

16 February 2015

Ms Sarah Proudfoot
General Manager, Retail Markets Branch
Australian Energy Regulator

Submitted via: AERinquiry@aer.gov.au

Dear Ms Proudfoot

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

The Energy Storage Council (ESC) is the peak industry body representing the energy storage sector in Australia. We welcome the opportunity to provide comment to the Australian Energy Regulator (AER) on the Issues Paper, 'Regulating innovative energy selling business models under the National Energy Retail Law'. We acknowledge the work of the Public Interest Advocacy Centre (PIAC), and support many of the recommendations made in their submission to you.

The energy market is changing rapidly, against the backdrop of quickly emerging energy storage technology. The ESC however, is concerned that the AER will 'bake in' a response to emerging energy storage technology at an embryonic stage. Any changes should be outcomes based and so far as possible agnostic to the solutions used to achieve the outcomes. There are a range of technologies and innovative deployment and management solutions already in the commercial marketplace with more on the way. We would like to see the AER to take the lead on regulation that encourages innovation in energy delivery for consumers.

We believe that this would provide the best outcome for all energy market participants, particularly residential and small business energy consumers. We encourage the AER to remain closely engaged in this debate and refrain from taking an overly prescriptive regulatory approach that would effectively exclude current, but not yet implemented in Australia, and emerging technologies and business models at this very early stage.

The ESC has responded to the questions asked in the AER Issues Paper below, but raises some more fundamental questions about the energy market for all consumers and offers some answers.

The AER restates the AEMC principles:

Our approach to the issue of regulating alternative energy sellers has taken into account the AEMC's Power of Choice review and the principles that AEMC identified for developing a compliance regime for such energy service providers. The three principles identified were:

- 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 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.¹

We consider these principles continue to be important to regulating retail energy selling, especially in the context of alternative energy sellers.

In these principles and in the energy supply market generally, whether electricity, gas or oil, there is a fundamentally flawed assumption that if altered would offer greater competition, more choice and lower costs for consumers. The assumption represents a market failure that results in perverse outcomes contrary to consumer interest and the broader public benefit.

Defining differences between retailers and alternative energy sellers

The AER's Issues Paper asks:

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 ESC, along with others, take the view that while the advent of solar PV, storage, smart appliances and the like are changing the way in which electricity is generated, used and stored, these technologies can be defined as 'behind the meter' technologies. That is, consumers in almost all cases are connected through a commercial contract with a retailer to the NEM network or grid (or the "interconnected national electricity system" as it is called in the rules). When consumers choose to purchase energy using, generating or storing appliances, these transactions are not generally subject to AER regulation because they are not part of the national energy market.

The ESC shares the view of the PIAC that the key distinction between NEM grid-connected and AER-relevant contracts and 'behind the meter' technologies is the key principle for regulating

¹ AEMC, Power of choice review - giving consumers options in the way they use electricity, Final report, November 2012, p.43, <http://www.aemc.gov.au/market-reviews/open/power-of-choice-update-page.html>.

differentiated responsibilities. The ‘primary’ source of energy in the sense of the largest proportion of energy supply to a customer may or may not be via the NEM network, but the retail NEM-related contract is the primary contract because it enables the NEM connection and the provision of an essential service and associated consumer protections. As the Issues Paper makes clear a ‘key difference is the impact disconnection of energy services would have on a customer’.

Taking the view that ‘energy storage’ is the key distinction for the AER when it proposes to regulate SPPA and other alternative energy selling models is flawed. As a concept energy storage is extremely broad. Energy storage in this context, may cover everything from a very small amount (1kWh) of storage in solar PV inverters that assist the ramp up and ramp down of inverter output through to storage over many hours for one or more domestic homes or businesses. It can also include storage such as hot water for later use for domestic or industrial purposes or for space heating.

Energy storage is simply a tool. It, in and of itself, is not and should not be considered a key determinant when scoping regulations. Taking this approach may lead to perverse outcomes. In a hypothetical example a company may offer a bundled solution to a customer including energy storage for use in an electric vehicle. Putting the emphasis on ‘energy storage’ in this case would trigger a necessary regulatory burden, and is disconnected from the issues the AER is looking to address. As we stated above regulation should be seeking outcomes and not be driven by technologies or tools – which are subject to rapid and often unforeseeable change.

