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TradeCoast Central

4 July 2017

Committee Secretary
Public Works and Utilities Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Committee

Submission on *Electricity and Other Legislation (Batteries and Premium Feed-in Tariff) Amendment Bill 2017*

Re: Embedded Network Legislation Changes

TradeCoast Central Pty Ltd (**TradeCoast**) welcomes the opportunity to make a submission to the Public Works and Utilities Committee (**Committee**) on the *Electricity and Other Legislation (Batteries and Premium Feed-in Tariff) Amendment Bill 2017* (**Bill**).

TradeCoast is the developer and manager of the TradeCoast Central Industrial Estate, which is a fully integrated master planned corporate office and industrial estate located on the former Brisbane Airport site at Eagle Farm. TradeCoast has been operating an embedded network at the TradeCoast Central Industrial Estate to supply and sell electricity to business customers since 2008.

This submission aims to provide feedback on the Bill's proposed changes to the regulatory arrangements for competition in embedded networks which **propose to *delete the definition of 'receiver' at section 23(2) of the Electricity Act by removing the requirement for a customer to be directly connected and capable of receiving supply directly from a distribution entity's supply network***.

This submission does not relate to any other component of the Bill.

1. SUMMARY

Embedded networks (private networks) are prolific in Queensland and provide many benefits. There are over 1,850 registered embedded networks [1] and many thousands more unregistered embedded networks which are operating under deemed exemptions[2], providing electricity supply to over 275,000 residential[3] and tens of

[1] Australian Energy Regulator, Public Register of Embedded Networks, available here.
[2] Networks which are operated under deemed exemptions are not recorded on a public register.
[3]Energy and Water Ombudsman Queensland submission to the AEMC dated 17 May 2017 available here.

thousands of business customers in Queensland. Each one of these embedded networks will be impacted by increased compliance costs and regulatory uncertainty by the Queensland Government's proposed changes to regulatory arrangements to accommodate full retail competition (**FRC**) in embedded networks prior to the resolution of numerous issues experienced in other jurisdictions in implementation of FRC.

The Bill is scheduled to be passed in August, with changes to FRC in embedded networks to take place on 1 December 2017.

Although the scale and nature of the impacts will differ from network to network, TradeCoast submits that if the Bill is passed in its current form, the majority of embedded network operators (**ENOs**) will be impacted in terms of:

(a) the risk of wasted investment in compliance that would arise due to the lack of a harmonised national framework for FRC in embedded networks that will result by prematurely introducing the proposed changes prior to the existing issues in other jurisdictions being resolved;

(b) creation of uncertainty, increasing the transition compliance costs by ignoring the long standing position of the Queensland Government that access to FRC in embedded networks should be delayed until a national harmonised solution is available;

(c) the significant technical works that are likely to be duplicated in order to ensure embedded networks are capable of facilitating FRC;

(d) costs and losses that will be incurred in undertaking technical works and changes to the ENOs charging mechanisms and infrastructure;

(e) exposure to non-compliance risk due to the very tight time frames of the compliance obligations that would follow if the Bill is passed.

It is TradeCoast's position that these impacts have not been properly considered by the Queensland Government in preparing the Bill and until a national harmonised solution is actually implemented, passage of the proposed changes to the Act by deletion of Section 23(2) is considered premature.

To this end, TradeCoast asks the Committee to recommend that the changes to FRC in embedded networks proposed under the Bill be delayed until such time as the risks above have been properly considered, discussed and, to the extent possible, mitigated by the Queensland Government in consultation with the ENOs and the outcomes of the ongoing regulatory reviews into embedded networks at the national level are completed and their recommendations implemented successfully.

2. ABOUT EMBEDDED NETWORKS

2.1 What is an embedded network

Embedded networks are private electricity networks which service multiple customers and are connected to another distribution or transmission system in the national grid through a grid connection point. A party, other than the registered local network service provider (e.g. Energy Queensland), owns and operates the private electricity network to which customers connect. That party is an ENO (ie embedded network operator). An ENO will hold an exemption under the National Electricity Law (**NEL**) and National Electricity Rules (**NER**), from the requirement to register as a network service provider, in order to operate that embedded network and supply electricity. There are certain specific conditions attached to that exemption that the ENO must comply with.

In the majority of cases, an ENO may also purchase electricity at the grid connection point and on-sell that electricity to customers within the embedded network. The sale of electricity is also regulated and the ENO must obtain an exemption from the requirement to be registered as an authorised retailer under the National Energy Retail Law (**NERL**) and the National Energy Retail Rules (**NERR**).

