



## Final Decision

# Electricity Network Service Provider Registration Exemption Guideline

December 2011

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# 1 Shortened Forms

<b>ABN</b>	Australian Business Number
<b>ACN</b>	Australian Company Number
<b>AEMO</b>	Australian Energy Market Operator
<b>AER</b>	Australian Energy Regulator
<b>ACCC</b>	Australian Competition and Consumer Commission
<b>DLF</b>	Distribution Loss Factor
<b>Electricity Law</b>	National Electricity Law
<b>NEL</b>	National Electricity Law
<b>NEM</b>	National Electricity Market
<b>NER</b>	National Electricity Rules
<b>NMI</b>	National Meter Identifier
<b>NSP</b>	Network Service Provider
<b>Public Register</b>	Public Register of Authorised Retailers and Exempt Sellers
<b>Retail Law</b>	National Energy Retail Law
<b>Retail Rules</b>	National Energy Retail Rules

## 2 Dictionary

**body corporate** means a controlling body of a scheme constituted under state or territory strata titles legislation, the members of which are lot owners (or their representatives), and includes an owners corporation but is not a body corporate for the purposes of the Corporations Act 2001 (Cwlth).

**customer** means a consumer of electricity for primary industry, domestic, commercial or industrial use but does not include a wholesale market customer who is registered by AEMO as a Customer under Chapter 2 of the NER.

**disconnect, disconnection** of premises means in the case of electricity, the opening of a connection in order to prevent the flow of energy to the premises.

**embedded network** see private network.

**energy** means electricity.

**energy Ombudsman scheme** means a scheme associated with the energy Ombudsman for the relevant state or territory as prescribed in the National Energy Retail Regulations.

**exempt network** see private network.

**large customer** means a business customer who consumes energy at business premises at or above the upper consumption threshold, as defined by the relevant jurisdiction. If no threshold is defined, 100 megawatt hours per annum for electricity.

**meter** means any device (compliant with metrology requirements and Australian standards) that measures the quantity of energy passing through it or records the consumption of energy at the customer's premises.

**off-market energy generation** means an energy generation option not required to be registered with AEMO under clause 2.5.2 of the NER and applicable AEMO guidelines.

*Note: The category includes — but is not limited to — small scale diesel, petrol, bio-fuel, gas (including coal-seam and other methane sources), fuel cells, an electric vehicle inverter, thermal-electric, geothermal, solar (including photovoltaic), wind or hydro generation and cogeneration and tri-generation installations.*

**on-market energy generation** means an energy generation option required to be registered with AEMO under clause 2.5.2 of the NER and applicable AEMO guidelines. This category includes the four AEMO registration categories of scheduled generation, non-scheduled generation, market generation and non-market generation.

*Note: The category includes — but is not limited to — small scale diesel, petrol, bio-fuel, gas (including coal-seam and other methane sources), fuel cells, an electric vehicle inverter, thermal-electric, geothermal, solar (including photovoltaic), wind or hydro generation and cogeneration and tri-generation installations.*

**onselling** means an arrangement where a person acquires energy from a retailer following which the person acquiring the energy or a person acting on their behalf sells energy for use within the limits of premises owned, occupied or operated by the person.

**private network** means any network connected to the NEM, or an islanded network subject to regulation under the NER, supplying electrical energy to a third party, but not a transmission or distribution network registered with AEMO.

**residential customer** means a customer who purchases energy principally for personal, household or domestic use at premises.

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

**retailer** means a person who is the holder of a retailer authorisation for the purposes of section 88 of the Retail Law.

**small customer** means a customer—

1. who is a residential customer, or
2. who is a business customer who consumes energy at business premises below the upper consumption threshold, as defined by the relevant jurisdiction. If no threshold is defined, 100 megawatt hours per annum for electricity.

## 3 Introduction

The Australian Energy Regulator (AER) is responsible for the economic regulation of electricity networks in the national electricity market (NEM). The AER is an independent Commonwealth statutory authority funded by the Commonwealth through the Australian Competition and Consumer Commission. It was formed under Part IIIAA of the *Trade Practices Act 1974* (renamed the *Competition and Consumer Act 2010* on 1 January 2011).

Under the National Electricity Rules (NER), any party that engages in an electricity transmission or distribution activity must either be registered with the Australian Energy Market Operator (AEMO) as a network service provider (NSP) or gain an exemption from the requirement to be a registered NSP from the AER. To assist applicants who may seek an exemption, the NER provides that the AER can issue a guideline setting out the requirements to gain an exemption.

The AER's NSP Registration Exemption Guideline (network Guideline) provides eligible classes of electricity transmission or distribution activity with an exemption from the obligation to be registered as an NSP with AEMO.

The types of networks (known as private networks in this guideline) that are typically covered by the network Guideline include situations where electricity supply is incidental to the main purpose of a business, such as networks within caravan parks, apartments, industrial parks and shopping centres. The granting of an exemption can relieve an affected party of the requirement to comply with the technical requirements set out in Chapter 5 of the NER, and the obligation to provide other network suppliers and other registered participants in the NEM with access to its network.

The network Guideline is intended to provide affected parties with clarity and certainty in the requirements for exemption. The purpose of the proposed network Guideline is to define the situations where an exemption is deemed, where an exemption must be registered and where an exemption application is required.

### 3.1 Regulatory requirements for network service providers

Section 11(2) of the National Electricity Law (NEL) and clause 2.5.1(a) of the NER state that a party 'must not own, control or operate a transmission or distribution system that forms part of the interconnected transmission and distribution system unless the person is registered as an NSP, or has gained exemption from the registration requirement.'

Under the NER, the AER is responsible for issuing and revoking NSP exemptions to eligible classes of private networks in the NEM jurisdictions. Clause 2.5.1(d) of the NER provides that, in accordance with the guidelines issued by the AER, the AER may exempt any person or class of persons who are required to register as an NSP from the registration requirement, or from compliance with the technical standards set out in Chapter 5 of the NER, subject to conditions the AER deems appropriate.

## **3.2 Purpose of the network Guideline**

The purpose of this guideline is to define the situations where an exemption is deemed to exist, where an exemption may be registered in a simplified form and where an application for individual exemption is required. All NSP exemptions are subject to conditions which must be observed to avoid the risk of penalties being applied.

## **3.3 Objectives of the AER's network Guideline**

The first objective of the network Guideline is to provide administrative certainty to private network owners and operators and service providers to private networks as to the classes of deemed and registrable activities, the associated conditions and the process for seeking an individual exemption when it is required.

A further objective of the network Guideline is to ensure that where onselling is involved, the classes of exemption align with the Exempt Selling Guideline's classes of exemption to minimise the risk of regulatory inconsistency and uncertainty.

The third objective is to ensure the regulation of private networks is proportional to the differing needs of residential customers, small customers and large customers respectively.

In applying these objectives the AER has adopted a principle that the highest order of regulatory oversight should relate to situations where the bargaining power of affected customers is weakest. Conversely, where well informed parties with adequate bargaining power and access to independent advice are involved, regulatory oversight may be reduced or minimised.

## **3.4 Distinction between the AER's retail and network guidelines**

In addition to the AER's role in regulating network exemptions, the AER is taking on a new role to regulate retail exemptions. Under the National Energy Retail Law (Retail Law) and National Energy Retail Rules (Retail Rules), the sale of energy to customers requires a person to hold a retailer authorisation, or have an exemption from the requirement. The AER's Exempt Selling Guideline sets out the new national framework for retail onselling exemptions. The AER's Exempt Selling Guideline is available on the AER's website at, <http://www.aer.gov.au/content/index.phtml/itemId/737837>.

A person seeking to transmit, distribute and sell **electricity** within a private network will need to be covered by either a deemed or registrable exemption from the AER for **both** their transmission/distribution network activity and their retailing activity.

Generally, where an exemption class applies to a network it will also apply with respect to onselling. There are exceptions to this rule and several classes are applicable to network exemptions alone. The AER has developed some network specific classes of exemption based on the network exemptions sought from the AER.

As this Guideline is issued under the National Electricity Law it does not apply to gas distribution or transmission.

### **3.5 Consultation process to date**

In June 2011, the AER released a draft network Guideline and accompanying consultation paper in conjunction with the release of the draft Exempt Selling Guideline. The AER invited comments on the network Guideline. Consultation closed on 12 August 2011.

