



Embedded network regulation: a consumer view

23 May 2017

Review of regulatory arrangements for embedded networks

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to respond to the AEMC's Consultation Paper on the Review of regulatory arrangements for embedded networks.

PIAC is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues. PIAC seeks access to affordable and sustainable electricity and gas services for all households, whether they are connected to the grid directly or embedded networks.

The growth in the number and size of embedded networks in Australia presents a variety of issues for the regulatory arrangements relating to those networks. Broadly, PIAC's concerns can be categorised as relating to:

- Elements of the exemption framework;
- Access to retail competition; and
- Consumer protection.

Exemption framework

PIAC considers the current two-tiered exemption system to be inflexible and not reflective of how embedded networks operate in the Australian energy system.

Currently, embedded network operators have significantly fewer consumer information and protection obligations than authorised market participants. While this would not be of concern if there were only a small number of embedded networks servicing a small number of customers, that is not the case; the AER reports that there are currently over 3,000 networks with exemptions.¹ These networks are highly diverse, with some servicing small communities and others providing network and retail services to large groups of consumers.

PIAC acknowledges that it is impractical to expect some small embedded networks operators to comply with regulations similar to those placed on authorised market participants. However, it is understood that there are some large firms operating multiple embedded networks and supplying network, retail and metering services to a similar number of consumers as a small retailer in the National Electricity Market (NEM). Such firms could be required to comply with requirements for consumer information and protection that are equivalent to those placed on authorised providers.

Recommendation 1

PIAC recommends that a more nuanced exemption framework be implemented for dealing with embedded networks in the contemporary Australian energy system.

¹ AER, Public register of network exemptions, 2017 <<https://www.aer.gov.au/networks-pipelines/network-exemptions/public-register-of-network-exemptions>>.

Access to retail competition

PIAC supports access to retail competition. In general, PIAC considers that access to retail competition is likely to lead to lower prices, something that is a good outcome for consumers. It is concerning that a majority of embedded network customers receive retail services from the embedded network operator in addition to their network and metering services.² 'Off-market' retailing results in a retail monopoly within embedded networks, and may be highly uncompetitive. Without a requirement to offer lower prices, there may be higher prices than in a competitive market, which is a poor outcome for consumers.

PIAC recognises that even where retail competition is the best option for embedded network consumers there may be practical barriers to them accessing it. There is anecdotal evidence that many retailers are not interested in providing services to customers in small embedded networks. Where this is the case, PIAC recommends that the AEMC work to ensure these embedded network customers are not in a worse position than consumers with access to retail competition.

PIAC considers that access to retail competition in embedded networks should not be viewed as an end in itself, and the AEMC should investigate how lack of access to competition can be addressed in other ways. PIAC is of the view that that access to standing-offer-equivalent pricing for consumers in embedded networks is not sufficient price protection for consumers in embedded networks.

Recommendation 2

PIAC recommends that, in networks where consumers are unable to access retail competition, they should be able to access prices no higher than the competitive market offer rates available to retail consumers in their area.

Consumer protection

PIAC is concerned by the lack of explicit protections against detrimental consumer outcomes.

All reasonable efforts should be made to ensure that, as far as practicable, no consumer is worse off in an embedded network than non-embedded customers. PIAC acknowledges, however, that that there is an inherent tension between many consumer protections and the ability of small embedded network operators to provide them.

For example, PIAC prefers to see all energy consumers covered by access to hardship programs, but agrees that this may not be practical when network and retail services are provided by a very small operator within an embedded network.

Explicit informed consent

PIAC considers the consent of consumers when signing up to electricity contracts to be their first protection. The National Energy Retail Law (NERL) and National Energy Retail Rules (NERR) set out a clear obligation for authorised retailers to gain the explicit informed consent of customers when they transfer to a new retailer or obtain a new market contract. This level of information and

² AEMC, *Review of regulatory arrangements for embedded networks*, Consultation Paper, 11 April 2017, Sydney, 5.

consent allows consumers to protect themselves against detrimental outcomes before they require further protection.

