

25 June 2015

Ms Meredith Mayes
AEMC Director
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Lodged on AEMC website

Dear Ms Mayes,

**Re: AEMC Consultation Paper National Electricity Amendment (Embedded Networks) Rule 2015;
Project Reference Code ERC0179**

The Consumer Utilities Advocacy Centre (CUAC) is a specialist consumer organisation established in 2002 to represent Victorian energy and water consumers in policy and regulatory processes. As Australia's only consumer organisation focused specifically on the energy and water sectors, CUAC has developed an in-depth knowledge of the interests, experiences, and needs of energy and water consumers.

Introduction

The rollout of smart meters in Victoria commenced in 2009. The cost of the rollout has been borne by Victorian consumers on the basis that the consumer would benefit.

Exempt selling¹ and the restricted consumer choice it represents excludes consumers from the benefits of this rollout, smart meter technology, and access to new products and services that these enable. Exempt selling also offers its customers lower consumer protections than what customers of energy retailers receive.

Exempt selling is now a contemporary and mainstream problem that is growing not only in Victoria but in other States. In Victoria, the Minister for Energy has asked for a review of the Victorian exemptions framework to ensure that it is able to meet the interests of consumers. The Minister for Planning has also issued a discussion paper 'Better Apartments' which seeks feedback to shape/inform apartment design guidelines, of which this particular type of 'choice restrictive utility service' forms a part of.

Exempt selling is a real issue now. CUAC is concerned that for the Victorian consumer this 'choice restrictive utility service' is set to increase dramatically. This problem needs to be addressed urgently at the very least with regard to new apartment stock.

¹ Exempt selling is also known as re-selling or on-selling of electricity.

A report released in February 2015 found that high-rise apartments are being built in Melbourne at four times the maximum densities allowed in places like Hong Kong, New York and Tokyo.² According to the Minister for Planning, *'medium and higher density residential development will be a key component of this as our city changes shape. In Melbourne alone it is estimated that an additional 480,000 apartments will be required to accommodate a projected population of 7.7 million by 2051.'*³

In June 2013, Melbourne City Council reported that the municipality was the fastest growing local government area in Australia. The Council reported there were more than 3,000 dwellings completed in 2013 with the number expected to increase to 8,000 in 2015. By 2021, the Council expected the residential population to be over 150,000 residents living in 92,000 homes, increasing to over 190,000 residents living in over 115,000 homes by 2031.⁴

The 'equity gap' and 'choice restrictive service' are likely to impact more consumers as more apartments are built to address the housing needs of a growing population and apartment living becomes more common. An increasing number of residents will find themselves in exempt selling situations and potentially be exposed to consumer detriment unless the problems around exempt selling are addressed.

Following CUAC's 2012 report, *[Growing Gaps: Consumer Protections and Energy Re-sellers](#)*,⁵ CUAC has been advocating for stronger consumer protections for customers of exempt sellers. The most significant issues for consumers subject to exempt selling arrangements are:

- Practical barriers to exercising choice;
- No access to the non-price benefits of compliant smart meters, smart meter technology and consumer choice – Victoria has had a mandatory rollout of smart meters which has been and is still being funded by consumers on the basis of receiving consumer benefits;
- No access to the Energy and Water Ombudsman (Victoria) (EWOV) for complaint resolution;
- No requirement for hardship programs;
- Anecdotal evidence of high fees/charges; and
- The standing offer as the benchmark for the maximum price a re-seller can charge is an artificial pricing safeguard as prices are de-regulated in Victoria.

CUAC's 2015 report, *[CUAC Regulatory Review: A Critical Review of Key Consumer Protections in Victoria](#)* recommended that the COAG Energy Council undertake a review of the exempt selling framework to ascertain whether it is appropriate to current market conditions, with a view to strengthening the provisions.

² Leanne Hodyl (February 2015), *[To Investigate Planning Policies that Deliver Positive Outcomes in Hyper-Dense, High-Rise Residential Environments \(The Winston Churchill Memorial Trust of Australia\)](#)*, p.7 <accessed on 25 June 2015>; ABC News (9 February 2015), *[Melbourne allowing high-rise development at rate that would never be allowed overseas, report finds](#)* <accessed on 25 June 2015>.

