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Australian Energy Market Commission
PO Box A2449
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Submitted online

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Dear Ms Flechas,

Submission to the Australian Energy Market Commission's ("AEMC") New Energy Products and Services Issues Paper

The Energy and Water Ombudsman (SA) Limited ("the Scheme" or "Energy & Water Ombudsman SA") welcomes the opportunity to comment on the AEMC's New Energy Products and Services Issues Paper ("the Issues Paper").

Energy & Water Ombudsman SA is the independent energy and water ombudsman scheme in South Australia. It receives, investigates and facilitates the resolution of complaints from customers of energy and water providers about (*inter alia*) the connection, supply or sale of electricity, gas or water.

Background

As part of its annual assessment of the energy markets, the AEMC explored how retail competition is influencing behind the meter battery technology innovation and conducted a mapping exercise of consumer protections under the National Energy Customer Framework (NECF) and the Australian Consumer Law (ACL).

We are responding to the AEMC Issues Paper that focusses on new energy products and services released on 12 December 2019.

Issues Paper

The Energy & Water Ombudsman SA provides a dispute resolution service for energy and water consumers and therefore forms part of the consumer protection framework.

The Scheme is established by a company limited by guarantee, the Energy and Water Ombudsman (SA) Limited. Membership of the Company and the Scheme and the Ombudsman are established by the Constitution of the Company.

According to the Constitution:

"7.1. A person shall be eligible to be a Member only if the person:
(a) is the holder of a retail, distribution or transmission licence issued under the Electricity Act; or
(b) is the holder of a retail or distribution licence issued under the Gas Act; or (c) is South Australian Water Corporation or is the holder of any licence issued under the Water Act; or
(d) is the holder of a relevant authorisation under the National Energy Retail Law; or
(e) is the holder of an exemption under the Electricity Act, the Gas Act, the Water Act, the National Electricity Law or the National Energy Retail Law, including:
(i) an exempt energy seller or an exempt network service provider (for example, an Embedded Network operator) distributing energy or water to small customers within South Australia"[1]

The jurisdiction of the Ombudsman extends to the functions specified in clause 4 of the Company Charter:

"4.1 The functions of the Ombudsman are to receive, investigate and facilitate the resolution of:

4.1.1 Complaints by customers regarding:
a) the connection, supply or sale of (or the failure to connect, supply or sell) electricity, gas or water by a Member to a customer as required by a licence or agreement;
b) the connection, supply or sale of (or the failure to connect, supply or sell) electricity, gas or water by another entity which is exempt from the requirement to hold a licence under either the Electricity Act, the Gas Act or the Water Act on the condition that it agrees to participate in the Scheme to the extent required by the Ombudsman as if it were a Member;
c) billing disputes;
d) the administration of credit and payment services by a Member;
e) disconnection and security deposit issues;
f) the manner in which a Member has exercised its statutory powers in relation to land or other property owned or occupied by the Customer or in relation to neighbouring land or other property; and
g) privacy and credit reporting under the Privacy Act 1988.

4.1.2 Complaints referred by the Commission or the AER in relation to the conduct of a Member's business.

4.1.3 Complaints referred by the OAIC in relation to acts or practices of a Member on privacy or credit reporting related matters.

4.1.4 Such other complaints as may, by agreement with the Ombudsman (including agreement as to jurisdiction, powers, procedures and costs) and the complainant, be referred to the Ombudsman by a Member."[2]

Submissions

Energy & Water Ombudsman SA supports the AEMC's consideration of the appropriate objectives of an overarching consumer regulatory framework. The Scheme also supports further analysis of how the objectives identified by the Productivity Commission in its review

[1] EWOSA (2018) Constitution at https://ewosa.com.au/assets/volumes/general-downloads/EWOSA_CorporateDocument_Constitution_2018_181203_122008.pdf pp.6-7.
[2] EWOSA (2018b) Charter at https://ewosa.com.au/assets/volumes/general-downloads/EWOSA_CorporateDocument_Charter-2018.pdf pp.5-6.

of Australia's consumer policy framework are addressed through the identified three regulatory frameworks which can be applied to energy products and services.

The Scheme notes that the consumer protections available to energy consumers extend beyond the three identified frameworks and include provisions in jurisdictional electricity and gas legislation. Jurisdictional energy ombudsmen schemes like Energy & Water Ombudsman SA are partly enabled under such legislation. We consider that for a comprehensive evaluation of energy specific consumer protections, these jurisdictional instruments must also be considered. We note that the AEMC's reviews of the regulatory frameworks for embedded networks and for stand-alone power systems considered jurisdictional consumer protections as part of their reviews.

