

2 March 2022

Sarah Pinchuck
Assistant Director
Compliance and Enforcement Branch
Australian Energy Regulator

By email: AERExemptions@aer.gov.au

Dear Sarah

Woolworths Group Limited – Application for an individual exemption from the requirement to hold a retailer authorisation

1. BACKGROUND

1.1 General background

Woolworths Group Limited ABN 88 000 014 675 (**Woolworths**) is a diverse group of retail businesses, including supermarkets.

On 10 May 2021, Woolworths announced its intention to separate Endeavour Group Limited ABN 77 159 767 843 (**Endeavour**) from Woolworths by way of a demerger. The demerger was implemented on 28 June 2021.

Endeavour operates Australia's largest drinks network, across Dan Murphy's and BWS stores, and the nation's largest portfolio of licensed hospitality venues.

1.2 Electricity sale arrangements

Section 88 of the National Energy Retail Law (**NERL**) provides that a person must not engage in the activity of selling energy to a person for premises unless the person is the holder of a current retailer authorisation, or is an exempt seller.

As part of the demerger process, Woolworths has identified that at a number of Woolworths stores (**Woolworths Stores**), Woolworths will be:

- (a) on-supplying electricity to an adjacent Endeavour store (ie a store that is not within the limits of a site that Woolworths owns, occupies or operates) (**Adjacent Endeavour Store**) through electrical infrastructure located at the Woolworths Store (ie Woolworths' electrical infrastructure is an embedded network);
- (b) on-supplying electricity to an Endeavour store whose premises is leased or subleased from Woolworths (ie a store that is within the limits of a site that Woolworths owns, occupies or operates) (**Subleased Endeavour Store**) through electrical infrastructure located at the Woolworths Store (ie Woolworths' electrical infrastructure is an embedded network); and
- (c) on-selling metered electricity to the Adjacent Endeavour Store and Subleased Endeavour Store at a child connection point on the embedded network located at the Woolworths Store.

Until 28 June 2021, Woolworths relied on a class D8 exemption under the AER (Retail) Exempt Selling Guideline (version 5, March 2018) (**Exempt Selling Guideline**) to on-sell electricity to Adjacent Endeavour Stores and Subleased Endeavour Stores. However, on 28 June 2021, Woolworths and Endeavour ceased to be related companies for the purposes of this exemption.

Woolworths intends to rely on a class ND1 and D1 exemption in respect of the ongoing on-supply and on-sale of electricity to Endeavour at Subleased Endeavour Stores, and a class NR6 exemption in respect of the ongoing on-supply of electricity to Adjacent Endeavour Stores.

However, in relation to the ongoing on-sale of electricity Adjacent Endeavour Stores:

- (a) a class R6 exemption (which would be directly applicable to the sale of electricity by Woolworths to Endeavour in these circumstances) not available under the Exempt Selling Guideline if the selling commenced on or after 1 January 2015. The Exempt Selling Guideline notes that Woolworths must therefore apply for an individual exemption to sell metered energy to small customers at a site or premises adjacent to a site that Woolworths owns, occupies or operates if the selling commenced on or after 1 January 2015; and
- (b) Woolworths also considers that a class R5 exemption is not available as it is a site specific exemption. Endeavour is not a large customer at each site (though Endeavour would likely be a large customer if its consumption at all sites within a jurisdiction was aggregated).

As such, Woolworths is seeking an individual exemption from the obligation to hold a retailer authorisation to sell electricity to Endeavour at the Adjacent Endeavour Stores set out in this application.

In prior discussions with the AER, the AER indicated that it may be prepared to permit Woolworths to register a class R6 exemption for the on-sale of electricity at Adjacent Endeavour Stores which were developed prior to 1 January 2015 (notwithstanding that Woolworths relied on a class D8 exemption for those sales prior to 1 January 2015). Subject to receipt of written confirmation from the AER that this approach is acceptable, Woolworths will promptly begin registering those sites under a class R6 exemption. If that approach is not acceptable to the AER, then Woolworths requests that those sites also be included as part of the sites to which the individual exemption applies. This approach would also reduce the number of sites the subject of this individual exemption application.

