



2 July 2015

Richard Owens
Senior Director
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Reference: ERC0179

Dear Mr Owens

RE: Embedded Networks Consultation Paper

ERM Power Limited (ERM Power) welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) Consultation Paper on Embedded Networks.

About ERM Power Limited

ERM Power is an Australian energy company that operates electricity generation and electricity sales businesses. Trading as ERM Business Energy and founded in 1980, we have grown to become the 4th largest electricity retailer in Australia, with operations in every state and the Australian Capital Territory. We are also licensed to sell electricity in several markets in the United States. We have equity interests in 497 megawatts of low emission, gas-fired peaking power stations in Western Australia and Queensland, both of which we operate. A subsidiary of ERM Power, Powermetric Metering Limited, is an AEMO-accredited Metering Provider and Metering Data Provider, operating since 2014.

ERM Power was also represented on the Australian Energy Market Operator's (AEMO) Multiple Trading Relationships and Embedded Network Reference Group which was convened during 2014 to provide advice to AEMO on the development of the Detailed Market Design that supports AEMO's rule change request.

General comments

There are a number of factors that can make servicing customers within an embedded network higher risk and cost for an authorised energy retailer compared to customers within the National Electricity Market (NEM). These can impact an embedded network customer's ability to access the contestable electricity retail market, both in terms of the additional costs they may face, and in the limited number of retailers that may be willing to make them an offer. Many of these factors relate to the fact the Embedded Network Operators (ENOs) are not subject to the National Electricity Rules (NER, or the Rules), but are governed by the Australian Energy Regulator's (AER) network and retail exemption guidelines. The guidelines impose some conditions for key exemption classes that aim to mirror obligations placed on distribution businesses in the National Electricity Market (NEM). However, the guidelines lack the clarity of the Rules framework in a number of key areas, and the AER has limited means to monitor and enforce them. Variation in obligations across jurisdictions, and between distribution businesses within a jurisdiction, further complicates operations.

While we acknowledge that these specific issues are outside the scope of this rule change request, we encourage the AEMC to remain cognisant of the impact that these factors may have in achieving the

objective of facilitating greater competition for embedded network customers in an efficient manner, and to seek options to also address these where possible.

In that context, ERM Power is supportive of the proposed change to the NER. More specifically, we believe that establishment of an Embedded Network Manager (ENM) role to undertake network functions, and market and business-to-business (B2B) communications is likely to reduce the costs of authorised retailers servicing embedded network customers. We agree that this would facilitate greater retail competition for embedded network customers in those jurisdictions where competition currently exists. However there are still a number of risks to authorised retailers that have not been clearly addressed under the proposal and Consultation Paper, although we consider them within scope. The submission that follows focusses on these areas rather than responding to each of the consultation questions directly.

We also welcome the AEMC's consideration of consequential changes to the National Energy Retail Law and National Electricity Retail Rules to address current regulatory gaps that may be exacerbated as more embedded network customers choose to engage with authorised retailers. As specific proposals to address these issues have not been put forward in the rule change request, we address each of these specifically in our submission.

Please contact me if you would like to discuss this submission further.

Yours sincerely,

[signed]

Jenna Polson
Manager, Regulatory Affairs
03 9214 9347 - jpolson@ermpower.com.au



PROPOSED CHANGES TO THE NER

Disconnection and life support

The Detailed Market Design specifies that the ENM would be responsible for communicating life support requirements for on-market children, and also for B2B communications relating to de-energisation and re-energisation (with the ENO responsible for performing these services). However the proposal does not appear to comment on how disconnection of supply at a child connection point should occur.

Currently, embedded network children connection points are not physically disconnected from the embedded network. The only way supply can cease at a child connection point is where the parent connection point is disconnected from the distribution network. Where an authorised retailer seeks to end supply of an on-market embedded network child (for example, in response to a move-out, non-payment or illegal use) the status of the child connection point is set to “de-energised” in MSATS. If electricity continues to pass through that child connection point, it will not be subtracted from the parent’s load. The effect of this is that the parent’s load is increased to include this usage. This increases the cost to the parent customer, and such sudden changes to the parent’s load profile may be a material risk to the parent’s retailer.

With the proposed establishment of the ENM role, we believe that the option for physical disconnection of embedded network children should also be introduced. The ENM would be able to receive market communications in relation to the request for disconnection, and pass this onto the ENO to effect the disconnection from the embedded network.

