

17<sup>th</sup> October 2016

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**Submission on Review of Electricity Network Service Provider Registration Exemption Guideline - 2016**

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA) is the State's peak industry body representing the interests of holiday parks, residential land lease communities (residential parks, including caravan parks and manufactured home estates), manufacturers and retailers of caravans, RVs, motorhomes and camping equipment and manufacturers of relocatable homes.

We currently have over 730 businesses representing all aspects of the caravan and camping industry. 451 of these members are holiday park and residential land lease community operators in various areas of New South Wales.

The geographical breakdown of these businesses is as follows:

<b>Region</b>	<b>Number of Businesses</b>
Far North Coast & Tweed	52
North Coast	70
New England	16
Manning/Forster	24
Newcastle, Hunter & Port Stephens	53
Central Coast	33
Sydney & Surrounds	22
Leisure Coast	48
South Coast	64
Central NSW	23
Murray & Riverina	27
Canberra & Snowy Mountains	13
Western NSW	5
Interstate	1

For the purpose of providing feedback to the State Government in August 2012 the Association conducted a survey of members operating residential land lease communities within New South Wales. That survey revealed that in approximately 60% of responses,

electricity is supplied to permanent residents by the operator via an embedded network (park supply).

Further, in 22% of surveyed cases electricity is supplied to permanent residents by the operator AND the electricity supplier, resulting in a 'mixed supply' via what could be termed a 'partially' embedded network.

A copy of the results of this survey is enclosed for your reference.

We note this survey did not take into account the supply of electricity via embedded networks in holiday parks. Nevertheless, the Australian Energy Regulator (AER) would be aware that there are numerous holiday parks within New South Wales where embedded networks are established and in operation.

As the peak industry body representing holiday parks and residential land lease communities in NSW with embedded electricity networks, the CCIA is an important stakeholder in relation to the draft amendments to the Electricity Network Service Provider Registration Exemption Guideline 18 August 2016 (Network Guideline). Accordingly, we welcome the opportunity to comment on the proposed amendments. Thank you to Paul Dunn, Director of Networks, at the AER for providing us with an extension of time to 17<sup>th</sup> October 2016 to provide these submissions.

For the purpose of these submissions, wherever we refer to "holiday parks" we are referring to caravan parks that only supply energy via an embedded network to occupants of holiday accommodation on a short terms basis (i.e. there are no permanent residents in these caravan parks). Wherever we refer to "residential land lease communities" we are referring to residential parks, including caravan parks and manufactured home estates, that supply energy via an embedded network to residents who principally reside there. This includes caravan parks that supply energy to as little as 1-2 residents right through to residential land lease communities that are exclusively residential.

Discussion questions from the *Issues Paper Draft Amendments to the Electricity Network Service Provider Registration Exemption Guideline August 2016* (Issues Paper) have been highlighted where relevant.

## Regulatory Requirements

Under the AER's (Retail) Exempt Selling Guideline (Retail Guideline) and current Network Guideline our holiday park and residential land lease community members are classified as follows:

<b>Embedded Network Type</b>	<b>AER Exemption Classes</b>
Operator selling metered energy to occupants of holiday accommodation on a short-term basis in a caravan/holiday park	Class <b>D3</b> of the Retail Guideline and Class <b>ND3</b> of the ENSP Guideline  Do not need to register their details with the AER, however are required to comply with Conditions attached to their exemption
Operator selling metered energy to residents who principally reside in the caravan park/residential park or manufactured home estate	Class <b>R4</b> of the Retail Guideline and Classes <b>NR4</b> and <b>NR05</b> of the ENSP Guideline  Must register their details with the AER and comply with Conditions attached to their exemption

<p>Operator selling metered energy to occupants of holiday accommodation on a short-term basis as <b>well as</b> residents who principally reside in the caravan/holiday park (mixed park)</p>	<p>Class <b>R4</b> of the Retail Guideline and Classes <b>NR4</b> and <b>NR05</b> of the ENSP Guideline</p> <p>Must register their details with the AER and comply with Conditions attached to their exemption</p> <p><b>NOTE:</b> <i>we highlight this class because even if a caravan park has only 1 permanent resident, they are required to register their details with the AER under Class <b>R4</b> of the Retail Guideline and Classes <b>NR4</b> and <b>NR05</b> of the ENSP Guideline, even though the majority of their customers are holiday makers.</i></p>
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We note that in December 2015 the Australian Energy Market Commission (AEMC) made a final Rule Determination - *National Electricity Amendment (Embedded Networks) Rule 2015* - the purpose of which was to clarify the regulatory arrangements for embedded networks and reduce the barriers to embedded network customers accessing retail market offers.

The changes to the National Electricity Rules (NER) create a new accredited provider role – embedded network manager (ENM) – to perform the market interface functions that link embedded network customers to the National Electricity Market (NEM) systems. More specifically, the role of the ENM would be to facilitate the transfer of customers between the embedded network operator and registered retailers, including carrying out the functions within Market Settlement and Transfer Solutions (MSATS) and the Business to Business (B2B) procedure that are performed by registered network service providers, retailers and accredited service providers for non-embedded network customers.

Our position remains that AEMC’s rule change places an unnecessary compliance and cost burden on the operators of embedded networks in holiday parks and residential land lease communities in NSW (which fall within Classes **ND3**, **NR4** and **NR05**<sup>1</sup> of the AER’s Network Guideline). We reiterate that in the context of these kinds of embedded networks, we do not believe the appointment of ENM will facilitate more competition in the retail market for energy or enhance the availability of sufficient information for consumers to make efficient decisions. All it will do is create an unnecessary cost for operators to bear, which without an alternative means, cannot be recouped by residential land lease communities in any way other than site fee increases to the detriment of customers largely in need of affordable housing.

However, in our consultations with the AEMC in October 2015 we acknowledged that in relation to the larger embedded networks market the rule change is a more preferable rule change. This was on the understanding that the AER would be provided with flexibility to exercise discretion and exempt a person from complying with the ENM conditions until such time a customer within the network exercises their right to access a retail market offer. The following extracts from the Rule Determination also support this understanding:

*“The final rule introduces a new accredited provider role into the National Electricity Rules – the embedded network manager – to be responsible for performing market interface services for embedded network customers.*

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<sup>1</sup> We note that activity class NR05 will cease to apply with the introduction of amended rules governing embedded networks

*The changes implemented by the final rule will establish the new role. The detailed functions, procedures, governance arrangements and criteria for when an embedded network manager must be appointed will then be set out in AEMO procedures and the Australian Energy Regulator's (AER) network exemption guideline. In particular:*

- ) the AER's network exemption guideline will specify which embedded network operators will be required to appoint an embedded network manager;*
- ) AEMO's procedures will specify the exact functions and instructions for performing the functions in the National Electricity Market systems; and*
- ) AEMO will create accreditation procedures for embedded network managers to ensure embedded network managers are capable of performing the functions...<sup>2</sup>*

*The final rule is expected to:*

*Minimise compliance costs and administrative burden for stakeholders by:*

- ) allowing the AER to determine which embedded network operators are required to appoint an embedded network manager taking into account the costs and benefits of doing so.<sup>3</sup>*

*...the final rule provides for the AER to allow embedded network managers to not be appointed in circumstances where the costs are likely to exceed the benefits."<sup>4</sup>*

On page 49 of its Rule Determination the AEMC makes it clear that an advantage of providing the AER with flexibility and discretion in this regard is so *“embedded network operators operating embedded networks where the likelihood of customers seeking to go on-market is low will not be required to bear the costs unless a customer seeks to go on-market.”*

Unfortunately, there appears to be minimal flexibility reflected in the draft amendments to the Network Guideline. It is proposed that embedded networks in residential land lease communities registered in activity class **NR4** servicing 30 or more customers would still be required to appoint an ENM by 1 December 2017.