Woolworths submits that an exemption is appropriate because obtaining a retailer authorisation and complying with the obligations of an authorised retailer in connection with the on-sale of electricity at Adjacent Endeavour Stores would be unnecessarily burdensome and costly. The electricity sale arrangements between Woolworths and Endeavour arise as a result of legacy electrical arrangements at a number of Adjacent Endeavour Stores which were developed when Woolworths and Endeavour were related companies.

1.3 **Application for an individual exemption from the requirement to obtain a retailer authorisation**

This letter sets out Woolworths' application to the AER for an individual exemption from the requirement to obtain a retailer authorisation pursuant to the NERL and the Exempt Selling Guideline.

The information set out in the remainder of this letter is provided in response to the requirements for an application that are set out in the Exempt Selling Guideline.

2. **GENERAL INFORMATION REQUIREMENTS**

2.1 **Legal name**

Woolworths Group Limited.

2.2 **Trading name if different to legal name**

N/A.

2.3 **Australian Business Number (ABN) or Australian Company Number (ACN)**

ABN 88 000 014 675 / ACN 000 014 675.

2.4 **Registered postal address for correspondence**

1 Woolworths Way, Bella Vista NSW 2153.

2.5 **Nominated contact person, their position and contact details**

Please address all correspondence to all contact persons listed below.

Contact person		Contact person
Name	(1) Michael Shelley (2) Glen Adams	Dan Brown
Title	(1) Michael Shelley General Manager, Green Energy Transition (2) Glen Adams Energy Contracts Manager	Partner
Company	Woolworths Group Limited	Ashurst
Telephone	(1) Michael Shelley [REDACTED] (2) Glen Adams [REDACTED]	+ [REDACTED]
Address	1 Woolworths Way, Bella Vista NSW 2153	Level 38, Riverside Centre, 123 Eagle Street, Brisbane QLD 4000
Email	(1) Michael Shelley [REDACTED] (2) Glen Adams [REDACTED]	[REDACTED]

2.6 **Why Woolworths is seeking an individual exemption, and why it believes that an exemption (rather than a retailer authorisation) is appropriate to its circumstances**

(a) **Selling electricity is not part of Woolworths' core business (NERL section 115(1)(a))**

Woolworths' core business is the sale of retail goods, including food and everyday needs. However, Woolworths does not currently intend to develop an energy retail business or become an energy retailer. As such, it would be unnecessarily burdensome and costly for Woolworths to obtain a retailer authorisation for the on-sale of electricity to Endeavour.

The on-sale of electricity to Endeavour at Adjacent Endeavour Stores, and the resulting requirement for an individual exemption, has arisen due to the legacy electrical wiring arrangements between some Woolworths Stores and Endeavour Stores. These physical arrangements were implemented at a time when the Endeavour drinks business either formed part of Woolworths (prior to the incorporation of Endeavour) or when Endeavour was a related company of Woolworths. Diagrams of these physical arrangements are set out in Schedule 2.

The on-sale of electricity to Endeavour is undertaken in conjunction with the physical on-supply of electricity to Endeavour through that infrastructure.

(b) **Woolworths' and Endeavours' circumstances warrant exemption (NERL sections 115(1)(b), 116(a), 114(1)(a) and 114(1)(c))**

Woolworths is seeking an individual exemption, rather than a retailer authorisation, on the basis that:

- (i) the Exempt Selling Guidelines have historically recognised that exemptions are available for persons selling metered energy to small customers at a site or premises adjacent to a site that they own, occupy or operate (class R6), and note that persons commencing selling after 1 January 2015 may apply for an individual exemption;
- (ii) Endeavour's aggregate load in each NERL jurisdiction is expected to be sufficient to make it a "large customer" in those jurisdictions, however at each individual Adjacent Endeavour Store it is a small customer (ie a class R5 exemption is not available because it is site specific); and
- (iii) the proposed exemption arrangements do not give rise to any consumer protection concerns. Woolworths and Endeavour are both sophisticated major ASX-listed retailers with similar bargaining power in their dealings with one another.

