

30 January 2024

Mark Feather
General Manager, Policy
Australian Energy Regulator
GPO Box 3130
Canberra ACT 2601

Submission: Review of the AER exemptions framework for embedded networks

Dear Mr Feather,

Network Energy Services (NES) is responding to the request for written submissions on the Review of the AER exemptions framework for embedded networks.

About Network Energy Services (NES)

NES is the leading Embedded Network Manager (ENM) and utility services billing service provider for retirement villages (NR3/R3) and over 50's land lease residential communities (NR4/R4), assisting over 160 communities and in excess of 20,000 elderly consumers across Australia.

For the communities that our business assists, the Residents Association or community operator is the Exempt Seller. In the case of Residents Associations, they are the representative resident's committees who set rates for the residents within their village, and all the benefits from the operation of the embedded network are returned to the residents either directly via discounts on resident bills or benefits to the village budget.

NES is a service provider who assists Residents Associations and community operators with the operation of their embedded networks to ensure compliance to relevant embedded network, billing, and consumer regulations. The on-selling of energy is incidental to the core business of retirement villages and over 50s land lease communities (including caravan parks), however our clients maintain all control in relation to price setting and discounts to their residents as the owner and operator of their embedded network infrastructure.

NES feedback for consideration

NES welcomes the AER's review of the exemptions framework for embedded networks. Our clients operate within the NR3/R3 and NR4/R4 exemption categories for retirement villages and land lease communities (including caravan parks). Given the nature of our client's core businesses in retirement and over 50s living, the on-selling of energy is an incidental part of their business, and yet they have embraced improvements to consumer protections within embedded networks as introduced by the AER.

We consider it important that the AER is made aware that embedded networks can provide significant benefits to consumers in situations where the best interests of end-user consumers are placed at the forefront of decision making. Retirement villages and over 50s land lease communities have proven to provide a far greater level of interest and care for their residents in relation to the operation of their embedded networks compared to other exemption classes, particularly NR2/R2. Low income, elderly consumers living within these on-selling communities consistently receive competitively priced utilities, together with tailored customer service provisions for ageing consumers, while also reducing their common area costs.

For consumer led embedded networks, such as retirement villages who are the exempt sellers, the benefits from the operation of the embedded network are returned to consumers via cheaper electricity rates

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and/or via the community's operating budget or long-term maintenance fund – recognising that they need to maintain the electrical infrastructure within the embedded network.

Additionally, for land lease communities in New South Wales ('Reckless method') and Queensland (*Manufactured Homes Act*), the embedded network operator is unable to charge consumers any more for energy than what they are paying for at the parent meter. Consequently, these communities operate their on-selling activities at an overall loss (when factoring in administrative cost).

The highest growth sector, as identified in the draft paper, relates to residential apartment buildings (NR2/R2). It is fair to write that this has been the sector responsible for the majority of complaints that have occurred. One of the key reasons for this, is that there is an external third party who contracts the parent meter and then sells the energy. The sole focus of this third party embedded network business is buying and selling electricity, which is one of the reasons that licensed retailers are very prevalent in this space.

This is very different to a retirement village where the supply and on-selling of electricity is 'incidental' to their core business. This was the original intention for embedded networks, along with consumers being the primary beneficiary of the embedded network operation.

There is an argument that could be made that in situations where the selling of energy is not incidental to their core business, that the third party embedded network business selling the energy should in fact be licensed, and consumers within these situations should therefore have market facing meters.

In the recent Embedded Network Review in Victoria, after considerable consultation by the Victorian Government, their reforms focused on the problem sector which related to apartment buildings and residential estates (VR2) – whereby external embedded network companies or retailers were obtaining the rights to sell electricity to consumers (usually in arrangements with the developer over a long-term deal) and were then selling energy at rates of their choosing. The third party embedded network businesses have profited from the sale of energy within high-density residential apartment buildings, where there is considerable scale. This is the reason that there has been considerable growth in the NR2/R2 (and VR2) exemption category.

We therefore support the AER's view that high-density residential embedded networks (NR2/R2) should be the focus of the review; especially for embedded network operating models where:

1. The sale of energy is the primary business activity of the third-party embedded network business who is buying the energy, setting the rates, and billing consumers.
2. The sale of energy is not incidental to their core business.
3. There is insufficient consumer benefit, which tends to mean that the third-party embedded network business is the primary beneficiary of the embedded network operations.

