



Clean Energy Council submission to the Australian Energy Regulator

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

Executive Summary

Clean Energy Council (CEC) welcomes the initiative by the Australian Energy Regulator (AER) to consider the implications of battery storage for the regulation of alternative energy sellers.

The AER's framework for regulation of alternative energy sellers is working. Reductions in the cost of battery storage do not necessitate changes to the ways that the AER regulates alternative energy sellers.

This review provides an opportunity to consider ways of streamlining the AER's regulatory framework to reduce unnecessary red tape for businesses. We urge the AER to consider the approach taken in Western Australia and allow a class retail authorisation exemption to sell electricity for consumption on commercial premises on which the generating works are located.

Cost-competitive battery storage is expected to enable new forms of electricity supply arrangements in future. One such innovation is 'micro grids'. Consumer protection issues might arise in future if large numbers of energy customers obtain their electricity through micro-grids that are not part of the interconnected national electricity system. However, addressing this issue does not require a change in the way that the AER regulates. Instead, it requires an extension to the scope of the AER's regulatory powers. CEC has written to relevant state and territory Ministers to bring this matter to their attention and we have requested that they consider consumer protections measures for customers whose electricity is supplied through an independent micro-grid.

Key recommendations

Recognise that the Australian Energy Regulator's approach to regulating alternative energy sellers is working and reductions in the cost of battery storage do not necessitate changes to the regulatory framework.

Reduce unnecessary red tape for businesses by allowing a class retail authorisation exemption to sell electricity for consumption on commercial premises on which the generating works are located.

Note that the solar PV industry has developed an ACCC-approved Code of Conduct to address consumer protection issues in relation to standards of service and product quality and that CEC is seeking ACCC authorisation to extend the scope of the Code to alternative energy sellers.

Consider whether the advent of independent micro-grids would justify changes to the National Energy Retail Law to extend the scope of the National Energy Customer Framework beyond the "interconnected national electricity system".

1. The framework for regulating alternative energy sellers is working

In July 2014 the AER published its statement of approach for alternative energy sellers. The AER's approach is working. It provides the appropriate regulatory oversight and has been very successful in stimulating competition, protecting consumers and ensuring compliance requirements do not present a barrier to market entry by new competitors. We support the Issues Paper's principles underpinning the approach to regulating alternative energy sellers, namely:

- facilitating new entry to the electricity market, to stimulate competition for the benefit of consumers;
- ensuring that (residential and small business) consumers are effectively and adequately protected; and
- ensuring that barriers to entry are not created by requiring potential new entrants (many of whom may be small businesses) to meet onerous and unnecessary compliance and accreditation requirements.

CEC supports the AER's conditions for solar PPA individual exemptions which require the seller to:

- clearly inform its customers that their seller is not an authorised retailer;
- explain it is not bound by obligations under the Retail Law that apply to an authorised seller, but is bound by all other relevant customer protection legislation;
- refrain from registering in the wholesale market for the purposes of purchasing energy; and
- not be the financially responsible retailer for the premises.

Recommendation 1: Recognise that the Australian Energy Regulator's current framework and approach for regulating alternative energy sellers is working and support its continuation.

2. Implications of storage for regulation of alternative energy sellers

The Issues Paper seeks the views of industry as to whether storage has the potential to make a solar PPA provider the primary source of energy to the premises. It is certainly technically feasible for solar and storage to enable a customer to disconnect from the grid. Using solar and storage to disconnect from the grid is unlikely to be a financially beneficial decision, based on current prices. However, some customers might choose to disconnect from the grid despite a low return on the investment required.

Grid independence could extend beyond individual customers. Solar and storage could also enable communities to supply their own energy using a micro-grid. This submission considers two potential new business models: solar PPAs that enable individual customers to disconnect from the grid; and solar PPAs and micro-grids that might in future enable communities to operate independently of the national electricity grid. These business models could have implications for competition and customers' access to electricity and these issues are also considered.

The CEC is aware that some companies are considering offering solar and storage PPAs for customers who wish to disconnect from the grid. This presents two key issues for consumer protection and education:

- ensuring adequate standards of service and product quality; and
- access to electricity as an essential service.

Ensuring adequate standards of service and product quality for customers disconnecting from the grid has implications for the industry's reputation. To improve customer service and industry standards, the CEC established the Solar PV Retailer Code of Conduct in 2013.

