



Endeavour  
Energy



12 February 2024

Mark Feather  
General Manager  
Strategic Energy Policy and Energy System Innovation  
E: [REDACTED]  
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Dear Mr Feather

### **NSW DNSPs response to the AER's Review of the embedded networks exemptions framework**

The NSW Distribution Network Service Providers (**DNSPs**) are pleased to provide this joint submission to the Australian Energy Regulator (**AER**) in response to the AER's Review of the AER exemptions framework for embedded networks (**ENs**) (**the Review**).

The NSW DNSPs are economic enablers for metropolitan, regional, rural and remote NSW communities:

- Ausgrid operates a shared electricity network that powers the homes and businesses of more than 4 million Australians living and working in an area that covers over 22,000 square kilometres from the Sydney CBD to the Upper Hunter;
- Endeavour Energy manages the electricity distribution network serving 2.7 million people in homes and businesses across an area spanning Sydney's Greater West, the Blue Mountains, the Southern Highlands, the Illawarra and the South Coast of NSW; and
- Essential Energy operates and maintains one of Australia's largest electricity networks covering 95% of NSW and parts of Southern Queensland, which services over 880,000 customers.

As noted in the Review, there have been several recent reviews<sup>1</sup> of ENs and compliance actions taken<sup>2</sup> by regulators. These reviews have repeatedly identified numerous gaps in the regulatory framework for ENs, including technical, billing, and safety issues. Accordingly, our businesses welcome the AER's focus on this important issue for EN customers who are also typically more vulnerable customers.

**Our submission supports the AER pursuing all four of its proposed high level options to improve outcomes for energy consumers**, with proposed additions shown below in underlined blue text:

- Requiring all current and future EN service providers to be registered on the AER's public register of exemptions and licensed by the AER to operate as an embedded network with licencing to operate in a tiered way depending on the EN's size;<sup>3</sup> and

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<sup>1</sup> Our businesses recently jointly produced a submission in response to the Legislative Assembly Committee on Law and Safety Inquiry into Embedded Networks for NSW. See:

<https://www.parliament.nsw.gov.au/ladocs/submissions/79083/Submission%2018.pdf>.

<sup>2</sup> We note that the AER recently accepted a court enforceable undertaking by Trinity Place Investments Pty Ltd (Trinity) after it admitted to overcharging consumers for electricity by approximately \$34,000 between December 2019 and January 2023. The undertaking requires Trinity to refund affected customers, commit to no further overcharging, and improve its compliance systems and processes regarding energy pricing. See: <https://www.aer.gov.au/retail-markets/compliance-reporting/trinity-place-investments-pty-ltd-overcharging-of-embedded-network-electricity-consumers/>.

<sup>3</sup> See our joint submission to the Legislative Assembly Committee on Law and Safety Inquiry into Embedded Networks for NSW, which provided a suggested approach to licencing embedded networks:

<https://www.parliament.nsw.gov.au/ladocs/submissions/79083/Submission%2018.pdf>

- Requiring future EN service providers to submit an application to the AER that demonstrates a net customer benefit, before being permitted to register for a residential [and small business](#) related exemption; [and](#)
- Imposing new reporting obligations and strengthening conditions relating to consumer protections [on all current and future EN service providers with gradual opt in obligations for existing ENs](#); [and](#)
- No longer granting exemptions for certain supply arrangements, [especially where the benefit to consumers cannot be demonstrated](#).

We provide further information in response to the consultation questions and the options at **Attachment A**. We would be happy to discuss our submission with you. For further information please contact:

- Ausgrid: Naomi Wynn at [REDACTED];
- Endeavour Energy: Patrick Duffy at [REDACTED]; and
- Essential Energy: Anders Sangkuhl at A [REDACTED].

