



7 September 2023

Mr Albert Jean  
Independent Pricing and Regulatory Tribunal NSW  
PO Box K35  
Haymarket Post Shop NSW 1240

**Lodged online:** [https://www.ipart.nsw.gov.au/Home/Reviews/Lodge-a-submission?openforms\\_id=922debf9-0915-463b-bee1-55ae0c82f644&timeline\\_id=16339&cta\\_type=have\\_your\\_say](https://www.ipart.nsw.gov.au/Home/Reviews/Lodge-a-submission?openforms_id=922debf9-0915-463b-bee1-55ae0c82f644&timeline_id=16339&cta_type=have_your_say)

Dear Mr Jean

## **INDUSTRY CONSULTATION PAPER – ENERGY PRICES IN EMBEDDED NETWORKS – 15 AUGUST 2023**

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA NSW) is the State's peak industry body representing the interests of over 500 holiday parks and residential land lease communities (residential parks, including caravan parks and manufactured home estates) and over 200 manufacturers, retailers and repairers of recreational vehicles (RVs, including caravans, campervans, motorhomes, camper trailers, tent trailers, fifth wheelers and slide-ons), camping equipment suppliers, manufacturers of relocatable homes and service providers to these businesses.

Many holiday parks and residential land lease communities in NSW have embedded networks serving holiday makers and/or residential customers. Under the Australian Energy Regulator's (AER) *Retail Exempt Selling Guideline, Version 6, July 2022* (Retail Guideline) and *Electricity Network Service Provider – Registration Exemption Guideline, Version 6, March 2018* (Network Guideline) our holiday park and residential land lease community members fall within Exemption Classes D3, ND3 and R4, NR4 respectively and must comply with the Conditions relevant to their exemption class.

In representing these embedded networks, the Association is an important stakeholder in relation to IPART's review of The Future of Embedded Networks in NSW and we welcome the opportunity to provide our feedback on the *Industry Consultation Paper - Energy Prices in Embedded Networks* (Consultation Paper). We have focussed on the consultation questions relevant to our sector.

For this submission, where we refer to 'holiday parks' we are referring to caravan parks that supply energy via an embedded network to occupants of holiday accommodation on a short-term basis (i.e., in these caravan parks there are no permanent residents occupying the accommodation as their home).

Where we refer to 'residential land lease communities' we are referring to residential parks, including caravan parks and manufactured home estates, that supply energy via an embedded network to residents who live there. This includes caravan parks that supply energy to as few as 1-2 residents (mixed parks) right through to those residential land lease communities that are exclusively residential.

## **ABOUT EMBEDDED NETWORKS IN HOLIDAY PARKS AND RESIDENTIAL LAND LEASE COMMUNITIES**

Embedded networks in NSW holiday parks and residential land lease communities are currently subject to several federal and state-based instruments, including the following:

### **Regulation of Embedded Networks in NSW Holiday Parks**

- National Energy Customer Framework:
  - National Electricity Law
  - National Electricity Rules
  - National Energy Retail Law
  - National Energy Retail Rules
- AER Retail Guideline – Exemption Class D3
- AER Network Guideline – Exemption Class ND3
- Australian Consumer Law
- *NSW Fair Trading Act 1987*
- *NSW Electricity Supply Act 1995*
- *State Environmental Planning Policy (Housing) 2021*
- *NSW Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021*
- *NSW Holiday Parks (Long-term Casual Occupation) Act 2002*
- *NSW Civil and Administrative Tribunal Act 2013*

### **Regulation of Embedded Networks in NSW Residential Land Lease Communities**

- National Energy Customer Framework:
  - National Electricity Law
  - National Electricity Rules
  - National Energy Retail Law
  - National Energy Retail Rules
- AER Retail Guideline – Exemption Class R4
- AER Network Guideline – Exemption Class NR4
- Australian Consumer Law
- *NSW Fair Trading Act 1987*
- *NSW Electricity Supply Act 1995*
- *State Environmental Planning Policy (Housing) 2021*
- *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021*
- *NSW Residential (Land Lease) Communities Act 2013*
- *NSW Residential (Land Lease) Communities Regulation 2015*
- *NSW Civil and Administrative Tribunal Act 2013*

These embedded networks are required to hold a valid exemption from the AER and comply with the Conditions of their exemption class and the provisions of each Act, Regulation and planning instrument listed above. This includes a raft of obligations and consumer protections regarding the supply and sale of electricity, such as:

- Obligation to supply and continuity of supply.
- Safety of persons and property.
- Metering.
- Complying with requests of the local Distribution Network Service Provider (DNSP).

- Disclosure and information provision to customers, including access to bills or other documents in relation to utility charges.
- Requirements for written occupation agreements and site agreements containing provisions for utilities.
- Billing requirements and payment arrangements, including pay-by dates and receipts.
- Pricing controls.
- Undercharging and overcharging.
- Unpaid utility charges.
- Payment difficulties, hardship and payment plans.
- Disconnection and reconnection.
- Facilitating access to concessions and rebates.
- Facilitating choice of retailer.
- Complaint handling and dispute resolution.
- Membership of NSW Energy and Water Ombudsman (EWON).
- Planned and unplanned interruptions to supply.
- Life support customers.
- Record keeping.

From a regulatory perspective, NSW holiday parks and residential land lease communities with embedded networks are highly regulated businesses with strict requirements regarding electricity supply and on-selling. They are subject to planning requirements in Parts 8 and 9 in the *State Environmental Planning Policy (Housing) 2021* and NSW Fair Trading monitoring, compliance and enforcement powers, including obligations to cooperate with NSW Fair Trading investigators.