CEC's Solar PV Retailer Code of Conduct is a voluntary scheme for retail businesses selling solar PV systems to households and businesses. It is authorised by the Australian Competition and Consumer Commission (ACCC). The Code aims to lift the bar higher than the minimum requirements set by government and regulations and bring about a better standard of service within the solar industry. When authorising the code in 2013, ACCC Commissioner Dr Jill Walker said:

"The Code will allow for the regulation of retailers of solar PV systems to ensure that retailers maintain a standard that will benefit consumers and the industry. The Code will promote confidence in the PV sector by giving information to consumers to assist in purchasing decisions. The Code will also promote compliance by PV retailers through sanctions and public reporting mechanisms."

The CEC manages the code of conduct and ensures that signatories comply with its strict requirements. To obtain approval, retailers must demonstrate compliance with all relevant consumer protection laws. There are a number of additional requirements including the demonstration of best practice pre- and post-sale activities; documentation; general business practices; and provision of a five-year, whole-of-system warranty.

Further information about the Solar PV Retailer Code of Conduct is available from the CEC web site at <http://www.solaraccreditation.com.au/retailers.html>. Currently the Code applies only to the sale of solar PV systems. However, the independent Code Review Panel, which is headed by the CEO of the Consumer Advocacy Law Centre, Gerard Brody, recently decided to extend the application of the

Code to solar PPAs and leases. A new provision for the Code, which will apply to providers of solar PPAs, has been drafted and is summarised in this submission. We are consulting with stakeholders regarding the new provision and we would be pleased to provide the draft provision to the AER. We hope to receive ACCC authorisation for the provision to cover solar PPAs and leases early in 2015.

Recommendation 2: Note that the solar PV industry has developed an ACCC-approved Code of Conduct to address consumer protection issues in relation to standards of service and product quality and that CEC is seeking ACCC authorisation to extend the scope of the Code to alternative energy sellers.

Electricity is an essential service and we support the logic underlying the AER's position that it is appropriate for a 'traditional' electricity retailer to obtain authorisation and a provider of a solar PPA to obtain an exemption because "a key difference is the impact disconnection of energy services would have on a customer".

We are aware that some companies are considering offering solar PPAs for customers who wish to disconnect from the grid. From the perspective of ensuring access to an essential service, the prospect of customers disconnecting from the grid should not necessitate a change to the regulatory approach toward alternative energy sellers. If a customer were to disconnect from the grid and subsequently finds the service provided by their alternative energy seller to be inadequate for their needs they would retain the option of reconnecting to the grid. This hypothetical situation does not present a fundamental challenge to ensuring that customers retain access to energy as an essential service.

We are also aware that some companies might be considering use of solar and storage to supply electricity to a group of customers via a micro-grid. Supply of electricity through micro-grids presents a potential concern in relation to provision of electricity as an essential service. A customer on a micro-grid who is dissatisfied with the service would have difficulty connecting instead to the national electricity grid.

It is our understanding that the National Energy Retail Law does not extend to customers on micro-grids that are not connected to the "interconnected national electricity system". The relevant parts of the legislation are included in the text box, below.

It seems likely that this apparent gap in the National Energy Retail Law was unintended and that legislators did not foresee the prospect of independent micro-grids enabling communities to operate independently of the interconnected national electricity system.

Recommendation 3: Consider whether the advent of independent micro-grids would justify changes to the National Energy Retail Law to extend the scope of the National Energy Customer Framework beyond the "interconnected national electricity system".

interconnected national electricity system means the interconnected transmission and distribution system in this jurisdiction and in the other participating jurisdictions used to convey and control the conveyance of electricity to which are connected —

- (a) generating systems and other facilities; and
- (b) loads settled through the wholesale exchange operated and administered by AEMO under this Law and the Rules;

national electricity system means—

- (a) the generating systems and other facilities owned, controlled or operated in the participating jurisdictions connected to the interconnected national electricity system; and
- (b) the interconnected national electricity system;

Division 2—Application of law—electricity

16—Application of law—electricity

Insofar as the *National Energy Retail Law* applies to electricity, the *National Energy Retail Law (South Australia)* —

- (a) will only apply in relation to the sale of electricity to customers whose premises are connected, or to be connected, to the interconnected national electricity system within the meaning of the NEL; and
- (b) will not apply in relation to any area prescribed by the regulations for the purposes of this paragraph.

3. Trigger points for review

The Issues Paper notes that, “One option proposed is the inclusion of a trigger point to assess whether the exemption remains the appropriate tool for regulating that seller”.

The Issues Paper alludes to the option of a trigger point based on the percentage of electricity provided by an alternative energy seller versus the percentage sold by a traditional authorised electricity retailer. CEC has considered this proposal and consulted with our members. In our view it is unnecessary and would not enhance consumer protections. The proposal would also be unworkable because this trigger point would be determined by the behaviour of individual customers. If trigger points are used they should be based on the actions of alternative energy sellers and not their customers.

