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To: Mr Owen Pascoe
Ms Kate Reid
Australian Energy Market Commission

Submitted online: www.aemc.gov.au

REF:

Dear Commissioners

Re: **AEMC, Review of regulatory arrangements for embedded networks, Draft Report, 12 September 2017**

OC Energy welcomes the opportunity to comment on the AEMC's review of regulatory arrangements for embedded networks.

OC Energy is a licenced electricity retailer (AER Retailer Authorisation Number E14033) and one of Australia's leading embedded network operators (**ENOs**) with over 23,000 live customers throughout New South Wales, Victoria and Queensland.

Key points:

- We do not support nor agree with the proposed requirement of NMI registration for all off-market meters. To require this will diminish (not increase) access by new customers to competition because new customers may never know that they had the opportunity to be a part of an embedded network (**EN**), and the benefits that come with it. Retailers are likely to proceed with contracting with new customers with off-market meters without informing them that their meter is currently part of an embedded network. In any event, even if a retailer does inform the customer it is unlikely to be done in a way that accurately and fairly informs the customer of the benefits of the EN. A distinction needs to be drawn between new customers entering the EN and existing customers who actively want to leave the EN – there should not be the same approach to both.
- There is already an established Embedded Network Manager procedure which facilitates customer access to the retail market should a customer wish to opt out of an embedded network, after weighing up the benefits of both. We think the important regulatory change is about making it easier for an unhappy customer to leave the EN, not to reduce customer participation in ENs by making ENOs compete in the same retail market at the large tier 1 retailers. To do so undermines the ability of ENOs to genuinely pass on cost savings and efficiencies to customers.

- Any rule changes must be drafted in a way that allow customers to be informed of their opportunity to be a part of an EN and the benefits of this, before the customer contracts with a regular market retailer. In effect, we believe that the customer must formally consent to 'opt out' of the EN as a prerequisite to churning to another retailer.
 - Requiring NMIs for all off-market meters goes too far, placing ENOs at a disadvantage to the big tier 1 retailers who, with their large marketing budgets and recognised brands, will place them at an advantage to the smaller, lower cost ENOs.
 - ENOs are not analogous to a regular energy market retailer, but provide an offering that combines both network distribution services, and retail services, along with distributed generation, water and other services, such as internet.
 - The changes proposed will result in fewer off-market customers which will have the effect of reducing the benefits and savings that an EN brings. Over time, this will impact the commercial viability of an ENs as customer numbers decline. Any proposed regulatory change must consider the wholistic approach that ENOs take to operating ENs and the many benefits to customers beyond merely price. In time, the proposed rule changes may well result in there being no new ENs.
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OC Energy is concerned that a number of the proposed amendments to the regulatory framework for ENs will create unintended consequences, including the reverse of what is intended, that is, that some of the proposed amendments will actually hinder the consumer's available choices and access to competition. We note that the recommendations in the Draft Report are *"not intended to create a barrier to the continued operation and establishment of embedded networks where they offer benefits to consumers. Instead, the intention is to provide customers in embedded networks with appropriate consumer protections and increased access to retail competition"*. We find that the recommendations:

- Create a barrier to the continued operation and establishment of ENs that offer real benefits to consumers.
- Go beyond providing the intended appropriate consumer protections as these can be achieved more simply through ensuring ENOs are required to be authorised retailers and registered participants of MSATS. We do not believe that additional protection is achieved by requiring NMIs for all off-market meters. Requiring NMIs for all off-market meters will result in diminished access to retail competition as in-coming customers will not know that they had the option of being a part of an EN prior to signing up with a regular market retailer.

Some of the proposed amendments relate to the perceived improvements to access competition and freedom of choice by customers. OC Energy submits that by creating a NMI registered class for off-market meters, conventional retailers will have visibility and access to the off-market customer, enabling them to make an unsolicited offer to a customer, then potentially churn the customer via the ENM. This could all occur without the knowledge of the ENO and with the customer never knowing that they had the option to be a part of an EN, and of the benefits that participation in an EN may offer them.

This situation is particularly relevant where a new tenant moves into a building with an existing EN. The tenant is likely to set up their electricity supply with a regular retailer prior to moving in. The tenant will

never know that they had the option of being a part of an EN, and its associated benefits. There is no way for the ENO to know who this tenant in order to contact them to explain the benefits of the EN. This will have the effect of limiting the choices available to that tenant and favouring the large tier 1 electricity retailers who have large marketing and advertising spend. One of the key benefits of ENs is that they can be lower cost operations and this provides the basis for cost savings to customers.

OC Energy submits that the current ENM regime, which will come into effect on 1 December 2017, adequately achieves a solution for customers who wish to choose a retailer other than their EN provider, however this decision will be made after the customer has already had a chance to consider the benefits of being part of an EN.