They are also subject to the jurisdiction of the NSW Civil and Administrative Tribunal (NCAT), which can make orders resolving disputes that arise in relation to an occupation agreement or site agreement, including utilities, and claims under the Australian Consumer Law.<sup>1</sup>

In terms of infrastructure, holiday parks and residential land lease communities are predominantly older developments that have evolved over time. The embedded networks within them were created to support this particular type of accommodation offering and there was no focus on selling energy as a key component of business revenue. This creates some limitations in these developments.

Even today, holiday parks and residential land lease communities are mostly operated as small to medium businesses where the supply of energy via an embedded network is ancillary to their core functions.

There is a mixture of embedded network structures within the sector. There are:

- a) complete embedded networks, where energy is supplied to sites through the embedded network infrastructure and the operator issues bills to customers for energy.
- b) part-embedded networks where energy is supplied to sites through the embedded network infrastructure, however the operator does not issue bills to customers. They are billed directly by a retailer.

---

<sup>1</sup> We note NSW holiday parks operating under deemed exemptions are not required to comply with as many of these obligations as residential land lease communities due to the supply/sale of electricity being to people in short term holiday accommodation. They are not required to be members of EWON, but are subject to NSW Fair Trading authority and the NCAT. The AER Retail Guideline notes deemed exemption classes are usually for small-scale selling arrangements that need little regulatory oversight.

- c) some sites that have a direct connection with the local DNSP and customers are billed by a retailer, though this is less common in legacy holiday parks and communities.
- d) some communities that have a combination of connection arrangements, where some customers are billed by the operator while others are billed by a retailer.

The number of residential customers in residential land lease communities can range widely, from as little as one to over 400. The reason for this is many communities are 'mixed parks' – i.e., those with a mixture of residents (home owners and tenants), tourists and long-term casual occupants.

For those with one or two residents, the operator is still required to register their community with the AER and comply with Conditions attached to their 'registrable' exemption under activity classes R4 and NR4 of the AER's Retail Guideline and Network Guideline (as opposed to activity classes D3 and ND3). This is required even though most customers in the embedded network are occupants of holiday accommodation on a short-term basis.

Due to size constraints, most site meters (child meters) within holiday parks and residential land lease communities are simple, accumulation meters and they do not 'communicate' with the parent smart meter (or meters) for the park/ community.

These child meters measure how much electricity has been consumed at the site, but they cannot discern when the electricity has been used. For residential land lease communities, this makes it difficult for operators to accurately calculate what a home owner should be charged where the operator is receiving electricity at the parent 'smart meter' under commercial time-of-use tariffs.<sup>2</sup>

We have received reports from some operators that home owners connected to the embedded network who have installed solar PV systems on their moveable dwellings (either with or without consent from the operator) the operation of these solar PV systems is causing the child meters in the embedded network to run backwards.

In addition, many sites in holiday parks and residential land lease communities have amperage at 60 amps and under. These levels of amperage were determined by planning and supply authority laws at the time of development. In communities established many years ago, the provision of lower amperage to sites was normal and accepted.

In 2021 the Association undertook a survey of members with embedded networks in residential land lease communities. Responses to the survey produced a sample size of 2492 residential sites. Of those,

- 168 sites (7%) have more than 60 amps
- 1225 sites (49%) have 31 – 60 amps
- 656 sites (26%) have 21 – 30 amps
- 443 sites (18%) have less than 20 amps

Extrapolating these figures across the estimate of all residential sites in NSW, the vast majority of sites do not have very low amperage (i.e., lower than 20 amps), however the majority do have less than 60 amps. The costs of supplying electricity to a site in a residential land lease community are the same whether the site is receiving 20 amps or 60 amps or more.

---

<sup>2</sup> These are practical difficulties associated with the Reckless method referred to on page 6 of this submission.

As for increasing amperage, most respondents to the survey advised that infrastructure upgrades would be needed (such as wiring/cable sizes, distribution/switch boards, transformers, etc) and costs estimates were in the hundreds of thousands of dollars.

Given these characteristics of embedded networks in holiday parks and residential land lease communities, it is important to comment on some statements made in the Consultation Paper.

The first statement is that *'there has been a rapid increase in the number of embedded networks across New South Wales.'* While this is true for some types of embedded networks, it is not the case for holiday parks and residential land lease communities.

As noted above, most holiday parks and residential land lease communities are older developments that have evolved over time. They are one segment of the original intended recipients of the embedded network exemption framework, and the supply and on-selling of energy to sites within these properties remain ancillary services. They are not the types of developments that have contributed to rapid growth in numbers of embedded networks across the State in the last 5-10 years.

The second statement is that *'there are currently few limits on their prices, and it is difficult for individual customers in embedded networks to switch retailers if they are unhappy with their supplier.'* We do not agree with this statement in relation to holiday parks and residential land lease communities.

Holiday makers, including long-term casual occupants, in holiday parks are protected by their occupation agreements under the *Holiday Parks (Long-term Casual Occupation) Act 2002* and Condition 7 of the AER Retail Guideline. That Condition places a cap on what exempt persons can charge for energy supply and usage.

It provides that an exempt person *'must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity, or estimated quantity, of energy directly to the premises of the exempt customer.'* As the Default Market Offer (DMO) limits the price that retailers can charge customers on standing offer contracts, these customers are protected in the same way as grid protected customers through the price cap created by Condition 7 of the AER Retail Guideline.