Yours sincerely,



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Emma Ringland  
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## Attachment A: Responses to questions in AER's issues paper

### Response to questions 1, 13, 14 & 15

#### **The evidence of harms caused by embedded networks should take precedence over other factors in the AER's review.**

The recent reviews into ENs<sup>4</sup> (as noted in Appendix B of the Review) and the AER's compliance actions<sup>5</sup> against ENs demonstrate the increasing evidence of harms to EN customers. These reviews provide numerous case studies and first-hand accounts of negative EN customer experiences, including information about pricing, safety and technical issues, and lack of consumer protections that are often reported in the media.<sup>6</sup>

It is, however, difficult to quantify the full extent of the price and service outcomes experienced by EN customers due to the lack of data on their size and performance. As noted by the NSW Parliamentary Inquiry:<sup>7</sup>

*There is limited visibility of embedded networks due to the lack of data available about how many exist and the number of customers they serve. Under the framework, some sites do not need to register their exemption with the AER, and operators do not need to report customer numbers. The AER raised that regulating smaller embedded networks, specifically those with less than 10 residential customers, could be burdensome for both the AER and those networks. Even so, this lack of data limits not only compliance and enforcement matters, but also the ability of regulators and advocacy groups to identify and therefore help these consumers.*

We therefore support recommendations to improve information gathering and reporting requirements for ENs, as a necessary step to be made in parallel with other regulatory reforms. This will enable the AER and other stakeholders to understand the impacts of any reforms and to inform future reviews and/or regulatory interventions. The need for other regulatory reforms has been well-established in both Australian Energy Market Commission (**AEMC**) and numerous jurisdictional reviews and inquiries. This demonstrates that EN customers are experiencing significant harms necessitating immediate reform.

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<sup>4</sup> Our businesses recently jointly produced a submission in response to the Legislative Assembly Committee on Law and Safety Inquiry into Embedded Networks for NSW. See:

<https://www.parliament.nsw.gov.au/ladocs/submissions/79083/Submission%2018.pdf/>.

<sup>5</sup> We note that the AER recently accepted a court enforceable undertaking by Trinity Place Investments Pty Ltd (Trinity) after it admitted to overcharging consumers for electricity by approximately \$34,000 between December 2019 and January 2023. The undertaking requires Trinity to refund affected customers, commit to no further overcharging, and improve its compliance systems and processes regarding energy pricing. See: <https://www.aer.gov.au/retail-markets/compliance-reporting/trinity-place-investments-pty-ltd-overcharging-of-embedded-network-electricity-consumers/>.

<sup>6</sup> <https://www.abc.net.au/news/2019-10-30/embedded-electricity-networks-energy-customers-paying-too-much/11653730>, <https://www.smh.com.au/national/nsw/minns-must-stop-this-energy-rort-before-development-binge-20231102-p5eh0u.html>, <https://www.theguardian.com/australia-news/2022/jun/19/the-prices-are-so-much-more-how-apartment-dwellers-get-locked-into-bad-power-deals>, <https://www.abc.net.au/news/2018-07-25/residents-in-apartments-slugged-thousands-to-change-power-supply/10029842>

<sup>7</sup> NSW Committee on Law and Safety, Embedded Networks in New South Wales Report 3/57, November 2022, p. 14

**Response to questions 2 and 3:**

**The review should consider not just how to proactively reform the exemptions framework, but also retroactively reform the framework to protect existing EN customers through a gradual grandfathering process.**

The number of ENs connected in NSW has grown significantly over the past 10 years. There are now approximately:<sup>8</sup>

- 1,000 ENs in Ausgrid's network with an additional 5-6 connecting each month;
- 400 ENs in Endeavour Energy's network, with an additional 7-8 new applications received each month on average; and
- 113 ENs in Essential Energy's network with an additional 2-3 new applications each month.

The existing regulatory framework for ENs was established at a time when there were relatively few ENs in NSW. However, as demonstrated above and noted in the Review, ENs are now proliferating in number and size, and are dominated by strata residential buildings, shopping centres and other large 'mixed use' developments.

