



16 February 2015

Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001  
Attn. General Manager—Retail Markets Branch

To: Australian Energy Regulator

Re: **Submission to AER Amendments to the Retail Exempt Selling Guideline – Version 3 (December 2014)**

Energy Intelligence is writing in relation to the above consultation. We wish to register our strong disagreement with the AER's view of brownfield embedded network conversions as limiting customer's freedom of choice. We feel the AER has acted arbitrarily and inconsistently by taking this view, and we wish to engage with the AER, industry and customer stakeholders to correct what (in our view) a position based on false assumptions.

### **About Us**

Energy Intelligence are an energy management consultancy based in Melbourne. A core part of our services is the implementation and management of embedded networks throughout the NEM. Our clients are typically landlords of multi-tenant shopping centres. We have implemented over 30 embedded networks, being a mixture of greenfield (new sites) and brownfield conversions (retrofits).

Energy Intelligence has several years' experience of interacting with market participants such as parent and child retailers, meter providers, meter data managers and distributors. We have recently provided input to the AEMO regarding the creation of an embedded network participant in MSATS, to facilitate embedded network operations within the market. Thus we feel strongly placed to comment on embedded networks, their impact on the market and how embedded networks are not incongruent with the objectives of the Retail Law.<sup>1</sup>

### **Points of contention**

Energy Intelligence has three main points of contention with the Amendments to the Retail Exempt Selling Guideline – Version 3 (December 2014) ("Amended Guideline"):

1. The assumption throughout the guideline that tenants inside embedded networks do not have, or have restricted, access to retail competition.
2. An arbitrary and inconsistent bias against brownfield embedded networks.
3. Inconsistency with the Electricity Network Service Provider Registration Exemption Guideline (August 2013) ("NSP Exemption Guideline").

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<sup>1</sup> Section 13, National Energy Retail Law (South Australia) Act 2011



## 1: Access to Retail Competition

As mentioned in the Amended Guideline, the Retail Law states that “*exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable retail customers in the same jurisdiction have that right*”<sup>2</sup>. The guideline then states that “*we therefore do not support the creation of infrastructure that deliberately reduces a customer’s ability to exercise choice.*” The Amended Guideline then makes several assertions that may restrict choice.

We wish to comment on key AER’s assertions in relation to freedom of choice. Namely (emphasis added):

- “...**deliberately** reduces a customer’s ability to exercise choice”.  
It is simply not true that landlords who seek to implement an embedded networks act in this manner, as infrastructure at both greenfield and brownfield embedded networks facilitates choice. This is expanded upon below.
- “... access to retailers depends largely on **network configuration**”  
In typical embedded networks, all meter panels comply with relevant state regulations to ensure customer freedom of choice. For example, embedded networks (both brownfield or greenfield) typically comply with Service and Installation Rules that recommend infrastructure “*minimise rework in the event that conversion to NEM metering is required*”<sup>3</sup>. That is, if future tenants wish to change from an embedded network orphan to a market child meter, and vice versa, no changes to the meter panels are needed. It would simply require a meter change, which is a common process undertaken by either the child retailer or, in the case of orphans, the landlord.
- “... **access** to individual meters”.  
Similarly to above, infrastructure inside embedded networks meet state regulations that require unimpeded access for a meter reader to conduct readings. There would be no point for the landlord to restrict meter access as this would inhibit access by the landlord’s own meter readers.
- “**Network configuration and metering arrangements should be designed to facilitate customer’s cost effective access to choice of retailer wherever possible**”

We wholeheartedly agree with the AER in this issue. We contend that embedded networks infrastructure, for both greenfield and brownfield, is installed with this in mind. If landlords are installing infrastructure that restricts freedom of choice, this should be a focus of the AER. The AER’s current proposal seems to instead want to restrict landlords who comply with the relevant rules and objectives of the Retail Law.

Based on the above, we re-inforce the fact that embedded networks do not restrict the ability of customers to choose their own retailer. This excludes Queensland, ACT and Tasmania, where current jurisdictional arrangements do not currently allow access to retailer of choice for most, or all, customers.

<sup>2</sup> Section 114(1)(b), National Energy Retail Law (South Australia) Act 2011

<sup>3</sup> Clause 8.10.3.4, Victorian Electricity Distributors Service & Installation Rules 2014



## 2: Bias against brownfield conversions

The Amended Guideline makes several references to brownfield embedded network installations as a “retrograde” step in terms of removing customer’s contestability.