The proposal to introduce obligations on the ENM relating to life support communications also reduces the risk of enabling physical disconnection. We recommend these communications are not restricted to the retailer supplying the parent connection point, but that the distribution business is also notified. It is important that the distribution business is able to treat the parent connection point as a life support customer where at least one of the children connection points has life support requirements, to ensure the child is not inadvertently disconnected.

We note the draft determination on metering competition also allows a retailer to arrange for re-energisation and de-energisation directly with the Metering Coordinator (MC) for a site, which we understand would also apply to on-market embedded network children. The interaction between the MC and ENM roles needs to be carefully considered to ensure that re-energisation and de-energisation can occur safely and efficiently when required.

Metering

Discrepancies between metering requirements for off-market and on-market embedded network children continues to be a barrier to retail competition for embedded network children. Under the AER’s Electricity Network Service Provider Registration Exemption Guideline, all new or reconfigured metering installations within an embedded network are required to be compliant with the requirements of the National Measurement Act, and the accuracy requirements of the NER. However, off-market metering installations are not required to be maintained in accordance with the NER’s stringent maintenance, testing and inspection regime. There is also no requirement for off-market metering installations to be serviced by AEMO-accredited Metering Providers and Metering Data Providers.

These differences in requirements for off- and on-market embedded network children mean that an off-market customer considering an offer from an authorised retailer is likely to face:

1. an upfront cost to upgrade or replace the metering installation at the site, as it is unlikely to have been maintained in a state compliant with the NER; and
2. higher ongoing metering charges, as services are provided by AEMO-accredited metering service providers (who have additional obligations, system requirements etc. compared to non-accredited providers).

These additional costs can be significant enough to dissuade a customer from engaging with authorised retailer.

Further, where the accuracy of off-market metering installations is not maintained appropriately, the correct level of consumption may not be recorded. This can result in real cost impacts for the off-market child and/or the embedded network parent, as well as parties with a financial interest in these sites. It also means that should an off-market customer choose to contract with an authorised retailer and have a new (more accurate) meter installed, they may experience bill shock where their correct consumption level is higher than what had previously been recorded. This was a common experience in Victoria where small customers replaced their aged basic meters with more accurate Advanced Metering Infrastructure.

ERM Power supports the recommendation made in the rule change request to update the AER's Electricity Network Service Provider Registration Exemption Guideline to require metering installations at off-market embedded network connection points to comply with the inspection and testing regime under the NER. Additionally, we recommend that off-market connection points are required to be serviced by AEMO-accredited metering service providers. These changes will reduce the cost-barrier to retail competition for embedded network children, while also improving the accuracy of recorded consumption in embedded networks.

NMI status codes for off-market children

In the Detailed Market Design, it is proposed that a new National Meter Identifier (NMI) status code is introduced to denote an off-market child (that may have previously been on-market). The stated intention is to indicate that the data available for the site may not be current and current market obligations to maintain/provide data are removed.

ERM Power opposes the introduction of a new NMI status code for this purpose. We do not believe this new status code is required, because:

1. an embedded network child would be discernible from NEM customers by the presence of an embedded network code included in MSATS for this connection point; and
2. use of the existing "de-energised" status would indicate to participants that the site is not currently active in the market (albeit active within the embedded network).

We believe this is sufficient to cause participants to verify the accuracy of NMI standing data before seeking to participate with respect to these connections points. The addition of a new NMI status code is likely to be particularly costly to implement, because NMI status codes have a very high number of dependencies within participant systems. We recommend the aspect of the proposed design is not adopted.

CORRESPONDING CHANGES TO THE NERR AND NERL

While the rule change request did not propose specific changes to the National Electricity Retail Rules (NERR) or the National Energy Retail Law (NERL), we welcome the AEMC's consideration of these instruments in light of the proposed framework. The issues discussed in section 5.4 of the Consultation Paper are an existing source of uncertainty and risk for ERM Power, as an authorised retailer supplying embedded network customers. This is only likely to increase as the number of embedded network children seeking to access the retail market increases. Addressing these issues would provide greater confidence to the authorised retailers, and support the development of a competitive market for retail services for embedded network children.

As the Consultation Paper does not propose solutions to the issues raised, below we provide feedback on our understanding of the current regulatory requirements for the sale of energy to embedded network children, and outline potential solutions for the AEMC's consideration.

Obligation to offer

In the NEM, the last retailer to service a connection point has an obligation to make a standing offer available to that customer. This ensures that where a customer has not actively chosen a market offer, electricity may continue to be supplied and billed according to fair and reasonable terms.