These enterprises, many of which are SME's, would be required to continue this appointment indefinitely and regardless of whether or not any of these customers sought to go on-market. Coupled with the fact that the costs of appointing an ENM remain unknown, this is not an acceptable regulatory environment for these business, *'where the likelihood of customers seeking to go on-market is low.'*

Scale is not the only important consideration that should be taken into account. The proposed amendments suggest clarification is required regarding holiday parks and residential land lease communities, particularly in relation to the way they operate and NSW legislation. For example, we are concerned about the complexity and usefulness of the cost recovery procedures and poll requirements for *“eligible communities”* registered in activity class NR4. We have expanded on this and other issues in our submissions below and proposed an alternative solution.

## **Embedded Network Billing**

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<sup>2</sup> Summary ii, AEMC National Electricity Amendment (Embedded Networks) Rule 2015,

<sup>3</sup> Ibid, Summary iv

<sup>4</sup> Ibid, p51

*Q.1 - Have we done enough? What more should be done? Who should bear responsibility for billing errors when network charges are duplicated?*

The Issues Paper outlines that in an embedded network if a customer decided to buy from a market retailer directly they would normally get two bills – one is the ‘energy only’ bill from the market retailer and the second is a network charges bill from the embedded network, primarily because it is not common for the market retailer to have an agreement with the embedded network manager to recover their network charges.

To avoid errors in network charges, the AER allows ‘shadow pricing’ whereby the customer is charged the prices they would receive as if they were directly connected to the distributor and are no worse off than if they had a direct connection to the national energy market. The Issues Paper goes on to state:

*“...this mean the embedded network operator may receive more revenue from network charges than they pay in their bulk supply bills. This is a source of profit which we consider can be applied to offset any costs incurred in satisfying our conditions for exemption.”<sup>5</sup>*

Further, to address the risk of customers being charged twice for network charges (because the retailer’s billing system or the MSTATS does not correctly record the meter is a child meter in an embedded network) the Network Guideline has been expanded in section 4.9 to:

- ) require the embedded network operator to resolve transitional charging problems in a brownfield conversion, and
- ) require the retailer to rectify any error in a greenfield situation.

While we anticipate that brownfield conversions are unlikely to occur in our industry, we generally see no issues with the proposed requirement in section 4.9.5.

However, we do not entirely agree with the AER’s account of network charges and billing in the context of holiday parks and residential land lease communities. The supply of energy to customers in these kinds of embedded networks is generally not a source of profit. In holiday parks servicing occupants of holiday accommodation, network charges are generally not imposed. In residential land lease communities, operators are limited in what they can charge by NSW legislation:

***Residential (Land Lease) Communities Act 2013:***

***76 Limit on amounts payable by home owner***

- (1) *The only fees and charges that may be required or received by the operator of a community from a home owner in connection with the occupation of a residential site, or the use of any of the facilities of a community, are as follows:*
  - (a) *site fees, including site fees payable in advance as permitted under section 57,*

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<sup>5</sup> p 11, Australian Energy Regulator, Issues Paper Draft Amendments to the Electricity Network Service Provider Registration Exemption Guideline, August 2016.

- (b) *the cost of registering or recording the site agreement under the Real Property Act 1900 if any fixed term period exceeds 3 years,*
- (c) *a refundable deposit for a key or any other opening device to access the community, not exceeding \$25 or another amount prescribed by the regulations,*
- (d) *other fees, charges and deposits required or permitted by this Act or the regulations.*

**77 Utility charges payable to operator by home owner**

- (1) *This section applies if, under a site agreement, the home owner is required to pay utility charges to the operator for the use by the home owner of a utility at the residential site.*
- (2) *The home owner cannot be required to pay for the use unless:*
  - (a) *the use is separately measured or metered, and*
  - (b) *the operator gives the home owner an itemised account and allows at least 21 days for the payment to be made.*
- (3) *The operator must not charge the home owner an amount for the use of a utility that is more than the amount charged by the utility service provider or regulated offer retailer who is providing the service for the quantity of the service supplied to, or used at, the residential site.*

*Maximum penalty: 20 penalty units.*

- (4) *The regulations may:*
  - (a) *provide for a maximum utility charge payable by home owners to the operator, and*
  - (b) *create an offence for an operator to request or receive more than that maximum charge (if any).*
- (5) *The regulations may provide that a service availability charge for electricity payable by home owners to the operator of a community is to be discounted in accordance with the regulations where less than 60 amps are being supplied.*

**Residential (Land Lease) Communities Regulation:**

**13 Maximum service availability charge—electricity**

*(1) The maximum service availability charge payable, in respect of any period, by a home owner to the operator for the supply of electricity at a residential site is the amount that would have been payable for the period if the electricity had been supplied to a small customer under a standard retail contract of the applicable local area retailer at standing offer prices.*

*(2) Despite subclause (1), the service availability charge payable by a home owner to an operator of a community for supply at a residential site of less than 60 amps of electricity is to be discounted in accordance with subclause (3).*

*(3) The maximum service availability charge payable by a home owner to an*

operator for supply at a residential site of less than 60 amps of electricity is:

(a) if less than 20 amps of electricity is supplied to the residential site— 20 per cent of the service availability charge that would apply if the home owner were a small customer under a standard retail contract of the applicable local area retailer, or

(b) if 20 amps or more but less than 30 amps of electricity is supplied to the residential site— 50 per cent of that service availability charge, or

(c) if 30 amps or more but less than 60 amps of electricity is supplied to the residential site— 70 per cent of that service availability charge.

(4) In this clause, local area retailer, small customer, standard retail contract and standing offer prices have the same meanings as in the National Energy Retail Law (NSW).

## **Fees, Charges and Transaction Costs**

*Q.2 - Should a meter reading charge should be allowed at all, or should it be capped as we propose or by an alternative mechanism.*

*Q.3 - Are customers, experiencing unfair, unreasonable or excessive fees?*

*Q.4 - If so, what form do these charges take?*

*Q.5 - Why do you think they are unfair, unreasonable or excessive?*

*Q.6 - What additional restrictions should the AER place on the levying of these charges?*

We consider that the proposed amendments to section 4.6 of the Network Guideline are generally reasonable, including in relation to late payments and manual meter reading charges (new condition 4.6.4.1). However, as a result of the above limitations on energy charges, the amendments to section 4.6 of the Network Guideline regarding network charges and charge groups offer little assistance to embedded network operators in residential land lease communities. The service availability charge (SAC) they are able to recoup barely represents the costs of maintaining the network, but they are limited to what the NSW legislation allows.

