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Mr Paul Dunn  
Director Network Operations and Development  
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The logo for Ashurst, featuring the word "ashurst" in a lowercase, bold, sans-serif font.

Dear Mr Dunn

**ASHURST SUBMISSION – DRAFT AER DRAFT NETWORK SERVICE PROVIDER  
REGISTRATION EXEMPTION GUIDELINE**

**1. BACKGROUND**

We would like to thank the Australian Energy Regulator ("**AER**") for the opportunity to provide submissions to the AER in respect of the AER draft revised network service provider registration exemption guideline ("**Draft Revised NSP Exemption Guideline**"), dated January 2013.

Please note, the views contained in this submission only represent the views of our firm and not of our clients.

**2. INTRODUCTION**

We have been involved in advising on obtaining exemptions from the requirement to register as a network service provider ("**NSP**"), particularly in the energy and resources sector and the manufacturing sector.

As such, we are aware of a number of instances where the Draft Revised NSP Exemption Guideline may not appropriately respond to the circumstances where electricity is supplied pursuant to an agreement between two or more large corporate entities ("**LCEs**"), where the supply of electricity is incidental to the core business of the LCEs. We understand that it is not the AER's intention, nor desire, to govern these types of relationships.

On this basis, we submit that a number of minor amendments to the Draft Revised NSP Exemption Guideline should be considered by the AER to:

- (a) provide for an appropriate deemed exemption class to apply where electricity is supplied by one LCE to another, where such supply is incidental to the core business of the LCEs; and
- (b) ensure that the conditions that apply to the relevant deemed exemption class are appropriate given:
  - (i) that the customer is an LCE; and
  - (ii) the charge (if any) levied in respect of the supply of electricity.

In these submissions, we have also suggested a number of minor amendments to the Draft Revised NSP Exemption Guideline, with a view to ensuring that the AER's objectives are met and that the guideline is aligned to the AER (Retail) Exempt Selling Guideline.

### 3. DEALING WITH SUPPLIES BETWEEN LARGE CORPORATE ENTITIES

#### 3.1 Background

It is common for LCEs to enter into commercial arrangements with other LCEs in respect of the supply of electricity:

- (a) to enable one LCE to provide the other LCE with a service. For example, where a mining company is required to supply electricity to a rail coal haulage provider on land adjacent to the mining lease, so that the rail coal haulage provider can operate its coal loading and transfer facilities to transport the mining company's coal by rail to port; or
- (b) to facilitate the supply of electricity where a direct connection of an LCE's site to the national electricity grid is difficult due to the remote location of the site. For example, this can occur where a joint venture that owns a mining operation supplies electricity to another joint venture that owns a mining operation, where an LCE is a participant in each joint venture or has an interest in each joint venture.

Generally, the supply of electricity by one LCE to another LCE is only for commercial purposes and is not used to supply electricity to any individuals or private residences.

Against this background, we consider that it is appropriate to expand the current deemed exemption classes to cover the circumstances described above in the manner described below.

#### 3.2 Deemed exemption class ND8

Currently, the Draft Revised NSP Exemption Guideline contains a deemed exemption for persons engaged in the selling of energy to a related company. This is referred to in the Draft Revised NSP Exemption Guideline as deemed exemption class ND8.

We submit that deemed exemption class ND8 be expanded to cover the circumstances we have described above. To this end, we propose that deemed exemption class ND8 should be amended to read as follows:

*"Exemption for persons or joint ventures engaged in the on-supply of energy to:*

- (a) a Large Corporate Customer, where no charge is levied in respect of the electricity supplied;*
- (b) a Related Body Corporate; or*
- (c) another joint venture, where:*
  - (i) each joint venture has a common joint venture participant; or*
  - (ii) one or more participants in each joint venture are Related Body Corporates."*

To give effect to the revised deemed exemption class, we further submit that the following definitions be inserted into the Draft Revised NSP Exemption Guideline.

**"Related Body Corporate** has the meaning given to that term in the Corporations Act 2001 (Cth)."

**"Large Corporate Customer** has the meaning given to the term "large proprietary company" in the Corporations Act 2001 (Cth)."

