10 October 2016

Mr. Chris Pattas
General Manager, Networks
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Email: aerinquiry@aer.gov.au

Dear Mr. Pattas

Re: Draft Amendments to the Electricity Network Service Provider Registration Exemption Guideline

WINconnect Pty Ltd (**WINconnect**) welcomes the opportunity to provide comments in response to the Australian Energy Regulator (**AER**) Draft Amendments to the Electricity Network Service Provider Registration Exemption Guideline (**Issues Paper**).

WINconnect, formerly known as WINenergy, is a privately owned company with its corporate headquarters in Melbourne supported by offices in Sydney, Brisbane and Adelaide. Since 2005, WINconnect has specialised in the establishment and operation of private embedded networks for electricity. In this role we act as an agent of either the property owner or the owners' corporation as applicable. Built on this decade-long heritage of embedded electricity services, WINconnect now provides a full portfolio of utility services.

WINconnect, trading as WINauspower, holds electricity retail authorisations in both Victoria and under the National Energy Customer Framework (NECF) and has recently been granted a retail gas authorisation under NECF. We have market participant status with AEMO and the ASX and we hold an Australian Financial Securities Licence.

In addition to its retail electricity experience, WINconnect's embedded network management business (trading as WINenergy) includes managing the sale and supply of other essential services, including hot water, air-conditioning, unmetered gas for gas cooktops (in NECF jurisdictions), internet and telephony services.

WINconnect manages and operates over 500 embedded network sites across Victoria, NSW, Queensland, South Australia and Western Australia. Our clients include large funds and property trusts who own shopping centres as well as property developers who either build and manage properties, or hand them over to owners' corporations on completion.

Completing our portfolio of product and services is our internal expertise in the design and installation of solar PV. At present, we maximise the available roof space and deliver the energy generated from these assets into Victorian embedded networks. The embedded network then consumes all of the energy and there is no feed into the grid. We have a pipeline of 20 sites, which are effectively micro-grids, which will be configured with solar within the next 24 months.

WINconnect would like to take this opportunity to highlight particular aspects on the Issues Paper which we view as important for the AER to consider as a part its review and amendment process.

General comments

In addition to responding to the specific questions the AER has raised in the Issues Paper, WINconnect would like to make the following general and over-arching comments.

Enforcement

WINconnect believes that a successful exempt distribution networks across the NEM can only be achieved if there is an unambiguous, clear, transparent and enforceable regulatory regime. Central to achieving this it will be necessary for the AER to:

a) publish a clear and unambiguous guideline as contemplated by this review;

b) publish any associated enforcement and compliance plan;

c) introduce compulsory breach reporting (self);

d) publish a list of penalties for non-compliance; and

e) monitor and enforce the revised NSP Guideline on stakeholders.

The operation of the NSP Guidelines and the *AER (Retail) Exempt Selling Guideline* since 2012 has in our view created a two-speed industry. On one side there are those market players who adhere to them and on the other side, there are those who say "they are just guidelines – not energy law". We believe that there is an opportunity through this current amendment process, in particular the addition of Condition 4.7, which will commercially favour EN service providers who already exploit them.

Regulatory consistency

Instrumental to the success of the revised NSP Guideline will be the cooperation of the NEM jurisdictions. With the ability of the jurisdictions to 'derogate away' as required, we are mindful that the success of the revisions may in fact be undermined as there is no guarantee of jurisdictional cooperation.

In particular we note that the Department of Energy and Water Supply (**DEWS**) in Queensland in their most recent review[1] are contemplating whether or not to adopt the revised NSP Guideline.

Additionally, the existence of the Victorian metering derogation[2] for small customers also needs to be considered – will this be harmonised or 'carved out' for a period of time?

Finally, we note the current overlap, replication in compliance requirements and regulatory burden for Victorian participants. This scenario is unlikely to be resolved any time soon or in favour of the AER's NSP Guideline taking regulatory precedence, with the Victorian government's insistence that the General Exemption Order[3] (**GEO**) still applies to exempt network service providers.

Below WINconnect provides a summary of points in respect of the AER's specific questions as outlined on pages 30 – 35 of the Issues Paper.

