



Draft Decision

Electricity Network Service Provider Registration Exemption Guideline

October 2011

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1 Shortened Forms

ABN	Australian Business Number
ACN	Australian Company Number
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
ACCC	Australian Competition and Consumer Commission
ASIC	Australian Securities and Investments Commission
DLF	Distribution Loss Factor
Electricity Law	National Electricity Law
NEL	National Electricity Law
NER	National Electricity Rules
NMI	National Meter Identifier
NSP	Network Service Provider
Public Register	Public Register of Authorised Retailers and Exempt Sellers
Retail Law	National Energy Retail Law
Retail Rules	National Energy Retail Rules

2 Dictionary

body corporate means a controlling body of a scheme constituted under state or territory strata titles legislation, the members of which are lot owners (or their representatives), and includes an owners corporation but is not a body corporate for the purposes of the *Corporations Act 2001* (Cwlth).

commencement date means [a date to be specified: Day Month 2012].

customer means a consumer of electricity for primary industry, domestic, commercial or industrial use but does not include a wholesale market customer who is registered by AEMO as a Customer under Chapter 2 of the National Electricity Rules.

disconnect, disconnection of premises means in the case of electricity, the opening of a connection in order to prevent the flow of energy to the premises.

embedded network see private network.

energy means electricity.

energy Ombudsman scheme means a scheme associated with the energy Ombudsman for the relevant state or territory as prescribed in the National Energy Retail Regulations.

exempt network see private network.

large customer means a business customer who consumes energy at business premises at or above the upper consumption threshold, as defined by the relevant jurisdiction. If no threshold is defined, 100 megawatt hours per annum for electricity.

meter means any device (compliant with metrology requirements and Australian standards) that measures the quantity of energy passing through it or records the consumption of energy at the customer's premises.

off-market energy generation means an energy generation option not required to be registered with AEMO under clause 2.5.2 of the NER and applicable AEMO guidelines.

Note: The category includes — but is not limited to — small scale diesel, petrol, bio-fuel, gas (including coal-seam and other methane sources), fuel cells, thermal-electric, geothermal, solar (including photovoltaic), wind or hydro generation and cogeneration and tri-generation installations.

on-market energy generation means an energy generation option required to be registered with AEMO under clause 2.5.2 of the NER and applicable AEMO guidelines. This category includes the four AEMO registration categories of scheduled generation, non-scheduled generation, market generation and non-market generation.

Note: The category includes — but is not limited to — small scale diesel, petrol, bio-fuel, gas (including coal-seam and other methane sources), fuel cells, thermal-electric, geothermal, solar (including photovoltaic), wind or hydro generation and cogeneration and tri-generation installations.

onselling means an arrangement where a person acquires energy from a retailer following which the person acquiring the energy or a person acting on their behalf sells energy for use within the limits of premises owned, occupied or operated by the person.

private network means any network connected to the National Electricity Market, or an islanded network subject to regulation under the National Electricity Rules, supplying electrical energy to a third party, but not a transmission or distribution network registered with AEMO.

residential customer means a customer who purchases energy principally for personal, household or domestic use at premises.

retailer means a person who is the holder of a retailer authorisation for the purposes of section 88 of the Retail Law.

small customer means a customer—

1. who is a residential customer, or
2. who is a business customer who consumes energy at business premises below the upper consumption threshold, as defined by the relevant jurisdiction. If no threshold is defined, 100 megawatt hours per annum for electricity.

3 Introduction

The Australian Energy Regulator (AER) is responsible for the economic regulation of electricity networks in the national electricity market (NEM). The AER is an independent statutory authority that is part of the Australian Competition and Consumer Commission. It was formed under Part IIIAA of the *Trade Practices Act 1974* (renamed the *Competition and Consumer Act 2010* on 1 January 2011).

Under the National Electricity Rules (NER), any party that engages in an electricity transmission or distribution activity must either be registered with the Australian Energy Market Operator (AEMO) as a network service provider (NSP) or gain an exemption from the requirement to be a registered NSP from the AER. To assist applicants who may seek an exemption, the NER provides that the AER can issue a guideline setting out the requirements to gain an exemption. The AER inherited the guidelines for NSP exemptions from the National Electricity Code Administrator in the transfer of functions when the AER formed in 2005. The guidelines have not been updated since.

When adopted, the AER's draft NSP Registration Exemption Guideline (network Guideline) will provide eligible classes of electricity transmission or distribution activity with an exemption from the obligation to be registered as an NSP with AEMO.

The types of networks (known as private networks in this guideline) that are typically covered by the network Guideline include situations where electricity supply is incidental to the main purpose of a business, such as networks within caravan parks, apartments, industrial parks and shopping centres. The granting of an exemption can relieve an affected party of the requirement to comply with the technical requirements set out in Chapter 5 of the NER, and the obligation to provide other network suppliers and other registered participants in the NEM with access to its network.

In June 2011, the AER released a consultation paper and draft network Guideline for preliminary consultation. The AER received 23 submissions in response to the draft proposal. This paper examines those submissions and sets out the AER's response to the issues raised and discusses the amendments made to the proposed network Guideline. The alignment of this guideline with the AER's Exempt Selling Guideline's classes of exemption has been further refined.

The network Guideline is intended to provide affected parties with clarity and certainty in the requirements for exemption. The purpose of the proposed network Guideline is to define the situations where an exemption is deemed, where an exemption must be registered and where an exemption application is required.

This draft decision and the attached draft network Guideline address the issues raised in submissions to the first consultation paper and represent the second (and final) round of consultation. When adopted, compliance with the network Guideline will be obligatory for all affected parties.

Further comments are invited before the AER makes a final decision which will be implemented by 1 July 2012 when the closely related exempt selling framework is expected to commence operation under the National Retail Law.

4 Public consultation process

4.1 Consultation process to date

In June 2011, the AER released a draft network Guideline and accompanying consultation paper in conjunction with the release of the draft Exempt Selling Guideline. While the consultation for each guideline takes place under a different legislative framework, the AER decided to align these processes to recognise that there are a number of synergies in the application of both guidelines to networks and to retail on-selling. The AER invited comments on the network Guideline and consultation paper by 12 August 2011.

On 27 July 2011, the AER held a public forum for relevant stakeholders to discuss network registration exemptions and retail exemptions. The AER received 23 submissions from stakeholders in response to the consultation paper.

4.2 How to make a submission

This draft decision and the attached draft network Guideline have been published in accordance with the consultation procedure set out under clause 2.5.1(e) of the National Electricity Rules (NER).

The AER invites comments on this draft decision and draft network Guideline. Responses to this consultation will inform the development of the final guideline.

Written submissions on this draft decision and draft network Guideline are invited by 11 November 2011. Electronic submissions should be sent to: AERInquiry@aer.gov.au with the subject line 'Submission to network exemption guideline' or by mail to:

General Manager
Network Operations and Development Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

PLEASE NOTE:

The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will therefore be treated as public documents unless otherwise requested, and will be placed on the AER's website (www.aer.gov.au).

