SHOPPING CENTRE
COUNCIL OF AUSTRALIA

11 October 2016

Mr Chris Pattas
General Manager – Networks
Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001

And by email: AERinquiry@aer.gov.au

Dear Mr ~~Pattas~~ Chris

Draft Guideline Exemption from
Registration as a Network Service Provider (August 2016)

Thank you for the opportunity to comment on the *Draft Guideline Exemption from Registration as a Network Service Provider (18 August 2016).* We understand the Final Guideline will take effect on 1 December 2016.

We have a strong understanding of the context of the proposed changes which stem from the Australian Energy Market Commission's *Embedded Networks Final Rule Determination* (17 December 2015) and includes the establishment of a new accredited service provider; the 'Embedded Network Manager' (or 'ENM').

While critical issues remain unknown with the proposed new approach (e.g. ENM accreditation, market participants, cost), we continue to support it broadly.

We also support the AER's proposed changes to better align the network exemption guideline with the retail exemption guideline, the latter of which has been subject to various changes.

We have structured this submission in response to the relevant (30) 'consultation questions', which appears at **Appendix 1**.

While we also support aspects of the Guideline (e.g. continued recovery of network charges), we have a number of concerns, which we believe require amendment, as follows:

- There remains a critical issue, yet to be resolved by the AER, regarding matters beyond an Embedded Network Owners/ENMs control, but for which they will unfairly bear responsibility (e.g. double-billing, due to retailer practice).
- An 'Exempt embedded network service provider' (or Embedded Network Owner/Operator - **(ENO)**), who engages an ENM, should not be accountable, or penalised, for issues beyond their control. This includes issues such as retailers who will not unbundle their bills and provide an 'energy-only' offer, or something that is the retailer's error. If the AER has insufficient current legislative powers, or alternative mechanisms, to compel retailers to (for instance) unbundle their bills for the purposes of the proposed reform, the risk and accountability of this issue should not merely be imposed on an ENO/ENM to resolve.
- The AER should investigate a mechanism to place an obligation on retailers to resolve issues if an ENO/ENM requests them to do so, in collaboration.
- While an ENM must be appointed 'per asset', to ensure efficiency, ENMs should be able to be contracted across a group or company with a portfolio of assets without being in breach.
- We believe the threshold of 30 customers to appoint an ENM is an appropriate trigger threshold to ensure an element of economies of scale.
- We are concerned with the possible requirement to upgrade meters, if a non-compliant meter was installed after 1 January 2012 (we note that the competition in metering rule change takes effect on 1 December 2017). We recommend that the AER provide explicit direction around the grandfathering of existing metering arrangements.

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- We believe elements of Attachment 2 (new clause 4.9), which don't specifically relate to the Rule Determination, are unclear and unnecessarily onerous, including the need (section 4.9.7) for a 'marketing campaign of at least three-months'.

We also believe that the AER should develop a 'customer-friendly' fact sheet (or similar) which ENOs/ENMs can utilise to help provide context and explanation for the new regulatory framework and operational issues, in particular around issues such as double-billing (as noted previously) and network charges.

As a final point, we believe the AER should consider a 12-month review of the new Guidelines, perhaps in the form of an informal review, particularly given that much remains 'unknown' about the new framework. This includes, for instance, the issue of cost, and cost recovery, of an ENM, and the issue of retailers appropriately collaborating on issues in the spirit of the new framework (e.g. resolving double-billing).

We are grateful for the AER's ongoing engagement with us, and would welcome an opportunity to discuss this submission with the AER.

As always, please feel free to contact me on 02 9033 1930 or anardi@scca.org.au.

Yours sincerely,

11.10.2016

Angus Nardi
Executive Director

APPENDIX 1: RESPONSE TO CONSULTATION QUESTIONS

DIFFERENCE BETWEEN HOUSEHOLD AND EMBEDDED NETWORK BILLING (pages 10-12)

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

We support the AER's proposal that ENOs can recover network charges from customers, and continue to do so under the shadow pricing arrangement.

We also support the principle of a 'single bill', but it is a reality that there may be circumstances where a customer will still receive two bills, largely due to the practice of the market retailers who will not offer customers unbundled bills.

This is an ongoing issue, and double billing issues are predominantly a result of market retailers not billing correctly.

We believe that responsibility for billing errors (including when network charges are duplicated) should sit with the party responsible for that error, particularly if one party (e.g. the ENO) has used their best endeavours, through the ENM, to address and resolve the issue. Any dispute as to responsibility can be resolved through appropriate dispute resolution mechanisms.

