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17 April 2023

Ms Jessica Robinson
Director, Pricing
Independent Pricing and Regulatory Tribunal
Level 16, 2-24 Rawson Place
SYDNEY NSW 2000

Dear Jessica,

AER submission: IPART draft terms of reference – The future of embedded networks in NSW

The Australian Energy Regulator (AER) welcomes the opportunity to provide a submission on the NSW Independent Pricing and Regulatory Tribunal's (IPART) draft terms of reference for the future of embedded networks in NSW.

Concerns with the regulation of embedded networks and the outcomes of consumers located in embedded networks have been consistently raised. We welcome IPART's review examining the introduction of setting maximum price protections for electricity, hot and chilled water and gas embedded networks in NSW. We would also be interested to have discussions with IPART on the criteria it intends to apply to assessing the prohibition of future embedded networks for hot and chilled water in NSW.

By way of background, the AER exists to ensure energy consumers are better off, now and into the future. We regulate wholesale and retail energy markets, and energy networks, under national energy legislation and rules. In relation to embedded networks, the AER has a number of functions. As part of the National Energy Customer Framework, the AER governs who can on-sell energy without being an authorised retailer, and the conditions exempt sellers have to comply with, via the Retail Exempt Selling Guideline. This includes on-selling arrangements at an embedded network site. Additionally, under the National Electricity Rules, the AER governs who can operate an electricity network, such as an embedded network, without being registered as a network service provider with the Australian Energy Market Operator (AEMO) and the conditions an exempt network would have to meet.

More broadly, the AER also sets the Default Market Offer (DMO) price for electricity each year under *the Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* which provides the legislative framework for the DMO and the AER's role. The AER recently published the draft DMO prices for 2023–24 on 15 March 2023.

This submission to the draft terms of reference highlights two ongoing consultations which IPART should take into account when undertaking any review of embedded networks.

The AER's review of consumer protections for future energy services

As part of implementing the Energy Security Board's (ESB) National Electricity Market 2025 reform pathway recommendations for the effective integration of Consumer Energy Resources (CER) and flexible demand, the AER is undertaking the review of consumer protections for future energy services¹. Currently, the National Energy Customer Framework (NECF) regulates entities that sell energy to consumers at their premises. In the future, we are likely to see providers offering products and services that do not involve the sale of energy and, as a result, may fall outside the scope of NECF. The AER's Review aims to understand the risks that new energy products and services may pose to consumers, and whether these risks are within the scope of the current regulatory framework. Where these risks fall outside the current framework, the AER is considering the need to recommend bringing new energy products and services into the future framework. The AER notes that our view is that energy services relating to chilled and bulk hot water currently sit outside the National Energy Customer Framework. We would be happy to discuss this further with IPART and provide additional information.

For this review of consumer protections for future energy services, the AER is building on the previous review of embedded networks undertaken by the AEMC in 2017, to consider how embedded networks will interact with new energy products and services, and what changes to the regulatory framework may be needed to address any identified consumer harms and risks. Additionally, the AER considers lessons from the operation of the embedded network framework could provide insights into consumer harms that may arise more generally if the authorisation and exemption frameworks is no longer fit for purpose in a world of new energy products and services.

We note that IPART's final report on Monitoring NSW Energy Retail Markets 2021–22 emphasised the importance of the AER's review of consumer protection for future energy services. One of the key findings of the IPART final report was that there are gaps in the consumer protection framework for new products and services which are not sufficiently covered by the existing framework.²

We would welcome the opportunity to work closely with IPART on undertaking the review outlined in the Terms of Reference and share any relevant insights which we have gained from the review of consumer protections for future energy services.

Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW) consultation on implementation of the 2022 Default Market Offer review outcomes

On 24 March, DCCEEW commenced consultation on the implementation of the 2022 Default Market Offer review outcomes.³ Importantly, this includes consultation on how to extend price protections provided by the DMO to customers in embedded networks, including examination of compliance issues. The AER supports the extension of price protections to electricity consumers located within embedded networks supplied by authorised retailers.

Given the draft terms of reference for IPART also include making recommendations on the DMO and the compliance and enforcement of new price protections, we would suggest that IPART work with DCCEEW to share insights and ensure there is a coordinated approach between the reviews.

¹ <https://www.aer.gov.au/retail-markets/guidelines-reviews/review-of-consumer-protections-for-future-energy-services>.

² IPART, *Final Report – Energy Mark Monitoring 2021 – 22*, 21 December 2022, p. 39.

³ <https://consult.dcceew.gov.au/2022-default-market-offer-review-outcomes>.

The AER's compliance and enforcement role with respect to embedded networks

Improving outcomes for consumers in embedded networks continues to be a Compliance and Enforcement priority for the AER. The [AER Compliance & Enforcement Priorities 2022-23](#) help to guide the AER's enforcement work and proactive compliance efforts and demonstrate where we think that behavioural change in the market is required. Priority 2 aims to improve outcomes for consumers in embedded networks.

The AER has engaged in a range of proactive compliance activities in line with this priority and we welcome the opportunity to discuss our experiences and progress with IPART. One key activity the AER implemented was working with the ombudsman schemes to ensure customers in embedded networks could access dispute resolution services through these schemes. In NSW in particular, these activities have resulted in an increase in the number of exempt sellers who are members of the Energy and Water Ombudsman in NSW. The release of version 6 of the Retail Exempt Selling Guideline last year introduced several new obligations on exempt sellers to protect customers, including a hardship policy condition, and the AER published fact sheets and engaged extensively with ombudsmen and industry and consumer groups concerning the new obligations.

In addition, the AER has ongoing investigations in relation to embedded networks, including in relation to an alleged failure by an embedded network operator to join an energy ombudsman scheme and alleged failures to register with AEMO or register exemptions with the AER while owning, operating or controlling an embedded network. The AER has a range of enforcement options available depending on the circumstances, including taking court action in the Federal Court, issuing Infringement Notices, and accepting Court Enforceable Undertakings from the parties concerned. The AER assesses each matter to determine what approach is appropriate and how it can best intervene to influence positive behavioural change and to send a deterrence message to prevent harmful conduct in the future.

It is important to note however enforcement options available to the AER are significantly different between the legislation that govern exemptions (the National Energy Retail Law being the legislation that governs retail exemptions, and the National Electricity Law being the legislation that governs network exemptions).

Under the National Energy Retail Law, an exempt seller must comply with applicable conditions imposed by the AER. Accordingly, a breach of a condition under a retail exemption may attract civil penalties. However, there is no equivalent provision in the National Electricity Law. A breach of a network exemption condition is not explicitly a breach. Therefore, the extent of the AER's enforcement power in breaches of network exemption conditions is unclear. It is open to the AER to revoke a network exemption in the event of a breach of a network exemption condition, and a civil penalty would then apply if the embedded network continued operating.

Compliance and enforcement in the area of embedded networks is complex, and the point noted above is a good example of this complexity. We consider it important that the embedded networks framework is as clear and consistent as possible across the NECF to ensure equitable treatment and enable embedded network operators to understand their obligations.

If you have any questions about our submission, please contact George Huang at [REDACTED].

Yours sincerely,



Mark Feather
General Manager
Strategic Policy and Energy Systems Innovation