On 27 July 2011, the AER held a public forum for relevant stakeholders to discuss network registration exemptions and retail exemptions. The AER received 23 submissions from stakeholders in response to the June consultation paper.

On 18 October 2011, the AER released a draft Decision and revised draft network Guideline. The draft Decision addressed issues raised in submissions to the June consultation paper and, where relevant, consequential amendments to the network Guideline.

The AER received six submissions in response to the draft Decision and revised draft network Guideline. One party, the Shopping Centre Council Australia, sought the opportunity to discuss their submission with the AER. The AER held a telephone conference with the SCCA on 17 November 2011.

This final Decision and accompanying network Guideline address the issues raised in submissions and concludes the public consultation for the network Guideline.

## 4 AER response to submissions

This section summarises the main issues raised in submissions to the AER's draft Decision and draft network Guideline and sets out the AER response. A list of submissions is included in Attachment A. As required under the Rules Consultation Procedures, which apply to this consultation, a detailed summary of submissions, the AER's consideration and response and a statement of amendments to the network Guideline can be found in Attachment B. Section 5 of this paper explains the changes made to the AER's network Guideline in response to submissions.

### 4.1 Exemption classes

#### *Submission*

SP AusNet submitted that the network Guideline should clearly indicate that a private network with one or more customers who have elected to contract with their choice of authorised retailer must be registered initially, or changed when the customers move to an authorised retailer, under the equivalent class in Table 3. United Energy also suggested that the AER should clarify that from the commencement of the NECF, an embedded network where there are second tier children will need to be registered, despite meeting the description of a deemed exemption category.

#### *AER Response*

While the draft network Guideline provides that where a private network customer has elected to contract with their choice of authorised retailer, the exemption will be registrable, the AER accepts SP AusNet's contention that the proposed arrangement to implement this is unclear. There are no exemption classes in Table 3 which are directly equivalent to exemption classes in Table 1. Moreover, as Table 3 is directly tied to the Exempt Selling Guideline, amendment of that category is not feasible.

The AER has therefore decided to add a new category to Table 4 to apply to private networks that offer customers the ability to participate in full retail competition. An advantage of this approach is that networks registered under Table 4 will be subject to the full set of conditions from the date of registration.

#### *Submission*

SP AusNet raised concerns that there is no equivalent onselling exemption for the exemption classes in Tables 2 and 4, which would suggest that no onselling is recognised or permitted on installations which would fall under those classes of exemption. SP AusNet suggested that a more detailed and clear definition of these arrangements is warranted.

#### *AER Response*

The network Guideline has been amended to clarify that network charges between the eligible parties nominated in Tables 2 and 4 is a commercial matter. As classes NDO1 through NDO5 and NRO1 through NRO4 are targeted to industrial and commercial situations, the AER does not consider a significant power imbalance will exist. The AER therefore believes that light-handed regulation should apply to the network charging arrangements in these classes,

consistent with the principle stated in section 3.3 and the arrangements set out in the retail onselling guideline for supply to large customers.

## 4.2 General requirements

### *Submission*

United Energy, SP AusNet and Citipower/Powercor all expressed concern that condition 5(3) places significant reliance on jurisdictional legislation to regulate technical and safety aspects of private networks. They submitted that it is unclear what the jurisdictional arrangements are or what they will be when the National Energy Customer Framework (NECF) is applied, and that existing obligations may not continue in full or be effective on all parties exempt from the NER.

### *AER Response*

The AER does not have the power under the NEL or the NER to impose safety or technical standards on private networks where no such obligation exists under jurisdictional law or regulations. The purpose of condition 5(3) of the network Guideline is to emphasise that jurisdictional safety legislation is sacrosanct. An AER issued network exemption will not exempt a private network from compliance with applicable jurisdictional requirements. If stakeholders consider jurisdictional safety requirements to be insufficient this is a matter that must be resolved with the relevant jurisdictional regulator or law-maker.

### *Submission*

The Shopping Centre Council of Australia (SCCA) believes that the previous position that the ‘AER does not require pre-existing metering installations to be upgraded’, should be reinstated. SCCA also submitted that it does not believe its members should be required to replace or upgrade their existing meters once the new framework commences or the NMI issues an exemption ‘from time to time’.

### *AER Response*

The network Guideline requires that meters used for the measurement of electrical energy comply with the requirements of the National Measurement Act, and regulations made under that Act for electricity meters. After consultation with the National Measurement Institute (NMI), which administers the National Measurement Act the wording has been reinstated as sought by the SCCA. That is, the network Guideline has been amended to state that the AER does not require that pre-existing metering installations be replaced, consistent with the arrangement which is to apply under the National Measurement Act.

The AER understands that the NMI expects to lift the exemption from 1 July 2012 with the express intention that the metering in embedded network will, in future, be fully compliant with the requirements otherwise applicable to the energy industry. The reference to an exemption issued under the National Measurement Act has been removed. The AER considers there is no sound reason to delay this measure and therefore requires all metering should be NEM compliant from 1 January 2012.

#### *Submission*

SP AusNet queries what the AER's intention is in including condition 5(7). If it is suggesting that meter readings for customers on different private networks sites can be aggregated, SP AusNet considers this to be a matter of billing rules and therefore relevant jurisdictional requirements will apply. SP AusNet is concerned that it may be interpreted as an endorsement of private networks extending over multiple sites, and considers that the condition should be redrafted to make the meaning clear.

#### *AER Response*

Condition 5(7) only permits a customer with premises within multiple private networks to attempt to negotiate a more favourable charging regime. The reason for its inclusion is to facilitate aggregation in private network situations where it would be viable. It has no impact on the status of any particular network within the NEM settlement system. This condition will not affect market settlements as it relates only to private settlements within private networks. The AER considers the current drafting to be clear in this regard.

### **4.3 AEMO & NEM requirements**

#### *Submission*

AEMO and SP AusNet advised that where a customer of a private network obtains supply from a NEM registered retailer, the party responsible for the provision, installation, registration and maintenance of a metering installation is the 'Responsible Person' (as defined in Chapter 7 of the NER) not the private network operator, as suggested in the draft network Guideline.

#### *AER Response*

The AER agrees that the obligation lies with the 'Responsible Person' and not with the private network operator. The Guideline has been amended to address this point.

### **4.4 Pricing**

#### *Submission*

SCCA is concerned with the limitation on private internal network charges. SCCA submits that where a private network operator believes that such charges are warranted, they should be able to seek consideration and approval from the AER on this issue, either as part of the registrable exemption process or a process similar to the 'variation of conditions' application process under Part C

#### *AER Response*

Where a private network operator seeks to profit from the provision of network services within a private network, Chapter 6 of the NER may be invoked. This would require the AER to make an individual pricing determination for the private network operator, which is a complicated and time consuming process. For this reason, the AER does not encourage separate network charges for a private network; however, it remains open to a private network operator to seek an individual pricing determination if they so desire.

#### *Submission*

SP AusNet queries whether exempt network service providers (NSP) should be allowed to charge customers on the basis of the same tariff and rates that customers would otherwise be subject to on the local network service provider's (LNSP) network. SP AusNet submits that this would generally result in an over recovery of tariffs by the exempt NSP, because the LNSP tariff will be a 'bulk' tariff and the aggregation of the 'shadow tariffs' of the customers within the private network will generally exceed this. Further, if the exempt NSP does not use shadow pricing but uses a more cost reflective approach, then the customer will not be able to compare their retail energy offering from the Exempt Onseller.

#### *AER Response*

The AER recognises that 'shadow pricing' is an imperfect approach for the reason stated by SP AusNet. This option was introduced in response to earlier submissions to address the practical difficulties inherent in implementing a cost reflective pricing approach and it has received broad support. The AER recognises that shadow pricing offers the significant advantage of being simple to administer and ensures the price outcome for private network customers is capped to the costs they would have faced had they been served directly by a local distributor. The AER is satisfied the benefits of this option, which include lower administrative costs and ease of understanding and application, outweigh the modest potential for over-recovery which may occasionally arise. The AER supports the use of cost reflective pricing where practicable.