Embedded network customers, however, are only covered by the AER's (Retail) Exempt Selling Guideline. This guideline does not explicitly require this level of consent. Instead, the AER only requires embedded network operators to disclose limited information to consumers before signing them up to exempt retail contracts.³ While this information does replicate some of what is required to be understood for explicit consent to be given, SACOSS notes that it is often hidden in a general rental agreement or contract of sale, rather than in a standalone electricity contract or disclosure statement.⁴ This makes it very difficult for consumers to be properly informed about the electricity supply conditions they are agreeing to.

PIAC is particularly concerned about the impact this has on consumers moving into an existing embedded network. While a group of consumers transferring existing properties to an embedded network arrangement are likely to be better informed at the time they make the decision to do so, the lack of explicit informed consent requirements means someone moving into an established embedded network could sign a lease and only later discover the implications, with respect to their energy costs, of doing so.

Mandating that embedded network operators be covered by the same explicit informed consent requirements as customers of authorised retailers would allow consumers to be properly informed about their contracts and protected from detrimental outcomes. Given that they are already required to provide some information by the AER's Exempt Selling Guideline, PIAC is of the view that it would not be onerous to require embedded network operators to seek explicit informed consent from their customers.

Recommendation 3

PIAC recommends that specific requirements regarding explicit informed consent, equivalent to those for licensed retailers, be imposed on retailers operating embedded networks.

Recommendation 4

PIAC recommends that explicit informed consent regarding energy arrangements be obtained from consumers at the time of rental and sale of properties where there is an embedded network.

Dispute resolution

In all jurisdictions except for NSW, embedded network customers are unable to bring complaints through their energy ombudsman. This is because, unlike market participant network and retail businesses, embedded network operators are not required to be members of ombudsman schemes. This removes a key protection for consumers against improper behaviour by their providers. In PIAC's view, the lack of access to independent, accessible dispute resolution is not acceptable.

Recommendation 5

PIAC recommends that both the jurisdictional and funding issues be addressed by requiring embedded network operators and/or exempt retailers in embedded networks to be ombudsmen

³ AER, *(Retail) Exempt Selling Guidelines, Version 3*, April 2015, 27-28.

⁴ SACOSS, *The retail and network exemption framework: emerging issues for consumers*, December 2015, 47.

members. It may be appropriate to have a limited number of exemptions such as for very small operators where compliance would be impractical.

Hardship

A key aspect of national energy consumer protection is hardship regulation. The NERL requires authorised retailers to produce hardship policies which are subject to approval by the AER (or ESC in Victoria).⁵ These policies set out the process retailers use to manage current payment difficulties and the repayment of historical debt by consumers facing financial hardship. The NERL also sets out minimum standards for hardship programs that implement these policies.⁶

Customers who receive their retail electricity services from an exempt seller are not covered by these regulations. Given that a majority of embedded network customers receive their network and metering services directly from the embedded network operator,⁷ there is a growing number of consumers that are not covered by hardship protections. These consumers lack the certainty of assistance in the event that they are unable to pay their bills due to financial hardship. PIAC considers this to be an unacceptable level of consumer detriment and something that must be addressed.

Recommendation 6

PIAC recommends that hardship provisions be extended to electricity consumers in embedded networks. It may be appropriate to have a limited number of exemptions such as for very small operators where compliance would be impractical.

Billing information

PIAC is concerned that some embedded network customers are not receiving adequate information about their electricity consumption and billing. The NERR set minimum billing information standards, including consumption amounts and benchmark information against similar consumers.⁸ There is anecdotal evidence that many embedded network customers are not receiving a bill at all, let alone one that complies with the requirements placed on authorised retailers. PIAC considers the provision of this information to be a key mechanism for consumers to protect themselves from excessive electricity bills. Without transparency in billing consumers are unable to effectively manage their electricity consumption or identify if there is a billing error.

Recommendation 7

PIAC recommends that embedded network customers should, wherever practical, be provided with equivalent billing and usage information as customers of licenced retailers.

Further engagement

PIAC would welcome the opportunity to discuss these issues in more depth with the AEMC and other stakeholders. For any queries please contact Craig Memery at cmemery@piac.asn.au or on (02) 8898 6522.

⁵ SACOSS, *The retail and network exemption framework: emerging issues for consumers*, December 2015, 50.

⁶ NERL, Section 44.

⁷ AEMC, *Review of regulatory arrangements for embedded networks*, Consultation Paper, 11 April 2017, Sydney, 5.

⁸ NERR, Section 25.