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Dear Ms Reid

**Submission on the Consultation Paper:
Review of Regulatory Arrangements for Embedded Networks**

The Energy and Water Ombudsman (SA) Limited ("EWOSA") welcomes the opportunity to comment on the Australian Energy Market Commission's Consultation Paper on the *Review of Regulatory Arrangements for Embedded Networks*.

In this submission, the EWOSA primarily addresses matters that are specifically of interest to the EWOSA Scheme.

EWOSA is an independent Energy and Water Ombudsman Scheme in South Australia. It receives, investigates and facilitates the resolution of complaints by customers with regard to (*inter alia*) the connection, supply or sale of electricity, gas or water.

While there are a number of important issues associated with the regulatory arrangements for embedded networks, including the treatment of vulnerable and life support customers within such arrangements, this submission focuses on the access of small energy customers within embedded networks to the dispute resolution services of energy Ombudsmen.

Exempt sellers and network operators have historically not been required to become members of EWOSA, although they have had the option of voluntarily becoming a member. But this option has not been taken up. This has resulted in customers of embedded networks generally not having access to EWOSA's services.

The Australian Energy Regulator (AER) updated its Network Exemption Guideline in December 2016 as part of the requirements under the AEMC's Embedded Networks rule change, announced in December 2015. While the updated AER Network Exemption Guideline provides for customers of embedded network operators to access external dispute resolution services, there is an inconsistent approach.

Under General Requirements, Condition 6 is as follows:

Where charges are to apply for services provided by, or in connection with, an embedded network, a private network must have in place dispute resolution procedures. To fulfil this condition, the exempt embedded network service provider must:

(a) Inform a customer who has a dispute of the availability of a specific external dispute resolution body where an external dispute resolution mechanism or Tribunal exists under non-energy specific legislation with authority to make determinations on disputes which include energy matters.

(b) If 6(a) does not apply and an Energy Ombudsman in a State or Territory advises that an exempt embedded network service provider is eligible to join an Ombudsman scheme, the exempt embedded network service provider must join that scheme and inform a customer who has a dispute of the availability of the specific Ombudsman scheme.

(c) If 6(a) or 6(b) do not apply, a suitable dispute resolution mechanism must be specified in the formal agreements between the network owner or its appointed agent and the end-use customer. These procedures must allow a customer to request, and be provided with, written details of all charges applicable to that customer. In addition:

i. In the event of a dispute concerning the sale of energy to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal if the customer is a tenant, the exempt embedded network service provider must:

- make reasonable endeavours to resolve the dispute, and*
- advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the State or Territory in which the exempt customer is located, if applicable.*

ii. The exempt person's dispute resolution process must meet, at a minimum, Australian Standards: AS/NZS 10002:2014 Guidelines for complaint management in organisations.

A dispute resolution mechanism does not require approval by the AER, but must be of a type ordinarily applicable to disputes of the kind, be reasonably accessible, timely, binding on the parties to the dispute and not subject to excessive or unnecessary costs nor to costs disproportionate to the amount in dispute.

Where a network owner or operator appoints an agent they, as the principal, remain responsible for ensuring this condition is satisfied.

Therefore, the condition requires operators of embedded networks which already have external dispute resolution mechanisms available to them to inform their customers of the mechanism and resolve complaints via such a mechanism.

However, if an embedded network operator does not have such a mechanism, they are required to inform their customers of the relevant energy Ombudsman in their jurisdiction and also become a member of that Ombudsman scheme.

This inconsistency causes uncertainty for a number of parties:

- Customers of embedded network operators
- Embedded network operators
- Ombudsman schemes – regarding which embedded network operators should become members of an Ombudsman scheme and therefore adds to the difficulty in identifying relevant embedded network operators.

Another difficulty for Ombudsmen in identifying the embedded network operators that should join their schemes – as well as and in particular the quantum of customers within those embedded networks – is the incomplete data of the AER's public registers of exempt operators.

The public registers exclude deemed exempt operators, which are usually small operators that distribute and/or on-sell electricity to less than ten customers. They also include exempt operators with individual exemptions and it is not clear what type of embedded networks these operate.

