



## Contestability of energy services

### Submissions invited on draft rule determination

**The Australian Energy Market Commission has made a draft rule that facilitates competition in the emerging energy services market and improves clarity and transparency in relation to the distribution service classification framework. Submissions are due by 31 October 2017.**

#### Context

Technology, and the increased choices it offers consumers, is changing the energy sector. In particular, technologies such as battery storage – which are able to provide multiple services – make it more difficult to draw the line between what is economically regulated and what is provided by contestable markets.

Against this backdrop of change, the Council of Australian Government Energy Council (COAG Energy Council) and the Australian Energy Council (AEC) – an industry body representing generators and retailers – submitted rule change requests seeking to facilitate competition in the emerging energy services market as well as improving clarity and transparency of the distribution service classification framework.

#### Overview of the draft rule

The draft rule, which is a more preferable rule, contains the following key features:

- Introduces restrictions on distribution network service providers (DNSPs) earning a regulated return on assets located “behind the meter”
- Introduces provisions that improve the distribution service classification framework’s ability to respond to technology changes
- Introduces a requirement for the Australian Energy Regulator (AER) to develop and publish guidelines that set out the AER’s approach to classifying distribution service.

#### Reasons for the draft rule

##### Restricting DNSPs ability to earn regulated returns on assets “behind the meter”

Since the Commission’s Power of Choice reform program started in 2012, its review recommendations and rule determinations have focused on increasing the ability of consumers to control how they use electricity and manage costs. In relation to the energy services market, the Commission considers the best way to support consumers’ ability to make meaningful choices is through robust, well functioning and competitive markets. The draft rule safeguards competition in the emerging energy services market by addressing the following concerns about DNSPs’ actions:

- **Favouring network benefits at the expense of maximising value across the electricity system.** Many of the new technologies are capable of providing multiple value and revenue streams, but not simultaneously. In an increasingly connected energy sector, the efficient use of new technologies must not be considered in the distribution sector alone, but across the whole energy supply chain. The Commission is concerned that if DNSPs are in control of assets embodying the new technologies, they may favour network benefits at the expense of maximising the value across the electricity system as a whole.

- **Foreclosing competition in the emerging energy services sector system.** The nature of new technologies such as battery storage is such that once installed at a customer's premises, the customer is not likely to install additional assets of the same type. The Commission is therefore concerned that DNSPs, with their incumbent status as monopoly operators of distribution networks, are able to adversely affect the level of competition in the energy services market through the ability to install (and operate) these assets and recover the costs of those assets through regulated revenues.

The Commission considers that the draft rule provides an effective and proportionate response to the issues raised by COAG Energy Council and the AEC. Importantly, the draft rule does not restrict DNSPs' ability to utilise new "behind the meter" technologies in order to deliver regulated network services more efficiently, it simply requires DNSPs to procure those services from third-parties or from their own ring-fenced affiliates rather than owning and controlling the assets.

#### Improvements to the processes of classifying distribution services

- **Promoting responsiveness in a changing environment.** It is important the regulatory framework is responsive to the rapidly changing environment. The draft rule promotes the regulatory framework's responsiveness to changes through the removal of the provisions in the National Electricity Rules preventing the AER from departing from previous service classification unless a different classification is clearly more appropriate. It allows AER to classify services based on their characteristics and the relevant tests in the law and rules, not a previous classification decision.
- **Improving clarity, transparency and regulatory predictability.** As distribution service classification is a key aspect of the regulatory determination process, the draft rule's requirement on the AER to publish a service classification guideline will provide stakeholders with clarity, transparency and regulatory predictability on the service classification process. The draft rule retains the AER's discretion to make service classification on a DNSP by DNSP basis so that service classification decisions are appropriate to the circumstances faced by the relevant DNSP.

#### Consultation

The following measures have been put in place to allow stakeholders to consider the draft rule and provide feedback:

- **Extended consultation period.** The consultation period on the draft rule is 9 weeks. Stakeholders are encouraged to make submissions in response to the draft rule by **31 October 2017**.
- **Stakeholder workshop.** The Commission will also be holding a stakeholder workshop in late September 2017. Further details on date and location will be published on the Commission's website as well as through stakeholder emails.

This draft determination describes the Commission's proposed approach to the implementation of the draft Rule. However, the draft rule itself does not contain savings or transitional provisions. The Commission will publish a separate paper to set out, and seek stakeholder feedback on, the Commission's proposed savings and transitional rule to implement the draft rule by **19 September 2017**.

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