## **4.5 Registration, applications and revocation**

#### *Submission*

SCCA and SP AusNet questioned what the registration process would be where multiple classes of exemption apply to a single private network.

#### *AER Response*

If multiple classes of exemption apply to a single private network, the applicant will only be required to submit a single application. Where the application form requires the applicant to insert the relevant class of exemption, the applicant need only nominate each applicable class.

#### *Submission*

SCCA and United Energy questioned what the transitional arrangements would be for a registrable exemption following a transfer of ownership.

#### *AER Response*

A new section has been added to the network Guideline to clarify the process for affecting a transfer of ownership or de-registration of interest in a network. Regardless, the party who acquires an existing exempt private network will be required to submit a new registration application in accordance with Section 11 or rarely, an individual exemption application under Section 12, of the network Guideline. The registration requirements are minimal, however,

and generally speaking, only require the new owner to register their contact details with the AER.

#### *Submission*

SP AusNet objected to certain aspects of the registration requirements, including the timeframe for registration and the information which is required to be registered. SP AusNet submitted that it is unsatisfactory that parties are required to register their details within 10 business days after commencing operation of the private network, rather than requiring that registration be in place before the private network is energised. SP AusNet also submitted that private networks with generation should have mandatory registration because of the potential network integrity and personal safety issues associated with generator installations.

#### *AER Response*

The AER's view is that the purpose of the public register is to demonstrate compliance with the NEL and the NER with respect to the requirement to be registered as a Network Service Provider or otherwise to be exempt from registration. Although the public register will be a useful reference source it is not intended to serve a wider purpose. In particular, it is not the role of the AER to establish a register for use by industry members as a detailed source of information regarding a private network. Such a role might be better served by another body such as AEMO through establishment of comprehensive market procedures for the recording, registration and settlement of retail activities in private networks. Similarly, the enhancements suggested by SP AusNet to the data to be collected fall outside the scope of the AER's purpose.

With respect to the timeframe for registration, the AER notes that the requirement to register with the AER is not the first step in establishing a private network. The establishment of a connection to the NEM must occur for a private network to exist. Thus the distributor will generally know of a private network before the AER. The primary purpose of this provision is to provide a grace period to complete the re-registration process when there is a transfer of ownership of a private network. In such cases the network continues to operate on the same terms and conditions. To the extent there may occasionally be a small delay in recording the registration of a private network, this will not affect the rights of those served by the network. The AER does not consider this to be a material problem.

In relation to the concerns raised about private networks with generation, conditions 5(3) and 5(4) address the issues raised by SP AusNet for networks which must be registered. Together, they require a private network operator to conform to the normal requirements for connection of a generator. Additional text has been added to the network Guideline in a number of places to emphasise that the owner of any installation with a generation source must contact the local distributor to ensure the requirements for safety are fulfilled.

#### *Submission*

SP AusNet and United Energy queried how the AER will notify exempt NSPs who are responsible for a private network which is subject to a deemed exemption of changes to the conditions of their exemption, or any amendment or revocation of an exemption class. United Energy submitted that they would support registration of all exempt networks rather than allowing continuation of deemed exemptions.

#### *AER Response*

As deemed exemptions do not require registration, the AER will not be in a position to directly inform a deemed exempt network owner/operator of changes to the conditions of their exemption or variations to an exemption class. As discussed in the draft decision, when formulating the policy framework which underpins the Exempt Selling Guideline, it was the intent of policymakers to draw a boundary with respect to when registration is, or is not, required. In aligning the network Guideline with the Exempt Selling Guideline, the AER is seeking to respect the intent of policymakers as reflected in the Retail Law. The AER agrees that communication with deemed exempt networks may be difficult if they are not registered.

Nevertheless, as indicated in the network Guideline, the application of a deemed exemption is subject to compliance with the relevant conditions. The onus is therefore on the private network owner/operator to ensure ongoing compliance with the conditions of their exemption, subject to any future variations. The AER's experience would suggest that the need to change conditions will arise infrequently, if at all.

#### *Submission*

SP AusNet submitted that reliance by the AER on revocation of an exemption as a regulatory compliance lever is flawed. SP AusNet considers that it is unrealistic to assume that customers of an embedded network who are left without a supply arrangement will be able to approach a LNSP. Further, there would be significant safety and technical barriers to the LNSP if they were to take over operation and service provision on the private network.

#### *AER Response*

The AER agrees that there are practical difficulties associated with the revocation of a network exemption. These difficulties are acknowledged in the network Guideline. The AER reiterates that it will consider the circumstances of a revocation on a case-by-case basis when the need arises.

#### *Submission*

SP AusNet submits that there is no clear definition of who is to be given the NSP exemption. While there are a number of references in the Guideline and the decision document, the terminology is inconsistent. SP AusNet suggests that the Guideline should be drafted so that the two entities are 'owner' and 'controller', and that this should be consistent with the wording in the Decision Paper such that, to the extent that the agent either operates or controls a private network, they must be registered together with the network owner.

#### *AER Response*

The AER agrees that the network Guideline should be amended to further clarify who must register or obtain an exemption. Additional introductory text has been included as suggested by SP AusNet which sets out in plain terms whom must register or obtain an exemption. It clarifies that the roles of 'operator' and 'controller' are largely interchangeable when applied to a private network and seeks to distinguish this role from the ordinary role of tradesmen, engineers and architects who may perform services related to the network on the instructions of the network owner, operator or controller.

## 5 The AER's revised network Guideline

This section describes the changes made to the October 2011 draft network Guideline in response to public consultation and the AER's considerations discussed in section 4.

Amendments to the classes of exemption, the associated conditions and the proposed application, registration and revocation process are discussed in turn in the following sections.

### 5.1 Application of the network Guideline

The network Guideline now includes an effective date of 1 January 2012. Compliance with the network Guideline will be obligatory for all private networks in operation on or after this date.

Private networks which are subject to an existing individual exemption granted by the AER pursuant to the former NECA guidelines will not be required to submit a fresh application under the new Guideline. Existing individual exemption holders will have their details transferred to the public register for exempt networks.

Additional introductory text has been included in the network Guideline which sets out in plain terms who must register or obtain an exemption. Under the NEL, everyone associated with a private network must be registered or be exempt from registration. This includes the network owner and may also include a lease holder or the joint owners' legal representative if they have rights over the physical assets that comprise the private electrical network. If no agent is appointed to the roles of 'operator' and 'controller' these parties have whole responsibility for the registration and operator of the network.

Where the network owner has made an agency arrangement with another entity to be the 'operator' or 'controller' of the network, registration or exemption of the agent is also required. The 'operator' or 'controller' of a network is anyone who *arranges to provide services normally associated with a network service provider*. Examples of these services include, but are not limited to: fault response; metering and meter reading; switching (fuse removal); access management to meters and meter panels; interfacing to a NEM registered distributor re these matters, etc. The terms 'operator' and 'controller' are largely interchangeable when applied to a private network.

### 5.2 Eligible classes of exemptions

The three classes of exemption defined in the network Guideline are deemed exemptions, registrable exemptions and individual exemptions.

A **deemed exemption** applies automatically to a private network. No application for exemption to the AER is required, and a private network covered by a deemed exemption does not need to register their activities with the AER. However, when compared to the approach adopted in the former guideline this is considerably more restrictive. For example, deemed exemptions will apply only to residential situations with less than 20 customers and to landlords passing on common area costs to tenants and not universally as was previously the case.

Table 1 of the network Guideline is aligned with the deemed classes of exemption in the AER's Exempt Selling Guideline and has not been amended since the draft. Note that whenever the deemed classes in the Exempt Selling Guideline change the AER will also change table 1 of the network Guideline to the extent necessary to mirror those changes.

Additional text has been included to clarify that where customers within a private network have access to full retail competition and the metering installation permits such access, the exemption will be registrable, not deemed. A new registrable class of exemption (NRO5) has been inserted into table 4 which will specifically apply in this situation.

Amended Table 2 (see next page) of the network Guideline describes network specific deemed classes of exemption. In each of the situations described in table 2 the parties involved are likely to be corporations or government agencies which have equivalent bargaining power and strong incentives to behave responsibly. The financial arrangements for the network service can be resolved commercially. The AER does not consider these classes require additional oversight by the AER.

