

21 December 2022

Mark Feather
General Manager – Strategic Policy and Energy Systems Innovation
Australian Energy Regulator

And by email: [REDACTED]

Dear Mark

**Review of Consumer Protections for Future Energy Services
Options for Reform of the National Energy Customer Framework**

Thank you for the opportunity to comment on the *Review of Consumer Protections for Future Energy Services (October 2022)*.

We provide this submission in good faith, and as a basis for further discussion. As noted below, across Models 1, 2 and 3 there are no models that we could endorse at this stage (though there are some agreeable aspects across the models). This is, in part, due to our view that the identified risk themes (and other issues and assumptions – e.g. the claim that embedded networks restrict competition) are not substantiated or materially relevant to our sector. We believe a more targeted, fit-for-purpose approach is needed, and we would be pleased to work with the AER on developing such an approach.

We appreciate the opportunity to discuss the review with AER officials, and thank them for their courtesy and professionalism, along with the AER's ongoing engagement with us.

The focus of this submission is shopping centre embedded networks, which our industry operates as an ancillary activity to shopping centre operations which principally relates to the leasing / licensing of retail floor space to retail and other (e.g. hospitality) businesses; centre management activities (e.g. common mall areas, car parking areas, cleaning, community safety and security, customer-focused marketing) and development activities.

Noting the AER's current (network and retail) exemption framework, a shopping centre embedded network can operate under several exemption types depending on the circumstances; and can hence trigger different AER network/retail conditions and obligations (e.g. sale of energy to related entities (for example) during construction activity at a shopping centre; electric vehicle charging).

Given the history of the AER's exemption framework including issues such as the need to obtain *explicit informed consent*, and noting the 'risk themes' in the paper, the consumer protection objective, along with the 'key factors' (at page 4) such as essentiality, regulatory burden and competitive neutrality, we respectfully submit that we should be considered 'low risk' by the AER and subsequently, a 'carved out' exemption framework could be developed that is fit-for-purpose moving forward.

We appreciate some commentary in the paper and urge the AER to investigate what is noted at page 13 of the paper; that 'retail and network exemptions could be available to a small group of 'low risk' sellers...'. We believe that a light-handed (and even lighter handed) regulatory approach for our sector should continue.

We also respectfully submit that in maintaining a light-touch exemption framework, a fresh approach could be adopted whereby we can operate under a broad exemption versus needing several exemptions (e.g. for the sale of energy to related entities) for what is ultimately under 'shopping centre operations'.

Noting Models 1, 2 and 3, there is no model that we could endorse in a complete sense at this stage, namely in our view because the issues presented (including broad claims in relation to 'customers' and 'customer protections') are quite broad and in some cases, are in our view solutions in search of a problem. We have however picked up on some 'pros' (and 'cons') that have been noted across each model.

We have been involved in embedded network policy for a long period of time, and residential issues consistently dominate broad stakeholder concerns in relation to embedded networks.

In both a principled and operations sense, we are substantially different to residential embedded networks, including the general visibility of our centres and networks (i.e. we are public places); that our tenancies are lease-hold (not free-hold); we are a B2B operation; and our 'customers' (including 'small' customers) can in fact be large, multi-national corporations with hundreds of stores across the country.

Overarching recommendations

Noting that we don't believe many of the 'risk themes' identified in the paper are applicable to, or are systematic in, our industry, our overarching respectful submission is that the AER:

- Makes a distinct separation or carve-out in issues / risk / policy / regulatory terms of our embedded networks from residential networks, and the ongoing issues that the residential sector (and their customers) seems to face,
- Recognises formally that we are a 'low risk' sector, and
- In making such a distinction, work with us to identify any key specific risk themes that can be fleshed out and addressed in any future policy and regulatory framework.

