Energy & Water Ombudsman NSW
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11 April 2023

Ms Carmel Donnelly
Chair
Independent Pricing and Regulatory Tribunal
PO BOX J35
Haymarket Post Shop NSW 1240

Dear Ms Donnelly

Draft terms of reference – The future of embedded networks in NSW

Thank you for the opportunity to comment on the draft terms of reference in relation to the future of embedded networks in NSW.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers.

Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to the draft terms of reference on matters that align with issues customers have raised with EWON, or with our organisation's operations as they relate to this review.

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy & Systemic Issues, on [redacted].

Yours sincerely

[redacted]

Janine Young
Ombudsman
Energy & Water Ombudsman NSW

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Background

EWON has over decade of experience managing complaints and systemic issues involving electricity embedded networks:

- EWON was founded in 1998 as the industry-based Ombudsman scheme to independently resolve energy, and later water complaints from NSW customers.
- Over the years, EWON has made submissions to various processes raising concerns about the inequity faced by customers living within embedded networks.[1]
- In 2013, the Electricity Supply Act 1995 (NSW) was amended to allow EWON to accept complaints from customers of exempt sellers. Initially, most of the complaints received by EWON about embedded networks were from residents of land lease (residential parks) communities. However, EWON's power to resolve these complaints was limited, as embedded network operators were not required to be members of our scheme.
- By 2016, growth in the number of residential apartment buildings established as embedded networks accelerated in NSW. EWON published our first public report on emerging consumer protection gaps for embedded network customers[2].
- In 2018, the Australian Energy Regulator (AER) amended the guidelines for exempt sellers and networks to require embedded network retailers and operators in NSW to join EWON as members. This change in EWON jurisdiction from 1 July 2018 enabled EWON to extend its membership and resolve disputes from embedded network customers.

EWON also has decades of experience managing complaints and systemic issues involving the billing of energy usage from common or centralised hot water systems:

- For decades, most common or centralised hot water systems in new residential apartment buildings were installed by developers according to the guidelines published by gas distributors in NSW. The gas distributor would typically take responsibility for the installation, maintenance, and billing of the gas meters and hot water meters in the building.
- This process meant that residents of apartment buildings with a common or centralised hot water system would have a gas meter, or a hot water meter, with both meters registered on the retail gas market. The Australian Energy Market Operator (AEMO) supported this process by establishing gas retail market procedures to accommodate the billing of gas (MJ) based on consumption recorded by a hot water meter.
- This business model for establishing common hot water systems meant customers were billed for the energy used by their hot water systems by an authorised energy retailer and they also benefited from the consumer protections contained in the National Energy Customer Framework (NECF), including access to EWON. By 2021, this included at least 252,841 NSW households.
- In 2015, the gas distributor, Jemena Gas Networks, introduced a network tariff designed for boundary metering. This network tariff allowed third party providers to take over the installation, maintenance and billing of the gas and hot water meters in new apartment buildings – effectively creating gas embedded networks.
- Some of these providers commenced billing customers in 'cents per litre of hot water' consumed instead of billing the customer for 'cents per megajoule' for the gas used to heat the water. This method of billing effectively removed the consumer protections the

[1] For example, AER approach to retail exemptions, June 2010. (ewon.com.au)

[2] https://www.ewon.com.au/content/Document/Publications%20and%20submissions/EWON%20reports/EWON%20Report%20on%20Exempt%20Sellers%20%20Rising%20Inequality%20in%20the%20Energy%20Market.pdf

customer's benefited from under NECF, including access to EWON's free, fair and independent advice and dispute resolution.

- EWON accepts complaints from gas embedded network customers – where the network operator is an existing member of EWON – but the consumer protections for these customers are limited to the Australian Consumer Law (ACL).
- EWON published a public report on gas embedded networks in March 2021[3].
- By June 2022, there were at least 64,325 NSW households in NSW in gas embedded networks – and no doubt this has increased since then.

