

Mr John Pierce  
Chair  
Australian Energy Market Commission  
PO Box A2449  
SYDNEY SOUTH NSW 1235

Dear Mr Pierce

You would be aware that in 2014 the Australian Energy Market Operator requested a rule change under section 91 of the National Electricity Law (NEL) to clarify arrangements for consumers in embedded networks under the NEL and the National Electricity Rules (NER).

In its final rule determination, published on 17 December 2015, the Australian Energy Market Commission (AEMC) recommended the Council of Australian Government's (COAG) Energy Council (the Council) request the AEMC to undertake a similar review of arrangements for embedded networks under the National Energy Retail Law (NERL) and the National Energy Retail Rules (NERR).

Accordingly, I am writing to you in my capacity as Chair of the Energy Council, requesting the AEMC to undertake a review of the treatment of embedded networks under the NERL and NERR, as per the attached Terms of Reference (TOR). I request that the review commence no later than February 2017, with an update to the Senior Committee of Officials by 31 May 2017. I also request the draft report be released by 15 September 2017 with a view to publication of the final report by 1 December 2017.

It is the Council's intention that the review will inform the preparation of a potential rule change request and also inform, and be informed by, ongoing work to consider the application of consumer protections to new products and services.

If you require further information, please contact Mr James O'Toole, Assistant Secretary, Electricity Branch, Department of the Environment and Energy at [james.o'toole@environment.gov.au](mailto:james.o'toole@environment.gov.au) or (02) 6275 9023.

Yours Sincerely



**The Hon Josh Frydenberg MP**  
Chair  
COAG Energy Council

December 16

## TERMS OF REFERENCE

### **AUSTRALIAN ENERGY MARKET COMMISSION (AEMC) REVIEW OF ARRANGEMENTS FOR EMBEDDED NETWORKS IN THE NATIONAL ENERGY RETAIL LAW AND THE NATIONAL ENERGY RETAIL RULES**

#### **1. BACKGROUND**

The Australian Energy Market Commission's (AEMC) final advice on Energy Market Arrangements for Electric and Natural Gas Vehicles and Power of Choice review recommended arrangements for metering within an embedded network be included in the National Electricity Rules (NER). In response, the Council of Australian Governments (COAG) Energy Council (the Energy Council) directed the Australian Energy Market Operator (AEMO) to develop and submit rule changes to recognise embedded network arrangements within the national regime.

The Energy Council considered that consumer choice of products and services in the electricity market would be enhanced by clarifying the metering and other arrangements for consumers in embedded networks. Uncertainty regarding metering arrangements and other responsibilities in embedded networks should not be a barrier to consumers accessing offers from competing market participants.

AEMO lodged a rule change proposal with the AEMC in accordance with this request,<sup>1</sup> proposing amendments to the regulation of embedded networks within the National Electricity Market (NEM) under the National Electricity Law (NEL). On 17 December 2015, the AEMC published a final rule determination on clarifying arrangements for embedded network customers, making a series of changes to the NER.

As the original rule change was proposed under the NEL and NER, the AEMC considered it was confined by its rule-making powers under the NEL (s.91B), able to make only corresponding rules under the National Energy Retail Rules (NERR) but unable to undertake a broader review of embedded network arrangements under the NERR and the National Energy Retail Law (NERL).

In the AEMC's final determination, it was noted that when an embedded network customer goes on-market they become the customer of an authorised retailer that is operating in the NEM. This retailer is subject to the NERL and NERR and not the conditions of the AER's retail exemption guideline. The NERL and NERR are designed on the basis of the tripartite relationship that typically exists between a customer, its retailer and its local network service provider (LNSP). This relationship does not exist for embedded network customers because there is no LNSP at the child connection point. Instead there is an embedded network operator. This different circumstance raises a range of retail market issues that require consideration and possible changes to the NERR, and potentially the NERL. For example, the obligations on retailers regarding the content of bills, de-energisation and re-energisation and how tariffs and charges are to be presented in contracts.

