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Energy Policy WA
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Consultation Paper Regulatory Impact Statement (CRIS)

Thank you for the opportunity to comment on the consultation documents relating to the proposed 'regulation of embedded networks', namely the *Consultation Paper Regulatory Impact Statement February 2024 (CRIS)*, and Energy Policy WA's clearly preferred *Option 4: AES Registration Framework*.

We have also reviewed the *Voluntary Embedded Networks Code of Practice*, noting that we commented on the Draft Code of Practice in 2023.

We also note that the *Electricity Industry Amendment (Alternate Electricity Services) Bill 2023* passed the Parliament this week.

Put simply, we continue to have major concerns with the proposed approach, including Energy Policy WA's self-justified preferred Option 4. **We do not support Option 4 in its current proposed form.**

The Draft Code that underpins Option 4 has nearly doubled in page-length from the 2023 draft version and contains a bewildering myriad of rights for customers to 'make requests', and a disproportionate balance of customer rights and protections versus of ENS (limited) rights and obligations.

CONCERNS

We have distilled our key concerns as follows:

1. The proposed regulatory framework, including Option 4, **continues to rely on a lack of substantive evidence for issues in non-residential ENs, including the 2022 survey which, by the numbers is overwhelmingly based on residential ENs (versus a sample size of 36 customers in non-residential ENs).**

By Energy Policy WA's own admission, the survey was a 'small sample size (being 36 'non-residential customers')'. On our analysis, at best this represents around 0.72% of all shopping centre tenants / customers, noting that we don't currently experience many disputes.

This section of the CRIS also highlights unsubstantiated claims in relation to people reporting '*very negative experience within embedded networks, particularly with respect to lack of information and pricing outcomes*', including providing (at Table 4) merely one quote from a 'tenant in a neighbourhood shopping centre'.

To give a simple reference, neighbourhood shopping centres can be more typically owned and operated by smaller companies and the customer experience within them cannot be credibly or systematically compared with all shopping centres, let alone larger centres such as those owned and operated by Scentre Group (Westfield shopping centres) or Vicinity Centres.

It is incredibly worrying that the Government continues to place a material reliance on the survey, or such quotes, as being either representative or indicative of the issues within shopping centre embedded networks (or indeed, other non-residential networks).

It is more worrying that '*key survey findings*' are then presented as a basis to justify the proposed approach, including that despite the CRIS noting that Energy Policy WA has been able to identify 'clear trends' in the survey results between residential and non-residential

customers, these clear trends are not provided in a clear or transparent manner (but have instead been bundled together).

We would welcome a breakdown on what the 'clear trends' actually are, as the trends are not clear in the CRIS.

Of further concern, is Energy Policy WA's own admission of the direct link between the survey and the AES Code, which is noted at page 22 of the CRIS that *'the proposed obligations on ENS under the AES Code seek to address key concerns raised in the Survey, feedback in consultation on the draft Voluntary EN Code and issues raised during one-on-one stakeholder engagement'*.

Further, other parts of the paper used unsubstantiated or generic claims to criticise the current approach (Status Quo), and justify the proposed preferred Option 4, such as at page 14 where it states (without any detail) *'Consultation indicates some non-residential customers, particularly those who – if they were outside an embedded network – would be able to access the contestable market'*.

2. **The overarching objectives – including to the desire to have 'like' rights and protections between customers in and out of embedded networks – have become self-justifying** and clearly prevented the development of what should be (if any) a light-touch regulatory framework and more akin to the AER's framework. The lack of any recognition of ENs being ancillary activities (such as is recognised under the AER's framework), and trying to compare ENs to licensed retailers, has resulted in a burdensome approach.
3. **Option 4 will impose a heavy cost and regulatory burden; full-stop.** The burden is an over-reach, and not proportional to the issues raised (even though we question the validity of the issues that have been raised – see our points above). Energy Policy WA's proposed 'benefits to industry' outlined in the paper, to help justify Option 4, are fanciful. We state clearly that we don't believe that the listed benefits are real, or outweigh the costs and regulatory burden. We would certainly prefer the 'regulatory certainty' and 'consistency' of the AER framework.
4. **The Draft Code appears to be unchanged, and still contains unjustified, unreasonable and onerous requirements.** Our feedback provided in 2023, even to have a fairer balance on issues (e.g. that a 'Customer Request' be defined and on similar terms to a 'Verifiable Consent'), has been ignored without any clear justification. Such inequity is completely unfair and unjustifiable, and points to a bias and imbalanced approach by Energy Policy WA.

The Draft Code is a bit - *'where to you start?'* - in terms of how complicated and onerous it will be. This includes providing customers with endless rights including the right to make endless 'requests' (and ENS' needing systems to enable the consideration of such requests), but not even providing appropriate rights and safeguards for ENS on issues that are not the fault of their own (e.g. the 5-day requirement in relation to tariffs remains at section 7.1 (c)).