In this regard, the ENM should not be responsible for issues beyond its control, or errors caused by the retailer or network company. At the 29 September 2016 AER forum, an AER official clarified that the AER has limited current legislative powers to compel retailers to unbundle their bills, but that they 'hope' that retailers will do so.

While this may be the case, this lack of regulation and certainty should not merely be transferred to an ENM to resolve, particularly in circumstances where an ENM will likely be unable to resolve issues with a retailers' billing system.

We believe that that the AER needs to ensure that retailers bear appropriate responsibility under the new framework. If this cannot be achieved through current legislative mechanisms, or mechanisms that can be affected by December 2016, we believe the AER should investigate alternative solutions such as an MoU or undertakings from retailers on this issue.

FEES, CHARGES AND TRANSACTIONS COSTS (pages 12-13)

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

We support the AER's proposed approach.

We believe that a meter read charge should be allowed, insofar that it is transparent and within appropriate and permissible billing practices.

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

Based on consultation with our members, we do not believe that customers are experiencing unfair, unreasonable or excessive fees outside the Guidelines. The current Guidelines provide clear parameters on cost recovery by ENOs.

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

N/A

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

N/A

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

N/A

METERING TYPES AND ACCESS ARRANGEMENTS (pages 14-15)

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

We generally support this approach, subject to the recommendations below.

In relation to Option 1, while the purchase or lease of the meter should be at the discretion of the retailer or customer, the purchase or lease of the meter should be a commercial arrangement with the ENO or ENM, to ensure that costs are recoverable by the ENO.

In relation to Option 2, while no 'compensation' should be payable to the ENO for the unrecovered cost of the meter, the Guideline should provide that the ENO should also not be liable for any costs in association to the installation of a replacement meter. These costs should be properly borne by the retailer seeking the replacement of the meter.

We also recommend that the AER provide explicit direction around grandfathering of metering. For example, where an embedded network was installed prior to January 2012, and a meter within that embedded network fails, any requirement that the meter is replaced with a 'market meter' rather than a NMI compliant meter may require costly network retrofitting in circumstances where only one meter is affected.

We recommend that the Guidelines define what types of meters are required for different embedded networks installed prior to 2012, which would remove significant confusion in the market place regarding the specific metering requirements in existing networks.

We do not support the proposal for the 'Embedded network service provider' becoming the 'responsible person' (paragraph 3, page 15). The ENM rule change was developed to separate market activities (to be managed by an ENM) and other activities by existing exempt network operators.

We would recommend that the 'responsible person' continue to be the retailer (for child customers) or alternatively the ENM, whose role has been specifically developed to facilitate interactions required on behalf of an ENO.

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

N/A

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

Refer to the above response in relation to metering requirements.

WHO MUST APPOINT AN ENM (pages 16-18)

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

We support the proposal that an ENM appointment should only occur in jurisdictions where the right to access retail competition exists.

We also support the approach that the appointment of an ENM should be subject to appropriate 'trigger events' for each relevant class of activity.

We generally support the proposed activity classes as being subject to the appointment of an ENM, as this recognises, in a broad sense, the lack of economies of scale to support the cost of appointing an ENM across a small number of customers in a network.

Our members' assets are generally captured by the proposed network exemption classes (e.g. NR1 which applies to the supply of energy to ten or more small retail customers within the limits of a site that they own, occupy or operate).

It should be noted that it remains unclear what the costs associated with an ENM will be. The AER correctly notes this at page 18 of the Issues Paper where it it is stated that "we have no reliable insight into the likely costs of the ENM role".

This is obviously a relevant consideration to the issue of when the obligation to appoint an ENM is triggered.

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

We support the proposed approach, subject to the 'small network' threshold trigger requirements being applied (refer above).

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

Nil.

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

We support the proposal that embedded network assets with less than 30 customers will not require the immediate appointment of an ENM (until, as noted, at least one customer notifies the embedded network service provider of its desire to access retail competition).

For our sector, we estimate that this threshold will still ensure that 93% of retail tenants/customer in Australia's shopping centres are covered by the immediate appointment rule. It is worth noting that such assets still have a 'safeguard' insofar that an ENM needs to be appointed with the transfer of one customer, and that the cost of the ENM will be recovered from those using ENM services.

We also support the position that in such circumstances, an ENO will be given the opportunity to price-match a retailer's competitive offer (which does not have to be accepted).

The lack of clarity on the costs associated with an ENM continues to be problematic, given that the accreditation will not be complete until 1 March 2017 and there is hence no existing market of ENMs.