Some common examples of embedded networks include networks which service customers in shopping centres, retirement villages and caravan parks. However the range of embedded networks is actually much broader than this and includes networks servicing:

(a) Industrial sub-divisions.

(b) coal mines;

(c) railway lines and related infrastructure;

(d) airports;

(e) football clubs;

(f) office buildings;

(g) defence installations;

(h) water supply infrastructure including desalination plants and pump stations;

(i) high voltage substations and distribution networks;

(j) low voltage distribution networks;

(k) large scale on market generation;

(l) small scale off market generation;

(m) subdivisions servicing a mix of retail and residential customers of both small and large customer classifications; and

(n) buildings incorporating multiple owners and a range of customers including large and small retail and residential customers.

Associated with each one of these examples is an ENO that will be directly affected by the proposed changes to FRC in embedded networks under the Bill.

2.2 What are the benefits of embedded networks

There are many benefits provided by embedded networks in Queensland, some of the key benefits include:

(a) Increased customer access to the National Electricity Market – in many cases embedded networks are established where a network service provider's construction and installation timeframes are inadequate or are cost prohibitive, such that they prevent a customer from connecting directly to a distribution network, or do not fulfil a customer's connection requirements;

(b) Increased opportunities in local and community based solutions – embedded networks provide the potential for increased opportunity for community based solutions to achieve collective objectives due to increased scale and the economic benefits available. This includes sharing the benefits of environmental schemes (i.e. solar and batteries) where the aggregated consumption and demand of the embedded network customers improves the economic viability of alternative renewable generation, or to support shared investment in local distribution augmentation to meet changing customer expectations at reduced costs; and

(c) Increased availability for joint purchasing arrangements – embedded networks enable ENO's to negotiate energy supply prices collectively enabling access to greater market opportunities not available to individual customers. While grid connected electricity customers may negotiate and obtain market offers, embedded networks provide an enhanced opportunity to seek competitive retail offers, though bulk electricity purchasing, and provide better access to lower electricity prices than an individual customer would otherwise obtain directly from a retailer.

2.3 Requirement for a national harmonised framework for embedded networks

It has been a long standing position of the Queensland Government that access to FRC in embedded networks should be delayed until a national harmonised solution to providing that access is introduced.[4] If there is not a harmonised national solution,

[4] Energy Competition Committee, Queensland Government Department of Energy, *Policy Decisions Paper No. 2 – Electricity Full Retails Competition, Final Policy Decisions*, (2006)

then changes to FRC in embedded networks would result in significant cost and compliance issues for Queensland's ENOs.

TradeCoast disagrees with the stated position within the Explanatory Note that a national harmonised framework has now been reached. In particular, TradeCoast notes for the Committee's attention that there are **currently five separate reviews and work programs** being undertaken by regulatory authorities which will impact on the regulation of embedded networks for ENOs in Queensland and nationally.[5]

In particular, the Australian Energy Market Commission (**AEMC**) is currently undertaking a comprehensive review of regulatory arrangements for embedded networks under the National Energy Retail Law (**NERL**) and National Energy Retail Rules (**NERR**) (**AEMC Review**). The AEMC Review focuses on a range of issues, including barriers to embedded network customers accessing offers from competing retailers under the NERR and NERL.[6]

It is highly likely that the outcome of the AEMC Review will result in further changes to the regulatory arrangements that facilitate FRC in embedded networks. This will result in additional changes to compliance requirements for ENOs.

It is evident that the goal of a national harmonised framework is yet to be achieved and implementation of the proposed amendments will introduce into the Queensland market the serious problems which have been experienced by early adopters in other jurisdictions.

3. EMBEDDED NETWORKS IN QUEENSLAND

Embedded networks in Queensland are regulated by both the NEL, the NER and the *Electricity Act 1994* (Qld) (**Electricity Act**).

Under section 20 of the Electricity Act, a person who receives electricity through an embedded network is defined as a 'receiver'.

Section 23 of the Electricity Act provides that, a 'receiver' can only be a 'customer' under the Electricity Act if:

> '*the receiver's premises has an electrical installation that, to the reasonable satisfaction of the distribution entity whose distribution area includes the premises, is capable of receiving supply directly from a distribution entity's supply network*'

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and Queensland Government Department of Energy and Water Supply, *Access to Retailer of Choice for On-supply Customers in Queensland Discussion Paper*, (2015).

[5] The Australian Energy Market Commission Review of Regulatory Arrangements for Embedded Networks (2017) (available here), AEMC 's Electricity Network Economic Regulatory Framework review (available here), Western Power's Alternatives to grid supplied network services rule change request (available here), COAG Energy Council's Energy Market Transformation Work Program (available here) and The Victorian Government's General Exemption Order (GEO) Review (available here).

