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15 December 2017

Mr John Skinner
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By email: energy@planning.nsw.gov.au

Dear Mr Skinner

Submission to discussion paper: protecting consumers in a changing energy world

We refer to the above consultation and thank you for providing the opportunity to comment. The AER recognises the importance of the issues raised in the discussion paper, which is reflected in the significant ongoing work being carried out at the national level to assess the suitability of current regulatory frameworks to emerging energy sale and delivery models. We therefore consider the NSW Government's discussion paper timely in reviewing whether the NSW jurisdictional energy framework is fit for purpose as the energy market evolves.

Given their relevance to the issues raised in the discussion paper, this submission firstly outlines our positions on relevant national processes, including work being led by the AER. These positions have been informed by our regulation of exempt entities under the exemptions frameworks, which has necessarily evolved as new selling models have emerged. Secondly, we draw your attention to two specific areas on which the NSW Government may wish to focus when conducting their review into whether NSW energy frameworks are fit for purpose. These are:

- the interaction of jurisdictional legislation with national regulatory frameworks, and
- the safety and reliability of embedded network infrastructure.

We have identified these specific areas of focus through our experience administering retail and network exemptions under the National Energy Retail Law (Retail Law) and National Electricity Law (NEL).

Our positions on relevant national processes

As noted in the discussion paper, many of the issues raised are being considered at the national level. We have submitted into a number of these work programs and reviews, and provide an overview of our positions on each below.

- **COAG Energy Council Energy Market Transformation work program.** The COAG Energy Council is progressing a work program to consider appropriate policy and regulatory responses to addressing key issues in the energy market relating to new technology, innovation and market change.

Our submission on the regulatory implications of stand-alone systems in the electricity market¹ details our view that any regulatory framework for stand-alone systems should be fit for purpose, sufficiently flexible and should not duplicate existing legislation. We also draw on our experience regulating network service providers (NSPs) to comment on points relating to ownership models, reliability and services standards, and regulatory challenges.

Our submission on the regulatory implications of consumer protections for behind the meter electricity supply² details our principles-based approach in determining whether energy-specific protections should apply to this type of supply. In regulating new and emerging products and services to date, we have generally taken the view that where the energy supply is the customer's primary source, the customer should be entitled to the full suite of energy specific protections set out in the Retail Law. This may not be the case where the supply is supplementary.

- **AEMC review of regulatory arrangements for embedded networks.** Our submission into the consultation paper³ and draft report⁴ details our view that the current binary market entry (authorisations/exemptions) framework under the Retail Law is no longer fit for purpose. This is because it is unable to deal with the diversity and complexity of exempt selling arrangements, including selling in embedded networks. We consider the improvement of consumer protections, service quality and pricing in embedded networks is best achieved through the introduction of effective competition.

In addition to the views expressed above, we are leading the below relevant project:

- **Access to dispute resolution services for exempt customers.** We have worked collaboratively with the Australia and New Zealand Energy and Water Ombudsman Network to consider what changes need to be made to the regulation of exempt

¹ AER, Submission on stand-alone energy systems in the electricity market – consultation on regulatory implications, 4 October 2016,

<http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Australian%20Energy%20Regulator%20-%20Response%20to%20consultation%20on%20standalone%20systems.PDF>

² AER, Submission on consumer protections for behind the meter electricity supply – consultation on regulatory implications, 4 October 2016,

<http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Australian%20Energy%20Regulator%20-%20Response%20to%20consultation%20on%20behind%20the%20meter%20consumer%20protections.pdf>

³ AER, Submission on consultation paper: review of regulatory arrangements for embedded networks, 17 May 2017, <http://aemc.gov.au/getattachment/a70483e9-1a6e-4929-be1d-444143d3a160/Australian-Energy-Regulator.aspx>

⁴ AER, Submission on draft report: review of regulatory arrangements for embedded networks, 17 October 2017, <http://aemc.gov.au/getattachment/d4de4074-5dbe-4a43-809e-e0207ad4e114/AER.aspx>

sellers/exempt NSPs and scheme membership requirements respectively to improve exempt customer access to energy ombudsman schemes where it is required. Our considerations detailed in the issues paper⁵ are directly relevant to part 4 of the discussion paper, protecting small customers. Our position is to expand energy ombudsman access to residential exempt customers.

