

21 July 2020

Mitchell Shannon
Senior Adviser
Australian Energy Market Commission

Submitted via email

Dear Mr Shannon,

Directions Paper – Deferral of Network Charges Rule Change

Thank you for the opportunity to comment on the Australian Energy Market Commission’s Deferral of Network Charges Rule Change Directions Paper.¹

The COVID-19 pandemic is having an unprecedented social and economic impact globally. Network businesses recognise the impact of the crisis on energy customers and the need for industry to work together to provide support; as recognised by the voluntary industry COVID-19 Gas and Electricity Network Relief Package.

Energy Networks Australia is the national industry body representing Australia’s electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia.

Proposed policy positions

We support the Commission’s proposal to make a more preferable final rule that adopts additional safeguards. In particular, we strongly support:

- a narrowing of the deferral mechanism scope by introducing retailer eligibility criteria to ensure it is accessed by those retailers that require financial support,
- limiting the deferral to household and small business customers on a payment plan, hardship arrangement or deferred debt arrangement for the reasons outlined by the Commission,
- the application of interest on deferred network charges, to allow network service providers to recover the efficient costs they may incur as a result of the payment deferrals, and
- introducing public reporting requirements to ensure transparency around delivery of the policy goals of the support package.

¹ Australian Energy Market Commission, *Directions Paper: Deferral of Network Charges Rule Change*, 9 July 2020.

We consider that these design features are necessary to ensure that the final rule is targeted, proportionate, and promotes the long-term interests of customers.

Feedback on proposed rules drafting

Energy Networks Australia has provided feedback on the proposed rules drafting for the Commission's consideration at **Appendix A**.

This feedback solely focuses on issues of workability, drafting consistency with the Commission's policy goals, and practical implementation of the final rule, and is based on independent legal review of the proposed draft rule.

Thank you for the opportunities provided throughout this consultation process to provide for important industry input into this rule change. We appreciate the open and constructive manner in which the Commission is conducting this urgent rule change review.

If you wish to discuss any of these matters raised in this letter further, please contact Lucy Moon, Head of Regulation, at lmoon@energynetworks.com.au.

Yours sincerely,



Andrew Dillon
Chief Executive Officer

Appendix A I Rules drafting – Deferral of payment of network charges (NER Chapter 11)

Table A1 below provides feedback on the draft rule² for the Australian Energy Market Commission’s (AEMC) consideration.

Table A1: ENA feedback on proposed rules drafting

AEMC Draft Rule	ENA Feedback
<p>11.[xxx].1.1 Definitions</p> <p>Eligible retailer means a <i>retailer</i> except:</p> <p>(a) any <i>retailer</i> which is owned, whether wholly or in part, by the government of a <i>participating jurisdiction</i>; and</p> <p>(b) any registered ROLR within the meaning of the <i>NERL</i>.</p>	<p><i>Retailer eligibility criteria</i></p> <ul style="list-style-type: none"> • Energy Networks Australia strongly recommends amendment of the definition to exclude related entities, particularly due to the state-based registration of some ROLRs. This amendment will ensure alignment with the intent of the AEMC’s directions paper [<i>“The Commission proposes to achieve this by providing that retailers that are directly or indirectly government-owned and retailers registered as a retailer of last resort (ROLR) (as well as any related entities of these retailers) will be excluded from deferring the payment of network charges”</i> (page 3)]. <ul style="list-style-type: none"> ○ The definition as currently drafted does not exclude related entities. • Energy Networks Australia also recommends amendment of the definition to exclude retailers owned in whole or in part, <u>or controlled</u>, by the government of a participating jurisdiction. <ul style="list-style-type: none"> ○ While the draft rule uses the formulation owned by government, we consider it preferable if the formulation were ‘owned or controlled by a government’. This is because government entities are not always owned by someone. Sometimes they have shareholding ministers but other times they are set up under statutes and subject to ministerial control but not necessarily clearly owned by single legal person. • To ensure transparency and consistency with interpretation, development of a publicly available list of excluded retailers (external to the rules drafting) is considered worthwhile.

² Australian Energy Market Commission, *Directions Paper: Deferral of Network Charges Rule Change – Appendix A*, 9 July 2020.