We have some perspectives on potential costs associated with ENMs, and the possible variations depending on the jurisdiction, which we would gladly discuss with the AER.

WHO PAYS FOR THE ENM (pages 18-20)

Q.14 - How much will ENM services cost?

We support the AER's position that ultimately it is the customer that will pay the costs associated with an ENM, but this raises the notion as to how the cost will be passed on to, or recovered from, the customer.

As noted above, the ENM cost remains unclear, as the AER has itself noted, stating that it has "no reliable insight into the likely costs of the ENM role".

The cost of an ENM has been a concern of ours for some time, including as expressed to the AEMC during its consultation on the then draft rule change.

The accreditation framework has still not been finalised (pending finalisation in March 2017), and there is no current market of ENMs or any existing market pricing or industry 'benchmark' costs that apply.

We do believe it is critical, however, that ENOs are not precluded from appointing ENMs across a portfolio of assets which could help to reduce overall costs, including costs to customers, through economies of scale and apportioning administrative costs across multiple assets.

While we note that the appointment of ENMs is linked to the exemption framework (i.e. activity classes), and are hence appointed on an 'asset' basis, it should not prevent an ENM being contracted by an ENO to provide services across a range of assets.

We believe this will have the overall benefit of improving efficiency (e.g. systems) and reducing costs, including for customers.

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

As noted earlier, we have previously provided a view to the AEMC that the cost of an ENM will vary depending on the jurisdiction and the current level of services provided by embedded network consultants and service providers.

We would be pleased to discuss our perspectives on the potential costs associated with ENMs with the AER.

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

As noted above, we believe that the additional costs of an ENM would threaten the viability in smaller networks (e.g. less than 30 customers), or if costs are not able to be properly recovered across the customer base.

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

It is obvious that an ENO will bear the direct cost of an ENM, under a commercial agreement and contract.

In terms of cost-recovery, we do not support Option 1 which provides that the ENO must "absorb" the cost of ENM services.

As this is a new role, to benefit customers, we believe that costs should fairly be able to be recovered from customers. This is particularly the case to ensure that only those customers using the service, pay – i.e. a user pays approach.

It would be unreasonable that customers that do not utilise the service of an ENM pay for an ENM.

In this regard, we support Options 2 and 3 as being fair approaches to enable the recovery of ENM costs.

We do not support a model where certain costs could be distributed across all customers within an embedded network.

However, we acknowledge that this model has similarities with the regulated recovery of shopping centre 'outgoings' (including costs associated with the operation and maintenance of shopping centre common areas) under the various pieces of State based retail lease legislation (e.g. the NSW *Retail Leases Act 1994*). For instance, in a shopping centre outgoings context, property owners are permitted to recover from tenants a proportion of operating maintenance and repair costs directly benefiting the tenant's premises based on their proportion of total floor space.

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

We recommend that cost recovery can be done on a user-pays approach where a cost is identifiable to a single customer, and that where costs can't be specifically identifiable, they can be recovered from all customers. We also recommend that the AER Guidelines provide that ENM costs should be identified on a customer's bill to ensure they are aware what any costs relate to.

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

This should be specified in the AER Guidelines, possibly in the 'Billing' section relating to the AER's conditions for new exemptions and site conversions

TIME LIMIT EXTENSION TO APPOINT AN ENM FOR ELIGIBLE COMMUNITIES (page 22)

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

N/A

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

N/A

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

N/A

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

N/A

NON-APPOINTMENT OF AN ENM AND REVERSION FOR ELIGIBLE COMMUNITIES (page 23)

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

N/A

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

N/A

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

N/A

EXTERNAL DISPUTE RESOLUTION (page 26)

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

We do not believe that the AER should add the proposed requirement that ENOs must apply to join an Ombudsman scheme. We believe that there are a number of unresolved issues that need to be further considered. As the AER notes, this issue is, for instance, currently being considered in the Victorian Government's current review of its *General Exemption Order*.

In principle, we do not oppose access to Ombudsman schemes for embedded network customers.

It remains an issue as to the fair and practical application of this approach, and appropriate cost and pricing model for this approach, given that the cost will be distributed across a relatively small number of customers. This is the case, for instance, under the Victorian review noted above.

We are concerned, for instance, that this approach, could give rise to a more expensive and less effective dispute resolution process for shopping centre tenants, recognising the ancillary nature of electricity provision in the context of retail leasing.

For this reason, a pay-by-service approach which we believe may be a more appropriate model.

