



Final Decision

Electricity Network Service Provider Registration Exemption Guideline

27 August 2013

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Inquiries about the currency of these guidelines should be addressed to:

Australian Energy Regulator
GPO Box 520
Melbourne Vic 3001

Tel: (03) 9290 1444
Fax: (03) 9290 1457
Email: AERInquiry@aer.gov.au

Contents

Shortened forms	2
Dictionary	3
Consultation procedure	5
1 Executive summary	6
2 Requirement to develop procedures and guidelines.....	7
2.1 Legislative requirements	7
3 Possible effects of revised guidelines.....	9
4 Revisions to the guideline.....	11
4.1 Additional class exemptions	11
4.2 Amended conditions	12
Appendix A. Amendments to exemption classes	14

Shortened forms

AER Australian Energy Regulator

network guideline Electricity Network Service Provider Registration Exemption Guideline

NEL National Energy Law

NER National Electricity Rules

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).

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 NER.

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, an electric vehicle inverter, 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 the 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, an electric vehicle inverter, thermal-electric, geothermal, solar (including photovoltaic), wind or hydro generation and cogeneration and tri-generation installations. Applies to generators of 30MW or greater capacity.

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 NEM, or an islanded network subject to regulation under the NER, 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.

Responsible Person has the meaning specified in clause 7.2.1(a) of the NER

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.

Consultation procedure

This final decision and amendments to the AER's Electricity Network Service Provider Registration Exemption Guideline (the network guideline) have been determined and published in accordance with the *Rules consultation procedures* set out in clause 8.9 of the National Electricity Rules (NER).

A Draft revised Electricity Network Service Provider Registration Exemption Guideline was released on 29 January 2013 for stakeholder consultation. Submissions closed on 15 February 2013.

The following parties made submissions:

Ashurst (on behalf of Telstra)

Ashurst (on behalf of large corporate entities)

Ms Madeleine Kingston

AGL

This final decision accompanies the revised Electricity Network Service Provider Registration Exemption Guideline – version 3.

1 Executive summary

Under clause 2.5.1 of the National Electricity Rules the AER regulates electricity networks. The electricity network registration exemption guideline sets the requirements for the exemption from registration and the AER's conditions for the operation of privately-owned electricity networks.

Persons involved in the on-selling of electricity generally need to conform to both the network guideline and (in those jurisdiction where the National Energy Retail Law applies) the AER's Retail Exempt Selling Guideline. Following recent amendments to the retail guideline the exempt selling activity classes have changed. The network guideline must be amended to align with those changes.

The current network guideline was extensively revised in 2011 and came into effect on 1 January 2012. Following public consultation we have identified a number of areas where changes would improve understanding of the current guideline. The significant areas of change have:

- reformatted the guideline to adopt a style similar to the retail guideline,
- added additional exemptions categories to cover more entities and common activities,
- set out that there are four basic condition sets for all exemptions covering safety, dispute resolution, metering and pricing,
- expanded discussion of jurisdiction based differences in the regulation of private networks,
- addressed situations where an unmetered supply is permitted,
- made clearer the rights of customers to access their own meters and metering data, and
- clarified what charging is permitted in most common situations.

Despite these amendments, the policy decisions underpinning the network guideline remain substantively unchanged. Our fundamental approach is tailored to providing strong protections for the most vulnerable customers but minimising intrusion on commercial, industrial and primary production installations at the opposite end of the spectrum.

2 Requirement to develop procedures and guidelines

The AER is an independent statutory authority established under Part IIIAA of the Competition and Consumer Act 2010 (Commonwealth). The AER is the national regulator of electricity and gas. Our responsibilities include administering and regulating authorisations and exemptions (retail and network) in participating jurisdictions.

As part our role, we must develop and maintain an Electricity Network Service Provider Registration Exemption Guideline (guideline). The guideline, which accompanies this final decision, sets out the AER's approach to regulating exempt networks. It also details the various exemption classes and the conditions attached to those exemptions.

Under the NER, we can exempt people or businesses from the requirement to register with AEMO as an electricity network service provider. We allow exemptions for situations where electricity is supplied to another person over a private network – for example, the sale of energy in retirement homes or caravan parks, or where an owner of an embedded generator supplies electricity to his/her tenants. It would be burdensome and unnecessary to compel these businesses to register as a distribution business.

