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Australian Energy Regulator  
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Dear Sarah,

**Refining our regulation of alternative energy sellers – Issues Paper**

Thank you for the opportunity to make a contribution to the Australian Energy Regulator's (AER) review of the regulation of Alternative Energy Sellers.

I congratulate the AER on its understanding of the evolving nature of the energy market and the importance of balancing regulatory oversight with flexibility. The regulation of this area is important, both for local suppliers and in clearly demonstrating Australia's attractiveness to international investors.

Over the last four years, I have been actively involved with a number of businesses offering unique technology and software solutions and alternatives to grid-sourced electricity. I have worked for 'traditional' energy retailers, energy management firms and energy storage start-ups.

In this submission, I point to key differences between traditional energy retailers and Alternative Energy Sellers. This submission proposes the argument that, for Alternative Energy Sellers, a retail authorisation is both inappropriate and unnecessary.

While the argument has been advanced that exempt sellers enjoy the benefit of reduced compliance costs by the exemption framework, the fact that this could create an 'un-even playing field' for existing energy retailers is irrelevant in terms of determining the correct regulatory setting. Existing energy retail, just like any other business, will need to adapt to changes in technology, the competitive landscape, and wider national and global economic fluctuations.

**1. Innovation in the way we sell energy**

The innovation we are seeing via Alternative Energy Sellers includes fundamental differences in the way that energy is sold to consumers. As the AER notes the 'typical' energy retail model involves a retailer purchasing energy from the wholesale market and then on-selling it to a consumer via the distribution network. The 'typical' energy retail market is dominated by key players. Origin Energy, EnergyAustralia and AGL jointly supply over 75 percent of the retail

market.<sup>1</sup> In contrast, the Alternative Energy Seller model encourages decentralisation and a distribution of the rights to generate and sell energy.

The Alternative Energy Seller model enables the sale of energy without the need for a purchase of energy over the wholesale market and, in many cases, without the need for use of the transmission or distribution network. Transmission and distribution costs make up a significant proportion of a typical energy bill. In NSW these two components account for approximately 66 percent of a residential electricity bill.<sup>2</sup> Alternative Energy Sellers typically source energy at or close to the place where it is consumed and so lessen the need for costly transmission and distribution components.

Most Alternative Energy Supply models are completely ‘behind the meter’ and most offer an alternative rather than a replacement to grid-sourced energy. In almost all cases, unless a customer goes off-the-grid, a consumer will continue to have a relationship with, albeit with less reliance on, their existing energy retailer. Energy storage technology will further reduce a consumer’s reliance on grid-sourced energy, but will not completely remove it. It is appropriate, and in fact desirable, that consumers continue to enjoy specific consumer protections in their relationship with their ‘traditional’ energy retailer.

## **2. The impact of Energy Storage**

Energy storage in combination with Solar PV (or other on-site generation) offers significant potential benefits: to energy consumers; in reducing pressure on existing network infrastructure; and in improving reliability of supply.<sup>3</sup>

On-site generation combined with energy storage will be a game-changer as it will give Alternative Energy Sellers ability to supply during peak-periods. It is true that developments in the preferred source of energy bring challenges, particularly in the regulatory sense. Up until this point we have happily paid our energy bills, supporting the network distributors, the transmission companies and retailers. We have never had a real ‘choice’, other than a choice of which logo we prefer on our energy bills.

Energy storage is expected to be an essential element of the Smart-Grid.<sup>4</sup> The three areas identified by the IEC, and noted in the AER discussion paper, all benefit both individual consumers and the operation of the ‘grid’ as a whole. As the AER notes: “On-site generation, storage and advances in technology open the way for consumers to more actively manage their use of energy.”

There will be a variety of commercial terms that will dictate how individual Alternative Energy Sellers ‘package’ these innovations to consumers. It is appropriate that these terms be

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<sup>1</sup> Australian Energy Regulator, State of the Energy Market 2014, page 124

<sup>2</sup> Ibid. page 131.

<sup>3</sup> Electrotechnical Commission, White Paper: Electrical Energy Storage, International, 2011, page 13

<sup>4</sup> Ibid.

regulated, but such regulation should be focused on addressing risks specific to such arrangements.

The more significant consumer risks in the sale of energy via an arrangement including battery storage rest in:

- a) The technology/ hardware itself (which are appropriately governed via regulations specific to electrical and product safety);
- b) The sales and contracting process (which is regulated by the Competition and Consumer Act 2010); and
- c) The use of personal information and data collected (which is regulated by the Privacy Act).

It is important to understand that the risks to consumers in a relationship with an Alternative Energy Seller are very different to the risks to consumers in their relationship with a traditional energy retailer.