We strongly disagree with this assertion based on the previously raised points however we make the following additional points:

- Customers in a brownfield conversion have the choice retaining their current market arrangements with their existing retailer. For customers who choose to remain with their current retailer, their supply arrangement remains unaffected when the embedded network is implemented. The distributor may require a change of meter to align with the AEMO Metrology Procedure (which mandates the child and parent meters should record energy usage in a similar fashion<sup>4</sup>), however this is akin to an installation of a smart meter. In our view, we do not consider this routine meter change as impacting the customer’s existing supply arrangement as the existing retailer is retained and that retailer will continue to bill their customer after the embedded network has been installed.
- Brownfield conversions do not limit customer’s contestability as “retrofitted” embedded networks meter panels are already compliant with specifications for the installation of NEM metering. Thus customers can easily move back and forth between landlord and retailer supply through a simple change of metering.
- The AER mentions “explicit informed consent”. Customers who choose to take up supply from the landlord inside an embedded network sign an agreement outlining the terms and customer’s protections in the same manner to a retail contract. **No customers are forced to take up supply from the landlord.** Marketing to tenants inside potential embedded networks highlight this point, and indeed this a requirement from the AER guidelines.

We wish to expand on this last point, as we feel the AER’s approach to retrofitted embedded networks is that they are “forced” on to tenants merely for the benefit of landlords. However there are several advantages for customers who choose to take up supply from the landlord inside an embedded network:

- Competitive rates, as the landlord can purchase energy in bulk.
- Dedicated service. Embedded network service agents often have relationships with multi-site tenants across several sites.
- Monthly, rather than quarterly, billing. This assists businesses better manage their cash flow.
- Ease of receiving energy charges through the landlord invoice or statement.

To exemplify this point, on average 82% of tenants within brownfield embedded networks Energy Intelligence has implemented over the last few months have signed

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<sup>4</sup> 2.5.1, AEMO METROLOGY PROCEDURE: PART A NATIONAL ELECTRICITY MARKET, March 2014



up to receive supply from the landlord<sup>5</sup>. For customers who do not sign up, they retained their existing energy supply arrangements with their retailer of choice. We thus consider embedded networks a “win-win” for end consumers and are disappointed the AER wish to restrict such arrangements for brownfield sites.

Furthermore, as the facilitation of retail competition is the same between greenfield and brownfield sites, we consider the AER’s position in the guideline to deter brownfield conversions as inconsistent and discriminatory. We see no valid reason why greenfield sites are able to receive a Registrable Exemption while brownfield sites must apply for an Individual Exemption. In our view, as access to full retail competition is maintained, brownfield sites should be able to receive a Registrable Exemption in the same manner as greenfield sites.

### **3. Inconsistency between Amended Retail Exempt Selling Guideline and NSP Exemption Guideline**

We wish to bring the AER’s attention an inherit inconsistency between the Amended Guideline and the NSP Exemption Guideline. While specific evaluation of the NSP Exemption Guideline is beyond the scope of this submission, as the NSP and Retail Individual exemptions are applied for on the same form, impacts from the NSP Exemption Guideline cannot be ignored.

In our view, aspects of Condition 12 of the NSP exemption General Requirements affects the viability of all embedded network applications:

- The condition states that “*a private network operator must not impede a customer’s access to retail competition*”. As previously discussed in this submission, we believe installation of both greenfield and brownfield embedded networks maintains this access.
- The condition also states that an embedded network operator “*...must not alter the electrical supply arrangement to a customer or tenant in a private network directly connected to a registered distributor without the written consent of that customer, tenant or other person as appropriate*”. We consider the “electrical supply arrangement” as supply from a licensed energy retailer. Installation of embedded networks does not affect any existing arrangements the customer wishes to maintain, thus in our view installation of embedded networks complies with this process.
- The commentary on this condition however expands this to “*a customer or tenant of commercial, industrial or residential premises cannot be compelled to become part of a private network or subject to an exempt selling regime without the express written consent of that customer or tenant.*” This is a herculean jump from the previous paragraph and based on the assumption that a customer cannot be part of an embedded network while maintaining their existing electrical supply arrangements. This is a false assumption.

We agree with the AER’s aim of ensuring customers are not forced into arrangements against their will, and we believe embedded networks

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<sup>5</sup> Current as of 13 Feb 2015



implemented to facilitate freedom of choice are congruent with this. Thus in our view this commentary is excessive as suggests all tenants must sign up for landlord supply, which is incongruent with the freedom of choice policy principles.

As the application of a retail exemption (whether deemed, registrable or individual) is based on a successful network exemption, we request further discussion of these points to assist with aligning the two exemption guidelines.

**Recommendations:**

Energy Intelligence wishes to make the following recommendations from our review of the Amended Guidelines:

- Review the wording around the guideline that suggests the implementation of greenfield and brownfield embedded networks limits freedom of choice, as this is simply incorrect.
- Request that **any** embedded network (whether greenfield or brownfield) that limits freedom of choice requires an Individual Exemption. Consequently, embedded networks that do not interfere with freedom of choice should receive a Registrable Exemption.
- Remove the inconsistency in the NSP Exemption Guideline that requires consent from all tenants to receive a network exemption, as we believe allowing for freedom of choice makes this requirement irrelevant.

We are happy to discuss any of these further points with the AER or interested stakeholders.

Kind Regards,

Mohsin Ali  
Operations Manager  
Energy Intelligence Pty Ltd