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Submission to the Australian Energy Market Commission's draft report on Updating the Regulatory Framework for Embedded Networks

Project Reference: EMO0036

22 March 2019

Dear AEMC

Thanks for the opportunity to lodge a submission on the draft report, and for accepting a late submission. We also commend the AEMC on the stakeholder workshops, which have informed our response to a significant extent, and given us additional opportunity to share our views with the Commission and with other stakeholders.

Due to time pressures, this submission is brief and focuses only on our key concerns and issues. If you would like more detail on anything we have raised, or wish to solicit our view on other matters, please don't hesitate to contact the author, Dean Lombard, on (03) 9631 5418 or at dean@renew.org.au.

About Renew

Renew (formerly known as the Alternative Technology Association) is a prominent advocate for all Australian residential energy consumers. As a member of the National Energy Consumer Roundtable, Renew works closely with other consumer advocacy organisations, providing expertise and experience in energy policy and markets. We also conduct independent research into sustainable technologies and practices.

As well as advocating on behalf of all residential consumers, we are the direct representative of our 11,000 members – mostly residential energy consumers with an interest in sustainable energy and resource use – who, like most Australians, find energy markets confusing and difficult to understand. Our members are probably more likely than typical consumers to be interested in living in residential developments with an environmental or sustainability focus, and these type of developments are increasingly likely to establish embedded networks in order to share solar generation and battery storage among residents. Thus, embedded networks are particularly relevant to our membership; and our concerns are to ensure both that consumer protections are appropriate, and that embedded networks remain viable and capable of giving benefit to occupants.

The new embedded networks framework

Renew broadly supports the new framework. We endorse the underlying principle that “consumer protections should be driven by the needs of customers and not the business model of suppliers”,¹ and believe that, in the main, the correct balance has been struck between “provid[ing] important consumer protections without placing undue costs on owners and operators of embedded networks.”²

Nevertheless, we have some concerns with, recommendations for, or thoughts on a number of issues:

- Retailer authorisations
- Transition of existing exempt networks
- Price regulation in legacy embedded networks
- Treatment of caravan parks
- Network billing for on-market customers
- Distributed Energy Resources (DER) in embedded networks.
- Power Purchase Agreements (PPAs)

Retailer authorisations

Renew supports the proposal to require off-market retailers in embedded networks to obtain a NEM retailer authorisation. This is preferable to the alternative of creating a new ‘off-market retailer’ class because, as the Commission notes, the proposed differences in rights and obligations between off-market and on-market retailers are minor and can be readily handled on a per-applicant basis. This approach has a number of advantages, including:

- Simplifying compliance for retailers who operate both on and off market
- Minimising the risk of inadvertent incentives for retailers to register as one or the other for regulatory benefit
- Ensuring future changes to retailer obligations will fall by default on off-market retailers, but the AER can still exempt them from inappropriate obligations if required
- Consequently, ensuring as much as possible that energy consumer protections are consistent whether a consumer’s retailer is on or off market.

Transition of existing embedded networks

Renew recognises the complexity of transitioning existing embedded networks to the new framework and the risk of detrimental outcomes if the transition is not well managed. Keeping in mind the underlying principle of consumer protections being based on consumers’ needs rather than suppliers’ business models, we strongly recommend a transition strategy to bring appropriate consumer protections to as many energy

¹ AEMC, Updating the regulatory frameworks for embedded networks, Draft report, 31 January 2019: p. i)

² AEMC, Updating the regulatory frameworks for embedded networks, Draft report, 31 January 2019: p. vii)

consumers as possible in a timeframe that is mindful of the challenges that small exempt sellers face in adapting to the new obligations.

We recognise two main classes of consumer protections:

1. Obligations to assist and advise customers as appropriate to avoid detrimental impacts
2. Competitive pressure to deliver efficient retail prices

For the first, we support all the AEMC's proposals in Chapter 7 of the draft report and recommend that off-market retailers in existing embedded networks be required to register as exempt sellers or authorised retailers (as appropriate), as promptly as feasible. For embedded network managers that already have significant numbers of customers across multiple sites and whose primary business already is selling energy in embedded networks, this should occur when the new framework comes into force. For smaller embedded network managers whose primary business is not selling energy, a transition period over a few years (our recommendation: two years) is appropriate, with a transition pathway designed to assist these type of businesses to understand and deliver these important obligations. This pathway would prioritise meeting the most important customer needs (for example, regarding life support customers, notification of outages, and RoLR functions) at the earliest opportunity (within the first six months).

With regard to access to competition in the regular retail market, we recognise that upgrading metering is a fundamental requirement, but a significant cost implication to existing networks that do not otherwise need to upgrade their metering. Renew supports a slower transition that does not require metering upgrades until meters require replacement, with the caveat that price controls are improved in legacy embedded networks, as discussed below.

Price regulation in legacy embedded networks

Because metering upgrades are likely to be cost-prohibitive to many existing embedded networks that do not otherwise need to upgrade metering, Renew accepts that many existing embedded networks may remain unable to give their customers access to retail competition in the medium term. Consequently, price regulation will continue to be necessary to protect these customers from the risk of price gouging.

The current pricing rule for embedded networks caps tariffs at the level of the local area retailer's standing offer. However it is well established that standing offers no longer represent a reasonable default price, but in fact are among the highest retail prices in most markets.³

Renew notes that the Australian Energy Regulator, as directed by the Commonwealth Government on recommendation from the ACCC, has developed the Default Market Offer (DMO) as an effective replacement for the standing offer. Thus we recommend that the DMO form the reference price for the purposes of the pricing rule for legacy embedded

³ For example, see ACCC (2018) *Restoring electricity affordability & Australia's competitive advantage: the Victorian Independent Bipartisan Review of Electricity and Gas Retail Markets* (2017), and the St Vincent de Paul Society's series of national energy market reports (https://www.vinnies.org.au/page/Our_Impact/Incomes_Support_Cost_of_Living/Energy/VINNIES_NATIONAL/)

networks, and for all embedded networks customers that do not have access to retail competition.

