



16 May 2017

Ms Anne Pearson  
Chief Executive  
Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

Dear Anne

**AEMC Reference RPR0006 – Review of regulatory arrangements for embedded networks**

Thank you for the opportunity to comment on the Australian Energy Market Commission's Consultation Paper: *Review of regulatory arrangements for embedded networks*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers.

In our submission to the consultation paper, EWON has responded to the questions posed in the paper which relate to the complaint issues which energy customers raise with EWON.

**Question 2: Does the exemption framework remain fit for purpose?**

There are various reporting requirements for licenced Local Network Service Providers (LNSPs), and consideration should be given to the adoption of equivalent reporting requirements for embedded networks.

For example, LNSPs must report on disconnections in error and disconnections of life support customers, however there are no equivalent reporting requirements on embedded networks. Further, the AER can apply penalties to LNSPs for those breaches. Given that customers of embedded networks would experience the same impacts as a result of disconnection as customers of LNSPs, consideration should be given to applying appropriate penalties to embedded networks.

Further, the AER has the power to conduct spot audits of LNSPs. It would be appropriate that similar audits be conducted of embedded networks, particularly where exemption requirement breaches have previously come to light.

The following case study illustrates the different nature of service that can be experienced between customers of LNSPs and customers of embedded networks. Reporting these incidents would bring them to light and could lead to better outcomes for customers.

**Case Study: *Embedded network customers experiencing frequent outages***

EWON was contacted by four customers living in a retirement village which was established as an embedded network. The customers complained about frequent unplanned power outages, up to 20 per day of varying duration, over a period of about a month. They were concerned about the safety of the residents due to the outages and also about the inability to operate the village's powered gates in the event of an emergency. The embedded network operator advised EWON that it was in the process of redesigning the supply across the network, which included an application to the LNSP to increase the supply.

**Question 4: Can access to retail competition be improved?**

Customers within embedded networks are unlikely to have access to the competitive range of retail contracts that other customers have. For example, in some situations, customers are only able to choose retailers who have opted in to supply energy at a particular embedded network site. In other situations, choice is not available at all. For example, tenants not being able to change metering without landlord authorisation.

EWON has been contacted by customers of embedded networks who are concerned about their inability to access competitive retail contracts.

**Case Study: *Limited access to competition within an embedded network***

EWON was contacted by a customer who enquired what, if any, action could be taken if a retailer did not wish to sell electricity to a customer in an embedded network. She considered that the regulations fell short if an embedded network was required to allow customers to access authorised retailers, but on the other hand, authorised retailers were not required to accept customers in embedded networks.

In a competitive market, retailers will make commercial decisions about where to market their services. The recent Embedded Networks rule change by the AEMC to improve retail competitiveness in embedded networks has not yet come into effect, so it is difficult to comment on improvements that could be made. EWON suggests the AEMC monitor the new rule's efficacy in its annual retail competition review.

**Question 5: Issues for embedded network customers that are on-market or wishing to go on-market**

Through the Retailer of Last Resort (RoLR) scheme, the National Energy Retail Law (NERL) contains protections for customers of authorised retailers in the event of retailer insolvency. Customers are protected in that they are not disconnected if their retailer ceases operation. Rather they are transferred to the RoLR, retailers which have mandatory basic retailer retailing responsibility, usually across an entire distribution network area. A circumstance could arise in a RoLR event where the RoLR had not entered into an agreement with a particular embedded network. In that case, it is currently unclear who would be responsible for retailing to the customers of a failed retailer within that embedded network. In an environment where wholesale pricing is volatile, this gap needs to be addressed.

Customers connected directly to a LNSP who have an account with an authorised retailer receive a single bill from their retailer containing bundled energy and network charges. The NECF provides robust rules to ensure these customers are:

- provided with an adequate level of information on their bill;
- given appropriate time to pay a bill and are protected from the unreasonable recovery of undercharges;
- safeguarded from being unfairly disconnected due to non-payment; and
- provided with access to payment plans and assistance in times of financial hardship.

On-market embedded network customers may receive an energy only bill from their retailer and a separate bill from their embedded network operator for network charges. The AER's Retail Exempt Selling Guideline provides many of the above consumer protections to customers of exempt retailers. EWON believes that if an embedded network operator is billing a small customer directly for network charges, the embedded network operator should also be required to adhere to similar conditions.

**Question 6: What consumer protections in relation to the sale of energy are appropriate for off market embedded network customers**

EWON's position is that, as a guiding principle, all energy and water customers should have access to the same consumer protections. Customers of embedded networks currently lack the same level of consumer protection afforded to customers of retailers under the NECF.

