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Submitted via email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

### **Regulating innovative energy selling business models under the National Energy Retail Law**

Alinta Energy (**Alinta**) welcomes the opportunity to make a submission in response to the *2015 Issues Paper – Regulating innovative energy selling business models under the National Energy Retail Law, (the Issues Paper)*, released by the Australian Energy Regulator (**AER**).

Alinta is an active investor in the energy retail, wholesale and generation markets across Australia. Alinta has over 2500MW of generation facilities in Australia (and New Zealand), and a customer base of approximately 800,000 in Western Australia and across the National Electricity Market (**NEM**).

#### **The AER's Issues Paper**

Alinta understands the purpose of the Issues Paper produced by the AER is to discuss and present the outcomes of its assessment on the ways in which businesses sell energy and how alternative energy selling models are regulated under National Energy Retailing Laws (**NEL**). The Issues Paper and the associated work provides a broad and detailed consideration as to whether there is in fact a material problem being created by granting retail exemptions within the NEM and whether the existing regulatory framework remains appropriate.

Under section 88 of the NEL a business is required to obtain a retail licence from the AER prior to selling energy unless an exemption has been obtained. The previous two years have seen a rapid increase in innovative retailing and solar leasing options available to consumers, with a rapidly increased uptake in these services by the market. Over this time, the AER has granted multiple retail licence exemptions to emerging business models.

The Issues Paper presents a number of guiding principles that the AER refers to when granting retail exemptions to alternate energy selling businesses including:

- Facilitating new entry to the electricity demand management market, to stimulate competition for the benefit of consumers.
- Ensuring that residential and small business consumers are adequately protected.
- Ensuring that barriers to entry are not created by requiring potential new entrants to meet onerous and unnecessary compliance and accreditation requirements.

Nonetheless, the AER has highlighted that “*we are concerned that the Retail Law is not equipped to deal with many emerging energy retail models....and it may be timely to revisit the framework more generally*”<sup>1</sup>. As such the AER has presented two potential options for regulating alternate business models:

1. All alternative energy sellers will be required to hold a standard retail authorisation.
2. The granting of individual exemptions to alternative energy sellers with robust conditions.

It is within this context that Alinta provides its views on the AER’s Issues Paper, including the challenges which have been created as a result of the AER having granted multiple retail licence exemptions to emerging business models.

### **Alinta’s views**

Based on the material presented within the Issues Paper, Alinta is strongly of the view that the market has reached a point which necessitates a review of the existing regulatory framework which applies under the NEL.

Alinta is of the view that in considering the most appropriate policy framework for the inclusion of alternative energy sellers the following objectives are paramount:

- Minimum levels of consumer protection should be maintained for all consumers.
- Competitive neutrality and equitable treatment of same services providers across all business supply models should continue to be promoted.
- The regulatory framework should ensure that potential future market developments can be accommodated.

Alinta is subsequently supportive of Option 1, as presented within the Issues Paper, as it will result in market outcomes that most closely align with these objectives. Further details of Alinta’s views on this matter are provided below.

### **Maintaining minimum level of consumer protection**

Alinta is strongly of the view that consumers of energy should have access to all the protections as provided under the NEL. The establishment of the current array of consumer protections has occurred incrementally over time in conjunction with the evolution of the market, and has resulted in a robust consumer protection framework for energy consumers in the NEM. In particular, energy consumers have access to a range of flexible consumer protections, which regulatory authorities consider fundamental in the provision of energy. If an authorised energy retailer is the primary provider of a consumer’s energy they are deemed to be an essential service and as such must provide the following services:

- Access to flexible payment options;
- Adherence to energy marketing requirements;
- Adherence to disconnection and reconnection obligations;

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<sup>1</sup> Regulating Innovative Energy Selling Business Models under the National Energy Retail Law, AER, (2014), Pg 6

- Ombudsman complaint referral and dispute mechanisms;
- Translation and foreign language services;
- Receipt and application of jurisdictional concession schemes on retail consumer bills; and
- Various other statutory liabilities such as prohibitions on life support disconnections.

The provision of these services represents a material and ongoing investment by energy retailers in the provision of quality customer service. Nonetheless the increasing prevalence of AER retail exemptions granted to alternate energy sellers is challenging the well accepted notion that these consumer protections are absolute requirements when selling energy. Alinta firmly believes it is pivotal that the regulatory framework should ensure that customers who purchase electricity from an alternate energy seller do not find themselves in an unenviable position where they have a problem under their contract but do not have access to the fundamental consumer protection provisions which would otherwise be available to them under a standard retail agreement from an authorised energy retailer.

In the AER's final statement of approach and guidance for industry as presented in 2014; the AER advised that customers purchasing energy through alternate energy sellers do not necessarily need the same level of protection as customers purchasing energy from an authorised retailer, and that the costs of regulation would outweigh the potential benefits and as such is not justified, forming part of the basis for the granting of the numerous retailer exemptions issued to date. Alinta however considers that from a customer protection perspective this is not an acceptable outcome. Whilst the cost of regulation may indeed be material these are costs that all energy retailers face equally and do not provide a strong reason for non-participation by alternate energy sellers. All new entrant energy retailers, including when Alinta entered the NEM, encountered and overcame the same regulatory burden.

