



16 February 2015

Sarah Proudfoot
General Manager
Retail Markets Branch
Australian Energy Regulator
Level 35, 360 Elizabeth Street
Melbourne VIC 3000

By e-mail: AERInquiry@aer.gov.au

Dear Ms Proudfoot

Issues Paper- Regulating innovative energy selling business models under the National Electricity Law

Origin Energy welcomes this opportunity to respond to the Australian Energy Regulator's (the AER's) issues paper on the regulation of innovative energy selling business models. As Australia's largest energy retailer, Origin has a keen interest in policy and regulatory developments in relation to these new business models and, as the AER is aware, holds an individual exemption for its own solar power purchase agreement (SPPA) business.

Origin believes that it is appropriate for the AER to review the level of oversight for alternative energy selling (AES) models given advances in battery technology coupled with embedded generation. However, we also consider it is timely to review the broader regulatory framework to determine if obligations applying to conventional authorised retailers remain proportionate and appropriate given the emergence of alternative selling models. We note that this is the subject of the Energy Market Reform Working Group's (EMRWG's) current consultation on new products and services in the National Electricity Market.¹

In Origin's view, there is no evidence of market failure in relation to the goods and services offered by AES providers. The technologies involved should not be the focus of regulation - the emergence of new business models shows how the energy market is evolving. In many ways, however, the grid impact from storage and other AES models is analogous to a change in consumer behaviour. On this basis, we support an ongoing light-handed regulatory regime. Consumers acquiring services from an AES business have access to protections already under the Australian Consumer Law (ACL). Origin believes that it may be beneficial for the AER to make its process for reviewing exempt applications more transparent to interested stakeholders (where possible). This would increase the level of understanding of the issues the AER considers important and will inform existing holders of an exemption as well as prospective applicants.

With regard to the options presented by the AER, Origin supports option 2, with a limited number of conditions to apply. Option 1 (full authorisation) will impose regulatory costs with little benefit to customers (and may increase confusion for them). In relation to option 2, we believe the AER should focus on confirming that the AES business provides core information to its customers so they can make informed and educated decisions about their energy services. The information itself should not be under assessment (that is, how the information is communicated and its contents), but rather that the AER is satisfied that information necessary for customers to make an informed choice is made available. Broadly, the ACL provides an appropriate level of protection for consumers, though some

¹ See: <http://www.scer.gov.au/workstreams/energy-market-reform/>

complementary provisions relevant to energy selling could enhance the regulatory framework. These are discussed in Appendix A below.

Finally, as a principle, Origin does not support retrospectivity in the application of regulation. The risk of regulatory uncertainty is high if additional conditions are imposed once an exemption has been granted. Prospective applicants may be subject to different conditions on their exemptions in light of the AER's findings, but we caution the AER against altering the conditions under which an AES business operates once it is already exempt from holding a retail authorisation.

We provide specific comments in Appendix A on the questions raised in the consultation paper. Should you wish to discuss the contents of this response, please contact David Calder (Regulatory Strategy Manager) on (03) 8665 7712 in the first instance.

Yours sincerely

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

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APPENDIX A: Response to questions in AER consultation 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?

Origin believes that while the addition of storage may bring the regulation of SPPAs and other alternative energy selling models into greater focus, individual technologies should not be the focus of regulatory decision making. In many ways, the grid impact from storage and other AES models is analogous to a change in consumer behaviour. Using storage is little different to a consumer shifting its consumption pattern while any storage export to the grid is akin to a solar PV system today. As discussed in the both the AER public forums in Sydney and Melbourne, any new regulation should be agnostic in relation to the technologies it is aimed at covering. The regulatory focus should be on the customer impact, rather than the technology the customer is considering.

From a holistic perspective, we understand that the Energy Markets Reform Working Group (the EMRWG) under the COAG Energy Council is considering policy developments in the area of alternative energy selling models. In particular, it is considering whether the existing National Consumer Energy Framework (NECF) is sufficiently flexible to adapt and evolve to the changing energy market dynamics. This should include not only considering what is the most appropriate regulatory framework to apply to AES businesses, but also reviewing the existing framework for authorised retailers to determine if that remains proportionate and appropriate in light of alternative supply models becoming more commonplace.

This work is likely to identify potential changes to the AER's regulatory role in this area.² As this work is looking at the longer term framework, it is appropriate in the interim for the AER to maintain its current light-handed approach for regulating alternative energy sellers. This mitigates the risk and compliance cost of applying and meeting more onerous conditions now that may need to be unwound or changed in the near future.