[6] Australian Energy Market Commission, *Review of regulatory arrangements for embedded networks*, Consultation Paper (2017), page 9.

Practically, this means that a person who receives electricity via an embedded network (i.e. does not have a direct connection to a distribution entity) cannot be considered a customer under the Electricity Act.

The definition of receiver and customer in Queensland is important as it directly relates to who can be a customer for the purposes of purchasing electricity directly from an authorised retailer (e.g. AGL, Origin Energy etc).

In order to sell electricity to a person at a connection point, an authorised retailer needs to be able to classify that connection point as a market connection point under the NER.[7]

Classification of a connection point as a market connection point has a dual purpose:

(a) it allows the authorised retailer to act as the financially responsible market participant (**FRMP**) for that connection point; and

(b) it allows a National Metering Identifier (**NMI**), which is a ten (10) character identifier assigned by local network service providers, to be assigned to that metering point and entered into the Australian Energy Market Operator's (**AEMOs**) Market Settlement and Transfer Solution (**MSATS**). It is classified connection points in MSATS that are involved in market settlement and the retail market.

In jurisdictions where access to FRC in embedded networks is available, a NMI is assigned to both:

(c) the embedded network customer connection point to the embedded network (ie the 'child connection point') which is classified in MSATS as a child NMI; and

(d) the ENO's connection point to the network service provider's network (ie the 'parent connection point') which is classified in MSATS as a parent NMI.

The arithmetical difference between the energy measured at the parent NMI and the child NMI is then calculated in MSATS and represents the energy consumption at the child connection point for the purposes of market settlement allowing a retailer to bill that child connection point. This allows a different retailer to act as the Financially Responsible Market Participant (FRMP) for both the parent connection point and child connection (ie Full Retail Competition in embedded networks).

Under the NER, it is generally recognised that jurisdictions are entitled to determine what connection points are eligible for classification as market connection points and therefore eligible for FRC. An important departure for Queensland under the NER[8], in conjunction with the Electricity Act definitions, prevents an authorised retailer from classifying the connection point of a receiver, who is not a customer as defined in the Electricity Act, as a market connection point and therefore assigning a NMI to that

[7] Section 2.3.1 of the NER.
[8] Section 9.34.4 of the NER.

connection point. This current situation prevents child/parent metering and FRC in embedded networks in Queensland. This barrier to child/parent metering in Queensland is recognised in the MSATS procedures.[9]

The changes proposed by the Queensland Government in the Bill seek to remove the exclusion of 'receivers' from the definition of customer under the Electricity Act. This would have the effect of removing the local exemption in the NER such that an authorised retailer would be able to act as the FRMP, and classify the connection point for an embedded network customer (ie permitting child/parent metering and implementing FRC in embedded networks) and departs from the long standing position in Queensland to not introduce FRC until a harmonised solution is achieved throughout the National Electricity Market.

TradeCoast understands that the changes are being proposed at this time by the Queensland Government in order to avoid any conflict between the operation of Queensland's embedded networks and the implementation of the AEMC's *National Electricity Amendment (Embedded Networks) Rule 2015 No. 15* (**Rule Change**) without also acknowledging the thirteen (13) complex issues identified in the other jurisdictions which have adopted FRC and which are still to be resolved. These have been published by the Australian Energy Market Commission (AEMC) within its final determination and summarised within Table B.1 attached and titled *NERR issues for embedded networks*[10]. A copy of a recent AEMC publication is also attached, which on page 2 confirms a substantial number of retail market issues have been raised and have yet to be resolved.

4. IMPACTS OF QUEENSLAND CHANGES

4.1 Technical requirements

On the whole, most ENOs for Queensland's embedded networks are not currently physically capable of complying with the requirements to implement FRC in embedded networks given switchboard constraints restricting the installation of new retail meters and the treatment of embedded generation. To this end if the Bill is passed in its current form, Queensland ENOs will be required to undertake significant technical changes to their networks in order to ensure their networks are compliant with technical and operational requirements which apply to embedded networks in FRC jurisdictions.

These will involve significant switchboard modifications to enable additional retail meters to be installed.

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[9] MSATS Procedures : CATS Procedure Principles and Obligations v3.6 - available at: http://www.aemo.com.au/Electricity/Policies-and-Procedures/Market-Settlement-and-Transfer-Solutions/CATS-and-WIGS-Procedures

[10] Australian Energy Market Commission, *Review of regulatory arrangements for embedded networks*, Consultation Paper (2017), pages 43 to 50

4.2 Financial impacts

In addition to the technical changes, access to FRC in embedded networks will have significant financial implications for ENOs.