Alternate energy sellers should have to comply with all the consumer protections available to customers under the NEL. Alinta is of the view that the popularity of alternate energy sellers in the market will increase in the short to medium term, running the risk that if the status quo continues and the AER continues to grant retailer exemptions, that a two tiered customer service system could become entrenched, whereby some customers will have access to a substandard customer protection services.

It is Alinta's view that the market has reached a point where the evolution of the market is occurring at a quicker pace than the regulatory reforms required to support it. If alternate energy sellers are not required to provide customers with an "essential level" of customer support obligations, then this raises the question as to whether these support services should in fact remain mandatory, or are surplus to consumer needs. Nonetheless, Alinta does not yet ascribe to such a view and considers consumer protections as desirable. As such, Alinta strongly supports adoption of option one which will ensure that all customers will be protected by retail authorisation provisions and the broader regulatory framework.

### **Equitable treatment of same service providers**

As referred to above, it is becoming increasingly apparent that the granting of retailer authorisation exemptions represents an inequitable treatment of same service providers. In Alinta's view it is essential to consider retailer authorisations on a first principles basis. If alternative energy sellers are the primary source of the customer's energy and if they are selling energy across multiple sites, it would be wholly consistent and equitable to require that seller to hold a retailer authorisation.

However, in practise the present situation has seen the AER granting multiple retailer exemptions and has arguably created precedence for the inequitable treatment of same service providers.

From an equity perspective Alinta considers that it is inappropriate to exempt alternate energy sellers from holding a retail licence (and thus the associated requirements of a retailer) when authorised retail licence holders are competing for the same customers base and yet incur costs to provide customer protections. In practise this inequity under the NEL means that alternate energy sellers now have a competitive commercial advantage.

An additional issue which has been raised in this area (and yet remains unresolved), is the AER's distinction between authorised retailers whom provide "essential service" and alternate energy sellers whom provide "supplementary services". In practice this refers to a consumer who has a solar leasing agreement with an alternate energy supplier whom provides the vast majority of consumers supply requirements. However, the consumer also has a contract with an authorised retailer for a small portion of their requirements that the alternate energy seller does not provide.

In this scenario, and under the current rules, the authorised energy seller is still treated as the customers "primary retailer" and is required to provide all of the associated statutory obligations that come from being an authorised retailer (and pay the associated costs), despite providing none or only a small amount of the customers energy. On the other hand, the alternate energy seller who is the customer's primary source of supply makes no contribution to the provision of customer support services, despite gaining the lion's share of revenue from the customer. In practise this has led to authorised retailers becoming the fall back safety net for customers whom encounter any problems with their alternate energy seller, resulting in the authorised retailer incurring significant costs and yet receiving only a small (or in some cases none at all) amount of revenue.

Alinta understands that the present rules contain various definitional points of contention such as "essential" and "supplementary" services, and that this has in part formed the basis of the AER's decisions to grant retail exemptions to date. Nonetheless, it is clear that the status quo represents an inequitable treatment of energy providers under the rules. In Alinta's view this provides a clear argument for reform of the National Energy Customer Framework and associated rules to ensure option one as presented by the AER is applied equally to all energy providers, including alternate energy sellers.

### **Regulatory framework flexibility**

As outlined above it is becoming increasingly clear that regulatory reform in this area has lagged behind the development of the market, to the point where the NEL now requires revision regarding how alternate energy sellers are regulated. Whilst Alinta is supportive of some level of flexibility in the application of a regulatory framework, it is essential that fundamental levels of customer protections are equally applied as the standard for the NEM. Alinta agrees that the obligations associated with holding a retail authorisation are to a degree burdensome; however the granting of exemptions in this area has only served to reduce transparency in the market for policy makers, regulators and most importantly customers, who may not be even aware of the nature of their energy contract with their alternate energy provider.

Having a regulatory framework which is flexible is a desirable trait however a two tiered regulatory system has been created in this case as a result of the AER's discretion to grant exemptions for energy providers. To avoid similar outcomes in the future, Alinta would be supportive of conditions being clearly defined under which the AER can exercise its discretion around granting exemptions for

energy providers. This would ensure that the confidence of the market to invest in new business models in the future is not undermined.

Broadly Alinta supports the intention of regulatory reform in this area which continues to regulate the sale of energy (including any alternate energy selling models) in a flexible manner that does not inhibit product innovation but still provides a mandatory level of customer protection under the rules. Alinta has confidence that through this consultation process the AER can find the right balance between flexibility (with the intention of reducing the regulatory burden for all retail participants) and ensuring fundamental consumer protections are maintained.

## **Conclusion**

Alinta believes the AER Issues Paper has provided a much needed opportunity to build a stronger platform for regulatory reform in the granting of retail authorisations. As explored above, it is clear that regulatory reform in this area has lagged behind the development of the market, to the point where the NEL and associated legislation are now out of sync with market circumstances.

Alinta has confidence that the right balance between customer protection and enabling a flexible regulatory regime so as to avoid regulatory burden can be achieved through the introduction of Option one.

Should you have any queries in relation to this submission, please do not hesitate to contact Mr Anders Sangkuhl on, telephone, 02 9375 0962.

Yours sincerely,



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