Further, this situation is likely to worsen for holiday parks and residential land lease communities who are impacted by Essential Energy's tariff changes.<sup>6</sup>

We have been advised by Essential Energy that there are at least 15 of our members who are affected.

## **Metering Installation**

*Q.7 - Do stakeholders consider these metering arrangements are sufficient to facilitate access to retail competition?*

*Q.8 - What other conditions are necessary or desirable to support competitive offers?*

Page 14 of the Issues Paper sets out that in order to facilitate access to retail competition the AER will require that where an existing meter is suitable for use by a market retailer, the embedded network operator must allow the customer and/or their retailer to continue to use

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<sup>6</sup> In July 2016 Essential Energy wrote to around 1,100 customers who have been identified as having energy consumption levels greater than 160MWh in the past twelve months and who are currently incorrectly on either a basic block, or time of use, tariff to advise them that they must be moved to a demand tariff from 1 July 2017. Additionally, Essential Energy has written to 1000 customers who consume greater than 100MWh but less than 160MWh per annum and are currently incorrectly on a block tariff to advise them that they will be moved to a time of use tariff. See: <https://www.essentialenergy.com.au/content/tariff-change>

that meter on reasonable commercial terms. Otherwise, the customer or the retailer may opt to replace the meter.

Our position is that this requirement is reasonable. However, in relation to holiday parks and residential land lease communities we do not agree with the statement that “*embedded network operators normally invest in their networks for profit, not because of any statutory obligation*” hence “*there is no obvious reason to shield embedded networks from the risk of stranded investments arising from shifts in the competition environment.*”<sup>7</sup> Please refer to our summary of the history of these networks on page 9 of these submissions.

The requirements for all new metering installations and to any reconfiguration of an existing metering installation within an existing embedded network are generally reasonable. However, we request the AER consider the following recommendations to provide further clarification and fairness:

**1. Redrafting of clause 4.2 (d) as follows:**

*Except where a customer, market retailer or other person provides a replacement metering installation of their own volition, An existing non-compliant metering installation for a child customer in an embedded network must be upgraded at the cost of the exempt embedded network service provider except where:*

- (a) *the child embedded network customer has not sought to take advantage of a market retail offer; or*
- (b) *the metering installation was in existence on 1 January 2012 and was not altered after that date; or*
- (c) *a metering installation was installed on or after 1 January 2012 and that installation complied with the requirements of this guideline in force on the date of commissioning or first use of the installation; ~~or~~*
- ~~(d) *a customer, market retailer or other person provides a replacement metering installation of their own volition.*~~

**2. Redrafting part of section 4.2.2.1 as follows:**

*In addition to any other requirement under the NER and/or jurisdictional requirements for a metering installation, all new and replacement meters installed in an exempt distribution network must be in an accessible location with safe, convenient access at no cost to the customer to facilitate meter reading by the network operator and the customer or their respective agents and, where relevant, to permit meter testing and maintenance.*

**3. Redrafting part of section 4.2.2.3 as follows:**

*Where a market retailer accesses an existing embedded network child meter the market retailer or the customer (as the case may be) may:*

- (a) *purchase or lease the existing meter from the owner of the meter on terms proposed by the owner of the meter; or*
- (b) *replace the meter with a meter of their own choosing.*

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<sup>7</sup> p 14, Australian Energy Regulator, Issues Paper, op cit.



If option (a) applies, the decision to purchase or lease of the meter on terms proposed by the owner of the meter, or as negotiated, and the arrangements to access meter data are ~~to be determined~~ at the discretion of the retailer or, otherwise, by the customer.

If option (b) applies, no compensation is payable to the exempt embedded network service provider for the unrecovered cost of the meter.

#### **4. Prohibition of measures which impede competition:**

We understand the need to prevent an exempt embedded network service from impeding or penalising a customer seeking access to retail competition. However, we do not agree with the following drafting of section 4.2.2.4:

*From the earlier of the effective date of this guideline and 1 December 2017, an exempt embedded network service provider is not entitled to receive and must not impose a requirement for compensation on a person, Owners Corporation, body corporate, strata corporation, landlord, resident, tenant or trust for the loss of capital, income or profits however it arises resulting from the exercise of a customer of the right to access an alternative retail market electricity price offer.*

This prohibition should not impact upon any legitimate rights at law to which an exempt embedded network service provider may be entitled to as a result of circumstances that arose prior to the earlier of the effective date of the Network Guideline and 1 December 2017. As such, this section should be redrafted to ensure it is not retrospective.

#### **5. Meter accuracy testing and billing disputes:**

The requirements proposed in section 4.2.2.5 are generally reasonable. However rather than requiring exempt embedded network service providers to inform a customer of the right to request a meter test and provide a written offer to conduct a metering test in the event of a billing dispute, an exempt embedded network service provider should be provided with the option of proactively including this information as part of a bill. As a result, additional administrative costs are avoided and the information is available to the customer in the first instance.

### **Metering Maintenance**

*Q.9 - Are the requirements for maintenance of the embedded network metering installation appropriate? Should any other exceptions apply? If so, why?*

We do not support the proposed amendments to section 4.3 of the Network Guideline. The language and requirements of schedule 7.3 of the NER are too complex for operators of embedded networks in holiday parks and residential land lease communities to understand and implement.

Put simply, the objective to standardise the routine testing and inspection arrangements for off-market child meters will not be achieved if operators do not understand the requirements they need to meet. We agree with the AER that all energy consumers have a reasonable expectation that their metering installation should be “accurate, safe and reliable”, but surely this can be achieved by an alternative means within the Network Guideline.

The Network Guideline needs to take into account the less sophisticated exempt embedded network service provider. We request that the AER reconsider these requirements and apply appropriate exceptions for holiday parks and residential land lease communities.

### **Appointment of an Embedded Network Manager**

*Q.10 - Do stakeholders agree these are the only relevant activity classes?*

*Q.11 - Do stakeholders agree these are the only appropriate activity classes required to appoint an ENM?*

*Q.12 - Should any other activity classes be added or removed? If so, which activity classes and why?*

*Q.13 - Is the threshold of 30 customers appropriate?*

In relation to the appointment of an ENM, the proposed amendments to the Network Guideline indicate that clarification is needed on the operation of holiday parks and residential land lease communities in NSW. As such, we reiterate here our previous submissions to the AEMC.

We acknowledge that there has been significant growth in the embedded network sector over the last year or two, with landlords looking to energy on-selling as a means of supplementing their rental income. Embedded networks are common in multi-tenanted buildings such as shopping centres or commercial buildings and are becoming more popular in new residential developments.