These will involve:

- the unknown costs associated with engaging an Embedded Network Manager given that no Queensland companies are currently accredited to provide this service;
- additional unnecessary compliance costs associated with introducing a new regulatory framework which has issues and changes are anticipated in the future;
- given the short timeframes between now and December 2017, Queensland entities are unlikely to achieve the required Embedded Network Manager (ENM) accreditation and registration and this function will be have to be outsourced to interstate entities which have had longer to prepare;
- addressing how retailers will reimburse embedded network owners for off market generation within their embedded networks (i.e. rooftop solar which is consumed within the embedded network);
- changes to charging structures which may also require amendments to tenancy agreements and ongoing electricity supply and sale agreements;
- furthermore, ENO's are exposed to potential breaches of existing electricity supply contracts if contracted electricity volumes are not achieved given many ENO's have entered into long term contracts to avoid significant price rises for their customers.

4.3 The double/wasted compliance risk

In addition to the direct costs incurred in complying with the Bill, ENOs may also be exposed to double/wasted compliance risk if the Bill is passed before the AEMC Review is finalised and the outcomes for ENO's are known.

If ENO's are required to make changes to their technical or financial models before the AEMC Review is finalised, then there is a risk that these changes may become redundant, or further capital investment may be needed in order to comply with the regulatory changes that come out of the AEMC's Review.

This would result in significant costs to the ENOs, which would be incurred over a relatively short period of time (ie 12 to 24 months). TradeCoast submits that ENO's should not be exposed to this double compliance risk and that these costs would be unnecessarily incurred.

If the changes to FRC in embedded networks being proposed under the Bill were delayed until the outcomes of the AEMC Review are known, ENOs would be given an opportunity to ensure work undertaken to comply with the revised regulatory

arrangements under both the Bill and the AEMC Review could be conducted as efficiently and economically as possible and to comply with one set of rules.

4.4 Timing of proposed changes

The Queensland Government is proposing to pass the Bill in August. The FRC provisions of the Bill, and the AEMC's Rule Change, will both commence on 1 December 2017. To this end, in order to ensure compliance by 1 December 2017, ENOs will have less than four months to implement the significant technical changes, prepare for the financial changes discussed above and to comply with the Rule Change.

TradeCoast notes that the Rule Change builds on reducing barriers to FRC for embedded networks in jurisdictions where FRC is already available (ie New South Wales and South Australia) and where embedded network arrangements already facilitate FRC.

ENO's in these jurisdictions have been aware, and have had time to prepare for, the Rule Change since 17 December 2015 when the Rule Change was made. To this end, ENO's in jurisdictions that already have FRC for embedded networks:

(a) are already established in terms of the technical and operational requirements to facilitate FRC for embedded networks; and

(b) have been given significantly more time to prepare for the Rule Change and commence the embedded network manager accreditation process.

Compared to ENO's in other jurisdictions, the Queensland Government has put Queensland ENOs at a significant disadvantage by allowing less than four months for the ENOs to:

(c) undertake the technical and operational changes necessary to facilitate FRC for embedded networks; and

(d) prepare for the Rule Change and complete the embedded network manager accreditation process.

It is TradeCoast's position that to meet this deadline and to avoid non-compliance, the cost of compliance for Queensland ENO's will be much greater than that of ENOs in other jurisdictions. There has been no consideration of these costs or time pressures by the Queensland Government in preparing the Bill. In particular, the Bill does not provide for any transitional arrangements for existing embedded networks or ENO's, whose operations cannot be transformed in four months.

5. CONSULTATION BY THE QUEENSLAND GOVERNMENT

It is TradeCoast's position that the Queensland Government seems to have failed to sufficiently consult ENOs, or consider the impacts on ENOs of the proposed changes under the Bill.

The Queensland Government Guide to Better Regulation states that:

> "The depth of analysis and consultation undertaken for a proposal should be proportional to the complexity and significance of the problem and the size of the potential impacts." [11]

TradeCoast puts to the Committee that the consultation undertaken by the Queensland Government (ie private consultation with a group of targeted stakeholders) is disproportionate to the potential impacts of the proposed changes on ENOs, as described above. This lack of consultation is confirmed within Energex's submission which stated '*… with respect to on-supply arrangements many of the issues do not impact Energex directly … and … any change in policy will need to consider the costs and benefits of the available options to all parties*[12]'.

