

10 October 2016

Mr Chris Pattas
General Manager, Networks
Australian Energy Regulator
PO Box 520 Melbourne Victoria 3001

Via email: aerinquiry@aer.gov.au

Dear Chris,

Thank you for the opportunity to comment on the issues paper and draft amendments to the *AER Electricity Network Service Provider Registration Exemption Guideline*.

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 sellers in NSW, with the cost of those complaints spread across the whole EWON membership, including water members.

The growth in the number of exempt networks, and exempt retailers, operating within the National Energy Market (NEM) is causing a significant disruption to the level of consumer protections that many energy customers are now provided with. EWON strongly believes that access to free, effective, independent, and expert external dispute resolution (EDR) must be extended to the customers of exempt networks (and exempt retailers) to ensure that all energy consumers are treated equally.

Energy ombudsman schemes have already adapted to changes in the energy market – such as the introduction of second tier retailers – and their flexible corporate structures will adapt again to support new participants such as exempt networks and retailers. Until all energy consumers are provided with equal protections, there is a significant risk to the public acceptance of further innovation in the energy market, and to the reputation of Australian regulators, energy ombudsman schemes, and the energy industry as a whole.

Our views are drawn from the complaints we receive and deal with. While having considered each individual question posed by the consultation paper, our response focuses on those issues which relate to our work.

Safeguarding consumer protections for customers of exempt networks

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 AER provides for innovation in the energy market, which in turn gives energy consumers access to new products and services. The exemption framework also provides the AER with the flexibility to provide energy consumers with consumer protections that are matched to the nature and scale of the alternative energy product or service.

However, EWON considers there are critical gaps between the protections afforded to energy consumers within the NEM, and the customers of exempt networks and retailers – particularly in relation to access to effective EDR. The current and predicted growth in the number of embedded networks operating alongside the NEM means that the number of customers with this inequitable level of consumer protection is significant and will continue to grow.

EWON considers that where appropriate, the consumer protections contained in the AER Retail Exempt Selling Guideline, including, but not limited to, the rules for the content and timeliness of invoices, the rules for managing customers in financial hardship, and the rules for disconnecting a customer's electricity supply in cases of non-payment, should also be extended to customers of embedded networks. EWON also believes that all energy consumers should have access to, and adequate information about, effective EDR.

Protections for customers receiving charges directly from an exempt network operator

EWON agrees with the AER that it is preferable that customers within exempt networks receive all their electricity charges on a single bill. However, EWON notes that the AER will continue to allow for a two bill approach for exempt network customers who have chosen to access an on-market offer from an authorised retailer. In this instance, the customer receives an 'energy only' bill from the retailer, and a second bill for network charges directly from the exempt network. EWON also recognises that the AER has proposed a simple and common sense solution to who should be responsible for resolving duplicate charges to a customer receiving two bills, dependent on whether the customer is located in a greenfield site or a brownfield conversion.

Energy consumers connected directly to the NEM, and who have opened an account with an authorised retailer, only 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;
- provided with access to payment plans and assistance in times of financial hardship.

The AER's Retail Exempt Selling Guideline also provides for many of the above consumer protections to customers of exempt sellers – where appropriate, depending on the service being provided, and the class of customer.

EWON strongly supports this and further believes that where an exempt network is billing a small customer directly for network charges, the exempt network operator should also be

required to adhere to the relevant core exemption conditions contained in the Exempt Selling Guideline.

Ensuring access to retail competition for customers within eligible communities

The issues paper presents the view that access to retail competition for customers of exempt networks is important because it places a natural cap on the ability of the embedded network seller to charge monopoly rent prices.

EWON agrees with this view. However access to retail competition is also crucial to incentivise exempt networks to provide their customers with an equal or better level of customer service and quality of supply, when compared to that provided to customers connected directly to the NEM.

Further, without effective access to retail competition, and where customers of exempt networks do not have access to effective external dispute resolution, there may be no incentive for exempt networks to use customer feedback for continual improvement to services.

EWON also agrees with the AER's view that exempt embedded network service providers should be required to absorb the cost of Embedded Network Manager (ENM) services.

The AER indicates that certain eligible communities should be allowed to establish a user pays system for the ENM services – where the customer seeking to access a market retail offer would pay the cost of these services. Eligible communities would include caravan/residential parks, retirement villages, and residential community schemes based on bulk purchasing power.

EWON previously submitted to the Australian Energy Market Commission in July 2015 that residential parks are relatively small businesses, operating quite old networks. We noted that it is possible that the costs of an ENM may be significantly out of proportion to the potential benefit of access to retail competition to the customers, and that these additional operational costs would ultimately be reflected in increased rental rates for all the residents.

