated entities, and to promote competition in the provision of electricity services. However, clause 5 of the Guideline recognises that it may be appropriate to waive a DNSP's obligation to comply with some parts of the Guideline in cases where this compliance would not be in customers' long-term interests, consistent with the NEO.

In general, customers' long-term interests are likely to be best served by competitive markets, where there is the potential for effective competition to exist. However, in our electricity market, there are some services which have strong natural monopoly characteristics—that is, it is most efficient for these services to be provided by a single service provider—for example, standard control services. The Guideline and its objective recognise that the development of competition may be hindered where a party is able to confer an advantage in a contestable market by virtue of its position as a natural monopoly provider in another (related) market. In cases where effective competition for the provision of a service could develop, the hindrance of this would clearly not be in customers' long-term interests, hence it is appropriate to prevent such market failures through measures such as those set out in the Guideline.

<sup>20</sup> For example, as highlighted in relation to emergency recoverable works on page 22 of the AER's Final Framework & Approach for the NSW electricity distributors regulatory control period commencing 1 July 2019, July 2017.

However, in the case of the waivers sought by JEN for the services as described in section 2.3, there is very limited competition (and scope for competition to emerge in the future) for the provision of these services. This is largely due to JEN being the only party able to provide these services due to their natural monopoly characteristics. Furthermore, to the extent that there is any potential contestability in elements of some of these services, JEN is unable to cross-subsidise between its services under its CAM, which is approved by the AER. Section 2.3 also explains how JEN only provides the services that are the subject of this waiver application in very limited (such as reserve feeder construction) or specific (such as where the service is directly related to the connection at JEN's electricity distribution network) circumstances, and that JEN does not actively promote or seek to compete with other providers in providing services such as greenfield public lighting rollouts where there is contestability. Indeed, the Guideline's explanatory statement discusses the appropriateness of waivers in such scenarios, in the context of the Guideline's branding obligations:<sup>21</sup>

*“DNSPs may apply for a waiver where they provide distribution services which are not direct control services, but there is no competitive market for that particular service. As an example, several DNSPs provide metering services which are not direct control services but there is no competitive market. It would be unnecessary and inefficient to require the DNSP to use separate branding in circumstances where there is not a contestable market or where there is no reasonable prospect of a contestable market emerging.”*

It is clear that where there is no scope for competition to emerge for the provision of a service, requiring the service provider to comply with obligations designed to promote service contestability is unlikely to deliver any benefits to consumers. Yet, as outlined in section 2.5, requiring the JEN to comply with these obligations would create costs, either directly or the through loss of efficiencies, to customers of both the services that are the subject of this waiver application and direct control services. Granting a waiver in respect of these services will therefore enable the continued provision by JEN of these services at least cost to customers over the long-term, consistent with the NEO.

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<sup>21</sup> AER, Electricity distribution Ring-fencing Guideline – Explanatory statement, November 2016, p. 39.