

8 November 2013

Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Attention: Jacqui Thorpe, Acting General Manager, Retail Markets Branch

By email: AERInquiry@aer.gov.au

Dear Ms Thorpe

Express Solar Application for Individual Retail Exemption

Thank you for the opportunity to provide a submission in response to Express Solar's application for an individual exemption from the requirement to hold a retailer authorisation.

Simply Energy considers that Express Solar should be subject to a retailer authorisation.

Express Solar intends to use rooftop photovoltaics (PV) as the source of the energy it retails to consumers (including residential and small business consumers).

It is the belief that energy is an essential service that created the need for a comprehensive retail energy consumer protection framework additional to general legal protections. This also applies to Express Solar's business model, which requires the consumer protections needed for energy retailing - general legal protections are insufficient for the supply of an essential service.

The question that the AER needs to consider is whether Solar Express is engaged in the sale of electricity and thus an essential service.

In our view they are, and thus the same questions about cooling-off periods, contract length, pre-contractual procedures apply to Solar Express as to a traditional retailer.

The only difference between the activities Solar Express is undertaking and those undertaken by a traditional retailer is the source of the generated electricity.

If Solar Express is granted an exemption, then it would imply that as long as you are not sourcing the supply of electricity from the wholesale market, then you will not need an authorisation.

This creates a loophole in the National Energy Consumer Framework. For example, traditional retailers could adopt a similar energy delivery model and avoid the need for an authorisation. We are not convinced that this is an outcome the AER would intend.

Business model exceeds the limited scope appropriate to exemptions

The business model goes beyond the limited scope of retailing activities that is the basis for providing exemptions from the general requirement for retailers to be authorised.

Specifically, Express Solar's application shows that its business model does not satisfy the criteria for the different types of exemption:

- The sale of energy is the sole relationship with the consumer and energy supply is not incidental to another transaction, such as rent for a unit.
- The sale of energy is unlimited in scope in terms of the number of consumers that could potentially purchase Solar Express's products. As a result, it is not possible to conclude that the full range of consumer protections provided by retailer authorisation is not required.

Protection of consumers experiencing payment difficulties

We have a particular concern that this business model, if operated without the consumer protections provided by retailer authorisation, will lead to worse outcomes for consumers who experience payment difficulties.

For example, authorised retailers are required to make payment plans available for consumers who are having difficulty paying for energy. Authorised retailers are not permitted to disconnect consumers from supply for non-payment, unless the consumer has failed to meet their obligations under the payment plan requirements.

If Express Solar does not also have these obligations, then it may remove its generation assets from the roofs of consumers who experience difficulties paying for the energy provided by Express Solar. The consumer will then be required to obtain all its energy from the authorised retailer that provides its non-PV energy. The consumer will also lose any feed-in income.

This will expose the consumer to the non-PV energy retail tariffs, without any offsets from feed-in income. This will exacerbate the hardship situation that the customer is in. Solar Express appears to expect the existing FRMP to bear the costs of this.

Confusion due to inconsistent consumer protection

Consumer confusion with respect to energy supply contracts, rights, and obligations is frequently cited by ombudsman schemes and consumer advocacy groups. Enabling retail businesses to provide different levels of consumer protection will cause further confusion and drive consumer complaints and service problems.

To avoid this, access to consumer protections should be consistent, with all energy suppliers having the same obligations. It is not reasonable to require higher service standards and stronger obligations from some service providers than from others providing the same services.

Inconsistent standards and obligations risk undermining the credibility of the consumer protection framework, as consumers will find they have no effective recourse against some suppliers when things go wrong, and their authorised retailer cannot solve these third party problems.

Retailer authorisation, and the obligations that follow from it, is the appropriate way to ensure that consumers who deal with Express Solar have access to industry standard methods, including those relating to rebates and concessions, debt recovery, consumer insolvency, and complaint management.