



2017/02917
A960972

GPO Box 2343
Adelaide SA 5001
DX 56201
Tel 08 8226 3500
Fax 08 8226 3535
www.dpc.sa.gov.au

19 May 2017

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

Dear Mr Pierce

The Department of Premier and Cabinet, Energy and Technical Regulation Division (ETR) welcomes the opportunity to comment on the AEMC's review of regulatory arrangements for embedded networks (ENs).

The exemption framework was originally designed to simplify arrangements for organisations such as caravan parks, retirement homes and apartment complexes whose core businesses was not the sale of electricity. Over the past few years, the number and types of exemptions being issued has grown. For electricity, the AER currently¹ lists 3108 network exemptions and 2596 retail exemptions compared to 59 retail authorisations. As noted in the table below, a growing proportion of these are residential developments.

<i>Year</i>	<i>Number of network exemptions for residential developments</i>
<i>2014</i>	<i>487</i>
<i>2015</i>	<i>1018</i>
<i>2016</i>	<i>1357</i>

With the size of ENs also increasing, the trend is leading to a growing proportion of customers in embedded networks. The increasing numbers of customers being affected may warrant a need to ensure the framework for ENs is appropriate and provides consumers with access market offers, information about the differences between offers and the ability to trade off the benefits of EN and market offers.

The increase in exemptions has been partially driven by simplified arrangements compared to obtaining a retailer authorisation and:

- Lower overall network connection costs compared to connecting each premises to the distribution network;

¹ At 1 May 2017.

- Revenue opportunities gained through managing and operating the embedded network;
- More bargaining power from group purchase arrangements; and
- Energy independence and sustainability goals.

The majority of exemptions provided by the AER fall into the deemed and registrable categories and are self-assessed. The AER publishes the exemptions on their website, but does not assess or approve them.

To some extent the framework may be incentivising developers to not connect individual sites to the distribution network, as a way to reduce upfront costs and secure an ongoing source of income. Under current arrangements, EN customers' ability to access market offers is limited. The consequences of this are limited competitive pressure on the EN owner to offer competitive prices and the arrangement may be seen as locking customers into the EN owner's arrangements. Some EN customers have indicated their EN contracts are higher than market offers that would have been available to them if they were distribution connected.

However, the exemption framework can also be useful to secure lower costs and better electricity deals for customers if reduced connection cost and benefits from larger energy purchases are passed on. The challenge is to ensure there is real competition to service EN customers.

Framework Objectives

The objectives of the framework should be aligned to the National Electricity Retail Objective to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.

The South Australian Government supports the National Electricity Retail Law (NERL) principles requiring exempt sellers to ensure regulatory arrangements, right to a choice of retailer and consumer protections, are as far as practicable, comparable to those of retail customers.

The framework should also:

- Be flexible to allow for different arrangements to apply to different types and sizes of embedded networks.
- Ensure EN customers are provided sufficient information to make decisions about trade-offs in arrangements between EN and retail offers.

Improving access to retail competition

In the current South Australian market, EN customers also have restricted choice as access to market offers is limited. Investigations undertaken by the Energy and Technical Regulation Division identified several barriers to obtaining a market offer or an "energy only" offer. ETR contacted several retailers seeking information for embedded network customers and experienced mixed responses to queries. Only one retailer was able to make an offer to an embedded network customer. Issues that arose during the investigation include:

- Lack of information or materials readily available to inform customers about the process to transfer;
- Conflicting information about a meter compliance, new meter installation and costs;
- Difficulty obtaining quotes with or without a NMI, poor response to questions about energy only offers or quotes without network charges; and
- Retailers discouraging EN customers from seeking an offer.

ETR has also received similar feedback from embedded network customers.

While the prevalence of these issues may subside when the 2015 Embedded Network Rule Change comes into effect in December 2017, ETR considers the current market retail contract framework is not sufficient to ensure small embedded network customers have visibility of retail energy offers. A low cost approach to enhance that visibility is to mandate that authorised retailers must publish any offers it has available for small embedded network customers. This issue could be monitored for effectiveness by the AEMC through regular competition reporting.

Alternatively, the AEMC could recommend that the Australian Energy Regulator (AER) consider amending its Retail Pricing Information Guidelines to ensure that the definition of “generally available” market offers specifically includes market offers available to embedded network customers and that information be published on the Energy Made Easy Website.

