WA State Government Agency:
Department of Mines, Industry Regulation and Safety /
Energy Policy WA

Energy-Tec Feedback / Response:

Draft Voluntary Embedded Networks Code of Practice

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VERSION CONTROL

Version	Date	Comment	Responsible Party
1.0	23/06/2023		Damien Moran

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1. Executive Summary

Energy-Tec wish to provide the following feedback regarding the recently released Draft Voluntary Embedded Networks Code of Practice.

Energy-Tec acknowledge the requirement for a code and the need for improved customer protections, we believe a code of conduct will greatly improve standards that services providers such as Energy-Tec can reference, where practices and standards are not up to scratch, however we do not believe the concerns are as significant for most sectors of the embedded network market as DMIRS are portraying.

Energy-Tec have reviewed the code and have listed several specific items in the following pages with feedback.

At high level we wish to raise concerns regarding the workability of the code in its first draft. We have concerns that it will be expensive to implement and be very difficult to comply with.

Energy-Tec suggest a workshop with property sector representatives, including Energy-Tec to provide constructive feedback / input on the code, to work with EPWA /DMIRS to improve workability of the code to achieve high-level customer protection objectives, which we understand at this stage to be:

1. Are customers being charged the right tariff?
2. Are customers being charged correctly?
3. Do customers have appropriate information to review their own invoice.
4. Are customers aware of customer protections available to them?
5. Do customers have pathways for dispute resolution.

Industry participants could provide better quality feedback on the code if EPWA / DMIRS provided more clarity on the high-level intent and objectives of this EN code.

We trust our feedback is of value to and look forward to working with EPWA / DMIRS towards an effective and workable Embedded Network Code of Practice for WA.

2. Background:

Energy-Tec's Historical Alignment with WA Energy Policy

Energy-Tec is an "Embedded Network (EN) Services provider who operate on a "fee for services model". We are not an electricity on- seller or a licensed retailer, rather we are engaged under contract as an agent acting under instruction to the Embedded Network Owner (i.e., the property owners or strata scheme), or the ENS as per the definition in the code.

Energy-Tec has been in the embedded network space as founding service providers to WA since its introduction in the early 1990's, as introduced by WA state owned SECWA at the time and formalised almost a decade later within the Electricity Act 2004 under the retail licence exemption. During this time almost the entire commercial sector and much of the residential sector were progressively retrofitted to be configured as embedded networks. Which was the intent the WA government of the time hence most commercial assets are configured in this way and many strata schemes also.

Energy-Tec service in the order of 2000 Embedded Networks in WA and the Eastern States with tens of thousands of commercial tenants or lot owners who are end use customers to our clients. We service all property types including airports, universities, ports, marina's, islands, markets, industrial precincts, office, industrial and retail buildings and Strata Schemes, (strata lots, apartments, units, townhouses, multi-level towers etc).

Born from SECWA (our founding director was a SECWA senior employee), for decades Energy-Tec has voluntarily aligned our billing services with published WA gazette tariffs, and we provide tariff reviews for customers to guide and support our clients on an annual basis to maintain verifiable records of alignment to the correct gazette tariffs. As such all ENS customers within our client base are receiving the appropriate billing information and account details. Since 2015 our standards were amended to follow the National Energy Market (NEM) compliance standards, where all tenant statements provided to our clients for distribution to end customers provide the equivalent information required in the NEM.

We also provide a comprehensive electricity (and gas) reconciliation service that reconciles the consumption and cost of energy for end uses within an EN, including tenants (or lot owners in the event of Strata) and common or house services.

Subject to the terms within lease agreements between owners and tenants, common area utility costs (electricity, gas and water) are passed on. In some cases, the arrangements are based on gross terms leases and in others nett. In addition, based on property type and sector, owners also need to allocate costs in accordance to the relative state regulatory requirements (i.e. Retail Tenancy Act / Strata Act)

Why is the consideration of the meter network configuration of existing WA building stock so crucial when developing energy Policy?

