

4 October 2016

COAG Energy Council Secretariat
GPO Box 9839
Canberra ACT 2601
By email: energycouncil@industry.gov.au.

Dear COAG Energy Council Secretariat

Thank you for the opportunity to comment on the consultation paper *“Stand-alone energy systems in the Electricity Market: Consultation on regulatory implications.”*

The Energy & Water Ombudsman NSW investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON also has jurisdiction to investigate and resolve complaints from customers of exempt energy retailers and networks in NSW. Exempt sellers, however, are currently not required to be members of EWON. With respect to the latter, the cost of those complaints is met by EWON Members, and the exempt retailer is not obliged to engage in EWON’s dispute resolution processes or accept direction or Binding Decision from the Ombudsman.

This consultation is very timely given the electricity market is, arguably, undergoing the most significant period of change in its history. The range of new products and services becoming available is significantly impacting how electricity is delivered and consumed by residential and business customers. In this context it is vital to review how regulation can influence the adequacy and development of this changing market. Regulation needs to maximise consumer benefit and ensure adequate consumer protections are in place for those consumers whose circumstances place them in situations where they cannot benefit from innovation, or worse, innovation creates greater detriment or inequality for those consumers in the future. It is critical that regulation does not unfairly favour any participants in the market or place some consumers in a position where protections are unavailable.

Principle based approach

The National Energy Customer Framework (NECF) was developed on the basis that the majority of consumers would purchase energy through a retail contract and that the energy was supplied from the source of generation via a regulated network.

The retail and network exemption framework managed by the Australian Energy Regulator (AER) provides for innovation in the energy market, which in turn gives energy consumers access to new products and services. The exemption framework empowers the AER to provide energy consumers with consumer protections that are matched to the nature and scale of the alternative energy product or service.

While some new energy products and services fall under the exemption framework, others are outside energy specific protections. In EWON's submission to the Australian Consumer Law Review, EWON identified as a fundamental principle for the regulation of new energy products and services that:

“Energy-specific consumer protections are required when a product or service impacts on a customer's access to a reliable, safe and high-quality supply of energy on fair and reasonable terms.”¹

EWON is of the view that the National Electricity Law (NEL) and the NECF are too prescriptive for some products and services. However, having services, including stand-alone energy systems, outside energy specific regulation leaves consumers vulnerable in relation to the provision of an essential service which has already been accepted as warranting industry specific protections. These key consumer protections cover disconnection, dispute resolution, quality and reliability of supply.

To address the need for innovation and consumer access to new products, the AER exemption framework provides a model of matching regulatory protections to the nature of, and the impact that, a new product or service will have on consumers. Such a model, when applied to **“stand-alone energy systems”**, will ensure that each proposal would be judged and an appropriate level of consumer protection applied.

The consultation paper identifies a **“stand-alone system”** as a new form of supply in remote regions, new developments or brownfield conversions (provided there is more than one customer). Self-supply by an individual customer is excluded.

The actual sale of energy within a stand-alone system would be encompassed by the current AER Retailer Exempt Selling Guideline. The AER Electricity Network Service Provider Registration Exemption Guideline, however, does not apply as a stand-alone system has no connection to the grid and therefore current distribution consumer protections would not be available to customers.

¹ *New Products and Services in the Electricity Market: Consultation on Regulatory Implications*, Energy Market Reform Working Group December 2014, p8

As the consultation paper notes, there are 30 stand-alone systems in remote Queensland and consumer protections are applied by jurisdictional extension of NECF to cover them. If stand-alone systems were established in NSW these consumer protections would not apply without a similar jurisdictional extension of NECF.

Two key features for establishing the need for energy specific protections for stand-alone energy systems are:

1. The essentiality of the product and associated service to reliable supply.
2. The level of complexity of the commercial arrangement associated with the supply of electricity.

In summary, once the need for energy specific protections is established, those protections could be applied by extending the current exemption framework to include stand-alone systems. The same result could be achieved by developing a parallel framework, administered by the AER, which identifies different classes of systems and then attaches relevant conditions to each class.

Particular issues

Network obligations

There are a range of important consumer protections which currently would not apply if regulation was left outside an energy specific regime. The most important of these are obligations the Distribution Network Service Providers and exempt networks have with respect to customers with life support equipment. Also important are protections around communication standards relating to both planned and unplanned outages, standards about reliability of supply and obligations to supply. Pricing protections may also be needed, given that stand-alone systems are in a monopoly situation. The appropriate level of regulatory protections needs to be adjusted according to the design of the system and the amount of choice that individual customers within such a system have available to them.

Dispute resolution

Energy customers need access to relevant, expert and consistent independent dispute resolution services for issues associated with the sale and provision of energy whether they are a customer of an authorised retailer, an exempt retailer or a stand-alone energy system. Generally, energy ombudsman schemes structure the way their members pay for Ombudsman services on a user pays basis. These funding models are flexible and can be structured to enable new entrants operating under different models to become members.

Operator of Last Resort

Reliability of supply is essential to consumers in a modern economy. The Retailer of Last Resort (RoLR) provisions in NECF ensure reliability of supply for customers in the traditional energy market. New and challenging issues arise in the context of stand-alone systems. In particular the ongoing operation of generation and distribution in the event of insolvency of the provider/operator poses challenges not contemplated in the RoLR arrangements.

These include:

- Who bears the cost and ensures maintenance of the system on an ongoing basis?
- Who bears the cost of capital equipment replacement?
- Who will operate the system in the absence of the original provider?

Appropriate regulation needs to ensure that such costs are not placed on customers who do not have responsibility for the failure or, often, even a choice about their supply system. For example, a tenant moving into an apartment complex may not be aware that the building has a stand-alone system.

EWON is currently participating in a consultation process led by the Water Division of the NSW Department of Primary Industries to develop Operator of Last Resort provisions in the regulations associated with the Water Industries Competition Act. The issues in this area are not dissimilar to those that would arise from the collapse of a stand-alone energy system and an examination of that work may inform development of an approach for ensuring customer protections in this area. A current illustration of this situation is the short and long term customer protection arrangements in place for water services for owners and tenants in the Lendlease developments at Barangaroo in Sydney.

EWON strongly supports this agenda for change as these arrangements should be addressed now.

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

Yours sincerely



Janine Young
Ombudsman
Energy & Water Ombudsman NSW