



12 August 2011

Chris Pattas
General Manager, Network Operations and Development Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Email: AERInquiry@aer.gov.au

Dear Mr Pattas,

RE: NETWORK SERVICE PROVIDER EXEMPTIONS

CitiPower and Powercor Australia (**the Businesses**) welcome the opportunity to make this submission to the Australian Energy Regulator (**AER**) regarding the AER's approach and guidelines on network service provider (**NSP**) exemptions released on 27 June 2011. Under the National Electricity Rules (**NER**), the AER is responsible for issuing and revoking exemptions to classes of NSPs in accordance with guidelines issued by the AER.

The AER has released the following documents for consultation:

- *Electricity Network Service Provider Registration Exemption Guideline* dated June 2011 (**the Guideline**); and
- *AER approach to electricity network service provider exemptions Consultation Paper* dated June 2011 (**the Consultation Paper**).

(collectively the **Network Exemptions Papers**)

The purpose of the Network Exemptions Papers is to define the situations where an exemption is deemed, where an exemption must be registered and where an exemption application is required. In addition, the Network Exemptions Papers detail and impose a number of necessary conditions with which all exempt networks must comply.

The Businesses acknowledge that, in conjunction with the Network Exemptions Papers, the AER is consulting on its approach to retail exemptions in a separate process. The AER has released a *Notice of Draft Instrument and Exempt Selling Guideline* dated June 2011 (**Exempt Selling Papers**). The Exempt Selling Papers outline classes of onselling activities which will be exempt from the requirement to hold a retailer authorisation under the National Energy Retail Law (**NERL**). It also outlines situations where an onseller should seek an individual exemption from the AER.

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The Businesses appreciate the opportunity to comment on the discussion papers and are supportive of the AER's initiatives in providing guidelines to give clarity and certainty in the requirements for network exemptions. The Businesses have responded to each of the 23 questions raised in the AER's Consultation Paper, with the responses provided in *Attachment A*.

The Businesses would welcome the opportunity to discuss any of the matters raised in this submission. If you have any questions, please contact Vivienne Pham on (03) 9683 2023 or by email at vpham@powercor.com.au.

Yours sincerely



Brent Cleeve
MANAGER REGULATION

Attachment A

CitiPower and Powercor responses to AER questions relating to NSP Registration Exemption Guideline

1. *Do stakeholders support the AER’s decision to align the classes of exemption in the network Guideline with the Exempt Selling Guideline?*

The Businesses support the AER’s decision to align the two guidelines to provide greater clarity and understanding of classes of exempt networks and exempt onsellors.

The Businesses note, however, that in many instances the classes listed in the Network Exemption Papers do not refer to the provision of network services but to the activity of energy onselling. This may lead applicants to incorrectly assume that a network exemption automatically qualifies them for a retail exemption, or vice versa. To avoid confusion, the Businesses request that the AER provide more precise descriptions of the activities eligible for exemption.

2. *Are the classes of exemption clear and easily interpreted?*

The Businesses consider that the classes of exemption could be made clearer and more easily interpreted. To reiterate comments from question 1, the way in which the tables currently describe activities may lead applicants to incorrectly assume that a network exemption automatically qualifies them for a retail exemption. Providing clearer, more precise descriptions of the activities eligible for exemption would minimise any misinterpretation and confusion.

In addition, the descriptions contain some terms that have not been defined in either the Guidelines or the Consultation Paper. The Businesses consider that it would be helpful if terms or concepts that have been adopted from other legislation were expressly stated, or defined in greater detail. For example, it would assist the Businesses if the following amendments to definitions were made:

- The meaning of “short term” under classification ND3 was defined in greater detail.
- The reference to “energy onselling in residential situations not covered under residential tenancy legislation” under Classification ND4 was defined in a narrower sense. The Businesses are concerned that situations falling outside Victorian residential tenancy legislation may potentially conflict with other classes listed in Table 2.
- The activity under class ND8 was clarified with respect to the NSP’s role. The Businesses are unclear as to whether this activity, as currently, drafted relates to the NSP.

- Classification NDO1 was removed to reduce complexity of the deemed classes. The Businesses consider that the activities under NDO1 would be adequately addressed under classification NRO1. Classification NRI was available to accommodate situations where the applicant does not believe NRO1 is applicable.

These examples are not exhaustive, and the Businesses consider that Tables 1 and 2 should be reviewed to ensure classifications are clearly defined and do not overlap.

3. *Are there any other network situations that stakeholders consider would warrant a separate exemption category?*

The Businesses do not consider that any further exemption categories are needed. This is because additional situations can be accommodated on an ad hoc basis through the NRI classification.