³ Department of Environment, Land, Water and Planning (May 2015), *Better Apartments: A Discussion Paper*, p.3.

⁴ Report to the Future Melbourne Planning Committee (June 2014), Draft Housing Strategy, available at <http://www.melbourne.vic.gov.au/AboutCouncil/Meetings/Lists/CouncilMeetingAgendaItems/Attachments/11564/JUN14%20FMC%20AGENDA%20ITEM%206.3%20Draft%20Housing%20Strategy.pdf> <accessed on 25 June 2015>.

⁵ Consumer Utilities Advocacy Centre (December 2012), *Growing Gaps: Consumer Protections and Energy Re-sellers*.

CUAC welcomes the AEMC's consultation paper *National Electricity Amendment (Embedded Networks) Rule 2015* (consultation paper). CUAC is generally supportive of the recommendations which the AEMC has put forward in their consultation paper. The recommendations make some progress towards providing regulatory certainty, helping to facilitate retailer choice in embedded networks, and meeting the long term interests of consumers.

CUAC recommends that the AEMC collect data and monitor the customer experience to determine if existing customers in embedded networks, following the rule change, are better informed (more aware) and able to exercise choice and move to a better energy offer. The extent to which there is competition in embedded network arrangements should also be included in the AEMC's competition reviews.

Other issues

CUAC notes that the rule change request is limited in scope. Key issues for the consumer that remain unaddressed are:

1. Consumers in existing embedded network arrangements are likely to incur direct cost and infrastructure barriers if they choose to have control and choice of their energy provider. For consumers in rental property, landlord investment in a new meter is unlikely. CUAC would like to reinforce that Victorian consumers have already paid for the cost of the smart meter rollout. This direct cost represents an additional impost on some consumers.
2. There is still an equity gap with regards to consumer protections between consumers in embedded network arrangements and consumers of energy retailers. These need to be addressed by the AER's exempt selling guideline. This would not assist Victorian consumers as Victoria is not a signatory to the National Energy Retail Law.
3. The current exemptions framework appears to have been narrowly developed to respond to particular situations including caravan parks, rooming houses, aged care facilities, and shopping centres. Its application to high-rise residential developments that are prevalent today was not envisaged. Their prevalence is evidenced by the large number of registered and individual exemptions with the AER.
4. The non-alignment of the AER's enforcement powers under the National Electricity Law (NEL) and Rules, and the National Energy Retail Law (NERL) and Rules. It is unclear whether the AER will be able to effectively monitor and enforce the requirements proposed by the rule change as their powers under the NEL is more limited than the NERL.
5. It is likely that the cost of the embedded network manager (ENM) will be passed on to consumers in embedded network arrangements and thus be an additional cost impost to their bill. While the 'Pricing Rule' might limit an embedded network operator (ENO) or reseller from charging customers the cost of the ENM (if that customer is already paying the standing offer rate), it is not a meaningful benchmark for the Victorian consumer. Prices are deregulated in Victoria.

6. While CUAC is supportive of choice, there may be some exempt selling arrangements where due to the particular nature of the multi-unit development, consumers may not wish to exercise choice. The rule change requires an ENM to be appointed even in such cases, which means that the cost would still be passed on to consumers even though they do not actually need the services of an ENM.
7. There is a need for a free, independent and impartial external dispute resolution scheme to address complaints an embedded network customer may have with their ENO and/or ENM. CUAC believes that the jurisdictional energy ombudsman would be the appropriate body.
8. It is unclear from the rule change request whether the ENM is more of a 'back-room' presence or whether their presence will be obvious to the customer in an embedded network arrangement. Transparency will enable customers to be informed about the ENM's role in facilitating the switching process. However, it may also add an additional layer of complexity as there is one more party a customer has to liaise with to switch energy providers.

Response to the AEMC's questions

Q1. Requirements to facilitate competition

CUAC is supportive of the functions required to facilitate access to competition identified in the consultation paper and the two changes to the conditions of exemptions in the AER's network guideline. In particular, the inclusion of the life support requirements, notifying the FRMP of the parent connection point, is critical.

