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Sarah Proudfoot

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Dear Sarah

**Regulating innovative energy selling business models**

Thank you for the opportunity to comment on your issues paper on regulating innovative energy selling business models. We broadly support the objectives and policy considerations identified in the issues paper.

The Australian Energy Regulator (AER) faces a difficult challenge in trying to apply the exemptions framework in a context which was not envisaged when the National Electricity Retail Law was put in place. Rapidly changing market conditions have given rise to circumstances where the AER’s decisions with respect to the exemptions regime have the potential to have a long-lasting impact on the development of the market.

The energy market is changing quickly in terms of:

* Who interfaces with the customer—the market has evolved where the focus was predominately on the provision of energy from the grid from the retailer to the emergence of different business models and services providers seeking to develop new products to leverage customer responsiveness.
* What product and services are offered to the customers—the market is transitioning from an energy only providers to energy service and product offering (energy, demand response, electric vehicles etc.) with a strong focus on unbundling of services offerings to customers.
* How the customer is sourcing new and alternative energy services (i.e. from the grid, off-grid, PV, energy storage, electric vehicles etc.) and the technology available to better understand and manage energy usage (smart metering, mobile, smart devices in the home, Google NEST etc.).

Energy policy needs to be developed in the context of these changes and ensure the market arrangements support the emergence of new products and services.

In practice, many key features of the current market framework were designed around the market model that prevailed ten years ago. This framework may not appropriately recognise or cater for the role of customers, changing technology, and evolution of business models beyond the traditional distribution and retail models.

For instance, one of AEMO’s concerns is the need to maintain system security and the integrity of market settlement systems in light of changing market conditions. At present wholesale markets settlements involve a range of approximations and work on a netting basis with no one having a complete set of updated and reconciled data. The absence of a holistic set of market data to underpin settlements not only affects retail markets. It also is, and will increasingly have an effect on operating the overall power system including the ability to forecast demand and manage security. A more active and responsive consumer base, coupled with significant levels of embedded generation and storage, will make management of the overall system more complex. Going forward, it is likely to be necessary to develop a more comprehensive data provision regime which includes embedded generation and storage.

We do not expect the AER’s review to resolve such issues. As suggested in your paper, these issues go beyond the scope of the existing Retail Law. We agree there should be a comprehensive review of market frameworks.[[1]](#footnote-1) We note that the Council of Australian Governments (COAG) Energy Market Reform Working Group has recently initiated a consultation on the regulatory implications of new products and service in the electricity market.[[2]](#footnote-2)

Any comprehensive review of market frameworks will take time, especially if legislative change is required. The AER faces an immediate problem in the form of the large volume of exemption applications it receives each month, with no clear framework in which to assess them. The issues paper seeks views on how the AER should respond to this challenge.

Until such time as a comprehensive review of market frameworks is complete, we support Option 2 – i.e., the AER should continue to issue individual exemptions with robust conditions.

AEMO considers it crucial that those conditions include a review clause so that recipients of an exemption are able to be brought within the regulatory framework later on. This could take the form of a dated sunset clause. Alternatively, the AER could commit to undertaking a review of all exemptions once a comprehensive regulatory framework has been developed. That review could be a trigger for a reopener of exemptions.

In the absence of a review clause, there is a risk that a proportion of the electricity market will end up outside the regulatory framework. This could have detrimental consequences insofar as customers do not receive the consumer protections available under the National Electricity Customer Framework. It may also complicate the development of market processes in response to changing conditions. Our proposed approach is intended to allow the regulatory implications of changing market conditions to be considered in a holistic fashion without creating a class of energy market sellers who are outside the regulatory framework.

While there are many issues that need to be considered and resolved before reaching a view on how the exemptions regime should be applied to new business models, some options might include:

* The conditions that apply to an exempt seller might vary based on the volume of energy sold. Once volumes exceed a pre-determined threshold, the exemption conditions would be aligned to reflect the size of the business;
* If the activities carried out by the business evolve into areas which require the business to register under the National Electricity Rules, then there could be a trigger for the exemption to be amended or revoked;
* Subject to the outcome of a broader review, the exemptions regime could potentially be the regulatory instrument by which obligations to provide data are applied to certain types of business.

We hope you find this submission helpful. If you would like to discuss any of the issues raised, please don’t hesitate to contact Jess Hunt on (08) 8201 7315.

Yours sincerely

David Swift

**Executive General Manager, Corporate Development**

1. AER, *Regulating innovative energy selling business models under the National Energy Retail Law*, November 2014, page 6 [↑](#footnote-ref-1)
2. COAG Energy Market Reform Working Group, *New Products and Services in the Electricity Market ‑ Consultation on regulatory implications,* December 2014. Available at: https://scer.govspace.gov.au/files/2014/12/Consultation-Paper-new-products-services-Dec-20141.pdf [↑](#footnote-ref-2)