4. *Do stakeholders agree that the general conditions are appropriate for exempt networks?*

The Businesses consider that the general conditions listed in Section 5 of Part B of the Guideline are appropriate. However, the Businesses note that the AER appears to use the terms “embedded networks” and “exempt networks” interchangeably in its commentary in Part A of the Guideline. The Businesses consider that these terms are *not* interchangeable and that the use of the term “embedded networks” is misleading.

All embedded networks must be either registered under the NER, or exempt under the AER Guideline. The use of the term “embedded network” in Parts B and C of the Guideline implies that there may be embedded networks which are not exempt. The Businesses request that, to avoid confusion, the AER refer to all networks subject to the conditions under Parts B and C as “exempt networks”.

5. *Do stakeholders consider any further conditions be included in the general conditions for exempt networks?*

The Businesses consider that, in addition to the general conditions outlined in Section 5 Part B of the Guideline, the following conditions should be included:

- Exempt networks must be responsible for connection and disconnection of the child customers once the embedded network is established; and
- Exempt networks must make provisions for customer hardship.

6. *Do stakeholders consider the criteria for revocation are appropriate for exempt networks?*

The Businesses consider the criteria for revocation are appropriate for exempt networks; however, note that there does not appear to be any provision for the transfer of customers and network assets in the event of revocation. The Businesses consider that a process should be developed to ensure the streamlined transfer of customers and network assets to a third party or to a distribution services provider (**DNSP**), albeit that DNSPs should have discretion as to whether they accept the network.

In the case where a DNSP agrees to accept responsibility for the network, the process should provide for:

- The DNSP to undertake an inspection of the network to ensure that it meets the relevant safety and technical standards and thereby provides a safe and reliable electricity supply to all of its customers. This will assist in ensuring that there are not adverse consequences on the DNSP's service target performance incentive scheme;
- Appropriate funding where the assets do not meet the relevant safety and technical standards and need to be replaced and/or upgraded; and
- Appropriate treatment of the assets in the DNSP's regulatory asset base (at zero value where these assets are 'gifted') and an allowance for the ongoing maintenance.

The Businesses note the grounds for revocation are based on the AER being satisfied that there has been a material failure by the exempt party to meet the conditions imposed on them. The AER will consider what constitutes a material failure on a case-by-case basis.

The Businesses seek clarification on how a material failure would be brought to the attention of the AER. The Businesses are concerned that there may be difficulties if the AER exercises its compliance and enforcement powers under the NERL to identify exempt networks in breach of the conditions under the Guideline.

7. *Do stakeholders consider the proposed process fair and reasonable?*

The Businesses consider the proposed exemption application process is fair and reasonable and agree that all details of the exempt network should be made publicly available in the Public Register of Authorised Retailers and Exempt Sellers.

The Businesses also agree that a consultation process is undertaken for new applications for exemption.

8. ***The AER considers common standards for the accuracy of metering will benefit consumers. Do stakeholders agree with this approach?***

The Businesses agree that common standards for the accuracy of metering should benefit consumers.

9. ***The AER considers that electricity should not be treated (differently?) to any other service or product with regard to metering. Do stakeholders agree with this approach?***

The Businesses support the second general condition that ensures that all customers in an exempt network be individually metered and that unmetered supplies of electricity will not be approved 'except in unique or exceptional circumstances'. The Businesses agree that electricity should not be treated any differently when it comes to requirements for accurate measurement for products sold or delivered by volume in Australia.

10. ***The observance of safety standards is essential for consumers to have confidence in exempt networks. Do stakeholders consider the AER's condition will achieve this objective?***

The Businesses agree that safety standards are essential for consumers to have confidence in an exempt network. The Businesses consider that the technical requirements under the Distribution Code are important in ensuring energy can be supplied to customers safely.

The Businesses note that provisions of the Distribution Code are currently being reviewed by the Department of Primary Industries (DPI) for inclusion in jurisdictional transitional legislation to the National Energy Customer Framework. The Businesses have been advised by DPI that provisions relating to network safety and technical requirements are likely to be included in transitional legislation; however, the Businesses have not been advised on the form and detail that these regulations will take.

The Businesses would welcome working with the AER to ensure that a clear and robust framework remains for embedded networks in relation to safety and technical matters.

11. ***As regulatory gaps can arise when related activities are authorised under different legislation, the AER considers that this cross-over condition will minimise the prospect of a gap arising in the retail onselling framework. Do stakeholders consider the AER's condition will be sufficient for this purpose?***

The Businesses agree that a network exemption does not necessarily mean a retail exemption, and vice versa. However, the Businesses refer to comments made in response to questions 1 and 2 regarding the drafting of Tables 1 and 2. The Businesses reiterate that the AER should provide clearer descriptions of the activities eligible for exemption to avoid confusion.

12. Do stakeholders have any suggestions which would improve this condition?

The Businesses consider that General Condition 5 should expressly state in the body of the text that the dispute resolution mechanism is required to be approved by the AER.

