



26 May 2022

Mr Mark Feather
General Manager, Strategic Policy & Energy Systems Innovation
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Via email: AERpolicy@aer.gov.au

Dear Mark

Re: Retailer authorisation and exemption review — Issues paper

CitiPower, Powercor and United Energy welcome the opportunity to respond to the Australian Energy Regulator's (AER) Retailer authorisation and exemption review issues paper.

Australia is undergoing a profound energy transformation as it shifts towards a lower emission future. The transition is bringing new technologies and new energy services and products to customers. As the offerings become more complex, it is imperative there is a strong consumer protection framework.

Entities that seek to participate in these new emerging markets, such as electric vehicle charging, aggregation or energy management services, should be subject to regulatory oversight through the strengthening of the retailer authorisation and exemption and framework. In this submission, we contend:

- outcome based regulation should be adopted to address the risks and potential harms from new energy products
- the AER should introduce a tiered authorisation process and stricter exemption controls
- all energy related services and products should be captured by the National Energy Customer Framework (NECF)
- a contractual relationship is essential between aggregators and distributors.

These matters are further discussed in the attachment.

Should you have any queries please do not hesitate to contact Trent Gibson on [REDACTED] or [REDACTED].

Yours sincerely,

[REDACTED]
Brent Cleeve
Head of Regulatory Policy and Compliance
CitiPower, Powercor and United Energy

ATTACHMENT

1 Outcome based regulation should be adopted

We support the adoption of an outcomes-based regulatory framework to address the risks and potential harms from new energy products and services. The Issues Paper discussed the introduction by the Australian Securities and Investment Commission (ASIC) of design and distribution obligations, as well as product intervention power, in the financial services sector. We consider the application of these output-based mechanisms to the energy sector is the best way forward.

There is a high degree of uncertainty with respect to how new energy services and products will evolve and it is important that the AER is able to address any issues that may arise.

Design and distribution obligations could provide the AER with the ability to ensure that:

- appropriate products and services are developed in a way that ensures certain outcomes for consumers, such as requiring customers have the ability to switch providers without high exit fees or high sunk costs for proprietary products, or control of heating and cooling appliances is only used within particular temperature ranges or times of the day
- participants implement effective governance processes, security processes, actively monitor consumer outcomes and provide regular reporting to the AER.

A product intervention power could provide the AER with an important tool to prevent consumer detriment by addressing conduct that emerges in relation to new energy services and products. This power affords the AER a 'catch all' mechanism to quickly target concerning behaviour as it arises in the market.

2 The authorisation and exemption framework should be expanded

The current authorisation and exemption framework is no longer fit-for-purpose, particularly as the sector transitions with the introduction of a range of new products and services.

We support a tiered authorisation process that allows the AER to specify the scope of the activities the entity is allowed to undertake and require the business to report changes in circumstances. Including the six characteristics of the proposed authorisation framework¹ would provide the AER with the ability to ensure regulatory oversight over both existing or newly introduced energy products or services. The characteristics would also address the existing shortcomings the current point-in-time authorisation process including if there is a change in control of an entity.

Tighter control around the exemptions framework should be introduced. Embedded networks operators have in the past required customers to pay higher electricity prices and their customers have not been afforded access to the same level of customer protections as other customers. For example, the framework for customers in the event of a failure of an embedded network operator (ENO) is not as clear as for customers of a licensed/authorised retailer, as evidenced by the failure of an ENO in Victoria in 2021.² It is important that exempt sellers are properly regulated, and we support the four reform areas suggested by the AER.³

We also support proposed requirements for embedded network operators to obtain a retailer authorisation or Australian Energy Market Operator (AEMO) registration which has been set out in legislative changes put forward by the Australian Energy Market Commission's 2019 Updating the Regulatory Frameworks for Embedded Networks report.

¹ Refer AER, Retailer authorisation and exemption review, Issues Paper, April 2022, p.46.

² Veeve Energy Pty Ltd was wound up in Victoria in 2021. Refer [Information for embedded electricity network customers | Essential Services Commission](#) and [What to do if your embedded network electricity retailer goes out of business | Essential Services Commission](#).

³ AER, Retailer authorisation and exemption review, Issues Paper, April 2022, pp.46-47.

3 The NECF should capture all energy related services and products

Ideally, the NECF would apply to sellers who engage in the activity of selling energy or energy-related products. Section 88 of the National Energy Retail Law governs when the NECF applies and currently, it only applies to sellers 'who engage in the activity of selling energy to a person for premises'. The inclusion of 'to a person for premises' narrows the scope and would potentially exclude its application to new and emerging products and services.

The narrow scope is no longer suitable given the shifting nature of the energy landscape in Australia. Introduction of new business models, such as electric vehicle (EV) charging, aggregation and/or energy management services, access to multiple energy providers under the proposed flexible trading arrangements rule proposal, embedded networks and microgrids may change the way in which customers participate in the various energy markets. As access to energy is an essential service, these related markets could impinge on consumers ability to receive that essential service, and by extension must fall within the NECF scope.

The NECF operates to ensure that consumers can access energy fairly and on reasonable terms. As the energy markets become more complex, there will be an increasing number of vulnerable customers who may not understand the market. The offerings of new participants, such as aggregators, may not be able to be run through a comparison website, so it may be difficult for people to understand. Some market offerings may also expose customers to pool pricing, increasing their vulnerability. Easy to understand information, including financial information, needs to be required as part of a strong consumer protection framework. Therefore, the NECF must extend to provide adequate safeguards to consumers for these new and emerging energy-related services.

4 Require contractual relationship between aggregators and distributors

We encourage the AER to consider whether contractual relationships should be required between entities selling new energy services and distributors. If an aggregator and/or energy management service operator has the ability to turn devices on and off remotely, this could interfere with a distributors' obligations to maintain system security in the National Electricity Market (NEM). For example, should AEMO call a minimum demand event and issue a direction for distributors to curtail generation, then distributors will need the ability to pass that requirement on to aggregators. This could be included as a condition in the authorisation and exemption framework.