Parties wishing to submit confidential information are asked to:

- clearly identify the information that is subject of the confidentiality claim
- provide a non-confidential version of the submission for publication, in addition to the confidential one

The AER does not generally accept blanket claims for confidentiality over the entirety of the information provided. Such claims should not be made unless all information is truly regarded as confidential. The identified information should genuinely be of a confidential nature and not otherwise publicly available. In addition to this, parties must identify the specific documents or relevant parts of those documents which contain confidential information. The AER does not accept documents or parts of documents which are redacted or ‘blacked out’.

For further information regarding the AER’s use and disclosure of information provided to it, please refer to the *ACCC–AER information policy: the collection, use and disclosure of information*, which is available on the AER website under ‘Publications’.

4.3 Next steps

In accordance with the consultation procedures set out under clause 2.5.1(e) of the NER, the AER anticipates finalising the network Guideline by February 2011.

5 Overview

5.1 Regulatory requirements for network service providers

Section 11(2) of the National Electricity Law (NEL) and clause 2.5.1(a) of the NER state that a party ‘must not own, control or operate a transmission or distribution system that forms part of the interconnected transmission and distribution system unless the person is registered as an NSP, or has gained exemption from the registration requirement.’

Under the NER, the AER is responsible for issuing and revoking NSP exemptions to eligible classes of NSPs in the NEM jurisdictions. Clause 2.5.1(d) of the NER provides that, in accordance with the guidelines issued by the AER, the AER may exempt any person or class of persons who are required to register as an NSP from the registration requirement, or from compliance with the technical standards set out in Chapter 5 of the NER, subject to conditions the AER deems appropriate.

5.2 Purpose of the network Guideline

The AER recognises that there are many situations where there is no practical purpose served in applying the full requirements of the NEL and NER to private networks. Under clause 2.5.1(d) of the NER, the AER is responsible for administering exemptions from the full registration requirements for private networks.

The purpose of this guideline is to define the situations where an exemption is deemed to exist, where an exemption may be registered in a simplified form and where an application for individual exemption is required. All NSP exemptions are subject to conditions which must be observed to avoid the risk of penalties being applied.

The AER’s network Guideline does not apply to gas transmission or distribution.

5.3 Objectives of the AER’s network Guideline

The first objective of the network Guideline is to provide administrative certainty to private network owners and operators and service providers to private networks as to the classes of deemed and registrable activities, the associated conditions and the process for seeking an individual exemption when it is required.

A further objective of the network Guideline is to ensure that where onselling is involved, the classes of exemption align with the Exempt Selling Guideline’s classes of exemption to minimise the risk of regulatory inconsistency and uncertainty.

The third objective is to ensure the regulation of private networks is proportional to the differing needs of residential customers, small customers and large customers respectively.

In applying these objectives the AER has adopted a principle that the highest order of regulatory oversight should relate to situations where the bargaining power of affected customers is weakest. Conversely, where well informed parties with adequate bargaining power and access to independent advice are involved, regulatory oversight may be reduced.

5.4 Distinction between the AER's retail and network guidelines

In addition to the AER's role in regulating network exemptions, the AER is taking on a new role to regulate retail exemptions. Under the National Energy Retail Law (Retail Law) and National Energy Retail Rules (Retail Rules), the sale of energy to customers requires a person to hold a retailer authorisation, or have an exemption from the requirement. The AER's Exempt Selling Guideline sets out the new national framework for retail onselling exemptions. The AER's Exempt Selling Guideline is available on the AER's website at, <http://www.aer.gov.au/content/index.phtml/itemId/737837>.

A person seeking to transmit, distribute and sell **electricity** within a private network will need to be covered by either a deemed or registrable exemption from the AER for both their transmission/distribution network activity and their retailing activity.

Generally, where an exemption applies to a network it will also apply with respect to onselling. There are exceptions to this rule and several classes are applicable to network exemptions alone. The AER has developed some new network specific classes of exemption based on the network exemptions sought from the AER.

As this draft Guideline is issued under the National Electricity Law it does not apply to gas distribution or transmission.

6 AER response to submissions

Attached to this paper at attachment A is a list of submissions and a detailed summary of the issues raised is available as an Appendix. This section notes the matters raised in response to the questions asked in the June 2011 Consultation Paper and sets out the AER response. In sections 6 and 7 the changes made to the AER's draft network Guideline are explained.

AER questions and responses

Q1. Do stakeholders support the AER's decision to align the classes of exemption in the network Guideline with the Exempt Selling Guideline?

Submissions

Most stakeholders supported the AER's decision to align the classes of exemption in the network Guideline with the Exempt Selling Guideline but Endeavour Energy did not, submitting that the AER should adopt an approach to each guideline based on their individual jurisdictional regulatory requirements. Seed Advisory submitted that clarification is required in the network Guideline about the alignment where different parties may be involved in both onselling and operating an exempt network.

AER consideration

The AER considers national consistency is important going forward. Equally, the AER is concerned to synchronise the retail onselling and related network exemption classes to minimise the risk of inconsistency. The AER's approach will encompass the jurisdictional specific needs of Queensland. The safety and technical regulatory framework of each jurisdiction is not altered by this guideline. In fact, this guideline relies on those frameworks continuing. The AER is satisfied that the approach should continue.

The AER has separated the tables describing the various classes of activity eligible for exemption into two broad categories — retail on-selling and network activities — to improve the distinction between these activities. This should address the concern raised by Seed Advisory.

Q2. Are the classes of exemption clear and easily interpreted?

Submissions

Some stakeholders believe that some classes of exemption should be clarified.

SP AusNet suggested that Class NDO1 (deemed exemption, off-market generation) should be made clearer whilst Active Utilities submitted that there should be a clear reference to the rights, under the exemption, of an agent who holds a relationship with the exemption holder.

AER consideration

Additional text has been added to clarify the classes of exemption and new classes have been added. The Guideline has been amended to clarify that a deemed exemption will apply to a network owner, network operator and any party or agent of the owner or operator who has control of the network.

Q3. Are there any other network situations that stakeholders consider would warrant a separate exemption category?

Submissions

Several stakeholders comment that there are other network situations not covered by the classes of exemption, such as:

- i. shared sites serving the broadcast and communications industry;
- ii. developments meeting the characteristics of a project offering decentralised energy;
- iii. gas embedded networks;
- iv. a situation whereby a domestic/commercial customer contracts for the sale of the output of a small generator with an authorised retailer different from the retailer from which the customer is purchasing normal energy;
- v. transfers of individual exemptions to another party.

AER consideration

In response to these numbered points, the AER considers that:

- i. A separate class of network exemption should apply to the broadcast and communications industry. This has been inserted into the draft network Guideline as class NDO2. Note however, that the associated onselling activity must also conform to the Exempt Selling Guideline requirements.
- ii. It is not clear to the AER that a project offering decentralised energy would not be captured by the exemptions available in NDO1, NRO1 and NRO2.
- iii. The network Guideline is issued under the National Electricity Law and therefore cannot encompass gas embedded networks.
- iv. This is an on-selling issue and consequently falls outside the scope of the network Guideline.
- v. Network exemptions are not transferrable; however, the AER will include transitional arrangements in the network Guideline.