13. Do stakeholders consider aggregation should be permitted in exempt networks? If so, why? Or why not?

The Businesses question whether such a condition is necessary on the basis that removing it would still allow exempt networks to aggregate bills. The Businesses consider that this is a matter for the exempt customer and onseller.

14. Do stakeholders consider the proposed registration arrangements are clear and the information requirements to be sufficient?

The Businesses consider that the proposed registration arrangements could be made more clear and comprehensive. For example, the requirement for a ‘deemed’ exempt operator to register details with the AER is not explicitly outlined. The AER should emphasise that it is incumbent on embedded networks to determine and specify whether they are ‘deemed’ or ‘registrable’ exempt networks, and then make an application to the AER on that basis, noting the class(es) of exemption.

In addition, the Businesses agree that exemptions should not be transferable as outlined in general condition 5(7). However, this condition should specify who is responsible for re-applying for the exemption, the network owner or the network operator.

15. Do stakeholders agree with the AER’s metering conditions for exempt networks?

The Businesses agree that all metering within exempt networks should comply with requirements set out in schedule 7.2 of the NER.

However, this requirement must be extended to all networks. The Businesses do not agree that these requirements are limited to new installations. This will ensure consistency and fairness across all customers in terms of understanding their consumption.

In addition, the Businesses consider that the following provisions should be included for all exempt networks.

- All child meters must be interval meters. The Businesses consider that given the AMI smart meter rollout, it is necessary for child meters to be interval meters in order for energy costs to be apportioned across child meters within an exempt network.

- All exempt network operators must advise the local DNSP of the existence of a life support requirement when notified by a customer. The Businesses have no way of identifying when a child customer is on life support.

16. *Do stakeholders consider the conditions that are applicable to energy generation appropriate?*

The Businesses consider the conditions that are applicable to energy generation are appropriate.

17. *Do stakeholders have any comments on electric vehicles or electric charging stations, and the conditions to be applied to them?*

The Businesses consider that electric vehicle charging stations that have downstream metering should be treated in the same manner as child metering installations within embedded networks. There are no compelling reasons for electric charging stations to be treated differently to embedded networks.

Standardisation with respect to metering will assist in facilitating retailer choice for child meters. The AER must exercise care in determining different standards or rules for electric vehicle charging stations because it may inevitably favour one business model over another.

18. *Do stakeholders consider the AER's approach to the application of distribution loss factors to exempt networks to be appropriate?*

The Businesses consider the AER's approach to the application of distribution loss factors is appropriate.

19. *Do stakeholders have any comments in relation to the AER's approach to external and internal network charges?*

The Businesses agree that all external network charges should be recovered from the Parent NMI metering point.

20. *Do stakeholders have any comments in relation to the AER's approach to Charge Groups outlined in the network Guideline?*

The Businesses note that the AER does not encourage separate network charges for exempt networks. However, bundled energy and external network tariffs may invariably include internal network charges and the Businesses query how the AER will monitor these charges to ensure that they do not include fees for internal network charges. The Businesses also note that internal network charges are only permitted in exceptional circumstances. However, where internal network charges are permitted, the Businesses consider that the AER should consult affected parties on why internal network charges are necessary.

21. *Should any other charge groups be permitted by the AER? If so, why?*

The Businesses do not support any other charge groups being permitted by the AER.

22. *Do stakeholders have any comments in relation to the requirements for registration or application for an individual exemption?*

The Businesses question whether there will be a requirement for the DNSP to sight exemption documentation prior to the establishment of an embedded network. This may be an important mechanism for the AER to ensure its public register is accurate and up to date, and to ensure that embedded networks understand their obligations as an operator.

The Businesses consider that the requirement placed on registered and individual exemptions to notify the AER of any changes to their circumstances should apply to deemed exemptions also. The Businesses note that with respect to registered exemptions, 'if any of the information provided to the AER for the purposes of registration changes during or after registration, the AER should be notified within 10 business days of the change to ensure that registered exemption remains valid.' Similarly, for individual exemptions, 'if any of the information provided to the AER for changes during or after the individual exemption application is made, the AER should be promptly notified of the change.'

The Businesses consider that a similar requirement should be placed on deemed exemptions as the embedded network operator may be in breach of the exemption, with the AER unaware of the circumstances. For example, a deemed exemption under Class D2 or ND2 may exceed the threshold for the number of residences for metered energy onselling. Unless the requirement is placed on the operator to notify the AER of changes (in this case, to the number of allowable residences) the AER may never be aware of the breach of the deemed exemption.

23. *Are there any other matters the AER has not considered in this draft network Guideline which stakeholders believe should be addressed?*

As noted above, the terms *exempt networks* and *embedded networks* have different meanings and therefore should not be used interchangeably.