Ms Sarah Proudfoot

General Manager—Retail Markets

Australian Energy Regulator

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Submitted online at: AERInquiry@aer.gov.au

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Dear Ms Proudfoot,

ATA appreciates the opportunity to provide feedback to the AER regarding the regulation of innovative energy sellers. We thank the AER for preparing a very useful issues paper and for their endeavours to include consumer advocates in this important and timely discussion.

Founded 35 years ago, the ATA is a National, not-for-profit organisation whose 5,500 members are residential energy consumers.

Through the application of our experience in energy policy and markets to our advocacy and research, and close collaboration with fellow members of the National Energy Consumer Roundtable, the ATA is an important voice for energy consumers Australia-wide.

ATA presents a uniquely two-fold perspective as a consumer advocate: with the continuing support of the Consumer Advocacy Panel (now Energy Consumers Australia) we represent all small energy consumers in with respect to the promotion energy affordability and improvements to the NEM, and speak with authority on behalf of the growing portion of the consumer base who have an active interest in demand side participation.

This submission has been prepared with valued input from the Consumer Utility Advocacy Centre, who will provide the AER with an endorsement of this submission, providing clarifications if required, in due course.

We have endeavoured to respond directly herein to the questions posed in the issues paper, as well as exploring some related matters of the treatment of energy services for the purposes of authorisation and/or exemption.

**The requirement for authorisations and exemptions needs to be based on the provision of energy services, rather than the sale of energy.**

ATA appreciates that the AER only has jurisdiction to regulate for sale of energy, hence retail and exempt selling arrangements apply today only where there is a financial transaction relating to the metered volumes of energy.

This means that providers of many energy related services, that are in other respects similar to those where energy is transacted, wont be regulated beyond ACL with respect to consumer protections.

Until now, this approach has been suitable given the nature of exemptions, but now needs to be brought up to date, as it leaves current and future energy consumers vulnerable to a lack of energy specific protections.

Perhaps of most concern is that restricting regulations only to where energy is metered and traded runs the risk of creating loopholes, whereby the provider of the product or service can – for better or worse - avoid complying with the same consumer protection and other exemption requirements simply by not selling energy on a per kWh basis.

One example of this today is solar leasing products. Under a typical solar leasing arrangement, a consumer makes a regular payment for a solar array that remains the property of the provider until fully paid for. In this case the consumer actually takes on markedly more risk than they do under SPPA's, as they (the consumer) carry most of the volume risk[1]. Perversely, the consumers are afforded lower levels of protection under the (usually higher risk) solar leasing arrangement than under the (usually lower risk) SPPA arrangement.

Emerging and future examples where providers of energy services may negate some regulation or compliance burden, which retail exemption provisions otherwise include, as where they are providing a service to consumers for the operation of appliances and devices within the home. These products and services may include:

- Demand aggregator control of household cooling (or heating) for the purposes of demand response;
- Battery charging systems to balance offpeak energy consumption with peak demand (without solar), to reduce consumer's price exposure; and
- Other emerging services to operate home appliances at certain times or under certain conditions.

Accordingly, in our view, the AER's jurisdiction should be expanded to cover the provision of energy services rather than just where there is a sale of energy.

[1] The volume risk relates to the production of energy over the life of the system. It is very common for solar arrays to generate less – in some cases, as less than half over the long term – of the energy that the provider has predicted at the time of sale, due to the impact of many factors including component performance, breakdown, and shading. Under an SPPA arrangement, where payments are based on the metered output, the provider carries this volume risk, however under a financing arrangement, where repayments are fixed regardless of performance, the consumer carries the risk.

While ACL is generally the more appropriate avenue for consumer protections where a consumer is buying a product outright and assuming full ownership and responsibility for day-to-day operation (which the exception of providers of SAPS systems as noted herein), in the cases indicated above, ongoing energy services provided are of a nature where ACL may be deficient and the consumer impacts may more closely resemble those catered for by retail exemptions.

ATA is of the view that the need for, and level of, regulatory intervention in the interest of providing consumer protection should be based not on the transaction of energy (ie on metered energy flows), but on

- the extent to which the service or product in question is being relied on by the consumer to deliver the essential service of the continuous supply of electricity; and
- the impact of on the consumer of experiencing payment difficulties and hardship

Again, ATA understands that the AER's jurisdiction would need to be expanded to accommodate such a change, however we are of the view that the AER is the more appropriate body.

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

Importantly, the regulation need to focuses on the service, rather than the technology. The level of regulation and consumer protections should be based not on whether batteries are used, but on the nature of service provided. Hence the inclusion of storage should not, in and of itself, become a trigger for further regulation (although related matters may be a trigger in some cases as explained further on)

Products need to be tested, fit for purpose and conform to safety requirements under the Australian Consumer Law. While the emerging lithium chemistry battery market in Australia is yet to mature to the point where consumers can be assured of adequate quality and performance, this is a matter for agencies rather than the AER.

There are different energy services reliant on similar battery technology where the consequence of major failure of the service provider or product, and hence the impact on either a consumer, or the consumer's traditional energy retailer, are materially very different from one case to the next, and this is a more appropriate cause for regulation than the inclusion of batteries.

