

A few  
words.

**Australian Energy Regulator (AER)**

**Level 35, 360 Elizabeth Street**

**Melbourne, VIC, 3000**

Attention: Sarah Proudfoot, General Manager, Retail Markets Branch

**16 February 2015**

**Submission to AER's Issues paper: Regulating innovative energy selling business models under the National Energy Retail Law, November 2014**

AGL Energy (**AGL**) welcomes the opportunity to make a submission on the AER's Issues paper: Regulating innovative energy selling business models under the National Energy Retail Law dated November 2014 (**Issues Paper**).

AGL is a significant retailer of energy with over 3.8 million electricity and gas customers nationally. Accordingly, AGL has a strong interest in the efficient delivery of energy services for the long-term interests of consumers. AGL's New Energy business also has a strong interest in selling energy through innovative means and has set an aspirational target to establish a presence in one million households by 2020. Indeed, one of AGL's subsidiaries AGL Energy Services Pty Limited was recently granted an individual exemption for its solar Power Purchase Agreement (**SPPA**) business.

AGL supports regulation of alternative energy sellers not being technology dependent. A principles-based approach will help maintain a level playing field and ensure that regulation does not become redundant as new technologies enter the market. In AGL's view, the emphasis should be on providing consistent customer protections through application of appropriate robust conditions on all individual exemptions granted to alternative energy sellers if selling energy is a core component of the product or service they are providing to residential and small business customers.

This issue of how to regulate consumer protections with alternative energy sellers is not found in isolation. The regulation needs to be looked at holistically. Consumer protections are important, but there are also technical issues and grid arrangements that need to be taken into account due to imbalances that can and will arise between those responsible for connection to the grid, and those selling behind the meter. The Energy Market Reform Working Group (**EMRWG**) current consultation paper is also seeking submissions on this issue. Therefore there needs to be coordination, consistency and discussion in making a determination on approach.

Please find attached at **Appendix A** AGL's comments on the questions raised in the Issues Paper. **Appendix B** sets out AGL's recommended conditions and reasons for its recommendations.



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Please contact Leilani Kuhn on 03 8633 6934 or [lkuhn@agl.com.au](mailto:lkuhn@agl.com.au) if you wish to discuss any aspect of this submission further.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'RJB', is positioned below the text 'Yours sincerely,'.

Rebecca Brigham  
Manager, Retail Regulation

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## APPENDIX A – AGL RESPONSE TO ISSUES FOR STAKEHOLDER CONSIDERATION

### 1. What difference, if any, should storage and/or other emerging technologies have on how the AER proposes to regulate SPPA and other alternative energy selling models?

AGL has a firm belief that regulation of all alternative energy selling models should be technology neutral. Technology is rapidly developing, therefore regulation will struggle to keep up unless it allows for flexibility to adapt to changing circumstances. AGL submits that in order to be effective in regulating this emerging area, any regulation should focus on the relationship between the entity and the customer, and the nature of the service being provided.

In AGL's opinion, the distinction between essential and supplementary energy supply is not an appropriate threshold for determining the required level of regulation. The National Energy Retail Law (**NERL**) was developed on the basis that energy is an essential service and that any person selling energy should be required to provide a certain level of basic consumer protections. AGL argues that would be difficult to determine when one energy provider becomes the primary energy supplier for a customer (for example, is it when that provider is supplying 51% of the load, 75%, 90%?).

AGL also submits that by drawing a distinction between the types of energy being supplied, the AER would appear to be picking winners by requiring vastly different regulatory requirements from two businesses providing the same service. This distinction also assumes that there will always be a primary retailer for each customer who may seek to contract with an alternative energy seller. The implementation of a number of recommendations from the Australian Energy Market Commission's (**AEMC**) Power of Choice review and electric vehicles consultation may mean this assumption is no longer valid. For example, the Multiple Trading Relationships and Embedded Networks working group is currently looking to implement a model where numerous energy service companies are able to provide services through individual connection points. As these reforms are implemented and customers sign contracts with multiple service providers simultaneously, identification of the primary retailer may become more difficult.

In AGL's view, any regulation should focus on maximising customer choice in relation to distributed generation, energy storage and emerging technologies while ensuring that all customers who purchase energy from an authorised retailer or an alternative energy seller receive a similar level of consumer protections, particularly where energy is being sold to residential and small business customers.

