SHOPPING CENTRE COUNCIL OF AUSTRALIA

9 December 2022

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

And by email: AERexemptions@aer.gov.au

Dear Rowena

Draft Network Exemption Guidelines – Version 7 (October 2022)

Thank you for the opportunity to comment on the *Draft Network Exemption Guidelines (Version 7) (October 2022).* We provide this submission in good faith, and as a basis for further discussion.

We appreciate the opportunity to discuss the *Draft* and *Notice of Draft* with the AER.

Some of our comments relate to previous comments we have provided to and discussed with the AER, including on the Consultation Paper (2021) referred to in the *Notice of Draft.*

We are generally supportive of several changes, which we categorise as being 'minor'.

There are however several issues that we consider to be significant, and are pleased to provide the following comments for the AER's consideration.

- At page 8, **where examples of embedded networks are provided**, we respectfully submit that the AER further characterises the listed examples to highlight where the scenarios (and hence customers) are *residential* (e.g. caravan parks, apartments) versus *non-residential* (e.g. shopping centres, airports, farm, mining sites).

- We recommend that the **table at pages 46-47 of the current (Version 6) Guideline, which outlines the 'Situation' and 'Who Pays', should be retained in Version 7**. This table was the result of previous discussions with the AER and provides a fair policy position along with clarity on role and obligation. The removal of this table would result in substantial capital upgrades (and related building works), which in our view would not be warranted including given the legacy practices of certain electrical contractors.

- We are concerned with what **we interpret to be a broad position that Deemed Exemptions would not be available to entities that have an ENM**. There is also an inconsistency between references in the material – for example the text on page 12 (section 4.2) and page 18 (figure 2) is broad and implies if there is an ENM then all Deemed Exemptions don't exist. However, table 1 at page 32 provides clarity that a Deemed Exemption preclusion only applies to ND1 and ND2.

  We believe that Deemed Exemptions should remain available where an entity has an ENM, noting general compliance awareness / issues, the lack of material risk or harm being caused and the various blend of exemption scenarios that form part of normal shopping centre operations (e.g. in our case, providing energy supply to a related entity undertaking on-site construction activity), that generally fall into 'ancillary' functions (eg, car parks) to normal shopping centre operations.

  For example, there may be a NR1 registration at the site, but if there is an electric vehicle charger within the embedded network this would be treated under ND03; and those ND03 conditions would apply. In this EV charging example, condition 1.14 and 1.15 doesn't apply to ND03 but does for NR1, and it makes little sense for there to be payment plans for public electric vehicle charges at (for instance) shopping centres.

Noting the above, we request clarity on a scenario where there is less than 10 customers, but you need an ENM. The text in table 1 for ND1 notes you should look to NR1, but this only applies for 'ten or more' customers.

- We would welcome **clarity that shadow pricing will still be enabled and retained as a minimum (and long-standing) condition**. While we note that shadow pricing is enabled as a condition (refer to page 58, Condition 5.2.1 – sub-clause 3), we are concerned with the associated language used in the preamble of that condition which refers to 'cost pass through'; which is a different pricing concept and application. Similar terminology is used at page 57, in Table 6 which refers to 'cost pass through, or less', in relation to small customers.

- While we note that **draft General Condition 13, in relation to Ombudsman Schemes** is similar to the current General Condition 13, we seek clarity on two key issues:

    - As per our previous engagement on this issue, including our submission on the AER's *2017 Issues Paper: Access to Dispute Resolution Services For Exempt Customers*, we don't believe that shopping centre embedded networks or customers need to be covered by Ombudsman Schemes. We would welcome clarity that there is no intended policy change in relation to the current AER requirement.

    - Noting the new insertion at General Condition 13, that a 'primary registrant (as defined) may discharge' this requirement, we would welcome an opportunity to better understand the intent and application of this insertion.

- Noting our comment above, we note section 5.1 in relation to the **primary registrant**.