Although EWON has jurisdiction to accept and investigate complaints about embedded network entities in NSW, our effectiveness is limited by the fact that they are not currently required to be members of EWON. Embedded network entities are therefore not bound by Ombudsman determinations and can choose to not participate in any or all of EWON's investigation processes.

In the absence of a satisfactory outcome through EWON's dispute resolution services, a customer would have to seek resolution through the Australian Consumer Law (ACL) via legal or tribunal channels, or abandon pursuing their complaint.

The ACL does not provide suitable complementary protection to customers in embedded networks. The NECF framework requires a high level of information provision about energy matters, with strong explicit informed consent provisions, that are not included in the ACL. Dispute resolution procedures are another aspect of the NECF that provide stronger protections. Under the ACL, dispute resolution occurs through state and territory fair trading / consumer affairs offices, where customers incur costs and may have to represent themselves, both of which are barriers to justice. Under the NERL, energy consumers have access to justice via free and independent, external dispute resolution through ombudsman schemes funded by energy market participants.

Customers within embedded networks may also have difficulty in accessing government rebates; the inability to use Centrelink; and reduced access to hardship programs. While outside the scope of the AEMC's review, collectively this diminished level of consumer protection creates an inequitable and non-competitive energy market.

**Case Study:** *A customer who did not know he was in an embedded network*

A customer's electricity at his rental property had been disconnected. The customer's real estate agent had promised to set up his electricity account, however the customer did not know what retailer he was with and had not received correspondence from any retailer.

During initial investigations, the customer could not be located on the metering database. EWON made enquiries with the LNSP and it became apparent that the customer was part of an embedded network. EWON's ability to provide assistance was limited as information about who had disconnected him was not immediately available. If EWON had been able to identify the financially responsible retailer, we could have provided quicker assistance to facilitate reconnection of supply.

**Question 7: Are current regulatory arrangements for gas embedded networks appropriate?**

As discussed above, EWON considers that, as a guiding principle, all energy customers should have access to the same protections. EWON has no complaint experience from gas embedded network customers but a starting point of equitable consumer protection arrangements for all natural gas customers is suggested.

**What arrangements need to be in place for life support equipment for customers in embedded networks who are on-market?**

Both LNSPs and embedded networks are subject to rules to protect the rights of customers with life support equipment. These include obligations to inform customers of upcoming outages so affected customers can make necessary arrangements. A situation could occur where a LNSP was planning an outage where supply to an embedded network was to be interrupted. It is not clear whose responsibility it would be to know about, and inform of the outage, a life support customer within that embedded network.

**Should the move-in or carry-over customer arrangements apply in the situation of an on-market customer in an embedded network?**

The deemed customer arrangements that apply for move-in or carry-over customers create a necessary relationship between the financial responsible retailer at a premise and a customer who is consuming energy but does not have a contract with a retailer for the supply of that energy. The move-in or carry-over arrangements should apply to a premise within an embedded network where that premise has a financial responsible retailer due to an earlier on-market retail arrangement with a customer, as the financially responsible retailer is in the best position to know that consumption is occurring without a contract. It can make the necessary contact with the customer to give them the information detailed in clause 53 of the NERR, which will enable the customer to enter into a contract with their retailer of choice.

**Is a pre contractual duty of retailers, of the kind provided for under this rule, necessary for customers of embedded networks, especially as they cannot (currently) access standing offers?**

We consider that it is necessary for a new customer seeking to move into an embedded network to be informed about their choice of retailers. How this responsibility is shared between the embedded network, exempt sellers, market retailers, property vendors and real estate agents will possibly vary from site to site.

**For customers in embedded networks seeking to go on-market, are the current Explicit Informed Consent (EIC) requirements appropriate?**

The current EIC arrangements defined in Division 5 of the NERL are appropriate and are required for customers of embedded networks seeking to go on-market. The current arrangements enable EWON to better investigate complaints due to the detailed definition of EIC in clause 39 of the NERL and the record keeping requirements placed on retailers in clause 40.

**What arrangements need to be in place for the de-energisation and re-energisation of premises of customers in embedded networks who are on-market?**

When a customer's premises are to be re-energised following a request from a retailer, LNSPs have timing requirements to ensure that customers are without power for no longer than necessary. However, there are no equivalent obligations placed on embedded networks. This could mean that if an authorised retailer requests a site be re-energised, the embedded network may not do so. Consideration should be given to placing timing and reporting requirements on embedded networks to re-connect customers.

If you would like to discuss this matter further, please contact Rory Campbell, Manager Policy & Research, on (02) 8218 5266.

Yours sincerely



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