The Electricity Act 1996 and its associated regulations provide a legislative framework to ensure that South Australian consumers have access to safe, reliable and quality electricity supply, as well as safe electrical installations in a competitive market. The Electricity Act 1996 was introduced against the national background creating the National Electricity Market aimed at providing greater customer choice and improved service:

> "The Bill has been prepared to provide a commercial and technical framework for a rapidly changing industry. Central to these objectives is the intention to make the Electricity Act consistent with the National Electricity Market arrangements and with the National Electricity Code (the Code) in particular."[3]

The Gas Act 1997 and its associated regulations provide a legislative framework to ensure that South Australian consumers have access to safe, reliable and quality gas supply. The Gas Act 1997 was aligned with the Electricity Act 1996 for consistency and efficiency purposes and was also developed against the national background of creating a national gas market.[4]

Both jurisdictional frameworks provide for the protection of consumer interests. Implicit in both jurisdictional frameworks is the principle that consumers have a right to access energy. Specified in each are provisions which apply to a network or retail entity which sells energy to customers within prescribed annual consumption levels to participate in an ombudsman scheme as a condition of licence.

Framework Objectives and Principles

The Scheme supports the following objective of the energy specific consumer protection framework:

> *Access to energy as an essential service.*

We believe the objective should be supported by the principle:

> *The customer detriment is significant enough to require access to redress by an industry specific dispute resolution body and dispute resolution cannot be effectively provided by another body.*

Given the issues identified by the AEMC case studies provided in appendix b of the Issues Paper relating to the concept of sale of energy, the Scheme does not support continued application of the consumer protections under the energy specific framework to be premised on the sale of energy through the grid representing the essential supply of electricity to small consumers.

[3] Electricity Bill 1996, Second Reading Speech.
[4] Gas Bill 1997, Second Reading Speech.

Case Studies and Consumer Detriment

Energy & Water Ombudsman SA thanks the AEMC for the case studies it has provided which illustrate where elements of the regulatory framework are challenged. The Scheme has provided its own case studies in appendix A to further illustrate the challenges presented by new energy products and services.

Case Study 1 presents a high bill complaint, where the customer's solar and battery installation had to be tested in order to assess the accuracy of the bill. Testing the operation of a solar and battery installation is on the boundary of the Scheme's jurisdiction as these products are behind the meter. It was not possible to ascertain the accuracy of the bill without undertaking the testing.

Case Study 2 presents an embedded network where two off market child meters needed to be replaced. As off market meters they were on the boundary of the Scheme's jurisdiction but it was difficult to ascertain any other dispute resolution avenue for the customer.

Case Study 3 presents a voltage inverter issue. It was only after investigation that the Scheme was able to ascertain that the inverter needed to have the recommended settings applied, a matter for the customer to have resolved rather than the distributor or retailer. Voltage issues can either be on the customer or network side, but it is not always apparent who is responsible. This issue is on the boundary of the Scheme's jurisdiction.

Case Study 4 presents a situation which involves the installation of a product – a solar system – where a complaint is made about the behaviour of the solar installer. This complaint is appropriately outside of the Scheme's jurisdiction as installers are operators in the same way that electricians and most other tradespeople are. The appropriate jurisdiction is Consumer and Business Services.

Case Studies 1-3 illustrate the importance of dispute resolution services for issues surrounding billing of energy services and access to energy. In relation to the inverter issue, we note that the grid connected customer is still able to access energy even if it is not from their solar and battery installation. This would not be the case for a stand-alone power system. Case Study 4 illustrates that not all new energy products and services should be within the boundary of an energy ombudsman's jurisdiction.

Responses to Specific Issues Paper Questions

8. For the supply of new energy products and services, is there any risk of consumer detriment that needs to be considered to have additional consumer protections (industry-specific regulation) beyond the voluntary framework? Please explain.

The Scheme identifies a need for industry specific provisions beyond the voluntary framework to provide greater consumer protections for the supply of new energy products and services. In our view, the associated potential consumer detriment is:

- Energy supply disconnected, curtailed or withheld due to:
    - non-payment of a bill without notice and no application of hardship criteria or payment options
    - failure to provide supply of the energy leaving the customer with no other means of access to supply
- Non grid connected customers being disconnected, curtailed of having supply withheld for:
    - non-payment of a bill or due to financial mismanagement of the system
    - failure to provide supply of the energy leaving the customer with no other means of access to supply.