One of the biggest gripes from retirement villages and land lease communities with the recent embedded network reviews across various jurisdictions is that they feel like they're collateral damage because the same regulatory burden has tended to be imposed on them as on NR2/R2. It is heartening in this paper, and also within the recent DELWP (VIC) review, that substantial investigation was undertaken to understand the different exemption categories, and in particular, the level of consumer benefit and care shown by exempt sellers to consumers in the various sectors.

We strongly support the recommendation that there should be a test for new NR2/R2 embedded networks to prove that there is significant consumer benefit in order for an exemption to be granted to a new apartment building. A process which is similar to an Individual Exemption is one option that could be considered. This will add increased work for the AER, however it is a thorough process whereby the consumer will be placed at the centre of assessment.

From an operational sense, the surest way to ensure that an operator is being held to account is to require that retailer / embedded network operator provide transparent reporting on the performance of the embedded network, which includes costs, revenue, and the profit that the retailer / embedded network

operators makes on the operation. This information should be declared to the Owners Corporation. The Owners Corporation is a representative body of owners, many of whom will be living in the building, and they will be the most enthusiastic party in ensuring that the consumer benefit is being realised.

If a consumer body, such as an Owners Corporation, is aware of the consumer obligations of the third party embedded network business then they will hold them to account. It also creates collaboration between the consumers and the operator, which ultimately is a good thing, and it also creates a positive relationship, rather than an *us vs them* mentality, which I suspect occurs in many R2 situations.

Since the consumer is at the heart of this review process, then empowering residents / consumers within their relationship with their third party embedded network business ultimately gives them more power. This approach would remove the obligation on the AER to police all situations which I suspect would become an impossible burden.

The big caveat on this is the practice of developers allowing third party embedded network businesses to install their own infrastructure (e.g. meters, hot water systems, solar systems etc.) within a building at no cost during the construction phase. There is a cost. The cost is that the Owners Corporation will need to buy out that third party embedded network businesses / retailer at a latter point in time. In the meantime, the third party embedded network businesses recover their upfront investment by setting whatever pricing they choose. Removing this practice will enable Owners Corporations to churn embedded network operators more easily which will ultimately be better for consumers. There is no free lunch. This practice of having a third party embedded network business installing their infrastructure in a building makes it incredibly difficult for Owners Corporations to extricate themselves from a bad relationship. This practice should be removed entirely.

With the multi-story retirement villages that we work with, the operators will purchase the entire infrastructure which ensures that that village / building is not locked into a third-party operator.

There are many retirement village and land lease embedded networks (NR3/R3 and NR4/R4) where the operation of the embedded network is entirely for the benefit of the community / consumers.

NES can advise that the embedded networks operated by its clients are paying rates that are well below the Default Market Offer (DMO) and Standing Offer Tariffs in their relevant distribution area, understanding that any surplus from the sale of energy is used to lower common area costs or for long term maintenance of their embedded network infrastructure.

Appendix A (provided to the AER in confidence only) outlines a sample of current community prices for the embedded networks NES provide services for in NECF states (excluding NR4/R4 sites which are representative of the average parent meter cost).

It is worth noting that where sites have large discounts compared to the DMO, they may do so as a result of one or more of the below circumstances:

- Larger embedded networks tend to have greater capacity to facilitate larger discounts
- Good raw energy supply contracts in place
- On-site renewals offsetting the need to draw power from the distribution network
- Solar and or battery within the embedded network

Conversely, smaller discounts offered may be due to a combination of factors also, including;

- Smaller embedded networks are often unable to facilitate larger discounts
- High raw energy supply contracts locked in during the height of the market volatility
- Community decision to reduce the monthly fees to live in the village rather than putting all the cost saving on the electricity bill. Whilst, the electricity discounts may not be as great, there are cost of living savings through reduced monthly maintenance fees.