The establishment of a relationship between a consumer and an Alternative Energy Seller does not limit that consumer's rights in respect to the supply of energy. Even if such a consumer were to be disconnected by their energy retailer, they would still have rights to reconnection, and still have access to assistance in situations of financial hardship, in accordance with Retail Law.

### **3. Disadvantages of Option One**

This submission proposes that it would be inappropriate to require an alternative energy seller, whose business model includes storage or other innovative component, to apply for authorisation. Such a requirement would not be reflective of the unique nature of the relationship between a consumer and an Alternative Energy Seller, as noted above.

Retail Authorisation carries with it a number of obligations which are incompatible with the business of Alternative Energy Sellers.

As the AER notes in Retailer Authorisation Guideline, July 2011:

“Under s. 92 of the Retail Law, an applicant must satisfy three entry criteria for the AER to grant a retailer authorisation. These are that it:

- has the organisational and technical capacity to operate as a retailer
- has sufficient financial resources to operate as a retailer
- is a suitable person to hold a retailer authorisation.”<sup>5</sup>

It is clear that the above three entry criteria are not applicable to the sale of energy via an Alternative Energy Supply model. For example, there are specific financial resource requirements that apply to an energy retailer. An energy retailer must be able to continue to meet the prudential requirements of the Australian Energy Market Operator (AEMO) and the network distribution

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<sup>5</sup> Australian Energy Regulatory, Retailer Authorisation Guideline, July 2011.

businesses. An Alternative Energy Seller does not have, nor need, an ongoing relationship with AEMO or the network distribution business (other than in relation to the export and requirements when connecting to the distribution network). AEMO would not require that an Alternative Energy Seller met prudential requirements or be a registered market participant if supply were limited to an individual customer and were 'behind the meter.'

There are a wide range of other obligations which rightly apply to traditional energy retailers but could not apply to an Alternative Energy Seller. For example, it would be inappropriate for an Alternative Energy Seller to be a Retailer of Last Resort, if such a seller were unable to source grid energy. It would also be inappropriate to require an Alternative Energy Seller to develop and publish Standing Offers.

If the AER determines that Option 1 is the most suitable way forward, it will need to identify which aspects of the various guidelines the NERL and NERR apply to Alternative Energy Sellers. In effect, there would still be two different regulatory regimes.

#### **4. Appropriate regulation and test to apply**

The appropriate way for the AER to regulate Alternative Energy Sellers is via Option 2. There is a clear distinction between the business model of traditional energy retailers and those of Alternative Energy Sellers.

The key difference between traditional sale of energy and that under a SPPA or similar model, as noted by the AER, is that disconnection of supply by a traditional energy seller has a material impact on a customer.

The 'significance' of the supply via an alternative method, when considered in the whole of the contract or the mix of supply to a customer, is inconsequential. The percentage of energy supplied by an alternative source has no impact on a customer's ability to access grid-energy, unless that customer is completely off-grid.

Similarly, the scale of operations of an Alternative Energy Seller has no relevance to the expectations of any one individual customer or that customer's ability to source energy from the grid.

The only relevant question is whether the customer has access to supply which cannot be disconnected without the protections afforded under Retail Law.

#### **5. Complaints resolution**

An important consideration in the regulation of Alternative Energy Sellers will be a consumer's right to lodge a complaint and have that complaint managed appropriately. I would suggest the appropriate solution is to require that Alternative Energy Sellers develop and implement a complaints management process which is consistent with the applicable Standard.

One obvious option is to extend the jurisdiction of the existing State-based Ombudsman Schemes, as supported by a submission of the Energy and Water Ombudsman (SA) Limited (EWOSA). My only concern about such an option is that the fees charged to join such a Scheme, and ongoing fees, will be a barrier to entry for new Alternative Energy Sellers.

There are already a number of SPPA customers. It is unclear if their actual experience supports the need for access to an Ombudsman Scheme. The cause of 'enquiries' noted by EWOSA in their submission is unclear, which is understandable as they are not currently able to collect this information. Such consumers could conceivably be complaining or enquiring about solar installation companies, about access to feed-in tariffs or simply the cost of solar panels.

## **6. Conclusion**

I support the regulation of Alternative Energy Sellers via Option 2. Regulatory requirements of Alternative Energy Sellers should be specific to the nature of the relationship and reflect the key differences and risks.

Energy storage will shift the balance of power towards Alternative Energy Sellers but will not reduce a consumers' rights to protection under Retail Law, unless such a consumer is completely off-grid and cannot be supplied by a traditional energy retailer.

Kind regards,



Connor James

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