As the Queensland Government has previously recognised, the introduction of FRC into Queensland's embedded networks is a very complex issue.[13] It is not something that should, or can be done, without proper industry consultation. In particular, the Queensland Government should give ENOs an opportunity to:

(a) take time to consider the proposed changes and undertake an assessment of impacts of those changes which will not be known until after completion of the extensive reviews currently underway; and

(b) discuss those impacts, and ways to mitigate those issues (i.e. through transitional arrangements or grandfathering), with the Queensland Government.

TradeCoast submits that, to its knowledge, no consultation between the Queensland Government and the ENOs has been undertaken in relation to these proposed changes and a very short time-frame has been allowed to consider this Bill and its ramifications.

6. TRADECOAST'S REQUEST

Based on the significant financial and compliance implications on ENOs which have not yet been considered or addressed, TradeCoast requests that the Committee recommend that the commencement of FRC in embedded networks in Queensland be delayed until:

(a) the economic and compliance impacts of introducing FRC in embedded networks have been adequately considered and addressed by ENOs and the Queensland Government;

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[11] The Queensland Government Guide to Better Regulations (2016), page 4, available here.
[12] Energex response to Electricity On-Supply in Queensland – Discussion Paper (2013) available here.
[13] Energy Competition Committee, Queensland Government Department of Energy, *Policy Decisions Paper No. 2 – Electricity Full Retail Competition, Final Policy Decisions*, (2006).

(b) the AEMC Review is finalised and the outcomes are known and any recommendations are successfully implemented in the early adopter states; and

(c) the Queensland Government has undertaken a sufficient consultation with ENOs on the proposed changes.

TradeCoast submits that the introduction of FRC into embedded networks is not something that can be, nor should be, achieved over night. As mentioned above, there are thousands of embedded networks and ENOs in Queensland, each of which will be affected by the Bill. These ENOs need to be given an opportunity to prepare for what will be a significant change in the regulation of embedded networks in Queensland.

Yours faithfully

[redacted]

R.W.J. Tucker
Director
TradeCoast Central Pty. Ltd.

Attachment 1: Australian Energy Market Commission - *NERR issues for embedded networks*

Table B.1 below was published in the Embedded networks final rule determination and sets out a number of possible issues in the NERR related to embedded networks published by the AEMC

AEMC

REVIEW

Australian Energy Market Commission

CONSULTATION PAPER

Review of regulatory arrangements for embedded networks

11 April 2017

Submissions due 16 May 2017. Reference: RPR0006
Consultation Paper

B NERR issues for embedded networks

Table B.1 below was published in the *Embedded networks final rule determination* and sets out a number of possible issues in the NERR related to embedded networks.

Table B.1 NERR issues for embedded networks

Relevant aspect of the retail framework	Overview	Issues arising
Customer classification	For the purposes of the NERL, a customer on an embedded network is likely to be considered a customer with the meaning of the NERL[50] and is likely to fall within the definitions of both a small customer and a residential customer.[51] The framework for classifying customers is set out in Part 1, Division 3 of the NERR. Under this framework, the retailer will need to classify the customer. There is no 'corresponding distributor' for the purposes of the classification framework, the 'distributor' in this case being the owner/operator of the embedded network. However, these rules will still be relevant the extent that the customer makes application for re-classification.	• Are any amendments to this classification framework necessary to take account of retail contestability in embedded networks (especially as customers in embedded networks are not 'shared' between retailers and distributors)?
Standing retail offers and contracts	Under s22(5) of the NERL a designated retailer is not obliged to make a standing offer to a small customer if the customer's premises are not, or are not proposed to be, connected to a distributor's distribution system. The premises of a customer in an embedded network are not connected directly to the distributor's distribution system. The obligation to supply is unlikely to extend to customers in an embedded network. The AER's retail exemption guideline effectively replicates this obligation for such customers, by obliging the holder of the exemption to supply a customer who meets the criteria for the exemption class. A retailer can only provide customer retail services to small customers under either a SRC or a MRC.[52]	• Should the existing standing offer and contract framework be extended to customers in an embedded network seeking to go on-market? • Should a purpose specific Standard Retail Contract (SRC) be developed for inclusion in the NERR as a separate schedule for such customers? • Is the Market Retail Contract (MRC) framework sufficient for making retail

50 A customer is a person to whom energy is sold for premises by a retailer or who proposes to purchase energy for premises from a retailer (s. 5(1) NERL). Premises is not defined in the NERL or NERR. Its plain English meaning is usually a house, building, site or place which will capture the premises associated with a customer on an embedded network.