Rather than drawing the distinction between whether the energy service is essential or supplementary, AGL submits that a better approach is to require all business, where selling energy is a core component of the product or service they are offering to residential and small business customers, to provide the basic consumer protections outlined in the National Energy Customer Framework (**NECF**). This position is supported by the *Exempt Selling Guideline – Version 2* dated July 2013 (**Exempt Selling Guideline**), which provides that for organisations looking to sell energy to small residential customers, the AER will likely impose conditions that provide customer protections that are similar to those provided under the NERL.

In determining whether "selling energy" is a core component of an alternative energy seller's product or service, AGL submits that the guidance provided in the Exempt Selling Guideline should be adopted. The Exempt Selling Guideline states that selling energy is likely to be a core component of a product or service being offer by a business where:

- a business' core business is the sale of energy;
- a business' primary relationship with its customers is the sale of energy and the business does not have another, or otherwise has a minor, relationship with the customer (for example, landlord/tenant relationship); and
- a business intends to sell to many customers and/or sell a large volume of energy.

As stated in the Issues Paper, when exercising its exempt selling regulatory functions, the AER must take into account the following policy principles:

- Ensuring that regulatory arrangements for exempt sellers do not unnecessarily diverge from those requirements applying to retailers.
- Exempt customers should be afforded the right to a choice of retailer as far as practicable.
- Exempt customers, should as far as practicable, not be denied customer protections under the NERL and the National Energy Retail Rules (**NERR**).

Drawing on the policy principles outlined above, AGL submits that the following four factors should underpin the development of AER's principles-based approach for regulating alternative energy sellers:

1. Ensuring adequate consumer protection
2. Encouraging innovation in the energy market
3. Avoiding cross subsidies between customers depending on technology choice
4. Ensuring competitive neutrality is maintained

It is AGL's view that this principles-based approach supports robust conditions focussed on consumer protection being applied to all alternative energy sellers where selling energy is a core component of the product or service being sold to residential and small business customers.

AGL also strongly submits that if the AER decides that further conditions should be applied to the SPPA business model going forward, then the AER should retrospectively apply the same conditions to all individual exemptions granted to SPPA business models to date using its powers outlined in rule 158 of the NERR.

## 2. What are stakeholders' views on the AER's proposed options? Are there any other options to which the AER should have regard?

Options	AGL views
Option 1 (retail authorisation)	A retail authorisation is not the appropriate approach to regulating alternative energy sellers. Retail authorisations are very rigid and do not offer the AER the required flexibility for regulating emerging technologies and non-traditional business models. Unfortunately, the AER does not have the option of granting limited authorisations under the NERL and a full retail authorisation could be seen as a barrier to entry that may stifle innovation of new and emerging technologies. AGL also agrees with the AER that some of the obligations of an authorised retailer are not appropriate for the emerging alternative energy selling

Options	AGL views
	<p>business models (for example, participation in the AER's Retailer of Last Resort scheme).</p> <p>As acknowledged by the AER, the current regulatory framework that applies to authorised retailers was developed before many of the emerging alternative energy selling business models were even being considered. As such, AGL considers that in order to maintain competitive neutrality in the energy market and keep pace with innovation, there is a strong case for a wholesale review of the current regulatory framework that applies to the retail energy market. This review should focus on ensuring that the right balance is being achieved between protecting consumers, encouraging innovation and ensuring that the regulatory framework is flexible enough for all participants (energy retailers, exempt sellers, distributors) to evolve the way they do business to allow energy to be brought to consumers more efficiently and at lower cost while maintaining the reliability of the market. AGL understands that the EMRWG current consultation paper is looking at these issues and AGL would encourage the AER to engage with EMRWG.</p>
<p>Option 2 (individual exemption)</p>	<p>As already stated above, AGL considers the individual exemption framework the most appropriate option for regulating innovative energy selling business models under the NERL. Individual exemptions provide the AER with the required flexibility for regulating this continually changing area while still ensuring that the balance between consumer protection, encouraging innovation, preventing cross subsidies between customers and maintaining competitive neutrality is struck.</p> <p>In granting individual exemptions to alternative energy sellers, the AER should apply robust conditions based on the principles-based approach discussed above. Also, the AER should apply the same robust conditions retrospectively to any SPPA providers who have already been granted an individual exemption by the AER. This will ensure an even playing field between alternative energy sellers going forward.</p> <p>AGL disagrees with the argument that the energy being provided by alternative energy sellers is supplementary and therefore their customers do not require the same level of consumer protections as those of an authorised retailer. AGL's view is that all alternative energy sellers, where the core component of the product or service they are providing to residential and small business</p>

