

Our reference: 21/215-3

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via email

Dear Mr Williams MP

Submission to the NSW Parliamentary Inquiry into Embedded Networks in NSW

Thank you for the opportunity to contribute to this Inquiry. The Tribunal has asked me to provide this submission.

Each year, IPART monitors and reports on the performance and competitiveness of the NSW retail energy market. The Tribunal has set out below some observations it made about embedded networks in its [Monitoring the NSW electricity retail market 2020-21 Final Report](#) (Chapter 9) that may be relevant to the Inquiry. These relate to:

- electricity prices for consumers in embedded networks
- consumer protections for hot water and chilled water embedded networks
- protections for embedded networks from being locked into long-term supply agreements
- electricity prices for consumers in land lease communities.

Electricity prices for consumers in embedded networks

In our 2020-21 review we investigated electricity prices for embedded networks where services are provided by authorised retailers to help us understand the prices that were being offered to consumers. We found that there are a range of offers available. Also, during the review, retailers advised that they considered the embedded network market to be competitive and that Body Corporates/Owners Corporations can negotiate better deals or switch providers.

We consider that further work could be done to understand whether there are any barriers to Body Corporates/Owners Corporations negotiating the best electricity deal for their embedded network. We highlight below our observations from last year's review.

An owner of an embedded network may choose to on-sell electricity to consumers in the embedded network, in which case the Australian Energy Regulator will require the owner to comply with the Australian Energy Regulator's Retail Exempt Selling Guideline.

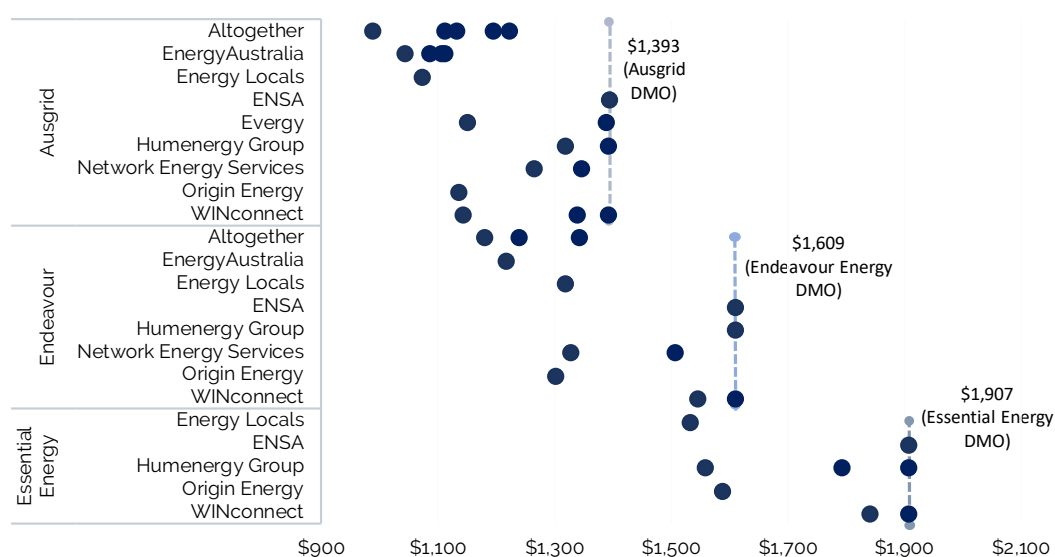
Under the Retail Exempt Selling Guideline, the maximum electricity price that owners may charge consumers is limited to the local area retailer's standing offer (a default offer for consumers that do not choose a market offer).¹ In these situations, consumers are indirectly protected by the Default Market Offer (DMO) as the standing offer that a local area retailer would charge is equal to the DMO.¹

However, if the owner of an embedded network chooses to outsource its energy services to an authorised retailer then consumers are not protected by the DMO. This is because consumers in embedded networks do not fall under the definition of 'small customers' to which the DMO applies.² In these situations, consumers face unregulated electricity prices. This also means that in the current energy market environment, where electricity prices are rising, these consumers are not protected by the DMO.