The Scheme believes that billing for energy in and out should be separate and discrete, showing meter data to support the billing unless the meter data is unrelated to usage. For example, if the customer's bill includes cost for a service/product not related to the supply of energy then the supply component should be separately itemised and metered as it is today.

Energy & Water Ombudsman SA notes that expansion of its jurisdiction can only proceed if required by regulation, as the responsible party would need to be a Member of the Scheme in order for it to address complaints from their customers. The relevant legislation, regulations, rules, codes, guidelines, etc. would need to clarify anticipated extension of coverage.

17. Does the nature of the market (new energy services and products) require an industry specific system/scheme to handle consumer complaints? Please explain.

The top complaints which the Scheme receives relate to billing disputes, provision (or non-provision), credit management and contractual issues. We note that the New Energy Tech consumer code is only recently established, and we do not have data available to determine whether it is working or not. The code needs to be monitored for compliance, and also whether it will change customer experience in the areas the Scheme traditionally receives complaints about.

Table 1 illustrates aspects of some new energy services and products where there is potential for significant consumer detriment

Billing disputes, contractual issues and access to energy (supply of energy) are all areas currently within the remit of energy ombudsmen schemes.

While we recognise that in most cases energy ombudsman schemes are best placed to deal with energy related matters as we have the status, expertise and understanding of the landscape, there remain cases where disputes are more appropriately dealt with elsewhere, as illustrated in Table 1 below.

A set of principles that could help energy ombudsman schemes like us determine additional coverage may assist with the discussion, and could include:

- the new function is closely aligned to the current core functions (i.e. billing, connections, disconnection)
- services are provided by a member organisation
- use of the Scheme's services is on a cost reflective basis, and not subsidised by other members
- the customer detriment is significant enough to require a specific dispute resolution body
- dispute resolution cannot be effectively provided by another body
- where there is a regulatory/policy requirement.

Table 1: New Energy Product or Service and Potential Consumer Detriment

New Energy Product or Service	***Potential Consumer Detriment***
Behind the meter batteries (BTM batteries)	Failure of product function.
Small-scale solar system retailing	Failure of product function; issues with purchase contract.
Installers, maintenance contractors and designers of new technologies and management systems	Failure to adhere to license conditions.
Small-scale solar systems	The system itself is a product and covered under ACL. However, consumer detriment may be experienced in relation to billing or metering.
Virtual Power Plants (VPPs)	Disconnection, unexpected curtailment or withholding of energy and billing issues.
Peer to peer (P2P) trading	The peer is simply another retailer (provider) with a different label. The potential detriment could relate to billing or contractual issues.
Electric vehicles	The vehicle itself is simply a product and covered under ACL. Energy flow through the meter related to access to energy or billing has a risk of consumer detriment.
Aggregated small customers participating in frequency control ancillary services (FCAS)	Undisclosed costs to consumers.
Aggregated small customers participating in the reliability and emergency reserve trader (RERT)	Undisclosed costs to consumers.

We note the case studies which the AEMC has provided in Appendix b of the Issues Paper that illustrate where elements of the regulatory framework are challenged. We believe these examples are cases where dispute resolution would be appropriately provided by an energy ombudsman, as illustrated in Table 2 below.

Table 2: AEMC Case Studies, Consumer Detriment and Jurisdiction

AEMC Case Study	*Consumer Detriment*	*Relationship to energy ombudsman scheme*
Solar power purchase agreements (SPPAs)	The potential detriment could relate to billing or contractual issues.	Could be within jurisdiction
Stand-alone power systems	Lack of access to essential service caused by unexpected curtailment or withholding of energy.	Due to be within jurisdiction
Embedded networks	Various including inaccurate billing, lack of access to essential service caused by unexpected curtailment or withholding of energy.	Is within jurisdiction
Bulk hot water	Lack of access to essential service.	Could be within jurisdiction

18. What are the risks of having different redress mechanisms under different consumer frameworks? Please explain.

The risks of having different redress mechanisms under different consumer frameworks include:

- failure to align with state based jurisdictional/distribution arrangements
- decreased visibility of systemic issues
- potential inefficiency of case handling
- data collection is impeded
- confusion for the customer about who to contact in relation to their issue
- differential redress dependent on mechanism accessed.