Difference between household and embedded network billing

WINconnect contends that the proposals put forward in the Issues Paper by the AER do not go far enough to facilitate a seamless and competitive transition process.

As long standing agents / managers for exempt sellers, we have the hands on experience which suggests that in many instances opponents of embedded networks use the two (2) source billing scenario as a deterrent to 'churn' out of the embedded network.

From a practical point the separation of NUoS from a retail customer's bundled bills will be essentially unworkable and expensive for retailer systems. Another equally important consideration which needs to be addressed more fully, is one of credit risk. Whose responsibility is it for the disconnection of a customer within an embedded network for non-payment of invoice to another?

Perhaps a better alternative is to mandate the Embedded Network Manager (**ENM**) on behalf of the Embedded Network Operation (**ENO**) put into practice a comprehensive B2B NUoS billing facility consistent with market retailers.

The existing CATS procedures – before the redesign – facilitated this perfectly in the scenario where the ENO has a close working relationship with the parent FRMP. The parent FRMP has access to child data

[1] *Implementation of Embedded Networks Rule Change - supporting Access to Retailer of Choice for On-supply Customers Discussion Paper* (August 2016)

[2] Currently due to expire 31/12/2017

[3] GEO is an Order in Council made under section 17 of the *Electricity Industry Act* 2000 (Vic) and published in the Government Gazette on 1 May 2002

which can be used for NUOS billing direct to retailers. Furthermore, in this instance, the disputes process then follows B2B procedure.

For the sanctity of the embedded network market WINconnect strongly recommends that above B2B should be the absolute minimum standard across all jurisdictions. We would further argue that any concerns about the cost of this service should be limited by the fact that this practice exists in some jurisdictions, e.g. NSW, where the utilisation of these functions under the current CATS procedures creates commercially viable supply arrangements for all stakeholders.

Fees, charges and transactions costs

WINconnect believes that the current principal of 'shadow pricing' as prescribed under the NSP Guidelines continues to be an appropriate mechanism for determining tariffs for customers within embedded networks. It is transparent and ensures that customers within the embedded network are afforded protections from less scrupulous operators.

We would make the point that any retail charges outside of that included in local retailer standing offer, should only be applied to customers after having obtaining their explicit informed consent (**EIC**). For example these charges would include charges for network services involved in the re-energisation or de-energisation of a customer.

If the practice regarding NUoS as outlined above is adopted, i.e., B2B billing, by the AER then notification regarding the change to NUoS charges would not required be required. The tariff change notification requirements, for bundled customers, would be deferred to the retailer's requirements as mandated by the National Electricity Rules (**NER**) / market contract conditions.

For completeness, the notification of NUoS changes in the C&I market (i.e., unbundled customers) is not common place in practice and therefore would not require any additional consideration.

Metering types and access arrangements

WINconnect recommends that the AER amend the NSP Guideline such that all metering within embedded networks are Service Installation Rules (**SIRs**) compliant. In adopting this approach embedded networks will also need to have compliant wiring arrangements and electrical switch boards etc. as well. Any amendment to incorporate SIRs would need to make provisions for 'grandfathering arrangements' for existing embedded networks.

The issue of compliance with SIRs is not limited to non-compliant networks. We note that in the market today, the reluctance for market retailers to provide offers to exempt network customers stems from the additional handling time required to affect a churn. Whilst these reforms address that somewhat, the handling time will still be increased for a retailer trying to 'win' an exempt network customer. In a case where there is non-compliant wiring, that customer may still not be able to churn without significant infrastructure works. This added risk may act as a remaining dis-incentive for retailers to participate in the EN market.

From a meter maintenance perspective WINconnect agrees with the amendment that all metering installations be maintained to the standards set out in schedule 7.3 where the embedded network has an ENM.

Further considerations include how the AER will manage the jurisdictional issues around safety procedures for metering. For example, in Victoria where the metering derogation applies, a churn to a market meter is currently considered a new connection to the LNSP's network. In Queensland, given customers of embedded networks do not have access to choice, this remains untested.