A new class of deemed exemption (NDO5) is included for electric traction services. The AER has received a number of applications for exemption from users of electrified rail networks. These applications concern the operation of a mix of government owned and privately owned and operated freight and/or passenger vehicles on a mix of government and privately owned networks. These arrangements arise from a rigorously controlled transport environment and are subject to elaborate commercial agreements. The need for exemption is clearly peripheral to the core business activity and no risk is likely to arise of an abuse of market power in these situations. A rail operator could substitute a diesel engine rather than an electric traction engine if agreement is not reached on the supply arrangements. Consequently, the AER sees no obvious need for a continuing role in regulating these network situations.

Two additional classes have been identified by the AER: NRO3 – mining and primary production and NRO4 – for industrial, commercial and ‘mixed-use’ facilities. The first new class is NRO3 for ongoing supply to major mining or primary production projects in remote areas and for services to the associated support communities. The class is framed to permit supply to other unrelated activities on a cost recovery basis but does not require they be served. This activity does not sit clearly in any existing or planned exemption category — a new class is proposed. Over time the AER has received a number of applications which relate to major mining projects. The conditions proposed are informed by the AER’s experience of responding to such applications. The AER has found that the network issues in relation to such projects are generally small compared to the broader jurisdictional planning and environmental considerations. Large mining projects have strong incentives to act as a good corporate citizen and develop and maintain strong relationships with the network service providers to whom they connect.

Another new class — NRO4 — is proposed for industrial, commercial and ‘mixed-use’ facilities not including energy generation activity and any activity listed in table 3. A law firm acting for a data centre recently approached the AER. The firm has identified a gap can exist between proposed classes NR1 and NR5 because of the differing descriptions of the applicable party. Class NRO4 closes that gap and ensures that facilities serving a mix of small and large commercial customers do not need to make an application for individual exemption. This is both costly to the firm and is not a good use of AER resources as the application is unlikely to be refused if the terms specified in class NRO4 are to be observed.

4. Do stakeholders agree that the general conditions are appropriate for exempt networks?

Submissions

EWON and Active Utilities believe the general conditions are appropriate for exempt networks. However, Ausgrid has extensive comments on metering and safety conditions, while SP AusNet believes the conditions are not appropriate in the case where the exempt NSP and exempt on-seller are different parties. United Energy does not support the approach that deemed exempt networks do not need to comply with AEMO and NEM requirements.

AER consideration

The scope of changes sought by a number of DNSPs sought to strengthen the framework for a private network to a level equivalent to a NEM registered distributor. As such, the AER considers this is outside the scope of the network Guideline. Policy makers have determined that private networks can exist and that onselling within private networks is permitted. Each jurisdiction maintains some form of industry Code for distribution services. If jurisdictional policy makers had intended that these Codes should apply within private networks the AER considers that they would have acted to do so before now.

5. Do stakeholders consider any further conditions be included in the general conditions for exempt networks?

Submissions

Ausgrid believes further conditions (related to metering and safety) should be included in the general conditions for exempt networks.

SP AusNet contends further conditions should be included to cover the full range and level of services the exempt NSP must provide, including:

- fault response
- maintenance of voltage levels
- new connections
- responsibility for life support customers
- meter reading arrangements
- smart meter services

Further, SP AusNet argues the general conditions should also address the exempt NSP's interface with the local NSP/DNSP.

AER consideration

The AER believes that existing conditions relating to metering and safety are adequate. Existing jurisdictional frameworks continue to apply to safety matters. Voltage drop is a matter addressed in Australian design standards. Where access to full retail competition is required for particular customers the metering arrangements are required to meet AEMO requirements. However, the AER has recognised that the obligation to pass on information to the local DNSP that a life support situation exists within a network should apply to all private networks.

Q.6. & 7. Do stakeholders consider the criteria for revocation are appropriate for exempt networks? Do stakeholders consider the proposed process (for revocation) fair and reasonable?

Submissions

Ausgrid and Active Utilities believe the criteria for revocation of an exemption are appropriate while AGL considers the lack of a public register for all exempt networks will make it difficult for the AER to monitor or revoke network exemptions. Origin

submitted that “material failure” should be amended to simply “failure”. AGL, SP AusNet and CitiPower think the Guideline should address what will happen to the customers of a revoked exempt network. Similarly, United Energy and VicUrban further argue that, in the event that an exemption is revoked, the maintenance of supply should be addressed.

AER consideration

The AER’s view is that it is necessary to strike a balance between practicality and comprehensive compliance. The AER is seeking to maintain consistency with the Exempt Selling Guideline which explicitly allows deemed exemptions in limited circumstances. The AER considers the registration requirements it proposes are consistent with this approach.

The AER agrees with Origin that “material failure” should be amended to a “failure”.

The AER has amended the network Guideline to expand on what will happen to customers of a private network when an exemption is revoked. The AER agrees that it is harsh on customers to be left with uncertainty regarding whether they will continue to receive supply due to the actions of another party. The AER will, therefore, be open to considering suitable transition arrangements to maintain supply to the customers of a network when an exemption is revoked. The AER trusts that these situations will be rare events, but, where a private network is found to be operating inappropriately the AER will not hesitate to enforce the terms of the applicable exemption.

Q.8. The AER considers common standards for the accuracy of metering will benefit consumers. Do stakeholders agree with this approach?

Submissions

Most stakeholders support the network Guideline’s approach to metering standards but Active Utilities argues that requiring a registered meter provider as the only option in installing meters will add to costs to consumers such as in retirement villages.

AER consideration

A private network operator will only be required to appoint an accredited metering service provider where customers have access to full retail competition. These requirements are directly related to customers receiving supply from a NEM registered retailer, not from the private network supplier. Customers receiving supply from a registered retailer are settled through the market settlement system operated by AEMO. The requirements of AEMO for accurate data are well defined in its published metrology procedures and the AER sees no scope to vary this requirement.

Q.9. The AER considers that electricity should not be treated to any other service or product with regard to metering. Do stakeholders agree with this approach?

Submissions

None of the submitters objected to the AER's approach to individual metering conditions.

Q.10. The observance of safety standards is essential for consumers to have confidence in exempt networks. Do stakeholders consider the AER's condition will achieve this objective?

Submissions

On conditions for safety standards, Ausgrid extensively discussed that the network Guideline should:

- clarify the conditions in light of jurisdictional regulation (i.e. in NSW)
- clarify the authority of the AER versus the Director-General of the NSW Department of Trade and Investment, Regional Infrastructure and Services (under the *Electricity Supply (Safety and Network Management) Regulation 2008* (NSW))
- clarify the classification of embedded networks under the *Electricity (Consumer Safety) Act 2004* (NSW) which refers to “electrical installations”
- clarify the respective obligations of the embedded network and the DNSP in regard to disconnection, or refusal to connect, due to safety issues
- clarify which industry code or guideline would cover exempt or embedded networks in NSW in light of the NSW Service and Installation Rules and the *Electricity (Consumer Safety) Act 2004* (NSW)
- clarify how the AER can enforce the conditions on safety
- clarify the obligations of exempt networks in regard to inspecting electrical installations

United Energy and CitiPower also comment that the AER should work with the jurisdictions to clarify safety and technical conditions. SP AusNet made similar comments.

