



1 November 2017

Mr John Pierce
Chair
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

570 George Street
Sydney NSW 2000
All mail to GPO Box 4009
Sydney NSW 2001
T +61 2 131 525
F +61 2 9269 2830
www.ausgrid.com.au

Dear Mr Pierce

ERC0206 – Submission on Draft Determination: National Electricity Amendment (Contestability of Energy Services)

Ausgrid welcomes the opportunity to provide comments in response to the AEMC's draft determination on the *contestability of energy services*. Ausgrid supports emerging and innovative markets that provide additional choice and value to customers through the development of energy services.

Ausgrid considers that the draft rule prevents distribution network service providers (DNSPs) from investing in assets that are located on the customer's side of the connection point, except in limited circumstances. The rule is given effect by prohibiting DNSPs from earning a regulated return on assets located "behind the meter". The draft rule also amends the process by which the AER classifies distribution services to provide the AER with more flexibility to depart from both a previous classification and its proposed classification under its Framework and Approach paper.

The AEMC's draft determination is that a rule is necessary because permitting DNSPs to invest in specific types of assets behind the meter could distort competition in the energy services market. The AEMC is concerned that DNSPs are less likely to consider the value provided by such assets across the supply chain, and instead would control such assets to favour network benefits.

Overall, Ausgrid supports the intention of the draft rule to provide customers with choice and allow them to benefit from lower prices and greater innovation that typically results from competitive markets. Ausgrid is increasingly seeking opportunities to partner with others to enable us to provide network services more efficiently and at a lower cost to our customers. Accordingly, Ausgrid has three broad concerns with the draft rule, as follows:

First, there is no evidence provided that there is in fact a problem that requires solving. On the contrary, DNSPs do not typically have an incentive or a need to invest in assets on the customer's side of the meter in order to monitor and control our network. For example, grid scale battery storage, located on our network, is likely to be a more cost effective means of managing our network due to the economies of scale involved than investing in individual assets at a customer's site. A potentially cheaper option still, may be to leverage off a customers' investment in battery storage by contracting directly with them to provide network services.

Similarly, under the current Rules framework, Ausgrid are already engaging the services of third party providers in order to offer innovative services to customers. An example of this is the shift in the way customer load control is met. Traditionally, Ausgrid has installed the necessary equipment to control

customer load. With the advent of smart meters, load can now be controlled through meter functionality rather than via an additional device, or switch, that works with a DNSP's load control system. This allows customers to continue to benefit from the associated reduced network tariffs, as well as providing a future strategy which may result in the replacement of Ausgrid's load control system with services provided entirely by third parties.

Second, the draft rule undermines technology neutrality by restricting the means by which a DNSP can deliver network services. The draft rule regulates the type and location of assets that DNSPs can invest in to provide network services. Ausgrid considers that this is inconsistent with Chapter 6 of the Rules, which regulates services not assets.

The reason for regulating services and not assets is to provide DNSPs with the flexibility to deliver defined services by the most efficient means. The AEMC has previously noted the importance of technology neutrality in delivering efficient outcomes:¹

An underlying principle of energy market regulation in Australia has been technology neutrality. That is, the rules are not designed to bias the deployment of storage or any other technology. Rather the rules have been designed to encourage efficient, market-based outcomes and so not act as a barrier to the use of whatever technology delivers the most cost-effective service. In sectors that are not subject to competition – network businesses – the regulatory framework has again been technology neutral, seeking to mimic to the greatest extent possible those cost-effective market outcomes.

Under the draft rule, DNSPs are permitted to control load via a network device that is not capable of generating electricity, but they are not permitted to control load via a battery. In other words, while the service being provided is exactly the same, one means by which DNSPs are permitted to deliver that service is restricted while another is not. There may be instances where this inhibits the delivery of the least cost solution, which will have negative impacts for the customer.

Finally, there is a risk that this rule change could stifle innovation by preventing DNSPs from investing in the most efficient solutions for our customers. The market is evolving at a rapid pace, with new technologies becoming available that allow us to better and more efficiently provide network services. There is a risk that the rules cannot keep up with these advances in technology. In this environment, it is important that rules are principles-based and promote flexibility in order to avoid becoming outdated or prevent the uptake of innovative new solutions.

Ausgrid agrees with the AEMC's stated overarching philosophy that consumer choice should be supported wherever possible. However, we consider that restricting the way in which a DNSP can deliver its services risks imposing additional costs on our customers and potentially restricting their choices.