In certain circumstances where the ENO has installed market compliant metering, sufficient to allow that customer access to a market retailer, the retailer / customer may still choose to replace that meter regardless. In such circumstances, there should be fair and equitable recovery of sunk cost allowed by the ENO. This may provide an additional incentive for ENO's to provide a better standard of metering to all customers. The appropriate rule may be for the ENO to shadow price any metering exit fee which may be applicable in the host LNSP's network.

Who must appoint an ENM?

WINconnect recommends that a network, wired as an embedded network, should all be subject to the same regulatory constraints – especially price controls.

We do not support the proposal of using a specific number of customers e.g. more than 30 within an embedded network as the metric for determining the requirement to appoint an ENM. In our opinion this verges on creating two different classes of embedded network customers. In addition, anecdotal evidence suggests that some of the worst embedded networks across the NEM are those where the number of connections points or customers is low.

The ENM service is a contestable offering and in our opinion there is no obvious reason why it requires a mechanism to be commercially regulated. The AER has made comments under section 4.4.1 of the Issues Paper where it is proposed that a new condition 4.7 be incorporated into the NSP Guideline to prohibit the payment of an 'advance fee or rebate' by an ENM to the property owner / developer or ENO to secure the service rights over the embedded network.

WINconnect notes that regardless of the engagement contract an ENM can have with the property owner / developer or ENO, an ENM will be required to be accredited by AEMO and therefore will be accountable for their performance in the role under the CATS procedures. Any non-compliance with these instruments would be prosecuted by AEMO. So whilst an ENM may essentially 'buy' the 'business' from the property owner / developer or ENO they must still be compliant with the AEMO accreditation requirements of the role. With this in mind we would encourage the AER to focus on the compliance of the ENO as this falls into the AER's regulatory gambit and leave AEMO to regulate the ENM function. We believe that the best way to keep the industry 'honest' is for customers to be able to easily choose to take supply from a retailer and in this regard the AER has the ability to influence this more readily then trying to regulate payments between the stakeholders.

Who pays for the ENM?

In our experience, many ENOs, i.e. owner's corporations – already rely on third party service providers to supply compliant services to the embedded network. WINconnect has undertaken these agency based services for the last 11 years and whilst the introduction of a dedicated ENM role will be very beneficial to the industry it should not be considered as a massive 'step change'.

In our experience the costs associated with an ENO engaging a service provider to manage the embedded network have been absorbed by the ENO itself and have not been passed onto customers within the embedded network. We see no reason why for the majority of the embedded networks this would change, certainly across the +500 embedded network we manage there will be no difference for the exempt customers following the introduction of the ENM role.

We expect that the cost of ENM services will be competitive and market driven depending on the embedded network composition and the competitive process for appointing such a role by the ENO. Presumably there will be a number of suppliers of ENM services such that an ENO can 'shop around' for the best value for service and therefore negating any adverse financial impact on customers within the embedded network.

If the AER has concerns about the viability of embedded networks or that an ENO will default and lead to disconnection of supply to customers, then we would recommend that embedded network specific ROLR procedures should be introduced to provide the necessary protection and certainty of supply to exempt customers.

Time limit extension to appoint an ENM for eligible communities

WINconnect cannot support any unique condition being applied to the appointment of an ENM for 'eligible communities'. The risk in adopting this approach is that 'everyone' will become and 'eligible community' and the objectives of the rule change will be bypassed.

WINconnect are strong advocates that regulation should be technology agnostic. A technology agnostic approach limits regulators having to pick 'winners' and 'losers' in the technology game, which in turn affords consumer protections that are no less than would be available to those customers under any other exempt selling scenario.

External dispute resolution

WINconnect believes that all energy customers, be they market or embedded network customers, should have access to a free, independent and unbiased dispute resolution scheme.

WINconnect supports the nomination of the state based ombudsmen schemes to be used as the dispute resolution for customers within embedded networks. The advantage of this is that all energy market

participants would have access to a single ombudsman scheme and thereby ensure the dispute resolution process remains simple, free, equitable and consistent across the market.

Furthermore, recommends the inclusion of the requirement that all exempt sellers (be it through their agent / manager / specialist services provider or ENM) must become a member of an approved customer dispute resolution scheme

However, we do note that it will be important to the success of the overall ombudsmen schemes that existing members of the schemes are not cross-subsidising the entry of exempt sellers into the scheme. The manner in which these are included and the costs involved in putting this together requires more detailed consideration so as not to financially disadvantage existing members.