Electricity reconciliation is a critical and necessary task to consider when developing energy policy for EN's as the electrical networks within WA buildings are bespoke (i.e. never the same). This is unique to WA and has major implications when accounting for energy in a building. Energy-Tec warn EPWA that reconciliation of energy will become much more difficult in the event a specific tenant is afforded access for a direct utility supply.

How did these bespoke meter network configurations come about?

This WA centric bespoke electrical network evolution has occurred since the early 1990's because the EN designers i.e., the developers, architects, engineers etc understood under state government energy policy (i.e., SECWA and later the 2004 Electricity Act allowing retail license exemptions) that the single Western Power utility gate meter policy, gave them total flexibility when designing the electrical network configuration. As a result of this flexibility in design, the common electricity loads within WA's existing building stock cannot be simply (or easily) separated from tenant supplies within most buildings, because they are intertwined.

In many cases common area is metered separately, however in most cases end uses of common area are not metered enough to afford clear separation. (i.e., common lighting, AC systems, lifts, carparks, basements, lobbies, malls etc). To add to the complexity, 2 x national regulatory policies have influenced some building types via the introduction of Section J within the NCCC Building Code and the introduction of 2013 National NMI Pattern Approval regulation. Neither are retrospective and neither averted the bespoke network design trends of buildings configured as EN's with a single Western Power utility gate meter.

How has Energy-Tec dealt with bespoke networks to improve energy accounting & accuracy within Embedded Networks?

To correctly reconcile, Energy-Tec has developed a formal Meter Network documentation pack via an Audit process and production of a Meter Network Drawing (MND) in the form of and electrical schematic drawings to validate the "as constructed" network topology. This documentation is then utilised to scope out and address metering anomalies, inaccuracies, verify meter topology / hierarchy and configuration, before common area can be validated, and energy allocated correctly.

Concerns of adverse impacts by enabling "Eligible Customers" within EN's direct access to Western Power Network

As this flexibility of network design is the product of regulatory flexibility afforded to properties in WA by the state, Energy-Tec do not believe it is now appropriate for the state to reverse this flexibility by enabling tenants to install their own supply without more significant consideration by EPWA & DMIRS.

Energy-Tec are concerned that EPWA grossly underestimate the implications and negative impacts of introducing state energy policy to allow the option for “Eligible Customers” to procure a direct supply from their tenancy to the Western Power network (whose estimated consumption is more than 50MWh per annum but less than 160MWh per annum).

Who will be impacted?

1. Property owners, Property Managers, Facility Managers, Strata Managers acting for owners in trying to negotiate with tenants, separate common area and bespoke electrical network configurations to facilitate electrical pathways and access for direct tenant supplies.

2. Network Operator Western Power who is already under-resourced and behind in processing renewable applications intended to facilitate the WA Energy Transformation Strategy towards electrification and renewables will be distracted and inundated with DQA applications for direct tenant supplies

3. The electrical consulting and contracting industry which are grossly under-resourced and heavily committed to the mining and construction industry in WA with labour and skills shortages.

All this effort and complexity is counterproductive to allow an eligible customer “the option” to procure an alternative electricity supply from a licensed retailer such as state-owned Synergy, as the costs for a tenant to fund a direct Utility network connection with Western Power will be unviable in most cases.

Why not avoid the complexity and simply regulate with pricing policy?

Energy-Tec acknowledge the need for a code of practice to protect customers is undoubtably required and is welcomed, especially where customers do not currently review adequate information within their invoice, or are not afforded a reliable and accurate electricity meter, but why would the WA state Government not seek to formalise and regulate, through the published gazetted electricity tariffs, the existing pricing mode? This way the customer protections with specific regard to pricing will be applicable and consistent to both the EN owners and licensed retailers.

Potential for Negative Impacts - working towards Net Zero Targets

Energy-Tec is concerned that diluting the “retail exemptions” for property owners within this EN code will be counter-productive and will adversely impact both our state and the nations plans to build momentum towards state and national Net Zero emissions targets.

Diluting Embedded Network “retail exemptions” will disincentivise owner investment into electrification and renewables if the consumers (within privately owned assets) can gain access to electricity retailers who have no control over the roofs or carparks for solar installation, and the carparks for EV Charging.