As part of last year's review, we investigated prices for embedded networks where services are provided by authorised retailers to help us understand whether they are likely to be exceeding the DMO. As there is no requirement for retailers to report their prices for embedded networks, we used the offers available on EnergyMadeEasy and also requested prices from retailers on a voluntary basis.³

From the information available, we did not observe any embedded network offers that were above the relevant DMO (at the DMO consumption level⁴) (Figure 1 and Figure 2). Most offers were below the DMO. However, these offers do not represent the full range of prices actually paid by consumers in embedded networks and reflects the market in 2020-21.

Figure 1 Embedded network (single rate) offers – Residential (August 2021)



Note: Some of the offers available are specific to a particular embedded network, whereas others are standing offers available to any embedded network within the distribution area. We used the DMO consumption levels to calculate bills.
Source: EnergyMadeEasy, information supplied by retailers and IPART analysis.

¹ The DMO came into effect on 1 July 2019. It is the maximum price that retailers can charge electricity customers on default contracts known as standing offers. The AER's role is to determine the DMO price each year.

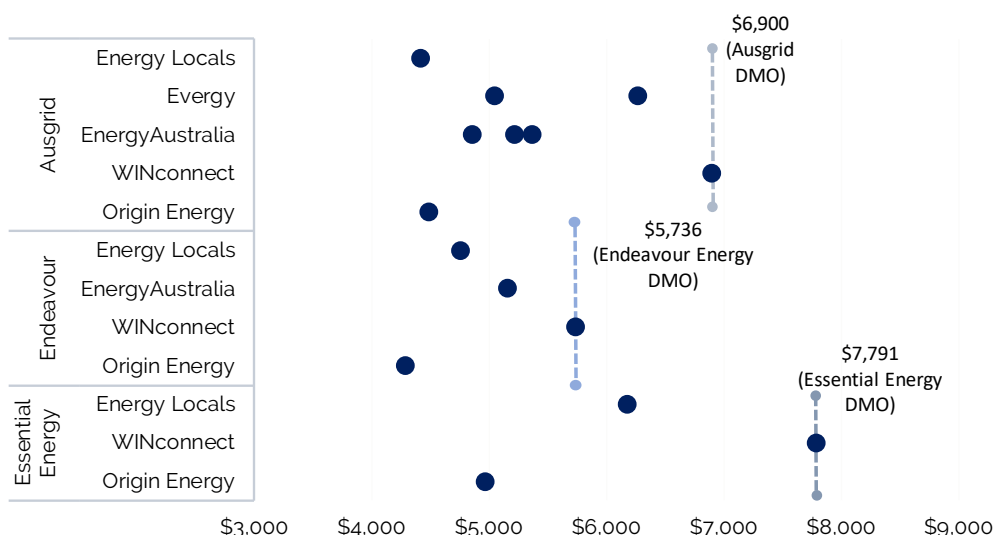
² Under the [Competition and Consumer \(Industry Code – Electricity Retail\) Regulations](#) s. 6(2), the DMO applies to 'small customers' which are residential customers, residential customers with a controlled load and small business customers. However, Regulation s. 6(3)(c) states that a consumer is not a 'small customer' if the supply is by means of an embedded network.

³ Altogether, WINconnect, Energy Locals, Humenergy Group, EnergyAustralia and Evergy's offers were available on EnergyMadeEasy (as parked offers). Origin Energy, Network Energy Services and ENSA provided their prices voluntarily.

⁴ The DMO is calculated using consumption levels of 3,900 kWh per year for Ausgrid's distribution area, 4,900 kWh per year for Endeavour's distribution area, and 4,600 kWh per year for Essential Energy's distribution area.

Figure 1 and Figure 2 also show that offers vary considerably with some retailers only listing rates that are equal to the DMO. However, they may charge lower rates that are not publicly available as they offer to match competitors' rates. During our review, retailers advised that they considered the embedded network market at that time to be competitive and that Body Corporates/Owners Corporations can negotiate better deals or switch providers.