Noting the above, we make the following comment and recommendations:

- Over the entire period of the AER regulating embedded networks, our sector has proven to be a low-risk sector with no major or structural issues being identified.
- We proactively engage with the AER, and don't 'hide' as a sector in terms of our visibility and the issues we face.
- We are readily identifiable – i.e. the AER knows that there is an embedded networks versus being hidden from sight, and our networks are in public facing visible shopping centres.
- We present little or no regulatory risk to the AER – i.e. there has been no structural issues.
- Where issues arise, the AER does and can coordinate issues through ourselves as the organised industry group.

We would be pleased to discuss this issue further, including to flesh some of the above issues out for which we can provide an evidence base to support our case and present relevant information in relation to our tenants / customers, their annual energy use / profile and other issues.

Comments

We are pleased to provide the following comments for consideration and further discussion:

What is a future energy product or service?

We don't believe that the AER has sufficiently set out what a 'new energy product and service' is, or will entail, particularly to warrant the statement in the paper that '*the AER is of the view there is a strong rationale for regulating new products and services...*' or a blanket perspective on the need for regulation.

While general examples are used in relation to 'new energy products and services' – such as 'energy aggregators' and 'operators of virtual power plants (VPP's)' – along with a reference to 'complexity of new products and services', and references to 'variation in the business models' and a 'diversification in the kinds of businesses seeking authorisation' – there is insufficient detail in our view to properly analyse the risk themes and a future regulatory approach.

We are also concerned with the statements (at page 18) the claim that '*embedded networks restrict competition and may be incompatible with some new energy products and services*'. We submit that this statement is not true; embedded networks (at least at shopping centres) don't restrict competition. As noted above, noting the lack of clarity of what 'new energy products and services are', we are unable to properly analyse if they are 'incompatible' with some new products and services.

We do not believe that the AER has sufficiently identified or defined any relevant or specific risks associated with embedded networks. In our long period of engagement on embedded network regulations, issues continue to get raised that are largely theoretical, rather than being based on real or identified risks.

The views of some stakeholders appear to be residential focussed / unsubstantiated

We note the comment (at section 1.6.4) that 'stakeholders largely agreed that the current exemption framework requires reform'...and that 'many submissions called for tighter regulations around exempt sellers...', and submit that this statement should be approached with caution.

We have reviewed material submitted by other stakeholders, and in our view some stakeholders call for additional regulation without there being a substantial definition of any problems or basis for such an approach.

In our experience, some stakeholders can have little appreciation in relation to regulatory burden, particularly where they aren't themselves a regulated party. Rather than simply look at regulatory burden from whether it will stifle innovation and/or how will costs be passed on to consumers, what should be looked at is; does any problem actually exist and is there a clear definition of the problem; does the problem warrant regulation or is there an alternate approach; what measures should the regulation be focussed on (e.g. the AER maintaining contact with EN operators); and what does the regulatory burden look like.

Risk themes

We believe that the risk themes are too broad as currently presented, to the extent that they are automatically referenced and translated into the proposed models.

As an example, we don't believe that our sector has any key adverse issues in relation to the identified risk themes of (in order of how they are identified in the table at pages 5 and 6): *Access, bunding, contracts, control of assets, data, dispute resolution, hardship, information provision, poor conduct, reliability or supplier failure.*

Models 1, 2 and 3

Across each model, there is no model that we could fully support at this stage, particularly where authorisation is proposed as a possible approach. This also includes that parts of some models relate to the risk themes identified in the paper, which we don't believe (as noted above) are materially relevant to our sector.

We have noted several agreeable policy positions, assumptions (e.g. we support the need to avoid prescriptive regulation) and 'pros' and 'cons' mentioned across each model, and in our view this points to a need to develop a 'Model 4', which is more fit for purpose and tailored to the specifics of our sector.

We would welcome an opportunity to discuss this submission with the AER, including to go through our sector's experience with embedded network operations, customer issues and regulatory compliance in more detail.

As always, please feel free to contact me on [REDACTED] or [REDACTED]

Yours sincerely,

Angus Nardi
Executive Director