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Ms Jacqui Thorpe  
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Australian Energy Regulator  
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**SUBMISSION BY KEVIN McMAHON**

**RE: ELECTRICITY RETAIL EXEMPTION BY  
APPLIED ENVIRONMENTAL SOLUTIONS**

Dear AER

I require no confidentiality to this submission.

I wish to object to the issuance of a Retail Exemption - Electricity, to the above-mentioned proponent (AES). Its submission is particularly bizarre. It appears that AES is an electricity generator, distributor and also wants to be a retailer (with an exemption) of the electricity produced.

AES wants to vertically integrate itself, in its submission.

It appears that AES's system has the ability to switch the site between grid power and on-site power. When it is sunny AES will be the generator/distributor/retailer.

One can see the problem of the "on again/off again" surges from the grid, perhaps at a rate of many times an hour, depending on cloud cover during daylight hours. There also may be some variable draw-down from the grid to supplement supply, but this is not stated.

Distributors and Retailers will not like this. This type of installation will try to mimic cogeneration, depending on the variable availability of light.

AES's proposal seeks to avoid feeding electricity into the grid, with continuous switching from one source to another. There has been quite some debate that PV solar owners should pay for the upgrades to the distribution system that is needed to augment their inputs to the grid. AES's system seeks to avoid this, but it may bring other problems to grid distributors/generators.

This system will involve one outside retailer, and one inside-retailer, AES.

This embedded network is actually and entrenched geographic monopoly. AES mentions 2 electricity meters, both of which will be parent meters, with switching from one to another. It does not appear to be a parent/child meter system

The only consideration the AER need to consider is that all income meters should comply to the National Measurement Act.

This system amounts to an on again/off again ring fencing arrangement, such as appears in remote locations.

Supply charges form a very large part of energy retailing. Will the end-user really have “freedom of choice” with the “grid parent meter supply”? Is AES really applying for the grid supply retailing by stealth?

It is hard to work out what they are seeking.

AES’s Power Purchase Agreement (PPA) seems to be a muddled affair, and in their own words “does not fit with the Retail Energy Legislation or the categories of exemption”. On this count alone it should not be granted an exemption.

They say “AES’s customers’ interests will be protected as their utility service will be an authorised retailer, and the customer must have an authorised retailer in order to enter” into a PPA. This appears to be a double-dip situation for the end-user will bear the additional, separate, and unregulated cost of the AES’s meters, and any other charge that AES can dream up.

In “2.3 Address of the Site”, “2.8 Mailing Address of the Site”, and “3.3 Total Number of Dwellings/Premises at the Site”, AES seeks a blanket exemption for its future practices. This is very strange. Every other exemption includes that the site information be made available on a public register, yet AES wants to keep this a secret. On this count alone it should not be granted an exemption.

Retailers will not like AES not supplying site detail that relate to their patch, and will not like AES capturing their customer in this way, and may decide that it is not a profitable situation for them, especially “Host Retailers” who may see AES as an interloper upon their patch.

Distributors will also wish to know where these installations will be sited.

AES mangles the concept of energy retailing in its “Form of Energy” statement. AES says “The commercial solar power plants will generally not be grid connected, as it increasingly required by the Distributors that commercial customers (over 30kW) have the solar connected in such a way as prevents it feeding back to the grid, under all circumstances.”

What has that to do with energy retailing? Will this statements apply to small retail customers or not? So what if they do a B2B contract with large customers. Those entities have vast resources to scrutinise contracts. Small energy customers do not.

This has nothing to do with energy retailing law. On this count alone it should not be granted an exemption.

In AES’s submission “3.1 Customers” is says “Not applicable”. Are they small or large customers? Are they retail customers? Why is this a secret? On this count alone it should not be granted an exemption.

“Other Services” mentioned have nothing to do with energy retailing.

In the submission at 3.4 “Sale of Energy - The premise of the ‘power purchase’ model is that the customer agrees to have a Solar PV system installed on their property and to pay for the energy it generates”. What is this “premise” in exact detail? To what extent? This appears to be, deliberately, very vague and deliberately confusing.

