

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 Public Interest Advocacy Centre (PIAC) thanks the Australian Energy Regulator (AER) for the opportunity to provide comment on the Issues Paper, *Regulating innovative energy selling business models under the National Energy Retail Law*. Given how fast the energy market is changing, it is appropriate that the AER explores the applicability of electricity retail regulation to new business models.

#### **Defining differences between retailers and alternative energy services**

PIAC notes that overall the AER's framework for regulation of alternative energy sellers seems to be working. 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?

PIAC's view is 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.

In PIAC's view, this distinction between NEM grid-connected and AER-relevant contracts and 'behind the meter' technologies is the key principle for regulating 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, as such, 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'.

#### ***Recommendation 1***

*PIAC 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).*

Level 7, 173-175 Phillip St  
Sydney NSW 2000  
DX 643 Sydney  
Phone: 61 2 8898 6500  
Fax: 61 2 8898 6555  
www.piac.asn.au  
ABN: 77 002 773 524

## **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 PIAC's view, the exempt seller framework is adequate for current 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 a consequence of energy efficiency upgrades to buildings, appliances or equipment – appropriately, none of which is in the remit of the AER.

PIAC believes it is important that regulation does 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). PIAC 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, PIAC 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?

PIAC's priority is to ensure residential consumers are effectively and adequately protected. In terms of how this should be undertaken, PIAC 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. PIAC is also concerned to ensure compliance requirements do not present a barrier for new competitors to enter the market so a balancing exercise is required here by the AER.

PIAC 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.

PIAC 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 the Clean Energy Council is seeking ACCC authorisation to extend the scope of the Code to alternative energy sellers. PIAC is supportive of this industry initiative, which promotes consumer confidence in the solar industry, including the demonstration of best practice pre- and post-sale activities.

PIAC notes that the Council of The Ageing (COTA) Queensland has suggested that an additional condition be placed on an individual exemption for the 'payment of a fee to the customer's authorised retailer to contribute towards the cost of providing hardship, life support and concession/rebate services for that customer'. PIAC recommends that this option be investigated.

PIAC also support's COTA Queensland's suggestion that it may be timely to consider an alternative approach whereby responsibility for provision of hardship services is addressed at a jurisdictional level.

NSW is currently the only jurisdiction where the Energy Ombudsman has jurisdiction to investigate disputes between customers and an exempt seller under the National Energy Retail Law (NSW) and customers have the right to apply to EWON for a review of a decision arising from any matter relating to the supply of electricity or gas by the exempt person to the customer. Currently EWON handles these disputes (for example, meter malfunctions, irregular billing) free of charge and does not require these exempt sellers to become members of EWON. In future it might be appropriate for jurisdictions to legislate that exempt sellers over a particular size be required to become members of an Ombudsman scheme.

In addition, while PIAC recognises that the creation of hardship programs can be a significant cost to an energy seller, it is important that hardship programs are available in situations where energy sellers have a significant number of customers to whom they are selling the majority of those customers' electricity. PIAC suggests the AER monitor industry developments in this area and consider the cases where it might be necessary to require exempt sellers (including via mini-grids) to develop hardship plans.

#### ***Recommendation 4***

---

*PIAC recommends that the AER continue to monitor industry developments with respect to the desirability of imposing conditions on exempt sellers requiring:*

- fee payment to the customer's authorised retailer to contribute towards the cost of providing hardship, life support and concession/rebate services for that customer;*
- membership of Ombudsman scheme; and/or*
- the development of hardship plans for businesses over a particular size.*

#### **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 PIAC'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.

**Recommendation 5**

---

*PIAC recommends that the AER write to the COAG Energy Council to initiate an overarching review of the National Electricity Law and Retail Law when customers begin to disconnect from the National Electricity Market in significant numbers.*

Once again, PIAC thanks the AER for the opportunity to provide comment on the Issues Paper. If you would like any further information, please do not hesitate to contact me, or Dr Gabrielle Kuiper, EWCAP's Senior Policy Officer, on 02 8898 6520, or [gkuiper@piac.asn.au](mailto:gkuiper@piac.asn.au).

Yours sincerely



**Deirdre Moor**  
**Manager, Policy and Programs**  
Public Interest Advocacy Centre  
Direct phone: +61 2 8898 6507  
E-mail: [dmoor@piac.asn.au](mailto:dmoor@piac.asn.au)