The AEMC recommended that the Energy Council request the AEMC to undertake a review of the NERL and NERR to identify and assess the issues regarding the arrangements for embedded network customers. Such a review would inform the preparation of a NERR rule change request regarding embedded networks.<sup>2</sup>

#### **2. PURPOSE**

The purpose of this review is to identify and assess any issues for, and the experiences of, embedded

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<sup>1</sup> AEMO, Rule change initiation, page 4: <http://www.aemc.gov.au/getattachment/66945de4-6a2d-44be-8327-192963ad2e7a/Rule-change-request.aspx>

<sup>2</sup> AEMC (17 December 2015), Final Rule Determination, *National Electricity Amendment (Embedded Networks) Rule 2015*, pp 67-68

network customers under the current NERL and NERR and to identify appropriate solutions for identified issues. This includes analysis of barriers in the NERL and NERR in relation to embedded network customers accessing offers from competing market participants.

The review will determine whether the current regulatory arrangements for embedded network customers remain appropriate under the NERL and NERR, and recommend to the Energy Council whether any further work, including rule changes, are necessary to address identified issues.

### 3. SCOPE

The AEMC, through stakeholder consultation undertaken for the embedded network review of the NER, identified a range of broader issues for embedded networks and their customers in relation to the operation of the NERL and NERR.

Building on these identified issues, the review is to include, but is not limited to the consideration of the following issues in relation to embedded networks and their customers under the NERL/NERR:

- regulatory arrangements for retailers and for exempt NSPs/exempt retailers;
- access to retail market offers and inhibitors to competition;
- information asymmetries and transparency;
- vulnerable customer arrangements such as hardship scheme and payment plans ;
- the applicability of the standing offer and standing contract framework;
- the operation of arrangements which usually apply between the LNSP and authorised retailer, including de-energisation and re-energisation;
- access to dispute resolution frameworks and ombudsman services;
- the appropriateness of current explicit informed consent provisions;
- access to life support provisions;
- the application of Retailer of Last Resort arrangements;
- reporting of appropriate retail performance indicators within embedded networks; and,
- any other relevant issues raised during previous embedded networks consultation process and during this consultation process.

The necessity of corresponding consequential amendments required in the NEL/NER and, if appropriate, the National Gas Law and National Gas Rules should also be considered.

The Review should also consider broader issues, and consequential changes, relating to embedded networks, in the NEL, NER, NGL and NGR, as noted in the AEMC Final Rule Determination.<sup>3</sup>

In undertaking its work and forming any recommendations, the AEMC should have regard to the *National Energy Retail Objective*<sup>4</sup> and the broader Energy Council work on energy market transformation. The AEMC should consider options which:

- support competition where effective;
- take into account the cost of regulation and supports for a range of supply and service models;
- take into account the impact of current arrangements on vulnerable consumers particularly in situations where other retail offers are not accessible;

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<sup>3</sup> AEMC (17 December 2015), Final Rule Determination, *National Electricity Amendment (Embedded Networks) Rule 2015*, p 68

<sup>4</sup> *National Energy Retail Law*, Section 13

- aim to ensure regulatory frameworks are fit for purpose and sufficiently flexible to cope with the effects of emerging technologies and market innovation; and
- enable consumers to benefit from innovative services while mitigating any risks<sup>5</sup>.

## **5. CONSULTATION**

The AEMC must consult with state, territory and commonwealth energy officials during the Review.

The AEMC must also consult with energy market institutions, the Australian Energy Market Operator (AEMO), the Australian Energy Regulator (AER) and Energy Consumers Australia (ECA), and hold public consultation processes to seek feedback and input from key stakeholders.

It is expected the AEMC will publish at least one consultation paper and one draft report for public consideration, prior to developing the final report.

## **5. TIMING**

Given the ongoing work by the Energy Council on consumer protections and new products and services under the Energy Market Transformation work stream, the Energy Council is requesting the AEMC to commence the review no later than February 2017. This timing will enable the AEMC to consider any recommendations and issues arising in the development of this work stream.

The AEMC is to provide an update on the scope of the review to the Senior Committee of Officials in May 2017 and release a draft report and recommendations by 15 September 2017, with a view by publishing the final review and recommendations by 1 December 2017. This is subject to the provision of embargoed copies to the Energy Council two weeks prior to public release.

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<sup>5</sup> <http://www.coagenergycouncil.gov.au/current-projects/energy-market-transformation>