



5 February 2024

Mark Feather
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By e-mail: AERexemptions@aer.gov.au

Dear Mark

Review of the AER exemptions framework for embedded networks

Alinta Energy welcomes the opportunity to respond to the Australian Energy Regulator's review of the exemptions framework for embedded networks.

Alinta Energy is an active investor in energy markets across Australia with an owned and contracted generation portfolio of over 3,300MW and more than one million electricity and gas customers. We note the efforts to reform regulation of embedded networks including the AEMC's *Review of regulatory arrangements for embedded networks (2017)* and the Victorian *Export Panel's review of embedded networks (2022)* processes.

Alinta Energy considers that to the extent possible, small customers supplied by embedded networks and exempt sellers should be afforded the same protections and access to energy retail market competition as those connected directly to the distribution network. While we acknowledge there may be an increased regulatory burden facing suppliers to embedded network customers, the principle of equal access to protections and access to the market should be the focus of any regulatory reform in embedded networks.

This principle was reflected in the AEMC's comprehensive *Final Report on its Review of Regulatory arrangements for embedded networks* mentioned above.¹ We note the recommendations from this review and the subsequent AEMC *Final Report on Updating the regulatory framework for embedded networks* were not progressed by National Energy Ministers.

As increasing numbers of customers are supplied through embedded networks, it is incumbent on policy makers and regulators to maintain a consistent level of protection for small consumers. If the current regulatory framework is considered to burdensome and inflexible, updating it and making it more efficient, while maintaining consumer protections should be the focus, rather than dispensing with elements of it for customers supplied under arrangements that differ from what has historically been considered conventional.

¹ AEMC (2017), *Review of regulatory arrangements for embedded networks*, pages i-ii.

We acknowledge that the AER has already examined the challenge of new supply arrangements and options for authorisation of activities supplying energy services to customers through its *Review of consumer protections for future energy services*. The review of the exemptions framework for embedded networks is complimentary to the future energy services advice.

Alinta Energy supports the development of a more flexible and adaptable regulatory framework for consumer protections in the longer-term, which would:

- Support customer participation in new energy services and the energy transition;
- Promote competition and innovation among service providers whether they are emerging or more traditional suppliers; and
- Reflect best practice and efficient regulatory practice, subject to review and ongoing assessment.

We would welcome further discussion of this response with the AER, please contact David Calder (████████████████████) in the first instance.

Yours sincerely



Graeme Hamilton
General Manager, Regulatory & Government Affairs

Chapter 2 - Approach to the review

1. Do stakeholders consider one factor or principle should take precedence over another? If so, what weighting should we give the various principles or factors provided by the Retail Law and set out above, to support any case for change to the exemptions framework?
2. Is the AER's proposed approach to the exemption framework review the preferred approach? If no, what other factors or criteria should the AER consider?
3. Is our proposed review scope reasonable? If not, what other supply arrangements should be considered and why?

(Q.1) Aligning customer protections and choice of retailer to the same standard and level as customers connected directly to the distribution network should take precedence over other considerations in the AER's approach. On this basis, greater weighting should be applied to:

- Aligning regulatory arrangements for customers in embedded networks with the National Energy Consumer Framework;
- Wherever possible, maximise customer choice of retailer; and
- Ensuring customers are offered and not denied the same protections as other customers.

Heavier weighting of the principles from the National Energy Retail Law set out on page 7 over the factors the AER is to have regard to (again contained in the NERL) on page 7 and 8 of the issues paper should guide the AER's approach to the review.

(Q.2) The proposed approach is appropriate and reasonable for the review's objectives.

(Q.3) The focus on customers in high-density residential developments is appropriate given the number of customers served by embedded networks in these developments.

Chapter 5 - The growth in embedded networks

4. What factors are driving the increase in residential exemptions?
5. Which factors are having the biggest influence?
6. How common is it for new residential developments to be built as embedded networks?