AES states “This differs from a traditional solar panel arrangement as the system remains the property of AES for the duration of the agreement (15 years). In exchange for the free system, warranty on the system and maintenance, all rebates and credits remain the property of AES and the customer pays for the energy on a monthly basis at a flat rate.”

So what! Who cares! Who sets the rate?

“Flat rate” compared to whom? There is no market in this case.

Again, this has nothing to do with energy retailing, and is more puffery. At “3.5 Purchase of Energy,” AES say “not applicable”. Why? AES offer no expected consumption and again keeps its site locations a secret. Retailers will not like AES capturing their customer in this way, and may decide that it is not a profitable situation for them, especially “Host Retailers” who may see AES as an interloper upon their patch.

At “3.9 Types of Meters” AES mentions the “production records”. Will these production records be available to all their site monopoly customers, so that they can ascertain the proper amount of energy be charged to them? Will “Switch Times” and aggregate Hours and Minutes be available to the end-user? Will electricity that is generated but not used be charged to the end-user?

Is there an independent audit of such things?

At 3.14 AES mention their Dispute Resolution Procedures. Which Ombudsman? There are many. How will Fair Trading Agencies deal with a contract that deals with Contract Law, Building Law, Property Law, Agency Law, Consumer Law, Tenancy Law, Energy Law and the Doctrine of Privity?

Should a small customer be placed in this position?

At 3.17 AES again waffles on with puffery and hopes to entrench its business model in energy law, but at this point it does not relate to the sale of energy. Their suggestion that “or a new type of authorisation should be implemented” proposes a new scheme of arrangement that was never contemplated by energy regulators and the National Energy Retail Framework.

On this count alone it should not be granted an exemption.

At this point AES “is effectively a ‘start up’ in the energy retail market. The requirements of an authorisation are onerous and at this stage of its operations, AES does not have the resources to meet these requirements”.

On this count alone it should not be granted an exemption.

Their business model seems to mangle together generation distribution, and the retailing of other things, building PV arrays, and all sorts of practices that have nothing to do with energy retailing. On this count alone it should not be granted an exemption. AES ‘helps’ arrange hire/purchase financing for its ‘customers’.

At 4.1 AES mention that the “consumer” is protected by laws other than energy law. The energy laws

are somewhat more rigorous, as they deal with an essential service, where other laws deal with a sense of contact law. It is unfair to the small retail customer that they need to be conversant with all those other laws.

I have mentioned that their proposal is an entrenched geographic monopoly, and if there is no market a “fair price” or “its value” can never be known. There is no safety-net in AES’s business model.

At 4.3 “Termination of the Agreement”, AES waffles on about all manner of things that are not related to energy law. It is a mirroring of the “Bulk Hot Water” market, and seeks to create a monopoly that may end up being perpetual.

A “solar customer” of AES (whatever that means!) will be forced to on-sell one of AES’s unregistered Deed Under Seal, that most within the billing agency sector use. If not, they will forever be AES’s customer, even though they have sold their property or rented it out.

This will clash with property succession law and tenancy law. Generally Tenancy Law forbids Lessors from compelling a tenant to buy something from someone else.

Yet again, this has nothing to do with energy law. On this count alone it should not be granted an exemption.

## CONCLUSION

Applied Environmental Solutions Pty. Ltd., submission should be rejected. It is a mish-mash of differing laws, agreements, understandings and contracts.

AES’s convoluted and secret dealings should not be entertained by any energy regulator. They offer no readily, easy to access, dispute resolution that other energy consumers have.

Other Energy Retail Contracts are easily available to all, but not ones from AES!

Other Retailers join Energy Ombudsmen schemes, but AES seems to wish to avoid this important energy retail customer protection.

On all the above counts, Applied Environmental Solutions Pty. Ltd. should never be granted an exemption.

AES should apply to be a Regulated Generator or Distributor or Retailer like their peers.

I would like to thank the Australian Energy Regulator for the opportunity to make this submission and hope that my words will be considered very carefully in its deliberations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kevin McMahon', written in a cursive style.

Kevin McMahon