AER consideration

Jurisdictional regulations apply to private networks under Jurisdictional legislation. The NER and the proposed network Guideline do not alter that fact. As noted earlier, this Guideline relies on that framework continuing. The relevant jurisdictional technical safety bodies will continue to have authority. The draft Guideline has been amended to expand on this aspect.

The rationale behind incorporating a reference to safety standards in the AER's conditions for exemption is to emphasise that safety is paramount and that jurisdictional safety requirements will continue to apply regardless of whether a private network is exempt or not.

The AER notes that in some jurisdictions some matters such as the existence of ‘Service and Installation Rules’ are not backed by Jurisdictional legislation nor by regulations. Rather, these are working guidelines of the network companies. As such, there is no legal authority to enforce the application of these Codes on private networks. In any event, even if the AER has sufficient power to do so, before the AER could consider whether to impose design restrictions on private networks as a condition of exemption it would be necessary for the AER to undertake a regulatory impact assessment. That is a process outside the scope of this consultation and the conduct of such a process would severely delay the implementation of this guideline.

Q.11. As regulatory gaps can arise when related activities are authorised under different legislation the AER considers that this cross-over condition will minimise the prospect of a gap arising in the retail onselling framework. Do stakeholders consider the AER’s condition will be sufficient for this purpose?

Submissions

None of the submitters objected to separate exemption applications for the network and for retail onselling.

Q.12. Do stakeholders have any suggestions which would improve this condition?

Submissions

In regard to dispute resolution procedures, all stakeholders support this condition being imposed on exempt networks. However, AGL and Origin submit that dispute resolution should be funded by the exempt networks and not cross-subsidised by authorised networks and retailers. Active Utilities submits that the Guideline should specify the minimum standard for dispute resolution and that a printed reference document should be handed out to the exempt network’s customers.

Jemena, CitiPower and VicUrban sought further guidance and clarification on how an embedded network can operate dispute resolution procedures and whether these need to be approved by the AER.

AER consideration

The AER does not require that private networks be subject to Ombudsman schemes. Rather, it only recognises that such schemes represent the state of the art for dispute resolution in the energy sector. Therefore, were an Ombudsman to accept private network issues for consideration, the AER would be satisfied that the dispute resolution arrangements were appropriate. The AER agrees in principle with AGL and Origin but notes that the fee structure of the Ombudsman scheme is not administered by the AER. Therefore, the access of private networks to Ombudsman schemes and the incidence of fees are outside the scope of this consultation. It is a matter that needs to be resolved in each jurisdiction. Where access to an Ombudsman scheme is not available the AER expects the alternatives provided by the private operator to meet the characteristics specified in the network Guideline.

Q.13. Do stakeholders consider aggregation should be permitted in exempt networks? If so, why? Or why not?

Submissions

Stakeholders consider that aggregation should be permitted in exempt networks, with some qualifications. Origin submits that embedded private networks should not be allowed in their onselling arrangements to be a licensed retailer across multiple embedded network sites; within a single network, Origin, Network Energy Services and WIN Energy all consider aggregation acceptable. Ausgrid thinks the Guideline should also provide for disaggregation (aside from aggregation). United Energy and CitiPower question whether this condition should be included, as aggregate billing should be a matter between the exempt customer and the onseller. AEMO sought clarification of the scope of aggregation across multiple sites.

AER consideration

The rationale behind the inclusion of this clarification is to remove any doubt that aggregate billing is permitted where it is sought by the customer and the onseller, both of whom are private entities operating within one or more private networks. Were the AER to delete this statement from the guideline the arrangement would remain permissible. Aggregate billing is not a requirement of the network Guideline and continues to be a matter to be negotiated between the customer and the onseller. Whether aggregation can be achieved or not will remain contingent on the metering arrangements being suitable and the will existing to implement aggregation. This permission does not mean that AEMO or any other NEM participant is required to modify their systems to give effect to what is, after all, a private settlement arrangement.

It is unclear to the AER what is meant by ‘disaggregation’ and why this should be specifically provided for in the network Guideline. Further consultation may clarify this point.

Q.14. Do stakeholders consider the proposed registration arrangements are clear and the information requirements to be sufficient?

Submissions

In regard to registration arrangements and information requirements AGL, Ergon Energy, Origin Energy and SP AusNet express concern with the absence of a requirement for a Public Register of all exempt networks. They argue that this would likely lead to the following:

- a lack of market transparency (on types and number of networks)
- inability of the AER to monitor exempt networks and enforce their compliance with the Guideline
- ownership/control of exempt networks can be changed without the knowledge of the AER
- lack of the exempt network owner’s awareness of their ongoing responsibilities

- small exempt networks, without visibility and surveillance, are likely to take regulatory shortcuts

Stakeholders believe an online process for networks to register and periodically update their information would not be a burdensome regulatory requirement.

United Energy and CitiPower consider that the proposed registration arrangements should be made clearer, and that deemed exempt networks should register details with the AER.

AER consideration

When formulating the Exempt Selling Guideline, it was the intent of policymakers to draw a boundary with respect to when registration is, or is not, required. In aligning with the Exempt Selling Guideline, the AER is seeking to respect the intent of policymakers as reflected in the Retail Law.

Q.15. Do stakeholders agree with the AER's metering conditions for exempt networks?

Submissions

AEMO, Origin, Active Utilities, Energy Response and SP AusNet agree with the metering conditions, but Ausgrid and SP AusNet gave several comments.

Ausgrid submits that:

- it agrees with individual metering
- the Guideline should be clearer about the metering obligations and non-obligations of transmission networks and local NSPs
- the Guideline should be aligned with the requirements of current regulatory arrangements such as the NER, AEMO and the National Measurement Act

SP AusNet submits that:

- the Guideline should be aligned with the requirements of current regulatory arrangements such as the National Measurement Act, the Victorian Service and Installation Rules, and the AEMO Embedded Network Guideline.

CitiPower believes that metering requirements should not be limited to new installations but should be required for all networks. Both Ausgrid and SP AusNet submit that the Guideline should address the case of small generators installed on an embedded network.

AER consideration

The AER has amended the draft Guideline to further clarify the metering obligations of transmission networks and local NSPs. The drafting has been amended slightly to clarify that the metering obligations are subject to the National Measurement Act which is administered by the National Measurement Institute. The AER is otherwise of the view that the network Guideline is aligned with the requirements of current

regulatory arrangements. The role of Jurisdictional requirements was discussed in response to Q.5 and the same consideration applies here.

The June 2011 draft Guideline proposed to grandfather existing metering situations. Some of the comments received opposed this approach. The AER notes that requiring metering changes in all existing networks may be a costly and impractical situation in many buildings and may not be in the best interests of small consumers. In the absence of cost-benefit analysis to demonstrate a benefit from changing this position the AER believes the draft proposal should stand. However, the AER agrees with SP AusNet that the grandfathering should be linked to the terms of a decision yet to be made by the National Measurement Institute.

