

12 August 2011

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

Cc: aer inquiry@aer.gov.au

Dear Mr Pattas

AER CONSULTATION PAPER

ELECTRICITY NETWORK SERVICE PROVIDER REGISTRATION EXEMPTION GUIDELINE

Endeavour Energy welcomes the opportunity to comment on the Consultation Paper of the Australian Energy Regulator (AER) titled "*AER approach to electricity network service provider exemptions*" dated June 2011 (the 'Consultation Paper') and the AER publication titled "*Electricity Network Service Provider Registration Exemption Guideline*" dated June 2011 (the 'Network Exemption Guideline paper').

NEL and NERL objective

The AER is seeking to align and integrate the Network Exemption Guideline (which allows for individual and class exemptions from the requirement to register as a network service provider) with the Exempt Selling Guideline (which allows for individual and class exemptions from the requirement to hold a retailer authorisation) in an administrative process. However, these guidelines have differing foundations and emanate from different jurisdictions.

The Network Exemption Guideline arises under the National Electricity Law (NEL), which has a *national electricity objective* (relating to both the supply of electricity and the national electricity system) and is underpinned by a purely economic efficiency principle.

Conversely, the Exempt Selling Guideline arises under the National Energy Retail Law (NERL) which has a *national energy retail objective* (relating to the supply of energy only) and is effectively consumer protection legislation.

Therefore, in developing and applying these guidelines, the AER should adopt an approach to each guideline based on their individual jurisdictional regulatory requirements rather than defer to an administrative process for justification of their development. This would also ensure that any perception of conflict, breach or confusion is avoided.

Endeavour Energy is concerned that the AER's alignment of the Network Exemption Guideline with the Exempt Selling Guideline for the stated intention to "*provide affected parties with greater clarification and certainty in the requirements for exemption*"¹ will in fact have the unintended consequence of blurring the objectives of the NEL and the NERL, and undermining the economic efficiency principle underpinning the *national electricity objective*..

Particularly concerning is the statement that "*the AER aims to have a single consistent approach to both guidelines to the extent possible because of the synergies in their application to situations in retail onselling and networks.*"² The extent to which a consistent approach is possible should be defined by reference to the regulatory jurisdiction of the guidelines, in particular their relevant underlying laws and rules, and the proper interpretation of their objectives.

The AER has also stated that "*should any inconsistency in interpretation arise between the two guidelines the AER will have regard to the Exempt Selling Guideline in resolving the dispute.*"³

Clause 2.5.1(d) of the National Electricity Rules (Rules) provides that the AER may, in accordance with the guidelines issued from time to time by the AER, exempt any person or class of persons who is or are required to register as a *Network Service Provider* subject to such conditions as the AER deems appropriate where (in the AER's opinion) an exemption is not inconsistent with the *national electricity objective*.

Clause 2.5.1(e) of the Rules provides that the AER must develop and issue guidelines or the exemptions described in clause 2.5.1(d) pursuant to the *Rules consultation procedures* and in accordance with those procedures consult with *Registered Participants* and authorities responsible for administering the *jurisdictional electricity legislation*.

However, it is not reasonable or justifiable to state that because the Guidelines are developed under the Rules, everything in that Guideline satisfies the requirements or intent of the Rules. In the case where an inconsistency in interpretation arises between the two guidelines, the AER should adopt the interpretation consistent with their applicable jurisdictional regulatory requirements, being in the case of the Network Exemption Guideline, the *national electricity objective* under the National Electricity Law and the National Electricity Rules.

Accordingly, Endeavour Energy considers that it is neither necessary nor desirable for the AER to treat the development of these guidelines jointly and that their exemption classes be aligned.

Endeavour Energy incidentally observes that in a note to the AER's proposed "Table 1 – Deemed classes of exemption", an applicant does not know whether their network is eligible for a deemed exemption without referring to the Exempt Selling guideline.⁴

Metering

Endeavour Energy supports the AER position that all onselling be subject to appropriate metering.

Accordingly, Endeavour Energy submits that a condition of an exemption to register as a Network Service Provider is that an exempt Network Service Provider must ensure that all metering

¹ P12

² P14

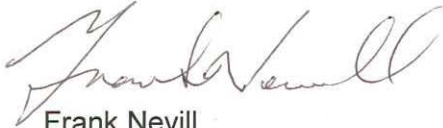
³ P3

⁴ P4

installations used in embedded or exempt networks are provided by the FRMP or, where the FRMP elects otherwise, the exempt Network Service Provider.

This would also support supply arrangements between a Retailer and an end use customer, whereby energy is delivered over the embedded network to the customer.

If you have any questions relating to this submission, please contact Mr Erik Beerden, Regulatory Affairs Manager, on telephone number (02) 9853 6904.

A handwritten signature in cursive script, appearing to read 'Frank Nevill', written in black ink.

Frank Nevill
Acting Manager Network Regulation