Ausgrid also has a number of specific concerns with the draft rule, which we elaborate on in Appendix A to this submission. These are:

- A permanent exemption should be included for generators that are installed on a temporary basis to maintain a customer's supply.
- The rule should provide the AER with more guidance in drafting the Asset Exemption Guidelines, which will set out how the AER will assess DNSP applications for asset exemptions.
- The transitional arrangements require amendment as the draft rule requires Ausgrid to submit its proposed asset exemptions for the 2019-24 regulatory period before the AER has published its exemption guideline.

¹ AEMC, Integration of Storage: Regulatory Implications, Final report, 3 December 2015, Sydney, p.ii.

We look forward to the opportunity to discuss these issues with you further. If you have any queries or wish to discuss this matter in further detail please contact Alex Moran on (02) 9269 7205 or via email alex.moran@ausgrid.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Simon Camroux', written in a cursive style.

Simon Camroux
Head of Regulation

Appendix A

A permanent exemption is required for temporary generators

The draft rule continues to permit DNSPs to install network devices as a means to enable the monitoring, operation or control of the network for the purposes of providing network services. However, the draft rule amends the definition of network device to exclude apparatus or equipment that has the capability to generate electricity.²

In the course of providing network services, there are instances where Ausgrid installs generators on the customer's side of the connection point on a temporary basis to maintain supply. This includes during emergencies, to undertake planned maintenance and for capital works, such as the replacement of network assets. The provision of temporary generation depends on the required supply outage and the impacted customers, which may include life support customers.

In these instances, Ausgrid considers it would not be in our customers' interests to prevent Ausgrid from installing temporary generation to maintain supply. This would imply that either customers would be required to procure a source of generation themselves, or that Ausgrid would not be able to recover the costs of maintaining supply to our customers.

For this reason, we consider a permanent exemption is required for generators that are installed on a temporary basis to maintain a customer's supply in emergencies, to undertake planned maintenance and capital works.

Additional guidance to the AER is required in developing the Asset Exemption Guidelines

The draft rule permits DNSPs to apply to the AER for a specific asset, or a class of assets, to be exempt from the restricted assets rule.³ If granted, this means that the DNSP could recover the costs associated with those assets via its regulated revenue.

Under the draft rule, the AER is required to consult on and publish Asset Exemption Guidelines (the Guidelines).⁴ In deciding whether to approve an asset exemption, the AER must have regard to these guidelines and "the likely impacts on the development of competition in markets for energy related services if the *Distribution Network Service Provider* invests in the assets the subject of the *asset exemption*".⁵

However, no guidance is given to the AER within the draft rule regarding the drafting of the Guidelines, nor in the draft determination. It is therefore not clear on what basis the Guidelines will be developed. This is particularly concerning given the proposed transitional arrangements, which we discuss next.

In particular, the circumstances under which assets should be granted an exemption should promote outcomes that are consistent with the national electricity objective (NEO). However, the NEO is a broad concept. For example, effective competition in contestable services is only one component of the NEO and should not be a deciding factor. The AEMC should provide clearer direction on situations where exemptions will meet the NEO.

Transitional arrangements

Ausgrid considers that the transitional arrangements require further consideration. As they currently stand, Ausgrid will be required to submit its proposed asset exemptions for the 2019-24 regulatory period before the AER has published its guidelines that explain the basis on which the application will be assessed.

² Draft rule Chapter 10 definition of *restricted asset* and *network device*.

³ Draft rule 6.4B2.

⁴ Draft rule 6.4B.1(c).

⁵ Draft rule 6.4B.1(b)

Ausgrid notes that the draft rule and draft determination provide no guidance on the issues that should be considered in developing the Guideline. Consequently, Ausgrid has no basis on which to develop its exemption application. This puts Ausgrid at a significant disadvantage, as there is no clarity on how the exemption application will be assessed.

Furthermore, for the purposes of transitioning to the new rules, neither Ausgrid nor the AER are required to have regard to the Guidelines in submitting or assessing, an exemption application.⁶ This approach is unworkable, given that the Guidelines are not required to be published until after the AER is to make a draft decision on the exemption application. However, it also means that there is a risk the Ausgrid (and the other DNSPs affected by the transitional arrangements), may have its application assessed on a different basis from other DNSPs.

⁶ Draft transitional rule 11.[XX].4(i).