



18 January 2024

Embedded Networks
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop, Sydney NSW 1240

Dear Jessica Robinson

Submission – Embedded Networks – draft report

Thank you for the opportunity to comment on this consultation paper.

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

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

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



Submission – Embedded Networks – draft report

We thank the Independent Pricing and Regulatory Tribunal (IPART) for the work it has undertaken on pricing for embedded networks in NSW. Over the last eight years, there have been multiple reviews into the regulation of embedded networks, and reform has been slow.

We are supportive of the draft report's overall position and have provided comments and additional information against the draft findings, decisions, and recommendations below. The report contains practical solutions, like requiring embedded network operators to publish prices on their websites. This would go a long way to increase the awareness of consumers and make new disclosure requirements impactful.

The draft report also appropriately captures the consumer protection gaps that still exist for embedded network customers, particularly in chilled and hot water embedded networks (for example, tables 3 and 4).

The purpose of the IPART investigation is to:

- develop maximum price methodologies for electricity (including assessing if the Default Market Offer is the appropriate maximum price), gas, and hot and chilled water in embedded networks
- develop a framework for ensuring compliance and enforcement of new price protections
- recommend if the NSW Government should prohibit new hot and chilled water embedded networks.

The draft report addresses these questions, however these recommendations are reliant on the NSW Government also progressing the NSW Embedded Network Action Plan. For example, chilled and hot water embedded network customers may also end up paying more because they do not have access to energy rules relating to external dispute resolution, disconnection, back-billing, estimations, and provision of affordability assistance.

EWON response overview

As detailed on the following pages, EWON's response to the draft findings, decisions and recommendations contained in the report could be summarised as being:

- the effectiveness of these recommendations will be reliant on the NSW Government also progressing the NSW Embedded Network Action Plan
- we support the draft finding that the DMO is not an appropriate maximum price for electricity embedded networks
- we support the draft decision that setting maximum prices by benchmarking them, on an equitable basis as detailed later in this paper
- to what on-market customers are paying best protects embedded network customers
- to ensure that all customers have access to free, fair and independent external dispute resolution, a mechanism must also be designed via the NSW Embedded Network Action Plan to require an entity that only provides embedded hot and chilled water services to join EWON
- our agreement that Embedded network sellers should be required to publish their current prices on their websites. If this recommendation is adopted by the NSW Government, any improvements to disclosure requirements will be significantly strengthened as a consumer protection.



Draft findings

Draft finding 1.

We support IPART's draft finding that the Default Market Offer (DMO) is not an appropriate maximum price for electricity embedded networks.

This aligns with the comments made in our submission to the Terms of Reference where we suggested that a more specific price cap may be needed.

The DMO limits the price that retailers can charge electricity customers on standing offer contracts. Customers can be on a standing offer for a variety of reasons, such as if they have never switched to a retailer's market offer or if they were placed on one when their market offer expired. However, some customers are on standing offers because they have a poor credit history and have found themselves not eligible for a retailer's market offer. Fundamentally, the DMO is designed to protect small customers from being penalised for not engaging, or being prevented from engaging, with the retail market.

78.8% of residential electricity customers in the energy market were on market contracts over the 2022/2023 financial year¹. In contrast, embedded network customers do not generally have a choice between a range of energy contracts and cannot access the retail market. The DMO is not designed to protect embedded network customers.

Some stakeholders also argue that embedded networks provide benefits to those residents – for example, the price paid for the energy they consume is lower than for on-market energy consumers due to the bulk supply of electricity or gas. The introduction of a price cap for embedded networks ie a specific embedded network DMO, based on this premise would ensure that there is a price benefit for embedded network residents as distinct from the broad market DMO which is designed to protect a minority of retail customers that remain on standing offer contracts.

Draft decisions

Draft decision 2.

We support IPART's draft decision that setting maximum prices by benchmarking them against what on-market customers are paying best protects embedded network customers provided that the benchmarking approach takes into account that other consumer protections are not equally provided, including affordability assistance.

Draft recommendations

Recommendations 3, 4, 5, 6, 7, 8, 9 & 10

We support IPART's draft recommendations. As noted above, these recommendations are reliant on the NSW Government also progressing the NSW Embedded Network Action Plan. For example, as mentioned previously, chilled and hot water embedded network customers may also end up paying more because they do not have access to energy rules relating to external dispute resolution, disconnection, back-billing, estimations and affordability assistance. To ensure that consumers have access to such protections for these essential services, the same or similar rules to those contained

¹ Australian Energy Regulator, Annual retail markets report 2022-23, November 2023, p6



in the National Energy Customer Framework (NECF) need to be extended to chilled and hot water networks.