Additional text has been inserted to clarify that simply owning a generator does not automatically mean a network exemption will be required. Exemption of a network will only be required where a third party is involved. An example is given: where a shopping centre has tenants, the network, including any generation sources, must be exempted. Added text also emphasises that jurisdiction specific obligations exist which impose additional requirements on the installation of generators.

The wording for classes NDO2 and NDO4 have been revised so that they are more easily understood by users of the Guideline and a reference to emergency energy supply has been included in NDO1.

A **registrable exemption** does not require a decision by the AER, but information must be provided as part of the registration process. The required information is set out in section 11, Part C of the network Guideline, which has been amended slightly.

Similar to Table 1, Table 3 of the network Guideline is aligned with the registrable classes of exemption in the AER's Exempt Selling Guideline. It is also subject to automatic revision if the equivalent table in the Exempt Selling Guideline changes.

A note has been added beneath Table 3 to clarify that the AER does not anticipate the conditions associated with network exemption categories NR1, NR2 and NR3 will necessarily be amended from 1 January 2015 when changed requirements will apply for persons engaged in retail onselling. This is to clarify that the risk of substantial changes to the conditions, which deal with safety, metering, dispute resolution and pricing, should be low. Although the AER may amend any of the conditions at any time, a change would most likely be to address a perceived problem in any of these areas. The application and approval process is, however, subject to change to maintain consistency with the retail onselling exemption guideline requirements.

**Table 2 – Deemed classes of exemption – other situations**

<b>Class</b>	<b>Activity</b>	<b>Deemed exemption applicable to:</b>
NDO1	Off-market energy generation by equipment owned, operated or controlled by a third-party and connected to the NEM via a private electricity connection <u>or equipment intended solely to provide emergency energy supply</u>	Energy generation installations not intended to supply network support or demand management services to the NEM <u>and not otherwise required to be registered with AEMO</u>
NDO2	<u>Sites broadcasting television or radio signals and/or mobile communications</u>	Current and future facilities
NDO3	Electric vehicle charging station within a private network	Current and future facilities
NDO4	Temporary supply for the construction and commissioning phase of building, civil, construction industrial, transport, mining or other projects	Incidental supply to facilitate bona fide construction and commissioning of new facilities on the same or an adjoining site
NDO5	Electric traction systems supplying passenger or freight vehicles ( <u>i.e. rail networks</u> )	Current and future facilities

Notes: Classes of exemption labelled 'NDO\_' are 'network deemed other' classes, and have no equivalent class in the Exempt Selling Guideline. Eligibility for a network deemed exemption is set out in this table.

The supply of energy in accordance with a commercial agreement between private parties is permitted for each category listed in Table 2.

Table 4 (next page) of the network Guideline describes network specific registrable classes of exemption. A new registrable class of exemption 'NRO5' (underlined) has been created and will apply to networks with metering infrastructure enabling access to full retail competition in those jurisdictions where this is possible (currently NSW, SA and Victoria).

An **individual exemption** may be granted by application to the AER on a case-by-case basis for private networks that do not meet the criteria for a deemed or registrable exemption or when no class exists which covers the activities for which the applicant seeks exemption. As individual exemptions may also be required for various registrable exemption classes from 1 January 2015, a minor wording change has been made to reflect the reduced level of consultation those applications may attract.

**Table 4 – Registrable classes of exemption – other situations**

<b>Class</b>	<b>Activity</b>	<b>Registrable exemption</b>	<b>Application for individual exemption</b>
NRO1	Off-market energy generation by equipment owned, operated or controlled by a third-party and connected to the NEM via a private electricity connection	Energy generation installations intended to supply network support or demand management services to the NEM	Only where exempt party believes conditions of exemption are not appropriate for their situation
NRO2	On-market energy generation by equipment owned, operated or controlled by a third-party and connected to the NEM via a private electricity connection	Energy generation installations required to be registered with AEMO under clause 2.5.2 of the NER	Only where exempt party believes conditions of exemption are not appropriate for their situation
NRO3	Ongoing supply to a mining or primary production facility and associated residential, commercial, industrial, processing and ancillary support facilities in areas with restricted access to NEM supply	All bona fide installations, subject to demonstrable circumstances of remoteness from existing NEM supply infrastructure	Only where exempt party believes conditions of exemption are not appropriate for their situation
NRO4	Industrial, commercial and ‘mixed-use’ facilities but not including energy generation activity and any activity listed in table 3.	All installations	Only where exempt party believes conditions of exemption are not appropriate for their situation
NRO5	<u>Metered energy onselling to customers in networks with metering infrastructure enabling access to full retail competition in a jurisdiction<sup>1</sup></u>	<u>All installations</u>	<u>Only where exempt party believes conditions of exemption are not appropriate for their situation</u>

Note: Classes of exemption labelled ‘NRO\_’ are ‘network registrable other’ classes, and have no equivalent class in the Exempt Selling Guideline. Eligibility for a network registrable exemption is set out in this table.

The supply of network services in accordance with a commercial agreement between private parties is permitted for each class listed in Table 4, except class NRO5.

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<sup>1</sup> This class applies only to private networks where customers have access to full retail competition via ‘child’ metering registered in accordance with applicable AEMO requirements. It does not apply where a customer arranges direct connection to a NEM registered network service provider. In all other circumstances, table 1 or table 3 applies.

## **5.3 Imposing conditions on exempt network service providers**

As was noted in the draft decision, the AER can impose conditions on the holder of a network exemption under sections 13(4) and 13(4) of the NEL and clause 2.5.1(d) of the NER. This power is quite broad but is not unlimited. A condition can require an affected party to meet an obligation that would apply to a registered NSP under the NER. A private network owner or operator must comply with all conditions imposed, and the AER may deal with a breach of a condition as if it were a breach of the NER. The AER can vary or revoke any condition it has placed on an exempt party.

In amending the draft network Guideline, the AER has made the following changes to Part B—Conditions:

### *General requirements*

1. Reference to regulations under the National Measurement Act has been added.
2. The requirement to disconnect (or ‘island’) a generator located within a private network in the event of a loss of supply now refers to a loss of supply from the local network service provider’s network, rather than from the National Electricity Market (NEM).

### *Metering installation*

3. Text has been inserted to clarify that the AER does not require an existing metering installation to be upgraded, noting however that, in the event of a billing dispute, it will be incumbent on the network operator to demonstrate that the metering installation is accurate.
4. The reference to an exemption granted by the National Measurement Institute has been removed.
5. Text has been included to clarify that where an electric vehicle charging facility operates only as a load, metering and charging arrangements within the private network may be determined by agreement between the network owner/operator and the proprietor of the charging facility. Further, a facility which includes a capacity to export electricity into the local distribution network must also comply with the metering requirements in clause 6.4 for energy generation sources.

### *AEMO & NEM requirements*

6. Condition 8(1) now references the ‘Responsible Person’ (as defined in Chapter 7 of the NER) as the party responsible for the provision, installation, registration, reading and maintenance of a metering installation, where a customer within a private network obtains supply from a NEM registered retailer.

### *Pricing*

7. The application of Charge Group C has been expanded and now also applies to the following deemed exemption classes: NDO1, NDO2, NDO3 and NDO5.

## **5.4 Register of Exempt Networks**

The AER publishes details of exempt networks on its website. An exempt network that holds an individual exemption or registered network exemption will, in future, appear on a Register of Exempt Networks. The AER's website will include the public component of the application for exemption and where applicable, the exemption instrument issued by the AER.

Some submissions proposed that all exempt networks should be registered, rather than allowing the continuation of deemed exemptions. As previously stated, the AER considers this impractical in the short-term and inconsistent with the intention of Jurisdictional policy makers when the retail onselling provisions were framed.

Some submissions suggested enhancements to the information to be collected under the registration process. This raises questions about the rationale for requiring exempt networks to register their details with the AER. The AER's purpose for the public register is to record exemptions from registration of a network. Although the public register may be a useful reference source for parties wishing to know where private networks are located, it is not intended to serve a wider purpose. As noted earlier, it is not the role of the AER to establish a register for use by industry as a source of information regarding detailed aspects of a private network. Similarly, the public register is not intended to be a register of generator registrations.