Consider the example of the complete major failure of a battery that results in the battery system being out of action for a week.

1. Where the failed battery is part of a grid connected customer's energy generation and storage system, but the consumer can still access energy from the grid, the consequence is
    a. no loss of access to an essential service
    b. the consumer pays maybe a few dollars more for energy that week
    c. the consumer's retailer sells some more energy at their nominated price

2. Where the failed battery is part of a Stand Alone Power Supply where a consumer is removed from the grid, the consequence may include
    a. if there is no backup generator present: a complete lack access to the essential service of continuous energy supply for a week
    b. if a back up generator is present: a constrained energy supply remains available, but potentially costing hundreds of dollars in diesel fuel over the course of a week
    c. perhaps just as importantly, a potential media and / or public outcry, especially if the situation occurs at multiple sites due to poor quality equipment, or if a service provider ceases to trade, or if there is a serious consequence such as injury or loss of life from loss of supply. In the longer term, any of these are likely outcomes.

ATA is of the view that the need for, and level of, regulatory intervention in the interest of providing consumer protection should be based not on whether batteries or any other specific technology is present, but on

- the extent to which the service or product in question is being relied on by the consumer to deliver the essential service of the continuous supply of electricity; and
- the impact of on the consumer of experiencing payment difficulties and hardship

**When should authorisations or more robust exemption requirements apply? What, if any, conditions should be placed on an individual exemption for an alternative energy seller?**

***Providers of equipment or services to take consumers permanently 'offgrid' should be subject to greater regulation for the purpose of consumer protection. Authorisation may be appropriate for these services.***

As noted, ATA is of the view that the need for, and level of, regulatory intervention in the interest of providing consumer protection should be based not on the transaction of energy (ie on metered energy flows), but on

- the extent to which the service or product in question is being relied on by the consumer to deliver the essential service of the continuous supply of electricity; and
- the impact of on the consumer of experiencing payment difficulties and hardship

Considering this, more stringent exemption conditions - some matching retailer conditions where appropriate - might be required wherever

- the provider of the product or service has the ability to entirely restrict a consumer's access to continuous energy supply for non-payment, or
- when the consequence of failure of the business or product is that consumers access to the essential service of the continuous supply of energy is compromised,

such that consumers are unable to access energy from another cost effective and immediately available source.

While many consumers in remote areas are used to living with stand alone power supplies, in coming years it is very likely that consumers who are used to receiving energy from the grid will choose to disconnect from the grid and purchase or lease a SAPS. These customers will be unused to living with a SAPS and tend not to appreciate the nature of outages associated with - particularly cheaper, poorer quality – SAPS.

Currently there are two types of protection afforded to consumers who choose to go 'off the grid'

- Electrical safety provisions, such as the wiring rules (not optional)
- Clean Energy Council's SAPS installer accreditation (optional). A SAPS installer does not legally require this accreditation, and providers of cheaper poor quality SAPS can often undercut those that do. In any case, this accreditation does not specifically address the unique risks and needs of grid-connected consumers moving off-grid.

Noting the example provided previously of the impact of the failure of a Stand Alone Power Supply[2], our view is that ***where the customer is disconnecting from the grid***, even if the consumer is purchasing a SAPS outright, the SAPS provider should be required to comply with conditions beyond those in ACL. These should include

- providing a performance guarantee with respect to the frequency and duration of system outages
- educating the customer about the difference between living with a grid connection and living with a SAPS
- demonstrating that they have the explicit informed consent of the consumer, with particular emphasis on the customer understanding the above matters.

Currently, there is no apparent requirement in ACL, NECF, or the Clean Energy Council's voluntary SAPS installer accreditation for the above conditions. Due to the nature of electricity being an essential service and the fact that these customers are initially connected to the grid, it is appropriate for authorisation, or more robust exemption arrangements administered by the AER, to be extended to these SAPS providers in the interest of consumer protection.

2 Where a Stand Alone Power Supply fails for a week, the consequence may include

1. if there is no backup generator present: a complete lack access to the essential service of continuous energy supply for a week
2. if a back up generator is present: a constrained energy supply remains available, but potentially costing hundreds of dollars in diesel fuel over the course of a week
3. perhaps just as importantly, a potential media and / or public outcry, especially if the situation occurs at multiple sites due to poor quality equipment, or if a service provider ceases to trade, or if there is a serious consequence such as injury or loss of life from loss of supply. In the longer term, any of these are likely outcomes.

***Explicit informed consent***

There need to be some exceptions to traditional energy market protections to reflect the nature of innovative products and services.

One example relates to access to competition.

For traditional energy retail services, consumers should be able to readily change energy retailers to access better priced energy from the grid, or break a contract when their circumstances change, with little or no penalty. However, some innovative products and services that will reduce costs (or improve cost certainty over time) for consumers inherently require a longer term contractual commitment, as material up-front investment is made in providing and installing equipment.

