2 January 2015

Sarah Proudfoot

General Manager

Retails Markets Branch

Australian Energy Regulator (AER)

By Email: AERInquiry@aer.gov.au

Dear Madam

Re: **Refining our regulation of alternative energy sellers – Issues Paper**

The AER has published on its website an issues paper titled "Regulating innovative energy selling business models under the National Energy Retail Law, November 2014", inviting submissions from interested parties on the matters raised in the paper. We submit the following response.

We initially registered our interest to attend the public forum, but due to work commitments we have opted to submit this response instead.

For any queries or requests for further information in respect of this Application, please address to the undersigned.

Kind Regards,

David Dalton.

Questions Raised In Issues Paper

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 under the Retail Law?

Storage and or other emerging technologies should not require any alteration to the existing individual exemption guideline and in fact it supports the AER objectives in providing energy efficiency services under existing consumer protection mechanisms. Emerging technologies and storage would simply make energy generation for the customer, at their election, more efficient, which allows them to fully utilise their SPPA savings model.

The SPPA model is based on a secondary service and irrespective of other technologies, the nature of the SPPA financial model will not substitute the customers primarily reliance on the grid, and in fact requires the customer to be primarily reliant on the grid. In offering an SPPA model to a customer, the energy generation system is designed based on the customer's exact usage requirements which will produce electricity to meet those energy demands at reduced rates to grid prices. Therefore it is in the customer's interest to utilise the alternative energy produced. In a traditional situation, if any energy is not used, the solar energy savings are diminished by the customer as the alternative energy is now exported to the grid (at a significantly reduced offer of around 6c/kWh, and also where other grid consumers are not passed on the benefits by the authorised retailer, which the Retail Law has failed to address). However, in the case of battery storage, the customer is now permitted to store the energy produced that was not consumed for its future use, energy that was originally designed to meet its specific usage needs under the SPPA. Under this scenario, full energy savings will be utilised by the customer accessing the energy produced by the original system with storage capabilities. In this case, it is inaccurate to state as per page 6 of the Issues Paper that "therefore, where an SPPA provider is also providing storage they could ostensibly become a customer's primary energy supplier". Storage is simply an *efficiency by-product of an SPPA model* requiring no alteration to be made to the SPPA model nor its exemption conditions.

Under the SPPA financial model, the energy system is also designed and priced to provide a specific rate of return to the exempt provider. Currently, the cost of battery prices and the amount of energy required to be produced and stored by an alternative energy system to provide up to as alleged on page 6 of the Issues Paper of "60-70% of the customer's energy needs" is not financially feasible under a SPPA model. In order to provide a energy system

to yield 60-70% of the customer's energy needs, it would not be feasible under the SPPA business model as the energy price would be significantly higher and uncompetitive in order for the SPPA provider to yield an adequate rate of return over the life of the SPPA. Potentially in the future the cost of battery storage may reduce which if elected by a customer may be added to an SPPA exempt model to better utilise the customer's energy needs.

2. What are stakeholder's views on the AER's proposed options?

Shouldn't individual exempt applicants/approved parties be invited as it directly impacts their business?

3. Item 3 of the Issues Paper - Are there other options to which the AER should have regard, is addressed in consideration to item 2 of the Issues Paper.

    a. Option 1 – requiring an alternative energy seller whose business model includes storage or other innovative component to apply for authorisation.

    It is unnecessary to alter any provisions or conditions outlined in the Exemption Guideline for existing and new individual exempt applicants that *may or may not* include storage/other technologies in their business model.

    Storage and emerging technologies are simply part of the energy generation system that is complimentary to and would not replace the primary grid services provided to a customer by an existing energy retailer.

    Storage and emerging technologies would further assist the customer to fulfill its energy requirements under an existing exempt SPPA model.

    The proposed licensing restriction under option 1 for an application offering storage as part of an SPPA model is to be retail authorised will have the impact of indirectly regulating storage as well as preventing storage from being offered to customers where SPPA providers are unable to be obtain or apply for authorization as an authorised retailer.

    Option 1 is not justified and would create a significant barrier for alternative energy suppliers to enter the energy sales market providing storage or other innovative components, which simultaneously would restrict consumers from being provided with innovative technology. The AER's current regulatory approach will suffice and the Retail Law did not envisage nor require the AER to

regulate storage as proposed under the options outlined in the Issues Paper.

b. "This option does not necessarily mean changing our current approach to regulating SPPA providers who do not include storage/ other technology that permits two way trade as part of their business model". Are there other options to which the AER should have regard?

It is unnecessary to alter any provisions or conditions outlined in the Exemption Guideline for existing and new individual exempt applicants that do not include storage/other technologies in their business model and that are not of a scale and scope of a large business. The existing regulatory framework adequately balances the customer protections against market entry factors for small to medium alternative energy sellers.

Currently, the Australian alternative energy sellers market is segmented and highly competitive that consists of small to medium businesses with low margins that offer renewable generation systems to be acquired by informed consumers protected under the Clean Energy Council (CEC) Standards and the relevant States Fair Trading Offices that oversee the Australian Consumer Law (ACL) provisions. All contracts within Australia are governed by the ACL, including the contracts and activities provided by alternative energy suppliers. There is much data available from CEC, Green Energy market and the ABS to illustrate Australia's alternative energy market participation and segmentation.

The SPPA business model directly impacts this market segment and the Retail Law has opened the Australian alternative energy market to large international SPPA providers. The SPPA model, for existing small to medium alternative energy operators in Australia, will provide a much needed and an alternative business opportunity to compensate for new market changes that will significantly impact upon (diminish) their existing businesses as a direct result of market competition and consumer driven preferences to acquire energy as opposed to directly investing into alternative energy systems.