19. Is there a better way to provide access to effective and strong redress mechanisms for consumers of new energy products and services?

Our view is that consumers of new energy product and services should have access to effective and strong redress mechanisms, and that it should be provided by the most appropriate body that can provide those mechanisms in the most cost effective, efficient and accessible manner for providers and consumers.

We note that the New Energy Tech consumer code is only recently established, and we do not have data available to determine whether it is working or not. The code needs to be monitored for compliance, and also whether it will change customer experience in the areas the Scheme traditionally receives complaints about. If it is determined that the voluntary code is the way to proceed, time needs to be allowed to gather data and assess effectiveness. Data should be publicly available for assessment of all complaints trends.

There are some cases where energy ombudsmen schemes can provide redress mechanisms and are able to draw on the following:

- in depth knowledge of state based jurisdictional/distribution arrangements
- visibility of systemic issues
- leverage extensive energy industry knowledge and relationships that improves efficiency of case handling, facilitates more effective identification of interconnected issues and delivers fair and independent outcomes across the full scope of energy issues

- less confusion for the customer about who to contact in relation to their issue
- free and impartial service.

As outlined in response to question 17, a set of principles that could help energy ombudsman schemes like us to determine additional coverage may assist with the discussion, and could include:

- the new function is closely aligned to the current core functions (i.e. billing, connections, disconnection)
- services are provided by a member company
- use of the Scheme's services is on a cost reflective basis, and not subsidised by other members
- the customer detriment is significant enough to require a specific dispute resolution body
- dispute resolution cannot be effectively provided by another body
- where there is a regulatory/policy requirement.

However, extending coverage of energy ombudsman schemes should be approached with caution if the consumer detriment does not involve:

- Energy supply disconnected, curtailed or withheld due to:
    - non-payment of a bill without notice and no application of hardship criteria or payment options
    - failure to provide supply of the energy leaving the customer with no other means of access to supply
- Non grid connected customers being disconnected, curtailed of having supply withheld for:
    - non-payment of a bill or due to financial mismanagement of the system
    - failure to provide supply of the energy leaving the customer with no other means of access to supply.

Any extended scope should not be too wide, while noting that the current functions of the Ombudsman as set out in the Company Charter are already very broad, basically embracing the recommended jurisdiction.

Caution should be specifically taken where the issues are with:

- function of a product – products like solar systems, batteries or in-home consumer products are no different to other consumer products such as air conditioners or hot water services, where the consumer guarantees in the Australian Consumer Law apply
- sales and installation of products – covered by license conditions and no different to sales and service of products like air conditioners.

In these cases, resolution would best be provided by an appropriate body that has expertise in managing complaints of this nature.

Thank you for consideration of this submission. Should you require further information or have any enquiries in relation to this submission, please contact me on 08 8216 1866

Yours sincerely

Sandy Canale
Energy and Water Ombudsman SA

Appendix A: EWOSA Case Studies

CASE STUDY 1

What does the complaint relate to: High Bill

Complaint Date: 13 September 2019

Case Type: Investigation

Number of Customers Affected: 1

Description of the conduct that forms the basis of the complaint:

The customer contacted EWOSA to complain of an unexpectedly high bill. The customer reported that their bill from 7 February until 7 May 2018 was $247.38 in credit. The disputed bill from 8 May until 7 August 2018 was $331.45. The customer stated that nothing in the property had changed and was concerned that his bill had increased significantly.

SA Power Networks tested the meter on 10 October 2017 at the retailer's request because the customer queried the higher than expected bill from 9 May to 7 August 2017. EWOSA reviewed the meter data recorded on the meter and found that SA Power Networks obtained actual reads on all attendances since the customer account started with their current retailer on 6 March 2017. EWOSA also reviewed the meter reads provided by the customer which were consistent and in line with the meter reads obtained by SA Power Networks.

EWOSA reviewed the bills from 6 March to 7 August 2018 and verified that the retailer billed the actual reads recorded on the meter and the actual imported and exported electricity that passed through the meter based on the actual reads.

EWOSA tried to explain the case for the disputed imported and exported electricity billed from 8 May to 7 August 2018 and sent two independent energy consultants to review the solar and battery installation at the customer's property. EWOSA undertook these assessments of the customer's private electrical infrastructure, which is beyond the meter and therefore outside SA Power Networks' responsibility, to attempt to reconcile the recorded consumption with appliance use, obtain a load profile of the customer's use and assess whether the customer's solar and battery systems were compliant and operating as they should. Both consultants found no assignable reason for the disputed higher than expected use and lower than expected export.