(Q.4-5) Each of the factors mentioned in part 5.1 of the issues paper are influencing the growth in embedded networks. Urbanisation and a focus on higher density development along with population growth are key drivers. Increased industry awareness of the AER's embedded networks framework is also a significant driver of growth.

Chapter 6 - Benefits and harms of embedded networks

7. How do embedded networks result in lower energy prices for residential customers? Please provide supporting information.
8. How do infrastructure costs for new developments built as embedded networks compare to non-embedded networks?
9. How do higher-density complexes configured as embedded networks benefit residential buyers? Please provide supporting information.
10. What kind of innovative and emissions reduction arrangements can embedded networks offer residential customers?
11. What other benefits are there for residential embedded network customers?
12. How should we consider any consequential benefits such as improved access to affordable housing in this review?
13. What is the evidence that supports the view that embedded network customers are paying higher energy prices compared to on-market retail customers?
14. What evidence is available to understand the scale, extent or risk of harms?
15. What other harms do embedded network customers face?
16. How can we maximise the extent to which any changes to our Guidelines complements jurisdictional actions and minimise the risk of misalignment or duplication?

(Q.7) Alinta Energy is not directly involved in the development of greenfield or retrofitted embedded networks, but we note that there are potential benefits and savings embedded network arrangements can offer residential consumers. The key issue is how any benefits or savings are shared with customers within an embedded network.

(Q.13) We are not aware of examples of customers consistently paying higher energy prices compared to customers on market retail contracts. As the AER acknowledges, the absence of reporting and monitoring powers makes understanding whether customers are paying more than their on-market counterparts challenging. Similarly, there is limited understanding of the extent to which exempt sellers are complying with their consumer protection obligations.

An ongoing monitoring framework that involves sampling a subset of exempt entities may provide greater visibility and understanding of consumer benefits and harms.

Chapter 7 - Potential options under the network guideline

17. What are the risks and implications for embedded network service providers, prospective exempt sellers, customers and other relevant third parties if we require current deemed exemptions to be registered? How could any risks be mitigated?
18. How should we measure the benefits to consumers of registration?
19. What are the risks and implications for embedded network service providers, prospective exempt sellers, customers and other relevant third parties if we revised the NR2 registrable network class exemption activity criteria to include prescribed customer benefits that must be met by NR2 registrable network class exemption holders? How could the risks be mitigated?
20. If we were to prescribe a list of specific embedded network customer benefits, what could be included?
21. What other regulatory approaches would enable the AER to ensure future embedded networks are beneficial to customers?
22. What are the risks to embedded network service providers, prospective exempt sellers, customers and other relevant third parties if we introduced a requirement to apply to the AER to register an NR2 network class exemption?
23. What are the implications of requiring embedded network service providers to demonstrate customer benefits before being permitted to register an NR2 network class exemption?
24. What support is there to stop the expansion of residential embedded networks by closing the NR2 registrable network exemption class?
25. What would be the impacts on customers, embedded network service providers, exempt sellers, embedded network managers, and other parties if we ceased granting exemptions for embedded networks with more than 10 residential customers? Please provide information to support your views.

(Q.17) Alinta Energy considers that requiring deemed exemptions to be registered will increase the administrative and compliance burden for exempt network service providers and exempt sellers. The question is whether this registration will create a greater level of oversight over these entities. As the AER identifies, weighing the benefits of oversight against the costs imposed on service providers, exempt sellers and customers, who may themselves be involved in their own supply, requires careful consideration. However, to the extent that the protections set out in the NECF and other instruments under the National Electricity Law and Retail Law are to apply to the greatest extent possible to consumers served by embedded networks, registration would be a minimum requirement.

(Q.18) Benefits of registration can be measured (as suggested above), by regularly sampling embedded networks and on-sellers to report on and demonstrate how they are meeting the conditions of their exemption class.