- We have concerns with **Condition 2.2 (page 51), which relates to the Prohibition of measures which impede competition**. We submit that the condition should at least remove the restriction of early termination charges for large customers, as such large customers typically, and willingly, enter into a fixed term agreement for a set price and fully comprehend the potential commercial and legal considerations of such an arrangements. Having this option clearly highlights competition at play. This practice becomes particularly pertinent with the extreme volatility of the energy market where the EN operator may be required to lock in costs and face termination charges, which can lead to those loss events due to an unforeseen termination by an EN customer which affects the EN operator's supply and load forecasts.

  If the AER were to adopt the condition as currently drafted, it would be inconsistent with large market contracts generally in the NEM which large customers would already be exposed to.

- We note section 5 in the Notice of Draft in relation to **small generator aggregator schemes**. We have no concerns with what is proposed; however we recommend that the AER adds clarity that where an embedded solar system is owned by the ENO (versus being owned by a third-party) and is under 5 MW, it is exempt.

- We note section 8 of the Notice of Draft in relation to **disconnection**. We request that the AER consider the impacts in relation to EN operations in Victoria, where there is a duplicate regulation for the network operations. We are concerned the AER's requirement differs to that in the Victorian regulation, and are keen to ensure that we are not unfairly caught up in a conflict between the two regulations.

- We note at page 68 that the **current record keeping requirement for 2 years is being extended to 7 years**. We recommend a minor change to this condition, to ensure that this only applies to new applications. For example, an EN that converted 3-years ago may no longer have the records and may not be in a position to comply with this new requirement for sound reasons.

- The below also raises what may be **typographical issues**:

1	Condition modified Appendix C: Part 1 Eligibility requirements Providing retrofit information *1.a)iii) the obligations about electricity offer matching in conditions 7.1 and 7.4 of this Guideline, and* ... addition: *3. You must also provide tenants with a copy of the AER's customer factsheet How to access an authorised retailer of your choice if you live in an embedded network87 published on our website as in force from time to time.*	Can the AER please confirm the reference in Appendix C Part 1: Eligibility requirements / Providing retrofit information 1.a)iii) is 7.4 correct or should it be 7.2?
2	Wrong reference to condition? Condition 1.6 Dispute resolution: 1. an EENSP must develop and make a set of procedures detailing their procedures for handling complaints and disputes, and those procedures must be provided to customers in accordance with condition **6.5.1.2(a),** and	We believe there is typo in *Condition 1.6 Dispute resolution* *1. an EENSP must develop and make a set of procedures detailing their procedures for handling complaints and disputes, and those procedures must be provided to customers in accordance with condition 6.5.1.2(a),* as there is no condition **6.5.1.2(a)** in the draft guideline. We believe it meant to refer condition 6.2.1.1(b)(ii)
3	Wrong reference to condition ? Condition 7.3 Duplication of network charges *2. not charge a connection charge to any tenant who enters into an energy supply contract with an authorised retailer as provided for in condition **2.9.1.***	We believe there is a typo in *Condition 7.3 Duplication of network charges* *2. not charge a connection charge to any tenant who enters into an energy supply contract with an authorised retailer as provided for in condition 2.9.1.* as there is no condition 2.9.1 We believe it meant to refer Appendix C Part 1 (Providing retrofit information)

In addition to the above, we would like to raise two broader issues for the AER's consideration:

- We continue to experience **certain jurisdictions that go it alone separate to the AER on embedded network policy and regulation**, including the current review in WA. We also provided an example above in relation to Victoria. We would support the AER seeking to ensure either adoption of, or alignment with, the AER's guidelines to ensure a more consistent approach. We would gladly assist the AER in such efforts, given we operate at a national level and across several jurisdictions.

- We submit that the final **Network Exemption Guideline should be easy to understand and digest, including ensuring that there is little room for misinterpretation** (e.g. different wording on the same issue in different sections of the Guideline). We have experience whereby certain consultants – including groups that are fairly 'new' to embedded network regulation - can apply an inaccurate interpretation or an interpretation that is not based on clear intent.

We would welcome an opportunity to discuss this submission with the AER, if needed. We again thank the AER's officials for their engagement with us.

As always, please feel free to contact me on [redacted] or [redacted].

Yours sincerely,

Angus Nardi
Executive Director