The existing energy-specific legislation currently contemplates some alternative energy supply models. For example, where a consumer determines to meet its energy needs onsite and disconnect from the grid, this consumer would no longer be covered by the consumer protections under the NECF; this mean the AER would no longer have an oversight or enforcement role for that consumer's supply arrangements. How the consumer goes off grid – whether contracting storage and alternative supply services from a third party or purchasing the equipment outright – is irrelevant. The question is in choosing to go off grid, is the consumer sufficiently informed to understand the energy consumer protection implications of this decision. Something for both the AER and the EMRWG to consider is whether there is a role for regulation to establish an explicit check point for customers to acknowledge the consumer protection consequences for going off grid.

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

Origin believes that option 2 – exemption with possible conditions - should be adopted as a model for regulating alternative energy suppliers. The conditions that might apply under option 2 are discussed in the next section.

² EMRWG (2014), *New Products and Services in the Electricity Market*, COAG Energy Council

Having reviewed the NECF consumer protection requirements that would apply to an AES under full authorisation (option 1), it is clear that:

1. Many requirements may not apply to the nature of the AES business model;
2. Some requirements could create unnecessary confusion for consumers;
3. Consumers will have broader protections under other regulatory frameworks, like the Australian Consumer Law (ACL) and Competition and Consumer Act (CCA).

Supply from an AES is supplementary to the consumer's grid supplied energy. A consumer voluntarily chooses to contract with an AES for this supplementary product. The grid-supplying authorised retailer will continue to provide NECF (or equivalent) consumer protections to these consumers, covering the customer if something goes wrong with their alternative energy supply.

All Australian energy consumers are covered by the ACL and CCA. Energy-specific consumer protections, like those under NECF, take those broad protections and set out not just how they apply in an energy context, but are quite prescriptive in how an energy supplier needs to deliver that protection. For example, the ACL includes core consumer protection provisions prohibiting misleading or deceptive conduct, unconscionable conduct and unfair terms in standard form consumer contracts. NECF, however, specifies what terms and conditions must be included in a standard form energy consumer contract, like a requirement to bill a consumer every three months unless the retailer has explicit and informed consent to bill another frequency.

For voluntary, negotiated products, like those provided by an AES, mandating the billing cycle through regulation puts in place an unnecessary regulatory burden for no benefit to the consumer. Most likely, it would increase the cost of delivering the product, which impedes effective competition. This is not in the long term interests of consumers.

An example of a requirement that could create unnecessary confusion for customers is the retailer requirement to provide customers with information about the availability of state-specific energy concessions. For an energy retailer who predominately administers many of these concessions on behalf of state governments, there is a clear link for the consumer between receiving the information from their retailer, discussing their eligibility and, where applicable, receiving the concession rebate on their energy bill. Given an AES would not be applying any state-based concession for a consumer, the connection between receiving information and actioning it would not exist. There is also a risk that the information provided by the retailer and AES may differ – even in presentation – which the consumer may construe as receiving different messages. Again, applying this provision would increase an AES's regulatory costs for no added benefit for the consumer.

Regarding the ACL and CCA, while the AER is conscious of roles the ACL and CCA have in regulating AES businesses, there could be greater transparency in how the AER has regard to the consumer protections in these regulations in making its current exemption decisions. The AER's exemption review process is detailed and robust. For example, it applies a high degree of scrutiny to reviewing and understanding an exempt applicant's product contract terms and conditions. Providing greater visibility of the process the AER follows could go some way to curtail some of the concerns voiced at the Public Forums, like contracts preventing consumers to choose retailers or having sufficient clarity over early contract termination fees.

Where there may be a gap in the current exempt regulatory framework is whether or not the AER should have an ongoing monitoring role around what information an AES provides prospective customers (as required under the ACL) for alternative energy products. While the AER undertakes an in-depth review when reviewing the initial exemption application, there's a question as to whether consumers would benefit from the AER having an oversight role should consumers start raising problems or concerns with future contracts? If there was deemed a role for the AER, it would be limited to reviewing that certain information was being provided to consumers, not assessing the appropriateness of that information; that role should remain with the various dispute resolution bodies responsible for administering the ACL.

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?

As highlighted above, the majority of the conditions listed in the AER's consultation paper are either not relevant or not appropriate to apply to an AES business. There would be little to no value to consumers from requiring the conditions met or they could result in increased confusion for consumers, which could increase the queries authorised retailers receive from their consumer base. Further information on why specific conditions should not apply are provided below in **Table 1**.