It is also important to ensure that the NERR does not act as a barrier to retailers providing market offers. ETR considers changes are necessary to allow authorised retailers to offer market contracts to EN customers without being non-compliant with the NERR. These include:

Rule	Name	Comment
Rule 16(3)	Pre-contractual duty of retailers	Retailers will not be able to comply with this rule as there is no distributor in the case of an embedded network customer.
Rule 25 (1) (v)	Content of bills (SRC and MRC)	There is currently no distributor for an embedded network customer and therefore, the information to be provided by the retailer is not clear. There is a civil penalty attached to this rule.
Rule 107 (4)	De-energisation – Application of this Part	How will interruptions that occur by either the Embedded Network Operator’ or by the upstream DNSP be treated as a disconnection?
Part 6, Division 4	Re-energisation of premises	There is no distributor for the retailer to request re-energisation of the embedded network customer.
Part 7	Life Support Retailer obligations	Many of these rules relate to the relationship between the retailer and the distributor. There is no distributor as per the NERL provisions. There civil penalties attached to these rules.

Customer protection

Dispute resolution

Most customers receiving electricity through any form of AER exempt seller arrangement are not covered by Ombudsman schemes and can only access dispute resolution services under the Australian Consumer Law (ACL), through state fair trading offices. In New South Wales, EN customers can contact the Energy and Water Ombudsman NSW. In South Australia EN customers may only contact the Energy and Water Ombudsman SA if the exempt seller is a member. In all other states and territories, EN customers can only contact their ombudsman if they buy their energy from an authorised retailer.

Feedback received during the COAG Energy Council's consultation regarding consumer protections for behind the meter supply suggested that simple, consistent arrangements for dispute resolution should apply to exempt sellers. Requiring all exempt sellers to become members of an external dispute resolution body, such as energy Ombudsman schemes, would allow for coordinated resolution of disputes involving multiple parties and reduce the potential for confusion among consumers. At the 10 April 2017 COAG Energy Council meeting, Ministers agreed on measures to enhance protections for consumers of behind the meter electricity services. Officials are currently undertaking further work so that jurisdictions may allow small customers of exempt sellers to access energy Ombudsman schemes.

Information provision

The complexity of the exemption framework, differences in arrangements and protections between EN and on-market customers and the lack of advisory services makes it difficult for consumers to understand their rights. EN customers should be provided information about their rights and differences in protections compared to normal customers in a format that is easy to understand.

EN customer bills (both from the EN and Retailer) should identify retailer and network components. Instructions should be provided to customers with their first bill to check that there is no duplication of network fees. ETR notes that the AER's Guidelines include provisions for correcting billing issues, however consumers would need to be able to identify where these occur.

Compliance

While exempt parties still have a number of obligations under the AER framework, the nature of an exemption rather than a registration means the regulator has little visibility of the entity's operations as there are no compliance reporting requirements. EN's in most States are also not required to participate in ombudsmen schemes, so little information is available on reported issues.

It is difficult to determine whether existing arrangements are appropriate without evidence of behaviours that should be penalised or monitored. ETR recommends that the AEMC pay particular attention to seeking information about consumer issues with ENs, including statistics on numbers of customers in each jurisdiction that have successfully transferred from an EN to a market offer.

The AEMC's consultation paper notes that a breach of a retail exemption is a breach of the NERL and is subject to civil penalty provisions. This is not the case for

breaches of conditions under the network exemption guideline. However, under certain circumstances, the AER does have the ability to revoke an exemption. For customers seeking market contracts, the latter could be a concern, as there are no penalty options to impose on an exempt network who fails to comply with requirements that facilitate customer access to market contracts other than removal of the exemption (which may affect supply to the customer).

A risk-based approach to regulation may be appropriate in EN situations. This approach to regulation focuses on prioritising effort, harm prevention and the delivery of outcomes through the use of appropriate strategies and instruments to achieve performance. The regulator often seeks to partner with the regulated in the proactive prevention of harm. With the increase in customers serviced by ENs, consideration should also be given to whether some reporting requirements are warranted, particularly for larger ENs.

If you wish to discuss our comments on this submission, please contact Ms Rebecca Knights, Director – Energy Policy and Projects, Energy and Technical Regulation Division on (08) 8226 5500.

Yours sincerely



Vince Duffy
Executive Director
Energy and Technical Regulation
Department of the Premier and Cabinet