To the extent the AER gathers private information for regulatory purposes, its use for other purposes is subject to the limitations imposed by privacy legislation. Using the public register for anything other than to record network registration exemptions would fall outside the scope of the AER's regulatory functions.

## **5.5 Registrable exemption application process**

Registrable exemptions do not require an application to the AER, but cover network activities that must be registered with the AER to receive the benefit of an exemption. Part C, section 11 outlines the information requirements for a registrable exemption. Minor adjustments have been made to the information required to register an exemption to correct an oversight in the information collected, notably, the name of the applicant was inferred but not listed.

To simplify the registration process, if multiple classes of exemption apply to a single private network, the applicant will only be required to register once (or, for an individual exemption, to submit a single application). Where the application requires the applicant to insert the relevant class of exemption, the applicant need only nominate each applicable class.

Registrable exemption forms will be made available for download from the AER's website, must be made in writing and may be submitted electronically to the AER at [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au), in accordance with information requirements set out in Part C of the network Guideline. The AER will develop a unified registration process for both the network Guideline and Exempt Selling Guideline to facilitate applicants seeking an exemption from both sets of requirements.

## **5.6 Individual exemption application process**

Individual exemptions will be granted by application to the AER on a case-by-case basis for network activities that do not meet the criteria for a deemed or registerable exemption. An application for an individual exemption must be made in accordance with the information requirements set out in Part C, section 12 of the network Guideline. The application must be made in writing but the AER intends that they may be submitted electronically to the AER at [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au).

A minor amendment has been made to the network Guideline to distinguish between applications for individual exemptions which seek to vary the conditions applicable to an exemption and applications which may result from the 1 January 2015 transition date specified in tables 1 and 3 in relation to onselling. While the former will be subject to rigorous scrutiny by the AER, individual exemption applications required post-1 January 2015 for private networks which would previously have fallen within a class of deemed or registerable exemption may not require significant scrutiny if the exemption conditions are found to be effective and not to require amendment.

## **5.7 Transfer, amendment or cessation of an exemption**

In response to submissions a new section 14 has been added to Part C of the network Guideline. This new section outlines the process for transferring, amending or de-registering an exemption. A notice addressed to the AER is required for all transfers of ownership, changes of accountabilities and/or registration details and for the cessation of operation of a registerable or individually exempt private network. No notice is required for a deemed exempt network.

The notice must detail the change of circumstances and should be submitted at the earliest opportunity whenever an exempt private network is to be subject to a transfer of ownership, change of registration details or a change or restructure of accountabilities.

The party acquiring an existing exempt private network will be required to submit a registration application in accordance with section 11 or section 12, as appropriate. The conditions for the operation of an existing exempt private network continue to apply until the AER determines otherwise in response to the new application.

Where a registered private network is to cease operation, the authorised representative(s) should notify the AER of the planned or actual date for the network to cease operation. The AER will deregister the network from the date specified in a notice. The AER may also deregister a private network if we learn from any other party that a registered network has ceased operation and we are unable to contact the registered authorised representative within 20 business days. The AER may, at its discretion, re-register the network at a later date.

## 6 Final Decision

Based on the consultation processes described in this Final Decision and the AER's consideration of the issues raised the AER has determined to make amendments to the draft guideline dated October 2011 as set out in this decision. Accordingly, the AER has further decided that:

1. The Electricity Network Service Provider Registration Exemption Guideline (the Guideline) dated December 2011 is approved with effect from 1 January 2012.
2. All previous Electricity Network Service Provider Registration Exemption Guidelines are revoked with effect from 1 January 2012.
3. No further applications for exemption from registration of a private network will be processed under the current framework but any new applications will be held-over to 1 January 2012 and will be considered under the new framework.
4. Existing individual exemptions issued by the AER or by its predecessor, the National Electricity Code Administrator, continue in force in the form currently registered with the AER until the registration details are amended for any reason or the network ceases to operate. Existing operators of individually exempted networks may, on application, amend their registration to the appropriate classes listed in the Guideline.
5. Owners and operators/controllers of existing networks previously subject to an unregistered exemption category but who must now register in accordance with the requirements of the new Guideline should do so at the earliest opportunity but no later than 30 June 2012. Joint applications for registration under the retail framework as an exempt seller and for exemption of the associated network will be accepted and are encouraged.

## A. List of submissions

Below is a list of submissions received on the October 2011 draft decision and draft network Guideline:

- AEMO
- Citipower/Powercor
- Elengas
- Shopping Centre Council of Australia (SCCA)
- SP AusNet
- United Energy

## B. Detailed response to submissions

As required by clause 8.9(g) of the NER, in accordance with the Rules Consultation Procedures, the following table is a summary of each issue raised in submissions to the draft decision and draft network Guideline, the AER response to that issue and, where relevant, the changes to the network Guideline.

Stakeholder	Submission	AER Response	Changes to network Guideline
General			
Elengas	Elengas questions why the AER is revising the network exemption guidelines when there have been so few applications for exemption under the current NECA guidelines and there are no apparent issues which would require a revision of the current guidelines.	<p>The AER inherited the guidelines for NSP exemptions from NECA in the transfer of functions when the AER formed in 2005. The guidelines have not been updated since they were first drafted in 1998. Legislative developments in the regulation of electricity networks in Australia and innovation in the electricity supply industry have both contributed to the need to update the current network guidelines, which are outdated. They deal poorly with new innovations such as widespread use of embedded generation and the emergence of electric vehicles.</p> <p>The AER fields numerous inquiries every year from private network operators seeking clarification of their obligations as they have found the current guidelines vague and unhelpful.</p> <p>Furthermore, there are obvious benefits in aligning the regulatory processes for network and retail exemptions. Hence, the AER has chosen to revise the network Guidelines in conjunction with the implementation of the AER's Exempt Selling Guideline. The AER believes that the revised network Guideline will provide affected parties with greater clarity and certainty as to the requirements for exemption.</p>	No change.

Exemption classes			
SCCA	The proposed ND7 exemption should be amended so that it is applicable to the whole network and not just common areas.	The AER has chosen to align the classes of exemption in the Network Guideline with the Exempt Selling Guideline, to minimise the risk of regulatory inconsistency and uncertainty where onselling is involved. For this reason, ND7 reflects the wording as contained in the Exempt Selling Guideline. The AER is of the view that the classes of exemption should continue to be aligned with the Exempt Selling Guideline, and therefore the current wording should be retained.	No change.
SCCA	The AER should provide a deemed exemption class for emergency energy supply.	The AER is of the view that a deemed exemption class for emergency energy supply is unnecessary as emergency generators are not required to be registered. Nevertheless, to avoid uncertainty, NDO1 has been amended to include a reference to emergency energy supply.	NDO1 has been amended to add: ...or equipment intended solely to provide emergency energy supply
SP AusNet	SP AusNet is still unclear about the changes in the exemption 'type' after 1 January 2015, when the grandfathering expires. For example, a network which would fall under class ND2 before 1 January 2015 would be subject to a registrable exemption after 1 January 2015 (presumably NR2). However, NR2 states that if established after 1 January 2015, the private network will be subject to an individual exemption. Hence, for clarity, Table 1 should indicate that a private network falling under ND2 will be subject to an individual exemption after 1 January 2015. This is also applicable for ND3, ND4 and ND6.	The AER agrees that there is inevitably some uncertainty regarding the status of deemed exemptions under the network Guideline post-1 January 2015, which flows from the intention under the Exempt Selling Guideline to move away from deemed exemptions.  While the AER will need to make a decision at a later stage with respect to the continuation of deemed exemptions under the network Guideline, the current intention is not to change the conditions capriciously. The conditions address metering, dispute resolution, safety and pricing and are expected to remain stable for the foreseeable future.	No change.
SP AusNet	The Guideline should clearly indicate that a private network with one or more customers who have elected to contract with their choice of authorised retailer must be registered initially, or changed when the customer moves to an authorised retailer, under the equivalent class in Table 3.	The network Guideline provides that where a private network customer has elected to contract with their choice of authorised retailer, the exemption will be registrable.  However, the AER accepts SP AusNet's contention that the proposed arrangement to implement this is unclear. United Energy also commented that there should be a registrable	A new registrable exemption category 'NRO5' has been created and will apply to networks with metering infrastructure enabling access to full retail competition in those jurisdictions where this is possible (currently NSW, SA & Vic.). A new section