This issue also gives rise to the participation and representation of embedded network owners in Ombudsman schemes. If this requirement is to be imposed, embedded network owners should have rights to have representation in Ombudsman scheme governance arrangements and

requirements. Currently, membership is generally only extended to energy companies and residential consumer representatives.

As an example, the Constitution for the Energy and Water Ombudsman Victoria specifies that membership is limited to "the holder of a Licence" (section 8).

We still maintain that, given the synergy with retail leases, which are regulated by State and Territory Governments, for shopping centre embedded networks the most appropriate avenue for dispute resolution is through the relevant retail tenancy mediation processes and tribunals (e.g. VCAT, NCAT). These are low-cost, and well-established and well-known in the retail tenancy environment, and often issues with electricity (e.g. lack of payment) relate to broader issues under a retail lease.

We believe that the AER should specify this approach as being appropriate for shopping centre embedded networks.

PRICING (pages 26-27)

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

We have no major concerns with the proposed changes, however there may be a practical issue with the proposed amendment that an ENO must provide notice to an exempt customer about any change in the network tariff 'as soon as practicable, and no later than the exempt customers next bill'.

It may be the case that an ENO is seeking to notify a customer 'as soon as practicable', but the timing of the billing cycle means that this occurs after the customers "next bill".

ACCESS TO RETAIL COMPETITION (pages 27-28)

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

We have no general concerns with the proposed amendments.

We do however have a concern with the proposed clause 1 (c), insofar that it may mean an ENO could unfairly incur costs in relation to a transferring customer. We have raised the issue previously that an ENO should not have to incur any capital costs as the result of a transferring customer (e.g. the potential incompatibility with the parent meter or switchboard). This circumstance may be limited; however, it may be a function of the age of the embedded network, or the configuration and infrastructure of an EN as a result of previous DNSP connection requirements.

NETWORK CONVERSIONS - SUPPLEMENTARY CONDITIONS (pages 28-29)

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

We do not support all of the amendments outlined in the new clause 4.9, as outlined at Appendix 2.

This proposal gives rise to two broad issues.

The first is the AER's processes to consider applications, including its timeframes.

The second is the conditions that apply, and the impost and uncertainty of some of these requirements.

We believe it is unreasonable that an embedded network owner be required to price match for large customers (4.9.3). These customers have sufficient bargaining and buying power, and in certain cases an embedded network owner may have to sell at a loss to meet this price match requirement, which is not the intent of the proposed reform. This is particularly relevant as the impact of any embedded network conversion can be negligible to a large tenant.

There is also a practical issue with price matching, particularly for small customers (4.9.4). One issue is that pricing from retailers can often come with conditions (e.g. contract length and pay-on-time discounts). There needs to be appropriate transparency around this issue, from an embedded network customer, to ensure that embedded network owners can appropriately seek to price-match bona fide comparable offers.

We cannot support the proposal that an ENO should be responsible for remedying any duplication of network charges (4.9.5), particularly where this issue is beyond the control of an ENO due to the failure of a retailer to provide unbundled bills (refer to our previous comments).

The AER's response to this issue at the 26 September 2016 AER forum is unreasonable, insofar that it was commented that the AER has no existing legislative powers to compel retailers to resolve the issue. If this is the case, then risk and responsibility of this issue should not transfer to an ENO. We believe that the AER should investigate options to ensure that retailers can be obligated to resolve such issues.

We also believe it is unreasonable that the AER specify a timeframe of "at least three months" to conduct a marketing campaign (4.9.7). The critical requirement that a tenant is appropriately informed should not be judged by reference to an arbitrary timeframe, but rather ensuring that the appropriate information has been provided. This may also unnecessarily drag out the overall application process.

We also believe that there needs to be further clarity around the meaning of a "substantial majority of tenants" in terms of agreeing to a conversion.

At the AER forum on 26 September 2016, it was clarified by an AER official that "substantial majority" means "well over 80%".

We acknowledge, that the AER also clarified that it may be difficult for an embedded network owner to get 100% (e.g. language barriers was cited as a reason) and that they will continue to maintain a flexible approach.

In this regard, we believe the AER should provide clarity in the Guideline that tenants who are already market customers should not need to be consulted on a proposed conversion, and that tenants can also not unreasonably withhold their consent. On this latter point, the AER has proposed price-matching in terms of the trigger threshold for the appointment of an ENM. On this principle, if a tenant has been offered the same price, or a better price, that tenant should not be able to unreasonably withhold their consent.