



12 May 2023

AER Reset Coordination Team
Australian Energy Regulator
GPO Box 3131
Canberra ACT

Via email: AERresets2024-29@aer.gov.au

Dear AER Reset Coordination Team

Ausgrid electricity distribution determination 1 July 2024 to 30 June 2029 Issues Paper
Endeavour Energy electricity distribution determination 1 July 2024 to 30 June 2029 Issues Paper

Thank you for the opportunity to comment on these issues papers.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to those questions in the issues papers that align with issues customers raise with EWON, or with our organisation's operations as they relate to the regulatory proposals.

We do not have any comments regarding the Essential Energy electricity distribution determination 1 July 2024 to 30 June 2029 Issues Paper.

If you would like to discuss this matter further, please contact Rory Campbell, Manager Policy & Systemic Issues, on (02) 8218 5266.

Yours sincerely

A handwritten signature in black ink that reads "Janine Young".

Janine Young
Ombudsman
Energy & Water Ombudsman NSW

Endeavour Energy electricity distribution determination 1 July 2024 to 30 June 2029 Issues Paper

Question 15. Do you consider there are any aspects of Endeavour's proposed Tariff Structure Statement that requires adjustment before our acceptance?

Embedded network tariffs

Please refer to the comments and case study provided below regarding embedded network tariffs.

Ausgrid electricity distribution determination 1 July 2024 to 30 June 2029 Issues Paper

Question 24. Do you consider there are any aspects of Ausgrid's proposed Tariff Structure Statement that requires adjustment before our acceptance?

Small and medium business tariff assignment policies

Ausgrid is proposing to:

- increase the consumption threshold for transferring existing customers from a demand tariff to a capacity tariff from 40 MWh per annum to 100 MWh per annum to align with the threshold at which the *National Energy Retail Law (NSW)* defines a small customer
- replace the 'three-phase rule' with a 'greater than 100 amp rule' for assigning customers to capacity tariffs.

EWON strongly supports these changes and Ausgrid's intent to increase the likelihood of new and existing business customers being assigned to the most suitable tariff. Complaints to EWON indicate that unsuitable tariff assignment can contribute to significant affordability issues for small business operators. The proposed changes should help to reduce these issues. EWON will continue to monitor small business tariff assignment complaints, and will be happy to provide complaints information to Ausgrid to assist in the ongoing review of the impact of the two measures.

Embedded network tariffs

Ausgrid and Endeavour Energy are proposing to introduce embedded network tariffs over a transition period for the 2024-2029 regulatory period. The aim of these new network tariffs is to better reflect the costs that embedded networks impose on networks, and therefore ensure that embedded network customers are making a fair contribution to recovering the cost of the networks.

The policy and economic basis for introducing network tariffs for embedded networks is reasonable. However, there are two significant related issues to consider in relation to embedded network tariffs:

- the increased costs associated with these new tariffs will be passed on to customers living in the embedded networks
- customers living in embedded networks are not receiving the same protections that on-market customers receive through their relationship with distributors.

Increased costs to customers

In EWON's experience, customers in embedded networks are not always on lower tariffs in recognition that embedded network operators are not currently charged 'service to property fees' as occurs with energy retailers on the open market. If new network tariffs are introduced, it will mean that the minimum price for energy paid by embedded network customers living in the network areas will increase over time. It will push the median price paid by customers closer to the Default Market



Offer (DMO) – meaning more customers are likely to be paying a maximum price because they do not have access to retail competition.

The NSW Government has recently consulted on its Draft Ministerial Statement of Expectations: Protecting NSW customers of embedded networks¹, as part of its response to the recommendations made in Report No 3/57 of the Committee on Law and Safety – *Embedded networks in NSW*.² The draft provides that from 1 July 2023, authorised retailers selling electricity through embedded networks should comply with the relevant Default Market Offer (DMO) maximum price set out by the Australian Energy Regulator under the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* (the Code). EWON strongly supported this expectation in our submission to the consultation.

Additionally, the Department of Climate Change, Energy, the Environment and Water (DCCEEW) recently consulted on proposed changes to the Code³, including extending the operation of the Code and the definition of ‘*distribution region*’ to include connected embedded networks who are on-sold electricity by authorised retailers to ensure that all consumers in this sector receive the same level of price protection. EWON strongly supported this approach and the underlying aim of equal protections across Australia, making it easier for retailers to comply with requirements across each jurisdiction in which they operate.

While these actions at the NSW level and the Commonwealth level will go some way to improving price protections for embedded network customers, EWON is also of the view that an embedded network specific DMO should be introduced if the embedded network tariffs proposed by Ausgrid and Endeavour Energy are approved. Further, lack of retail competition in embedded networks is a driver for an embedded network specific DMO regardless of the underlying network tariff.

