

8 December 2022

Rowena Park
General Manager – Compliance and Enforcement Branch
Australian Energy Regulator
GPO Box 3130
Canberra ACT 2601

By email: AERexemptions@aer.gov.au

Dear Ms Park

**CCIA NSW SUBMISSION ON DRAFT NETWORK EXEMPTIONS GUIDELINE (VERSION 7),
OCTOBER 2022**

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA NSW) is the State's peak industry body representing the interests of over 500 holiday parks and residential land lease communities (residential parks, including caravan parks and manufactured home estates) and over 200 manufacturers, retailers and repairers of recreational vehicles (RVs, including caravans, campervans, motorhomes, camper trailers, tent trailers, fifth wheelers and slide-ons), camping equipment suppliers, manufactured home builders and service providers to these businesses.

We currently have as members over 700 businesses representing all aspects of the caravan and camping industry and residential land lease living industry. Of these, just over 480 members are holiday parks and residential land lease communities located throughout New South Wales (NSW).

Under the Australian Energy Regulator's (AER) current *Electricity Network Service Provider - Registration Exemption Guideline, Version 6, March 2018* (Network Guideline) and *AER Retail Exempt Selling Guideline, Version 6, July 2022* (Retail Guideline) our holiday park and residential land lease community members are classified as follows:

Embedded Network Type	AER Exemption Classes	Requirements
Persons supplying metered or unmetered energy to occupants of holiday accommodation on a short-term basis	Class ND3 of the Network Guideline	Deemed classes of exemption. Do not need to register with the AER, however, are required to comply with Conditions attached to their exemption
Persons selling metered energy to occupants of holiday accommodation on a short-term basis	Class D3 of the Retail Guideline	

Embedded Network Type	AER Exemption Classes	Requirements
Persons supplying metered or unmetered energy in caravan parks, holiday parks, residential land lease parks and manufactured home estates to residents who principally reside there	Class NR4 of the Network Guideline	Registrable classes of exemption. Must register with the AER and comply with Conditions attached to their exemption
Persons selling metered energy in caravan parks, residential parks and manufactured home estates (also known as residential land lease communities) to residents who principally reside there	Class R4 of the Retail Guideline	

Embedded Network Type	AER Exemption Classes	Requirements
Persons supplying metered or unmetered energy to occupants of holiday accommodation on a short-term basis AND in caravan parks, holiday parks, residential land lease parks and manufactured home estates to residents who principally reside there (mixed parks)	Class NR4 of the Network Guideline	Registrable classes of exemption. Must register with the AER and comply with Conditions attached to their exemption <i>NOTE: Even if a caravan park has only 1 permanent resident, they are required to register their details with the AER under Class R4 of the Retail Guideline and Class NR4 of the Network Guideline, despite the majority of their customers being holiday makers</i>
Persons selling metered energy to occupants of holiday accommodation on a short-term basis AND in caravan parks, residential parks and manufactured home estates (also known as residential land lease communities) to residents who principally reside there (mixed parks)	Class R4 of the Retail Guideline	

For the purpose of this submission, wherever we refer to ‘holiday parks’ we are referring to caravan parks that only supply/sell energy via an embedded network to occupants of holiday accommodation on a short-term 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/sell energy via an embedded network to residents who live there. This includes caravan parks that supply energy to as few as 1-2 residents (mixed parks) right through to residential land lease communities that are exclusively residential.

As the peak industry body representing holiday parks and residential land lease communities in NSW with embedded electricity networks, the CCIA NSW is an important stakeholder in relation to the AER’s draft *Network Exemptions Guideline (Version 7), October 2022* (draft Network Guideline). We welcome the opportunity to provide our feedback as relevant to our members.

STREAMLINING THE NETWORK GUIDELINE

We welcome the changes that have been made in the draft Network Guideline to streamline its contents and improve readability.

The diagrams and flowcharts are helpful, and the use of plain language makes it much more user friendly than previous versions. Moving certain detailed content into appendices and creating clearer distinctions between conditions are also improvements.

However, the draft Network Guideline is still structured in terms of conditions. We reiterate our previous suggestion of structuring the guideline accordingly to class activity. While this will involve some repetition of content, making the guideline a longer document, it would make the guideline so much easier for less sophisticated embedded network operators to navigate and understand.

If structured according to class activity, operators could simply refer to their section of the guideline for all the requirements and conditions that apply to them. The Retail Guideline could benefit from similar improvements.