In residential land lease communities, tenants are protected by their tenancy agreements and Condition 7 of the AER Retail Guideline. Meanwhile, there are even stricter price controls under home owners' site agreements and section 77(3) of the *Residential (Land Lease) Communities Act 2013* (RLLC Act).

Section 77(3) provides that an *'operator must not charge the home owner an amount for the use of a utility that is more than the amount charged by the utility service provider or regulated offer retailer who is providing the service for the quantity of the service supplied to, or used at, the residential site.'*

The meaning of this section was clarified on 4 September 2018 by the NSW Supreme Court's determination in the case of *Silva Portfolios Pty Ltd trading as Ballina Waterfront Village & Tourist Park v Reckless [2018] NSWSC 1343 (Reckless)*. The Court's decision was that the concept of a 'regulated offer retailer' no longer existed (following deregulation of the energy market in 2014) and under section 77(3) of the RLLC Act the plaintiff was not entitled to charge the defendant any more than the plaintiff had been charged by the utility service provider for the supply or use of the electricity consumed by the defendant.

While there are some practical difficulties in calculating the tariff to apply (known as the 'Reckless method')<sup>3</sup> due to older metering infrastructure, the outcome is that these types of embedded networks are prohibited from profiting on the sale of energy and have no opportunity to recover any administrative, operational, maintenance or replacement costs of the embedded network through energy charges.

What this means is many home owners in residential land lease communities are currently paying lower energy prices (equivalent to commercial rates) compared with residential customers supplied energy by a retailer.

Page 2 of the Consultation Paper notes that the 2021 statutory review of the RLLC Act found that *'if energy prices increased to the DMO, there would be sharp increase in energy bills.'* While this is correct for communities where the operator would choose to charge up to the standing offer cap, we would like it clarified that such an increase in energy bills would essentially be a return to previous pricing policy under the *Residential Tenancies Act 1987*, *Residential Parks Act 1998*, *Residential Parks Regulation 1999* and the prescribed code *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks*.

The operation of section 77(3) of the RLLC Act as it currently applies to an embedded network in a residential land lease community is an aberration. It is not the result of considered government policy informed by careful analysis and robust public consultation. It is simply due to an error in drafting, which flies in face of government policy that operated well for the industry for 30 years prior to the current situation.

At paragraph 39 of his judgement in the *Reckless* case Justice Davies says:

*"I am firmly of the opinion that the Legislature overlooked the fact that the RLLC Act, which had been passed and assented to in 2013, was not amended to take account of the changes made by the 2014 Regulation before the RLLC Act was proclaimed to commence."*

If energy prices *'increased to the DMO'* in these communities, it would be a return to previous policy that was accepted by the regulator and the industry as appropriate and reasonable for a very long time.

It is also important to highlight that everyone in the broader community has faced sharp increases in energy prices over the last few years, not just customers in embedded networks.

In terms of the difficulty for embedded network customers to switch retailers if they are unhappy with their supplier, we note that the likelihood of home owners in residential land lease communities seeking to go 'on-market' so they can switch retailers is low, should it happen at all. This was acknowledged by the Australian Energy Market Commission (AEMC) in its final *Rule Determination - National Electricity Amendment (Embedded Networks) Rule 2015* (Rule Determination).

On page 49 of its Rule Determination the AEMC made it clear that an advantage of providing the AER with flexibility and discretion regarding the appointment of an Embedded Network

---

<sup>3</sup> To apply the Reckless method, all charges in an operator's bill are combined and then divided by the total number of kilowatt hours the operator has been charged for the whole community. This results in a single per kilowatt hour (kWh) rate. To calculate the correct charge for the home owner, the rate per kilowatt hour is multiplied by the total kilowatt hours used by the home owner. More information on the Reckless case and the Reckless method is available via NSW Fair Trading's website 'Utilities and other charges,' <https://www.fairtrading.nsw.gov.au/housing-and-property/strata-and-community-living/residential-land-lease-communities/utilities-and-other-charges>

Manager (ENM) is so *'embedded network operators operating embedded networks where the likelihood of customers seeking to go on-market is low will not be required to bear the costs unless a customer seeks to go on-market.'*

As the pricing limit imposed by the RLLC Act on these businesses make it unlikely that customers will seek retail competition, there is limited value in switching for these embedded network customers. Contracting directly with a retailer is unlikely to result in an energy cost saving.

This would also be the case for communities that would not charge up to the standing offer cap if the DMO was the pricing control. There were many communities that charged lower prices under the previous pricing model, recognising the benefits of providing value to their customers, and we expect that would continue.

Further, when considering retail competition, customers in holiday parks should be distinguished from home owners and tenants living in residential land lease communities. This is because issues do not rise in the same way, as NSW holiday parks operating under deemed exemptions are not required to comply with as many obligations as residential land lease communities.

Holiday parks are tourism businesses, so the primary relationship between an embedded network customer and an embedded network operator in a holiday park is an arrangement for holiday accommodation. It is not a tenancy. The supply of energy is incidental and on a temporary basis.

As customers in holiday parks make use of the embedded network only occasionally and for holiday purposes, regulators have identified that these arrangements need little regulatory oversight. Operators still have obligations in relation to supply, pricing, information disclosure, billing, receipts, dealing with complaints and resolving disputes, but issues like retail competition and retailer of last resort provisions are not of concern in holiday parks.