By only applying the scope to the Review to new ENs, hundreds of thousands customers will remain impacted by the legacy framework. This necessitates a pathway for longer term reform for the industry to ensure that customers receive National Electricity Consumer Framework (**NECF**) protections and gradually improve their ability to comply over several years.

The *Security of Critical Infrastructure Act 2018* (Cth) (**SOCI Act**) is a good example of reforms that are gradually implemented over time. For example, the SOCI Act takes a tiered approach with organisations and currently does not impose security obligations on entities, and currently only requires entities to take 'active steps to manage their security'. Obligations are initially limited to reporting, with more proactive obligations applying overtime to enable entities to gradually improve their compliance. It also tiers entities by size and risk factors to commensurately apply obligations depending on the cyber security implications.<sup>9</sup>

**Response to questions 4, 5, 6 & 21:**

**The review should ensure ENs are being established where they provide a service of value to customers rather than responding to misaligned regulatory and/or pricing incentives.**

ENs are well suited in some limited circumstances where there is a single site with a few (less than 10) customers, managed by one party and/or it is not feasible to establish a physical connection point with each customer. EN's can also be well suited for phased developments where each phase might have fewer than ten customers but, cumulatively, represent a larger EN due to developer management. This model is effective in multi-phase sites where individual connections per customer are impractical, illustrating some flexibility beyond small, single-customer scenarios.

We note that ENs allow a developer/site owner to earn additional revenues through retail margins as EN customers cannot (or cannot as readily) access the competitive retail market. There are also three key tariff-based savings available to Embedded Network Operators:

- 1) Exploitation of the inherent inefficiencies of a 'postage stamp' pricing framework. This can be via fixed charge avoidance or arbitrage advantages of energy, demand and capacity price differentials between small and large customer tariffs;
- 2) Demand charges based on the diversified demand of all customers within the EN rather than undiversified demand of each individual customer within the embedded network; and
- 3) Netting of generation against aggregated load.

<sup>8</sup> While approximate figures have been provided below, the data challenges discussed above in relation to embedded networks remain relevant.

<sup>9</sup> <https://www.gtlaw.com.au/knowledge/curtain-falls-final-reforms-australias-critical-infrastructure-laws>

The growth in embedded networks may also be driven by the increasing commercial viability of hosting and aggregating on-site generation and storage to act as a virtual power plant (**VPP**) to off-site consumption and offer additional market services. Customers may value 'green communities' which embedded networks can offer as a valued service.

As noted above, with limited visibility and reporting on ENs, it is difficult to understand the drivers for their increasing size and frequency (beyond the ability to arbitrage network tariffs). However, we consider it important that ENs are established where they can provide a service at a lower cost than networks could (e.g., a caravan park, small-scale retirement village or shopping centre) and/or where they provide a service that is valued by customers (e.g., the tariff savings identified in items 2 and 3 above are passed through to customers).

If this growth is driven, in full or in part, due to benefits of exploiting mispricing and/or less onerous regulations (whether they be safety, technical, service quality or customer protection related) it will result in inefficient outcomes and not promote customers' interests. It is for this reason that both Ausgrid and Endeavour Energy have proposed the introduction of EN tariffs in their regulatory proposals for the 2024-29 regulatory control period. These EN tariffs seek to address the mispricing issue listed in item 1 above. The AER is to make a decision on these tariffs in their April 2024 final decisions for the 2024-29 regulatory control period.

We encourage the AER in this Review to further consider the extent to which the regulatory framework for embedded ENs is providing an appropriate incentive / signal to prospective EN operators. As noted above, we consider ENs will benefit customers where they are established due to competitive cost advantages and/or valued service offerings that can be shared with customers that are not derived from mispricing, poor service quality and/or lack of regulation.