Woolworths has also conducted preliminary investigations into the cost required to re-wire the electrical infrastructure at the Woolworths Stores and Adjacent Endeavour Stores to connect the Adjacent Endeavour Store to the same network (whether an embedded network or the regulated distribution network) to which the Woolworths Store is connected. This would mean that Woolworths would not be involved in either the on-supply¹ or on-sale² of electricity to the Adjacent Endeavour Store. However, Woolworths' preliminary investigations have indicated that it would cost in the order

¹ Noting that Woolworths is separately progressing registration under a class NR6 exemption from the requirement to register with AEMO as a Network Service Provider under the AER's *Electricity Network Service Provider – Registration Exemption Guideline* (version 6, March 2018).

² Assuming that Endeavour does not elect to purchase electricity from a retailer of its choice while supplied by Woolworths.

of \$100,000 per site to establish direct connection arrangements. Given the number of sites the subject of this application, this amount is cost-prohibitive compared with maintaining appropriate exemption arrangements (in the context of on-selling electricity to another sophisticated ASX-listed retailer).

(c) **Woolworths does not intend to profit from the arrangements (NERL section 115(1)(c))**

Please see the information included in Schedule 3 (Confidential information).

(d) **The amount of energy sold is insignificant in relation to national energy markets (NERL section 115(1)(d))**

Please see the information included in Schedule 3 (Confidential information).

(e) **The imposition of conditions would allow appropriate obligations to govern the arrangements (NERL sections 115(1)(e) and 116(b))**

Woolworths submits that the imposition of conditions on its individual exemption would allow appropriate obligations to govern the arrangements between itself and Endeavour.

Bearing in mind the historic arrangements and the sophistication of each of Woolworths and Endeavour (please see items 2.6(a) and 2.6(b) above), Woolworths considers that the conditions in the Exempt Selling Guideline applying to class D8 or R5 exemptions would best reflect the arrangements between it and Endeavour.

However, if the AER extended the scope of the individual exemption to any person that owns, occupies or operates an Adjacent Endeavour Store in the future (as requested in item 3.3 below), Woolworths considers that the conditions in the Exempt Selling Guideline applying to a class R6 exemption may also be appropriate given that the identity of future customers at an Adjacent Endeavour Store is not known.

(f) **The costs of obtaining and complying with a retailer authorisation outweigh the benefits (NERL section 115(1)(f))**

As set out in item 2.6(a) above and elsewhere in this application, Woolworths is only seeking an exemption to on-sell electricity to Endeavour at Adjacent Endeavour Stores due to legacy wiring arrangements (and for which other exemptions were available until the demerger was implemented).

On-selling electricity is outside of Woolworths' core business and it would be unnecessarily burdensome and costly for Woolworths to obtain a retailer authorisation for the sale of electricity at these sites to Endeavour.

Woolworths does not currently have the organisational and technical capacity to comply with the regulatory requirements applying to authorised retailers, and would need to incur significant costs in order to do so. Woolworths' electricity sales to Endeavour at Adjacent Endeavour Stores lack the economies of scale and scope required to justify complying with those requirements.

As such, Woolworths considers that the costs of obtaining and complying with a retailer authorisation outweigh the benefits.

(g) **Endeavour's right to retailer of its choice (NERL section 114(1)(b))**

The metering arrangements between Woolworths and Endeavour will allow Endeavour to purchase electricity from a retailer of Endeavour's choice. As such,

Endeavour may elect in the future to access competitive market offers rather than purchasing electricity from Woolworths at any particular Adjacent Endeavour Store.

(h) **Other relevant matters (NERL section 115(1)(g))**

Please see the information included in Schedule 3 (Confidential information).

2.7 **The address of the site at which Woolworths intends to sell energy, including a map of the site and a brief description of the site and its current and future use/s**

A list of the addresses of each Adjacent Endeavour Store is set out in Schedule 1 (divided between sites at which energy selling commenced prior to, and on or after, 1 January 2015). Diagrams of these arrangements are set out in Schedule 2.