For example, suppose for the sake of the argument that the trigger point is set at 70% of a customer’s consumption. An alternative energy seller might design a system to provide, say, 60-65% of consumption, based on the customer’s current consumption profile. The customer might then reduce their consumption, through energy efficiency, behaviour change, changes in family circumstances etc. This reduction in total energy consumption could take the proportion of solar energy consumed by the customer above the trigger point, requiring the alternative energy seller to then apply for full retailer authorisation. This scenario would create an unmanageable business risk because it would not be under the control of the alternative energy seller. Moreover, this approach

does not appear to deliver any material benefit in terms of consumer protection. It would be a heavy-handed, micro-managing approach to regulation that would require very complex monitoring and reporting procedures, which would create a barrier to entry for alternative energy sellers. The red tape burden of this approach would be significant and would yield little or no consumer protection benefit. It appears to be a mechanism to protect the interests of incumbent electricity retailers rather than their customers.

CEC is not opposed to the inclusion of trigger points for review in the conditions of an authorisation exemption. However if a trigger point is placed in the conditions of an exemption it should be based on actions that are under the control of the alternative energy sellers and not its customers. CEC believes that the only appropriate trigger point to consider is when an alternative energy seller's business model includes provision of electricity to customers where reconnection to the "interconnected national electricity system" would be non-trivial due either to physical limitations (eg. customers supplied through an independent micro-grid) or contractual limitations (eg. a contract that prohibits the customer from entering into a contract with another retailer).

4. Allow a class exemption to sell electricity for consumption on commercial premises

Under Western Australian legislation, there is a class retail licence exemption to sell electricity for consumption on commercial premises on which the generating works are located. For example, a solar PPA provider can sell electricity to a commercial customer without a retail licence if the solar PV system is on the same premises that the electricity is being consumed on (electricity sold for consumption must be consumed on the premises; it cannot be exported to the grid).

Class exemptions apply automatically. Providers of solar PPAs do not need to apply for them individually. The Department of Finance's [Public Utilities Office](#) administers electricity licence exemptions.

This is a sensible approach and reduces unnecessary red tape for businesses.

Recommendation 4: Allow a class retail authorisation exemption to sell electricity for consumption on commercial premises on which the generating works are located.

5. Responses to AER questions

5.1 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?

The current Retail Law authorisations and exemptions framework provides appropriate regulatory oversight for alternative energy sellers. The emergence of new generation technologies such as cost-competitive battery storage should not, in and of itself, require changes to the regulatory framework for alternative energy sellers. If alternative energy sellers were required to obtain retailer authorisation, the costs would outweigh the benefits to customers.

Threshold issues should be unrelated to the emergence of any particular new technology. Thresholds should be determined by the nature of the service or contract offered by the PPA provider. The only threshold issue for the AER should be when alternative energy sellers offer services or contracts that would make reconnection to the “interconnected national electricity system” non-trivial due either to physical limitations (eg. customers supplied through an independent micro-grid) or contractual limitations (eg. a contract that prohibits the customer from entering into a contract with another retailer).

5.2 What are the stakeholder’s views on the AER’s proposed options? Are there other options to which the AER should have regard?

CEC is opposed to the proposal that the AER should require all alternative energy sellers to be authorised retailers. This would represent an unnecessary and restrictive level of regulation and a barrier to entry for these businesses.

The overwhelming majority of customers who purchase electricity through a solar PPA will retain access to the energy retail market and engage a retailer of their choice. Their authorised retailer will continue the role of essential service provider and the customer has access to consumer protections provided under the *Retail Law* through its relationship with the authorised retailer. Providers of solar PPAs will usually be secondary providers, and the service they provide is optional. In this situation, it is reasonable not to require a retailer authorisation for the solar PPA provider.

In situations where an alternative energy seller seeks to be the customer’s only access to reliable energy supply without the option of reconnecting to the “interconnected national electricity system”, it is reasonable to require the alternative energy seller to obtain a retailer authorisation.

This review provides an opportunity to consider ways of streamlining the AER’s regulatory framework to reduce unnecessary red tape for businesses. We urge the AER to consider the approach taken in Western Australia and allow a class retail authorisation exemption to sell electricity for consumption on commercial premises on which the generating works are located.

5.3 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?

CEC supports the AER's current approach, that requires an alternative energy seller to obtain a retailer authorisation when:

- An alternative energy seller is the sole supplier of gas or electricity at a premises;
- The alternative energy seller prohibits the customer from entering into a contract with another retailer, or requires the customer to enter into a contract with a specified retailer; or
- The alternative energy seller is registered with the Australian Energy Market Operator (AEMO) in the wholesale market for the particular fuel source, and is the financially responsible retailer for the particular premises.