(Q.19) Greater visibility of the number of embedded networks, the number of customers they provide services to and the extent to which service providers are complying with their conditions, would be consistent with the principles guiding the review set out on page 7 of the issues paper. This should be the AER's primary consideration, rather than potential risks facing exempt network service providers and on-sellers.

(Q.22-23) Alinta Energy agrees that there would be a significant increase to the administrative burden facing the AER under Option 3 (assessing all NR2 registrable network exemptions). Streamlining the assessment process may reduce the burden, but questions arise over how the AER's work will be funded and how it is prioritised among its many other functions. There may be an alternative approach, where an assessment of net consumer benefit of a NR2 application only take place where the number of residential customers impacted exceeds a certain threshold of materiality,

(Q.24) While noting the AER is not considering the restriction or closure of registrable exemption classes (NR2 in particular), we do not think such an approach would be appropriate in the medium term and significant transitional mechanisms would be needed to facilitate such alterations to the regulatory framework.

Chapter 8 - Potential options under the Retail Guideline

26. What compliance breaches should exempt sellers be required to submit to the AER, if they on-sell to residential customers?
27. What performance reporting indicators would best support the AER to identify consumer trends and inform regulatory reform for embedded networks? What are the risks and implications for embedded network service providers, prospective exempt sellers, customers and other relevant third parties if we require current deemed exemptions to be registered? How could any risks be mitigated?
28. What would be the benefits, costs and risks to exempt sellers, and other stakeholders, if the AER were to impose compliance and/or performance reporting obligations on exempt sellers, who on-sell to residential customers?
29. Should we extend any compliance reporting obligations to exempt embedded network service providers, via the Network Guideline?
30. Should family violence obligations be extended to exempt sellers who on-sell to residential and small business customers?
31. What obligations would, and would not be feasible, to implement?
32. Could some obligations be tailored to the specific circumstances of an exempt selling scenario? How, and what support might enable sellers to meet their obligations effectively? What additional obligations should the core exemption conditions include?

(Q.26) Exempt sellers should (as part of the granting of their exemption from holding a retail authorisation) be aware of their obligations, which includes the reporting of material compliance breaches and performance reporting. (unauthorized disconnections, disconnections, not providing information to customers on request, concession and life support customer numbers, price variation communications etc.).

An interim approach in the short-term, consistent with light-handed regulation would be for the AER to again randomly sample customers supplied by exempt entities. For example, the AER could provide a simple online survey asking customers questions to determine if minimum standards are being met. This would help inform the AER of the likelihood of a breach and the need for further investigation of the exempt seller.

(Q.27) While we consider exempt sellers should not be subjected to excessive reporting obligations, existing NECF provisions and AER guidelines either have value or they do not. A theme that has consistently arisen when consumer protections of embedded networks has been assessed has been the suspension of obligations on the basis they present a burden to exempt sellers. The consumer protections set out in the NECF need to apply equally to as many small customers as possible or be reviewed to accommodate emerging business models and innovation in the supply of energy, such that any amended level of consumer protections apply to all market participants, supplying small customers on an equal basis.

We understand the AER has separately considered such issues in its *Review of consumer protections for future energy services*. Entrenching a different standard of consumer protections across different market participants is not in the long-term interests of consumers.

(Q.28-29) While Alinta Energy does not support the imposition of burdensome regulation on exempt sellers or network service providers, we suggest that policy makers and the AER should

consider whether it is appropriate that different standards should persist, or if a long-term solution would be streamlining the regulatory framework to protect consumers, support the National Energy Retail Objective and minimise the compliance burden on all energy market participants is preferred.

(Q.30) To the extent possible (as for other elements of regulation relevant to small consumers) the key provisions subject to Tier 1 civil penalties relating to family violence obligations should be applied. Alinta Energy agrees there are circumstances (particularly in very small exempt selling and embedded network arrangements) where application of these obligations will be challenging, but we would encourage the AER, consumer groups and industry to develop solutions to any barriers identified.