We note that at present, the term "large proprietary company" is defined in the Corporations Act 2011 (Cth) to mean a company that meets one or more of the following criteria:

- (a) the consolidated revenue for the financial year of the company and any entities it controls is \$25 million or more;
- (b) the value of the consolidated gross assets at the end of the financial year of the company and any entities it controls is \$12.5 million or more; and
- (c) the company and any entities it controls have 50 or more employees at the end of the financial year.

We consider that it is appropriate to extend the exemption to include "large corporate customers" as such entities are sophisticated and have a range of alternative commercial solutions available to them. Therefore, LCEs 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.

### 3.3 Conditions to apply to deemed exemption class ND8

Currently, the Draft Revised NSP Exemption Guideline states that the conditions set out in sections 5, 6, 7, 9(1) and 10 of Part B of the Draft Revised NSP Exemption Guideline apply to deemed exemption class ND8.

However, again having regard to:

- (a) the fact that the customer is an LCE; and
- (b) the charge (if any) levied in respect of the supply of electricity,

we consider that deemed exemption class ND8 should only be subject to the conditions set out in subsections 5(2)-5(5), 5(7), 5(10), 5(10) (amended as outlined below) and section 10 of Part B of the Draft Revised NSP Exemption Guideline.

Therefore, we submit that the statement as to the conditions that apply to deemed exemption class ND8 (which appears on page 4 above table 1) in the Draft Revised NSP Exemption Guideline, be amended to read as follows:

*"The conditions set out in sections 5, 6, 7, 9(1) and 10 of Part B of the Guideline apply to deemed exemption classes ND1 through ND7.*

**The conditions set out in subsections 5(2)-5(5), 5(7), 5(10), 5(10) and section 10 of Part B of the Guideline apply to deemed exemption class ND8."**

## 4. CONDITIONS GENERALLY

The conditions set out in sections 5, 6, 7, 9 and 10 of Part B of the Draft Revised NSP Exemption Guideline are stated to apply to almost of classes of deemed and registrable exemptions. However, in many instances, the conditions do not sit appropriately with the relevant class of exemption. This is particularly the case with respect to the application of the conditions with respect to metering.

We note that the AER has sought to address this issue in the Draft Revised NSP Exemption Guideline by the amending subsection 5(2) of Part B of the Draft Revised NSP Exemption Guideline to read as follows:

*"All customers must be individually metered except where the AER has determined an unmetered supply is permitted<sup>12</sup>, **or where unmetered supply is permitted under the Exempt Selling Guideline.***

*FN 12: The AER does not approve unmetered supplies except in unique or exceptional circumstances. **Metering is not required if no charge is levied for electricity or recovery of supply costs from a tenant or co-tenant.** Existing unmetered supplies in accordance with classes ND6 and NR7 are permitted. The AER will have regard to the need for transitional arrangements in NEM Jurisdictions where unmetered supply has previously been allowed."*

We agree with the intention behind these amendments but propose that, from a legal perspective, the intention may be better effected if sections 5 6, 7 and 9 are amended as outlined below. This is because there may be doubts about the legal effect of a footnote.

#### 4.1 Subsection 5(1)

We submit that subsection 5(1) be amended to read as follows:

*"1) **If a private network is required to have suitable metering pursuant to subsection 5(2) of Part B of the Guideline, all** meters used for the measurement of electrical energy whether delivered to, or exported by, a customer must comply with the requirements of the National Measurement Act and regulations made under that Act for electricity meters and sub-meters and with the requirements set out in schedule 7.2 of the NER. "*

#### 4.2 Subsection 5(2)

We submit that subsection 5(2) be amended to read as follows:

*"2) All customers must be individually metered except where:*

***a) the AER has determined an unmetered supply is permitted;**<sup>12</sup>*

***b) no charge (other than network charges) is levied in respect of the electricity supplied via the private network; or***

***c) ~~or where~~ unmetered supply is permitted under the Exempt Selling Guideline.** "*

We further submit that footnote 12 be amended to read as follows:

*"The AER does not approve unmetered supplies except in unique or exceptional circumstances. **Metering is not required if no charge is levied for electricity or recovery of supply costs from a tenant or co-tenant.** Existing unmetered supplies in accordance with classes ND6 and NR7 are permitted. The AER will have regard to the need for transitional arrangements in NEM Jurisdictions where unmetered supply has previously been allowed."*

#### 4.3 Subsection 5(5)

We submit that section 5(5) of Part B of the Draft Revised NSP Exemption Guideline be amended to reflect that:

- (a) the National Energy Retail Law has not yet commenced in every jurisdiction of Australia; and
- (b) an onseller is only required to comply with the conditions listed above if a charge is levied in respect of the electricity supplied.