Each Woolworths Store is a supermarket or small grocery convenience store (i.e under the 'Metro' banner) and each Adjacent Endeavour Store is a drinks store (eg Dan Murphy's or BWS).

2.8 **The primary activity of Woolworths' business**

Woolworths is a diverse group of retail businesses. Each Woolworths Store set out in Schedule 1 is a supermarket or small grocery convenience store.

2.9 **The form of energy for which Woolworths is seeking an individual exemption (electricity or gas). For electricity, please state whether the network you propose to sell is directly or indirectly connected to the main grid or is (or will be) an off-grid network.**

Woolworths is seeking an individual exemption for the sale of electricity.

Each Woolworths Store is either connected within an embedded network (for example, as part of a shopping centre) or directly connected to the regulated distribution network.

Diagrams of these arrangements are set out in Schedule 2.

2.10 **Is Woolworths establishing, or has it established, energy supply in an area where there are no other viable energy supply arrangements available?**

As set out in item 2.6(a) above, the Adjacent Endeavour Stores are connected to electrical infrastructure located at a Woolworths Store (ie that infrastructure forms an embedded network), due to arrangements that were implemented while the Endeavour drinks business formed part of Woolworths, or when Endeavour was a related company of Woolworths.

Woolworths has investigated the cost of re-wiring the Adjacent Endeavour Stores to connect them to the same network to which the Woolworths Store is connected (being either an embedded network or the regulated distribution network) and considered the cost to do so to be cost-prohibitive compared with maintaining appropriate exemption arrangements (please see item 2.6(b) above).

2.11 **The date from which Woolworths intends to commence selling energy**

28 June 2021.

2.12 **Mailing addresses for premises at the site (where applicable)**

A list of the addresses of each Adjacent Endeavour Store (divided between sites at which energy selling commenced prior to, and on or after, 1 January 2015) is set out in Schedule 1.

2.13 **Details of any experience in selling energy**

Prior to 28 June 2021, Woolworths sold electricity to Endeavour at Adjacent Endeavour Stores (and other sites) relying on the related company exemptions from on-sale.

2.14 **Whether Woolworths currently holds, or have previously held or been subject to, any energy selling exemptions or retail licence (retail authorisation) in any state or territory**

Former exemptions

Prior to 28 June 2021, Woolworths relied on a class D8 exemption to on-sell electricity to Endeavour in the NERL jurisdictions. It also relied on a similar related company exemption under the *General Exemption Order 2017* in Victoria and *Electricity Industry Exemption Order 2005* in Western Australia.

Current and future exemptions

Woolworths intends to rely on class D1 and ND1 exemptions for the on-sale and on-supply of electricity to Endeavour at Subleased Endeavour Stores (on the basis that at each individual Subleased Endeavour Store, Endeavour is a small customer).

Woolworths is separately progressing registration under a class NR6 exemption under the AER's *Electricity Network Service Provider – Registration Exemption Guideline* (version 6, March 2018) to on-supply electricity to Endeavour at Adjacent Endeavour Stores.

As noted in item 1.2 above, Woolworths will also register a number of Adjacent Endeavour Stores (where the selling commenced prior to 1 January 2015) under a class R6 exemption, if this approach is acceptable to the AER. This approach would also reduce the number of sites the subject of this individual exemption application.

Woolworths is also progressing a separate application for an exemption from the requirement to hold an electricity distribution and retail licence under section 16 of the *Electricity Industry Act 2000* (Vic) with the Victorian Department of Environment, Land, Water and Planning. Woolworths will also rely on other deemed or registrable exemptions to on-supply and on-sell metered electricity to Endeavour under the *General Exemption Order 2017* (Vic) (depending on the type of store).

Woolworths considers that it has the benefit of other exemptions under the *Electricity Industry Exemption Order 2005* in Western Australia.