It is therefore important to keep in mind that there are distinctions between different types of embedded networks. There is a lot of negativity surrounding embedded networks and sweeping statements are made about their disadvantages.

However, in many contexts they can be useful, practical developments that provide benefits to customers. It is positive to see this acknowledged on page 2 of the Consultation Paper and we trust that IPART will take a balanced, fair and pragmatic approach during this review.

## **RIGHT LEVEL OF PROTECTION**

### ***Consultation Question***

***1. Are these the right criteria to use for assessing the different pricing options? Are there any criteria we have missed?***

We note that IPART considers a methodology for setting maximum prices for embedded network customers, where practical, should:

1. Ensure there is no interruption to energy supply.
2. Ensure that an efficient embedded network provider is able to recover its efficient costs of supply.
3. Respond to changes in the costs of supplying customers.

4. Incentivise customers and embedded network operators to supply and use energy efficiently.
5. Be simple for customers to understand and easy to apply.
6. Allow for cost-reflective pricing.
7. Be enforceable.

We agree with criteria 3, 5 and 7 however we have the following concerns and questions in relation to criteria 1, 2, 4 and 6:

### **1 – Ensure there is no interruption to energy supply**

Rather than ensuring there is '*no interruption to energy supply*,' this criterion should instead be expressed as '*ensuring the continuity of supply*' to the extent that it is within an embedded network operator's control. For holiday parks and residential land lease communities, this would be more consistent with other applicable legislation.

### **2 – Ensure that an efficient embedded network provider is able to recover its efficient costs of supply**

This criterion is appropriate, as customers should be required to pay a share of the cost of the embedded network operator's investment in the infrastructure and the resources it takes to provide them with energy. A supply charge supports required services such as maintenance, repairs and general administrative responsibilities, which must be undertaken by an operator regardless of how frequently or infrequently customers use energy.

This was the purpose of a Service Availability Charge in residential land lease communities, which operators can no longer charge due to the *Reckless* case. As a result, operators are now having to supply energy to home owners without the ability to recover their costs through energy charges. This needs to be rectified and we have been lobbying the NSW Government for change for several years.

In addition to this, the methodology for setting maximum prices for embedded network customers should also allow a reasonable profit for an embedded network operator.

We acknowledge that energy is an essential service and residential land lease communities are in the business of providing an important form of housing, but they are also businesses just like holiday parks and other types of embedded networks (retirement villages, shopping centres, airports, etc).

Allowing residential land lease communities to profit from all their services is crucial. Profitability impacts on whether an operator can obtain financing, fund its operations and improve its business. Communities cannot remain in business, and thus continue to support housing, if they cannot turn a profit.

### **4 – Incentivise customers and embedded network operators to supply and use energy efficiently**

This criterion is appropriate as everybody has an important responsibility to supply and use energy efficiently. However, we seek clarification on whether this criterion will also allow for upgrades and investment in consumer energy resources (CER) (e.g., solar PV systems, batteries, electric vehicles, etc).

If yes, then in addition to any costs of facilitation, consideration will also need to be given to any technical or operational challenges or regulatory gaps faced by embedded networks (see submissions in response to consultation question 8).



## 6 – Allow for cost-reflective pricing

Our view is criterion 6 is unnecessary if criterion 2 is adopted. In addition, criterion 6 is complex and could be difficult for some embedded networks to implement.

The move to cost-reflecting pricing in the energy market is proving to be unappealing for many customers and challenging for DNSPs to implement – and these are big businesses, with in-house expertise and a sole focus on utility supply.

Enabling infrastructure, real time data and information are just some of the fundamental things needed to implement cost-reflective pricing. Not all embedded networks will have the capability or expertise for this, and it would be unfair and costly to impose such an obligation on them.

There is also the issue that all cross-subsidies can be difficult to identify and remove entirely, and this would likely be even more challenging in some embedded networks, such as mixed parks.

Lastly, by its nature, cost-reflective pricing is not really 'simple to understand and easy to apply,' which is contrary to criterion 5. For embedded networks, particularly residential land lease communities, the overarching aim of pricing policy should be to try and reduce complexities, not increase them.

## SETTING MAXIMUM PRICES

### *Consultation Questions*

**2. How should maximum prices be set?**

**3. Is the Commonwealth Government's Default Market Offer the appropriate maximum price for electricity embedded networks? If so, why?**

For consistency with other types of embedded networks, including holiday parks, and grid connected customers maximum prices for energy in residential land lease communities should be set as per Condition 7 of the AER Retail Guideline.

This change would alleviate all the confusion surrounding electricity charges in communities that have been brought about by section 77(3) of the RLLC Act and the *Reckless* case. It would remove legislative duplication and result in a charging framework that is fairer for all parties, more accurate and more akin to government policy that operated well for the industry for many years.

The National Energy Customer Framework provides that customers should receive the same level of consumer protections, regardless of where they live. However, home owners in NSW residential land lease communities are currently at an advantage in relation to pricing protections compared to other customers of exempt sellers and authorised retailers.<sup>4</sup>

Electricity is an essential service, but this does not absolve a person from paying their fair share for this resource. Like other embedded electricity network operators, retailers and

---

<sup>4</sup> We acknowledge embedded network customers supplied energy by authorised retailers have limited price protections due to a current legislative loophole, but this is in the process of being reviewed by the Commonwealth Government as outlined in this submission.

DNSPs, residential land lease community operators should be allowed to charge home owners fair and reasonable prices for electricity usage and service availability.