In developments such as these we understand the AEMC's rule change and the amendments to the Network Guideline as proposed by the AER. However, there is no rapidly increasing development of holiday parks and residential land lease communities in NSW with dedicated embedded networks. Their operations and ownership structures are different and the requirements for activity class NR4 need to be recast.

### **History**

Most holiday parks and residential land lease communities in NSW are older developments that have evolved over time and the embedded networks within them have come about through circumstance. In most cases, there was no conscious business decision to create an embedded network that factors in the cost of appointing an ENM. The infrastructure is older and owned by the operator.

Many caravan parks were originally camping grounds on reserves of Crown land in coastal areas outside the capital cities, squatted by people who had lost their homes and who had no housing alternative to living in tents, shacks and vans. The reserves were converted to caravan parks after the Second World War and maintained by local councils, although most parks had little in the way of communal facilities.<sup>8</sup>

In 1986 legislation was passed which legalised long-term occupancy of sites and set minimum standards for caravan park residency and in 1992 State Environment Planning Policy (SEPP) 21 – Caravan Parks was introduced, encouraging “the orderly and economic use and development of land used or intended to be used as a caravan park catering exclusively or predominantly for short term residents (such as tourists) or for long-term residents, or catering for both.”<sup>9</sup>

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<sup>8</sup> p 2, *Caravan Parks, NSW Parliament e-brief August 2011*

<sup>9</sup> Section 3 (1) (a) *State Environment Planning Policy No 21 – Caravan Parks*

The *Residential Tenancies Act 1987* originally covered permanent residents of residential parks. However, it later became clear that there were so many differences between tenancies in parks and other residential tenancies that separate legislative provisions were necessary. As a result, the *Residential Parks Act* was enacted in 1998, and a range of protections were secured for residents, including protections for energy consumption.

### **Operations**

Although corporate ownership is increasing, the majority of holiday parks and residential land lease communities are in private ownership and are operated as separate legal entities. They are small to medium businesses where the supply of energy via an embedded network is ancillary to their core functions.

Occupants of holiday accommodation in holiday parks are either tourists or occupants that leave their vans in the park for occasional recreational use during the year under the terms of an occupation agreement.

An occupant of residential accommodation in residential land lease communities (residential parks, including caravan parks and manufactured home estates) can be:

- ) A tenant who leases a dwelling and a site from the operator under a residential tenancy agreement, or
- ) a Home Owner, a person who owns their dwelling but leases the site on which the dwelling sits from the community operator under a site agreement.

The operators of residential land lease communities know their residents well and in many cases, managers live on site. They are not large, faceless landlords who try and avoid their obligations to properly manage the embedded network and facilitate customer access to retail competition. They are businesses highly regulated by State legislation and do not have the luxury of aggregating the additional cost of appointing an ENM across multiple parks or communities.

There is also a mixture of embedded networks in this sector that must be considered. In some caravan parks, there could be as little as 1-2 permanent residents. Nevertheless, an operator of a 'mixed-park' is required to register their details with the AER and comply with Conditions attached to their 'registrable' exemption under activity class NR4 (as opposed to activity class ND3) notwithstanding that all other energy consumers in the embedded network are occupants of holiday accommodation on a short-term basis.

Further, as indicated by our member survey results in August 2012, in 22% of surveyed cases electricity is supplied to permanent residents by the embedded network operator AND the electricity supplier, resulting in a 'mixed supply' via what could be termed a 'partially' embedded network.

### ***ENM Appointment Trigger Conditions***

Focusing only on existing embedded networks, our understanding of the proposed changes to the Network Guideline is as follows:

#### Overarching Requirement

1. The overarching requirement is that all existing embedded network operators in activity classes **ND1, ND2, ND10, NR1, NR2, NR3, NR4, and NR5** must appoint an ENM by 1 December 2017.

## Exceptions

### *Holiday Parks*

2. Existing embedded network operators in activity class **ND3** (holiday parks) are not required to appoint an ENM from 1 December 2017. However, if triggered by a customer entering into a market retail contract for the sale of energy at the relevant child connection point and the cooling off period in relation to that contract has expired, an ENM must be appointed<sup>10</sup> and the operator is to absorb the cost into the network charges.

### *Small Networks*

3. Existing embedded network operators in activity classes **ND1, ND10, NR1** and **NR6** with 29 or less customers are not required to appoint an ENM from 1 December 2017. However, an ENM must be appointed when an ENM trigger event occurs, which is when:
  - (a) *a customer or a retailer notifies the exempt embedded network service provider of the desire of the customer to access retail competition; and*
  - (b) *where an eligible member of an eligible community notifies the exempt embedded network service provider as provided for in condition 4.7.2 that the customer does not accept a binding written price counter-offer; and*
  - (c) *the cooling off period for that market retail contract has expired.*<sup>11</sup>
4. Existing embedded network operators in activity classes **ND2, NR2, NR3** and **NR4** with 29 or less customers are not required to appoint an ENM from 1 December 2017. However, an ENM must be appointed when an ENM trigger event occurs, which is when:
  - (d) *a customer or a retailer notifies the exempt embedded network service provider of the desire of the customer to access retail competition; and*
  - (e) *where an eligible member of an eligible community notifies the exempt embedded network service provider as provided for in condition 4.7.2 that the customer does not accept a binding written price counter-offer; and*
  - (f) *the cooling off period for that market retail contract has expired.*<sup>12</sup>

### *Eligible Communities*

5. Existing embedded network operators in activity classes **ND2, NR2, NR3** and **NR4** with 30 or more customers are technically required to appoint an ENM from 1 December 2017, however conditions 4.7.2 and 4.7.3 of the draft Network Guideline allow these 'eligible communities' to delay the appointment of an ENM (in order to

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<sup>10</sup> Chapter 10 New Definitions, Schedule 5 Amendment to the National Electricity Rules, National Electricity Amendment (Embedded Networks) Rule 2015 No. 15

<sup>11</sup> Section 4.4.2.1 of the draft Network Guideline.

<sup>12</sup> *Ibid.*

decide if ENM costs will be charge to only the users of ENM services or seek ENM accreditation) or to revoke an appointment of an ENM if the need for an ENM ceases.

In relation to point 2 above on page 16 of the Issues Paper and section 4.4.2 (page 46) of the draft Network Guideline the AER summarises that activity class ND3 concerns short-term accommodation and the transient nature of those arrangements makes it unlikely that there would be sufficient opportunity to offset the transaction costs of appointing an ENM. Although the use of the words “rental” and “tenancies” in this section of the Network Guideline should be deleted (as these arrangements are not tenancies), we agree that class ND3 should be omitted from the relevant activity classes.

It is unfortunate, however, that these kinds of embedded networks cannot be excluded from the ENM requirements entirely due to the strict drafting of the AEMC’s final rule. It is these types of embedded networks where the likelihood of customers seeking to go on-market is low, should it happen at all.

