17 May 2017

Mr John Pierce
Chair
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Review of Regulatory Arrangements for Embedded Networks Consultation Paper

Dear Mr Pierce,

Thank you for the opportunity to contribute to the Australian Energy Market Commission's *Review of Regulatory Arrangements for Embedded Networks Consultation Paper*.

Energy Networks Australia is the national industry body representing businesses operating Australia's electricity transmission and distribution and gas distribution networks. Member businesses provide energy to virtually every household and business in Australia.

Energy Networks Australia's primary concern with the embedded network regulatory framework is that embedded network customers currently lack access to equivalent consumer protection measures when compared to the standard arrangements for customers in the national electricity market. In particular, embedded networks customers should have access to jurisdictional ombudsman dispute resolution schemes.

In addition, Energy Networks Australia supports strengthening of the exemption framework to improve the Australian Energy Regulator's visibility of non-compliance with exemption conditions.

Should you have any additional queries, please feel free to contact Kate Healey, Director Regulation on (02) 6272 1516 or khealey@energynetworks.com.au.

Yours sincerely,

John Bradley
Chief Executive Officer

As of 10 November 2016, the Energy Networks Association commenced trading as Energy Networks Australia. Our website and email has changed to energynetworks.com.au. Please update your records accordingly.

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Energy Networks Australia

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Overview

Energy Networks Australia welcomes the request by the Council of Australian Governments (COAG) Energy Council for AEMC to review the regulatory arrangements for embedded networks.

Embedded networks are private electricity or gas networks that serve multiple customers and are connected to another distribution or transmission system in the national grid through a "parent" connection point. Common examples of embedded networks include shopping centres, retirement villages, apartment complexes and caravan parks. Embedded networks may occur as new developments or retrofits of existing buildings. In some but not all cases they can feature distributed energy resources such as solar photovoltaic (PV) panels, battery storage, or diesel generators located within the embedded network.

Significant growth in the number of embedded networks in recent years brings opportunities for innovation and potential risk for consumers who are not subject to the same arrangements and protections as customers that have a standard network connection. While potential issues with the regulatory arrangements of embedded networks have previously been identified as part of wider reviews, consideration of those issues and possible solutions has been beyond the scope of those earlier reviews.

Embedded network operators currently must gain exemption from the requirement to register as a network service provider. If the embedded network operator also wishes to sell energy within the embedded network then the operator must also hold a retailer authorisation from the Australian Energy Regulator (AER), or be exempted by the AER from holding a retailer authorisation.

Energy Networks Australia notes that Victoria has not adopted the *National Energy Retail Law* and has not adopted and the AER's *(Retail) Exempt Selling Guideline* does not apply. The Victorian Government has a *General Exemption Order* (GEO) that applies to embedded networks and is in the process of reviewing and updating the GEO to provide equivalent consumer protections to those available under the AER's Exemption Framework.

In mid-2016, the Victorian Government released the *General Exemption Order Draft Position Paper*. Energy Networks Australia understands that the Victorian Government is likely to release a Final Position Paper in coming weeks along with a revised GEO for public consultation. It is likely that many of the consumer protection related issues associated with embedded networks which were identified by Victorian stakeholders may be advanced through the finalisation of this review process. This response will therefore not cover in detail issues likely to be soon resolved through the finalisation of the Victorian Government review.

In this response, Energy Networks Australia supports further consideration by the AEMC of the following:

- ensuring embedded network customers having access to equivalent consumer protections as customers of licenced energy retailers, including access to jurisdictional energy ombudsman dispute resolution schemes;

- seeking the development of nationally consistent consumer protection arrangements, including energy payment assistance arrangements;
- promoting where feasible the development of further retail competition in jurisdictions which do not currently allow customers in private networks to choose their electricity retailer;
- appropriate arrangements to address embedded network operator failure, to ensure continuity of service and protection of consumers;
- additional conditions or requirements in the network exemption guideline to support greater transparency for consumers within embedded networks on matters such as planned outages; and
- further consideration of the role of embedded network operators to support system security and network planning such as obligations to notify NSPs on embedded generation capability.