There are three kinds of exemptions:

- deemed exemptions (which apply automatically),
- registrable exemptions (which apply when an eligible person registers with the AER),¹ and
- individual exemptions (which are granted by the AER on a case by case basis, on application).

2.1 Legislative requirements

We exempt certain classes of persons, by either deeming them to be exempt or requiring a person within a class to register with the AER. We may also decide to grant an individual exemption to a particular person.²

We may from time to time amend the deemed and registrable exemption activity classes by following the consultation procedure set out in the NER.³

This guideline, in addition to providing information about exemptions, sets out:

- procedures for applying for the grant, variation or revocation of an individual exemption,

¹ These appear on the AER's <http://www.aer.gov.au/node/2446>.

² NER, clause 2.5.1(d).

³ NER, clause 8.9.

- the information that must be provided by an applicant for an individual exemption,
- requirements relating to registered exemptions,
- the categories of deemed and registrable exemptions, and any associated conditions of exemption that are to apply, and
- any other matters that the AER considers relevant.

The guideline also sets out our classes of exemption, and conditions attached to each exemption class.

3 Possible effects of revised guidelines

The revised guideline further clarifies our approach to network exemptions, and significantly many of the changes are intended to ensure the classes of network exemptions align with our retail exempt selling guideline, which itself has recently been amended (May 2013).

Most amendments do not depart substantively from our previous approach. There are, however, some areas where we have further clarified our position. These include:

- Imposing conditions against activity classes – Explanatory text has been added to make clear that there are four basic condition sets for all exemptions covering safety, dispute resolution, metering and pricing.
- Imposing a condition to allow consumers to access retail competition in private networks.
- Revising the metering requirements to make clearer the rights of customers to access their own meters and metering data.
- Clarified the roles and responsibilities of a number of parties involved in arranging metering installations.
- Unmetered sales of energy – we have recognised existing unmetered energy sales by commercial or retail customers in a new class exemption. As per the retail exempt selling guideline, this class will be closed from 1 January 2015.
- Sale of energy to adjacent properties – we have recognised that a person may want to sell energy to properties adjacent to their own (where the customer is not, for example, a tenant of that person). This class will be also be closed from 1 January 2015.
- Sale of energy by telecommunications companies – we have included a deemed exemption class for incidental energy sales by telecommunications companies.
- Sale of energy by government departments, statutory authorities and government owned corporations – we have included a deemed exemption class for incidental energy sales by government agencies.
- Unmetered supply to third parties – we have recognised that the current guideline would require all plug-in and rack mounted items to be individually metered if the user is not a related party. We have added an additional deemed category to remove this unintended effect.
- Demand-side participations schemes – We have recognised that demand side participation will increase in the future. As such, we expect more networks exemptions applications from participants in demand management schemes. We have included a deemed exception class for demand side participations.

- Large corporate entities – we have recognised that large sophisticated firms may want flexibility when applying for a network exemption. We have added a deemed exemption class for large corporate entities.

4 Revisions to the guideline

In finalising our guideline, we have considered stakeholder submissions. In particular submissions by:

- Ashurst (on behalf of Telstra) proposing that we should include a category for the supply of energy by telecommunication companies to its own network (we agreed),
- Another by Ashurst that we should include a category for large corporate entities (also agreed),
- AGL supporting our guideline (noted), and
- a stakeholder who expressed opposition to embedded networks (noted).

The significant changes to the exemption classes are detailed in Appendix A. The format of the guideline has been extensively revised to better align with AER (Retail) Exempt Selling Guideline. This has resulted in a reordering of the clauses and renumbering of a number of the specific conditions concerning metering, distribution loss factors and charging. However, the content of these clauses has not been substantially altered.

4.1 Additional class exemptions

We have created five new classes of deemed exemptions, class ND5, ND9, ND10, NDO6 and NDO7, and two new registrable classes, NR6 and NR7 in response to issues raised as part of our consultation process. Many of these changes are simply to align the network guideline activity classes with the retail exempt selling activity classes. These are identified in appendix A, which details the changes to the exempt selling classes and to the network specific classes.