If policy makers could address the customer protections and cost regulation via tariff control, rather than facilitating licensed retailer access to privately owned networks, we could all focus more on

upgrading and reconfiguring Embedded Networks for more electrification and renewables to drive Net Zero targets.

Energy-Tec find the timing of the introduction of this regulation that would allow licensed retailers more access to customers within private networks to be out of step with the State's Energy Transformation Strategy, if the state objectives to towards electrification and renewables targets are to be realised within the very tight targeted 2030 timeframes

Energy-Tec would hope effective energy policy would incentivise owners of private networks to invest into their networks to facilitate upgrades for renewables and electrification rather than divest.

Hence our suggestion that the solution for improved customer protections with regard to electricity pricing by the WA state government is to regulate via the published gazetted electricity tariffs, which is the existing pricing mode that has been adopted and is being utilised now, voluntarily by most embedded network operators in WA.

With such a simple mechanism available, Energy-Tec is concerned that the EN Code is being pitched to deliver improved customer protections which we welcome, however we are concerned the agenda may also be about enabling "licensed retailers" more market access.

As the WA state government is both the energy policy maker and has vested interests in energy retailing entity Synergy, which would benefit from more market access, we wish to have these concerns tabled and discussed.

3. Survey Feedback

We are concerned that EPWA / DMIRS are presenting EN's in a poor light within the EPWA / DMIRS websites, surveys, guides, and policy papers, including within the Draft Voluntary Code.

DMIRS have outlined the code is necessary to address the concerns raised in from the survey however, the results of the survey draw from a very small data set of respondents and does not acknowledge the representation as a % of all possible industry participants that could have responded. Energy-Tec confirm that we shared your survey link out to all our customers and encouraged them to share with their end use customers and to participate.

Most major property managers, strata managers and owning entities responded that they would share the survey.

The limited responses to the survey may indicate less concern by most end use customers of embedded networks regarding customers protections than EPWA have portrayed. It may well be the case that EN customers do not have concerns enough to cause them to submit responses to your survey.

Embedded Network customers have not been impacted by pricing increases to the scale of customers exposed directly to licensed retailer on the eastern states within the MEM.

4. Code Workability

The following are examples of areas that could potentially impact the workability of the code. We propose more discussion to work through the practicalities of these items:

1. Imbalance of Obligations & Penalties
   1.1 The ENS v the customer obligations - concerns the energy selling business model is not complete.

2. Limited scale of tariff options –Absence of many tariffs currently utilised and as published in the State budget papers and the Gazette. i.e., time of use tariffs,

3. Acknowledging many embedded networks are old and antiquated, EPWA / DMIRS may be underestimating the sophistication of Embedded Network infrastructure within many assets within the built environment and the appetite and interaction that occurs in owner / customer relationships in delivering fit for purpose metering technology required to meet the data requirements (i.e. peak, off-peak and demand) of a negotiated and agreed tariff.

5. Definitions

In all consultation to date only large use customers >160Mwh per annum that would be allowed to apply for a separate connection point and electricity supply agreement. The Draft Voluntary Embedded Networks Code of Practice has the definition of an "*Eligible Customer*" as one who's annual consumption being between 50 and 160MWh, the threshold has not only been lowered but it now excludes those large use customers >160Mwh per annum.

The draft document states within section 1.2(b) that, "*Where an Existing Supply Arrangement contains a term which is inconsistent with an obligation in the Code; the ENS must: (i) use reasonable endeavours to amend the term to be consistent with the Code; or (ii) where possible, not seek to rely on the term and instead apply the equivalent term in the code"*.

An existing commercial legal agreement should take precedence. The code should not be retrospective and should only be applicable to new supply agreements only. Additionally, "*term*" as a definition is undefined and should be included within the definitions.

The definition of "*ENS*" is defined as a person within section 2.2 however later in section 12.2(b)(i) the draft document states that, "*the right of a Customer to have a complaint or dispute considered by a senior employee of the ENS*". This is despite the section 12.2(b) stating that, "*disputes will be handled by the ENS*".