In relation to points 4 and 5, we appreciate the AER’s consideration of a trigger event requirement to delay the date by which an ENM must be appointed, as a means of lessening the burden for smaller networks and what has been termed ‘eligible communities’. These latter networks are also provided with additional options of non-appointment and reversion.

However, as stated above, scale is not the only important consideration that should be taken into account. The limitations on utility charges in residential land lease communities (which are registered in activity class NR4) under NSW legislation effectively removes the incentive for residents to go on-market because:

- a) operators are prohibited from charging resident an amount for energy that is more than the amount charged by the utility service provider or regulated offer retailer who is providing the service for the quantity of the service supplied to, or used at, the residential site,
- b) operators are also prohibited from charging home owners who receive 60 amps of electricity or more an amount that is more than the maximum SAC that would be charged if the electricity had been supplied to a small customer under a standard retail contract of the applicable local area retailer at standing offer price, and
- c) where home owners are provided with less than 60 amps, the SAC is discounted as follows:
  - i. if less than 20 amps of electricity is supplied to the residential site—20 per cent of the service availability charge that would apply if the home owner were a small customer on a standard retail contract of the applicable local area retailer, or
  - ii. if 20 amps or more but less than 30 amps of electricity is supplied to the residential site—50 per cent of that service availability charge, or
  - iii. if 30 amps or more but less than 60 amps of electricity is supplied to the residential site—70 per cent of that service availability charge.

As such, due to their operating and regulatory environments residential land lease communities are also a prime example of embedded networks where the likelihood of customers seeking to go on-market is low, as contemplated by the AEMC. As a result, they should not be required to bear the costs of appointing an ENM unless and until a customer

seeks to go on-market. This is the correct approach if regulatory obligation is to be proportionate to the benefits to the customer.<sup>13</sup>

Taking into account our submissions regarding an alternative option for the recovering the costs of an ENM and subject to other issues that need to be resolved (see below), we request the AER reconsider the requirements for persons registered in activity class NR4 with 30 or more customers and apply the same requirements proposed for embedded networks with 29 or less customers (summarised in point 4 above). Larger residential land lease communities should have an added administrative burden of having to resolve not to appoint an ENM from 1 December 2017 when their operating environment is essentially the same as a 'small size network'.

## **ENM Costs**

*Q.14 - How much will ENM services cost?*

*Q.15 - What is a reasonable range for estimating the costs of ENM services?*

*Q.16 - At what level do the additional costs of an ENM threaten the viability of an embedded network?*

*Q.17 - Are customers happy with current approaches as a model for recovery of the ENM costs?*

*Q.18 - Is there a need for specific measures or an AER condition to ensure that cost recovery occurs on an equitable basis for all network customers?*

*Q.19 - If so, what form should this take?*

Without further information regarding what will be involved in seeking accreditation to become an ENM (i.e. training, cost, etc) we anticipate that operators of embedded networks in holiday parks and residential land lease communities will not assume the role, but rather appoint an external ENM, particularly given that the supply of energy is not their core business. As such, there will be costs (for appointment and retainer) to be met.

On the question of costs for market interface services, perhaps the Distribution Network Service Providers (DNSPs) could shed some light on this subject, seeing as they provide the service for customers outside of embedded networks.

Our comments on the proposed models for recovery of ENM costs are as follows:

### **Option 1**

We do not agree with the AER's baseline requirement that the exempt embedded network service provider must absorb the cost of ENM services, except where an embedded network has been formed to operate as a "community based bulk purchasing scheme." Our reasons for this are as follows:

1. This means embedded network service providers will effectively be charged for losing a customer while the retailers benefit,
2. As residential land lease communities are limited in the amounts that can be charged for the supply of energy, the AER's shadow pricing policy offers limited assistance compared with other types of embedded networks,

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<sup>13</sup> p20, Australian Energy Regulator, Draft Guideline Exemption from registration as a Network Service Provider, 18 August 2016

3. Holiday parks and residential land lease communities rarely profit from the ownership or operation of an embedded network,
4. Residential land lease communities cannot “extract a price premium from customers of the embedded network” or charge “greater than the charges that would have resulted if the customers were served directly by a market retailer” as stated on pages 9 and 19 of the Issues Paper.
5. Like holiday parks covered by activity class ND3 (deemed exemption), residential land lease communities “sell or provide a connection to electricity incidentally. Energy sales and supply is not their primary business...they are generally motivated by considerations other than profit.”<sup>14</sup>

## **Option 2**

While we agree with the adoption of a ‘user pays’ principle, the AER’s proposed cost recovery mechanisms for what are termed “eligible communities” operating “bulk purchasing schemes” are problematic for residential land lease communities registered in activity class NR4.

Our understanding of the cost recovery mechanisms for embedded networks registered in activity class NR4 is that condition 4.7.1.1 (page 56 of the draft Network Guideline) would allow ‘eligible communities,’ operating ‘cooperative or ‘group based’ bulk purchasing schemes’ to charge ENM costs to only the users of ENM services (i.e. customers benefiting from the ENM service) so long as:

- a) The appointment of an ENM (other than the operator of the embedded network) is conducted as an arm’s length transaction and is a transparent, competitive process,
- b) There is no payment of an advance fee or rebate to a property owner, developer or exempt embedded network service provider or any other person in connection with the provision of ENM services or to secure a right to provide services to an embedded network regulated by the AER,
- c) There is agreement by a 2/3 majority vote of “network customers” each voting once, and
- d) The poll requirements in section 4.7.3 have been followed:

### **4.7.3 Poll requirements**

*Where an eligible community proposes by a resolution of its members to appoint, or not appoint, or to cease to appoint, an ENM the exempt embedded network service provider must:*

1. *provide a notice at least 14 calendar days prior to a vote to all eligible members of the intention to consider a resolution*
2. *provide every eligible member with a copy of the notice required under condition 4.8.1, a copy of the proposed resolution and written information supporting or opposing the resolution*
3. *conduct a poll of eligible members in which eligible residents may vote once (but voting is not compulsory)*

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<sup>14</sup> *Ibid*, p19 – 20.

4. *record and report to the AER separate tallies of the total votes for and against the resolution, the total proxy votes for and against, the total number of eligible voters and the total number of informal votes and excluded votes.*
5. *report the results of the poll to the AER (electronically is preferred) within a further ten business days, including a copy of all material circulated to members under condition 4.7.3.2 and a detailed description of the benefit sharing mechanism.*

*If a two-thirds majority of eligible members of the community who vote are in favour of a resolution and the AER is satisfied with the conduct of the poll and that the benefit sharing mechanism is equitable, the AER will determine whether the exempt embedded network service provider may appoint, not appoint, or cease to appoint, an ENM as the case requires. The decision of the AER does not take effect until receipt of a notice from the AER of this decision.*

*An application under this condition may be treated as a public matter and may be subject to publication as discussed in section 2.4 of this guideline.*

If 'eligible members' decide to charge ENM costs to only the users of ENM services, then an ENM must be appointed (via the above 'arm's length, competitive process') when:

- a) a small customer accepts a market retail offer and,
- b) if relevant, advises the embedded network operator that the customer does not accept a binding written price counter-offer as provided for in condition 4.7.2, and
- c) the cooling off period for that market retail contract has expired.