An important trend is that the proportion of exempt sellers with individual exemptions is rising. This is expected to continue, as more owners of office buildings, shopping centres and apartment blocks retrofit their premises, so that they can become an exempt seller with an individual exemption and derive revenue from on-selling electricity to their tenants. This trend will add further to the difficulty in determining the quantity and type of embedded networks.

It should also be noted that the AER's Retail Exempt Selling Guideline has yet to be updated since the revision to the external dispute resolution condition in the Network Exemption Guideline, so there is also some inconsistency between the two guidelines.

However, as mentioned in the Consultation Paper, the AER is currently considering enabling access to energy Ombudsman schemes for customers within embedded networks and possible changes to the Retail Exempt Selling Guideline that could facilitate this.

We believe that consistency between the two guidelines is necessary and that Ombudsman schemes are the appropriate vehicles for dealing with energy disputes.

In particular, we believe that the dispute resolution conditions in both of the AER's Guidelines should be changed, so that all embedded network operators with 30 or more customers are required to join the Ombudsman scheme in their jurisdiction. The recommendation of 30 or more customers is consistent with the requirement on embedded network operators to appoint an Embedded Network Manager and is suggested to ensure that the costs of joining an Ombudsman scheme are not imposed on small embedded network operators that may never receive a complaint.

In addition, if a complaint against an embedded network operator with less than 30 customers is registered with an Ombudsman scheme, it should be a requirement for that embedded network operator to become a member of the relevant Ombudsman scheme. Such an approach would also be consistent with the requirements on small embedded network operators, in terms of appointing an Embedded Network Manager, if one of their customers seeks to switch to an authorised retailer.

Another issue with the condition in the Network Exemption Guideline is the adequacy of some of the current external dispute resolution mechanisms for small energy consumers. Some of these operate as tribunals, which often have limited decision-making power and where a consumer needs a legal right to achieve a resolution. The consumer also has to argue their own case, often with no assistance, gather evidence, provide witnesses etc. This can be daunting for small energy consumers, who often have limited bargaining power relative to their energy supplier. Such dispute resolution forums are not as accommodating for small energy consumers, compared to access to a free, independent, informal Ombudsman scheme.

As such, we do not believe that the current arrangements regarding the ability of small energy consumers within embedded networks to access the dispute resolution services of energy Ombudsmen satisfy the consumer protection test under the National Energy Retail Law.

An alternative to changing the AER's exemption guidelines to achieve customer access to energy Ombudsmen services would be via a rule change request to the Australian Energy Market Commission. This would involve adjusting the National Electricity Rules and National Energy Retail Rules to add new rules along the lines of the above paragraphs, where appropriate. This approach would also involve the removal of the relevant dispute resolution conditions from the AER's exemption guidelines.

As stated in the Consultation Paper (page 20):

The AER has no visibility of embedded networks operating under deemed exemptions and limited visibility of embedded networks operating under registrable and individual exemptions. Unlike registered network services providers and authorised retailers there are no compliance reporting requirements on exempt network service providers/exempt sellers.

This creates difficulties for the AER in undertaking its responsibilities to monitor the compliance of embedded network operators with the conditions in the AER's guidelines or approved individual exemptions. While we believe that imposing reporting requirements on embedded network operators would likely be too onerous, particularly for the smaller operators, the lack of monitoring increases the risks for small energy consumers within embedded networks of receiving prices or a level of service that does not comply with the AER's guidelines. This risk is worse for customers that are already vulnerable.

This is another reason why access to energy Ombudsmen is important for such customers.

It is also the case that energy Ombudsmen have processes in place that could enable the capture of data and the reporting of complaints that could be useful to the AER in monitoring embedded network operators, if such complaints were to be handled by energy Ombudsmen. Any systemic issues regarding embedded network operators could be reported to the AER, as they currently are if there are similar problems with authorised retailers and network service providers.

We also support the removal of barriers to energy customers within embedded networks from accessing retail market offers.

Should you require further information or have any enquiries in relation to this submission, please email me at antony.clarke@ewosa.com.au or telephone me on (08) 8216 1851.

Yours faithfully



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