		<p>class for this purpose. The AER agrees.</p> <p>However, there are no direct equivalent exemption classes in Table 3 equivalent to those in Table 1. Moreover, as Table 3 is tied to the Exempt Selling Guideline, addition of a class in that table may produce future conflicts should the Exempt Selling Guideline change.</p> <p>Therefore, a new class has been added to Table 4 to apply to private networks that offer customers the ability to participate in full retail competition. An advantage of this approach is that networks registered under table 4 will be subject to the necessary set of conditions from the date of registration including the AEMO metering requirements.</p>	(14) has been added to clarify the process for effecting transfers and changes of registration.
United Energy	The Guideline states that no deemed exemption classes will cater for retail competition. It would be useful if the AER clarified that from the commencement of the NECF an embedded network where there are 2nd tier children will need to meet a registrable category or seek an individual exemption. This is despite the exempt network meeting the description of a deemed exemption category.	The AER agrees and, as noted above, has amended the network Guideline to include a new class that applies where there is access to full retail competition.	
SP AusNet	The Guideline states that applications for individual exemptions will be subject to 'rigorous scrutiny and will only be granted in exception circumstances'. This is inconsistent with Table 3 which states that all classes of embedded networks in Table 3 will require an individual exemption if established after 1 January 2015.	<p>To resolve this inconsistency the AER has made a minor amendment to distinguish between applications which seek to vary the conditions applicable to an exemption and those which may result from the 1 January 2015 transition event mentioned in Tables 1 and 3.</p> <p>Individual exemptions which involve a variation of conditions will be subject to rigorous scrutiny by the AER. However, individual exemption applications required post-1 January 2015 for private networks which would have previously fallen within a class of registrable exemption may not require significant scrutiny if the exemption conditions are found to be effective and not require amendment. The AER will make further statements in this regard closer to the transition date.</p>	The network Guideline has been amended and now reads: 'Applications for individual exemptions or which involve a variation of conditions will be subject to rigorous scrutiny and will only be granted in exceptional circumstances.'

SP AusNet	Tables 1 and 3 of the Guideline state that the exemptions are applicable to 'onsellers'. The exempt onseller and the exempt network service provider could be different parties. The current wording for the classes could lead to confusion and should refer to the 'Current NPS and NSPs who comment operation prior to...'	Tables 1 and 3 are, as stated in the Guideline, derived from the Exempt Selling Guideline. They exactly mirror the wording used in that Guideline. The introductory text above the tables clearly states the conditions apply to anyone who owns, operates or controls a private network. The AER prefers this alternative to the approach proposed by SP AusNet.	No change.
SP AusNet	There is no equivalent onselling exemption for the exemption classes in Tables 2 and 4. This would suggest that no onselling is recognised or permitted on installations as identified in Tables 2 and 4. However, if no onselling is allowed then each customer must have their own market meter. This is not an embedded network in the true sense but a multiple occupancy premises. The Guideline needs a more detailed and clear definition of these arrangements.	A multi-purpose network must be registered in multiple categories and condition 5(5) will apply to any on-selling in such a network.  As classes NDO1 through NDO5 and NRO1 through NRO4 are targeted to industrial and commercial situations the AER does not consider that a significant power imbalance will exist. We therefore believe light-handed regulation should apply to charging arrangements in these classes. The Guideline has been amended to make clear that network charges between the eligible parties nominated in tables 2 and 4 is a commercial matter.	The Guideline has been amended to state that in industrial and commercial situations a commercial agreement may set out the network charging arrangements.  Onselling will still be subject to the applicable classes of the Exempt Selling Guideline.
SP AusNet	Class NRO2 is much too specific and does not have an equivalent class for on-selling.	It is not apparent that this class is 'too specific'. No other submission has raised a concern about this class.  To address the potential uncertainty about energy transfers in these classes additional text has been added. As classes NRO1 through NRO4 are targeted to industrial and commercial situations the AER does not consider that a significant power imbalance will exist and therefore believes light-handed regulation should apply to the network charging arrangements in these classes.	The Guideline now states that: 'The supply of energy in accordance with a commercial agreement between private parties is permitted for each class listed in Table 4 except class NRO5'.  Retail onselling to a large customer falls under class R5.
SP AusNet	SP AusNet seeks further clarification as to the difference between a generator within a private network which is 'not intended to supply network support or demand management services' (for which only deemed registration is required) and a generator within a private network which is intended for this	The former category is for generation for private use. It will displace the consumption of the private network and may export to the LNSP's network. Note that exemption of the private network is only required in such installations if a third party is also involved in the network. The latter category	No change.

	role and must therefore be registered.	<p>applies where the generator is intended to supply a service to AEMO or an NSP under a formal contract or other arrangement.</p> <p>Where AEMO or an NSP incurs an outlay a need for public accountability for those costs arises. Registration will assist in ensuring the transparency of such arrangements and assist policy makers seeking to monitor developments in this important area.</p>	
United Energy	<p>It would be beneficial if NDO2 was described as television and radio services and NDO5 referred to rail networks. These descriptions may be more easily understood by a larger group of people. The description of shared broadcasting and communications is unclear; it could be construed that it only included mobile phone towers with supply shared with a number of phone carriers.</p>	<p>The AER agrees that the wording for NDO2 and NDO5 should be revised in the manner suggested by United Energy so that they are more easily understood by users of the network Guideline.</p>	<p>NDO2 has been amended and now reads: 'Sites broadcasting television or radio signals and/or mobile communications'. NDO5 has also been amended and now reads: 'Electric traction systems supplying passenger or freight vehicles (i.e. rail networks).</p>
United Energy	<p>NRO4 has been introduced as a catch all of mixed industrial/commercial without generation. This appears to be an extremely broad category.</p>	<p>The operative words in this exemption class are 'but not including energy generation activity and any activity listed in table 3'. The effect of these words is to limit the application of this class.</p>	<p>No change.</p>
SP AusNet	<p>It is important to include electric vehicle batteries in the list of generators in the 'Off market generation' description, as these are a likely source of potentially large amounts of embedded generation capacity in the future.</p>	<p>While the AER agrees in principle, it is the inverter powered by electric vehicle batteries which should be included as an off-market energy generator, not the batteries per se.</p>	<p>The definitions for 'off-market energy generation' and 'on-market energy generation' have been amended to include a reference to 'an electric vehicle inverter'.</p>
General requirements			
Citipower/ Powercor	<p>General condition 5(3) requires all private networks to comply with jurisdictional regulations. Victorian jurisdictional provisions have yet to be confirmed ahead of the NECF and therefore there is a risk that provisions with respect to technical standards and safety for private networks will not be carried forward in full under the NECF.</p>	<p>The AER does not have the power to impose safety and technical standards on private networks where no such obligations exist under jurisdictional legislation or regulations.</p> <p>The purpose of Condition 5(3) is to emphasise that exempt networks are not exempt from applicable jurisdictional</p>	<p>No change.</p>

	Citipower/Powercor query whether the AER's proposed obligation to have a current safety management plan, or similar, will be imposed where no such obligation under jurisdictional regulations exist.	requirements. The revised jurisdictional arrangements will depend on legislation which is yet to be passed. The scope of those arrangements will be determined by each jurisdiction.	
SP AusNet	SP AusNet continues to have concerns with respect to the lack of a comprehensive regime for private network regulatory management and monitoring. For example, it remains unclear what the 'applicable' jurisdictional safety requirements currently are or will be under the NECF. Further, there is no obligation on an exempt NSP to provide a status change for a customer with a registered retailer in a timeframe which will enable a local NSP to meet their CATS obligation.	The AER would welcome the amendment of the AEMO system procedures (including CATS & MSATS) as suggested by SP AusNet to include full recognition of embedded networks. However, it is not within the ambit of the AER to mandate a requirement for this to occur.	
United Energy	Condition 5(3) places a significant reliance on technical and safety matters continuing to be dealt with by the jurisdiction. UE is not aware of how existing conditions on embedded networks and generation which are contained in the Victorian Electricity Distribution Code or other jurisdictional instruments will transition under the NECF. Revised jurisdictional arrangements may not continue the existing obligations in full or be effective on all parties exempt from the NER.		
SCCA	In relation to General Condition 6 (Part B), SCCA believe that the previous position that the 'AER does not require pre-existing metering installations to be upgraded', which was included in the initial Guideline, should be reinstated. Further, the Guideline requires that 'meters installed prior to the commencement date may be subject to the terms of an exemption under the National Measurement Act as amended from time to time'. SCCA does not believe that its members should be required to replace or upgrade their existing meters once the new framework commences, or the NMI issues an exemption 'from time to time'.	<p>The network Guideline requires that metering installations satisfy applicable standards under the National Measurement Act, which is administered by the National Measurement Institute.</p> <p>The network Guideline does not require that pre-existing metering installations be replaced. Following consultation with the National Measurement Institute, the wording has been revised.</p> <p>The Institute advises the current exemption will be revoked from 1 July 2012 but existing metering will not be required to be upgraded.</p>	Condition 6 has been amended to reflect the advice of the National Measurement Institute.