As outline above, to ensure fair and reasonable pricing in embedded networks Condition 7 of the AER Retail Guideline already places a cap on what exempt persons can charge for supply and usage. It provides that an exempt person *'must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity, or estimated quantity, of energy directly to the premises of the exempt customer.'*

In turn, the DMO limits the price that retailers can charge electricity customers on standing offer contracts, while still allowing retailers to offer more competitively-priced market offers.

Therefore, although the DMO does not directly apply to embedded networks, embedded network customers serviced by exempt sellers are indirectly protected through the price cap created by Condition 7 of the AER Retail Guideline. This provides consistency in the energy market.

We also note above that prior to the *Reckless* case there were communities that did not charge home owners up to the maximum cap of the local retailer's standing offer, and we anticipate this will continue. Operators understand the benefits of offering value in community living to their customers.

The Consultation Paper notes that consumer groups, such as the Public Interest Advocacy Centre and EWON, consider that the maximum price methodology *'should recognise embedded network customers' inability to access retail competition.'* We believe the use of the word 'inability' is inaccurate.

Embedded network customers in NSW do have the ability to access retail competition – the AER's guidelines require embedded network operators to provide information to facilitate this right and prohibits them from interfering with it. What embedded network customers face is a 'difficulty' accessing retail competition due to infrastructure limitations, costs and/or retailers' reluctance to offer 'energy-only' contracts.

Taking into account the considerations set out in the Consultation Paper, on page 3 IPART states its preliminary view is that *'a methodology to set maximum prices should result in maximum prices for embedded network services that are comparable to prices paid by relatively engaged on-market customers. This would be lower than the DMO.'*

However, there have been changes in the DMO and market offer prices over recent years due to volatility in wholesale energy markets, which have led to higher prices for households and businesses.

On 26 May 2022 the AER released its final determination on the DMO prices for 2022–23. DMO prices increased for households (between 1.7% and 8.2% above inflation) and small businesses (0.2% and 13.5% above inflation), accounting for significant rises in wholesale electricity costs over the past year.<sup>5</sup>

These rises persisted and in its August 2022 *Statement on Monetary Policy*, the Reserve Bank of Australia (RBA) identified that *'market offers have previously been priced at a significant discount to default offers; however, at least some of this discount has been eroded recently,*

---

<sup>5</sup> AER, *Default market offer prices 2022–23 Final determination, May 2022*, accessed 4 September 2023, <https://www.aer.gov.au/system/files/AER%20-%20Default%20Market%20Offer-%20Price%20determination%202022-23%20-%20Final%20Determination%20-%2026%20May%202022.pdf>

with price increases for market offers in the east coast states and South Australia generally being larger than the increase in default offer prices.<sup>6</sup>

IPART then identified in its *Monitoring NSW energy retail markets 2021-22 Final Report* that ‘recent offer prices in July and August 2022 show the difference between median market and median standing offers has dropped dramatically... These are now closer together in price than at any other time since IPART began its market monitoring role. Our review of offers in the market shows that the median market discount off the residential standing offer has dropped from around 15% in May to less than 2% in August.’<sup>7</sup>

IPART also identified ‘in some cases, individual market offers are higher than the standing offer’<sup>8</sup> and ‘analysis of offers in August finds that few embedded network offers are above the market offer median.’<sup>9</sup>

On 26 May 2023 the AER released its final determination on the DMO prices for 2023–24. From 1 July 2023 residential customers in NSW without controlled load were forecast to see price increases of 20.8% to 21.4% (14.6% to 15.1% increases above forecast inflation, respectively), depending on their network distribution region. Customers with controlled load were forecast to see price increases of 19.6% to 24.9% (13.3% to 18.7% increases above forecast inflation, respectively). Small business customers faced increases of 14.7% to 28.9% (8.4% to 22.6% above forecast inflation, respectively) depending on their region.<sup>10</sup>

Considering these changes, the expectations of ongoing higher prices, and the fact there is no regulated price cap that determines the maximum retailers can charge customers on a market offer, we question the value of implementing a separate electricity pricing policy, as opposed to applying the pricing cap already provided by Condition 7 of the AER Retail Guideline.

In market conditions like these, there seems to be limited benefit in taking such an approach. We would like IPART to consider this and undertake a thorough cost-benefit analysis as part of this review.

In our view, Condition 7 of the AER Retail Guideline would provide greater consistency and accuracy in electricity pricing policy and it would also make it easier for embedded network customers to compare the competitiveness of different electricity plans should they seek to go ‘on-market.’

When setting the DMO the AER takes into account changes in wholesale, environmental, network and retail operating costs. While standing offers already lag market conditions, an IPART determination of ‘maximum prices for embedded network services that are comparable to prices paid by relatively engaged on-market customers’, which we assume will be based on a historical view, would likely exacerbate that lag.

We note that in August 2021, when the NSW Department of Customer Service was consulting with stakeholders on electricity charging provisions in the RLLC Act, we agreed to the proposal of setting the maximum amount that a home owner may be charged for electricity supplied

---

<sup>6</sup> RBA, *Statement on Monetary Policy – August 2022, Box A: Recent Developments in Energy Prices*, accessed 4 September 2023 <https://www.rba.gov.au/publications/smp/2022/aug/box-a-recent-developments-in-energy-prices.html>.

<sup>7</sup> IPART, *Monitoring NSW energy retail markets 2021-22 Final Report*, November 2022, p iv.

<sup>8</sup> *Op.cit.*, p 68.

<sup>9</sup> *Op.cit.*, p 111.