2.15 **What arrangements Woolworths has made in the event that it can no longer continue supplying energy**

If Woolworths is unable to continue on-selling electricity to Endeavour at an Adjacent Endeavour Store, the metering arrangements will allow Endeavour to change retailers so as to purchase electricity from a retailer of Endeavour's choice.

3. **PARTICULARS RELATING TO THE NATURE AND SCOPE OF THE PROPOSED OPERATIONS**

3.1 **Will Woolworths' customers be its tenants? If so, are they residential or commercial/retail**

No. All Adjacent Endeavour Stores are located adjacent to the Woolworths Stores. The Adjacent Endeavour Stores are not sub-leased to Endeavour by Woolworths.

3.2 **Is Woolworths providing other services to persons on the site who it intends to sell energy to? Or will the only commercial relationship to persons on the site be the sale of energy?**

Please see the information included in Schedule 3 (Confidential information).

3.3 **What is the total number of customers at the site?**

Woolworths is currently on-selling electricity to one customer at each Adjacent Endeavour Store, being Endeavour.

However, if the AER is minded to do so, Woolworths would appreciate for the conditions of its individual exemption to permit Woolworths to on-sell electricity to any other small customer that owns, occupies or operates an Adjacent Endeavour Store in the future (such as if the tenancy arrangements at that store change). Otherwise, Woolworths may need to either apply for a further individual exemption from the requirement to hold a retailer authorisation in order to on-sell electricity to those persons, or cease on-selling electricity to those persons (in which case, they will need to purchase electricity from a retailer of their choice).

3.4 **Will Woolworths be on-selling energy or purchasing it directly from the wholesale market?**

Woolworths is on-selling electricity purchased from its electricity retailer at its connection point.

3.5 **What is the estimated aggregate annual amount of energy that Woolworths is likely to sell and the average expected consumption of each of the types of customers it will service?**

Endeavour is Woolworths' only customer of this service under these arrangements set out in this application.

Please see the information included in Schedule 3 (Confidential information).

3.6 **Will Woolworths' customers be wholly contained within a site owned, controlled or operated by Woolworths?**

No. Woolworths will be on-selling electricity to Endeavour at stores located adjacent to a site that Woolworths owns, controls or operates.

However, in some instances, the Woolworths Store and Adjacent Endeavour Store may be divided by an access way, easement, laneway or minor road (for example, an emergency exit door and corridor within a shopping centre).³

3.7 **Will each premise/dwelling be separately metered?**

Yes, the electricity on-sold to Endeavour at each site will be separately metered. Woolworths is in the process of installing revenue grade meters at all child connection points for Endeavour's stores.

³ Woolworths notes that the division of adjacent sites by these matters is acceptable to the AER for the purposes of a class ND6 exemption under the *Electricity Network Service Provider – Registration Exemption Guideline* (version 6, March 2018).

3.8 **Will meters will allow Woolworths' customers to change retailers as required by the AER's Network Guideline?**

The metering arrangements will allow Endeavour to change retailers so as to purchase electricity from a retailer of Endeavour's choice.

3.9 **In what form and how often will customers be billed? Will Woolworths be issuing bills itself or through a billing agent?**

Woolworths and Endeavour, as large corporate entities, are currently working through the specific billing arrangements. Please see the information included in Schedule 3 (Confidential information).

3.10 **What dispute resolution procedures will Woolworths put in place to deal with energy related complaints and issues? Confirm that the policy is consistent with the Australian Standards AS/NZS 10002:2014 Customer Satisfaction – Guideline**

Please see the information included in Schedule 3 (Confidential information).

3.11 **Please provide any further information that you consider would assist the AER to assess Woolworths' application**

As the Adjacent Endeavour Stores are business premises, Woolworths will not be on-selling electricity to any sites at which a life support customer resides.

Please let us know if you have any questions or comments on this application. We look forward to working with the AER to secure this exemption.

