



SUBMISSION

Electricity Network Regulation Review – Package 1]

Submission to Australian Energy Market Commission - July 2026

Submitted to	Australian Energy Market Commission
Date	23 July 2026
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Status	Public

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About the Smart Energy Council

The Smart Energy Council (SEC) is Australia's peak body for the renewable energy and storage industry, representing over 700 member companies across solar, battery storage, energy management, and related clean energy sectors. Our membership spans technology manufacturers, installers, retailers, financiers, and policy advocates, all committed to accelerating Australia's transition to clean, affordable energy.

Introduction

The SEC welcomes the opportunity to provide a submission to the Australian Energy Market Commission's (AEMC) Electricity Network Regulation Review Package 1, incorporating the concurrent rule change requests from Nexa Advisory and Energy Networks Australia. This review represents a pivotal mechanism to reshape the economic boundaries of our power system, ensuring that the regulatory framework evolves to deliver a clean, affordable and deeply resilient energy grid for all Australians.

The SEC notes that a comprehensive network regulation review is vital as the energy transition accelerates. The unprecedented expansion of consumer energy resources (CER) requires stable, dynamic and workably competitive market structures rather than the extension of natural monopoly models into contestable sectors. Protecting competitive neutrality is critical to mobilizing private capital, driving dynamic efficiency, and shielding consumers from regressive cost socialisation during a live cost-of-living crisis.

Q3. Are changes required to the ring-fencing arrangements?

Q3.1. Ring-fencing obligation effectiveness and required changes?

The SEC considers that the current distribution ring-fencing obligations have become increasingly ineffective at preventing the cross-subsidisation of contestable activities and maintaining competitive neutrality. The legacy ring-fencing architecture was built for a centralised energy model and is entirely inadequate for modern, highly interactive CER markets, including distributed batteries, virtual power plants and electric vehicle charging networks.

A major factor in this systemic erosion is that ring-fencing waivers have become treated as routine, administrative remedies instead of strictly enforced, rare exceptions. For example, in Box 1 of the consultation paper, the ring-fencing class waiver for the Australian

Government's Community Batteries for Household Solar Program and individual waivers granted for network-led electric vehicle charging infrastructure trials illustrate how ad-hoc waiver mechanisms are increasingly being utilised to normalise monopoly network entry into contestable sectors. This effectively allows networks to secure an unmatched foothold in adjacent CER markets before long-term structural impacts are fully assessed.

This normalisation affects market structures because Distribution Network Service Providers (DNSPs) possess fundamental, structural advantages. This includes early access to network capability data, connection queue prioritisation and customer operational profile information that third-party commercial operators do not possess.

To address these structural deficiencies and restore market confidence, the National Electricity Rules (NER) should be amended to mandate that the Australian Energy Regulator (AER) publish comprehensive annual compliance and enforcement reporting that details all ring-fencing breaches, notifications and active investigations.

Q3.2. Ring-fencing waivers and required changes?

The historic operation of the ring-fencing waiver framework has failed to promote the long-term interests of consumers, as it lacks a rigorous mechanism to account for cumulative market impacts. The incremental relaxation of these guidelines has created a distinct chilling effect on private, third-party investment across the CER value chain. Commercial competitors are increasingly hesitant to allocate capital when forced to enter contestable markets against monopoly utilities that combine consumer-funded assets, privileged grid data and implicit financial backing.

To rectify this market distortion, the SEC recommends that the NER explicitly restrict the availability of ring-fencing waivers, ensuring they are only granted as a strict last resort in cases where a demonstrated, independently verified market failure exists and clear long-term consumer benefits are explicitly proven. Furthermore, any waiver approved by the regulator must be subject to mandatory, non-negotiable safeguards, including time-limited sunset clauses, independent external auditing and transparent commercial exit plans.

Q3.3. Other ring-fencing arrangements or waivers?

A significant and expanding problem not adequately captured by the current framework relates to the ongoing transition of DNSPs into Distribution System Operator (DSO) roles. As networks scale up their operational orchestration capabilities, they will naturally acquire far greater access to system-wide real-time network conditions and commercially sensitive third-party CER operational data. The current ring-fencing framework does not address this data advantage, and this regulatory gap will expand dramatically as the energy transition progresses.