Distributor protections

The embedded network tariffs are intended to ensure that all customers are paying for their fair use of the network. It is important to consider that embedded network customers are not receiving the same protections that on-market customers receive through their relationship with distributors. In return for paying network charges, a distributor has several important obligations, in addition to the supply of electricity, to customers that are connected directly to the network and covered by the deemed customer connection contract. The *National Energy Retail Rules* (NERR) clarify the protections consumers receive through their relationship with distributors. These include:

- distributor service standards and guaranteed service level schemes
- fault reporting and correction
- provision of electricity information
- notice of interruptions.

Embedded network customers also pay network charges that are passed through to them by the embedded network operator from the parent connection point to the embedded network. These external network charges are based on a shadow price, which means that embedded network customers often pay the same network charges as customers connected directly to the network. However, an embedded network customer is not covered by the network service provider’s deemed customer connection contract. This also means that the customer is not covered by the obligations a distributor has to its customers, including notification requirements for interruptions, service standards and access to guaranteed service level schemes.

¹ [NSW Ministerial Statement of Expectations 202303.pdf](#)

² [Report - Embedded Networks in New South Wales.pdf](#)

³ [Default Market Offer Post-review consultation - Implementation of the 2022 review.pdf](#)



This situation means that if a network event interrupts the supply of electricity to the embedded network, residents and small businesses within the embedded network will not be covered by guaranteed service levels and will not be able to claim for losses associated with the event. This also means that embedded network customers may be left financially disadvantaged compared to customers who are affected by the same network event but are connected directly to the network and therefore benefit from these general protections. The below case study provides an example of a resident in an embedded network being financially disadvantaged in this way.

Case study: Embedded network customer unable to claim compensation for losses after 8-day power failure

In July 2020 a customer complained to EWON that he had experienced a power outage due to a transformer failure within the broader electricity network, which affected many customers in the area. The outage lasted eight days. The customer contacted the distributor and requested it provide an electricity generator for his residential building so that residents could run some appliances. The distributor's customer service representative told the customer he could submit a claim for compensation for food wastage if the outage lasted several days. After the power was restored, the customer submitted a claim to the distributor. The claim was declined because the customer lived in an embedded network. EWON advised the customer that as he was not covered by a customer connection contract with the distributor, he could only make a claim to his embedded network operator.

The customer returned to EWON after making the claim for losses caused by the unplanned outage to the embedded network operator. The embedded network operator had also declined the customer's claim. EWON referred the customer's complaint to the embedded network operator at a higher level. The embedded network operator provided EWON with the following reasons why the claim could not be taken further:

- The electricity outage was caused by the fault at the network substation and not within the embedded network, so the incident was outside the control of the embedded network.
- The embedded network operator did make a group claim on behalf of the customers within the embedded network, but the claim was declined by the distributor.
- An individual claim could not be made on behalf of the customer to the distributor as the incident was outside the regulated reporting period.

EWON contacted the embedded network provider to obtain more information about the handling of the customer's claim. The embedded network provider confirmed that the claim was initially rejected because the cause of the outage was an electrical storm, and the operator could not make a claim to the distributor on behalf of the affected residents. This was due to the nature of the connection contract between the distributor and the embedded network operator. The embedded network operator did offer to provide the customer with a credit of \$150 due to the lack of information provided in response to the customer's initial claim.

The customer complained to EWON again in November 2020. The customer advised that the network transformer that was replaced nine months earlier caught fire and caused a second electricity outage event in the building. The customer made a claim for \$400 due to food spoilage and was again referred by the embedded network operator to make the claim directly to the distributor. EWON referred the matter to a higher level and the embedded network operator contacted the customer and apologised for providing incorrect information. The embedded network operator offered to include the customer's claim in the group claim it was making to the distributor following the event.



EWON contacted the embedded network operator again to follow up on the outcome of the customer's claim. They advised that an explanation for the network event had not been received from the distributor. The embedded network operator offered the customer a credit of \$150 due to the customer service issues he experienced following the event. The embedded network operator also agreed to support the customer's claim to the distributor and to seek reasons for any decision. The customer accepted this outcome to the complaint about the embedded network operator.

The customer again returned to EWON when his claim to the distributor was declined on the basis that he was an embedded network customer. EWON obtained the claim information from the embedded network operator and reviewed the customer contract for both the embedded network operator and the distributor. EWON provided the customer with additional information and acknowledged that the customer was in a situation where they were unable to claim further for unplanned network outages.