Regulatory change in this area needs to recognise the fact that ENs in apartment buildings have a large percentage of residents that are renters, and that the average tenancy is only 14-16 months duration. This means that the above scenario will occur frequently and on a large scale. Many of the other benefits of ENs are more important to customers than simply low prices. For example:

- *the speed of connection*: OC Energy often leaves power connected to the apartment for the convenience of the next occupant, and if it is discounted, we guarantee same day connection.
- *simplicity*: customers are offered simple and easy-to-understand rates with no promotional discounts or prices they don't know and no lock in contracts.
- *supply and network management*: customers often have their supply broken by tripping/overloading isolators that protect the meters in centrally located cupboards. As the ENO, OC Energy manage and re-connect customers in our EN without charge and same day. This is not a service a distribution body or mainstream retailer can offer or provide.

We accept and agree that it is essential that tenants be able to elect not to be part of an EN should they choose, but there needs to be a process put in place so that new customers are made aware of the existence of an EN offering in the first instance, and that customers exiting an EN must explicitly elect to leave the EN having had access to the offers available from the ENO. OC Energy contends that this will not be achieved by requiring NMIs for all off-market meters.

OC Energy submits that the current regulatory framework is adequate to allow customers to churn out of an EN, whilst still having the effect of alerting the customer to the fact that their property is currently a part of an EN, and the benefits associated with an EN.

Although we advocate that off-market meters not be assigned an NMI, if this change was adopted, then at the very least, an incoming retailer should be required to advise the customer of the fact that their property is currently a part of an EN, who the ENO is, how to contact them, some general information on the possible benefits of ENs, and that they may (most likely in our view) will need to go off-supply whilst the electrical meter is changed over. The ENO should also be made aware of the creation of a new customer request with the retailer within say 2 days and in any event prior to the cooling off period ending.

We highlight that the difference between ENOs and regular retailers needs to be recognised in the market and argue that an ENO cannot be compared with a mainstream retailer given the differences in function, services and costs.

Feasibility of continuing the EN

Without incoming tenants knowing or being told of the existence of the EN, and as a result the tenant signing up with a regular retailer, high tenancy turnover rates in apartment complexes, will result in the rapid decline in the customer base for the ENO, eventually making the EN unviable. In these circumstances, the ENO will have to exit and cease operating the EN. This will mean:

- customers who wish to remain a part of an EN and enjoy the benefits will no longer be able to do so as the EN will be dismantled, thereby reducing competition in the space
- deprive customers of the option to be within an EN and the benefits to short-term tenants this entails (easy connection, no lock in contracts, no break fees, no connection fees)
- as the number of customers within an embedded network declines, a threshold point will be reached where the EN is no longer viable, as the benefits of wholesale purchasing power will no longer deliver viable discounted energy.

Metering

Once a meter becomes on-market and is moved outside of an EN, it is extremely unlikely it will ever be brought back within the EN. This will lead to attrition over time of the EN and ultimately embedded networks will cease to exist, no matter what benefits they are able to offer above and beyond those offered by traditional market retail arrangements.

Has there been consideration for how a customer would come back into the EN? We submit that once an ENO loses a customer, that property (with its on-market meter) is lost to the EN, for the following reasons:

- ENOs offer lower cost to acquire than many conventional retailers and have limited marketing spend relative to the size of the customer base. These benefits are passed onto customers in the form of lower prices and better customer service and support. Without the benefits of large marketing spend, customers would have no way of knowing that they even had the option to be a part of an EN at their property; and
- even if a customer did know about the EN, re-incorporating a premises back into an EN would not be cost effective as a new meter would need to be installed (one that is compatible with the embedded network), increasing costs and so disadvantaging the ENO's offering (compared with the market retailer's offer) and preventing the ENO from passing on maximum cost savings to the customer.

As a result of the above, where customers are not advised of the option to be a part of an EN and the benefits of this at the outset, every time a new tenant moves out of a property, the incoming tenant is likely to sign up with a market retailer.

Improved customer protections

In the past, some ENOs may have taken advantage of a closed network causing diminished customer protections. In our opinion, the proposed changes regarding regulatory accreditation and consumer protections will be enough to stamp out those unscrupulous operators.

The AEMC does not need to kill off the existence of ENOs to achieve greater customer protections.

Embedded network operators provide a different service to other retailers

We wish to highlight the fact that ENOs provide a different set of services to other market retailers and are different to conventional retailers in that they offer a combination of both network distribution services and retail services. This means that they cannot be compared solely on price or tariff alone: *“a different service, at a different level”*.