We also reiterate our request for the AER develop additional resources such as factsheets in Plain English explaining key requirements of the guidelines to assist less sophisticated embedded network operators to fully understand their obligations. This would also assist embedded network customers.

PRIMARY REGISTRANT

In our 5 July 2021 submission on the AER's *Updating the Network and Retail Exemption Guidelines Consultation Paper, May 2021* (Consultation Paper) we suggested that where there are multiple parties involved in the ownership, control and operation of an embedded network they should have the ability to nominate the person best placed to be the sole registrant.

The introduction of the opt-in 'primary registrant' model for different parties associated with a network does not go as far as this suggestion at this stage, but it is a good start on reducing some of the regulatory burden and costs associated with the guideline – in this case the requirement for all parties to be a member of an ombudsman scheme and comply with its requirements.

We look forward to the AER's future review of this model and other conditions which a primary registrant may perform on behalf of other parties.

EMBEDDED NETWORK MANAGER REQUIREMENTS

We note the amendment to Condition 3.3 (previously Conditions 4.4.2 – 4.4.2.1) specifies that where an Embedded Network Manager (ENM) trigger event occurs the Exempt Embedded Network Service Provider (EENSP) must, if not an accredited ENM, appoint an accredited ENM within 30 business days of the occurrence of the ENM trigger event.

This is a shorter period than the 90 days we recommended in our 5 July 2021 submission on the Consultation Paper. We do not press the issue at this time. However, if 30 business days proves to be insufficient to allow a successful procurement process (and subject to our below submissions regarding retaining the mechanism for eligible communities to not appoint an Embedded Network Manager (ENM) immediately) we request the AER prioritise a review of this time period.

In relation to deferral of the appointment of an ENM, we welcome the AER's decision to include in section 6 of the draft Network Guideline provisions allowing this where it would not serve a practical purpose.

For holiday parks and residential land lease communities operating under activity classes ND3 and NR4 it is our understanding that there are no changes in the draft Network Guideline for when an ENM must be appointed in these embedded networks.

Despite changes to the wording in the relevant conditions in the draft Network Guideline (new Conditions 3.1 – 3.4) and more reliance on the use of footnotes to differentiate the relevant activity classes (page 54), it remains that:

- Class ND3 is not a relevant activity class that requires early appointment of an ENM. This is due to this class concerning short-term rental accommodation. However, in the unlikely event an ENM trigger event occurs the EENSP must appoint an ENM.
- Class NR4, regardless of whether there are more or less than 30 small residential customers, is also not a relevant activity class that requires early appointment of an ENM. This is due to the AER's determination that the costs will outweigh the benefits of early appointment of an ENM. However, in the event an ENM trigger event occurs the EENSP must appoint an ENM.

This is our understanding of the ENM requirements for activity classes ND3 and NR4 based on our process of deduction in reading the Conditions and footnotes of the draft Network Guideline, our understanding of previous versions of the Network Guideline and the fact that a proposal for a change in this area was not raised in the Consultation Paper nor the *Notice of Draft – Network Exemptions Guideline (Version 7)* (Notice).

We are concerned, however, that the average park or community operator will not easily comprehend the requirements because the footnotes are silent on activity class NR4 with 30 or more residential customers, and a key paragraph of information that is in 'Condition 4.4.2 ENM appointment trigger conditions' on page 54 of the current version of the Network Guideline (Version 6) has been deleted. That paragraph is:

'We have omitted classes ND1 and ND2 from the relevant activity classes. These classes have fewer than 30 customers. We have omitted classes ND3 and NR4 from the relevant activity classes. These classes concern short-term rental accommodation (as is common in tourism) residential land lease and manufactured home sites. For class ND3, we do so on the basis that the transient nature of those tenancies makes it unlikely that there would be sufficient opportunity to offset the transaction costs of appointing an ENM. For class NR4, we are satisfied that the price control effect of State based legislation (where it exists) makes the costs of an immediate appointment of an ENM unlikely to outweigh the benefits of an early appointment.'

This is extremely helpful information for a layperson that explains, in very simple terms, what the ENM appointment requirements are for activity classes ND3 and NR4. It is therefore very disappointing to see it has been deleted from the draft Network Guideline.

Not all holiday parks and residential land lease communities in NSW are members of our Association, so these businesses will not have the benefit of receiving information and assistance from us with interpreting the Network Guideline.

As part of the objective to make the Network Guideline easier to understand, we request the footnotes be amended to explicitly take account of activity class NR4 with 30 or more customers and the above paragraph be reinstated (whether in the text, footnotes or appendices of the guideline). This would be a great help to avoid confusion for our members as well as other embedded networks operating under these activity classes.