Energy Networks Australia responds to the AEMC's four core questions in more detail below.

Background

Energy Networks Australia is the national industry body representing businesses operating Australia's electricity transmission and distribution and gas distribution networks. Member businesses of Energy Networks Australia provide energy to virtually every household and business in Australia.

Energy Networks Australia welcomes this opportunity to make a submission in response to the Australian Energy Market Commission's (AEMC's) Consultation Paper *"Review of Regulatory Arrangements for Embedded Networks"* (the Consultation Paper).

Response to stakeholder questions

1. Is the regulatory framework fit for purpose?

Energy Networks Australia's primary concern with the embedded network regulatory framework is that embedded network customers currently lack access to equivalent consumer protection measures when compared to the standard arrangements for customers in the national electricity market. In particular, embedded networks customers should have access to jurisdictional ombudsman dispute resolution schemes. Further detail is provided below at response to question 3.

In addition, Energy Networks Australia notes that the AEMC Consultation Paper states that the AER has limited visibility of non-compliances of exemption conditions and that "consequently its ability to enforce exemption conditions is limited"[1].

Energy Networks Australia supports strengthening of the exemption framework to improve the AER's visibility of non-compliance with exemption conditions.

2. Can access to retail market offers be improved?

The AEMC Consultation Paper identifies that "jurisdictional regulations which govern embedded network customers access to retail market offers are inconsistent and some prevent embedded network customers accessing retail market offers".

The National Electricity Retail Rules (NERR) do not provide clear obligations and relationships between authorised retailers, embedded network operators and embedded network customers"[2].

There are two ways that embedded network customers can access retail services by authorised retailers:

1. The retailer comes to an agreement with the embedded network operator to bill the retailer for network services and the retailer then bills the customer for network and energy services.
2. The customer pays two separate bills, one to the embedded network operator for network services and one to the retailer for energy services.

Either method requires that the embedded network operator must inform either the retailer or the customer of the unbundled prices. This additional complexity of providing retail services may pose a commercial barrier to retailers developing products and services for small customers.

Victoria, New South Wales and South Australia allow customers in private networks to choose their electricity retailer. As the AER notes:

> *"Elsewhere, access to retail competition through a private network is subject to agreement between the exempt embedded network service provider and the customers of that network. Customers in the ACT, Queensland and Tasmania*

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1 (AEMC 2017) Review of regulatory arrangements for embedded networks consultation paper, p. 21.
2 Ibid. p. 23.

have traditionally required a direct connection to a distributor to access retail competition. Review of jurisdictional regulation of embedded networks in the ACT and Queensland is likely. With the introduction of the new rule from 1 December 2017, one or more of the other NEM jurisdictions may also adopt new access arrangements. The situation which is to apply in Tasmania and the Northern Territory is subject to further consideration by those jurisdictions"[3].

Energy Networks Australia supports the development of further retail competition in jurisdictions that do not currently allow customers in private networks to choose their electricity retailer.

3. What consumer protections should apply to embedded network customers?

Energy Networks Australia considers that embedded network customers should have access to equivalent consumer protections as customers of licenced energy retailers.

The AER's *Electricity Network Service Provider – Registration Exemption Guideline* and the AER's *(Retail) Exempt Selling Guideline* place exemption conditions on embedded networks operators and on-sellers. Consumer protections feature in these conditions, but the enforcement of these conditions is inadequate, given the AER's limited visibility of any non-compliances of exempt conditions. It is therefore important to strengthen compliance with and enforcement of the exemption conditions by:

- embedded network customers having full access to jurisdictional energy ombudsman dispute resolution schemes; and
- The AER considering its compliance regime for such conditions.

