



EnergyAustralia

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Australian Energy Market Commission
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Draft Report – Review of Regulatory Arrangements for embedded networks

EnergyAustralia welcomes the opportunity to comment on the Australian Energy Market Commission's (the Commission) draft report for its review of regulatory arrangements for embedded networks. We are one of Australia's largest energy companies, with over 2.6 million household and business customer accounts in NSW, Victoria, Queensland, South Australia and the Australian Capital Territory. We also own and operate a multi-billion dollar portfolio of energy generation facilities across Australia, including coal, gas and wind assets with control of over 4,500MW of generation in the National Electricity Market (NEM).

Need for regulatory reform

The Commission's review of embedded networks is timely and its analysis of the sector will enhance policymakers' understanding of its significance as a growing source of effective competition in energy markets. The Commission's documentation on the number and type of embedded networks across the NEM – and the number of customers that they serve – provide valuable insights. This will assist in identifying the nature and extent of any market failure or other problems within the sector and help in developing targeted and proportionate regulatory response.

We view embedded network service providers and other exempt sellers as an important source of competitive pressure. Furthermore, we observe effective competition within the embedded network sector is driving improvements in service standards and, most significantly, customer outcomes. As an example, we have developed our own embedded network service offering, which involves advanced metering and innovative pricing.

Arguably, more effective competition in energy markets reduces the need for industry specific regulation (in this case, the National Energy Customer Framework or NECF). However, we share the Commission's view that the current regulatory framework for the sale of energy is no longer fit for purpose and that reform of the National Electricity Rules and National Electricity Retail Rules is necessary to account for the evolving competitive environment.

The 'two tiered' framework, whereby market participants are either authorised retailers and exempt entities undermines the notion of competitive neutrality, distorting investment decisions or creating a bias in favour of specific operating models. Therefore, it is a problem that commercial entities essentially providing the same service face different regulatory obligations and are subject to different degrees of regulatory oversight. More significantly, customers of different entities do not have access to the same protections even where they are purchasing the same service.

Even when similar obligations apply, it isn't clear that the Australian Energy Regulator (AER) devotes the same resources to oversight of exempt sellers. We also note the Commission's discussion of the AER's observations that it feels limited in its ability to take reasonable and appropriate action against exempt sellers because of the constraints of the overarching framework.

We see a need for greater certainty, proportionality and transparency. The AER currently has considerable discretion to revisit the exempt seller and exempt network guidelines, varying or adding new obligations and introducing new categories. In recent years, the AER has introduced or consulted on new categories of exempt sellers (e.g. alternative and innovative energy sellers). This ongoing discretion about the form of regulation that applies to different business models creates an environment of uncertainty, undermining investment in or the development of new business models.

In summary, there are numerous compelling reasons for reform.

Qualified support for Commission recommendations

EnergyAustralia supports the principle that customers of exempt sellers should have a comparable level of protection as customers of licensed retailers. We strongly believe that any regulatory protection measures are only necessary when they enhance competition and customer outcomes rather than impose additional costs just to deliver perceived benefit to customers.

In principle, we support each of the themes underpinning the Commission's recommended approach to reform, namely, to:

- Improve access to retail market competition in legacy embedded networks to the extent possible.
- Elevate embedded networks into the national regulatory and competitive retail market framework. This also involves retention of a power for the AER to grant an exemption under a 'narrow set of circumstances'.
- Better consumer protections for new and legacy embedded networks. AEMC has identified relevant protections, including disclosure and information provision, and access to dispute resolution mechanisms.

Access to competition

Embedded networks offer considerable benefits to many customers. As the Commission notes, embedded network service providers may be able to purchase energy at a bulk rate that may well be at a lower cost than would be available to individual small customers outside the network. More fundamentally, there is still a compelling commercial incentive to provide a high level of service (in order to retain tenants, for example). Customers typically receive a bundle of services, which can create some efficiencies in billing or other aspects of service delivery.