Treatment of caravan parks

Renew recognises that caravan parks differ from many embedded networks in that they more faithfully embody the scenario for which the exemptions framework was initially developed – bodies for whom the sale of energy is incidental to their primary business activity. However, the reality that caravan parks do provide long term housing for a group of consumers who are among the most vulnerable – people who are marginalised from the mainstream housing market – means it is critical that they are equipped and required to deliver appropriate consumer protections to their long-term residents.

Renew supports the proposal to require caravan parks with long-term residents to be elevated into the new framework as registered network service providers and retailers; and recommends that existing caravan parks be required to transition to the new framework over an appropriate period of time in alignment with other legacy embedded networks. However, we note the different requirement for providers of short-term holiday accommodation (to be registered exempt providers) and recognise that this raises a quandary for treatment of caravan parks with a mix of short- and long-term residents. We note the concern of some stakeholders that onerous registration requirements and customer obligations may incentivise these caravan parks to transition away from providing long-term accommodation; but also note that, as far as we understand, caravan park operators see some economic benefit in having a number of long-term residents to provide ongoing revenue between holiday seasons. Thus we recommend that the Commission pay particular attention to the requirements for both new and existing caravan parks. One approach might be a registered exemption category for new caravan parks (as proposed for short-term accommodation providers), but with explicit customer protections and price controls for long-term residents (with an appropriate compliance and enforcement framework) that mirrors the requirements for off-market retailers in new embedded networks. Another might be a requirement to become authorised retailers with exemptions from some requirements as deemed appropriate for caravan parks and tailored obligations that differentiate between long-term residents and short-term holiday guests. For existing caravan parks, a transition pathway that delivers necessary consumer protections appropriately to long-term residents while being responsive to the scale of businesses is required. In our view, access to retail competition for these customers is not essential so long as appropriate price controls and obligations for price transparency and managing hardship and bill payment difficulty are in place, and enforceable.

Network billing for on-market customers

Renew supports the approach to network billing for on-market customers in embedded networks. Specifically, the proposal to require AEMO to establish shadow network charging procedures for ENSPs so they can allocate a shadow network tariff to on-market customers and collect network charges from these customers' retailers is an elegant solution that allows retailers to service embedded network customers with minimal friction, delivers pricing equity (with non-embedded network customers) for on-market embedded network customers, and provides an additional revenue stream for ENSPs to help cover the administrative overhead of enabling access to retail competition.

We acknowledge the potential problem of non-payment of network charges by retailers to ENSPs. We understand that in many cases currently, such non-payment is because retailers are not confident that customers have not already paid network charges to embedded network operators. (Presumably, these retailers repay the network component of their bills back to the customers concerned.) Perhaps retailers could advise ENSPs regarding how to distinguish between 'can't pay' and 'won't pay' creditors. In any case, clear rules, a robust compliance framework, and transparent billing processes should mitigate this uncertainty and maximise revenue certainty for ENSPs.

Distributed Energy Resources in embedded networks

We understand that some network businesses have been impacted by embedded networks installing distributed energy resources (DER) behind the parent meter without seeking connection approvals that are mandatory for directly-connected customers. Recognising the importance for networks of having visibility of DER in their systems and the ability to reach agreement with DER owners as to the impact of DER exports, we recommend that embedded networks be explicitly required to seek DNSP approval for DER installations; and that concomitant changes are made to the regulatory arrangements for DNSPs so that they are required to negotiate in good faith with customers regarding DER connections, and adopt consistent, responsive, and evidence-based principles for determining the terms of DER connections.

Power Purchase Agreements (PPAs)

As noted in our 2016 report *Empowering the future: appropriate regulation and consumer protections in emerging energy markets*⁴, residential customers with Solar Power Purchase Agreements (SPPAs) fall into an unnecessary regulatory gap: PPAs fall within the ambit of mainstream energy regulation, but are excised by the exemptions framework with no material conditions (besides an obligation for PPA providers to tell their customers that they have no protections beyond Australian Consumer Law). This is despite PPA customers being vulnerable to considerable consumer detriment thanks to a very energy-specific thing: the risk that an oversized solar installation could mean they export the majority of their generation for a feed-in tariff (FiT) that is significantly lower than the rate at which they are required to purchase the energy their system generates. This is of particular concern because residential PPA customers are more likely than not to be households that are vulnerable to financial stress (since households with financial security would always be better off using their access to finance to purchase solar systems outright, rather than sign up to a PPA).

We have no particular view as to whether PPA providers should remain under the exemptions framework or become authorised retailers; but we strongly urge the Commission to prohibit them from charging more than the customer's FiT rate for exported generation. We note that some PPA providers already have this as their policy, which in our view is evidence that doing so does not unduly compromise the PPA business model.

⁴ Available at https://energyconsumersaustralia.worldsecuresystems.com/grants/729/ap729-empowering-the-future-appropriate-regulation-and-consumer-protections-in-emerging-energy-markets_ATA.pdf

Conclusion

Thanks again for the opportunity to convey our views on this significant regulatory change. Please don't hesitate to contact us if you wish to clarify anything contained herein, or seek further information.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'DL', with a long, sweeping horizontal stroke extending to the right.

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