Dispute resolution

The AEMC states:

"Embedded network customers have less access to energy ombudsmen schemes to help resolve disputes with their energy providers[4]*. Consumers groups have advocated for the expansion of access to independent dispute resolutions*[5]*. The AER is currently considering the expansion of access to ombudsman schemes to include embedded network customers and what associated changes would be necessary to the (Retail Exempt Selling Guideline to accommodate any potential expansion of ombudsmen schemes. Changes to jurisdictional regulation and the funding models of ombudsman schemes may also be necessary"*[6].

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3 AER (2016), Electricity Network Service Provider - Registration Exemption Guideline Version 5, p. 16.
4 J Benvenuti and C Whiteman, Consumer access to external dispute resolution in a changing energy market, report to Energy and Water Ombudsman (Victoria), Energy & Water Ombudsman NSW, Energy and Water Ombudsman (SA), 24 June 2016.
5 See for example SACOSS, The retail and network exemption framework: emerging issues for consumers, December 2015.
6 AEMC (2017), Review of regulatory arrangements for embedded networks Consultation Paper, p. 32.

Energy Networks Australia notes the Victorian government has recently stated that:

> *"The jurisdiction of the Energy and Water Ombudsman Victoria (EWOV) only extends to customers of licensed retail, distribution and transmission bodies..... Instead, consumers supplied electricity by an exempt entity may utilise the Victorian Civil and Administrative Tribunal (VCAT) to resolve disputes that cannot be resolved directly with the entity. Customers who contact EWOV are often also referred to Consumer Affairs Victoria for advice"*[7].

In its recent *General Exemption Order (GEO) Draft Position Paper* the Victorian Government Department of Environment, Land, Water and Planning states that it believes that EWOV has many advantages over VCAT in the resolution of energy related disputes. EWOV is accessible, free for consumers, less litigious in its approach to resolving complaints and has expert knowledge of the energy regulatory framework[8].

The Department is intending to release a revised GEO in coming weeks. Energy Networks Australia recognises that extending the ombudsman scheme will likely require reforms to EWOV's internal company Charter and its Constitution. The exempt entity annual membership fee for EWOV will need to be appropriately proportional.

To the greatest extent possible, the cost of EWOV membership for some EWOV members, including embedded network operators, should not be cross-subsidised by other EWOV members.

The situation is similar in NSW. The Energy & Water Ombudsman NSW advises that it has

> *"jurisdiction to receive and investigate complaints from embedded network customers, however, exempt sellers are not required to be members of EWON. This means that while we can handle and generally resolve complaints about exempt sellers, currently those who are not members of EWON are not bound by our decisions"*[9].

Energy Networks Australia supports the expansion of all jurisdictional energy ombudsmen schemes to include embedded network operators and energy on-sellers, including exempt parties paying an appropriate share of fees.

Hardship

The AEMC notes,

> *"The AER's retail exemption guideline requires exempt sellers to offer flexible energy payment options to embedded network customers who identify themselves as being in financial difficulty. Stronger consumer protections apply to authorised retailers, including the development of an AER approved hardship policy. The South Australian Council of Social Service (SACOSS) received feedback from embedded network customers that current practices*

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7 Victorian Department of Environment, Land, Water and Planning (2016), General Exemption Order Draft Position Paper, p. 24.
8 Ibid, p. 25.
9 See EWON webpage: https://www.ewon.com.au/page/making-a-complaint/what-can-i-complain-about/on-sellers accessed 14 May 2017.

are unacceptable[10]*. Some stakeholders have also raised concerns over the ability of embedded network customers to access concessions in some circumstances"*[11].

Research by consumer advocates has indicated that a large proportion of concession cardholders have not received any concession information, or assistance in applying for a concession, from their re-seller.[12].

Energy Networks Australia supports making full and complete information on any available concessional payments available to embedded networks customers at the commencement of their tenancy/residency. This is a current provision of Condition 2 of the AER's *(Retail) Exempt Selling Guideline*. It may require reconsideration by the AER of the enforcement regime which is intended to safeguard compliance with those conditions.

