



25 November 2013

Ms Jacqui Thorpe
Acting General Manager, Retail Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

By email: AERInquiry@aer.gov.au

Dear Ms Thorpe,

Regulation of alternative energy sellers under the National Energy Retail Law Issues Paper

Alinta Energy (Alinta) welcomes the opportunity to make a submission on the *Regulation of Alternative Energy Sellers under the National Energy Retail Law Issues Paper (Issues Paper)*

Alinta is an active investor in the energy retail, wholesale and generation markets across Australia. Alinta has around 2500 megawatts of generation capacity in Australia (and New Zealand), and a growing customer base which includes approximately 700,000 retail energy customers in Western Australia, and across the National Electricity Market.

Alinta is of the view that the lack of regulatory governance over what is termed “alternate” energy sellers, within the National Energy Retail Law (NERL) and National Energy Consumer Framework (NECF) is a market design deficiency that needs to be addressed. As a result of technological advances and innovation in product offering through alternate business models the NERL and NECF need to be revisited and appropriate governance frameworks implemented to ensure both consumer protections and competitive neutrality in the provision of energy supply and services is maintained.

We support the Australian Energy Regulator (AER) in identifying and commencing consultation on this important issue and look forward to our continued involvement in this consultative review. Our detailed comments are contained in the following document.

Should you wish to discuss the details of our submission I may be contacted on (02) 9372 2653 or via email shaun.ruddy@alintaenergy.com.au

Yours Sincerely

Shaun Ruddy
Manager National Retail Regulation

Regulatory Policy Objectives

In considering the most appropriate policy framework for the inclusion of alternative energy sellers the following objectives are paramount:

- Maintaining minimum levels of consumer protection, for all consumers;
- The continued promotion of competitive neutrality across all service and supply entities; and
- Ensuring the regulatory framework is sufficiently flexible to accommodate potential future market developments, particularly in light of technology developments.

The AER in its Issues Paper is attempting to draw a definitional differentiation between essential and non-essential supply of energy. However any such definitional segregation has the potential to be quite subjective in its determination. Further with potential advancements in technology and the way in which consumers consume energy the definition of what is deemed essential and non-essential will evolve.

It would appear that what is being born out of the issue paper is that the NECF needs to be reviewed to redefine what it is to be a retailer of energy, with a focus on the issue of what service or commodity is being sold (supplied) to the consumer. This may result in an alternative category of authorisation for some categories of service provider. Alinta is supportive of such an outcome.

NECF must be able to identify, categorise and value a service on its own merits, rather than relying on referencing it against other services being supplied to the premises, as is being suggested in the Issues Paper. Such an approach lends itself to the inclusion of alternative authorisation categories.

An additional factor impacting the ability for the implementation of a national policy objective / governance framework overseeing alternate energy sellers is that we are yet to have all jurisdictions adopt the NECF. This lack of regulatory consistency across NEM jurisdictions makes it even more difficult to achieve appropriate policy objective outcomes.

Current Exemptions Regime

The Issues Paper proposes to utilise the current exemptions framework under the NECF in dealing with these alternate energy sellers. Alinta does not support this approach. The exemptions framework under the NECF was conceived under a different, more simplistic policy framework. The NECF was developed and only contemplated a requirement to regulate retailers and distribution companies. The exemptions framework, in the case of retailers, was developed under this regime to manage a limited number of exceptions to the usual retailer business model. That is, for example, to manage supply through embedded networks and caravan parks where there was no traditional retailer yet consumers received supply.

Alternative energy sellers are proposing to supply energy to a consumer in competition to the consumers existing retailer. Such a model carries with it a number of complexities, which are not reflected or contemplated by the current simplistic exemptions framework.

Some alternate energy sellers have in the past expressed the view that they consider themselves not to be selling energy, which raises the question of whether the NECF or the exemptions framework under the NECF is applicable to these suppliers. The perceptions /

assumptions of alternative energy sellers in this regard needs to be addressed through a more comprehensive authorisation / exemption regime that accurately defines categories of alternative energy sellers.

Proposed Approach

The proposed approach outlined in the Issues Paper does not appear to be addressing any specific market failure. Whilst the Issues Paper suggests there are some potential barriers to market entry, we hold the firm view that it is not good policy to require higher service and consumer protection standards and obligations from some service providers and not from others providing similar (or in most cases identical energy supply) services.

Such an approach distorts competitive market outcomes and has the potential to confuse customers and create further market complexity. The proposed approach in the Issues Paper would have the likely effect of transferring risk to existing “authorised” market participants, whilst allowing others (alternative sellers) an ability to benefit from a light handed compliance approach, ultimately to the detriment of consumers.

The proposed approach also assumes the current retailer-consumer arrangement will continue, that is there will always be a primary retailer for each consumer where an alternate energy seller is also supplying a consumer. Where there is an option for multiple trading entities and service providers to supply a consumer through a single connection point the ability to determine the “primary retailer” will become less clear and thereby undermine the fundamental concept of the proposed approach.

Alinta is of the view that a broader approach is required when considering the long term governance and regulatory framework for alternative energy sellers. Such an approach should not be based on a simplistic differential definition approach (essential vs. non-essential supply) as prosed in the Issues Paper, but rather a model that ensures both competitive neutrality among suppliers and maintains sufficient consumer protections.

Given the developing nature of this market segment, and the different business models under proposal and in particular the complexities around consumer protection, further direct market participant consultation is required. The Issues Paper should be viewed as the commencement of this dialog and we look forward to further working with the AER on this important and complex issue.