

4 April 2014

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

By email: AERInquiry@aer.gov.au

Dear Ms Thorpe,

RE: Applied Environmental Solutions - application for individual electricity exemption

The Energy Retailers Association of Australia (ERAA) welcomes the opportunity to provide feedback to the Australian Energy Regulator (AER) in response to the application by Applied Environmental Solutions (the applicant) for an individual electricity exemption from the requirement to hold a retailer authorisation under the National Energy Retail Law (NERL).

The ERAA represents the organisations providing electricity and gas to almost 10 million Australian households and businesses. Our member organisations are mostly privately owned, vary in size and operate in all areas within the National Electricity Market (NEM) and are the first point of contact for end use customers of both electricity and gas.

It is the view of the ERAA that, taking into account the relevant considerations, the AER should not grant solar leasing entities like Applied Environmental Solutions an individual electricity exemption from the requirement to hold a retailer authorisation under the NERL. We have previously provided that view in submissions to the AER in response to similar exemption applications by REpower Shoalhaven (submitted 19 March 2014), Australian Clean Energy Finance Fund (submitted 20 January 2014) and the AER's Issues Paper on regulation of alternative energy sellers under the NERL (submitted 22 November 2013). We note that, in the period since the AER published the abovementioned issues paper, twelve solar leasing companies have applied to the AER for exemption from the requirement to obtain an electricity retailer authorisation under the NERL. The first six of those applicants – Express Solar, Smart Commercial Solar, Demand Manager, Australian Clean Energy Finance Fund, SEL Absolute Return Fund SA Pty Ltd and Tindo Asset Management – have been granted exemptions by the AER. The last six (including Applied Environmental Solutions) currently have exemption applications before the AER.

As a general principle, the ERAA does not believe that it is beneficial to the long term interests of consumers to require different service standards from businesses that are providing the same services. It creates uneven playing fields that distort competitive market outcomes. The ERAA supports competitive neutrality between energy businesses through the consistent application of the customer protection framework.

Whilst there may be barriers to entry in the retail energy sector, these barriers are not unnecessarily high, and exist to ensure that consumers are adequately protected. Should obligations under the National Energy Retail Rules (NERR) apply to primary retailers but not to alternative energy sellers like Applied Environmental Solutions, primary retailers will take on additional compliance costs, credit risk and liabilities for network charges. The proposed



exemption may also introduce confusion for customers, who may be unsure of the responsible party in the event of an issue with their solar panels. This may result in increased costs for government, ombudsman, retailers and Applied Environmental Solutions. This approach is not consistent with the principle that risks are apportioned to those parties best able to manage them.

It is the view of the ERAA that the NERL was developed to ensure a consistent and harmonised approach to consumer protections for all energy services. As such, maintaining appropriate standards of consumer protections for all customers, and competitive neutrality between competitors must be a strong consideration for the AER.

As energy is considered an essential service, there is a basis for requiring alternative energy sellers such as the Applied Environmental Solutions to obtain a retailer authorisation. This is of particular importance in the current changing regulatory environment. For example, the Australian Energy Market Operator's (AEMO) Multiple Trading Relationships and Embedded Networks Working Group is currently looking to implement a model where numerous energy service companies (retailers and alternative energy sellers) are able to provide services through a single connection points. As these reforms are implemented and customers sign contracts with multiple service providers simultaneously, the complex environment and the increased costs noted above are more likely. Alternative energy sellers such as Applied Environmental Solutions should obtain a retail authorisation to ensure that the market can develop to include the business models of energy service companies whilst maintaining the consistent application of consumer protections.

We understand the relevant regulatory framework (and thus decision-making considerations) for the AER's decisions in relation to these applications for individual exemptions, to comprise the NERL, the NERR and the AER (Retail) Exempt selling guideline. The six decisions to grant individual exemptions made by the AER in the last three months have been surprising. It is not at all clear how the AER has interpreted the relevant regulatory framework to reach those decisions as they were not accompanied with adequate explanation or justification.

While it would be a more constructive exercise to comment on the AER's reasoning if it were available, in its absence we would like to highlight the following considerations.

The central consideration that must be taken into account by the AER in making this decision is the set of three policy principles set out in section 114 of the NERL:

- a) regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers
- b) exempt customers, should, as far as practicable, be afforded the right to a choice of retailer in the same way comparable retail customers in the same jurisdiction have that right
- c) exempt customers, should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and Rules.

A proper consideration of the first and third of these policy principles in particular should weigh in favour of a decision to refuse the application. As noted in the AER (Retail) Exempt selling guideline, "These principles are, in part, aimed at ensuring that exempt customers are not unreasonably disadvantaged compared to customers of authorised retailers."¹

In making its decision on this application, the AER is required to comply with section 205 of the NERL, which requires the AER to:

- contribute to achievement of the National Energy Retail Law objective, to promote efficient investment in and efficient operation and use of energy services for the longterm interests of energy consumers with respect to price, quality, safety, reliability and security of supply of energy; and

¹ AER (2013), AER (Retail) Exempt selling guideline – version 2, p.11

- exercise that function or power in a manner that is compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers.

The granting of an exemption to the applicant would not contribute to the achievement of the national energy retail objective. If the applicant were not subject to energy retail obligations and the applicant's customers encountered problems with the applicant's energy selling, its customers could only access energy retail consumer protections via the primary retailer. It would not be appropriate, fair or consistent with the principle of competitive neutrality for retailers to provide and pay for consumer protections to the applicant's customers in relation to their consumption of energy sold to them by the applicant. In that scenario, if the applicant's customer fell on hard times and could not meet both of its energy bills, it would be the energy provider subject to and paying for that customer's energy retail consumer protections (including in relation to the customer's consumption of energy sold by the applicant) that would be paid last.

We draw your attention to certain aspects of the applicant's application, which support our contention that an exemption from the requirement to hold a retailer authorisation under the NERL is not appropriate.

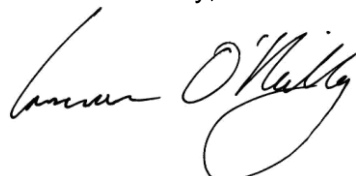
The application refers to the customer site's authorised retailer as "back up". The applicant and other alternative energy sellers are entitled to attempt to become significant players in Australia's retail energy market – to remain successful, our members must embrace the challenge of competing in new markets – but the applicant is not entitled to expect that incumbent authorised retailers should:

1. effectively subsidise that attempt by guaranteeing consumer protections on behalf of the applicant
2. be saddled with the obligations of the energy retail regime while a new competitor free of the cost and resource intensity of compliance with that regime gains a substantial competitive advantage.

The applicant explicitly states that it wishes to become an energy retailer and acknowledges that "a retail authorisation may be a suitable method of regulating AES's operations in the future"². The applicant also contemplates amendment to the authorisation and exemption framework under which the AER must consider how it should most appropriately regulate alternative energy sellers. The ERAA agrees that the current framework requires amendment in order to more appropriately achieve the right balance between facilitating new energy supply options and ensuring competitive neutrality while delivering consistent consumer protections that are appropriately apportioned to the various participants in the market. In the meantime, the correct application of the existing framework should lead to the rejection of exemption applications such as this one.

Should you wish to discuss the details of this submission, please contact me on (02) 8241 1800 and I will be happy to facilitate such discussions with my member companies.

Yours sincerely,



Cameron O'Reilly
CEO
Energy Retailers Association of Australia

² Applied Environmental Solutions (2014), Application for Individual Retail Exemption from the requirement to hold an electricity retailer authorisation, p.9