Yours faithfully



Michael Shelley

General Manager – Green Energy Transition, Woolworths Group Limited

SCHEDULE 1

List of Adjacent Endeavour Stores

1. **ADJACENT ENDEAVOUR STORES AT WHICH ELECTRICITY SALES COMMENCED ON OR AFTER 1 JANUARY 2015 (OR WHICH ARE UNKNOWN)**

Endeavour store #	Site name	Address	Suburb	State	Endeavour tenure	Opening Date
6945	Minto	10 Brookfield Rd	Minto	NSW	Own lease	16/05/2016
1303	Padstow	3 Faraday Road	Padstow	NSW	Own lease	Unknown
1455	Crows Nest Mall	10 Falcon Street	Crows Nest	NSW	Own lease	Unknown
1807	Gladesville	235 Victoria Road	Gladesville	NSW	Own lease	Unknown

2. **ADJACENT ENDEAVOUR STORES AT WHICH ELECTRICITY SALES COMMENCED PRIOR TO 1 JANUARY 2015**

Endeavour store #	Site name	Address	Suburb	State	Endeavour tenure	Opening Date
6539	Riverwood	Carpark Level, Riverwood Plaza, 247 Belmore Road (cnr Webb St)	Riverwood	NSW	Own lease	02/07/1990
6197	Chullora	Chullora Marketplace, 355 Waterloo Road	Chullora	NSW	Own lease	22/07/1980
6117	Jesmond	24-26 Blue Gum Road	Jesmond	NSW	Own lease	10/12/2008
6723	Woden	Westfields Woden, Cnr Hindmarsh & Melrose Drives	Woden	ACT	Own lease	11/03/1999
6595	Dubbo	Cnr Mitchell Hwy & Wheeler Lane	Dubbo	NSW	Own lease	24/06/2014
6831	Riverdale	49-65 Macquarie Street	Dubbo	NSW	Own lease	10/10/1973
6199	Northbridge	113 Sailors Bay Road	Northbridge	NSW	Own lease	16/11/1982
6204	Ingleburn	Ingleburn Town Centre, Cnr Nardoo & Norfolk Street	Ingleburn	NSW	Own lease	22/11/2010
6213	Ashfield	260A Liverpool Road	Ashfield	NSW	Own lease	05/11/2010
6884	Dural	Round Corner, 494-500 Old Northern Road	Dural	NSW	Own lease	25/06/2010
6960	Forbes	134 Rankin Street	Forbes	NSW	Own lease	26/06/2009
6374	Prospect	Cnr Flushcombe Road And Myrtle Street	Prospect	NSW	Own lease	04/06/2000

Endeavour store #	Site name	Address	Suburb	State	Endeavour tenure	Opening Date
6398	Belmont	Cnr Macquarie And Singleton Streets	Belmont	NSW	Own lease	09/12/2008
6488	Burwood Plaza	Burwood Plaza Shopping Centre, 42-50 Railway Parade	Burwood	NSW	Own lease	30/07/2001
6957	St Marys	St Marys Village Shopping Centre, Shop 302, Charles Hackett Drive	St Marys	NSW	Own lease	25/10/2001
6649	Marrickville Metro	Marrickville Shopping Centre, 34 Victoria Road	Marrickville	NSW	Own lease	05/11/2010
6567	Leura	152-160 Leura Mall	Leura	NSW	Own lease	14/04/2011
6577	Matraville	Bunnerong Road and Daunt Ave	Matraville	NSW	Own lease	27/02/2014
5029	Glenelg	Bayside Village, Cnr Jetty And Brighton Rds	Glenelg	SA	Own lease	23/11/2009
5039	Marryatville	Cnr Kensington Rd And Tusmore Avenue	Marryatville	SA	Own lease	06/12/2004
5041	Unley	204 Unley Road	Unley	SA	Own lease	15/12/2008
5042	Mitcham	119 Belair Road	Torrens Park	SA	Own lease	29/11/1962
5043	Findon	186 Findon Road	Findon	SA	Own lease	01/09/2006
5055	Springbank Plaza	382-396 Waterloo Corner Road	Burton	SA	Own lease	18/06/2007
5069	Northpark	Northpark Shopping Centre, 264 Main North Rd	Prospect	SA	Own lease	03/05/2004
5070	Northgate	Cnr Folland Avenue, Fosters Road	Northgate	SA	Own lease	10/04/2006