If 'eligible members' decide not to charge ENM costs to only the users of ENM services, or a 2/3 majority decision to charge as not been achieved, then an ENM must be appointed (via the above 'arm's length, competitive process') and the costs for the ENM absorbed into the network charges.

In either case, if the embedded network operator is not an accredited ENM, the ENM must be appointed within 40 business days.

#### Problems for Residential Land Lease Communities Registered in Activity Class NR4

We suspect that the requirements set out in conditions 4.7 are too complex for less sophisticated embedded network operators. But apart from complexity, we have identified a number of issues that result in the proposed appointment and cost recovery conditions being problematic for residential land lease communities registered in Activity Class NR4:

##### 'Eligible communities' operating 'shared bulk purchasing schemes'

Page 17 of the Issues Paper outlines that some embedded networks "operate as community based schemes" and as a group "the community benefits from bulk purchasing power."

We can understand how the various conditions under 4.7 might work for embedded networks within strata title buildings, community schemes or retirement villages. In these developments, the 'eligible community' may act as the embedded network operator and property is a shared entitlement.



There is a fundamental difference in residential land lease communities - property is not shared with residents and energy savings which are passed through to residents are usually the result of the residential land lease community operator (a separate legal entity) choosing to share the cost benefits of their commercial energy contact. Residents in a residential land lease community don't generally "participate consensually in a group buying scheme."<sup>15</sup>

As set out above, in residential land lease communities residents either:

- ) lease a dwelling and a site from the operator under a residential tenancy agreement, or
- ) own their dwelling (which is a relocatable dwelling) and only lease the site on which the home sits from the community operator under a site agreement.

As a result of this, it is arguable that residential land lease communities registered in activity class NR4 are not really 'eligible communities'. Consequently, residential land lease communities registered in activity class NR4 would be subject to the same requirements that would apply to small networks and larger networks (as the case may be) in activity classes ND1, ND10, NR1, NR5 and NR6.

If concessions for appointment and cost recovery are intended to apply for residential land lease communities registered in activity class NR4, and we agree they should, the relevant conditions in the draft Network Guideline require significant amendment.

#### Poll requirements

As there is no shared ownership in residential land lease communities, customers of these embedded networks have no real vested interest in deciding where to allocate the cost of ENM services. As a result, the poll requirements in condition 4.7.3 are not within reach of the operator of a residential land lease community because they are reserved for resolutions proposed by the 'members' of an 'eligible community.' There is no way for a residential land lease community operator to initiate a resolution or price match without a request.

In addition, because there is a limitation on fees and charges that can be required or received by operators from home owners under NSW legislation (outlined above) there is no reason for residents to decide whether to delay the appointment of an ENM, or to charge ENM costs to only the users of ENM services.

#### Terminology

Throughout condition 4.7 the words "eligible members," "eligible residents" and "network customers" appear to be used interchangeably. This causes confusion for residential land lease communities that supply energy to holiday makers and permanent residents. It is unclear whose vote is to be counted in the 2/3 majority as holiday makers are also 'customers' of an embedded network.

If it is intended that only permanent residents are considered 'eligible members' entitled to vote, then the requirement for a 2/3 majority vote does not assist a residential land lease community with only 1-2 permanent residents. Even if this was possible, there is still no incentive to make a decision to charge ENM costs to users of ENM services.

#### Price matching

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<sup>15</sup> p21, Australian Energy Regulator, Issues Paper, op cit.

It is unclear in the drafting of condition 4.7.2 of the Network Guideline, in comparison to the decision tree on page 24 of the Issues Paper, whether embedded network operators can price match in any instance (not just at the time of a brownfield conversion under conditions 4.9.4).

Condition 4.7.2 appears to reserve pricing matching to instances of conversion, but the decision tree (at Step 5 for small customers) suggests this is possible at any time through the words “in the event of a customer seeking a market retail offer...”). However, if a customer was a tenant or resident at the time of the creation of the embedded network, wouldn't they be seeking to 'remain' on market? Why is it that price matching at Step 5 for larger networks is not reflected in the decision tree?

Our position is that price matching should also be encouraged in larger networks in activity class NR4. If this is the intention, we believe further amendments to the Network Guideline are needed to clarify.

### **Alternative Option for ENM Costs**

Page 55 of the draft Network Guideline sets out the AER's requirements of an ENM:

“Our conditions for the appointment of an ENM are:

- (a) *Unless the requirements of condition 4.7.1.1 are met, any cost resulting from the accreditation of any person as an ENM or from the appointment or provision of services by an ENM must be borne by the exempt embedded network service provider. Cost recovery is not permitted from any other person.*
- (b) *An ENM must not pay an advance fee or a rebate to a property owner, developer or exempt embedded network service provider or any other person in connection with the provision of ENM services or to secure a right to provide services to an embedded network regulated by the AER.*
- (c) *Also, an exempt embedded network service provider must not seek an advance fee or a rebate from any other person in connection with the provision of ENM services or to secure a right to provide services to an embedded network regulated by the AER.”*

We agree that in the interests of customers, advance fees and rebates should be prohibited. However, we do not agree with the policy that cost recovery should not be permitted from any other person.

As outlined above, the AER's baseline requirement that the exempt embedded network service provider must absorb the cost of ENM services, except where an embedded network has been formed to operate as a community based bulk purchasing scheme, means embedded network service providers will essentially be charged for losing a customer while the retailers benefit.

It is our position that the retailer who wins the customer's business should cover the costs of the ENM. The retailer may then choose to absorb the cost as part of its marketing effort to win new customers or may pass the cost on to the new customer.<sup>16</sup>

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<sup>16</sup> p 19, Australian Energy Regulator, Issues Paper, Op cit.

As set out on page 26 of the Issues Paper, the AER intends to add a requirement that exempt embedded network service providers must apply to join an Ombudsman scheme (we assume at a cost)<sup>17</sup> where it is available in a jurisdiction or otherwise abide by decisions of Ombudsman schemes. We therefore propose the following Alternative Option:

- a) When a customer seeks to go on-market only then is the exempt embedded network service provider required to appoint an ENM,
- b) Costs resulting from the appointment or provision of services by the ENM are billed in the first instance to the exempt embedded network service provider,
- c) The exempt embedded network service provider then seeks reimbursement of its reasonable costs from the retailer who has won the customer's business, and
- d) Should the retailer not agree that the costs of the ENM are 'reasonable costs' the parties may seek a binding determination from the relevant Ombudsman.

In this scenario, we expect that the issues around long term binding contracts not in the interests of customers and improper practices would be resolved by the market. Further, because all accredited ENMs will be registered with the AEMO, information would be available to the Ombudsman to determine what are 'reasonable costs' by comparison.

We would appreciate the AER's consideration of our alternative proposal in the context of our industry.