Energy Networks Australia also supports a review of the current energy related consumer protection arrangements for reasons discussed in Chapter 4 of the Network Transformation Roadmap released by CSIRO and Energy Networks Australia in April 2017.

Reliability

Energy Networks Australia is concerned about aspects of consumer protection related to infrastructure service, performance and reliability. Poor reliability may be a sign of poor operation or maintenance of the embedded network.

Energy Networks Australia proposes that the AEMC's review consider:

- Should energy infrastructure access within an embedded network be considered an essential service?
- Should customers within embedded networks be able to expect equivalent standards of infrastructure service including performance and reliability as customers on the shared network?
- Should embedded network operators be required to provide customers with information about the embedded networks reliability when commencing their tenancy/residency?
- Should embedded networks of a significant size (more than a few customers) be required to publicly report on network reliability?
- Are there circumstances where network businesses could offer to build the infrastructure within an embedded network, where embedded network operators or developers do not want to carry the task of having to maintain and operate the embedded network infrastructure and be accountable for its ongoing service performance?

  This might be similar to the existing situation for new housing developments,

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10 See for example SACOSS, The retail and network exemption framework: emerging issues for consumers, December 2015.
11 AEMC (2017), Review of regulatory arrangements for embedded networks Consultation Paper, p. 32.
12 CUAC (2012) Growing Gaps – Consumer Protections and Energy Re-Sellers – A CUAC Research Report, p. 37.

which may have the energy reticulation constructed by third parties, which are subsequently gifted to distributors and thereby becomes part of the shared network. This could be an unregulated service or under different regulatory arrangements.

Outages

Energy Networks Australia would support the introduction of a requirement for embedded network operators to notify their embedded network customer when they are informed of a planned outage notification by their Local Network Service Provider.

In addition, Energy Networks Australia suggests that the embedded network regulatory arrangements should provide greater accountability on embedded network operators and embedded network managers to provide a 24-hour contact number for enquiries, and to provide necessary information to facilitate safe energisations and exchange of metering.

Distribution businesses do not have access to customer information (for customers within the embedded network) required to provide this relevant information and services. Customers within an embedded network do not have any direct relationship with their local distribution network service business provider. In these circumstances, embedded network operators and managers are the appropriate party to provide these services to embedded network customers.

Embedded network operators and embedded network managers of last resort

Energy Networks Australia suggests that the AEMC should consider what arrangements should apply if an embedded network operator fails? Electricity networks may not be able to absorb additional responsibilities (and liabilities) on another party's network. There are consumer protection schemes currently in place that could be drawn on to provide a basis for a similar framework for embedded network operator failure.

For instance, the National Energy Retail Law contains provisions for a national Retailer of Last Resort (RoLR) scheme which is intended to ensure that, in the event of a retailer failing (a RoLR event), customers continue to receive electricity and/or gas supply. The AER has certain responsibilities under the RoLR scheme which include:

- registering default and additional RoLRs;
- publishing and maintaining a register of RoLRs;
- appointing designated RoLRs in relation to RoLR events;
- publishing RoLR guidelines and RoLR plans;
- conducting RoLR exercises simulating RoLR events; and
- making RoLR cost recovery scheme determinations.

Energy Networks Australia suggests the review consider whether a similar, regulatory framework could be applied to embedded networks.

Embedded Generation arrangements within embedded networks

Customers within embedded networks may choose to add or increase the capacity of solar embedded generation. In these circumstances, it is currently the responsibility of the embedded network operator to apply for a new or modified connection agreement with their local network service provider (LNSP). LNSPs do not currently have the ability to assess all connected equipment. LNSPs must manage connection agreement compliance with the embedded network operator and not the actual embedded network customers arranging the installation. This is problematic as, in most circumstances; it is the embedded network customer who has access to relevant information and paperwork. Currently, it is difficult for the LNSP to assess and approve the connection agreement, and hence confirm that the inverter connected complies with all relevant safety and network standards. Energy Networks Australia would support clear allocation of the responsibility for establishing connection agreements either to the customers within embedded networks or to the embedded network operator.