The AER is of the view that the network Guideline addresses the case of small generators installed on a private network.

Q.16. Do stakeholders consider the conditions that are applicable to energy generation appropriate?

Submissions

Energy Response disagrees with the condition that off-market energy generation should be metered. Network Energy Services raises metering and other equity issues with access to solar PV premium feed-in tariffs.

AER consideration

The AER must apply the requirements of the NEM to all connected private networks at the point of connection. Many small generators, notably solar PV systems, exist which are connected to household networks. These are metered at the switchboard by an export meter or by a bi-directional meter. The AER considers that this is the minimum standard that must apply to any private network. The drafting has been amended to clarify the intention to permit simplified metering for smaller generator installations.

The AER notes that the access issue for solar PV installations is beyond the scope of this guideline. Wording has been added to the draft Guideline to forewarn that installations within a private network may not have access to such schemes.

Q.17. Do stakeholders have any comments on electric vehicles or electric charging stations, and the conditions to be applied to them?

Submissions

AGL, Origin, Ausgrid and CitiPower submitted that electric vehicles or electric charging stations should not be included in the network Guideline, or should not have a separate class of exemption.

AGL submitted that it is not convinced that it would be appropriate to have electric vehicle charging stations connected within an existing network captured as part of the exempt network regime.

Origin considers that the service of recharging batteries is not a function of the National Electricity Market and therefore should not be covered in the guideline.

Ausgrid queries how this class of exemption would work and whether a separate category for electric vehicles is warranted. Ausgrid questions whether electric vehicles should be treated as any other load connected to an embedded network.

CitiPower submits that electric vehicle charging stations that have downstream metering should be treated in the same manner as child metering installations within embedded networks.

AER consideration

The AER believes it is appropriate to include a class of exemption for electric vehicle charging stations. Recently the AER was approached by a distributor to seek clarification of the status of a private network in which the DNSP was installing a trial installation. This demonstrates that without a specific exemption class, DNSPs and others involved in trials may be frustrated by the lack of a suitable exemption class and exposed to unnecessary regulation. Where a charging facility connects to a DNSP it is an ordinary load and therefore falls outside the guideline. However, in carparks, shopping centres and hotels it may be cheaper for the charger to be installed as a load within the private network. This is what is intended to be permitted under the Guideline. Even if the category did not exist it is probable the activity would fall under another exemption class dealing with onselling to small or large customers. This class removes all doubt.

Q.18. Do stakeholders consider the AER's approach to the application of distribution loss factors to exempt networks to be appropriate?

Submissions

All stakeholders support the AER approach to the application of DLFs; however, Ausgrid and SP AusNet submit that the Guideline should be clearer about:

- the NER requirement on embedded networks relating to parent and child meters
- the Guideline's inconsistency with the structure of DLFs in SP AusNet and other Victorian networks

AER consideration

The AER is of the view that the NER requirement on private networks relating to parent and child meters should be as set out in the amended network Guideline. The AER's intention is that DLFs apply within a private network in the same manner as they would if the local DNSP were serving the private network. It is intended that the network Guideline should be consistent with the structure of DLFs in DNSP networks. The AER has considered whether private network operators should calculate annual DLFs within private networks but has determined that the cost of doing so is generally not warranted. DLFs must be calculated in accordance with a suitable methodology and approved by the AER. The AER expects that a DLF

methodology for private networks would reflect this condition. It is rarely the case that individual meters have a site specific loss factor. However, the network Guideline would enable even those situations in private networks to qualify for a site specific loss factor.

Q.19. Do stakeholders have any comments in relation to the AER's approach to external and internal network charges?

Submissions

Active Utilities disagrees with the Guideline's provision that internal network charges are disallowed or discouraged, because embedded networks have legitimate costs to recover. Active Utilities suggests a change to Charge Group B.

CitiPower also questions why internal network charges should be disallowed. Submissions from Colonial First State, Network Energy Services the Shopping Centre Council and WIN Energy all raised issues with the difficulty in apportioning external network charges if the draft provision is interpreted narrowly. A repeated theme was the AER should consider allowing shadow pricing as an option to address this issue.

AER consideration

It was not intended that the draft provision on external network charges be read narrowly but the AER acknowledges that the drafting should be clarified to address this outcome. Additional text has been added to recognise that a precise pass through of external network charges is difficult. An alternative as suggested by a number of submissions was that 'shadow pricing' — whereby the customer is exposed to a charge no greater than the charge which would have been levied were they directly connected to the local DNSP — has been adopted. The AER understands that this approach has been in general use in a number of jurisdictions to address the identified difficulty.

Private networks are implicitly able to accept new connections on a full cost recovery basis but may not make a return on past investment by way of a 'tariff' without an express determination of the AER.

The provision of network services is regulated because customers connected to the network may have no other choice than to pay a charge, no matter how fair or unfair that charge may be if levied by a private party. Where no add-on charges are levied the AER has no need to review the charge. This is the basis of Charge Group B.

But where a charge is to be made, then the AER must determine what, if any, charge should apply. It would need to be satisfied that the charge results in an efficient price outcome for the affected consumer and this involves a substantial investigation and consultation process. What a network proprietor views as 'legitimate costs' may represent unreasonable or inflated management fees that bear no relationship to the services provided to customers. The AER is unlikely to allow such charges without strong evidence that the charge is strongly related to a benefit to customers.

It remains open to an applicant to apply for a variation of a condition if they believe that the defined pricing arrangements should not apply to them. The AER will consider the individual application and decide whether a variation of the condition is appropriate.

Q.20. Do stakeholders have any comments in relation to the AER's approach to Charge Groups outlined in the network Guideline?

Submissions

Origin submits that the drafting of this section needs more clarity. Ausgrid queries Charge Group E because private parties should be left alone with their commercial arrangements. Network Energy Services also expressed concern with the effect of Charge Group E on retirement and other community based solar PV schemes.

AER consideration

This charge group has possibly been misunderstood. The intent of Charge Group E is on one hand to prevent a rogue private network operator pocketing a benefit that rightly belongs to the embedded generator but, on the other, to allow the parties to manage their own commercial arrangements. The charge group does not prevent the generator from reassigning its rights if it wishes to do so. The embedded generator may enter into an arrangement to surrender these rebates if they so wish. The text has been expanded to address these comments.

Q.21. Should any other charge groups be permitted by the AER? If so, why?

Submissions

There were no submissions on this point.

Q.22. Do stakeholders have any comments in relation to the requirements for registration or application for an individual exemption?

Submissions

Active Utilities and SP AusNet submit that the role/authority of an Agent and the requirements for an individual exemption lack clarity.

AER consideration

The requirement for an exemption applies to anyone who owns, operates or controls a private network. To the extent an agent either operates or controls a private network they must be registered *as well as* the network owner. The AER will hold the network owner(s) accountable for the observance of the conditions attached to a network exemption, as well as any appointed agent who operates or controls the network on behalf of the owner(s).