51 Assuming they purchase energy principally for personal, household or domestic use at premises and consume below relevant consumption thresholds: s. 5(2) NERL)

52 Section 20 NERL.

Relevant aspect of the retail framework	Overview	Issues arising
		offers to customers in an embedded network seeking to go on market?
Market retail offers and contracts	Under the existing retail framework, there is no barrier to a retailer making a market retail offer to a customer in an embedded network seeking to go on-market. Section 33 of the NERL provides: *A small customer and a retailer may, subject to and in accordance with this Division and section 147, negotiate and enter into a market retail contract for the provision of* *(a) customer retail services; and,* *(b) any other services, as agreed between the small customer and the retailer.* However, a retailer will need to ensure that the MRC is not inconsistent with the applicable minimum requirements set out in the NERR.[53] MRCs can also deal with other things so long as the rules do not prohibit such things being dealt with in the contracts.[54] "Subject to and in accordance with this Division" means that any MRC offered to a small customer will need to meet "minimum requirements". The terms and conditions of a MRC have no effect to the extent they are inconsistent with any minimum requirements, and the minimum requirements are to apply to the extent of the inconsistency (unless the terms and conditions provide for a higher level of service to the customer).[55] To be able to offer a valid MRC to a customer on an embedded network, a retailer will need to comply with the minimum requirements set out in the NERR. If it cannot meet these requirements, the retailer will have the following options:	• Are any amendments to the MRC framework necessary to take account of retail contestability in embedded networks? • Are the current minimum requirements set out in the NERR relevant to customers on embedded networks? Are there any additional requirements? Should the application of any of these requirements be amended as they relate to customers in an embedded network seeking to go on market?

53 Section 34(2) NERL which provides the NERR may set out (a) minimum requirements that are to apply in relation to small customers who purchase energy under a market retail contract; and (b) minimum requirements that are to apply in relation to the terms and conditions of market retail contracts.

54 Section 34(3) of the NERL.

55 Section 36 of the NERL.

Relevant aspect of the retail framework	Overview	Issues arising
	a) not offer a MRC at all if it cannot meet the minimum requirements; b) offer a MRC which meets the 'spirit' of the minimum requirements so as to avoid inconsistency; and c) offer a MRC which contains terms and conditions that are better than the minimum requirements in. A range of minimum requirements may give rise to issues in the context of customers on embedded networks and these are discussed below.	
Minimum requirement: Pre-contractual duty of retailers **(NERR rule 16)**	This rule applies where a retailer is contacted by a small customer who is seeking to purchase energy for premises. The rule outlines the obligations for a retailer who is 'the designated retailer for the premises' and for the retailer who isn't. Under the NERL, a designated retailer is defined in terms of where there is and isn't an existing connection in relation to a small customer's premises. Connection is defined as being a 'physical link between a distribution system and a customer's premises to allow for the flow of energy'. There is no physical link between the premises of a customer on an embedded network and the distribution system. Therefore, at pre-contractual stage, there cannot be either a designated or financially responsible retailer for a customer who is seeking to go on market.[56]	• Is a pre-contractual duty of retailers, of the kind provided for under this rule necessary for customers on embedded networks, especially as they are cannot (currently) access standing offers?
Minimum requirement: Contents of bills NERR rule 25	This rule requires a retailer to prepare a bill so that a small customer can easily verify that the bill conforms to their customer retail contract. It outlines what it must include: Relevantly, the bill must include: *(a) tariffs and charges applicable to the customer;*	• In its current form, strict compliance with this rule may be difficult, depending on the arrangements in place between a retailer and the operator of an embedded network.

56 However, once a customer on an embedded network goes on market, the retailer that accepts that customer will; then be the 'financially responsible retailer', this being "the retailer who is the financially responsible Market Participants responsible for the premises under the NER".

Relevant aspect of the retail framework	Overview	Issues arising
	(b) the basis on which tariffs and charges are calculated; *(c) a separate 24 hour telephone number for fault enquiries and emergencies, the charge for which is no more than the cost of a local call, being the telephone number for the distributor and giving the name of the distributor.* This rule is classified as a civil penalty provision.	What amendments are necessary? • Further, contact details of the operator of an embedded network may be more relevant to a customer on an embedded network seeking to go on market. What other changes will be of assistance to customers in embedded networks seeking retail contestability?
Minimum requirement: Tariffs and charges NERR rule 46	This rule provides relevantly: 1. *A retailer must set out in a market retail contract with a small customer all tariffs and charges payable by the customer.* 2. *The retailer must give notice to the customer of any variation to the tariffs and charges that affects the customer.* 3. *The notice must be given as soon as practicable, and in any event no later than the customer's next bill.* 4. *The retailer must set out in the market retail contract the obligations with regard to notice that the retailer must comply with where the tariffs and charges are to be varied.*	• In its current form, strict compliance with this rule may be difficult, depending on the arrangements in place between a retailer and the operator of an embedded network. What amendments are necessary?
Minimum requirement: Liabilities and immunities NERR rule 51	This rule prohibits a retailer from including any term or condition in a MRC with a small customer that limits the liability of the retailer for breach of the contract or negligence by the retailer. This rule is classified as a civil penalty provision.	• Is such a prohibition still relevant in the embedded network context? Are any amendments necessary?