Embedded networks also provide other benefits such as the ability to add or include on-site renewables and large scale batteries. Unfortunately, there can be some limiting factors with embracing renewables, including:

- Apartment buildings have limited roof space to add solar panels
- Ownership and responsibility for available potential roof space for solar installations; various embedded network sites may have different situations of roof space ownership to navigate.
- Australian Standard AS4777 limits an embedded network to a maximum of 30kW of solar being installed before network protection equipment is required to be fitted. While this can be accommodated for a new Greenfield embedded network, retrofitting network protection equipment across a broad acre retirement village or land lease community is both physically disruptive and cost prohibitive.

The paper indicates that some / many residential apartment embedded networks (NR2/R2) impose new connection charges (and other related fees that mirror distributor and/or retailer fees). It is worth noting that retirement villages and land lease communities (including caravan parks), do not impose any such fees in the sites that we are involved with. In addition, NES helps facilitate all relevant and available government concessions to eligible consumers in each state to assist concession card holders to claim eligible rebates.

We note that one of the greatest challenge embedded network customers face is being able to find a retailer willing to make an energy only offer. Retailers not making offers to consumers within embedded networks are a challenge that previous regulatory reforms have not been unable to resolve. NES acknowledges that due to varying embedded network operating models, it could be challenging to prove that benefits of energy selling are in some way being passed onto consumers, especially at the time of an exemption registration. Some ideas to assess whether the benefits are going to be passed onto consumers could include:

- Requiring transparent reporting to the Owners Corporation / Residents Association (as previous discussed)
- Identify the beneficiary(ies) of any surplus derived from selling energy
- Identifying whether energy on-selling is the primary business of the Exempt Seller
- Different rating for exemption categories (i.e. NR2/R2 versus NR3/R3)

There are many benefits that consumers in retirement villages and over 50s land lease communities receive, such as:

- Consistently low consumer electricity prices when compared to the market offers
- Benefits from the embedded network operation (i.e. low/avoided common area costs)
- Renewables that serve the whole community
- Access to green energy (purchased via parent meter and/or on site solar)
- No hidden fees or charges (i.e. no connection fees)
- Facilitation of relevant government concessions that are available to consumers in each state
- Access to tailored customer service, particularly for elderly consumers

It is important to note that NES is a billing services provider and accredited Embedded Network Manager, and is not an exempt seller of energy. Our business focuses on the NR3 and NR4 exemption class embedded networks, where on-selling energy is not their core business. Our customer support team specialises in supporting elderly consumers that are pensioners and those from low socio economic backgrounds. We would argue that the service that NES provides is more customised for elderly consumers, who can call our support line, and they will immediately talk to someone rather than having to deal with an automated service, which is difficult for a 90 year old.

Most of these NR3/NR4 embedded networks operate for the benefit of consumers within the community. We do not see the same type of problems within these exemption classes that have become increasingly commonplace across NR2 exemption class.

We note that the AER's review is primarily focused on the NR2 exemption class, and we support that view, since NR2 is the exemption class that has been the cause of the most disputes, and it is also the highest growth category. As such, NR2 should be exemption class that is in focus.

In Victoria, the DELWP review of embedded networks restricted new embedded networks in residential apartments by imposing additional green obligations and reporting. While the Victorian Government reserved the right to review these exemption classes in future, there was strong support to show that exempt sellers in VR3 and VR4 were passing on benefits to consumers.

Subsequent changes to the General Exemption Order (GEO) in 2022 by the Essential Services Commission in Victoria introduced annual reporting requirements for embedded networks. While this requirement has resulted in additional administrative burden and costs for exempt sellers, annual reporting could help ensure monitoring and compliance by the AER also.

The AER makes reference to family violence obligations that could be extended to exempt sellers. We have reservations about there being an obligation imposed on NR3 and NR4 exemption classes. Whilst this initiative is well intentioned, operators such as Caravan Parks are often managed by small administration teams. We would encourage that information and guidance be made available to exempt sellers in NR3 and NR4 so that they are aware of how to support consumers who are facing family violence. This could be done as a best practice measure rather than adding to the increasing regulatory burden.

Network Energy Services has been assisting community Exempt Sellers for over 20 years, and we welcome any queries relating to this submission.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'D. Arsenis', is written over a light blue rectangular background.

Damian Arsenis
General Manager
Network Energy Services