We received a submission from Ashurst (on behalf of Telstra) citing that an additional category should be added to the guideline to reflect the sale of energy by telecommunications companies. Additionally, Telstra pointed out that our current guideline effectively required metering to be installed for even the smallest items of rack mounted or plug-in equipment. We understand that such arrangements have historically been excluded from the scope of energy legislation. Although these activities technically constitute a sale of energy, we see little need for detailed regulatory oversight given the commercial nature of the relationship, the bargaining power of both the seller and the customer and the relatively small amounts of energy sold. We have created two new deemed classes of exemption, ND5 and ND9, to cover these activities.

We received a second submission from Ashurst citing that the guideline over-regulated circumstances where electricity is supplied between two or more large corporate entities (e.g. between a mining company and a rail coal haulage company). They noted the supply of electricity is only for commercial purposes. It is not used to supply electricity to individuals or private residences. Additionally, Ashurst submitted that large corporate entities are sophisticated, and as such have the ability to arrange alternate supplies of electricity if they are not satisfied with the terms and conditions

offered to them by an on-supplier. We do not see a need for extensive regulatory oversight on large corporate entities. We have created class NDO6 to apply to them.

In response to higher energy prices we expect demand side participation to increase. Emphasis on the demand-side will result in commercially motivated innovators aggregating commercial, industrial and residential appliance loads and offering demand-side response. We have created a deemed class of exemption under ND07 for demand side participation equipment and facilities.

Government agencies are another group of on-sellers that are not currently covered by a class exemption. Yet we are aware that a number of government departments (Federal, State and Local), statutory authorities and government owned corporations sell energy outside of their core functions. We do not see a need for extensive regulatory oversight of these bodies. We have decided that government agencies that sell energy ancillary to their core functions do not need to be registered. The customers that government agencies sell energy to are likely to vary. As we assume some of those customers are small customers (albeit non-residential), they should have the same conditions as sellers under the D1 exemption class.

We have also become aware of a number of long-standing relationships that are mutually convenient for both the seller and customers. One is where a person sells metered energy to small customers adjacent to a site that they own, occupy or operate; and the other is where a person sells unmetered energy to small commercial and retail customers.

Both of these types of arrangements are not currently covered by a class exemption. We believe that these types of arrangements are not extensive and that the nature of the sales is not significant. Requiring existing sellers to apply for individual exemptions would be onerous and unnecessary.

We consider registration is adequate for these arrangements but propose to limit both exemption classes to current sellers and to close them from 1 January 2015. From this date these activity classes will be closed to new installations.

The new classes are:

- NR6 – for persons selling metered energy to small customers at a site or premises adjacent to a site that they own, occupy or operate, and
- NR7 – for persons selling unmetered energy to small commercial/retail customers at a site that they own, occupy or operate.

The conditions for both classes will be the same as those that apply to registrable class NR1.

4.2 Amended conditions

We have reviewed the existing general conditions in section 4.1. In most instances we have made minor revisions or added text to better explain the requirements of each condition. However, the basic requirements of the conditions have not been amended except as follows:

- condition 2 – (metering) now refers only to paid energy consumption because metering is not necessary if there is no sale of energy
- condition 5 – (retail authority) added a new provision for retail on-selling in jurisdictions where the National Energy Retail Law has not commenced
- condition 8 – the period for registration has been extended to 20 business days and
- condition 12 – (new) a condition has been added to support access to retail competition in New South Wales, South Australia and Victoria.

To assist in identifying the relevant general conditions we have added lookup tables that identify which conditions are pertinent to each class of activity.

The section dealing with pricing has been restructured. Text has been added to clarify which are the most common situations for each charge group. A small inconsistency in relation to charge group C has been deleted (a reference to small customers in the text implied selling to small customers in remote areas was unregulated).

The most significant addition is a new pricing section stating what charges can apply to customers (differentiated by size). This should assist all users of the guideline to identify which charges are relevant to their individual circumstances.