EWON understands that the costs of ENM services are currently unknown. However, if the costs of these services are prohibitive, then customers living in eligible communities, particularly those in residential and retirement communities, could be blocked from accessing retail competition. EWON encourages the AER to closely monitor the costs of ENM services following the commencement of the rule change in December 2017. It will then be critical for the AER to reconsider the model for deciding who pays the ENM costs again, based on the known costs, when the guideline is next reviewed.

Providing customers of exempt networks with access to effective external dispute resolution

The NSW government established formal external dispute resolution, in the form of EWON, in response to privatisation of the NSW energy industry.

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 so as not to be a barrier to new entrants such as exempt sellers and networks.

The growth of exempt retailers and embedded networks is the next step in increasing competition within the NEM. EWON's governance framework was effectively changed after second tier retailers entered the NEM, and can be further modified to meet the changing needs of the evolving market. On this basis, EWON strongly supports the AER's intention to add a requirement that exempt embedded networks service providers must apply to join an Ombudsman scheme where it is available in a jurisdiction, or otherwise abide by decisions of Ombudsman schemes.

Unlike other jurisdictional energy ombudsman schemes in Australia, EWON has jurisdiction to investigate complaints from customers of exempt sellers under the following provisions:

NSW Electricity Supply Act 1995

96B ...

(1A) The scheme may provide for the appointment of an energy ombudsman to deal with the following:

...

(b) disputes and complaints between small customers and exempt sellers or other persons exempted from the *National Energy Retail Law (NSW)*, this Act or the *Gas Supply Act 1996* in relation to the supply of electricity or gas,

96D (1) This section applies to the following decisions by an energy ombudsman under an approved energy ombudsman scheme of which a retailer or other exempt person is a member:

(a) a decision relating to a matter concerning the retailer's or exempt person's functions under this Act or the *Gas Supply Act 1996*, or under any instrument under those Acts,

(b) a decision relating to a dispute or complaint involving the retailer or exempt person and a small customer or regulated offer customer, if that dispute or complaint arises under any such Act or instrument.

...

(3) In this section:

exempt person means an exempt seller under the *National Energy Retail Law (NSW)* or a person exempted (under section 3B of that Law) from the requirement to hold a retailer authorisation.

NSW Electricity Supply (General) Regulation 2014

- 11** (1) For the purposes of section 96A (1) of the Act, the following persons may apply to an energy ombudsman under an approved energy ombudsman scheme for a review of a decision:
- (a) a small customer in respect of a matter arising between the customer and an exempt person concerning a contract for the supply of electricity or gas (including charges for electricity or gas) or any other matter relating to the supply of electricity or gas by the exempt person to the customer
- 18** (1) The exemption of a person (the **exempt person**) from section 13 of the Act (under clause 14) is subject to the conditions set out in this clause...
- ...
- (2) (b) the exempt person is bound by, and must comply with, any decision of the energy ombudsman in relation to a complaint or dispute relating to the provision of connection services.

EWON resolves complaints by negotiating outcomes with customers and energy providers based on what is fair and reasonable, having regard to laws and codes and good industry practice.

If a matter is not resolved through negotiation, the Ombudsman may make a determination ('binding decision') to resolve a case. The complainant can choose whether or not to accept the determination. If it is accepted, then EWON's member is bound by the determination.

The Ombudsman's ability to make binding decisions underpins the scheme's effectiveness for providing negotiated outcomes to thousands of consumers in NSW each year. Members of the scheme are also required to comply with EWON's investigations processes, and to make information available to EWON for the purpose of resolving complaints.

While the above NSW regulations provide EWON with the power to accept and investigate complaints about exempt sellers, exempt sellers are not required to be members of EWON, and are therefore not bound by Ombudsman determinations, and may choose to not participate in any or all of EWON's investigation processes.

The fact that exempt sellers are not required to become members of the EWON scheme therefore imposes a limit on EWON's ability to provide fair and reasonable complaint outcomes to this group of energy consumers. A requirement for all exempt networks and exempt retailers to join an Ombudsman scheme would ensure consumers have access to effective external complaint resolution.

The use of the term Embedded Network Manager

EWON notes that the term 'Embedded Network Manager' is confusing, as the role of the ENM is not to manage the exempt network, but to help customers transition from an off-market energy contract to an on-market energy contract.

EWON understands that the term 'Embedded Network Manager' was established through the embedded network rule change, however, it adds to the complexity of energy terminology which is already well acknowledged as being difficult for customers to understand and has

been the subject of review. It would be prudent for the AER to ensure that clear information is provided to the customers of exempt networks, so that industry-based language does not become a further additional barrier to customers who want to access retail competition.

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