<sup>10</sup> AER, *Default market offer prices 2023–24 Final determination, May 2023*, accessed 28 June 2023, <https://www.aer.gov.au/system/files/Default%20market%20offer%20prices%202023-24%20final%20determination.pdf>

through an embedded network as the median market price, with a separate charges method, based on historical figures advised to the NSW Government by IPART.

However, this was done in the interest of reaching a compromise that would satisfy all stakeholders. We had been advocating for the NSW Government to amend section 77(3) of the RLLC Act for several years and, at the time, this was seen as an option that could provide the industry with an alternative, interim solution so that communities could have a speedier resolution to this ongoing issue.

We made it very clear that our support for setting the maximum amount that a resident may be charged for electricity supplied through an embedded network at the median market price that is charged to retail customers was as an interim alternative to Option 3 set out in the *Statutory Review of the Residential (Land Lease) Communities Act 2013 Discussion Paper*<sup>11</sup> (Statutory Review Discussion Paper). That Option 3 was removing provisions that govern what can be charged for electricity from the RLLC Act and leaving national energy regulation to apply.

Government delays were continuing, and the industry needed to move forward from the confusion and conflict created by the *Reckless* case. Despite the changes in the market, the industry position remains that Option 3, as set out in the Statutory Review Discussion Paper, is the simplest and better policy option.

There are also several other issues we believe IPART should consider in this review:

### **Price Disparities in Residential Land Lease Communities**

The different pricing protections under Condition 7 of the AER Retail Guideline and section 77(3) of the RLLC Act are creating disparities between residents (home owners and tenants) living in residential land lease communities. In some cases, this is exacerbated by the mixture of embedded network structures within the sector.

For example, in communities where the operator bills some customers for electricity under the *Reckless* method, while others are billed directly by a retailer,<sup>12</sup> home owners in the latter category ask why they are paying higher usage rates and service charges. This creates confusion and unnecessary discord in communities, which could be avoided if Condition 7 of the AER Retail Guideline was applied consistently.

### **Residential Land Lease Communities Offer Other Benefits**

Residential land lease communities offer secure, community-based housing that is generally more affordable than traditional house and land options. Instead of buying the land, home owners pay a weekly or fortnightly site fee. They don't pay stamp duty or council rates, and pensioners may be eligible for Commonwealth Rent Assistance.

Communities can be developed quickly, and they can provide excellent facilities and amenities, including swimming pools, tennis courts, bowling greens, libraries, onsite gyms, BBQs, communal gardens and more.

Home owners have security of tenure under the RLLC Act and manufactured homes are comparable in design, quality and durability to site-built homes.

---

<sup>11</sup> NSW Department of Customer Service, *Residential (Land Lease) Communities Act 2012 Statutory Review*, November 2021, accessed 4 September 2023, <https://www.parliament.nsw.gov.au/tp/files/81194/DCS%20-%20Statutory%20Review%20Residential%20Land%20Lease%20Communities%20Act%202013.pdf>

<sup>12</sup> Residential land lease communities that have a combination of connection arrangements referred to on page 4 of this submission.

While retail competition can be difficult for some home owners to access, we believe these broader housing benefits should also be considered when setting maximum energy prices.

### **Increasing network charges for embedded networks**

Aside from increasing operational costs that are already being incurred by operators, embedded networks using more than 160MWh in Ausgrid's and Endeavour Energy's distribution networks are facing potential significant increases in network charges. The Consultation Paper identifies this on page 2.

On 31 January 2023 Ausgrid, Endeavour Energy and Essential Energy submitted their 2024-29 Regulatory Proposals to the AER. The proposals set out the revenue each DNSP proposes to collect from its consumers through distribution network charges over the 2024–29 regulatory control period.

The AER has published Issues Papers highlighting some of the key elements of the proposals. They include Ausgrid's and Endeavour Energy's proposals to introduce embedded network tariffs – an average 30% increase in network charges for embedded networks in Ausgrid's network over 5 years and an average 12% increase in network charges for embedded networks in Endeavour Energy's network over 2 years.

In addition to the feedback we provided to the DNSPs late last year, we lodged submissions with the AER on 11 May 2023 noting our concerns about these cost impacts and the modelling used.

### **Extending the DMO to customers of authorised retailers in embedded networks**

Stakeholder concerns about authorised third-party retailers servicing embedded networks not being subject to the price controls of the DMO or the AER's Retail Guideline are now being addressed through separate review processes.

Apart from this review, the Australian Government, through the Department of Climate Change, Energy, the Environment and Water (DCCEEW), is consulting on the proposed implementation approaches from the 2022 Review of the Competition and *Consumer (Industry Code – Electricity Retail) Regulations 2019*, which introduced the DMO and the Reference Price.

The consultation includes how to extend price cap protection provided by the DMO to customers in embedded networks, as the Government proposes extending pricing protections by ensuring prices offered by retailers to customers in embedded networks do not exceed the local standing offer.<sup>13</sup>

### **New hardship protections for embedded network customers**

In July 2022 the AER's new Retail Guideline included copies of newly established documents for embedded networks:

- AER Factsheet: How to access an authorised a retailer of your choice if you live in an embedded network.