DISCONNECTION PROTECTIONS FOR ENERGY ONLY CUSTOMERS

In our 5 July 2021 submission on the Consultation Paper we had no issues with the proposal to amend the Network Guideline to include the Retail Guideline's disconnection obligations (Conditions 9-11) for on-market customers.

Many residential land lease communities in NSW with embedded networks are already bound by these obligations under the Retail Guideline, and they appear to be consistent in the draft Network Guideline.

Residential land lease communities are also bound by section 78 of the *Residential (Land Lease) Communities Act 2013* (RLLC Act), which states -

'78 Unpaid utility charges

(1) If a home owner is required to pay a utility charge to the operator of a community under this Part, the operator may charge a fee for late payment or a dishonoured payment, not exceeding the amount that could have been charged if the service was supplied directly to the home owner by the local utility service provider or regulated offer retailer.

(2) The operator may apply to the Tribunal for an order requiring the home owner to pay to the operator—

- (a) any unpaid utility charge, or*
- (b) any unpaid fee for late payment, or*
- (c) any unpaid fee for a dishonoured payment.*

(3) The Tribunal may, on application under this section, make—

- (a) an order requiring the home owner to pay the unpaid charge or fee (or a specified part of it) within a specified period, and*
- (b) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.*

(4) The Tribunal may determine the application without conducting a hearing with the consent of the parties.'

The protections provided by section 78 of the RLLC Act effectively mean a home owner's electricity supply in a NSW residential land lease community cannot be disconnected without an order from the NSW Civil and Administrative Tribunal (NCAT).

MEANING OF OWNING, CONTROLLING AND OPERATING

In our 5 July 2021 submission on the Consultation Paper we agreed it would be useful for the Network Guideline to clarify the meanings of 'owning,' 'controlling' and 'operating' an embedded network in a way that allows for the various ownership and operating structures of embedded networks.

While the additional guidance added to the draft Network Guideline in new section 5.1, and the suggestion to seek legal advice, will not provide an upfront definitive answer for everyone

considering this question, it at least gives some information about the AER's position on these terms.

ELIGIBLE COMMUNITIES AND COUNTER-OFFER PROVISIONS

We do not support the proposal to remove the 'eligible communities' and counter-offer provisions for the reasons stated in our 5 July 201 submission on the Consultation Paper.

Residential land lease communities in NSW are currently subject to price control effects of the RLLC Act resulting in customers being unlikely, if ever, to seek to go on-market, rendering ENM services as unnecessary at this time. This would be the reason for a lack of take up of the eligible communities and counter offer provisions in activity class NR4, not because 'there is a lack of interest in forming 'eligible communities'' as stated on page 25 of the Notice.

It would be a poor policy outcome and a disservice to embedded networks and their customers to simply remove these provisions without at least redrafting them to reduce their complexity and improve their suitability. Although they have not yet been taken up, these provisions provide a benefit to embedded network customers who do not utilise the service of an ENM.

It is widely acknowledged that bulk purchasing schemes offer the most benefit if all customers remain inside the embedded network. In its 'Reasons for Decision' during consultation on version 5 of the Network Guideline in 2016 the AER concluded –

*'Our final position remains that the exempt embedded network service provider will be required to absorb the ENM costs, except in the limited case of an eligible community bulk purchasing scheme. We consider this position will provide the lowest barrier to effective competition in embedded networks and thereby ensure embedded networks seek to operate on a competitive basis.'*¹

Removing the eligible communities and counter offer provisions from the Network Guideline at this time would be premature. Should the NSW Department of Customer Service progress the legislative changes we have advocated are needed for electricity charges and other fees in NSW residential land lease communities, ENM services may become more prevalent and thus the benefit provided by the 'eligible communities' provisions important.

It would be unfair to force home owners who want to stay in an embedded network and continue to receive the benefit of a bulk purchasing arrangement to have to bear the cost of ENM services for other home owners seeking to go on-market without some sort of cost-recovery mechanism.

REMOVAL OF UNNECESSARY CONDITIONS

In relation to the AER's decision to remove conditions where requirements are already covered by the National Electricity Law (NEL) or National Electricity Rules (NER) to avoid regulatory duplication, we generally support that approach but we are concerned about the deletion of 'Condition 4.2 Metering installation and NEM requirements' in its entirety.