Q.23. Are there any other matters the AER has not considered in this draft network Guideline which stakeholders believe should be addressed?

Submissions

Ausgrid and SP AusNet submitted that the network Guideline should be amended to provide:

- greater clarity about the embedded generator's or network's connections with the DNSP;
- greater clarity about the definition of 'embedded network'; and
- consistency in approach and terminology with NER and jurisdictional legislation.

SP AusNet also suggested that the network Guideline should be amended to be consistent with jurisdictional licence exemptions.

Seed Advisory submitted that the network Guideline should clarify the meaning of "owned, operated or controlled" in relation to an embedded network.

CitiPower submitted that the terms 'exempt network' and 'embedded network' have different meanings and should not be used interchangeably.

WINenergy raises several practical issues with varying degrees of cooperation or resistance to private networks from DNSPs.

VicUrban raised potential issues with subsequent changes to the ownership structure of district scale networks.

AER consideration

Additional text has been added to clarify some aspects of generator technical safety requirements and metering arrangements.

Jurisdictional legislation and regulation exist alongside the NEM framework which is the Law of every participating jurisdiction. This means both must co-exist. The AER Guideline recognises this situation. However, jurisdictional licence exemptions do not exist universally across the jurisdictions participating in the NEM. Therefore the AER cannot seek to impose the jurisdiction specific provisions of Victoria across the other states through a Guideline.

In the amended Guideline the AER has adopted the term 'private network' in most instances to avoid the clash with the differing use of the terms 'embedded' and 'exempt' networks.

The phrase 'owned, operated or controlled' is contained in the National Electricity Law and in the National Electricity Rules. As written, the term has its ordinary meaning as derived from reputable dictionaries. The AER considers the term to be comprehensive and easily understood but individuals facing any remaining uncertainty should consult their legal adviser.

The AER is aware the concerns raised by WINenergy exist. Policy makers clearly intend that private networks can exist but that they should be subject to an appropriate degree of regulation. The reported claim that some DNSPs ‘make the rules’ appears unlikely to be true in practice. The AER is not aware of any power of DNSPs to determine rules under the National Electricity Law. That power lies with the Australian Energy Markets Commission. The AER’s Guideline concerns the conditions under which the AER will consider a private network to fall within the approved framework. As such, it does not impose obligations on any party except the private network owner, operator and any agents with control over aspects of the operation of the network.

The AER cannot address VicUrban’s potential issues through this Guideline alone. To the extent network exemptions are required to support district scale networks the Guideline will establish mechanisms for exemption to be obtained where appropriate. The AER considers it likely that the draft Guideline will enable such developments to proceed with minimal regulatory burden.

Most, if not all of the activity VicUrban describes will be likely to fall into the registrable exemption categories of the draft Guideline. To the extent that specific conditions of exemption need to be addressed for some developments, the option of individual exemptions will be available to the developer.

Regarding the future sale of such developments, the AER has flagged its intention that there will be transitional arrangements that will permit approved network activities to continue, except where the AER has found a pressing need to revoke or modify an exemption. It is likely that the scenarios surrounding innovative district scale developments will test these provisions at a later date. The AER will work with bodies such as VicUrban to resolve these issues as they arise in future developments.

7 The AER's revised network Guideline

This section describes the changes made to the June 2011 draft network Guideline in response to consultation and the AER's considerations discussed in section 6.

As is the case in the AER's Exempt Selling Guideline, the three broad classes of exemption defined in the network Guideline continue to be deemed exemptions, registrable exemptions and individual exemptions. To better distinguish between the retail onselling related activity classes and the network specific categories the previous tables have been split. New activity classes have been added to reflect additional situations identified by the AER since the initial draft network Guideline was framed.

Amendments to the classes of exemption, the associated conditions and the proposed application process are discussed in turn in the following sections.

7.1 Eligible classes of exemptions

The three classes of exemption defined in the network Guideline continue to be deemed exemptions, registrable exemptions and individual exemptions.

A **deemed exemption** applies automatically to a private network. No application for exemption to the AER is required, and a private network covered by a deemed exemption does not need to register their activities with the AER. Typically, deemed exemptions will apply to small networks within caravan parks, office buildings, flats/apartments, units, industrial parks and shopping centres.

Table 1 of the network Guideline has been adjusted to align with the final decision in the Exempt Selling Guideline. Further, the network Guideline now nominates Attachment 1 of the Exempt Selling Guideline as the reference source for each class of deemed exemption when onselling is involved.

Table 2 now describes the network specific classes of activity. Two new classes have been added. One new class is NDO2 for shared broadcast and communication facilities. This activity does not sit clearly in any existing or planned exemption category — a new class is proposed. Similarly, the AER has over time received a number of applications which relate to the operation of rail networks. A new class NDO5 is proposed for electric traction services.

In each of these situations the parties involved are likely to be substantial corporations or government agencies which have equivalent bargaining power and powerful incentives to behave responsibly. The AER does not consider either class requires additional oversight by the AER. The classes have been renumbered to allow activities with similar attached conditions to be grouped.

Q1: Are the new deemed classes of exemption (NDO2 and NDO5) clear and easily interpreted?

Table 1 – Deemed classes of exemption – energy onselling

Class	Activity	Deemed exemption applicable to:
<i>ND1</i>	Bodies corporate or owners' corporations that pass on the cost of (metered or unmetered) energy for common areas through body corporate fees	Current and future onsellers
<i>ND2</i>	Metered energy onselling by residential landlords or lessors operating under jurisdictional residential tenancy to less than 20 residences	Current onsellers and onsellers who commence operation prior to 1 January 2015
<i>ND3</i>	Metered energy onselling to short term residents in holiday accommodation	Current onsellers and onsellers who commence operation prior to 1 January 2015
<i>ND4</i>	Metered energy onselling in residential situations not covered under jurisdictional residential tenancy legislation	Current onsellers and onsellers who commence operation prior to 1 January 2015
<i>ND5</i>	There is no class ND5 – the equivalent retail guideline class applies only to gas onselling	Not applicable
<i>ND6</i>	Unmetered electricity onselling in Queensland to small customers.	Current onsellers and onsellers who commence operation prior to 1 January 2015
<i>ND7</i>	Landlords or lessors passing on common area energy costs to premises in commercial developments	Current and future onsellers
<i>ND8</i>	Exemption for persons engaged in the onselling of energy to a related company	Current and future onsellers

Notes: Classes of exemption labelled 'ND_' are 'network deemed' classes. Classes ND1 through ND8 are aligned to the Exempt Selling Guideline. The activity description and application criteria in this table are indicative only. Applicants should refer to Attachment 1 of the Exempt Selling Guideline to determine eligibility for a deemed exemption.