The SEC recommends that the ring-fencing framework explicitly require that all DSO-generated data, network constraints and capacity metrics be made available to all market participants on strictly equivalent, standardised, open-access and timely terms to prevent anti-competitive self-preferencing.

Q3.4. Clarity on distribution service boundaries?

The commercial reality of the current regulatory framework is that DNSPs face strong, capital-biased financial incentives to enter emerging CER markets, regardless of how traditional classification boundaries are drawn. Relying on broad or ambiguous service definitions creates room for persistent regulatory creep via ad-hoc trial applications.

The SEC recommends amendments to the NER to provide far more prescriptive and granular guidance on classification boundaries for emerging services. The rules should explicitly clarify the service boundaries for battery storage systems, EV charging facilities and demand-side flexibility orchestration services to prevent the standard service classification process from being systematically bypassed.

Q6. Nexa rule change request – Do the ring-fencing arrangements in the NER need to be strengthened?

Q6.1. Nexa framing?

The SEC agrees with Nexa Advisory's framing of the issues raised in its rule change request. The pattern of recent regulatory decisions demonstrates that incremental ring-fencing waiver approvals have cumulatively normalised DNSP market entry in a manner that was entirely unintended by the original market design. By allowing monopoly networks to expand into contestable markets under the guise of trial frameworks, these behaviours risk becoming permanently entrenched before their broader, systemic consequences on competitive capital deployment are fully assessed or checked.

Q6.2. Deficiencies in distribution ring-fencing arrangements?

The SEC identifies material, systemic deficiencies across four core areas of the current distribution ring-fencing framework that require urgent structural remediation:

- **Waiver conditions:** The existing threshold criteria are insufficiently rigorous regarding long-term competitive degradation, meaning the bar for allowing a monopoly utility to enter a contestable market must be lifted substantially higher.
- **Affiliate dealings and data access:** Information asymmetries regarding network connection queues, customer energy profiles and hosting constraints are significant, deeply opaque and highly difficult to detect. This makes independent, audited data parity requirements essential.
- **Financial Resilience:** Implicit, consumer-funded backing by network businesses provides their commercial affiliates with an unfair advantage. This means minimum financeability thresholds, with triggered restrictions on value and dividend transfers out

of the regulated entity, are a proportionate response to protect consumers and level the playing field.

- **Reporting and Enforcement:** The lack of transparency surrounding the AER's ongoing compliance monitoring undermines industry confidence, necessitating the establishment of an anonymous complaints mechanism and mandatory annual reporting.

Q6.3. Deficiencies in transmission ring-fencing arrangements?

While the most immediate and acute risks are currently concentrated at the distribution level, where the impact on residential and small business billing is immediate, identical structural issues are emerging at the transmission level. As Transmission Network Service Providers (TNSPs) assume more active system coordination and system strength procurement roles, the risk of self-preferencing and cross-subsidisation in grid-scale storage assets increases. The AEMC should apply the same core ring-fencing obligations and data transparency rules to the NER. This will ensure large-scale commercial generation and storage investment remains adequately incentivised and a level playing field remains across distribution and transmission grid levels.

Q7. Nexa rule change request – Would Nexa's proposed solution address the identified problem?

Q7.1. Would Nexa's proposed solution efficiently address the problem?

The Smart Energy Council considers that Nexa's proposal to elevate core ring-fencing obligations out of fluid guidelines and directly into the text of the NER is a highly efficient, necessary and proportionate solution. Guideline-based protections lack structural permanence and are highly vulnerable to administrative dilution over time. Elevating these baseline requirements into the rules provides the long-term durability and regulatory certainty that commercial developers need to justify long-term capital allocations. The ultimate efficiency of this reform will depend on how cleanly the core obligations are formalised and how strictly the last-resort waiver test is operationalised.

Q7.2. Views on Nexa's specific proposals?

The SEC broadly supports the integrated package of reforms targeting affiliate data parity, strict branding separation, financial safety switches and enforcement transparency.

Q7.2.a.

The SEC supports the integration of Nexa's specific structural amendments within the NER. Elevating core ring-fencing obligations makes them significantly harder to dilute and signals a durable regulatory commitment to competitive neutrality.