¹ AER, *Reasons for Decision – Amended Network Exemption Guideline – Version 5, Commonwealth of Australia, 2016*, p25

Condition 4.2 in the current Network Guideline contains important information that clarifies who pays to replace meters installed in embedded networks before and after 1 January 2012 and in what circumstances. The information was added to Version 5 of the Network Guideline (December 2016) and further improved upon in the current Version 6 (March 2018). This information is not replicated in the NER and we note that previous guidelines are revoked when a new one commences.

In the 'Reasons for Decision – Amended Network Exemption Guideline – Version 5' the AER states:

'We proposed the costs of any meter replacement necessary to become compliant with NER requirements will be borne by different parties, depending on the circumstances:

- The embedded network operator must bear the costs of replacement if the customer's meter is owned or operated by the embedded network operator and the non-compliant meter was installed on or after 1 January 2012.*
- The customer or market retailer must bear the costs of replacement if the non-compliant meter was installed before 1 January 2012.²*

...

'Prior to the introduction of requirements for embedded network metering from 1 January 2012 by the AER, metering in embedded networks was not subject to specific requirements. The AER requirements were modelled on the National Measurement Institute approach to legacy installations. Therefore, under our guideline, the grandfathering of older metering installation is already in place and this will continue.'³

...

'We have amended conditions 4.2(d) and 4.2.2.3 as suggested by the CCIA (and supported by BAC and SCCA). There appears to have been some confusion as to our requirements. Our amendment is to address a misplaced concern that the embedded network operator must pay for a replacement meter where a customer elects to accept a market retail offer but does not elect to use the existing metering installation... Our clarification addresses this confusion by stating explicitly that a replacement meter is at the cost of the customer or retailer that elects to not re-use an existing meter.'⁴

Consequently, Condition 4.2 appears in Version 5 of the Network Guideline as follows:

² *Ibid.*, p 15-16.

³ *Ibid.*, p 17

⁴ *Ibid.*, p19-20

4.2 Metering installation and NEM requirements

The following requirements apply to all new metering installations and to any reconfiguration of an existing metering installation within an existing embedded network. This clause also applies to an activity class where condition 4.1.12 applies, as set out in tables 6, 7, 8, 9 & 10.

Metering at the parent connection point of an embedded network is to be determined in conjunction with the relevant transmission or distribution network service provider's requirements for connection of a customer. Metering requirements for child connections in a exempt embedded network, including a requirement to appoint an ENM, are set out in section 4.2.2. A metering installation is non-compliant if the metering installation does not conform to current standards for NEM metering in any material respect - see condition 4.2.2.5.

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 and at their own cost.

This was further improved in 2018 following feedback from stakeholders (including CCIA NSW). In the 'Reasons for Decision – Amended Network Exemption Guideline – Version 6' the AER states:

2.3.5.1.5 Who pays for meter upgrades

We received two submissions that provided comment in relation to condition 4.2. This condition specifies which party is liable for the costs of meter upgrades. Both submissions support the addition of the table for clarity but considered that more situations should be included.

Following this, Condition 4.2 appears in Version 6 of the Network Guideline as follows:

4.2 Metering installation and NEM requirements

The following requirements apply to all new metering installations and to any reconfiguration of an existing metering installation within an existing exempt network. This clause also applies to an activity class where condition 4.1.12 applies, as set out in tables 6, 7, 8, 9 & 10.

Metering at the parent connection point of an exempt network is to be determined in conjunction with the relevant transmission or distribution network service provider's requirements for connection of a customer. Metering requirements for child connections in an exempt embedded network, including a requirement to appoint an ENM, are set out in section 4.2.2. A metering installation is non-compliant if the metering installation does not conform to current standards for NEM metering in any material respect - see condition 4.2.2.5.

An existing non-compliant metering installation for a child customer in an exempt network must be upgraded at the cost of the Exempt Network Operator except where:

- (a) the child exempt 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 and at their own cost.

Where an Exempt Network Operator is non-compliant due to a customer having no metering installation, a compliant metering installation must be installed at the Exempt Network Operator's expense.

These requirements to pay for a metering upgrade can be summarised as follows:

Situation	Who pays?
Metering installation existed before 1 January 2012, and has not been changed since	Customer/Customer's retailer
Metering installation installed after 1 January 2012 and was compliant at the time of installation	Customer/Customer's retailer
Customer/customer's retailer or other person provides a replacement metering installation of their own volition and cost.	Customer/Customer's retailer
Any other situation where metering installation does not conform with NEM metering standards (see condition 4.2.2.5).	Exempt Network Operator
Customer has no metering installation in non-compliance with the requirements of this Guideline	Exempt Network Operator

We request that the information in Condition 4.2 regarding who pays for a metering upgrade and the table be reinstated in the draft Network Guideline. This information, which does not appear in the NER, is still important for parties to understand and access as current to resolve any disputes.