Where Origin does consider there may be scope in applying conditions is making clear the key information that the AES business should be providing to customers to promote informed and educated decision making. This includes providing clarity around the relevant consumer protections and providing greater transparency as to what ACL requirements are relevant in an energy context. We would consider it appropriate for an AES business to:

- Make clear that a customer maintains the right to choose its own retailer;
- Make clear that the AES is not an authorised retailer and therefore what consumer protections apply;
- Explain the applicable process for dispute resolution;
- Set out the frequency of bills and terms for payments; and
- Provide adequate information on the term and costs that apply to the agreement.

The AER's ongoing role in monitoring AES business compliance would be to confirm that such information was being provided to customers beyond the initial review of the underlying AES contract during the exemption application process. This light-handed monitoring approach would provide greater confidence that consumers had the necessary information available to make informed and educated decisions about alternative energy products and services. For example, if the AER becomes aware of customer complaints in relation to an AES business, they may ask for information from that exempt seller. In terms of reporting, we do not believe a formal process (for example annual reporting) is necessary in relation to AES businesses.

Table 1: Assessment of conditions proposed by AER to apply to AES

Condition	Reference in Attachment A	NECF Sub-conditions	Applicable	Reasons
Obligation to supply	Condition 1 [1 and 2]		No	Customer decides to purchase products/services supplementary to grid connection.
Information provision	Condition 2 [1(a) and 1(c)], [condition 13 not applicable]	<ul style="list-style-type: none"> • Right to choose retailer • Exempt seller not subject to normal retail obligations, customer will not receive same protections 	Yes	Clear statement that AES customer has right to choose other suppliers. Contract sets out obligations, not the same as those set out in NECF.
	Condition 2 [1(e)-1(i)]	<ul style="list-style-type: none"> • Access to relevant government/no n-government rebates • Assistance available if can't pay bill on time • Energy tariffs and associated fees 	No	AES does not provide access to these concessions/rebates. Creates confusion for customers to provide information but not action. Imposes compliance cost for AES for no customer benefit.
Billing & payment arrangements	Condition 3-8 [all]	<ul style="list-style-type: none"> • Issue bills once every 3 months • Flexible payment options • Particulars of the bill • Bill estimates • Pay by date 	No	Billing and payment arrangements should be agreed with customer and specified in negotiated contract. NECF requirements on how to bill not appropriate for voluntary contractual negotiation or different product structures.
Disconnection & continuity of supply	Condition 9-11 [all]	<ul style="list-style-type: none"> • Payment difficulties and disconnection • Where disconnection prohibited • Reconnection 	No	Not the primary supplier of energy. Voluntary contract. Disconnection process set out in AES contract.

Condition	Reference in Attachment A	NECF Sub-conditions	Applicable	Reasons
Dispute resolution	Condition 2 (1c), condition 15(a) [condition 15(b) not applicable]	<ul style="list-style-type: none"> Resolve disputes and advise of available dispute resolution bodies 	Info only	Targeted dispute resolution processes should be set out in the AES contract.
Life support	Condition 16	<ul style="list-style-type: none"> Advise authorised retailer and distributor of life support details Maintain record of life support customers 	No	Authorised retailer and distributor already collecting this information. Grid connection primary source of life support supply.
Termination	Condition 18	<ul style="list-style-type: none"> Specific conditions for terminating a contract 	No	Termination provisions should be set out in the contract with the customer. NECF terms are not appropriate for voluntary negotiated contract.

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

Origin does not believe a trigger point for individual cases is appropriate or required. A robust regulatory framework needs to set proportionate and appropriate requirements for businesses upfront. Under the current regulatory framework, altering the requirements based on the number of consumers purchasing products and services from an exempt business or an increase in the total volume of consumer energy sourced by an alternative supplier may create regulatory uncertainty and possibly confusion for both businesses and consumers. In addition, while still connected to the grid, a consumer has access to energy-specific consumer protections from their grid retailer.

There are also particular challenges with administering a trigger point based on the percentage of volume of customer energy sourced from an authorised retailer and an alternative supplier. First, trying to measure those percentages would be incredibly difficult to track. Second, the result would be an increase in overall regulatory compliance costs; the increased cost for the AES would not be offset by a corresponding reduction in the compliance costs of the authorised retailer. The authorised retailer would still need to continue providing those protections for other consumers. From the perspective of the consumer, there would be an increased cost for no benefit.