Page 15 of the AEMC's consultation paper mentions that one of the functions required to facilitate access to competition is, *'requesting AEMO to provide NMI and allocating these NMIs to child metering installations in MSATS when an off-market embedded network customer wishes to become on-market.'* As mentioned earlier, there are infrastructure barriers that prevent/deter a consumer in an embedded network arrangement from switching energy providers. The cost of a new meter or other technology is likely prohibitive and in the case of a tenant, not an option. Thus, merely providing an NMI to child metering installations would not solve the problem in all embedded network arrangements.

We support the requirement for ENOs to unbundle bills of embedded network customers into network and energy charges. This will help customers compare offers from energy retailers and the ENO, and provide greater transparency of network charges from energy charges.

Q2. Who should perform these functions?

CUAC supports, in principle, the designation of a new accredited service provider (a role which may be met by a range of parties including ENOs, energy retailers, or distribution service network providers (DNSPs) – the ENM – to manage embedded network customers in the NEM and to facilitate the transfer of customers between the ENO and energy retailers (including the functions within MSATS and the B2B procedures).

CUAC is of the view that this recommendation would help to clarify the roles and responsibilities of managing embedded networks and provide a framework for embedded network customers to exercise choice. The roles and functions need to be defined to ensure impartiality in representing consumer interests.

We support, in principle, the position that an ENO should only be granted an exemption from the requirement to be registered as a network service provider (NSP) if an ENM has been appointed for the network.

Q3. When is an ENM required?

We agree with the recommendation that all ENOs that require a registrable or individual exemption under the AER's network guideline be required to appoint an ENM. However, we ask the AEMC to consider what we have raised in point 6 above.

The consultation paper states that for deemed exemptions, if an embedded network customer seeks access to a retail market offer, the existing deemed exemption becomes registrable and triggers the need to appoint an ENM. While this sounds fine on paper, we do not understand how it will work in practice. Given that deemed exemptions are automatic (no requirement to register/apply) how would:

- This requirement be communicated to ENOs so that they are aware of this obligation;
- The AER ensure compliance with this obligation; and
- Customers be aware that they may be able to exercise choice?

Q4. Accreditation and governance of an ENM

CUAC supports the requirements for accreditation and governance of ENMs. CUAC agrees that the requirement to have ENM services provided by an accredited ENM should be classified as a civil penalty provision.

Q5. Who can be an ENM?

Subject to appropriate ring-fencing provisions, the ENM role should be open to any party able to meet the accreditation requirements. We support recommendation to have the AER determine the ring-fencing arrangements for ENM services.

Q6 Grandfathering

CUAC would like to see a shorter timeframe than two years from the commencement of the rule to appoint an ENM for existing embedded networks with registrable or individual exemptions.

Q7. Transitional issues

CUAC agrees that there would be a need for AEMO to amend the MSATs, metrology and B2B procedures, and for AEMO to develop the ENM service level procedures.

Q8. Implementation timing

There is merit exploring whether there are potential synergies in the timing of the proposed changes outlined in the consultation paper with other recommendations arising out of the Power of Choice review.

Q9. Competition in the ENM market

We understand the need to ensure that there are sufficient ENMs available when the rule commences. However, AEMC's proposal to allow automatic accreditation of energy retailers and NSPs who notify AEMO that they wish to be ENMs for a six month period (from the date of commencement of the rule) may create an unlevel playing field. An alternative approach would be to invite businesses to seek accreditation as an ENM well before the commencement of the rule so that there will be enough ENMs once the rule commences.

Q10. Consequential or corresponding changes to the NERR

The issues which the AEMC have raised in the section are complex. Amendments would have to be made to the NERR to accommodate the various scenarios that have been outlined in this section. Certainly, the relevant energy provider must obtain the explicit informed consent (EIC) of a customer in any transfer – whether from an ENO to an energy retailer, or from an energy retailer to an ENO.

Thank you for the opportunity to participate in this consultation. If you have any queries on this submission, please contact Deanna Foong at (03) 9639 7600 or deanna.foong@cuac.org.au .

Yours sincerely,



Mercedes Lentz
Executive Officer