SP AusNet	<p>It is unclear what condition 5(7) is intending. If it is suggesting that meter readings for customers on different private network sites can be aggregated, this is a matter of billing rules and therefore relevant jurisdictional requirements will apply. Market meter data, however, cannot be aggregated across NMIs. SP Aus Net is concerned that it may be interpreted as an endorsement of private networks extending over multiple sites. This condition should be redrafted to make the meaning clear.</p>	<p>The provision only permits a customer with premises within multiple private networks to attempt to negotiate a more favourable charging regime. It has no impact on the status of any particular network for market purposes. Even if the condition was omitted the customer would still have this right.</p> <p>The purpose of condition 5(7) is to be transparent that aggregation in private network situations is permitted where it would be viable. This condition will not affect market settlements as it relates to private settlements within private networks.</p> <p>The AER considers the current drafting to be clear in this regard.</p>	No change.
SP AusNet	<p>The process imposed on an Exempt NSP under condition 5(10) is not consistent with broader industry practice, which is for a life support customer to notify and provide a medical certificate to a retailer, who will then notify the LNSP. The Network Guideline needs to ensure that the outcome matches industry practice.</p>	<p>The conditions under this Guideline apply to the holder of a network exemption (i.e. the private network owner/operator). This provision complements similar provisions for retailers under the Exempt Selling Guideline. The AER expect that to be the main route for notification to occur.</p> <p>This condition exists to minimise the risk of a customer's details not being recorded and is supported in other submissions.</p>	No change.
United Energy	<p>Condition 5(4) refers to a generation source needing to shut down (or island) in the event of loss of supply from the NEM. The NEM may have supply however a local feeder may have lost supply due to a high voltage injection. It is preferable to refer to loss of supply from the local or registered network service provider rather than the NEM.</p>	<p>The AER agrees that it is preferable to refer to loss of supply from the 'local network service provider' rather than the NEM. The network Guideline has been amended accordingly.</p>	<p>The reference to 'NEM' in condition 5(4) has been replaced with 'local network service provider's network'.</p>
Metering installation			
SCCA	SCCA seeks further clarification in relation to off-market and on-market energy generation, particular in relation to NRO1	The AER spoke directly to SCCA on 17 November 2011 in response to their submission to clarify metering	No change.

	and NRO2, including the position that 'it is not intended that small generator installations within private networks should be exposed to unduly onerous metering requirements'.	requirements.	
United Energy	The guideline states that for class NDO3 the conditions set out in section 5(3) and 6 apply. However, condition 6 suggests that if no agreement has been reached between a network owner/operator and the proprietor of the charging facility, then the conditions set out in sections 5, 7, 9 and 10 apply. This is confusing in light of the NDO3 being an exemption category with no equivalent on-selling category and also not being applicable where there is retail competition. Categories NDO have no equivalent on-selling arrangements. However, condition 6 relating to vehicle charging suggests there is an on-selling arrangement where there is a private network and the charging station is owned by another party. If this is the case, which on-selling category applies?	<p>While individual charging stations may be small, it is expected that over-time collectively they will equate to large customers. The AER therefore considers that this group is capable of negotiating appropriate charging arrangements with site proprietors on commercial terms without the need for regulatory oversight.</p> <p>To the extent an on-supply of energy occurs the AER considers this to be incidental to the operation of the charging station and that these costs may be included in the network charge.</p> <p>The AER agrees that the wording in Condition 6 relating to electric vehicle charging facilities should be clarified.</p>	<p>Text has been added to condition 6(5) to the following effect: 'Where the facility operates only as a load, metering and charging arrangements within the private network may be determined by agreement between the network owner/operator and the proprietor of the charging facility. If no agreement is reached, then the conditions set out in sections 5, 7, 9 and 10 are to apply.'</p> <p>A new class (NRO5) has been created to service those embedded networks where the customers require access to full retail competition.</p>
<b>AEMO &amp; NEM requirements</b>			
AEMO	Condition 8(1) refers to a Guideline published by AEMO applicable to a private network. This Guideline has not yet been completed and contains a request for feedback. The current work on the Network Exemption process will hopefully allow for the Guideline to be finalised. A footnote explaining this position would be appropriate.	The AER agrees that a footnote explaining the position of the AEMO Guideline should be included in the network Guideline.	A footnote has been added to condition 8(1) as follows: 'AEMO issued an Embedded Network Guideline in November 2009. AEMO intends revising that Guideline following the issue of the AER's guidelines on network exemptions and onselling'.
AEMO	The Network Guideline states that where customers of private networks have access to full retail competition and where a customer has elected to obtain supply from a NEM registered retailer, 'a private network operator may be required to appoint an accredited metering service provider or other registered NEM participant, as appropriate, to act as its agent for the provision, installation, registration and maintenance of the metering installation'. In the NER, and consequently the Metrology Procedure, this obligation lies with the Responsible	Where a customer obtains supply from a NEM registered retailer, the 'Responsible Person', as defined in Chapter 7 of the NER, will be responsible for the provision, registration, reading and maintenance of the metering installation. Typically, this will be the NEM registered retailer. The network Guideline has been amended accordingly.	Condition 8(1) now refers to the 'Responsible Person' as the party responsible for the provision, installation, registration, reading and maintenance of a metering installation, where a customer within a private network obtains supply from a NEM registered retailer.

	Person (RP) and not with the private network operator.		
SCCA	Where there are child meters, there needs to be clarification around who installs and manages the data from these meters, as well as the costs of change-over and ongoing maintenance.		
SP AusNet	The metering conditions in the Network Guideline do not accurately reflect metering responsibilities, at least as they apply in Victoria. In Victoria, the installation and reading of type 5 manually read interval meters is the responsibility of the LNSP. Further, because of the Victorian rollout derogation, if the private network (or a customer of a private network) is less than 160MWh pa, the related authorised retailer will not be able to elect to be the Responsible Person and install a contestable type 4 remotely read meter. Hence, the majority of market meters on customers with an authorised retailer will be provided and read by the LNSP. This should be reflected in the Network Guideline.		
SCCA	In relation to General Condition 8, while the SCCA supports that embedded networks should have a metered supply; it does not believe that meter data agents are necessary.	See above.	
Metering accuracy			
AEMO	The wording used in Condition 7 implies that the National Measurement Institute (NMI) can exempt a participant from complying with the National Electricity Rules (NER). While the NMI can issue an exemption from Pattern Approval, enforcement of the NER lies with the AER and therefore the AER is the only body that can issue exemptions from compliance with the NER.	The AER agrees and has amended the network Guideline accordingly.	Text has been deleted.
Pricing			
SCCA	While the SCCA welcomes the AER's revised position in	Where a private network operator seeks to profit from the	No change.