Condition 1 of the AER's Exempt Selling Guideline states that an exempt person cannot refuse to sell energy to a customer who meets the criteria for the applicable exemption class (except in accordance with relevant disconnection provisions). However, once a customer has chosen an authorised retailer, this obligation to supply shifts to their retailer of choice. The NERR requires that if an energy supply agreement with an authorised retailer ends and is not replaced with another market contract, the retailer is then required to offer the customer a standing offer contract. We understand an authorised retailer would also have an obligation to offer in a scenario where their NEM customer is retrospectively added to an embedded network (a brownfield conversion). The requirements relating to the detail of this offer are discussed further below.

Network charges

Network charges relating to the operation of an embedded network must be paid to the ENO, and in general the ENO continues to collect these charges from an on-market customer (although some retailers may choose to collect these on the ENO's behalf).

As outlined in the Consultation Paper, NEM standing offer rates include both energy charges and network charges associated with the operation of the distribution network. If a retailer does not offer an energy-only standing offer, then a bundled standing offer would apply, under which the customer would pay for both distribution network charges (payable to the retailer) and embedded network charges (payable to the ENO). Of course the retailer would be responsible for communicating the features of this offer to the customer to enable their informed choice about whether to take up that offer, seek an alternative (perhaps energy-only) offer from another retailer, or to contract with the ENO for its electricity supply.

It is important that offering energy-only products remains a commercial decision for each authorised retailer, and is not mandated in these scenarios. Establishing the capacity to offer an energy-only product may require different system, process and contractual requirements compared to bundled offers. Each retailer should be free to consider the costs and benefits of offering these products to embedded network children, just as they would when assessing the business case for targeting any other customer segment.

Standard contract terms

The Consultation Paper highlights that some of the model terms and conditions required to comprise an authorised retailer's standing offer contract are not appropriate for customers within an embedded network, because they reference the distribution business in a manner that would not be applicable. We believe that the most appropriate solution is for the AEMC to amend the model terms and conditions to differentiate distributor, ENO and ENM obligations for on-market embedded network children so these terms and conditions could apply in either NEM or embedded network contexts.

Explicit informed consent

The NERL currently only requires an authorised retailer to gain explicit informed consent when transferring a small customer from another authorised retailer (and when entering into a market offer contract). The Consultation Paper highlights that there is no current requirement to gain explicit informed consent for transfers between authorised retailers and ENOs when the customer enters into a standing offer.

While not explicitly required, we expect it would be highly unlikely in practise for an authorised retailer to not obtain explicit informed consent to transfer a customer from ENO supply, on the basis that the ENO is not an authorised retailer. Nonetheless, it is appropriate to clarify this in the NERL. We therefore recommend that clause 38 of the NERL is amended to state that explicit informed consent is also required in transactions relating to the transfer of a customer from an exempt seller.

The requirement for an ENO to gain explicit informed consent exists in the AER's Exempt Selling Guideline. Our understanding of this Guideline is that explicit informed consent must be gained by an ENO where:

1. the ENO has sold energy to a group of small customers under one agreement (in this case, explicit informed consent must be gained for each individual customer); and
2. customers in brownfield sites.

ERM Power agrees that explicit informed consent should be obtained for these customer transfers. We also recommend the Guideline be amended to also require the ENO to gain explicit informed consent from customers who choose to switch from an authorised retailer back to ENO-supply (in cases other than brownfield conversions, where explicit informed consent is already required).

Contents of bills

The NERR places an obligation on authorised retailers to prepare a bill so that a small customer can easily verify that the bill conforms to their customer retail contract, and to include certain particulars in a bill for a small customer. This included the tariffs and charges applicable to the customer. The AEMC rightly suggests that in cases where the retailer is not collecting network charges, it would not be in a position to comply with this requirement. ERM Power recommends that clause 25 of the NERR is amended to specify that these obligations only apply to the charges that the retailer is collecting from the customer. We do not believe it is appropriate for retailers to be expected to comply with these requirements for charges that are collected by other parties.

Clause 25 of the NERR also requires a 24-hour telephone number of the distribution business to be included on the bill, as well as the name of the distribution business, for fault enquiries and emergencies. ERM Power emphasises that, while other references to the distribution business are not appropriate for embedded network customers, it is appropriate for the distribution business's telephone number to be

included on an embedded network customer's bills for fault and emergencies. This is because if supply was interrupted at an embedded network connection point, it is appropriate to first determine whether this is due to an outage at the parent connection point. If the distribution business confirms that there is no outage at the parent connection point, the customer should then contact the ENO to investigate whether there is a problem within the embedded network.