We are currently consulting on changes to the Retail Exempt Selling Guideline⁶ and Electricity NSP Registration Exemption Guideline (Network Exemption Guideline)⁷ to give effect to this change. The energy ombudsman schemes, including the Energy and Water Ombudsman NSW, are actively considering the corresponding changes required to their charters, constitutions or constituting legislation to allow exempt sellers to be participants in their schemes.

As noted in the discussion paper, we agree these processes are important and directly relevant to considerations on whether the consumer protection frameworks in NSW are meeting the changing needs to energy customers.

Interaction of jurisdictional legislation with national regulatory frameworks

We draw your attention to the existence of jurisdictional legislation that impacts and adds complexity to selling energy in embedded networks. While our comments here specifically address embedded networks, the NSW Government may find parallels in its consideration of NSW energy frameworks for regulating microgrids and other emerging models.

Aspects of the sale of energy in embedded networks may also be governed by jurisdictional legislation including tenancies legislation, body corporate legislation and caravan park and manufactured homes legislation, depending on what kind of embedded network operator (ENO) is involved. The overlap of legislative instruments creates confusion about ENO obligations, as well as potential inconsistencies. It also creates confusion over the potential jurisdiction of dispute resolution bodies around certain areas. The interaction of jurisdictional and industry-specific obligations with the Retail Guideline also dilutes and, in some instances, distorts the application of the Retail Law.

A specific example concerns the *Residential (Land Lease) Communities Act 2013 (NSW)*. Under this legislation, in order for a resident in a caravan park to claim an energy rebate, the park must be registered with NSW Fair Trading. A park may only be registered if they have residents that meet the definition of a 'permanent resident'—which is dependent on the number of days the resident occupies their site per year. This definition differs from the Retail Exempt Selling Guideline, where we refer to residents having to 'principally reside' at the park under the R4 exemption class. We are aware of instances where residents who do not have any other principal place of residence and who would otherwise be eligible for energy rebates are unable to claim them as they don't meet the definition of a permanent resident under the Act.

We are aware of other instances of legislative overlap which have the effect of detracting from the consumer protection framework governing embedded networks provided under the Retail Law. We consider it would be useful for the NSW Government to identify NSW-

⁵ AER issues paper, Access to dispute resolution services for exempt customers, June 2017, <https://www.aer.gov.au/system/files/AER%20issues%20paper%20-%20access%20to%20dispute%20resolution%20services%20for%20exempt%20customers%20-%20June%202017.pdf>

⁶ See consultation webpage, AER website, Draft Retail Exempt Selling Guideline, November 2017, <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/draft-retail-exempt-selling-guideline-november-2017>

⁷ See consultation webpage, AER website, Review of network service provider registration exemption guideline – 2017-18, <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/review-of-network-service-provider-registration-exemption-guideline-2017-18>

specific legislation affecting embedded networks and assess the impact these have on the national regulatory framework.

Safety and reliability of embedded network infrastructure

The Network Exemption Guideline⁸ and jurisdictional arrangements provide the safety requirements that govern embedded networks. We are aware of concerns from some embedded network customers about the safety of the embedded network infrastructure. These concerns have been detailed in SACOSS's report on emerging issues for exempt consumers.⁹ We consider that, while dependent on the resources and expertise of the ENO, in practice there is limited incentive for the ENO to maintain network infrastructure due to limitations on what they can charge to cover the costs of maintaining the network. This is particularly relevant in jurisdictions where some ENOs are limited by local legislation and cannot make a profit from on-selling energy. We consider it would be helpful for the NSW Government to review the extent of this issue and whether the safety requirements themselves or their implementation can be improved.

Conclusion

We hope our submission assists your assessment of whether NSW frameworks are fit for purpose and contributes to any improved outcomes for NSW energy customers that may result. If you require any further information or assistance, we would welcome the opportunity to discuss these matters further. If you have any queries regarding this submission, please call Sarah Proudfoot on 03 9290 6965.

Yours sincerely



Paula W. Conboy
Chair

⁸ The current Network Exemption Guideline can be accessed here: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/network-service-provider-registration-exemption-guideline-december-2016>

⁹ SACOSS, The retail and network exemption framework: emerging issues for consumers, December 2015, pp 57-58.