Table 2 – Deemed classes of exemption – other situations

Class	Activity	Deemed exemption applicable to:
<i>NDO1</i> ¹	Off-market energy generation by equipment owned, operated or controlled by a third-party and connected to the NEM via a private electricity connection	Energy generation installations not intended to supply network support or demand management services to the NEM
<i>NDO2</i>	Shared sites for the purposes of broadcasting and/or communications	Current and future facilities
<i>NDO3</i> ²	Electric vehicle charging station within an embedded network	Current and future facilities subject to an agreed commercial arrangement
<i>NDO4</i>	Temporary supply for the construction and commissioning phase of building, civil, construction industrial, transport, mining or other projects	Incidental supply at cost to facilitate bona fide construction and commissioning of new facilities on the same or an adjoining site
<i>NDO5</i>	Electric traction systems supplying passenger or freight vehicles	Current and future facilities

Note: Classes of exemption labelled ‘NDO_’ are ‘network deemed other’ classes, and have no equivalent class in the Exempt Selling Guideline. Eligibility for a network deemed exemption is set out in this table.

A **registrable exemption** does not require a decision by the AER, but information must be provided as part of the registration process. The required information is set out in section 11, Part C of the network Guideline. The activities which are covered by registrable exemptions are now set out in Tables 3 and 4, subject to the conditions detailed in Part B of the network Guideline for a number of network activities, both during and after a transition period.

Table 3 of the network Guideline has been adjusted to align with the final decision in the Exempt Selling Guideline. Further, the network Guideline now nominates Attachment 2 of the Exempt Selling Guideline as the reference source for each class of registrable exemption when onselling is involved. Additional text has been added to class NRO2 to clarify when a generation installation also requires registration with AEMO.

Table 4 now describes the network specific registrable classes of activity. Two new classes have been added.

¹ This category applies only to the network to which the generator is connected. Generator registration and exemptions are handled by AEMO.

² Note that no exemption is required if the charging facility is directly connected to a distributor.

Table 3 – Registrable classes of exemption – energy onselling

Class	Activity	Registrable exemption	Application for individual exemption
<i>NR1</i>	Metered energy onselling by commercial/ retail landlords or lessors to small customers.	Registrable for current onsellors and those who commence onselling before 1 January 2015	Required for those who commence onselling on or after 1 January 2015
<i>NR2</i>	Metered energy onselling to residents where the relationship with the person is governed by state or territory body corporate legislation.	Registrable for current onsellors and those who commence onselling before 1 January 2015	Required for those who commence onselling on or after 1 January 2015
<i>NR3</i>	Retirement villages operating under state or territory retirement village legislation and onselling metered energy.	Registrable for onsellors commencing onselling before 1 January 2015	Required for those who commence onselling on or after 1 January 2015
<i>NR4</i>	Metered energy onselling in caravan parks, residential parks and manufactured home estates to residents who principally reside there.	Registrable for current and future onsellors	Only where exempt seller believes conditions of exemption are not appropriate for their situation
<i>NR5</i>	Metered energy onselling to large customers.	Registrable for current and future onsellors	Only where exempt seller believes conditions of exemption are not appropriate for their situation

Note: Classes of exemption labelled ‘NR_’ are ‘network registrable’ classes. Classes NR1 to NR5 are aligned to the Exempt Selling Guideline. The activity description and application criteria in this table are indicative only. Applicants should refer to Attachment 2 of the Exempt Selling Guideline to determine eligibility for a registrable exemption.

One new class is NRO3 for ongoing supply to major mining or primary production projects in remote areas and for services to the associated support communities. The class is framed to permit supply to other unrelated activities on a cost recovery basis but does not require they be served. This activity does not sit clearly in any existing or planned exemption category — a new class is proposed. Over time the AER has received a number of applications which relate to major mining projects. The conditions proposed are informed by the AER’s experience of responding to such applications.

A new class NRO4 is proposed for industrial, commercial and ‘mixed-use’ facilities not including energy generation activity and any activity listed in Table 3. A law firm acting for a data centre has identified a gap can exist between classes NR1 and NR5 because of the differing descriptions of the applicable party. This class closes that gap and ensures that facilities serving a mix of small and large commercial customers do not need to make an application for individual exemption.

Table 4 – Registrable classes of exemption – other situations

Class	Activity	Registrable exemption	Application for individual exemption
<i>NRO1</i> ³	<i>Off-market energy generation</i> by equipment owned, operated or controlled by a third-party and connected to the NEM via a private electricity connection	Energy generation installations intended to supply network support or demand management services to the NEM	Only where exempt party believes conditions of exemption are not appropriate for their situation
<i>NRO2</i> ⁴	<i>On-market energy generation</i> by equipment owned, operated or controlled by a third-party and connected to the NEM via a private electricity connection	Energy generation installations required to be registered with AEMO under clause 2.5.2 of the NER	Only where exempt party believes conditions of exemption are not appropriate for their situation
<i>NRO3</i>	Ongoing supply to a mining or primary production facility and associated residential, commercial, industrial, processing and ancillary support facilities ⁵ in areas with restricted access to NEM supply	All bona fide installations, subject to demonstrable circumstances of remoteness from existing NEM supply infrastructure	Only where exempt party believes conditions of exemption are not appropriate for their situation
<i>NRO4</i>	Industrial, commercial and ‘mixed-use’ facilities but not including energy generation activity and any activity listed in table 3.	All installations	Only where exempt party believes conditions of exemption are not appropriate for their situation

Note: Classes of exemption labelled ‘NRO_’ are ‘network registrable other’ classes, and have no equivalent class in the Exempt Selling Guideline. Eligibility for a network registrable exemption is set out in this table.

Q2: Are the new registrable classes of exemption (NRO3 and NRO4) clear and easily interpreted?

An **individual exemption** may be granted by application to the AER on a case-by-case basis for private networks that do not meet the criteria for a deemed or registrable exemption or when no class exists which covers the activities for which the applicant seeks exemption.

Class NRI in Table 5 refers to network exemptions specific to the circumstances of the applicant. This will apply in circumstances where an applicant is unable to

³ This category applies only to the network to which the generator is connected. Generator registration and exemptions are administered by AEMO.

⁴ This category applies only to the network to which the generator is connected. Generator registration and exemptions are administered by AEMO.

⁵ Ancillary support facilities is intended to be interpreted broadly to encompass a range of sundry activities including local tourism, communication, health, public safety and emergency services.

conform to all of the conditions applicable to any relevant class of registrable exemption or where no class exists which covers the activities for which the applicant seeks exemption.

Table 5 – Individual network exemption class

Class	Activity	Registrable exemption	Application for individual exemption
<i>NRI</i>	Specific exemption of a network not otherwise described	All approved applications	Detailed application required

Tables 1 and 3 each note that in 2015 the AER will move to individual exemptions for retail on-selling. Additional text has been included to clarify the approach the AER will take to the network component of this transition.

The AER will, prior to the planned 2015 transition date, review the conditions set out in section 2 of the network Guideline applicable to Table 1 and in section 3 applicable to Table 3 to determine whether those conditions should continue to apply in their current or a modified form to the network component of similar retail on-selling activities.

The AER’s intention will be to predefine the network element of the conditions to apply to each class of retail on-selling activity post - 1 January 2015. The AER does not propose requiring a detailed application for individual exemption as set out in Part C for network activities linked to retail on-selling post - 2015, except where a variation of conditions is sought.