Appendix A. Amendments to exemption classes

Exemption class	Amendments	Reason for amendments
<p><i>Class ND1</i></p> <p><i>Replace:</i></p> <p>Bodies corporate or owners' corporations that pass on the cost of (metered or unmetered) energy for common areas through body corporate fees.</p> <p><i>With:</i></p> <p>Persons selling metered energy to fewer than ten small commercial/retail customers within the limits of a site that they own, occupy or operate.</p>	<ul style="list-style-type: none"> • Class deleted and replaced with a new exemption class that mirrors class ND2 	<p><i>To align with the revised retail exempt selling guideline.</i></p>
<p><i>Class ND2</i></p> <p><i>Replace:</i></p> <p>Metered energy onselling by residential landlords or</p>	<ul style="list-style-type: none"> • Classes ND2 and ND4 combined to create a new class exemption with the additional amendments: <ul style="list-style-type: none"> ▪ Bodies corporate, 	<p><i>To align with the revised retail exempt selling guideline.</i></p>

Exemption class	Amendments	Reason for amendments
<p>lessors operating under jurisdictional residential tenancy to less than 20 residences.</p> <p><i>With:</i></p> <p>Persons selling metered energy to fewer than ten residential customers within the limits of a site that they own, occupy or operate.</p>	<p>lessors, landlords, owners and operators of rooming houses and property managers are included as potential exempt sellers</p> <ul style="list-style-type: none"> ▪ The threshold for the number of customers that sellers can sell energy to lowered from 20 to 10 	
<p><i>Class ND3</i></p> <p><i>Replace:</i></p> <p>Metered energy onselling to short term residents in holiday accommodation.</p> <p><i>With:</i></p> <p>Persons selling metered energy to occupants of holiday accommodation on a short-term basis.</p>	<ul style="list-style-type: none"> • Activity has been extended to energy selling generally, not just onselling • There will no longer be a sunset clause attached to this class 	<p><i>To align with the revised retail exempt selling guideline.</i></p>

Exemption class	Amendments	Reason for amendments
<p><i>Class ND4</i></p> <p><i>Remove:</i></p> <p>Metered energy onselling in residential situations not covered under jurisdictional residential tenancy legislation</p>	<ul style="list-style-type: none"> Deleted as a stand-alone class exemption: merged with class ND2 	<p><i>See ND2</i></p>
<p><i>Class ND5</i></p> <p><i>Replace:</i></p> <p>There is no class ND5—the equivalent retail guideline class applies only to gas onselling.</p> <p><i>With:</i></p> <p>Unmetered supply via plug-in or rack mounted equipment in any premises.</p>	<ul style="list-style-type: none"> Amended to allow for plug-in or rack mounted equipment 	<p><i>Strict interpretation of the current guideline would require all plug-in items to be individually metered if the user is not a related party.</i></p> <p><i>We consider it inappropriate for entities with plug-in or rack mounted equipment to be required to apply for a network exemption.</i></p>

Exemption class	Amendments	Reason for amendments
<p><i>Class ND6</i></p> <p><i>Replace:</i></p> <p>Unmetered electricity onselling in Queensland to small customers.</p> <p><i>With:</i></p> <p>Persons selling unmetered electricity to small customers in Queensland.</p>	<ul style="list-style-type: none"> • Activity has been extended to energy selling generally, not just onselling • The individual exemption requirement for those who commence onselling after 1 January 2015 has been removed. 	<p><i>To align with the revised retail exempt selling guideline.</i></p>
<p><i>Class ND7</i></p> <p><i>Remove:</i></p> <p>Persons recouping the cost of energy used in common areas of a site that they own, occupy or operate, from tenants in commercial or retail premises, where the relationship between the person and the tenant is governed by commercial or retail tenancy legislation.</p>	<ul style="list-style-type: none"> • Class deleted 	<p><i>To align with the revised retail exempt selling guideline.</i></p>

Exemption class	Amendments	Reason for amendments
<p><i>Class D8</i></p> <p><i>Replace:</i></p> <p>Exemption for persons engaged in the onselling of energy to a related company.</p> <p><i>With:</i></p> <p>Persons selling energy to a related company.</p>	<ul style="list-style-type: none"> • Activity has been extended to energy selling generally, not just onselling 	<p><i>To align with the revised retail exempt selling guideline.</i></p>
<p><i>(new) Class ND9</i></p> <p>Persons selling energy to customers in conjunction with, or ancillary to, the provision of telecommunications information services.</p>	<ul style="list-style-type: none"> • New exemption class 	<p><i>To align with the revised retail exempt selling guideline.</i></p>
<p><i>(new) Class ND10</i></p> <p>Government agencies, other than housing authorities, selling metered energy to non-residential customers.</p>	<ul style="list-style-type: none"> • New exemption class 	<p><i>To align with the revised retail exempt selling guideline.</i></p>
<p><i>(new) Class NDO6</i></p>	<ul style="list-style-type: none"> • New exemption class 	<p><i>This class has been created for large corporate entities in response to a submission by Ashurst. We consider that corporate entities should be registered</i></p>