We are also observing innovative pricing, which can involve profit sharing or benefit sharing in the event of network or wholesale market arbitrage opportunities. There are also numerous regulatory protections, over and above those that the AER applies through its exemption framework. Therefore, we do not share the view that customers in embedded networks are necessarily trapped or vulnerable to exploitation by their service providers.

Despite this, we do recognise that many such customers in established embedded networks cannot access the benefits that competitive energy markets offer. This is due to a range of legacy issues, such as metering. Our view is that the regulatory framework should be competitively neutral and encourage embedded network service providers do the right thing for customers.

The requirements under the AER's current network exemption guideline for all metering installations to be NEM compliant enables residential customers in newly built and retrofitted embedded networks to access retail market offers. Furthermore, the Commission's recommendation to 'elevate' the regulation of embedded network services to small customers will inevitably add to compliance costs but is a reasonable and pragmatic way to overcome the problems inherent in the current framework.

However, we have some reservations about some aspects of the Commission's recommendation to improve access to retail market competition in legacy embedded networks 'to the extent possible'. In particular, we encourage the Commission to reconsider its recommendation that Embedded Network Managers for embedded networks of 30 or more customers be required to:

- Apply to AEMO for NMIs for off-market metering installations.
- Register the NMI for off-market metering installations with AEMO.
- Maintain information in the metering register about whether the meter complies with the current NEM requirements.

We are not convinced the costs that these obligations would create are as immaterial as the Commission suggests or that the benefits outweigh those costs. In our view, the extension of obligations to capture all metering installations in existing embedded networks when an ENM has been appointed would significantly increase the administrative costs – including transaction fees for each meter – for ENM services, which are then recovered from customers. This is regardless of whether any customers within those networks have expressed any interest or see benefit from going on market.

Rather, we recommend the Commission undertake further analysis of these costs or consider other interim measures to better understand outcomes for customers in existing embedded networks. The ENM rule change is yet to commence and we think it would be more appropriate to promote customers' awareness of their ability to access retail market offers through this mechanism at this stage of the market's development before mandating a costly obligation to apply and register all NMIs in the manner that the Commission recommends. A more incremental approach, whereby the ENM registers a NMI in response to a customer request, avoids imposing significant costs on all embedded network customers regardless of their willingness to seek out retail offers.

Furthermore, the Commission's other recommendations allow the AER to extend core consumer protections to all customers in embedded networks. We support the Commission's recommendation to grant the AER a specific role with respect to monitoring the behaviour / conduct of embedded network service providers and exempt sellers. This would provide an

evidence base for any subsequent regulation where the benefits more clearly outweigh the costs.

Other observations

EnergyAustralia supports the principle of extending the jurisdiction of the various energy ombudsman schemes across the NEM. We view this as a core consumer protection but there is still work to be done to ensure that any scheme expansion is fair and equitable for all members. One aim should be to achieve a membership fee structure that avoids cross subsidy as far as possible. It would otherwise be unfair and inefficient for retailers to fund the investigation of complaints that are made against their exempt competitors.

We welcome the Commission's view that there is benefit in harmonising the regulatory framework of obligations and customer protections for embedded network operators. The Commission will be aware that the Victorian Government recently released its Final Position Paper on the General Exemption Order. This Paper recommended alignment with the national framework but granted the Essential Services Commission of Victoria the power to specify those provisions of the Energy Retail Code that should apply for different market participants, including different categories of exemption.

This is a further example of the Victorian Government's willingness to depart from national initiatives (its decision to retain the distributor monopoly over smart metering is another). This divergence between the Victorian and national approaches to embedded networks creates confusion, inconsistency and burden for embedded network service providers operating in Victoria and other NEM jurisdictions. It is Victorian customers who are ultimately denied access to benefits of cheaper services and more innovative service offerings.

Should you require further information regarding this submission please call me on (03) 8628 1242 or Samantha Nunan on (03) 8628 1516.

Yours sincerely

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