7.2 Imposing conditions on exempt network service providers

As noted in the June 2011 Consultation Paper, sections 13(3) and 13(4) of the NEL and clause 2.5.1(d) of the NER provide that the AER may exempt a party from the requirement to register as an NSP subject to ‘conditions as the AER considers appropriate.’ This power is quite broad. A condition can require an affected party to meet an obligation that would apply to a registered NSP under the NER. A private network owner or operator must comply with all conditions imposed, and the AER may deal with a breach of a condition as if it were a breach of the NER. The AER can vary or revoke any condition it has placed on an exempt party.

In revising the conditions associated with the network Guideline, the AER has taken into account a number of issues raised during the June 2011 round of consultation in regard to technical issues, jurisdictional requirements, life support, metering accuracy, pricing and settlements and transfers. The AER has also taken into account recent experience in administering network exemptions. The AER proposes to make the revised conditions in relation to the areas set out in Part B of the network Guideline.

In amending the draft network Guideline the AER has made the following changes:

General Conditions (section 5)

- i. Reference to National Measurement Institute amended to National Measurement Act
- ii. References to ‘embedded or exempt network’ amended to ‘private network’
- iii. New condition re safety of generation sources
- iv. Clarification of fees permitted for dispute resolution
- v. Text added re processes for obtaining a deemed or registrable exemption
- vi. ‘Life support’ condition relocated from section 8 to general conditions
- vii. Express requirement added not to disconnect a life support customer without suitable arrangements being made
- viii. Clauses renumbered due to additions and transfers from other conditions

Q3: Do stakeholders agree with the amendments to the General Conditions?

Q4: Is it clear to stakeholders that the network Guideline does not exempt private networks from the application of jurisdictional regulations?

Metering Installation (section 6)

- i. Additional detail of connection requirements added
- ii. Grandfathering provision tied to requirements determined by the National Measurement Institute
- iii. Phrasing changes
- iv. Requirements for generator metering expanded
- v. Electric vehicle charging station provision amended to clarify when an exemption is required

Q5: Do stakeholders agree that the grandfathering provision should be tied to requirements to be determined by the National Measurement Institute?

Metering accuracy (section 7)

No change

AEMO & NEM requirements (section 8)

Reference to AEMO metrology procedures added

Distribution loss factors (section 9)

Drafting amended to clarify application of loss factors to private networks.

Pricing (section 10)

Additional text added to clarify external network charges and incorporate shadow pricing option.

Minor drafting changes to clarify charge groups C, D & E.

7.3 Register of Exempt Networks

Some submissions proposed that all exempt networks should be registered. The AER considers this impractical in the short-term and inconsistent with the intention of Jurisdictional policy makers when the retail onselling provisions were framed. The AER's approach to onselling contemplates a grace period during which the current arrangements will continue with the phased introduction of stricter requirements from January 2015.

The AER publishes details of exempt networks on its website. An exempt network that holds an individual exemption or registered network exemption will, in future, appear on a Register of Exempt Networks. The AER's website will include the public component of the application for exemption and the exemption instrument issued by the AER.

7.4 Registrable exemption application process

The Consultation Paper inferred that a registration process has been developed for registrable exemptions. This work is outstanding but will be undertaken in early 2012, in good time for the commencement of the new guideline.

Registrable exemptions do not require an application to the AER, but cover network activities that must be registered with the AER to receive the benefit of an exemption. Part C, section 11 outlines the information requirements for a registrable exemption. Registrable exemption forms will be made available for download from the AER's website and must be made in writing and be submitted electronically to the AER at AERInquiry@aer.gov.au, in accordance with information requirements set out in Part C of the network Guideline. The AER will develop a single registration process for both the network Guideline and Exempt Selling Guideline to facilitate applicants seeking an exemption from both sets of requirements.

7.5 Individual exemption application process

Clarification was sought of the AER's planned process for handling individual exemption requests and potential continuity issues in transfer of ownership situations. Adjustments to the guideline have been made accordingly.

Individual exemptions will be granted by application to the AER on a case-by-case basis for network activities that do not meet the criteria for a deemed or registrable exemption. An application for an individual exemption must be made in accordance with the information requirements set out in Part C, section 12 of the network

Guideline. A proforma application for an individual exemption will be developed for download from the AER's website to accompany additional supporting text provided by the applicant. The application must be made in writing but the AER intends that they may be submitted electronically to the AER at AERInquiry@aer.gov.au.

The AER will develop a single application process for both the network Guideline and Exempt Selling Guideline to facilitate applicants seeking an exemption from both sets of requirements.

An individual exemption applies to an owner or operator of a private network site from the time they are entered on the Register of Exempt Networks. Where a new owner or operator becomes involved the terms of the existing exemption will continue to apply until the AER determines the outcome of the new application, which must be made within 10 business days. The AER will inform the applicant of the AER's decision regarding the application for the grant or variation of the terms of the individual exemption. The previous exemption will be revoked.

Q6: Do stakeholders have any comments on the proposed transitional arrangements following a transfer of ownership of a private network?

7.6 Revocation of an exemption

Part C, section 13 of the network Guideline outlines the AER's approach to revocation of an exemption. A number of submissions sought clarification of the status of a network should a revocation occur. This is a matter that requires a case-by-case appraisal and cannot be fully anticipated in advance of the event.

As noted in the June Consultation Paper, the AER can revoke any network exemption. The grounds for revocation are that the AER is satisfied that there has been a failure by the exempt party to meet the conditions imposed on them. The AER will consider what constitutes a 'failure' on a case-by-case basis as matters come to our attention.

In aligning its process for revocation of a network exemption to the equivalent process imposed in Section 120 of the Retail Law for retail exemptions the AER will have regard to the potential for hardship and unreasonable impacts on innocent parties.

Following revocation of the network exemption, customers of the exempt network will either need to obtain supply from a NEM registered distribution or transmission network service provider or must otherwise satisfy the conditions to qualify for a new deemed or registrable exemption or must make an application for an individual exemption.

In situations where revocation may place undue hardship on customers of an embedded network, to the extent practicable, the AER will seek to minimise hardship on innocent parties while enforcement action is taken. This may involve the grant of a limited individual exemption to operate the network under restricted conditions. This will need to be assessed on a case-by-case basis.

Q7: Do stakeholders have any comments on the proposed approach to the revocation of a network exemption?

A. List of submissions

Below is a list of submissions received on the June 2011 Consultation Paper:

- AGL
- Ergon Energy
- Origin Energy
- Ausgrid
- SP AusNet
- Jemena
- United Energy
- Citipower/Powercor
- Endeavour Energy
- Energy & Water Ombudsman NSW (EWON)
- AEMO
- Active Utilities
- Energy Response
- Broadcast Australia
- Seed Advisory
- VicUrban
- Colonial First State
- Network Energy Services
- WINenergy
- UED and Multinet Gas
- Shopping centre council of Australia
- Envestra
- Energy Division