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Submission on AER's approach to electricity network service provider exemptions and registration exemption guideline

Jemena Electricity Networks (JEN) welcomes the opportunity to provide comments on the Australian Energy Regulator (AER) consultation paper on *AER Approach to Electricity Network Service Provider Exemptions* and the *Electricity Network Service Provider Registration Exemption Guideline*.

JEN's key messages are:

- JEN considers a suitable dispute resolution mechanism is required for all exempt customers. However, it does not believe condition 5 (5) in the guideline can be easily implemented. It is suggested an alternative approach be considered – one that can be practically implemented. Otherwise it may lead to many instances of non compliance creating major enforcement issues for the AER.
- JEN proposes condition 8 (4) be expanded to cover additional matters relating to exempt customers with life support equipment. These include requirements to promptly notify exempt customers who have life support equipment of a planned interruption when the operator of an exempt network receives such notice from the local DNSP; and to provide general advice and information to assist the customer to prepare a plan of action in case of an unplanned interruption.
- The proposed guideline does not apply condition 8 (4) to deemed exemption classes. JEN submits that condition 8 (4) should also apply to deemed exemption classes of exempt networks.
- JEN proposes that 9 (3) be extend to require the network operator to meet the reasonable costs incurred by the DNSP in assisting with the calculation of the distribution loss factors.

JEN's detailed response to the Rule change is set out in Attachment 1.

Should you have any questions in relation to this submission, please contact me on (03) 8544 9442 or siva.moorthy@jemen.com.au.

Yours sincerely

Siva Moorthy
Manager Network Regulation

Attachment 1

AER's approach to the classification of embedded networks

The AER's proposed registration exemption guideline sets out network activities where an application for exemption is not required (deemed exemption), network activities where registration is required (registrable exemption) and network activities where an application for exemption is required (individual exemption). JEN considers the three classes of exemptions provide a sensible approach to registration of exempt service providers.

JEN agrees with the AER's assessment that most the exempt network activities will fall within deemed and registrable classes of exemptions. Moreover, JEN considers the AER's proposed approach to registration of embedded networks as reasonable – that is, where deemed exemptions apply automatically to eligible classes of embedded network operators without the need to register for an exemption; and registrable network activities require no application, but certain information must be provided to the AER.

The AER has outlined several conditions of exemption in the network guideline which are binding on the operators covered by a deemed or registrable exemption.

The proposed guideline does not apply condition 8 (4) to deemed exemption classes. JEN submits that condition 8 (4), which deals with exempt customer who have life support equipment, should also apply to deemed exemption classes.

Condition 5 – General Requirements

General condition 5(3) – JEN suggests improvements to the drafting as follows:

“...applicable ~~requirements-laws~~ within the jurisdiction in which the network is located for the safety of persons and property, including where relevant regulatory obligations and industry codes and guidelines ~~an industry Code or Guideline~~ otherwise applicable to a network service provider providing similar services.”

General condition 5(5) – Part B, section 5(5) of the network Guideline states:

“An embedded or exempt network must have in place **approved dispute resolution procedures**. Where retail on selling is occurring under the Retail Law and a dispute resolution mechanism is available under that Law, the same arrangement may apply for the resolution of disputes. In all other circumstances a suitable dispute resolution mechanism must be specified in the formal agreements between the network owner (or its appointed agent) and the end-use customer.⁷ **[emphasis added]**”

⁷ For acceptance by the AER, a dispute resolution mechanism must be of a type ordinarily applicable to disputes of the kind, be reasonably accessible, timely, binding on the parties to the dispute and not subject to excessive or unnecessary costs nor to costs disproportionate to the amount in dispute.”

The consultation paper does not discuss or provide any guidance on how an embedded network service provider can go about “having in place approved dispute resolution procedures”. It is not clear which body will be responsible for approving the procedures.

Assuming the AER means “approved dispute resolution scheme”, then there is no guidance on how an embedded network service provider can practically have in place or participate in a dispute resolution scheme.

If the AER expects an embedded network service provider to be a member of a relevant state or territory energy ombudsman scheme – similar to the licence condition placed on licensed distributors and retailers – then there are a number of issues the AER needs to consider.

For example, not all embedded network owners have the ability to pay their share of the costs of operating an ombudsman scheme. The energy and water ombudsman of Victoria (EWOV) is funded by licensed distributors and retailers. EWOV has no authority to resolve disputes from customers in embedded networks. Even if EWOV is directed to change their operating charter to extend its jurisdiction to customers in embedded networks, there is an issue of enforcement of conciliated resolutions or binding decisions on exempt bodies.

It is suggested an alternative approach maybe that exempt bodies be required to notify their customers of the dispute resolution options available to them including the contact details of the relevant dispute resolution bodies – for example, in Victoria customers within embedded networks in Victoria currently take their disputes to the Victorian Civil and Administrative Tribunal (VCAT) for resolution. Other bodies that may assist with dispute resolutions are Legal Aid and customer advocacy organisations.

JEN considers a suitable dispute resolution mechanism is required for all exempt networks. However, it does not believe condition 5 (5) – as drafted in the guideline – can be practically implemented. JEN suggests condition 5 (5) requires more work. If it not suitably amended, it may lead to many instances of non compliance.

Condition 8 – AEMO & NEM Requirements

Condition 8 (4) – JEN proposes condition 8 (4) be expanded to cover additional matters relating to customers with life support equipment. The National Energy Retail Rules – rules 90 and 125 – imposes requirements on a distributor relating to life support equipment. Similar relevant requirements should also be imposed on an embedded network service provider. These include requirements to promptly notify exempt customers who have life support equipment of a planned interruption when the exempt network operator receives such notice from the local DNSP; and to provide general advice and information to assist the customer to prepare a plan of action in case of an unplanned interruption.

The proposed guideline does not apply condition 8 (4) to deemed exemption classes. JEN submits that condition 8 (4) should also apply to deemed exemption classes of exempt networks. It may be more appropriate to locate these under section ‘5 General requirements’.

Condition 9 – Distribution Loss Factors

Distribution loss factors may become significant – in which case conditions 9(2) and 9(3) would apply. JEN proposes that 9 (3) be extended to require the network operator to meet the reasonable costs incurred by the DNSP in assisting with the calculation of the distribution loss factors.

Dictionary

The dictionary in the guideline gives meaning to '*energy Ombudsman scheme*', '*disconnection*', and '*exempt customer*', but there is no reference to these defined terms in the guideline. JEN considers the dictionary in this guideline requires tidying up.