The current individual exemption model provides such businesses with the opportunity to provide an SPPA model to its small to medium customers, where the regulation is not only fit and appropriate, but is also duplicated in most cases under the current regulations to which these business are bound and operate within the Australian market place. As a result, we do not feel it is appropriate for any of AER's proposed options to be implemented for this segment of the market.

Secondly, small to medium alternative energy businesses are facing significant entry costs in applying for and operating an SPPA business.

The current application process requires significant upfront legal and administrative costs to be incurred in order to comply to the terms of the individual exemption, which in-itself is creating a significant burden and barrier to entry for such small to medium businesses. The suggestions provided in options 1 and 2 would be excessive, provide significant barriers to entry for such businesses that they would not be able to overcome, and are not justified in light of consumer driven choices and current regulatory protections.

We propose that no alteration is made to the existing individual exemption conditions for small to medium alternative energy suppliers, and in the alternative, for an individual class exemption to be created for such businesses with the current conditions outlined in the Exemption Guideline v2 to continue to apply without any alteration being made to its conditions.

It is also imperative that individual exemptions are granted to increase market and price competition in the energy sector, that is dominated by large retailers and large SPPA providers.

c. Alternatively, it could require all alternative energy sellers to be authorised, if the scale and scope of the business warranted it. Are there other options to which the AER should have regard?

As outlined in section 3(b) above, it is excessive and unjustified to impose the conditions outlined in the Issues Paper and to require all energy sellers to be authorised. Alternative energy is supplied as a secondary service to increase market, product and price competition, where the service is only engaged if elected by the consumer under existing statutory protections. Any blanket authorization for all participants would automatically prevent small to medium alternative energy providers from entering into the market.

The AER may however consider segmenting individual applicants into 2 individual classes, and impose proposed conditions to a special class, or alternatively require alternative energy suppliers of a certain class to be authorised, whose scale and scope of business is that of a large financial market operator.

As illustrated in recent online media and print media (see article links listed below), there are new international and large existing retailers/ asset & fund managers/ corporations entering into the alternative energy segment with significant market capitalization and investment capital from $10m to over $100m. These businesses have operational and financial resources, existing retail and business capacity, scope and scale to target and contract large numbers of customers at multiple sites across Australia. We consider that these companies and their business models clearly demonstrate their intention, scale and business capacity to that equivalent of an authorized retailer. These

companies are in the position to comply with the AER's proposed conditions as outlined in the Issues Paper and ought to be placed into a particular class or be required to be simply authorised. We recommend that all other providers (small to medium SPPA providers) are therefore to be categorised in a separate individual exemption class with the current conditions outlined in the Exemption Guideline v2 to continue to apply without any alteration being made to its conditions.

Question: why are existing authorised retailers provided with individual exemption application processes in any regards, as they are already authorised?

Examples of articles:
http://www.cleanenergyfinancecorp.com.au/media/releases-and-announcements/files/cefc-invests-in-large-scale-commercial-solar-program.aspx

http://reneweconomy.com.au/2014/origin-comes-to-party-on-rooftop-solar-with-pay-as-you-go-offer-25020

http://reneweconomy.com.au/2014/how-australian-utilities-will-cope-with-solar-and-storage-78624

http://reneweconomy.com.au/2014/new-financing-models-tipped-drive-demand-commercial-solar-33334

4. Item 4 and 5 are addressed together. What are stakeholder's views on the AER's proposed options? 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? Should the AER include a "trigger point" for review of individual cases if it proceeds with Option 2 – that would allow us to assess whether an exemption remained the most appropriate mechanism for regulating a specific party's activities?

Our submission under 3(b) & (c) above further apply in respect of the proposed conditions as they would create further barriers to entry for individual exempt applicants (small to medium providers) that comply and operate with the applicable statutory framework and within the existing parameters of an individual application submission.

Proposed Condition 1 obligation to supply is not commercially practicable where the secondary service is that of an energy system that is financed and dependent upon the monthly receipts generated by customers paying for energy produced or consumed. The annunciated financial assistance provisions, bill smoothing, life support mechanism (not necessary as secondary provider),

availability of rebates, concessions, flexible payment options, disconnection and or cessation of supply provisions are all difficult and impossible to provide for small to medium enterprises selling secondary and limited energy that is produced and used by a customer on a monthly basis. The proposed estimation condition is not necessary for all SPPA models, as normally a generation system is designed to produce and bill actual energy as determined to meet the exact customers usage patterns. Given the alternative energy technological capabilities and metering services, it is not necessary for energy to be estimated for any applicant and all exemption classes and billing should be based on actual metered data (perhaps this can be a condition imposed on all participants to provide added consumer protection). All prices are equally set at below network rates clearly defined in a contract and as per existing exemption guidelines and the ACL.

The ACL and the Retail Law further provide significant safeguards for consumers in line with AER's Exempt Guideline v2 conditions. As an example, all contracts are entered into with customers under a 10 day cooling off contract period where the customers informed consent is obtained as required by the ACL. The second obligation set out in Attachment A is therefore not necessary. The information provisions set out in condition 2 of Attachment A are adequately set out in the existing regulatory framework, where an exempt seller is automatically restricted to selling energy subject to its exemption and the conditions outlined by AER clearly sets out the information requirements under the exemption.

AER's statement that "Option 2 would allow us to assess whether an exemption remained the most appropriate mechanism for regulating a specific party's activities" and the "trigger point" mechanism is itself a measurement of compliance and performance, and as a result is inappropriate given that AER is not able to impose performance conditions on an authorised retailer other than conditions relating to satisfaction of their entry criteria. The entry criteria proposed under the Issues Paper significantly creates barriers to entry for new exempt applicants and should not be imposed.