---

<sup>13</sup> DCCEEW, *Default Market Offer Post-review consultation*, 2023, accessed 28 June 2023, [https://storage.googleapis.com/files-au-climate/climate-au/p/prj25a21b4b6c55497cd333f/public\\_assets/Implementation%20of%20the%202022%20review%20outcomes%20of%20the%20Competition%20and%20Consumer%20\(Industry%20Code%20E2%80%93%20Electricity%20Retail\)%20Regulations%202019.pdf](https://storage.googleapis.com/files-au-climate/climate-au/p/prj25a21b4b6c55497cd333f/public_assets/Implementation%20of%20the%202022%20review%20outcomes%20of%20the%20Competition%20and%20Consumer%20(Industry%20Code%20E2%80%93%20Electricity%20Retail)%20Regulations%202019.pdf)

- Exempt Seller Hardship Policy template.

Like other embedded networks, holiday parks and residential land lease communities that on-sell electricity to occupants of holiday accommodation on a short-term basis and/or residents through an embedded network must comply with the new Retail Guideline and relevant Conditions within it.

This now includes providing residents with the AER Factsheet in compliance with revised Condition 2 and providing hardship support to residents experiencing payment difficulties due to hardship using the Exempt Seller Hardship Policy template in compliance with new Condition 26. This is providing additional assistance to home owners that may experience difficulties paying their electricity bills.

Importantly, disconnection is one area where they enjoy a higher level of protection than even grid connected customers. Section 78 of the RLLC Act provides that a home owner's electricity supply cannot be disconnected without an order from the NCAT.

Community operators are also prohibited from applying site fee payments to unpaid utility charges and the NCAT has jurisdiction to make binding orders regarding payment plans for utility arrears, making operator determined disconnection unavailable.

In our experience, the NCAT always seeks to preserve a site agreement, and this extends to utility supply.

### **Accelerating transformation of the energy sector**

The transformation of the energy sector to renewable energy sources is accelerating. This will come at a cost and, like all energy users, operators and home owners in residential land lease communities need flexibility to invest and keep up.

Electricity pricing protections should not limit innovations in energy services and products and the ability for communities to leverage value from CER.

#### ***Consultation Questions***

***4. How should different metering arrangements be taken into account? For example, how should prices be set where services are unmetered, or where water is metered rather than energy?***

***5. Should prices be set differently for different types of customers, and different types of embedded networks? For example, residential customers, land lease communities, small businesses.***

We do not believe that prices should be set differently for different types of customers or different types of embedded networks.

Consistency in pricing is important. So, for consistency with other embedded networks, including holiday parks, and grid connected customers maximum prices for energy in residential land lease communities should be set as per Condition 7 of the AER's Retail Guideline.

We reiterate that this would alleviate all the confusion surrounding electricity charges in communities that have been brought about by section 77(3) of the RLLC Act and the *Reckless* case. It would remove legislative duplication and result in a charging framework that is fairer

for all parties, more accurate and more akin to government policy that operated well for the industry for 30 years.

In relation to different metering arrangements, in holiday parks and residential land lease communities there is no need for price setting where the cost of energy supply and use is unmetered and included in accommodation tariffs or site fees.

If operators wish to charge for energy separately to site fees, then sites must be separately metered and existing price controls apply. To our knowledge there are no hot or chilled water embedded networks in holiday parks or residential land lease communities.

### ***Consultation Questions***

#### ***8. How can the maximum prices provide incentives for low emissions energy generation?***

Embedded networks can help facilitate arrangements for low emissions energy generation that may not otherwise be available to consumers.

Maximum prices could provide incentives for this by allowing for flexible pricing (along side price caps) that support integrating CER investments like PV solar systems and battery storage, virtual power plants and other energy sharing initiatives. Pricing could help with managing customer demand and generation, as well as provide for incentives like feed-in tariffs.

However, arrangements for embedded networks would need to be voluntary, particularly for holiday parks and residential land lease communities. For example, where they have the capability to offer feed-in tariffs, embedded network operators should be able to choose (like retailers do) whether or not to offer feed-in tariffs and determine the level of feed-in tariff they will offer.

We have raised the issue of CER in residential land lease communities several times with the AEMC, the AER, NSW Department of Customer Service and NSW Department of Planning and Environment. We know that if home owners' CER could be integrated into residential land lease communities without placing all the risk and costs onto the business, most operators would support it.

Ideally, community operators and home owners would be enabled under an appropriate framework to work together to realise the benefits of investment in CER, including minimising the business and household power bills, supporting the external power system and contributing to reducing emissions.

However, there are several issues that would need to be resolved for this to happen, because embedded networks within holiday parks and residential land lease communities present more complex connection point arrangements. They vary widely in terms of size, customer mix, age of development and differing levels of supporting infrastructure. There are also gaps and barriers in the current rules and regulations.

Regarding integration of CER the main problems or issues that concern our members are:

- Knowing what CER has been installed, when and by whom (consent).
- Knowing how that CER is operating at any one time (visibility, data, communication).

- Practical issues associated with accommodating CER such as size and location of fusing, metering and other equipment.
- Infrastructure costs of accommodating CER such as upgrades to wiring, meters, etc, and how to recover these costs.
- Managing the two-way flow of electricity.
- Impacts on the embedded network (e.g., voltage, safety, security).
- What to do if CER damages the embedded network and who pays for repairs.
- Grey areas or confusion about the rules, regulations and Australian Standards that apply.
- Operator and consumer rights and responsibilities.
- Having the capacity to effectively manage CER, on-sell electricity and/or operate the network (e.g., enough skilled and knowledgeable staff, time, resources like IT systems and operational processes, etc).
- The time and effort involved with managing CER and/or electricity supply/on-selling taking away from their core business.