	<p>relation to external network charges, it is concerned with the limitations on private internal network charges. SCCA submits that where a private network operator believes that such charges are warranted, they should be able to seek consideration and approval from the AER on this issue, either as part of the registrable exemption process or a process similar to the 'variation of conditions' application process under Part C.</p>	<p>provision of network services within a private network, Chapter 6 of the NER may be invoked. This would require the AER to make an individual pricing determination for the private network operator, which is a complicated and time consuming process. For this reason, the AER does not encourage separate network charges for a private network; however, it remains open to a private network operator to seek an individual pricing determination.</p>	
SP AusNet	<p>The Network Guideline allows for the Exempt NSP to charge customers on the basis of the same tariff and rates that they would be subject to on the LNSP's network. However this will generally result in an over recovery of tariffs by the Exempt NSP, because the LNSP tariff will be a 'bulk' tariff and the aggregation of the 'shadow tariffs' of the customers within the private network will generally exceed this. Further, if the Exempt NSP does not use shadow pricing but uses a more cost reflective approach, then the customer will not be able to compare their retail energy offering from the Exempt Onseller.</p>	<p>The AER recognises that 'shadow pricing' is an imperfect approach for the reason stated by SP AusNet. However, the AER also recognises that it offers the significant advantage of being simple to administer and ensures the price outcome for private network customers is capped to the costs they would have faced had they been served directly by a local distributor. The AER is satisfied the benefits of this option, which include lower administrative costs and ease of understanding and application, outweigh the modest potential for over-recovery which may arise in some situations. The AER does not object to the use of cost reflective pricing where it is practicable.</p>	No change.
Registration, applications and revocation			
SCCA	<p>SCCA urges the AER to streamline the registration process where there is a requirement to register under multiple categories for both the retail and network exemptions. SCCA are keen to avoid situations where one application is approved whilst another is declined for the same private network.</p>	<p>Where applicants are seeking an exemption under both guidelines they will only be required to submit a single application. It is the AER's intention that if an exemption is granted under the Exempt Selling Guideline it will also be granted under the Network Guideline.</p> <p>If multiple classes of exemption apply to a single private network, the applicant will only be required to submit a single application. Where the application requires the applicant to insert the relevant class of exemption, the applicant need only nominate each applicable class.</p>	Minor change in section 12.
SP AusNet	<p>The Guideline should contain a statement explaining the effect of multiple classes of exemption applying to a single private network.</p>		

SCCA	There needs to be mechanism for transferring property ownership, which occurs due to merger and acquisition activity. A transfer of ownership should not require a fresh application. A mechanism where the AER is advised of the change of ownership details would enable simpler administration of the scheme.	A new section has been inserted into the Guideline to clarify what the process is where there is a transfer or cessation of an exemption. Where a party acquires an existing exempt private network, they will be required to submit a registration application in accordance with Section 11 or Section 12. The registration requirements under the network Guideline, however, are minimal, and will only require the new owner to register their contact details with the AER.	A new section (Section 14 'Transfer or cessation of an exemption') has been inserted.  This section clarifies the process to apply where there is a transfer or cessation of an exemption.
United Energy	It would be useful to clarify if similar transitional arrangements following a transfer of ownership will also apply to registrable exemptions.		
SP AusNet	Private networks with generation should have mandatory registration because of the potential network integrity and personal safety issues associated with generator installations.	Conditions 5(3) and 5(4) address this issue. Together, they require a private network operator conform to the normal requirements for connection of a generator.  Additional text has been added to emphasise that the owner of an installation with a generator must contact the local distributor to ensure the requirements for safety are fulfilled.  The public register of the AER is not intended to be used as a definitive register of generator registrations. Its purpose is to record network exemptions. To the extent the AER gathers private information its use for other purposes is subject to limitations imposed by privacy legislation. The enhancements suggested by SP AusNet to the data to be collected fall outside the scope of the AER's purpose.	Additional text cautioning of the need to consult the local distributor added above table 2 which provides for a deemed exemption in some situations. This is where the potential for misapplication of the Guideline arises. As Table 4 requires registration the generator installation will be recorded and visible.
SP AusNet	It is unsatisfactory that parties are required to complete registration requirements for a registrable exemption within 10 business days after commencing operation of the private network. The Guideline should require the registration to be in place before the private network is energised.	The requirement to register with the AER is not the first step in establishing a private network. The establishment of a connection to the NEM must occur for a network to exist. Thus the distributor will generally know of a network connection before the AER.  The AER currently accepts advance applications for exemption of a network and will continue to do so. The primary purpose of this provision then is to provide a grace period when there is a transfer of ownership of a private	No change.

		<p>network. In such cases the network continues to operate on the same terms and conditions. To the extent there may occasionally be a small delay in recording a private network is operating, this will not affect the rights of those served by the network. The AER does not consider this to be a material problem.</p>	
SP AusNet	The registration information required should be expanded to include a 24 hour emergency contact number, number of customers, life support customer flag and generation flag.	<p>As stated earlier, the AER's view is that the purpose of the public register is to demonstrate compliance with the NEL and the NER with respect to the requirement to be registered as a Network Service Provider or otherwise to be exempt from registration.</p> <p>Although the public register will be a useful reference source is not intended to serve a wider purpose. In particular, it is not the role of the AER to establish a definitive register for use by industry members as a source of information regarding the internal aspects of a private network. Such a role might be better served by AEMO through establishment of comprehensive market procedures for the recording, registration and settlement of retail activities in private networks.</p>	No change.
United Energy	UE welcomes condition 5(9), where the AER can use the register of exempt networks to notify exempt network providers of any changed conditions or revocation or amendment to any exemption class. However, UE notes that this condition will be ineffective for deemed exemption classes. UE would support registration of all exempt networks rather than allowing continuation of deemed exemptions.	<p>As deemed exemptions do not require registration the AER will not be in a position to directly inform a deemed exempt network owner/operator of changes to the conditions of their exemption. While it would seem attractive to require the registration of all exempt networks, given the number of private networks in operation this was judged by policymakers not to be feasible. It was the intent of policymakers to draw a boundary with respect to when registration is, or is not, required. The AER is respecting the intent of policymakers in this regard.</p>	No change.
SP AusNet	While SP AusNet agrees that exempt NSPs must be informed of changes to the conditions of their exemptions, it is unclear how the AER will notify those exempt NSPs who are responsible for a private network which is subject to a deemed	<p>Nevertheless, as set out in the network Guideline, the application of a deemed exemption is subject to compliance with the relevant conditions. The onus is therefore on the private network owner/operator to ensure ongoing</p>	

	exemption.	compliance with the conditions of their exemption, subject to any future variations.	
SP AusNet	Reliance by the AER on revocation of an exemption as a regulatory compliance lever is flawed. It is unrealistic to assume that customers on an embedded network who are left without a supply arrangement will be able to approach a LNSP. Further, there would be significant safety and technical barriers to the LNSP if they were to take over operation and service provision on the private network.	The AER agrees that there are practical difficulties associated with the revocation of a network exemption. These difficulties are acknowledged in the network Guideline and it is stated that the AER will consider the circumstances of a revocation on a case-by-case basis.	No change.
SP AusNet	There is no clear definition of who is to be given the NSP exemption. While there are a number of references in the Guideline and the decision document, the terminology is inconsistent. The Guideline should be drafted so that the two entities are 'owner' and 'controller', and this should be consistent with the wording in the Decision Paper such that, to the extent that the agent either operators or control a private network, they must be registered together with the network owner.	The AER agrees that the network Guideline should be amended to further clarify who must register or obtain an exemption.	Additional introductory text has been included in the network Guideline, setting out in plain terms who must register or obtain an exemption. It clarifies that 'operator' and 'controller' are largely interchangeable when applied to a private network.
Elengas	Elengas questions the requirement to have a register of exempt networks, as the regulations will apply to networks regardless of whether they are required to register or not. Elengas considers it illogical to have a register for some categories and not others. Elengas also raises concerns about the confidentiality of information which is to be made public available through the registration process.	The AER considers that there are a number of obvious benefits in having a public record of exempt networks. Firstly, the public register provides useful information to affected parties, such as local network service providers and customers within a private network. Second, the public register ensures that the AER is transparent in how it exercises its regulatory functions. Indeed, as discussed earlier, Elengas refers to the register in support of its contention that there is no need to amend current practice. While it would seem attractive to require the registration of all exempt networks, given the number of private networks in operation this was judged by policymakers not to be feasible. It was the intent of policymakers to draw a boundary with respect to when registration is, or is not, required. The AER is respecting the intent of policymakers	No change.

		<p>in this regard.</p> <p>The AER does not consider the information which is required to be registered to be commercially sensitive or of a nature which would properly attract a claim of confidentiality.</p> <p>In any event, an unscrupulous provider of network services may abuse a lack of information to exploit uninformed consumers. A public registration reduces the scope for such abuse.</p>	
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