Recommendation 1

ESC recommends that the AER define the ‘primary’ source of energy as the retailer providing a NEM network connection to the customer. Further, the AER should use the principle of differentiated responsibilities for NEM network-connected services and ‘behind the meter’ services (including solar and storage).

The proposed options

The AER’s Issues Paper asks:

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

In the ESC’s view, the exempt seller framework is adequate for current purposes and future purposes until such time as a significant number of consumers begin to leave the NEM.

Whether exempt sellers offer solar PV or storage or electric vehicles or energy efficiency, in all cases they are reducing the electricity sourced from the NEM. This is also the consequence of energy efficiency upgrades to buildings or appliances or equipment – none of which is in the remit of the AER – and nor should it be.

ESC believes it is important that regulation should not create barriers to innovative business models, especially those that are likely to reduce energy use and therefore costs to consumers.

However, in cases where an alternative energy seller will be the consumer's only energy supply without the option of reconnecting to the NEM, it is reasonable to require the alternative energy seller to obtain a retailer authorisation.

It is appropriate that retailers have additional requirements given their unique role in providing a connection to the NEM (and/or a sole supply of electricity). ESC agrees with the AER that conditions for exemptions should take into account that a 'customer may not need the level of protection an authorisation would require a retailer to offer in relation to its customers' and that there exists a risk of duplication if additional consumer protection requirements are placed on exempt sellers.

Recommendation 2

On balance, ESC supports Option 2 – of exemption for innovative or alternative energy selling, managing or storing models.

Conditions for exempt sellers

The AER's Issues Paper asks:

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?

The ESC endorses the PIAC's recommended priority to ensure residential consumers are effectively and adequately protected. In terms of how this should be undertaken, ESC also believes that the principle of differentiated responsibility for sellers 'in front' and behind the meter is appropriate and that regardless of the mix of technologies, adequate consumer protections should be in place. ESC is also concerned to ensure unfair or unnecessary compliance requirements do not present a barrier to market entry by new competitors so there is a balancing exercise required here by the AER.

ESC 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.

ESC notes 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 Clean Energy Council is seeking ACCC authorisation to extend the scope of the Code to alternative energy sellers. ESC is supportive of this industry initiative as promoting confidence in the solar industry for consumers, including the demonstration of best practice pre- and post-sale activities.

In addition the Australian Solar Council has established a due diligence program for solar PV panels called Positive Quality™² as part of an industry led consumer support mechanism. The ESC is considering the applicability a similar program for storage systems.

In addition to the core exemption conditions outlined in Attachment A to the Issues Paper, ESC would like to see a condition requiring access to an Ombudsman scheme.

Recommendation 3

ESC recommends that the AER require exempt sellers to become voluntary members of relevant Ombudsman schemes.

While ESC recognises that the creation of hardship programs can be a significant cost to an energy seller, it would be important that hardship programs are available where energy sellers have a significant number of customers to whom they are selling the majority of those customers electricity. ESC supports the PIAC suggestion that the AER monitor industry developments in this area and consider the cases where it might be necessary to require exempt sellers, especially via mini-grids to develop hardship plans e.g. if they have over 10,000 customers.

Recommendation 4

ESC recommends that the AER monitor industry developments with respect to the desirability of imposing conditions for the development of hardship plans.

Trigger points for review

The AER's Issues Paper asks:

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

In ESC's view, the most important 'trigger point' for the AER as a whole should be if a significant number of consumers begin to disconnect from the NEM (including through connections to mini-grids). Such circumstances would mean that the definition of electricity provision via the NEM as an essential service was under threat and should be reviewed. It would require an overarching review of electricity law and the electricity retail law.

It is too early to know how technology improvements and innovative business models will impact the NEM and imposing a blanket trigger, namely the introduction of energy storage at some defined level, is likely to stop the most efficient adoption of new approaches.

² <http://solar.org.au/positive-quality/>

Once again, ESC thanks the AER for the opportunity to provide comment on the Consultation Paper. If you would like any further information, please do not hesitate to contact me, 0400 102 396, or ceo@energystorage.org.au.

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