This is confusing as it suggests that the "*ENS*" is perhaps a person with overall authority whereas later it is intimated that it could be a department with junior and senior members and perhaps a person with overall authority. There is also no definition as to who the "*Coordinator of Energy*" is other than the person who would approve and ENS, again this intimates a department head whereby individuals are delegated authority to work within the ENS. This also fails to describe how 3rd party agents are able to act on behalf of the embedded network.

6. General Obligations

Electricity Supply Agreement:

Requirement for an Electricity Supply Agreement to be in place with all customers and when an Existing Supply Arrangement contains a term which is inconsistent with an obligation in the Code; the ENS must:
(i) use reasonable endeavours to amend the term to be consistent with the Code; or
(ii) where possible, not seek to rely on the term and instead apply the equivalent term in the code.

Our feedback is that an existing commercial legal lease agreement should take precedence. The supply agreement should only apply when there is not already a lease agreement that outlines the electricity supply arrangement – it should not be retrospective.

In the event of Change of Ownership - any energy on-sell arrangements provisioned for within the existing Lease agreement for the contract term should remain intact as the lease agreements are an asset when transferring ownership. The whole aspect of how the Code will fit in with contractual Lease agreements is a topic that needs to be carefully considered as this has significant impacts for property owners.

7. Metering

The only way to make sure customer protections are in place is if the electrical supply is metered/measured - without a measurement device the concept of customer protection is absent.

The draft document states at section 5.1 that, "*An ENS must ensure that each supply address which is supplied by the ENS has a meter unless, (a) as at the date the Code is published the supply address was connected to a supply of electricity but was not separately metered; and (b) the Supply address has not been separately metered at any date since the date this code is published*."

This is the one area which should be retrospective to ensure energy consumption is robustly and accurately measured and allows an ENS customer to access to their reading data at the source.

Within section 5.4, the draft document states that, "*If a customer requests a test of the Meter, the ENS must test the meter within a reasonable time. The ENS may only charge the reasonable cost of testing the meter if the meter test determines the meter is not faulty*".

We believe that meters should be 'validated' with a certificate of validation issued. The presence of certified documentation protects both the customer and the ENS and promotes integrity as the cornerstone to a mandatory code of practice. In addition, the term "*test*" as a definition is undefined and should be included within the definitions.

8. Billing

The draft document states at section 6.1(a) that, "*An ENS must issue a bill to a Customer at least once every 60 days*".

The use of the word "must" denote no leeway given to circumstances outside of the ENS's control for instance not receiving their retailer account bill within the normal timeframe. Synergy's own website has the following statement regarding failure to adhere to the normal 60-day cycle, "*Recently, due to technical issues, the network operator has been unable to provide us with metering data for some accounts since the meters were last read. As a result, we've been unable to issue bills to impacted accounts for recent electricity consumption as per our standard 60 day billing cycle. This means that bills for impacted accounts will cover a longer period of time than usual*". The ENS would be bound to produce a bill irrespective if they had received all of the necessary inputs to allow accurate reconciling of energy consumption particularly for the customers who receive their energy with the costs passed through.

The contents of a bill are incredibly prescriptive, particularly with respects to information that is not changeable and could be obtained through a website.

Within sections 6.8 and 6.9 of the draft documents, limits are placed on when an ENS can recover undercharged billing amounts whereas there is no limit to when a customer can recover an overcharged billing amount. In section 6.6, the ENS is only required to retain billing data for 2 years, meaning that a dispute for an overcharge greater than that period could go unresolved and result in escalation to the judicial system. It would seem prudent to maintain the same limit whether it is and overcharge or an undercharge of the billing amount.

9. Price

The property industry has voluntarily aligned with published gazetted electricity tariffs for decades, a model to default to a flat-rate conflicts with time of use R tariffs already available and utilising advanced metering technology to provide consumers with more control over their energy usage and as published and utilised by Synergy via their suite of small and medium business tariffs. This provides customers with the opportunity to purchase at peak and off-peak rates which is a foundation to driving sustainable energy usage.

The need for a code of practice to protect customers is undoubtably needed especially where customers do not currently review adequate information within their invoice, but why would it not seek to formalise and regulate, through the published gazetted electricity tariffs, the existing pricing mode?