Exemption class	Amendments	Reason for amendments
Large corporate entities		<i>and should have minimal conditions suited to their circumstances.</i>
<p><i>(new) Class NDO7</i></p> <p>Residential, commercial and industrial sites hosting demand-side participation equipment and facilities, including the owners and operators of the equipment and facilities.</p>	<ul style="list-style-type: none"> • New exemption class 	<p><i>This class has been created in anticipation on increased interest in demand side management schemes. The class will remove a need for applications for network exemptions from owners and operators of private networks with equipment that will facilitate demand side management.</i></p>
<p><i>Class NRI</i></p> <p><i>Replace:</i></p> <p>Metered energy onselling by commercial/ retail landlords or lessors to small customers.</p> <p><i>With:</i></p> <p>Persons selling metered energy to ten or more small commercial/retail customers within the limits of a site that they own, occupy or operate.</p>	<ul style="list-style-type: none"> • Class limited to persons onselling to 10 or more customers per site • The requirement that the landlord/tenant relationship be governed by commercial or retail tenancy legislation is removed 	<p><i>To align with the revised retail exempt selling guideline.</i></p>

Exemption class	Amendments	Reason for amendments
<p><i>Class NR2</i></p> <p><i>Replace:</i></p> <p>Metered energy onselling to residents where the relationship with the person is governed by state or territory body corporate legislation.</p> <p><i>With:</i></p> <p>Persons selling metered energy to ten or more residential customers within the limits of a site that they own, occupy or operate.</p>	<ul style="list-style-type: none"> • Class deleted and replaced with a new class exemption that includes bodies corporate, lessors, landlords, owners and operators of rooming houses and property managers but limited to persons selling to 10 or more customers per site. • New requirement that anyone that engages in this type of activity on or after 1 January 2015 must apply for an individual exemption. 	<p><i>To align with the revised retail exempt selling guideline.</i></p>

Exemption class	Amendments	Reason for amendments
<p><i>Class NR3</i></p> <p><i>Replace:</i></p> <p>Retirement villages operating under state or territory retirement village legislation and onselling metered energy.</p> <p><i>With:</i></p> <p>Retirement villages selling metered energy to residential customers within the limits of a site that they own, occupy or operate.</p>	<ul style="list-style-type: none"> • Activity has been extended to energy selling generally, not just onselling • Removal of reference to retirement village legislation 	<p><i>To align with the revised retail exempt selling guideline.</i></p>
<p><i>Class NR4</i></p> <p><i>Replace</i></p> <p>Metered energy onselling in caravan parks, residential parks and manufactured home estates to residents who principally reside there.</p> <p><i>With:</i></p>	<ul style="list-style-type: none"> • Activity has been extended to energy selling generally, not just onselling 	<p><i>To align with the revised retail exempt selling guideline.</i></p>

Exemption class	Amendments	Reason for amendments
Persons selling metered energy in caravan parks, residential parks and manufactured home estates to residents who principally reside there.		
<i>Class NR5</i> Persons selling metered energy to large customers.	<ul style="list-style-type: none"> Activity has been extended to energy selling generally, not just onselling 	<i>To align with the revised retail exempt selling guideline.</i>
<i>(new) Class NR6</i> Persons selling metered energy to small customers at a site or premises adjacent to a site that they own, occupy or operate.	<ul style="list-style-type: none"> New exemption class 	<i>To align with the revised retail exempt selling guideline.</i>
<i>(new) Class NR7</i> Persons selling unmetered energy to small commercial/retail customers at a site that they own, occupy or operate.	<ul style="list-style-type: none"> New exemption class 	<i>To align with the revised retail exempt selling guideline.</i>