Relevant aspect of the retail framework	Overview	Issues arising
Move-in customer or carry over customer	The NERL deems particular arrangements between the financially responsible retailer and a move-in or carry-over customer.[57] Once a customer on an embedded network goes on market, the relevant premises will be assigned a NMI and have a retailer that is financially responsible for those premises (currently). Such premises could therefore be subject to the move in or carry over arrangements. These arrangements are premised on the basis of the SRC and standing offer framework set out in the NERL (see above).[58]	• Should the move-in or carry-over customer arrangements apply in the situation of an on-market customer in an embedded network? • How should such arrangements apply (if at all)? What changes will be necessary? • Can this issue be addressed through other means?
De-energisation and re-energisation of shared customer's premises	The NERR provides for a how premises can be de-energized (disconnected). A retailer is prohibited from arranging de-energisation of a customer's premises except in accordance with Division 2 of Part 6. This division applies to MRCs and is premised on the basis that the retailer arranges disconnection with a distributor. However, it is the owner of the embedded network that will be responsible for disconnection. Division 4 of Part 6 relates to re-energisation and also applies to MRCs. It, like de-energisation, is premised on the basis that the retailer arranges re-energisation with a distributor. However, it is the owner of the embedded network that will be responsible for re-energisation. These rules are classified as a civil penalty provisions.	• What arrangements need to be in place for the de-energisation and re-energisation of premises of customers in embedded networks who are on-market? • Is there a gap in existing arrangements (including various conditions to exemptions that may be in place) for customers on an embedded network seeking to go on market?
Life support	The NERR provides for various retailer obligations in relation to life support equipment.[59]	• What arrangements need to be in

57 Section 54(1) NERL. Carry-over customer means a small customer who continues consuming energy at premises after the customer's previously current customer retail contract expires or terminates: (a) without provision in that contract for the terms and conditions to apply after expiry or termination for the continued provision of those services; and without applying to a retailer for the provision (after that expiry or termination) of those services. Move-in customer means a small customer who starts consuming energy at premises without first applying to a retailer for the provision of customer retail services, including rules 53 and 54 of the NERR.

58 Including rules 53 and 54 of the NERR.

Relevant aspect of the retail framework	Overview	Issues arising
equipment	Many of these obligations require notification to a distributor. However, it is the owner of the embedded network that has similar responsibilities to that of a distributor in relation to life support equipment, which obligations are usually addressed in conditions applying to the exemptions held by embedded network owners. The rule applies to any MRC and is a civil penalty provision.	place for life support equipment for customers in embedded networks who are on-market? • Is there a gap in existing arrangements (including various conditions to exemptions that may be in place)?
Retailer of last resort (RoLR)	Under the NERL the contractual arrangements for small customers and the relevant designated RoLR are the terms and conditions of the designated RoLR's standard retailer contract.[60] The prices that are applicable are the relevant designated RoLR's standing offer prices.[61]That is, the current RoLR arrangements are premised on the basis of the SRC and standing offer framework set out in the NERL (see above). Currently, the retail exemption guideline makes little provision for the eventuality of exempt seller failure.	• What arrangements should be in place for customers in embedded networks who are on-market in the event of retailer failure? • Is there a gap in existing arrangements (including various conditions to exemptions that may be in place)? • Should these gaps be addressed in the retail framework? Are there other avenues (e.g. network service provider exemptions)? • Are there other gaps in the RoLR arrangements arising in relation to customers in embedded networks who are on-market in the event of retailer failure (e.g. RoLR regulatory

59 NERR rule 124

60 Section 145(3) NERL

61 Section 145(4) NERL.

Relevant aspect of the retail framework	Overview	Issues arising
		information notices)?
Presentation of market offer prices	Under the NERL a retailer must present (and publish on its website) its market offer prices (including any variation of those prices) in accordance with the AER's Retail Pricing Information Guidelines.[62] Market offer prices are the tariffs and charges that a retailer charges a small customer for or in connection with the sale of energy to a small customer under a market retail contract.	• Depending on the arrangements in place between a retailer and the operator of an embedded network, a retailer may not necessarily be able to present any offer to customers on embedded networks in accordance with such requirements. What requirements should be in place for the presentation of such offers? Are the AER Guidelines able to sufficiently address this?
Explicit informed consent (EIC)	Currently the entry by the customer into a market retail contract with the retailer is a transaction that needs EIC.[63] As customers in embedded networks seeking to go on market are likely to be offered MRCs (subject to any change to the SRC framework- see above) EIC will be necessary for the entry into such contracts.	• Are the current EIC requirements appropriate?