### **Time Limit Extension**

*Q.20 - Do stakeholders support these requirements? If so, why? Or, if not, why not?*

*Q.21 - Is the time to appoint an ENM reasonable?*

*Q.22 - Are the protections sufficient? Why not?*

*Q.23 - What further protections are required and why?*

In relation to the time limit extension of 40 business days (notionally 8 weeks), subject to our other submissions above, this may be too long a period given that the trigger event involves the expiry of a customer's market retail contract cooling off period. However, if the cost recovery conditions remain as complex as they are, then this amount of time may be necessary for embedded network operators to comply.

### **Non-appointment and Reversion**

*Q.24 - Do stakeholders support these requirements? If so, why? Or, if not, why not?*

*Q.25 - Are the protections sufficient? Why not?*

*Q.26 - What further protections are required and why?*

Our consultations with the AEMC included a request for non-appointment and reversion conditions and we are pleased to see that the AER has given consideration to these requirements. However, we wish to make the following comments and recommendations:

- a) We refer to our submissions regarding 'eligible communities' and embedded networks registered in activity class NR4. However, we also suggest that condition

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<sup>17</sup> On 7 October 2016 we sought information from EWON as to likely costs for membership. Unfortunately, this information was not able to be provided or estimated by EWON.

4.7.2 be redrafted to make it easier to understand by less sophisticated operators, as they are the primary audience.

- b) Further, options for non-appointment and reversion mechanisms should also be available to holiday parks in activity class ND3, as well as residential land lease communities in activity class NR4. Notwithstanding our view that time for price matching should be encouraged in all embedded networks, the AER has rightly acknowledged that activity class ND3 concerns short-term accommodation and *“the transient nature of those arrangements makes it unlikely that there would be sufficient opportunity to offset the transaction costs of appointing an ENM”*.

If holiday parks should be excluded from the requirement to appoint an ENM immediately on this basis, there should also be options to not appoint an ENM immediately or, if no holiday occupant is served by a market retail offer, to cease to engage an ENM.

The process for doing this as currently drafted under condition 4.7.2 is not appropriate because a holiday park is not an ‘eligible community.’ This may be more appropriately dealt with by the AER through a process of application and assessment against relevant criteria.

We are happy to consult further on these recommendations and workshop appropriate solutions.

## **Dispute Resolution**

*Q. 27 – Do stakeholders have any feedback about Ombudsman dispute resolution services becoming accessible to small customers in embedded networks for matters relating to exempt embedded network service providers?*

As holiday parks and residential land lease communities in NSW are subject to the jurisdiction of the NSW Civil and Administrative Tribunal (NCAT) in relation to energy disputes we see no issues with the AER’s proposals for dispute resolution in section 5.4 (a) i – ii. Most holiday parks and residential land lease communities already cooperate with the Energy & Water Ombudsman NSW (EWON). Our concerns related to the additional cost burden<sup>18</sup>

In relation to an exempt embedded network service provider’s dispute resolution process meeting *Australian Standards: AS/NZS 10002:2014 Customer Satisfaction – Guidelines for complaints handling in organisations*, this is unnecessary for our industry which is highly regulated and may create a duplication of existing processes. In addition to the NCAT, customer’s also have access to low cost dispute resolution services through NSW Fair Trading.

## **Information Provision**

Overall, most of the amendments to the Network Guideline set out in section 4.8 appear reasonable regarding the provision of information, contact details and maintaining records. However, we make the following submissions:

### **Section 4.8.1**

#### Unbundled tariffs

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<sup>18</sup> *Ibid.*

The amendment proposed by the AER extends further than the AEMC's recommendation.

As part of its rule change request, the AEMO recommended that the AER amend its network exemption guideline to require all embedded network operators to unbundle retail bills into network and energy charges. AEMO considered this would allow embedded network customers to compare offers from retailers and embedded network operators.

In making its final rule determination, the AEMC made the following comments:

**Commission's analysis**

*To assess whether unbundling of bills is necessary, it is important to understand the two ways that embedded network customers can be provided retail services by authorised retailers. The first is that the retailer comes to an agreement with the embedded network operator for the embedded network operator to charge it for network services. The retailer then bills the customer for network and energy services. The second method is that the customer pays two separate bills, one to the embedded network operator for network services and one to the retailer for energy services.*

*For either method to work the embedded network operator must inform either the retailer or the customer of the unbundled prices. For example, under the first method the retailer must know what the embedded network operator will charge it for network services for the customer otherwise it cannot make an offer for network and energy services to the customer. Under the second method, the customer needs to know the breakdown of the network and energy prices so that it can compare the energy component of the embedded network operator's charges to a retailer's energy only prices.*

*AEMO's proposal of compulsory unbundling of all embedded network operators' bills would solve this problem because both retailers and customers would have the required information. A potential retailer could make an offer based on either an energy only service or the energy and network bundled service.*

*However, AEMO's solution would require unbundling for every embedded network customer in the NEM. This would include customers within embedded networks which are already on-market, embedded networks where no customer is seeking to go on-market and embedded networks where customers have no ability to go on-market (currently in Queensland, Tasmania and the ACT). It would also be confusing and unnecessary for customers under the first arrangement where they can simply compare the bundled charge from the embedded network operator and retailer.*

*The alternative solution that the Commission recommends is to require embedded network operators to provide information regarding the unbundled prices on request from either a customer or a retailer that the customer is seeking an offer from. This will allow any customer seeking to go on-market to compare offers from embedded network operators and retailers but will not incur the cost of compulsory unbundling being applied to all embedded network operators regardless of circumstance. Nor will it result in confusion for customers where the first method occurs.*

*To achieve this, the Commission recommends the AER consider including a requirement in its network exemption guideline that embedded network operators provide information regarding the unbundled prices when requested to do so by either a customer or a retailer that the customer is seeking an offer from. For clarity, if this recommendation is implemented, it would not require the embedded network operator to provide bills on an unbundled basis. Rather, the embedded network operator would be required to provide the customer or retailer with the split of its retail prices between network and energy components when requested to do so.*

We consider the AEMC's recommendation to be the fair the reasonable option for the same reasons stated, but also the fact that tariffs can change over time. If unbundled tariffs are provided to holiday makers at the start of an occupation agreement and to residents at the start of a tenancy agreement, this will probably be of no assistance to them if and when they actually seek to go on market.

If the purpose of section 4.8.1 of the Network Guideline is to allow embedded network customers to compare offers from retailers and embedded network operators at the time they seek to go on-market, the additional requirement that unbundled tariff information be provided at the start of their occupation agreement or tenancy agreement is unnecessary. We request the AER reconsider its proposal.

However, should the AER proceed with this approach, we recommend the following:

- a) to assist exempt embedded network service providers to advise customers in writing, at the start of their tenancy/electricity sale agreement of the unbundled details of the network tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy, the AER provide guidance on how to do this to assist less sophisticated operators, and
- b) As residential land lease communities are limited in the amounts that can be charged to residents, and are required by NSW legislation to disclose information at the start of a tenancy anyway, we ask that the AER consider compliance with state legislative requirements in this regard as compliance under section 4.8.1 d.