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Options	AGL views
	<p>customers is selling energy, should be required to meet the minimum level of consumer protections found in NECF.</p> <p>AGL acknowledges that some of the requirements placed on authorised retailers are not relevant to alternative energy sellers and should not apply to individual exemptions granted to an alternative energy sellers by the AER. However, AGL's view is that it is not a significant burden to require certain alternative energy sellers to adhere to some of the minimum consumer protection standards set out in the NERL and NERR (such as obligations regarding providing ombudsman access to customers and billing requirements). This will ensure all customer have access to the same basic level of consumer protections and that there is not a significant disparity between the regulatory burden placed on authorised retailers and alternative energy sellers.</p>

**3. In relation to Option 2 (exemption, rather than authorisation), what, if any, conditions should be placed on an individual exemption for an alternative energy seller?**

If individual exemptions are to be granted to alternative energy sellers by the AER, AGL considers that there are a suite of appropriate conditions available to the AER that would result in a more consistent outcome for the customer. AGL's view is that the AER should impose conditions on all alternative energy sellers where "selling energy" is a core component of an alternative energy sellers' product or service that mirror basic customer protections afforded in NECF.

AGL has outlined its recommended conditions and reasoning for their inclusion in **Appendix B**. AGL considers that the conditions outlined in Appendix B should apply to any new individual exemptions granted by the AER to an alternative energy seller where "selling energy" is a core component of an alternative energy sellers' product or service. AGL also considers that these conditions should be retrospectively applied to any alternative energy sellers who have already obtained an individual exemption from the AER where "selling energy" is a core component of that alternative energy sellers product or service. The AER should allow for a transition period prior to the new conditions taking effect.

**4. Should the AER include a 'trigger point' for review of individual cases if it proceeds with Option2?**

AGL recommends that the AER include a 'trigger point' for review of individual exemptions. In our opinion, the trigger point should be a time based trigger (i.e. every 5 years) as this would allow the AER to keep abreast of the changes in the alternative energy sellers' market and ensure that its regulatory approach continues to be appropriate.

AGL does not support a trigger based on size (i.e. in terms of kW installed) as AGL believes there is a risk that it would encourage businesses to try and stay under the threshold for the trigger, which would lead to market distortion and undermine the whole purpose of having the trigger in the first instance. An example of some of the issues that can be encountered with a size based trigger is the threshold that was originally applied to the Victorian Energy Efficiency Target (**VEET**). When VEET was introduced in Victoria, to be captured by the scheme a business had to exceed the 5000 customer threshold. This led to some businesses actively maintaining their customer numbers under the 5000 threshold and gaining an unfair competitive advantage of being exempt from complying with the VEET scheme. Many of the participants in the VEET scheme submitted to the Victorian government that the 5000 customer threshold did not deliver an equitable outcome and distorted the competitiveness of the retail energy market. As a result of the submissions received, the Victorian government introduced a dual threshold for liability under the VEET scheme to be triggered when either the existing 5000 customer threshold or a new consumption based threshold were exceeded.<sup>1</sup>

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<sup>1</sup> The former Department of Primary Industries (DPI) *Victorian Energy Efficiency Target Scheme Definition of Relevant Entities Discussion Paper* dated July 2012