62 Section 61 NERL.

63 Section 38 NERL.

Attachment 2: AEMC Information Notice confirming substantial retail market issues

Note: See Page 2 *

AEMC

INFORMATION

Review of regulatory arrangements for embedded networks

The AEMC has commenced a review of regulatory arrangements for embedded networks under the National Energy Retail Law (NERL) and National Energy Retail Rules (NERR). The Terms of Reference was received from the COAG Energy Council in December 2016.

What are embedded networks?

Embedded networks are private electricity networks which serve multiple premises and are located within, and connected to, a distribution or transmission system through a parent connection point in the National Electricity Market.

While an embedded network is within, and connected to, a distribution or transmission system, a party other than the registered local network service provider owns and operates the local area of the network that customers connect to. This party is known as an embedded network operator and is usually the embedded network customers' retailer as well.

Common examples of embedded networks include shopping centres, retirement villages, caravan parks, apartment blocks and office buildings. Embedded networks may occur as greenfield or brownfield developments and may, or may not, use distributed energy resources such as solar photovoltaic panels, battery storage, or diesel generators.

Purpose

Consumers could potentially benefit if a number of issues in regulatory arrangements for embedded networks are addressed. These issues arise because the NERL and NERR are designed on the basis of the relationships that typically exist between a customer, its retailer and its local network service provider. These relationships are different for embedded network customers because there is no local network service provider. Instead there is an embedded network operator.

The purpose of the review is to identify and assess any issues for embedded network customers under the NERL and NERR and identify appropriate solutions. This will be informed by the experiences of embedded network customers.

The review will determine whether current regulatory arrangements under the NERL and NERR for embedded network customers remain appropriate. The AEMC will consider:

- regulatory arrangements for exempt network service providers and exempt retailers
- customer protections for embedded network customers
- barriers to embedded network customers accessing competitive retail energy offers.

The review will also consider broader issues related to embedded networks in the National Electricity Law, National Electricity Rules, National Gas Law, National Gas Rules and jurisdictional instruments. We will have regard to the National Energy Retail Objective and the COAG Energy Council's broader work on energy market transformation.

The AEMC will recommend to the COAG Energy Council any further work required, if necessary, including any changes to the NERL and NERR.

Process and timeframe

The AEMC will consult with stakeholders throughout the review process and welcomes stakeholders to contact the project team at any time.

A consultation paper will be published in April 2017, which will outline key issues and questions for stakeholders and call for written submissions.

A draft report will be published by 15 September 2017 and a final report by December 2017.

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The AEMC's 2017 Retail Energy Competition Review, which will be published by 30 June, will also consider the increasing number of embedded networks in the market and the associated issues for competition and consumers.

Background

In 2014 the Australian Energy Market Operator submitted a rule change request related to embedded networks under the National Electricity Law (NEL) setting out proposed changes to the National Electricity Rules (NER) to make it easier for embedded network customers to change retailer. The rule change request stemmed from recommendations in the AEMC's Energy Market Arrangements for Electric and Natural Gas Vehicles and Power of Choice reviews.

The AEMC will publish a consultation paper in April 2017

A number of substantial retail market issues were raised during the AEMC's work on the rule change. Due to the limited scope of the rule change request, the Commission did not have the power to make changes to the NERR. The Commission also considered that further analysis and consultation was required on the retail market issues raised by embedded networks, including potential NERL changes.

In the Final Rule Determination, published in December 2015, the AEMC recommended that the COAG Energy Council request the Commission to undertake a review of the NERL and NERR to identify and assess the issues regarding the arrangements for embedded network customers. The Commission also recommended that the COAG Energy Council consider whether this review should consider broader embedded network issues.

The Terms of Reference were received from the COAG Energy Council in December 2016 and are available on the AEMC website.

A number of potential issues in relation to the NERL and NERR were identified in the Terms of Reference and in the AEMC's Final Rule Determination. The review will consider these and other issues raised by stakeholders.

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