Figure 2 Embedded network offers (single rate) – Small business (August 2021)



Note: Some of the offers available are specific to a particular embedded network, whereas others are standing offers available to any embedded network within the distribution area. We used the DMO consumption levels to calculate bills.

Source: EnergyMadeEasy, information supplied by retailers and IPART analysis.

It is currently difficult for consumers in embedded networks to individually access retail market offers and switch retailers. This is because they are not included in the Australian Energy Market Operator's retail market systems, and so competing retailers are unable to quote, transfer and bill consumers using standard market processes.⁸ In 2017, the Australian Energy Market Commission conducted a review into the regulatory framework for embedded networks and made recommendations to make it easier for consumers in embedded networks to access retail competition (Box 1).

Box 1 The AEMC has recommended changes to make it easier for consumers in embedded networks to access retail competition

In 2017, the Australian Energy Market Commission completed a review of the regulatory frameworks for embedded networks following substantial growth in the number of embedded networks. Its recommendations included:

- improving individual consumer access to retail market competition in embedded networks by capturing all embedded network customers in Australian Energy Market Operator's market systems and by standardising network billing arrangements between embedded networks and National Electricity Market retailers

Box 1 The AEMC has recommended changes to make it easier for consumers in embedded networks to access retail competition

- elevating embedded networks to the national energy framework to ensure that consumers receive the same level of consumer protections as customers that interact directly with their retailer.^a

In 2019, the Australian Energy Market Commission recommended specific legislative changes to implement the advice it provided in its 2017 review. Its proposed legislative changes are currently with the COAG Energy Council.

a. The National Electricity Retail Law (NERL) and National Energy Retail Regulations (NERR) that apply to retail customers do not apply to consumers in embedded networks. This is because the tripartite relationship between retailer, customer and local network service provider does not translate in the context of embedded networks, as there is no local network service provider at the child connection point for the consumer in the embedded network (instead there is the embedded network service provider). For example, the AER has less ability to monitor and enforce requirements such as proper notice for planned interruptions by embedded network service providers. AEMC, [Review of regulatory arrangements on embedded networks – final report](#), November 2017, pp 144-145.

Source: AEMC, [Updating the regulatory frameworks for embedded networks – Final report](#), June 2019, p v-vi

Consumer protections for hot water and chilled water embedded networks

During our 2020-21 review, the Public Interest Advocacy Centre raised concern about the protections available to consumers in embedded networks for the provision of hot and chilled water.ⁱⁱⁱ In our report we highlighted that the Australian Energy Regulator was considering this issue in its review of the Retail Exempt Selling Guideline – provided below for the Inquiry's information.

Consumers in hot water embedded networks receive hot water from a common hot water system. They can be charged for their hot water in litres rather than in units of electricity (kWh) or gas (MJ). When they are charged in litres, consumers do not have access to any of the consumer protections under the Australian Energy Regulator's Retail Exempt Selling Guideline or the National Energy Customer Framework for their hot water service.^{iv} This is because when the product is sold in units other than in cents per kWh or MJ, the Australian Energy Regulator considers that an energy service is not being provided (similar to a hotel tariff or rent that includes energy costs).^v

During our 2020-21 review, the Public Interest Advocacy Centre submitted that consumers in embedded networks should be provided the same protections as those available to customers outside of embedded networks for their hot water service.^{vi} The Public Interest Advocacy Centre also submitted that consumers in embedded networks that receive chilled water, for example for air conditioning use, similarly receive limited consumer protections.^{vii}

The Australian Energy Regulator is considering the regulation of the sale of hot and chilled water in its current review of the Retail Exempt Selling Guideline. The Australian Energy Regulator recently released its Draft Decision where it proposed no changes to the current arrangements. This is because the Australian Energy Regulator considered that the sale of bulk chilled or hot water is unlikely to constitute the sale of energy for the purposes of the Retail Law.^{viii}

Protections for embedded networks from being locked into long-term supply agreements

In our 2020-21 review, we commented that the NSW Government was reviewing protections for embedded networks from being locked into long-term supply agreements. We provide our discussion below for the Inquiry's information.