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## APPENDIX B – AGL’S RECOMMENDED CONDITIONS FOR EXEMPT SELLERS

Conditions	AGL’s reasons
Condition that the alternative energy seller can only sell energy under the business model that the alternative energy provider has received an exemption for	AGL considers this important as it ensures that the AER maintains a level of scrutiny about what business models are being used by alternative energy sellers and whether individual exemptions (and applicable conditions) are appropriate for those business models.
Condition setting out reporting requirements to the AER	<p>As alternative energy sellers are an emerging area of the energy industry in Australia, and one that is continually changing, AGL submits that it is very important that the AER has some oversight on the developments in the alternative energy sellers’ market. As more customers take up these alternative forms of energy supply, and move further away from traditional arrangements, it is important that the AER have information on customer numbers, complaints, and emerging issues to ensure it is appropriately regulating this area of the energy market.</p> <p>In AGL’s opinion, all of the relevant requirements outlined in section 282 of the NERL should apply regarding reporting on customer numbers, complaints, disconnections.</p>
Condition 2 – Information provision	AGL submits that this condition is required to ensure that residential and small business customers of alternative energy sellers are provided with adequate information to make an informed decision regarding the product or service being offer by the alternative energy seller.
Condition 3 – Billing and payment arrangements Condition 5 – Pay by date	AGL submits that this condition is required to ensure that the bills provided by alternative energy sellers will be presented in a way that allows the customer to understand the cost and other details of the product or service being provided.



Conditions	AGL's reasons
	<p>It is also important that alternative energy sellers are required to:</p> <ul style="list-style-type: none"> <li>• issue bills reasonably frequently;</li> <li>• offer flexible payment options to its customers if they find themselves in financial difficulty; and</li> <li>• give customer an appropriate amount of time to pay their bills. However, AGL submits that given the current trend towards monthly billing for residential and small business customers, it would be appropriate to reduce the number of days required to seven business days rather than 13.</li> </ul>
<p>Condition 8 – Undercharging and overcharging</p>	<p>AGL considers it important to include conditions relating to undercharging and overcharging to ensure that the rights and responsibilities of alternative energy sellers are clear if an undercharge/overcharge situation arises. However, AGL submits that the threshold for when an alternative energy seller must offer a customer an option about how they would like their overcharged amount refunded should be \$50 in accordance with the NERR.</p>
<p>Condition 9 – Payment difficulties and disconnection or cessation of supply</p> <p>Condition 10 – When disconnection or cessation of supply is prohibited</p> <p>Condition 11 – Reconnection of supply</p>	<p>AGL considers that these conditions are required to ensure continued supply for customers of alternative energy sellers and provide some minimum protections for vulnerable customers (for example, customers experiencing financial difficulties, life support customers).</p> <p>Also, while the customers may have a contract with an authorised retailer along with the alternative energy seller (meaning that even if they are disconnected by the alternative energy seller they still have access to electricity from the grid through their authorised retailer), AGL considers it important that all alternative energy sellers customers receive notice prior to being disconnected to minimise the possibility of disputes arising between authorised retailer, alternative energy</p>

Conditions	AGL's reasons
	sellers and customers due to a customers disputing bills they receive from their authorised retailer because they did not realise that they had been disconnected by their alternative energy seller.
Condition 12 – Concessions and rebates	In AGL's view it is important to include a condition that sets out the alternative energy sellers' responsibilities with respect to concessions and rebates as there may be concessions and rebates that are targeted at alternative energy sellers in the future (for example solar rebates) or the current concession regimes may apply to alternative energy sellers.
Condition 13 – Choice of retailer	AGL considers this condition important to ensure that contestability in the energy market is maintained.
Condition 14 – Contact details	The condition is important in AGL's view as it ensures that customers of alternative energy sellers have clear information about who to contact to discuss their account. This will minimise the number of customers contacting their authorised retailer due to confusion or lack of information about who to contact at their alternative energy seller.
Condition 15 – Dispute resolution	AGL's view is that all alternative energy sellers should be required to provide access to the state based ombudsman schemes where possible.
Condition 16 – Life support customers	AGL considers it very important that alternative energy sellers are required to advise the relevant authorised retailer and distributor when one of its customers is registered as a life support customer (and provide updates on this information if and when they are available). It is also important that alternative energy sellers maintain appropriate records of their life support customers.
Condition 17 – Continuity of supply	AGL submits that it is appropriate that alternative energy sellers be subject to a condition requiring them to advise the AER

Conditions	AGL's reasons
	immediately if there is any likelihood that they will be unable to continue selling energy.
Condition 19 – Maintaining records	AGL considers it important that alternative energy sellers maintain appropriate records about its customers to assist in resolving any disputes or enquiries that may arise.

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