Energy Networks Australia considers that there should be an obligation on the embedded network operator to advise the LNSP of all embedded generation capability (size, type etc.) within the embedded network. Under the Victorian Electricity Distribution Code, distributors have an obligation to keep a register of all embedded generation located in their area. Further, for network planning purposes distributors need to understand all available embedded generation (solar, wind, electric vehicle batteries, battery storage etc.) which affects network forecasts and localised network asset management and planning.

Energy Networks Australia would support revision of the *Electricity Network Service Provider – Registration Exemption Guideline*. The Guideline refers to large generation or NEM registered generation or generation that may provide network support or demand response. However, increasing embedded generation to reduce energy costs and hence reduce the required supply from the grid (as opposed to export) appears to not to be considered a generation source. Batteries and smart programs could serve to operate so that energy does not go to grid, but rather is used purely for customer/embedded network benefit.

4. Are current regulatory arrangements for gas-embedded networks appropriate?

Energy Networks Australia notes that the gas embedded network industry is not at the same level of development as its electricity counterparts. That said, Energy Networks Australia notes the following:

- We support the broad objectives underpinning the regulatory framework for electricity-embedded networks. These include ensuring that customers supplied by embedded networks have access to relevant consumer protections and are able to access retailer choice facilitated by access to individual metering arrangements.
- There is currently inconsistency in state-based regulations and building codes, which influences the design and physical construction of gas networks within high-

rise and other multi-dwelling premises.

- Although embedded gas networks exist in some states, the ability to measure individual gas consumption depends on individual building infrastructure and on the appliances using the gas.

We would welcome the AEMC's consideration of how the policy and regulatory framework can appropriately balance customer participation and protection in embedded networks with the facilitation of innovation in new services across the energy market.

Energy Networks Australia suggests that the AEMC consider the appropriate customer protections and access to retailer choice for hot water metering separately to economic efficiency and safety concerns associated with gas metering for cooktops. Any changes in the gas embedded network regulatory framework will need to be accompanied by changes to the Australian Energy Market Operator (AEMO) retail gas market procedures and metrology arrangements and AEMO gas retail markets systems and other participant IT systems.

Energy Networks Australia would welcome the AEMC's consideration of how the policy and regulatory framework can appropriately balance customer participation and protection in embedded networks. In an environment of rising wholesale gas prices, it is crucial for customers to have access to individual metering and billing, choice of retailer and customer protection measures.

There is currently no national gas distribution exemption framework in place. There is no equivalent head of power to the AER's *Electricity Network Service provider – Registration Exemption Guideline* under the National Gas Rules (NGR). In the case of electricity distribution, customers with a child connection are able to be registered in the NEM and choose their own retailer. The NEM procedures and MSATS IT system facilitate this process. An equivalent situation does not apply for gas distribution. The NGR and market systems do not support parent and child relationships.

Energy Networks Australia encourages the AEMC to facilitate thorough consultation with all effected stakeholders should any changes to the regulatory framework for gas-embedded networks be proposed,

In terms of jurisdictional-related issues, we do note that regulatory arrangements vary state to state.

In NSW, many medium or high-rise developments in NSW have centralised hot water units. Currently Jemena customers have individual hot water meters that records the water (and therefore gas used as part of the centralised hot water units), which allows customers access to choice of retailer for the gas used.

In Victoria, to date, the Government has not supported an exemptions framework for gas networks. Further, the operation of gas embedded networks in Victoria without a gas distribution licence or an individual exemption would be in breach of the Gas Industry Act.

Other issues

Energy Networks Australia requests that the AEMC consider the legal definition as to whether any embedded network related services could be considered distribution services. We note the definition of embedded networks refers to networks not owned

by DNSPs. Does this preclude all DNSP ownership of embedded networks? Are there any circumstances in which DNSPs could provide some aspects of embedded network related services (either as a regulated or unregulated service)?