#### **Response to questions 24 and 25:**

##### **NSW DNSPs support closing the NR2 registerable exemption class to future obligations (option 4).**

As noted by the Review, this exemption class is the highest growing class within the EN framework. NSW DNSP data above shows the exponential growth over recent years. We recommend that closing this class of exemption will enable the majority of prospective EN customers to receive the same protections as other residential customers in the National Electricity Market (**NEM**). We refer to the Victorian and South Australian Government reforms to limit EN growth in their jurisdictions and support a national approach to ensure customers do not have to become energy experts before buying a property or entering into a lease.

We support the proposition that all existing ENs should be licensed, similar to the NSW Government's framework for private water networks, where they are tiered, with compliance obligations applying commensurate with size.<sup>10</sup> We refer the AER to our joint submission to the Legislative Assembly Committee on Law and Safety Inquiry into Embedded Networks for NSW, which provided a suggested tiered licencing framework for ENs.<sup>11</sup>

#### **Response to questions 26,27, 28 & 29:**

##### **NSW DNSPs support the AER introducing mandatory performance reporting obligations for NR2 registerable exemption class ENs (option 5).**

As many ENs are effectively running an unregulated monopoly for network and retail functions for energy consumers, the application of commensurate and equivalent obligations as those imposed on registered retailers and DNSPs would result in a better outcome for energy consumers across the NEM.

We note that the AEMC came to a similar conclusion in its 2019 review, *Updating the regulatory frameworks for embedded networks*,<sup>12</sup> citing numerous challenges EN customers face with respect to

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<sup>10</sup> Licensing fees could be used by the AER to support associated reporting and compliance functions.

<sup>11</sup> <https://www.parliament.nsw.gov.au/ladocs/submissions/79083/Submission%2018.pdf>.

<sup>12</sup> <https://www.aemc.gov.au/market-reviews-advice/updates-regulatory-frameworks-embedded-networks/>.

pricing, access to competition, access to rebates and concessions, customer protections, billing, compliance, access to ombudsperson, reliability, connections and safety. As a result, the AEMC released a suite of NEL, NER and NERR rule changes in June 2019 to significantly increase the regulation of ENs. This included registration requirements, pricing and billing obligations, customer protections, connection services and market system integration.

As noted by the Review, these suggested reforms have not since been progressed by the Energy Ministers, despite the concerns continuing to persist and impacting ever-increasing numbers of customers. As a result, Victorian and South Australian jurisdictional regulators have implemented EN regulatory reforms and NSW is in the process of implementing pricing controls.

**Response to questions 30, 31 and 32:**

**Family violence obligations should be extended to EN customers, as well as all other NECF protections including guaranteed service level, life support and hardship obligations.**

When a new retailer enters the market, they must comply with all National Energy Retail Rules (**NERR**) obligations, regardless of the size of their customer base. The same principle should apply to new ENs entering the market to ensure that no matter where customers live in the NEM, the NECF applies. It is even more important because it is often more vulnerable and low income customers who reside in ENs, increasing the risk of harm to customers and, accordingly, the imperative for regulatory intervention.

We note the AEMC's 2019 review recommended all new embedded market customers be retailer customers, supplied by either an authorised on-market NEM retailer (i.e., subject to the full suite of customer protections) or an authorised off-market retailer. The AEMC proposed the latter be subject to almost all of the existing customer protections under the National Energy Retail Law and NERR along with the parent connection point retailer being assigned as the Retailer of Last Resort (**RoLR**) in the event of the failure of an off-market retailer.

Without adequate visibility of ENs within the broader network infrastructure, our capacity to fulfil regulatory obligations and uphold our obligations towards life support and other vulnerable customers becomes challenging. This visibility is crucial not only for compliance purposes but also for ensuring that the most at-risk individuals in our communities receive reliable and continuous power supply. The integration and oversight of ENs, therefore, become essential in safeguarding customers.

We recommend these obligations be mandatory for all new ENs, and gradually applied to existing ENs (similar to the earlier example regarding the SOCI Act). Extending family violence and NECF protections to EN customers is essential for fair and safe energy access. Applying these protections uniformly across new and existing ENs ensures consistent customer standards in the NEM. This approach guarantees equitable treatment for all consumers.

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