CEC has drafted amendments to the Solar PV Retailer Code of Conduct, which might be of interest to the AER when considering exemption conditions for PPAs. The amendments must go through an authorisation process with the Australian Competition & Consumer Commission (ACCC). The CEC plans to submit the amendments in late February 2015.

Approved Retailers (ie, signatories to the Code of Conduct) will be required to clearly provide accurate information about the total cost over the financing term of solar PV systems sold under finance arrangements including, without limitation, leases and power purchase agreements (PPAs).

When advertising, or offering to a consumer, a finance arrangement that provides an alternative to initial outright purchase, Approved Retailers will be required to provide the following information in their contracts of sale:

- the name of the lender to whom the consumer will be contracted;
- a clear statement that the periodic payments are available only if the consumer wishes to take advantage of the finance model;
- the comparative cost of that same product if the consumer was to purchase it outright on that day;
- a clear statement that fees and charges apply in relation to the finance arrangement, including:
 - the dollar amount of fees and charges applied under the finance arrangement and what each fee and charge represents;
 - whether the fees are fixed and, if not, details of escalation rates; and
 - where and in what form the consumer can expect the fees and charges to appear in the finance contract;
- under a solar leasing offer, the aggregate amount payable over the life of the financing term;
- under a PPA, the aggregate amount over the financing term based on a reasonable and stated estimate of the solar-generated electricity consumed by the consumer;
- details of any exit payments or penalties associated with the finance arrangement;
- a statement as to whether the consumer owns the system at the conclusion of any plan or agreement under the terms of the finance arrangement and/or details, including any

associated costs and/or fees, of any option or options available to the consumer to purchase the system at the end of the term; and

- a statement that questions and complaints about the finance arrangement should be directed to the lender with whom the consumer is or will be contracted and, where relevant, to the Australian Securities & Investments Commission or the financier's external dispute resolution provider.

It is our understanding that credit providers operating in Australia are governed by the National Consumer Credit Protection Act 2009 (Cth) ("the NCCP Act"). Under proposed amendments to the Code of Conduct, Approved Retailers must make reasonable enquiries as to whether the lender (ie. the finance company to whom it is introducing consumers) is a credit provider as defined by the NCCP Act. If the finance company is not or states that it is not a credit provider as defined in the NCCP Act, the Approved Retailer must ensure that the relevant contract includes a provision substantially in the following form:

"The consumer acknowledges that the lender is not, or may not be, subject to the National Consumer Credit Protection Act 2009 (Cth) ("the NCCP Act") and accordingly the consumer may not have the benefit of the statutory protections afforded to consumers under the NCCP Act including, without limitation:

- access to the services of the Financial Services Ombudsman;
- access to dispute resolution services;
- access to a streamlined court procedure for small claims;
- a right to seek compensation;
- applications for hardship variations or stays of enforcement; and
- receiving information from the Credit Provider when a consumer defaults on their contract or a debit is dishonoured."

This clause would need to be signed by the consumer as an acknowledgment that the consumer is or may be waiving certain statutory rights.

5.4 Should the AER include a 'trigger point' for review of individual cases if it proceeds with Option 2?

The only appropriate 'trigger point' should be when an alternative energy seller offers services or contracts that would make reconnection to the "interconnected national electricity system" non-trivial due either to physical or contractual limitations.

The Issues Paper proposes a requirement for authorisation exemptions that, "the exempt seller can only sell energy under the business model in relation to which the entity applied for the exemption". It may be useful to consider requiring applicants for an authorisation exemption to state whether they will provide PPAs to customers who wish to receive their electricity supply through a micro-grid that is not connected to the "interconnected national electricity system". If this forms part of an alternative energy seller's business strategy then the requirements placed on the business should be materially different to those placed on alternative energy sellers whose customers remain on the grid or who can relatively easily reconnect to the grid. It is noted that this would require an extension to the scope of the AER's regulatory powers. CEC has written to relevant state and

territory Ministers to bring this matter to their attention and we have requested that they consider consumer protections measures for customers whose electricity is supplied through an independent micro-grid.

6. References

Australian Energy Regulator (2014), *Regulating innovative energy selling business models under the National Energy Retail Law: Issues paper*. Commonwealth of Australia, 2014

Australian Energy Market Commission (2014), *Guide to application of the NECF*, <http://www.aemc.gov.au/Energy-Rules/Retail-energy-rules/Guide-to-application-of-the-NECF>: accessed 8 December 2014