Q7.2.b.

We endorse the implementation of the last-resort waiver test, as a high bar built on clear market failure and consumer benefit hurdles is essential to preserve market integrity.

Q7.2.c.

Crucially, applicant-commissioned market sounding assessments must not be accepted at face value; independent, third-party verification must be a mandatory prerequisite before the AER can contemplate waiver approvals.

Q7.6 Alternative Solutions?

We do not propose any further alternative solutions to those proposed by Nexa.

However, the SEC rejects the alternative approach of retaining the current NER provisions and relying on the AER's internal guideline review processes. The systematic erosion of competitive neutrality has occurred substantially through the flexibility of the guideline and waiver process itself. Relying on that exact same fluid mechanism to restore structural market protections is fundamentally cyclical and inappropriate. Durability can only be achieved through explicit formalisation in the rules.

Q8. Nexa rule change request – What are the costs and benefits of Nexa's proposed solution?

The long-term economic, systemic and consumer benefits of implementing Nexa's proposal substantially outweigh any potential implementation costs. Restoring a secure, level playing field immediately improves private investment confidence for original equipment manufacturers (OEMs), aggregators, retailers and installers across the entire clean energy value chain, unlocking significant capital for batteries, aggregation networks and charging infrastructure. The costs associated with this change are primarily transitional administrative and compliance adjustments for utilities, which are modest relative to the immense consumer benefit of workably competitive markets. This proposal ensures a level playing field rather than the exclusion of networks, as DNSPs can still participate in competitive markets through structurally separated, non-subsidised affiliates. Furthermore, the NER can easily incorporate principles-based operational flexibility for the AER while ensuring that core structural protections remain legally durable.

Q9. ENA rule change request – Do you agree with ENA that there is a problem with the roll out of EVCI?

Q9.1. Is there a ‘chicken and egg’ problem for EVs and kerbside EVCI?

Q9.1.a.

The SEC recognises that physical barriers to public kerbside EVCI deployment are real and directly impact consumers who:

- lack access to off-street parking, such as renters and apartment residents or,
- need EVCI for intercity trips or in regional areas.

This requires accelerated but strategic rollout as Australia’s proportion of detached houses, where consumers can charge at home, sits at a higher proportion when compared to the rest of the world.

Q9.1.b.

However, we do not agree that this represents a permanent commercial market failure that warrants granting a regulated monopoly role to network utilities. On-the-ground deployment delays are substantially driven by the DNSP’s slow, unstandardised and opaque connection processes, high pole-access fees and complex infrastructure leasing arrangements, rather than a lack of commercial appetite from private operators.

Q9.1.c.

While infrastructure gaps are acute in regional and remote blackspots, private commercial charging providers are actively seeking to deploy capital at scale across urban and metropolitan areas.

Q9.1.d.

The economically correct response is to dismantle these underlying connection barriers directly, not to bypass them by expanding regulated utility structures into a contestable market.

The AEMC should look closely at successful demand-led deployment models internationally, such as the framework implemented in the Netherlands¹. In that jurisdiction, residents without private driveways request public chargers from local municipalities, and if no commercial infrastructure exists within a defined proximity, the government competitively tenders the site out to commercial operators. This demand-led procurement model successfully delivers accelerated public infrastructure deployment without expanding regulated network monopolies or placing asset risk onto electricity consumers.

Q9.2. Other EVCI barriers addressable through the NER?

Independent of the final outcome of the ENA rule change request, the SEC urges the AEMC to utilise the current review to address the specific network barriers that commercial charging providers face. Third-party operators routinely grapple with slow and opaque DNSP connection processes that completely lack transparent site capability information and reliable turn-around

timeframes. Furthermore, there is a material risk of utilities providing preferential treatment to themselves or their corporate affiliates regarding site selection, connection prioritisation and facility access pricing. These risks, alongside highly inconsistent technical connection requirements across distribution zones, inflate rollout costs and can be effectively addressed through strengthened connection and facility access rules regardless of service reclassification.

Q10. ENA rule change request – Do you agree with ENA that there is a problem with the roll out of EVCI?