Therefore, we submit that subsection 5(5) be amended to read as follows:

*"5) All onselling conducted within a private network must be undertaken by:*

*a) a registered market retailer; or*

*b) by the holder of a valid retail exemption registered with the AER; or*

*c) by a party or parties entitled to a deemed retail onselling exemption in accordance with the current AER Exempt Selling Guideline,*

**where:**

**d) the private network is operated in a jurisdiction of Australia where the National Energy Retail Law has commenced operation; and**

**e) a charge is levied in respect of the electricity onsold via the private network (other than network charges)."**

#### 4.4 Subsection 5(7)

We submit that subsection 5(7) be amended to read as follows:

*"7) Where a single customer has energy delivered to adjoining sites (not necessarily adjacent sites) or to multiple exempt sites within a jurisdiction and the sites are subject to a common supply arrangement and suitable metering is **required to be installed pursuant to subsection 5(2) of Part B of the Guideline**, meter readings for that customer may be aggregated for corresponding time periods.<sup>15</sup> "*

#### 4.5 Section 6 - Metering Installation

We submit that the first sentence of section 6 be amended to read as follows:

*"The following requirements relate to all new installations and to any reconfiguration of a metering installation within an existing private network, **where such metering is required pursuant to subsection 5(2) of Part B of the Guideline.**"*

#### 4.6 Section 7 - Metering Accuracy

We submit that the first sentence of section 7 be amended to read as follows:

***"Where a private network is required to have suitable metering pursuant to subsection 5(2) of Part B of the Guideline,** meters used ~~within private networks~~ must be pattern approved, consistent with the requirements of the National Measurement Act and regulations made under that Act, in accordance with the equivalent requirements for NEM electricity meters and to accuracy classes as stipulated in schedule 7.2 of the NER, unless otherwise exempted by the National Measurement Institute.<sup>18</sup>"*

#### 4.7 Section 8 - AEMO and NEM requirements

We submit that the first paragraph of section 8 be amended to read as follows:

*"Billing and settlement of meters in an embedded (i.e. private) network is a complex area. In networks where none of the customers obtain supply from a NEM registered retailer there is not an immediate need to apply the unique metering identifiers issued by the local DNSP and record these in the market settlement*

*system operated by AEMO. However, where a customer within a private network obtains supply from a NEM registered retailer there is an immediate need for the 'child' meter for that customer to be recorded in the metering and settlements system. The following conditions apply to a private network **(where the private network is required to have suitable metering pursuant to subsection 5(2) of Part B of the Guideline)** in jurisdictions where customers of private networks have access to full retail competition and where a customer has elected to obtain supply from a NEM registered retailer:"*

4.8 **Section 9 - Distribution Loss Factors**

We submit that the following sentence be inserted to appear immediately under the heading of section 9:

**"This section applies where a private network is required to have suitable metering pursuant to subsection 5(2) of Part B of the Guideline."**

5. **OTHER**

We note that throughout the Draft Revised NSP Exemption Guideline, the AER refers to the onselling or selling of electricity. However, we submit that the Draft Revised NSP Exemption Guideline refer to the "onsupply" or "supply" of electricity instead on the "onselling" or "selling" of electricity. This is because:

- (a) the onselling of electricity is dealt with under the AER (Retail) Exempt Selling Guideline; and
- (b) there are many instances where electricity is supplied via a private network and the private network operator may not be the entity "selling" electricity to the customer. For example, the customer may have its own retailer and the operator of the private network may only convey the electricity.

Again, we thank the AER for allowing us to make this submission.

We would welcome the opportunity to discuss this submission with you.

Yours faithfully



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