There are a number of benefits to EN customers beyond price that customers should be made aware of before they consider a churn:

- Once a market retailer has taken over an off-market meter, the retailer will almost certainly remove the existing meter and replace it with a new meter provided by their metering provider. This is an additional cost that would not otherwise be incurred. The costs of the new meter may be absorbed by the retailer, however, ultimately all costs get passed on to consumers.
- Within the EN, the requirement to connect/disconnect supply is more readily managed as residents moves in and out.
- Express connections (i.e. connecting new customers who may have forgotten to arrange electricity on move in) can typically be more rapidly managed by the ENO.
- Low emissions, distributed generation can more readily be made available to tenants and owners within an embedded network. This is near impossible for a conventional retailer.
- Owners Corporations sometimes share in the benefits of the EN, resulting in improved services and benefits to owners and tenants.
- ENs provide innovation opportunities such as electric vehicles for common use, EV charging points, electric bikes for common use, battery storage for demand management. Items that require a certain critical mass in an EN to warrant/enable capital expenditure on these items.

Network tariffs

It is unclear how an ENO would recover its network tariffs without a B2B settlements process.

If ENOs are required to become a registered network service provider / sub-set of market participant, then ENOs should be able to charge their own network tariffs, and to determine which tariff is applicable.

As the network service provider, there needs to be an obligation on retailers to have B2B arrangements or market based arrangements with the ENO.

ENOs will need access to MSATS to ensure recovery of their network tariffs.

We further submit that as a network service provider, where an ENO has borne the cost of installing a meter for a new premises, that the ENOs should have the right to charge an incoming retailer a new connection fee, along with any other applicable charge or fee that a distributor would charge in managing a customer connection.

It is important that the ENO's be responsible for nominating the tariff that is applicable for any on market customer and not leave this to the retailer. This is consistent with distributor practices and avoids disputes where multiple tariff options are available.

Legacy ENO's

The law needs to recognise, that for existing ENs, the ENO has in many cases, paid for that infrastructure in good faith based on existing laws. As more and more meters become on-market without customers even knowing that they had the option of remaining a part of an EN, this will dismantle the viability of the EN. How is this issue to be addressed and are ENOs to be compensated for their loss of initial investment in the EN infrastructure?

Embedded generation and innovative solutions

The proposed changes hinder improved access to embedded generation.

Investment in innovative or low emissions technology by ENOs is based on the size of the proposed EN, and ENOs currently willingly take on the risks associated with funding this infrastructure. However, without certainty over the future size of any given EN, ENOs will not be able to include costly innovative services like embedded generation or energy and demand management initiatives. For example, if an ENO has paid for a "co-gen" at a site and the EN becomes no longer viable, who gets the benefit of that plant? How will the costs be recovered? Some degree of certainty around the customer base is important to ensuring tenants and owners in building are able to access these types of solutions.

Jurisdictional issues

OC Energy is supportive of increased access by customers to consumer protection regimes such as ombudsman schemes and concessions schemes. ENOs are currently denied this due to state-based legislation.

There needs to be a coordinated approach by states to allow ENOs access to these schemes before the Federal government implements laws to ensure a level playing field. ENOs want to, but cannot, compete with ordinary market retailers in relation to these schemes. We note the point made in the submission that there is a need for this. We argue that this can be addressed within the current regulatory framework and does not require further changes as set out in the Draft Report. We think that enabling customers access to independent bodies that can inform them on what ENs are, what benefits should be available, and what options a customer has to leave the EN, will achieve the consumer protection outcomes without the need to essentially treat off-market EN meters in the exact same way as on-market contestable meters. It's the customer that needs to be the focus, not the meter.

Conclusions

Requiring transparency for all off-market meters might at first glance appear to result in increased access to competition for customers, but if the effect is to reduce the number of retailers who can offer services, then in fact the counter is true and competition will be reduced.

ENO's do not have advertising and marketing budgets to inform customers of the fact that their residence may be a part of an EN, and any increase in marketing spend will only increase overheads and diminish the cost competitive nature of the EN offering in the first place. Where customers never even know of the option to be a part of the EN, there is no access to competition, only access to conventional market retailers. The rules should not be changed in a way that favours only the big tier 1 retailers resulting in homogenous customer offerings all appearing to be different but which are largely the same. Regulation should encourage diversity and enable niche operators to flourish where they are able to provide a superior service (whether by cheaper pricing or better quality service, or both).

ENO's have made considerable financial and technical contributions to infrastructure at many existing EN sites. This must be recognised in any rule changes and suitable arrangements made to ensure that a return on investment for these investments is achieved. Failing to do this will drive ENO's out of business.

ENO's need to be able to establish and charge on-market customers fees and charges that may be applicable to that specific building network.

We look forward to continuing to engage with the AEMC on these issues to ensure that the best outcome for customers is reached. If you would like to discuss this submission, please contact our CEO Christopher Wilson on (03) 8888 7977 or at chris@ocenergy.com.au.

Yours sincerely,

Christopher Wilson
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OC Energy