

**ESSENTIAL SERVICES COMMISSION: CONSULTATION PAPER: MAXIMUM PRICES  
FOR EMBEDDED NETWORKS AND OTHER EXEMPT SELLERS (5 FEBRUARY 2020)****COMPLIANCE STATEMENT - COMPETITION AND CONSUMER ACT 2010**

In preparing this submission, the SCCA has taken steps to ensure that it is not contravening the spirit, intent or application of the *Competition and Consumer Act 2010*, including by engaging in or facilitating any conduct or behaviour that is anti-competitive or would substantially lessen competition, including through collusion, cartel conduct or by engaging in a concerted practice. This includes that the SCCA did not act, and will not be acting, as an intermediary for the communication of commercial sensitive information between members and/or competitors. Nor will the SCCA be using or enabling the use, by its members, of the information collected in ways as might replace or reduce competitive, independent decision making by shopping centre owners including as embedded network owners and operators.

**EXECUTIVE SUMMARY**

The Shopping Centre Council of Australia (SCCA) thanks the Essential Services Commission (ESC) for the opportunity to comment on the *Consultation Paper* relating to maximum prices for embedded networks and other exempt sellers.

We have reviewed the *Consultation Paper*, including the proposed framework for formulating maximum prices, the tariff structure of maximum prices and the implementation of maximum prices.

As the ESC is aware, our members own and operate embedded networks (under exemption) including the sale of energy to their tenants.

The sale of energy is ancillary/incidental to our member's core business, is limited to defined sites and assets, and unlike residential embedded networks, comprises a business-to-business relationship and customers that can be large, international companies (i.e. they are not 'vulnerable' customers akin to residential circumstances).

We also note that we don't operate in the broader energy market, and have limited options and flexibility in terms of their energy (purchase) contracts.

As a general comment, to the extent that it seems residential embedded networks continue to be the main focus of concern, we are frustrated that certain residential issues are being translated or assumed as being non-residential issues without sufficient evidence, understanding or justification. We note (at page 2 of the *Consultation Paper*) that the number of customers in residential networks far outweighs those in non-residential networks (85% vs. 15%).

We are pleased to provide the following comments:

- *Cost-stack methodology*: As the ESC is aware, under the GEO (and similar to the *AER Retail Exemption Guidelines* – but also noting that the *AER's Network Exemption Guidelines* apply), our members must provide energy offers no higher than the relevant Standing Offer; which essentially serves as a price cap (*Clause 27 – Pricing Rule*).
- Based on further consideration in relation to a 'cost-stack methodology', while we generally agree with this approach in-principle, such an approach would be difficult to develop for embedded networks (at least for shopping centres) given the large number of shopping centres, shopping centre companies and embedded networks and the related different energy costs associated with their businesses (e.g. energy purchasing, contracts).
- This is further complicated with the different configurations of shopping centres (e.g. amount of common mall area).
- We disagree with some of the ESC's statements such as assumptions around 'ability to access bulk pricing deals' (e.g. some shopping centres are owned by small entities that own one centre) and there being 'no customer acquisition or retention costs'. There is a variation in energy purchasing costs and contracting periods. Further, unlike retailers, we have less flexibility in being able to manage these costs, due to the fact that shopping centres usually buy at a point in time and do not have the luxury of buying evenly over the year (as assumed in the VDO wholesale price calculation).
- Noting the above, we agree with the ESC's initial view that developing a cost-stack methodology (akin to the *VDO Tariff Formulae*) would be complex and may outweigh the cost to do so.
- Noting the above, we don't however agree with the ESC's comments that the VDO 'reflects the efficient costs of the sale of electricity'; it may do so for electricity retailers, however as the ESC notes in other commentary in the parts of the Paper, this can't be assumed for shopping centres.

- We recommend that the VDO prices apply to shopping centres (in the applicable distribution zone) (noting *Clause 27 (Pricing Rule)* of the GEO) from 1 July 2020.
- *Load thresholds:* In terms of load thresholds, we note that the VDO calculations are based on a 20MWh load. The Energy Retail Code and GEO define small customers as those that use up to 40MWh per annum. Our understanding is that the VDO does/would not apply to customers greater than 40MWh per annum. We have raised this before and would welcome clarity on this issue.
- *Cost differences:* The ESC notes a 'difference' between exempt sellers and authorised retailers as being due to 'brokerage or advisory services'. We don't agree with this point, are unsure of its basis, and believe it should be removed.
- *Implementation and compliance:* We would welcome an opportunity to discuss with the ESC how compliance with the VDO will be enforced given the timing lag between published retailer standing offers and the need for exempt sellers to be compliant. We would also seek clarity on how to confirm compliance with the VDO with respect to load shapes (i.e. different peak / off-peak split).
- *Price cap:* We note that the maximum prices for exempt sellers will form a hard cap on the price an exempt seller can offer their customers, which is different to the VDO which applies to standing offers and does not restrict retailers from making market offers that differ from the VDO. We don't believe this is an equitable approach, and noting the ESC's other commentary question why embedded networks would be treated differently. We believe should be changed to ensure that both embedded networks and retailers have the same framework.

## CONCLUSION

We would welcome an opportunity to discuss this issue with the ESC, including the issues relating to tariff structure and types noted in the *Consultation Paper*, noting the different types of customers within shopping centre embedded networks. We would also welcome an opportunity to discuss the notion of what the ESC describes as being 'barriers customers of exempt sellers may face' and the so-called 'regulatory burden of various approaches' as we find this issue remains a source of consistent misunderstanding by certain parties, particularly in relation to shopping centre embedded networks, the nature of their customers, and whereby customers can and do churn.