Recommendation 12

We support IPART's recommendation that EWON should be authorised to refer potential embedded network pricing breaches and supporting information to the regulator.

IPART also proposes that authorised retailers and exempt sellers, including sellers of hot and chilled water, have the following obligations:

- authorised retailers are required to provide EWON contact details on their website
- exempt sellers are required to advise customers of their right to access EWON at the commencement of their tenancy or residency.

As noted above, these recommendations would need to be implemented as part of the NSW Government's Embedded Network Action Plan objective that hot and chilled water embedded networks customers should have access to equivalent consumer protections to on-market customers under NECF. This would include the requirement for operators of hot and chilled water embedded networks to join EWON as a scheme member so that residents have access to independent dispute resolution and through complaint data analysis, network pricing and other non-compliance issues can be identified and reported by EWON.

As the draft report identifies, the *Electricity Supply Act 1995* (NSW) and Regulations were previously amended to allow consumers to complain about the delivery of energy services by networks and sellers that were exempted from the requirements of the *National Energy Retail Law* and *National Electricity Law*. However, the Act and Regulations did not require exempt entities to become members of EWON. This created practical barriers to resolving consumer complaints about embedded networks because exempt entities were:

- not bound by EWON determinations
- not required to comply with EWON's dispute resolution procedures
- not required to pay for the cost of managing ombudsman complaints.

In March 2018, the Australian Energy Regulator (AER) published revised network and retail exemption guidelines requiring exempt entities servicing residential customers to become members of EWON. This requirement resolved the issues above.

Expanding EWON's jurisdiction to bring exempt entities into membership provided us with significant learnings about expanding Ombudsman scheme jurisdiction. For example, it is ineffective to create a right for consumers to complain to EWON in legislation, without a corresponding trigger requiring service providers to become members of the scheme.

Many operators of hot and chilled water embedded networks are already members of EWON by way of their obligations under the AER's authorisation and exemption frameworks.

However, it is important to note that EWON is established as a not-for-profit company limited by guarantee. As an industry-based Ombudsman scheme, our funding comes from fees paid by energy and water providers, which are required by law to be EWON members.

Each legal entity is limited to one membership of EWON². This means that if an energy business is structured so that their embedded electricity networks operations are managed by a separate legal

² Clause 4.1, EWON Constitution



entity to the entity controlling their embedded hot and chilled water operations, they would only be a member of EWON as an electricity seller/network operator. In this situation, EWON would not have jurisdiction to take complaints about the related entity that controls the businesses' hot and chilled water operations.

To ensure that all customers have access to free, fair and independent external dispute resolution, a mechanism must also be designed via the NSW Embedded Network Action Plan to require an entity that only provides embedded hot and chilled water services to join EWON.

Recommendation 13, 14, 15, 16, 17 & 18

We support the recommendations made by IPART for a compliance and enforcement framework to help implement a maximum energy price for embedded networks in NSW. We agree with IPART's reasoning that EWON is not the appropriate body for enforcing maximum prices.

Embedded network sellers should be required to publish their current prices on their websites. We also agree with the reasons provided in the report, including:

- enabling prospective customers to check prices before they become part of an embedded network and compare prices with what they currently pay, and with available market offers
- that visibility into what comparable embedded networks are being charged may facilitate competition at the building/owners corporation level when they renegotiate contracts or seek to change providers.

Recommendation 20

We support the recommendation that the NSW Government consider imposing additional disclosure requirements as part of its action to improve disclosure and consumer awareness for prospective purchasers and tenants under the NSW Embedded Network Action Plan.

If recommendation 14 – the requirement for embedded networks to publish their current prices – is adopted by the NSW Government, any improvements to disclosure requirements will be significantly strengthened as a consumer protection.

Response to 'seeking comment'

Question 3. *Would a complaints-based compliance system deliver the right level of consumer protection?*

Ensuring that embedded network customers have access to free, fair and independent external dispute resolution will be critical to the success of a complaints-based compliance system. Our above feedback and comments against the draft recommendations provide context and additional information about how EWON could fit within the proposed compliance and enforcement framework.