Pricing

WINconnect supports the AER's proposal to expand the requirement on ENOs to incorporate a requirement to notify customers of changes in their tariffs and that the recovery of any late fee payments should be limited to the costs reasonably incurred by the ENO.

WINconnect continues to support the shadow pricing principle for exempted customer network tariffs which has been carried forward from previous versions of the NSP Guideline. That being said, the proposed mechanisms for dealing with billing for network services to on-market customers falls well short of the mark and runs the risk of undermining free, unencumbered and frictionless access to retailer of choice. The expectation that a customer should receive separate bills for NUoS and retail services may act as a significate deterrent to access retail competition. Further, requiring a customer to have multiple supply arrangements for the same connection points raises a number of operational issues. These include:

- Confusion around unbundled tariffing;
- Disconnection for non-payment to either party; and
- Effective and unambiguous treatment of cases in independent dispute resolution.

In a practical sense, these issues primarily occur due to the vagaries around the eventual business to business (B2B) protocols between market retailers operating in an exempt network and the Exempt Network Service Provider.

It is our view, that B2B procedures should be introduced to best replicate those which exist in the contestable market where practical. These may include, but not be limited to:

- B2B billing procedures;
- B2B dispute resolution;
- Procedures for retailer / customer default and NUOS payments; and
- Access to meter data for on market customers.

In regards to access to child meter data we note a potential disconnect between the procedures proposed here, the drafting in the Rule Change, and the market design proposed by AEMO. The proposed amendment to clause 7.7 of the Rules, allows access to meter data by the Embedded Network Service Provider. However, this party will not be an active market participant or a service provider in AEMO's systems. Hence, it is difficult to understand how, outside of MSATS and the MMS (Market Management System), the ENO gets clear access to on-market billing data. In addition, an ENO is likely to rely on service providers to facilitate that network billing function. It stands to reason that they would also rely on the management and provision of child meter data via market systems by a third party, the obvious one being the ENM. It's not clear that the Rules allow for direct access to child data via the ENM.

We acknowledge that imposing contractual NUoS arrangements between all market retailers and large number of disparate ENOs is practically unworkable. That said, the introduction of the ENM role provides good opportunity for the AER and AEMO to 'raise the bar' with respect to standardising NUoS B2B procedures within an EN. Failure to take this opportunity may significantly hamper the intended outcome with regards to retail contestability in ENs.

Access to retail competition

As stated above under the section 'Metering types and access arrangements' WINconnect reiterates that unless wiring compliance is dealt with, and other issues, like dual billing for NUoS are addressed, then these any changes to the NSP Guidelines will in all likelihood not achieve the desired outcome.

Competition within embedded networks will thrive if the AER takes a strong stand and introduces changes to regulation around metering in particular which makes it easier for customers to churn and become contestable customers. Second to the change in the regulations will be a strong compliance and enforcement regime for non-compliance with the regulations.

Network conversions - supplementary conditions

WINconnect is sympathetic to the motivation behind the AER's proposal re: supplementary conditions on brownfield embedded network conversions, but cautions that what is proposed in the form of the additional conditions is now overly prescriptive.

If the market design and intent towards facilitating competition is via the ENM, then we would argue that these conditions are not relevant. We would recommend that the AER and AEMO work together to make competition so seamless that things like offer / price matching are not required.

In NSW for example, the existing practice makes the wiring change and refits to a market meter such that a customer can continue a contract with their retailer of choice. Metering arrangements should in theory be irrelevant insomuch that retailer of choice by customers is not compromised. In our view clause 4.1.12(e) is problematic and on the face of it creates a duty of care inside an embedded network which does not exist elsewhere across the NEM. For this reason we believe that it should be omitted along with the new clause 4.9 which we believe has been included to address the deficiencies of clause 4.1.12(e).

We note that the recalcitrance from retailers participating cannot be changed by any good intending ENM / ENO or through regulation from the AER.

Should you wish to discuss the details of this submission, please contact either myself or Andrea Steele on 0408 237 695 we would be pleased to have further discussions on our submission and the industry more generally.

Yours sincerely

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