RECOMMENDATIONS

Noting the above, our general recommendations are as follows:

- **Defer the proposed regulatory framework, and specifically Option 4, for non-residential networks**, until such time that a clearer body of evidence is provided that there are actual market and regulatory failures to need to be addressed. As it stands, a real and documented case for regulatory change for non-residential embedded networks continues to be slim.

- If Option 4 is inevitable (which it seems that it is given it 'ticks all the boxes' according to Energy Policy WA – refer to page 28), we firstly note that Option 4 encompasses:
 - Each ENS to register with the ERA, subject to a potential public interest test and public consultation – with a possible 'simpler' or 'fast-track' process (though this is unclear but can be 'enabled') – at a registration cost – with potential compliance audits and enforceable undertakings 'as for that to address licensing contraventions',
 - Each ENS to become a member of the Ombudsman Scheme – at a cost,
 - The combined cost/fee estimates of the above ranges from \$10 to \$37 per customer. Energy Policy WA 'anticipates' that both regulatory compliance costs and the registration fees and charges 'would be materially less than those for licensees'.
 - Each ENS to meet obligations under the AES Code.
 - Onsite Power Supply (OPS) may also be required to become registered with the ERA.
- If Option 4 is inevitable, the cost and provisions of Option 4 should be seriously amended and wound back as follows:
 - a **guaranteed streamlined and fast-track registration process**, which doesn't need to meet any public interest test or be subject to public consultation.
 - including **providing clear price certainty and a guaranteed cap in relation to proposed ERA and Ombudsman fees**. While fee's may be 'materially less than those for licensees', this is not a good benchmark given licensees are generally large energy companies (versus where ENS' are generally an ancillary activity and with a limited customer pool).
 - **removing or amending provisions of the Draft Code at the very least (but not limited to), as follows** (noting that many of the below issues were raised in our June 2023 submission, but the same provisions remain in place, word-for-word, while several more 'pro-customer' provisions have been inserted without justification):
 - It should only apply to new customers (i.e. a New Supply Agreement) – not existing customers (i.e. an Existing Supply Agreement). Those agreements were entered into fairly at the time (e.g. when a tenant entered into a lease), and the new requirements of the AES Code should only apply to new customers.

Noting that, in our sector, a customer generally becomes a customer when they enter into a new retail lease in a shopping centre, the Code needs to align with and not undermine the retail leasing process, particularly given this is a time when issues relating to capital works, including shop fit-outs, are negotiated and resolved (including at a pre-lease stage).

We believe some issues proposed under the Code will undermine the retail leasing process. The Code should include an amendment that if a customer agrees to issues under the Code as part of their retail lease, such provisions should not apply under the Code.

- As we raised last time (we were ignored), the Code should have a definition of 'Customer Request' in the Definitions section of the Code, similar to the definition of 'Verifiable Consent, to clarify that any request from a customer, for it to be a valid request, must be in writing, by the customer, backed by sufficient information, and to the ENS contact person (identified in the Disclosure Statement).

The Code contains too many unjustified rights for a customer to 'make a request' that we are obliged to meet. It is a double standard, and inequitable, that a 'Verifiable Consent' is needed but a 'Customer Request' isn't required and prescribed on similar terms.

Energy Policy WA needs to be aware that having systems in place to respond to various 'customer requests' will add cost, including (but not limited to), general staffing costs and potentially issues such as legal costs where contracts may need to be entered into for service providers. Costs can be minimised if 'Customer Requests' have a more appropriate definition and structure.

- Section 2 is unworkable, given how ENS' are owned and operated in the context of shopping centre ownership and operation, including the notion that it is a 'person' responsible for supplying electricity to customers in an ENS. The AER framework has a more sensible and tested approach on this issue.
- The Disclosure Statement content and requirements are too onerous (e.g. requirement to issue).

The Statement has been substantially added to and has become more onerous since the previous Draft version, and parts are unreasonable (e.g. in relation to DER). It is unclear why this has been substantially changed since the last version. In any case, ENS' should be able to issue their own 'form' of Disclosure Statement.

- As we raised in 2023, there needs to be either a *Customer Disclosure Statement*, or a requirement that the customer provides a written statement that they understand the issues identified in the Disclosure Statement and that the ENS cannot be subject to any claims of misrepresentation. If Disclosure Statement remains as is proposed a Customer DS would be reasonable.
- Section 5 needs to allow for the grandfathering of existing metering installations.
- For alternate supply, the costs should be on the tenant / customer who wants to access it, particularly noting the 'Eligible Customers' that the Code applies to (i.e. estimated annual consumption of 50MW/h – 160MW/h). As we provided previously, section 3.2 should be amended to ensure the customer is responsible for 'all costs associated with' (not just 'reasonable' costs) this process and obtaining new supply, including making good any relevant issue at the end of their retail lease. It should also be amended to note that an ENS' ongoing obligations to that customer under the Code are extinguished.

- Disconnection requirements should align with the AER framework.

Thank you for the opportunity to provide comment. This submission aims to be succinct, and for the purposes of ongoing discussions. We'd welcome an opportunity to discuss these issues further.

Yours sincerely,

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Chief Executive