An appropriate framework is needed to address these issues and concerns - preferably one that does not exacerbate the confusing web of rules and regulations that currently apply.

Operators and home owners should be supported to work together to integrate CER for mutual benefit. The integration of CER should not be mandated at this time, but rather **facilitated** where the benefits outweigh the costs and it should be up to each holiday park and residential land lease community to decide this, based on their individual circumstances.

As part of this, operators should at a minimum have rights to protect their network assets and be able to recoup the costs of on-selling electricity and/or operating the network more generally.

This issue of cost recovery is important to the facilitation of solar PV systems and other CER in residential land lease communities because currently the RLLC Act does not consider CER arrangements. It does not allow for separate service availability charges, and there is a limitation on the fees and charges that may be required or received by the operator of a community from a home owner in connection with the occupation of a residential site, or the use of any of the facilities of a community (see section 76).

Overall, the regulatory framework for embedded networks should incentivise and support operators that want to encourage and integrate CER. As part of this, and in order to comply with their own responsibilities, where home owners are installing (or want to install) new energy technologies like solar PV and other CER, operators must be involved and be able to have a say over what energy technologies are being installed and how on individual sites.

Essentially, there needs to be shared responsibility between customers, operators and suppliers of CER under energy laws. The RLLC Act, which is tenancy law, needs to be less obstructive, particularly in relation to fees and charges (including electricity usage and supply charges).<sup>14</sup>

Most importantly, operators should not be left out of pocket. If costly infrastructure upgrades are going to be required to accommodate CER then customers (whether they be home owners, tenants or long-term casual occupants) should be required to contribute to these costs. Sufficient financial support from governments, such as grants, tax incentives or loan schemes should also be made available.

---

<sup>14</sup> We note the NSW Department of Customer Service is currently reviewing the RLLC Act. These issues have been raised with the Department.



### **Consultation Question**

#### **9. How should the maximum prices be enforced?**

As we support maximum prices being set in accordance with Condition 7 of the AER's Retail Guideline, they should be enforced through existing mechanisms.

The AER has powers for monitoring, investigating and enforcing compliance with national energy laws. In addition, for holiday parks and residential land lease communities, authority to intervene and resolve disputes, including disputes about prices, is also given to NSW Fair Trading and the NCAT.

Residential land lease communities are also required to be members of EWON and comply with the requirements of that scheme.

### **INFORMATION FROM EMBEDDED NETWORK OPERATORS**

In relation to the information IPART is seeking from embedded network operators, exempt sellers and authorised retailers about their operations, we have undertaken a survey of our members.

Although the survey produced only a small sample size (13 complete responses), the data provides the following insights:

### **Consultation Question**

#### **11. How many customers do you have by site and by embedded network type?**

The survey responses indicate:

- 14 embedded networks on-selling electricity to 92 holiday makers and 972 residents.
- 4 embedded networks on-selling natural gas to 491 residents.
- Most are mixed parks.

### **Consultation Question**

#### **12. What are your prices?**

Operators are charging holiday makers in accordance with Condition 7 of the AER's Retail Guideline and charging home owners in accordance with the *Reckless* method under section 77(3) of the RLLC Act.

Prices vary under the *Reckless* method as operators apply the calculation using their energy bill, which fluctuates. For electricity, prices for usage range from 21c to 45c per kWh. For gas, one respondent noted 3.122 cents per MJ.

### **Consultation Question**

**13. Do you generate, extract or store energy on site? If so, please provide details.**

The survey responses indicate 7 communities have solar panels that offset electricity use, but there is no battery storage on site.

### **Consultation Question**

**14. What are your costs, and how do you recover these?**

The type of costs incurred are:

- Maintenance, repairs and upgrades of physical infrastructure.
- Compliance and administrative processes such as dealing with customer enquiries, billing (reading meters, undertaking calculations under the AER Guidelines and according to the *Reckless* method, invoicing, collecting and processing payments), comply with notification, disclosure & information requirements, connection services & obligations, data management, record keeping, etc.
- Staff wages and engagement of contractors (electricians, gas fitters, etc).
- Staff training.
- Software costs.
- Sundries.
- EWON membership fees and dealing with any complaints that go to EWON.

Due to section 77(3) of the RLLC Act and the *Reckless* case, residential land lease communities are not able to recover all of their costs because they are now prohibited from charging a separate service availability charge to home owners. Some communities rely on cost recovery via site fees and site fee increases, but this is not an ideal outcome for communities nor home owners.

Only one respondent provided a dollar figure for their circumstances. In on-selling electricity via one embedded network to 67 residents, they estimate \$15,000 in costs that are not recovered.

### **Consultation Question**

**16. How are the short and long term interests of consumers considered when designing an embedded network?**

This is a difficult question to answer in relation to holiday parks and residential land lease communities. Respondents to our survey note that as most embedded networks were built many years ago the current owners/operators had no input to such considerations.

However, some did comment on consideration of consumer interests during upgrades that are carried out to ensure embedded networks comply with Australian Standards, are safe and/or to save energy.

## CONCLUSION

Thank you for considering our feedback. As the peak industry body representing holiday parks and residential land lease communities in NSW with embedded networks, CCIA NSW is an important stakeholder in relation to IPART's review of The Future of Embedded Networks in NSW.

Should you wish to discuss the issues raised in this submission please contact [REDACTED],  
[REDACTED]  
[REDACTED]

We look forward to our continued involvement in the consultation process.

Yours sincerely

[REDACTED]  
[REDACTED]  
[REDACTED]