SCHEDULE 2

Diagrams

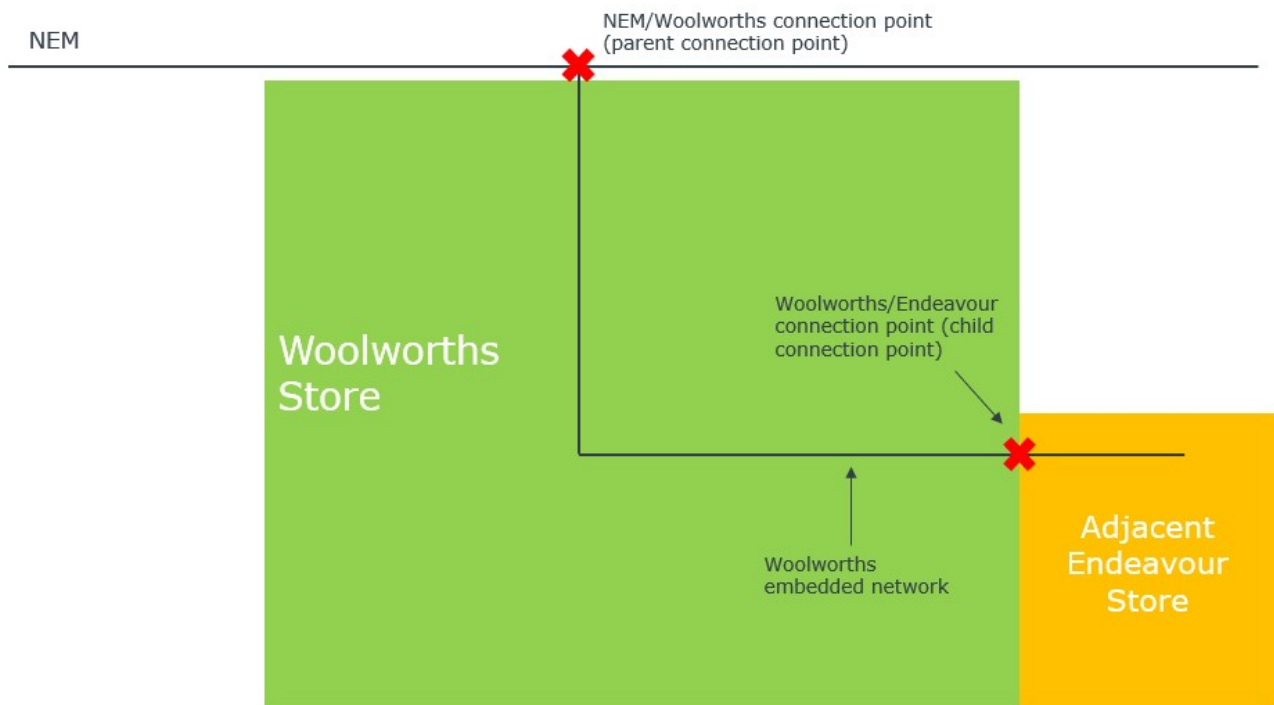
1. BACKGROUND

Set out below are diagrams of the arrangements for the on-supply of electricity by Woolworths to Endeavour at Adjacent Endeavour Stores, where either:

- (a) the Woolworths Store is directly connected to the National Electricity Market; and
- (b) the Woolworths Store is connected within an embedded network.

In each case, Woolworths will on-sell electricity to Endeavour at the Woolworths/Endeavour connection point shown in the diagrams.

2. WOOLWORTHS STORE CONNECTED DIRECTLY TO THE NATIONAL ELECTRICITY MARKET AND ADJACENT ENDEAVOUR STORE



3. **WOOLWORTHS STORE CONNECTED WITHIN AN EMBEDDED NETWORK (EG A SHOPPING CENTRE) AND ADJACENT ENDEAVOUR STORE**