AEMC Draft Rule	ENA Feedback
<p>11.[xxx].1.1 Definitions</p> <p>COVID-19 customer arrangement means:</p> <p>(a) any payment plan or instalment arrangement within the meaning of the <i>NERL</i> or the <i>NERR</i>;</p> <p>(b) any arrangements for a hardship customer (other than a payment plan), within the meaning of the <i>NERL</i>; and</p> <p>(c) any deferred debt arrangement, other than a plan or arrangement between an eligible retailer and a <i>shared customer</i> where the <i>shared customer</i> is a <i>large customer</i> within the meaning of the <i>NERL</i>.</p>	<p><i>Large customer meaning</i></p> <ul style="list-style-type: none"> • Energy Networks Australia recommends clarifying the meaning of large customer by providing large customer, in a participating jurisdiction, means a large customer for the purposes of the National Energy Retail Law as it applies in that jurisdiction (including subject to any modifications to the National Energy Retail Law made by that jurisdiction). <ul style="list-style-type: none"> ○ The draft rule currently appears to be referencing the National Energy Retail Law prior to jurisdictional adjustments, which does not appear to be consistent with the intent of the AEMC’s Directions Paper.
<p>11.[xxx].2 Deferral of payment of network charges</p> <p>11.[xxx].2.1 (c) the eligible retailer has, prior to the <i>due date for payment of network charges</i> not covered by this clause 11.[xx].2.1, provided to the <i>Distribution Network Service Provider</i> a statutory declaration signed by an officer of that eligible retailer verifying the following for each <i>shared customer</i> referred to in clause 11.[xxx].2.1(b):</p>	<p><i>Statutory declaration requirements</i></p> <ul style="list-style-type: none"> • Energy Networks Australia recommends clarifying whether the statutory declaration under clause 11.2 is required to be made each time an invoice is issued or only when there is a change in circumstances and, if the later, make clear a change in circumstances includes a customer ceasing to be party to a COVID-19 customer arrangement. <ul style="list-style-type: none"> ○ It is not clear from the drafting if a statutory declaration has to be prepared each time a statement of charges is received or if an initial declaration may be issued and then only updated when new customers are added. Our concern is whether, if the second interpretation is correct, a distribution network service provider may not get immediate notice when a customer ceases to be party to a COVID-19 customer arrangement.

AEMC Draft Rule	ENA Feedback
<p>11.[xxx].2 Deferral of payment of network charges</p> <p>11.[xxx].2.5 A <i>Distribution Network Service Provider</i> and eligible retailer to whom clause 11.[xxx].2.1 applies must in good faith cooperate to implement the processes necessary to ensure their compliance with clause 11.[xxx].2.1 and clause 11.[xxx].2.3 as soon as practicable, and in any event no later than 5 <i>business days</i>, after the commencement date.</p>	<p>Implementation</p> <ul style="list-style-type: none"> While the voluntary Network Relief Package implementation processes can be leveraged, this draft rule includes both additional jurisdictions (which won't have pre-existing processes implemented) and a different scope to the voluntary package. Drawing from experience with the voluntary package, it took a few weeks to develop and implement the required processes (however, the package was back dated to ensure that retailers were still provided the announced support). Therefore, Energy Networks Australia recommends that the rules require either implementation as soon as practicable after the commencement date instead, or alternatively if a timeframe is still deemed required, within 15 business days.
<p>11.[xxx].3 Deferral of payment of charges for prescribed transmission services</p>	<p>TNSP deferral</p> <ul style="list-style-type: none"> Energy Networks Australia recommends making it clear that clause 11.3 prevails over any contractual arrangements in force between a transmission network service provider and a distribution network service provider (or in force prior to the amending rule being made). <ul style="list-style-type: none"> To the extent there is a contract in place between a distribution network service provider and a transmission network service provider setting out when invoices are due to be paid, it is not clear that clause 11.3 will be effective to override this.
<p>11.[xxx].4 AER reporting</p> <p>11.[xxx].4.2 The <i>AER</i> must <i>publish</i> the information it receives pursuant to clause 11.[xxx].4.1 no later than three months following the latest <i>due date for payment</i> reported to it pursuant to clause 11.[xxx].4.1.</p>	<p>Public reporting timeframes</p> <ul style="list-style-type: none"> Energy Networks Australia recommends aligning the draft rule with the intent of the AEMC's Directions Paper, which is for the public reporting of retailer data in a timely manner <i>while the mechanism is in operation</i>. <ul style="list-style-type: none"> The rule as currently drafted appears to require the public reporting of retailer data after the deferral period is concluded.

AEMC Draft Rule	ENA Feedback
Dispute resolution processes	<p><i>Additional clause</i></p> <ul style="list-style-type: none"> As per the proposed drafting in our Consultation Paper submission³, Energy Networks Australia recommends the inclusion of a mechanism to deal with how the dispute resolution procedures work given there are two due dates per invoice.

³ Energy Networks Australia, *Deferral of Network Charges: Response to AEMC's Consultation Paper - Appendix 2*, 19 June 2020.