EIC should apply to all contracts whether short or long term, but the implications of the long term contracts to the consumer would be different. In these cases, a consumer should not be restricted from accessing innovative products and services by protections that are intended to preserve access to competition in the retail market, however, a service provider must be able to demonstrate explicit informed consent such that the consumer is made aware that

- they may be foregoing access to competition for some or all of their energy needs for any period. This is important for consumers to understand, given, for example, the experience of some consumers making long-term decisions to use uncompetitive LPG (bottled gas).
- they may be subject to some sort of additional change if their circumstances change - for example, if they move house – to recoup some of the cost outlay.

As noted previously, where the customer is disconnecting from the grid, even if the consumer is purchasing a SAPS outright, the SAPS provider should be required to comply with conditions beyond those in ACL. These should include

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- educating the customer about the difference between living with a grid connection and living with a SAPS
- demonstrating that they have the explicit informed consent of the consumer, with particular emphasis on the customer understanding the above matters.

**Should the AER include a 'trigger point' for review of individual cases?**

A time triggered review, as noted by the AER, would be effective in the interest of maintaining consumer protections in the context of an evolving market.

As noted, ATA is of the view that the need for, and level of, regulatory intervention in the interest of providing consumer protection should be based on

- the extent to which the service or product in question is being relied on by the consumer to deliver the essential service of the continuous supply of electricity; and

- the impact of on the consumer of experiencing payment difficulties and hardship

Hence, an energy volume or proportion based trigger for retail authorisation is not appropriate.

Using the portion of energy provided as a trigger for authorisation is unnecessary and may create a barrier to efficiency and effective competition. It also requires the application of an arbitrary distinction that reflects neither the real impacts on the consumer or on the retailer.

While retailers have raised the issue that they will carry the risk of consumer protection provisions such as CSOs, while the other energy provider doesn't, some aspects of this concern do not appear valid, and in any case this appears to be an entirely manageable risk. These matters were productively discussed at the AER's forum on February 5th and the points following reflect ATA's understanding of some of these issues as discussed.

1. In the case of a consumer accessing a grid connected generation and/or storage related service, if a third party service provider ceases to trade or the technology stops working, there is no negative implication for the retailer – the outcome for them is that the consumer purchases more energy from the grid, at a price determined by the retailer. By all accounts this is a positive result for the retailer.

2. Any retailer is able to make a price offering to consumers to recover any additional risk or cost. The advent of customers getting most of their energy from sources other than the grid does not present a fundamentally new problem for energy retailers, it simply means some of their customers will use less energy.

   For example, a 30kWh/day all-electric home that meets 80% of its energy needs from a generation and storage system will import about 7.5kWh/day from the grid. There are many efficient dual fuel consumers today without solar or batteries that already import less than 7.5kWh/day.

   At least one retailer that is active in Victoria today already readjusts the unit price of energy that is charged to their customers on a month to month basis, according to the customer's historical average kWh energy use. They do this to account for - among other things - fixed network charges and other fixed costs that they smear across the volume charge.

   There is nothing preventing a retailer of the customer with low energy usage (for example, one with solar and batteries) from taking a similar approach, or applying other tools such as higher fixed charges and declining blocks tariffs, today.

3. Compared to average consumers, those accessing innovative energy services are generally less likely to enter into hardship, as they will tend to
   a. Have access to capital to make a material up-front payment; and/or
   b. Have satisfied the provider of those services / products that they are a low credit risk (few innovative energy service providers will enter into a PPA or leasing arrangement with a consumer that is likely to have difficulty paying); and/or

c. Be an owner occupier, as restrictions on building modifications and the longer term nature of some contracts with make generation and/or storage products and services unfeasible for renters

4. In the event that the consumer has difficulty paying, the retailer wont be exposed to any more unpaid credit than for their own portion of the energy supplied for that consumer in any case.

   This actually reduces the retailer's cost burden for that customer. As the retailer ultimately has the ability to disconnect a consumer from the grid in the event of not payment – a measure the other service provider can't do - the consumer will generally opt to pay the retailer ahead of the generation / storage provider.

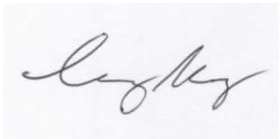
Some retailers are of the view that the innovative energy sellers have an advantage in an unlevel playing field, however in our view this is neither accurate, nor a valid reason for imposing higher conditions on providers of generation and / or storage, as

- retailers are equally able to enter the market for innovative products and services (with or without retail authorisation) and, in fact, a few larger retailers have actually set up their own subsidiary companies with retail exemptions with a view to do so; and
- retailers and innovative sellers offer fundamentally different services, such that the extent to which they are in direct competition is questionable. For example, retailers offer connection to continuous supply of energy from the grid (which SPPA providers cant), whereas a provider of storage services may provide, for example, optimisation of energy use in a home, (which retailers dont)

For the above reasons it is hard to accept the argument raised by retailers about the lack of a level playing field.

Some retailers have also argued for relaxed authorisation requirements because they perceive the requirements on innovative sellers are lesser than their own. However, the solution isn't to lower the authorisation requirements for retailers providing access to an essential service.

Thank you again for the opportunity to provide this submission, and please feel free to contact myself (craig@ata.org.au) or Damien Moyse (Damien@ata.org.au) with any queries.



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