#### 24-hour emergency contact line.

Not all embedded networks will have the capacity to provide a 24-hour emergency contact line as proposed in section 4.8.1 e. As such, we request the AER further amend this condition as follows:

*e. contact numbers in the event of an electricity fault or emergency, including the number for a 24-hour emergency contact line **if one is available**.*

#### **Distribution Loss Factors**

We note that to offset the cost of network losses the AER allows shadow pricing to apply to network charges. While this may be sufficient for embedded networks in holiday parks (who choose to apply network charges) residential land lease communities are limited in the amounts that can be charged for the supply of energy. As such, the AER's shadow pricing policy offers limited assistance regarding distribution loss factors compared with other types of embedded networks.

#### **Pricing**

*Q.28 - Do stakeholders agree with these amendments? If so, why? If not, why not? If relevant, what further changes do you consider necessary or desirable?*

In relation to amendments to section 4.6 we reiterate our submissions appearing under the heading 'Fees, Charges and Transaction Costs'.

## Access to Retail Competition (Part B Conditions – General Requirements)

*Q.29 - Do stakeholders agree with these amendments? If so, why? If not, why not? If relevant, what further changes do you consider necessary or desirable?*

Subject to our earlier submissions regarding the costs and appointment of an ENM and pre-existing rights at law (p 8), we see no issues with the proposed amendments to section 4.1.12 regarding access to retail competition.

## Network Conversions

*Q.30 - Do stakeholders agree with these amendments? If so, why? If not, why not? If relevant, what further changes do you consider necessary or desirable?*

As stated above, we anticipate that brownfield conversions are unlikely to occur in our industry. However, where they do, we agree that some of the proposed requirements in section 4.9 reasonably strike the balance between the rights of different customers in favour of potential benefits if a conversion were allowed.

Exception to this are:

- a) **Section 4.9.1 3.** – the wording in this condition is too broad. Clarification is required regarding how to ensure information regarding a proposed retrofit is “clearly, fully and adequately disclosed”. Further, there is no reason to include the words “and that it has regard to a person’s capacity to provide consent.” The issue of consent in all transactions is adequately covered by the common law.
- b) **Section 4.9.2 3.** – the wording in this condition is too broad. Clarification is required regarding how an exempt embedded network service provider “must engage with prospective customers who do not consent, and seek to mitigate their concerns.”
- c) **Offer matching – sections 4.9.3 and 4.9.4** – wherever the word “fulfil” appears in these conditions it should be changed to the words “respond to”. This ensures clarity that price matching is not mandatory on the part of the exempt embedded network service provider in response to a request made by the tenant.
- d) **Section 4.9.7** – The requirement that the applicant “must conduct a marketing campaign for at least three months based wholly on this condition 4.9” is inappropriate. Some smaller conversions may simply not need this amount of time and the different types of “marketing campaigns” are numerous. A communications plan should simply be carried out as required by the circumstances and so long as the applicant can demonstrate that “a substantial majority of tenants and residents” have agreed to the conversion, this should be sufficient.

## Further Comments

We make the following further comments on the draft Network Guideline for consideration:

- a) **1.2 Who should read this guideline?** – holiday parks and residential land lease communities have not been listed.
- b) **Selling, On-selling and Supply** – we support the amendment of some deemed and registrable exemptions to refer to ‘supply’ of electricity, rather than ‘selling’ to better reflect the distinction.

- c) **Correct terminology** – in Table 3 and various other sections, the Network Guideline refers to “caravan parks,” “residential parks” and “manufactured home estates.” We ask that the term “residential land lease community” also be included, or at least a note providing clarification such as “residential land lease communities (residential parks, including caravan parks and manufactured home estates).”
- d) **Section 4.4.3 registration required when ENM is appointed** – this section requires for “*all embedded networks for which an ENM has been appointed, registration in the relevant activity class or classes is required. An existing registration must be updated or amended where necessary to record each relevant NDx or NRx activity class.*” We seek clarification from the AER regarding holiday parks covered by deemed exemption ND3. If an ENM were to be appointed, do they register? If yes, how? What will be involved? What conditions will apply?

## Conclusion

Thank you to the AER for considering our response to the proposed amendments. As the peak industry body representing holiday parks and residential land lease communities in NSW with embedded electricity networks, the CCIA is an important stakeholder in relation to the draft amendments to the Electricity Network Service Provider Registration Exemption Guideline 18 August 2016 (Network Guideline).

We are available to discuss this submission further and to workshop with the AER and our members proposed solutions to the issues we have raised. As such, we look forward to our involvement in the consultation process.

Should you have any questions or require further information please contact us on (02) 9615 9999 or email [admin@cciansw.com.au](mailto:admin@cciansw.com.au).

Yours sincerely,

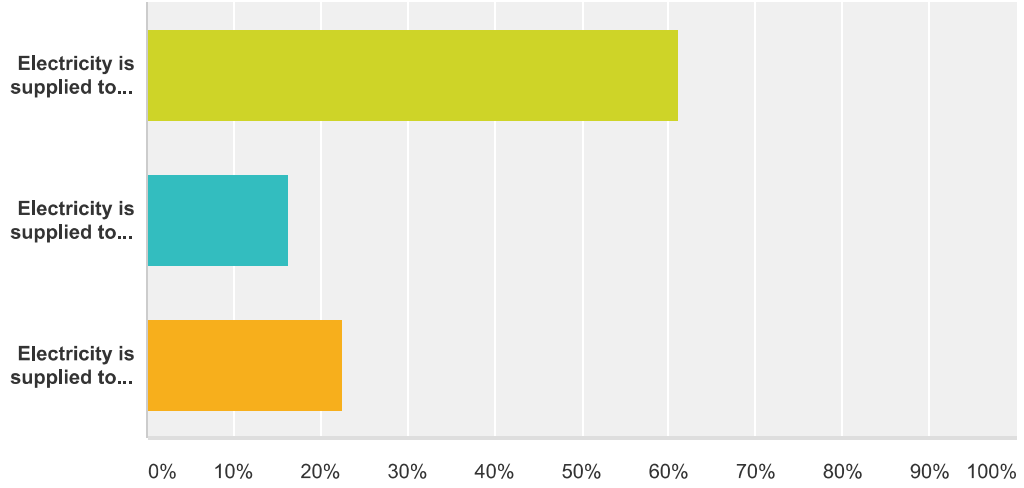


Lyndel Gray  
**Chief Executive Officer**



### Q1 How is electricity supplied to residents in your residential park?

Answered: 178 Skipped: 0



Answer Choices	Responses
Electricity is supplied to residents by the park owner (park supply)	61.24% 109
Electricity is supplied to residents by the electricity supplier (direct supply)	16.29% 29
Electricity is supplied to residents by the park owner AND the electricity supplier (mixed supply)	22.47% 40
<b>Total Respondents: 178</b>	