While there remain current limitations on NSW residential land lease community operators recovering any fees and charges from home owners not expressly set out in the RLLC Act

(which includes metering installation) this state-based legislation is currently under review. We are seeking changes to make it fair and reasonable for all parties, including consistency with national requirements. This does not, however, detract from the information in Condition 4.2 needing to be retained in the Network Guideline.

CONTINUITY OF SUPPLY

We have no issues with the proposal to impose a new condition in the draft Network Guideline that requires the EENSP to notify customers and the AER if it becomes aware that there is, or any likely risk of, any disconnection of the parent connection point as a result of any failure of the party selling electricity within the embedded network.

As noted on page 31 of the Notice, a similar condition already applies to exempt sellers in the Retail Guideline. However, it is unclear in the Notice whether any distinction will be drawn between customer types.

Holiday parks (operating under activity class ND3) are tourism businesses, so the primary relationship between an embedded network customer and an embedded network operator in a holiday park is an arrangement for holiday accommodation. The supply of energy is incidental and on a temporary basis.

As customers in holiday parks make use of the embedded network only occasionally and for holiday purposes, regulators have identified that these arrangements need little regulatory oversight. Operators still have obligations in relation to supply, pricing, information disclosure, billing, receipts, dealing with complaints and resolving disputes, but issues like retail competition and Retailer of Last Resort (ROLR) provisions are not of concern in holiday parks. As Condition 21 of the Retail Guideline does not apply to activity class D3, this should be reflected in the Network Guideline for class ND3.

For residential customers, we note there are difficulties with ROLR provisions and embedded networks, however it is also worth noting the state-based protections for customers in NSW residential land lease communities.

In most cases, the embedded network operator is also the owner/operator of the residential land lease community and they rely on continued energy supply to the embedded network for their own operations and common facilities. This creates an inherent motivation to maintain supply, aligning an operators' interests with the interests of their customers.

In the event of an EENSP/operator failure (e.g., being placed into external administration or otherwise going out of business) customers of residential land lease communities will be concerned with their security of tenure, not just their energy supply. Therefore, the RLLC Act contains provisions regarding the appointment of administrators, receivers and managers to protect the well-being and financial security of the residents of the community. These are set out in Part 13, Division 2, sections 164 – 170.

In requiring administrators, receivers and managers to exercise all the functions of the operator of a community, and comply with an operator's obligations under the RLLC Act as if the person were the operator, the RLLC Act provides for the ongoing supply of energy to exempt customers in the event of an exempt seller/EENSP failure. The RLLC Act also requires operators to notify the Commissioner when a place ceases to be a community.

In addition, the AEMC has noted that where an embedded network operator becomes insolvent standard insolvency laws will apply:

“Ultimately, electricity will only be one of a number of services that the embedded network owner – typically a body corporate or shopping centre – will no longer be providing to the customers in the relevant apartment or shopping centre. In this instance, the Commission considers that it is appropriate for standard insolvency processes to apply and a RoLR equivalent is not required.”⁵

Holiday parks and residential land lease communities also have strict responsibilities for electricity supply under the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021*.

DRAFTING ERROR

In the Appendix A-1: Classes of deemed and registrable exemptions table on page 32 of the draft Network Guideline, footnote 33 has been placed against activity class ND2 rather than ND3. This needs to be corrected.

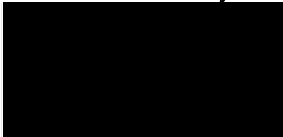
CONCLUSION

Thank you for considering our responses to the Consultation Paper. As the peak industry body representing holiday parks and residential land lease communities in NSW with embedded electricity networks, CCIA NSW is an important stakeholder in relation to the network exemptions framework.

We would like to meet to discuss the issues raised in this submission before the revised Network Guideline is finalised. We would be grateful if someone could please contact Shannon Lakic, Policy, Training and Executive Services Manager, on [REDACTED] or email [REDACTED] to advise availability.

We look forward to our continued involvement in the consultation process.

Yours sincerely



Lyndel Gray
Chief Executive Officer

⁵ AEMC, *Updating the Regulatory Frameworks for Embedded Networks Final Report*, 20 June 2019, p 101.