Q10.1. Would ENA's proposed solution efficiently address the problem?

The SEC does not consider ENA's proposal to reclassify public kerbside EVCI as a regulated, direct control service to be an efficient or sustainable solution. Allocating the asset and operational costs of charging infrastructure across all electricity consumers, regardless of whether they own or drive an electric vehicle, creates profound equity concerns. Shifting these costs onto household power bills is highly regressive and unjustifiable during a severe cost-of-living crisis, running counter to the pricing principles established in the AEMC Pricing Review.

Furthermore, because the ENA proposal contains no constraints on the number, type, or location of utility EVCI deployments, it creates an unacceptable risk of crowding out private commercial capital and stalling market innovation. The proposal lacks any mechanism requiring a DNSP to prove that commercial provision is unviable before executing a regulated deployment.

Q10.2. – Q10.6.

The SEC's overarching position, as outlined in Q10.1 and Q10.7, is that ENA's proposed solution is not the most efficient or appropriate regulatory response to the challenges facing kerbside EVCI deployment. Given this position, the SEC has not provided detailed responses to Q10.2 through Q10.6, as the underlying premise of ENA's proposal is one the SEC does not support.

The SEC's view is that the more effective policy response is to address the structural barriers currently suppressing private commercial deployment, rather than reclassifying kerbside EVCI as a regulated distribution service. The SEC's alternative recommendations are outlined in Q10.7.

Q10.7. Alternative Solutions?

The SEC recommends that the AEMC pursue alternative policy solutions that address the root causes of slow deployment while preserving competitive market structures. The AEMC should focus on reforming and streamlining connection and facility access frameworks directly under the NER, establishing clear time-bound connection turnarounds and mandating that DNSPs

¹ [Lessons from the Dutch EV charging approach](#)

publish open-access site suitability and hosting capacity information. Rather than altering service classification boundaries, the framework should encourage local government demand-led procurement models based on the Netherlands approach.

Finally, the AEMC should formally monitor and evaluate the market outcomes of the [Commonwealth DCCEEW's \\$40 million Accelerating EV charging program](#) before enacting permanent, high-risk structural amendments to the rule.

Q12. Assessment Criteria

The SEC supports the five proposed assessment criteria outlined by the AEMC to evaluate these regulatory reforms. However, we urge the AEMC to integrate specific weight to the long-term structural and equity dimensions when applying these criteria in practice.

Within the Principles of market efficiency and Consumer outcomes criteria, the long-term dimension of competitive market structures must be given explicit weight over short-term deployment spikes. Optimizing short-term rollout by expanding monopoly powers creates long-term structural inefficiency, reduces consumer choice, and inflates system costs.

Furthermore, equity of access must be formally recognised within the consumer outcomes framework. The long-term impacts on renters, apartment residents, low-income households and regional consumers must be thoroughly evaluated alongside baseline metrics of price and reliability, ensuring that network cost-recovery mechanisms remain fair, progressive and completely insulated from anti-competitive cross-subsidisation.

Conclusion

The Smart Energy Council thanks the Australian Energy Market Commission for the opportunity to provide a submission and welcomes further engagement on the matters raised.

The energy transition is accelerating, and the regulatory frameworks governing our networks must keep pace. Competitive neutrality is the foundation upon which private capital deployment, consumer affordability, and long-term market dynamism depend on. Where that neutrality is eroded, whether through the normalisation of ring-fencing waivers, the expansion of regulated monopolies into contestable CER markets, or the socialisation of infrastructure costs onto all electricity consumers, the consequences fall hardest on those least able to absorb them.

The SEC strongly supports the Nexa Advisory rule change proposal as a proportionate and durable mechanism to restore structural market protections and urges the AEMC to prioritise its timely progression.

On the ENA proposal, our view is that the barriers to kerbside EVCI deployment are real, but the solution lies in dismantling the connection and access barriers suppressing private investment, not in expanding the regulated asset base.

The SEC looks forward to further engagement with the AEMC through this process and is available to discuss any of the matters raised in this submission in further detail. If you have any queries on the issues raised, please do not hesitate to contact Rhiannon Evans via rhiannon@smartenergy.org.au.

Kind regards,

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