Our history and in-depth knowledge, combined with our customer complaints data and insights has provided us with a unique perspective on the issues faced by residents in embedded networks including lack of access for many to the energy related consumer protection framework.

The Draft Terms of Reference

EWON supports the task as outlined in the Draft Terms of Reference.

Relevant considerations

EWON supports the relevant considerations as outlined in the Draft Terms of Reference. We also recommend that the following issues form part of IPART's considerations:

1. There are a range of consumers that live in embedded networks. Consideration of the different types of consumers living in embedded networks will impact on the assessment of short and long term outcomes:

Customer type	Characteristics
Owner occupiers in strata developments	Owner occupiers in strata developments can be both: • end users in embedded networks that are billed for their energy usage, and; • through their share in the strata corporation, the on-seller of energy or the controller, operator, or owner of the network. However, it is important to understand that even if the strata corporation is registered as the energy seller, or network operator, contractual arrangements established by the developer with authorised or exempt energy retailers may mean the strata is locked into long term contracts giving them little control over the price of energy or quality of service delivery.
Tenants in strata developments	Tenants living in embedded networks are end users who are billed for their energy usage. Tenants have the least choice and are very often not adequately informed that they are moving into an embedded network. Tenants are also unlikely to gain from any non-energy cost benefits of living in an embedded network (such as the benefits owner occupiers might get through their share in the strata corporation).
Tenants in social housing developments	EWON is aware that some social housing developments in NSW have been established as embedded networks. These customers, who are at higher risk of experiencing financial vulnerability, would benefit from price protections and access to a strong consumer protection and default market offer pricing framework.
Residents in land lease communities	Residential land lease communities provide an important affordable housing option for thousands of households in NSW. These customers, some who are at risk of experiencing financial vulnerability, would benefit from continued price protections and access to a strong consumer protection and default market offer pricing framework.

[3] https://www.ewon.com.au/page/publications-and-submissions/reports/spotlight-on/hot-water-embedded-networks

Customer type	Characteristics
	These customers are also protected by the *Residential Land Lease Communities Act 2013* (NSW). A review of the Act was completed in 2021 and recommendations have been made about future amendments to the electricity charging provisions of the Act.
Small business customers	Small businesses also operate in embedded networks. Small business customers have the least consumer protections of any embedded network customer.
The operators of land lease communities	Operators of land lease communities are not customers – but many of these small business operators must already comply with two separate legislative frameworks – the *Residential Land Lease Communities Act 2013* (NSW) and the *National Energy Retail Law* (NSW). On-selling energy is not a core function for these businesses. Currently, land lease community operators are not allowed to make a profit from on-selling energy to residents. Positively, this provides price protection for these residents which is critical given the financial affordability challenges these residents face.

2. The proposed introduction of new network tariffs for embedded networks and its impact on the price paid by customers living in embedded networks.

The Australian Energy Regulator (AER) is currently consulting on the NSW networks regulatory proposals for 2024-29.

Two NSW electricity distributors, Ausgrid and Endeavour Energy, are proposing to introduce embedded network tariffs (over a transition period) for the 2024-2029 regulatory period[4]. The aim of these new network tariffs is to better reflect the costs that embedded networks impose on networks, and that embedded network customers are making a fair contribution to recovering the cost of the networks.

The policy and economic basis for introducing network tariffs for embedded networks is reasonable, however the increased costs associated with these new tariffs will be passed on to the customers living in the embedded networks. This will mean that the minimum price for energy paid by embedded network customers living in these two network areas will increase over time. Because of this, we intend to raise with the AER that it considers an embedded network specific Default Market Offer should these tariffs be approved. Further, due to the lack of retail competition in embedded networks, a separate DMO may be desirable regardless of the underlying network tariff. This IPART review should also consider whether NSW-specific price regulation is needed for embedded networks.

[4] https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/ausgrid-determination-2024%E2%80%9329; https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/endeavour-energy-determination-2024%E2%80%9329