EWOSA found no evidence that the customer had been overcharged and therefore there was no basis to adjust the disputed bill. Without establishing that the installation was operating as intended, EWOSA could not have confirmed the accuracy of the billing. Testing the operation of the solar and battery installation is on the boundary of the jurisdiction of EWOSA as they are behind the meter but it was not possible to ascertain the accuracy of the bill without doing so.

Is the investigation open or closed?: Closed.

CASE STUDY 2

What does the complaint relate to: 2 child meters not replaced

Complaint Date: 5 March 2019

Case Type: Investigation

Number of Customers Affected: 2

Description of the conduct that forms the basis of the complaint:

On 29 May 2018, the retailer agreed to replace two faulty embedded network meters at a caravan park. The customer was advised that these two child meters would be replaced within 12 weeks of 29 May 2018. At the time of raising the complaint, the meters were still not replaced and the customer was being issued with estimated bills.

SA Power Networks had originally installed both meters and then invested them to the retailer under a private arrangement. Both meters are off market. They were considered simple installations.

The retailer sourced two second hand meters from SA Power Networks which they intended would replace the faulty meters. They experienced difficulty engaging anyone to install the meters.

The retailer approached SA Power Networks to facilitate the installation of these private meters at the site. After investigation, SA Power Networks identified that this was not work they could perform, based on advice from their Regulatory Team.

EWOSA identified that as the meters were off market meters, they did not need to be market ready. EWOSA provided the retailer and the customer with contact details for sourcing an electrician who could conduct this type of work. A registered electrical contractor was engaged to have this work completed for the retailer. The customer was very satisfied with the outcome.

As off market meters, the complaint was on the boundary of jurisdiction for EWOSA.

Is the investigation open or closed?: Closed.

CASE STUDY 3

What does the complaint relate to: Voltage Inverter Issue

Complaint Date: 18 December 2017

Case Type: Investigation

Number of Customers Affected: 1

Description of the conduct that forms the basis of the complaint:

At this time of year, when solar panels are operating at their optimum and households are using less energy, we expect to see an associated rise in complaints. Generally, these complaints relate to inverters turning on and off due to high voltages which may be caused either by issues with the customer's inverter or on the network side (due to high voltage input from solar panels).

The customer stated that he had a new 4.8kW solar system inverter which was cutting out due to the voltage coming in too high. The customer stated that this was happening 2-3 times every day between 12-3pm and that independent electricians told him to organise for SA Power Networks to retap the transformer on the street.

SA Power Networks installed poly logger test equipment at the property on 16 January 2018 and removed it on 24 January 2018. During the test period, voltage level at the service point to the customers' property complied with the levels prescribed in the Australian Standard for voltage levels.

On 14 February 2018, the customer was advised by SA Power Networks that during periods when there is lower demand for electricity and solar PV installations in the area are exporting significant electricity, network supply voltages may increase. The solar PV inverter may switch off in this situation as it is designed to do, protecting against damage to the customer's solar panels. SA Power Networks advised that this type of nuisance tripping can be minimised by having a solar installer apply the recommended SA Power Network settings to the inverter.

EWOSA sought the view of the Office of the Technical Regulator (OTR) on the SA Power Networks response. The OTR suggested that the customer inverter was the most likely cause of the problem and that the recommended settings should be applied.

The matter was closed shortly after EWOSA notified the customer of the need to arrange an electrician to modify the settings on the inverter. The customer advised that they were no longer experiencing voltage issues at their property after the work was completed.

Is the investigation open or closed?: Closed.

CASE STUDY 4

What does the complaint relate to: Solar Installer Issue

Case Type: Out of Jurisdiction

Number of Customers Affected: 1

Description of the conduct that forms the basis of the complaint:

Ms X presented with a complaint that a solar installer had damaged her roof as part of the installation process and that when the system was activated, it failed to deliver the benefits that the solar installer/retailer had advised. Ms X was concerned about damage to her property and the fact that her pay back period was nowhere near what she had been told at the point of sale.

EWOSA determined that a case of this type was outside the jurisdiction of the Scheme as the customer was still able to access energy from the grid and the dispute was about the sale of a product, the promises which had been made and the damage caused by the installer. The matter was referred to Consumer and Business Services who have experience in licensing of tradespeople, sale of products and alleged misrepresentation.

Is the investigation open or closed?: Closed.