In 2018, new provisions (section 132A) were included in the *Strata Schemes Management Act 2015* (NSW) to protect strata schemes from being locked into unfair long-term utility supply contracts. These provisions limited the term length of contracts (for example, 3 years for new contracts) and required the contracts to be considered at annual general meetings.^x

However, embedded networks were exempted from the new provisions. At the time, the Australian Energy Market Commission was undertaking a review of the regulation of embedded networks (Box 1). The NSW Government indicated that it did not want to pre-empt the findings of the Australian Energy Market Commission's review and impose controls that were contrary to the Australian Energy Market Commission's recommendations.^x

In November 2021, the NSW Government completed its statutory review of the Strata Schemes Management Act.^{xi} The NSW Government recommended that section 132A be extended to contracts for the supply of electricity through an embedded network.^{xii}

Electricity prices for occupants in land lease communities

In our 2020-21 review, we also commented that the NSW Government was reviewing electricity prices for land lease communities. We provide our discussion below for the Inquiry's information.

Land lease communities are embedded networks where consumers own or rent the home they live in but lease the land from a community operator (for example, caravan and residential parks).

In NSW, the *Residential (Land Lease) Communities Act 2013* (NSW) limits the amount that land lease community operators may charge consumers for electricity. Operators cannot charge consumers more than the amount the operator has been charged for electricity used by the consumer. This means that operators cannot levy an additional charge to recover costs associated with maintaining the embedded network, billing, meter reading and EWON membership fees.^{xiii}

In November 2021, the NSW Government completed its statutory review of the Residential (Land Lease) Communities Act.^{xiv} One of the options considered was setting the maximum amount that a consumer could be charged at the median retail market price, comprised of separate usage and supply charges that are contained in the median market offer for each distribution area, as identified by IPART. However, this approach would likely result in price increases for consumers.

The NSW Government recommended that further work be done on the potential price impacts of the introduction of a maximum price cap based on the median market price. This should include consideration of whether there is a need for any mitigation strategies, and any additional mechanisms to promote competition and transparency of electricity prices.^{xv}

The Tribunal supports the Inquiry's investigation into embedded networks in NSW to improve consumer protections.

IPART's contact officer for this submission is Chris Ihm, Principal Analyst, contactable on [REDACTED]

Yours sincerely

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Liz Livingstone CEO Signed by: Liz Livingstone	

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- i AER, [\(Retail\) Exempt Selling Guideline version 5](#), April 2018, p 37.
 - ii AEMC, [Updating the regulatory frameworks for embedded networks – Overview](#), accessed November 2021.
 - iii [PIAC submission to IPART Draft Report](#), pp 11-12.
 - iv Correspondence with DPIE, 21 October 2021.
 - v AER, [Updating the Network and Retail Exemption Guidelines – Consultation Paper](#), May 2021, p 38.
 - vi [PIAC submission to IPART Draft Report](#), p 12.
 - vii [PIAC submission to IPART Draft Report](#), pp 11-12.
 - viii AER, [Notice of Draft Instrument: Draft Retail Exempt Selling Guideline Version 6](#), March 2022, p 6.
 - ix NSW Government, [Statutory review of the NSW strata scheme laws – Discussion Paper](#), November 2020, p 62.
 - x NSW Government, [Statutory review of the NSW strata scheme laws – Discussion Paper](#), November 2020, p 62.
 - xi NSW Government, [Report on the statutory review of the Strata Schemes Development Act 2015 and Strata Schemes Management Act 2015](#), November 2021.
 - xii NSW Government, [Report on the statutory review of the Strata Schemes Development Act 2015 and Strata Schemes Management Act 2015](#), November 2021, p 92.
 - xiii NSW Fair Trading, [Residential Community Electricity FAQs](#), accessed 23 September 2021, NSW Government, [Residential land lease communities: electricity charging options](#), accessed 23 September 2021.
 - xiv NSW Government, [Residential \(Land Lease\) Communities Act 2013 Statutory Review](#), November 2021.
 - xv NSW Government, [Residential \(Land Lease\) Communities Act 2013 Statutory Review](#), November 2021.