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Submitted by email to AERExemptions@aer.gov.au with the subject line 'AER (Retail) Exempt Selling Guideline'

Amendments to the AER (Retail) Exempt Selling Guideline – Notice of Draft Instrument

Thank you for the opportunity to respond to the Amendments to the AER (Retail) Exempt Selling Guideline – Notice of Draft Instrument (the Paper).

Simply Energy is a leading energy retailer servicing Victoria, South Australia, New South Wales and Queensland. Simply Energy is a member of the Energy Retailer's Association of Australia (ERAA).

The Australian Energy Regulator (AER) is making policy decisions that are best made by the COAG Energy Council and Australian Energy Market Commission (AEMC)

Simply Energy is concerned that the AER is considering and determining matters of policy it is not best placed to draw conclusions about. It appears clear that the AER now has a strong public position of encouraging and supporting lower standards of regulation for non-traditional energy providers, the very providers who are not well versed in dealing with the specific needs of energy consumers. It is unclear that the AER should be in this position.

Furthermore, the issues touched upon extend beyond the specific draft instrument and remain issues best considered by COAG and the AEMC, given the interconnected nature of the electricity supply chain and the implications across the supply chain of the AER's conclusions.

The impacts across the electricity supply chain of differentiated regulatory standards have not been properly considered

The AER has restated its confidence in the principle that for grid-connected customers only grid-delivered energy needs to be comprehensively regulated and subject to energy-specific consumer protections. Other energy supplies provided to grid-connected customers are considered to be discretionary purchases and supplemental, and as a result require lower levels of consumer protection.

The AER has applied this principle when amending the guideline, and as a result is proposing to further reduce the regulation of non-grid energy providers and embedded networks, and increase the scope of exempt activities.

The AER states that it considered the issue of competitive neutrality between different kinds of energy sellers, but concluded that none of the proposals to support it are workable under the current framework. As a result, issues relating to competitive neutrality with impacts across the electricity supply chain have been effectively ignored.

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This is a significant matter and Simply Energy urges the AER to avoid determining policy in this area and instead seek direction from the AEMC and COAG Energy Council.

The AER considers that the customer can always fall back onto the regulated grid-delivered supply if problems occur with the exempt supply, whereas the impact on the customer of the disconnection of grid-delivered energy is much more significant. This perspective stands behind the differentiated regulatory standards between grid-delivered and non-grid delivered electricity.

However, this perspective is inconsistent with the potential impacts on the customer, when these are quantified.

For example, being locked into 10-year power purchase agreement (PPA) relating to the output of a 3 kilowatt solar photovoltaic system at rates that are 5c/kWh higher than the best rates that become available (25c/kWh instead of 20c/kWh, for example) would cost the customer additional energy costs of $1,750[1].

This is significantly greater than the costs of de-energisation and re-energisation that relate to grid-delivered energy. Simply Energy does not charge customers for de-energisation for non-payment. Customers who are de-energised for non-payment therefore only pay for re-energisation. If remote re-energisation is available this cost to the customer will be approximately $35[2].

Current Victorian Guaranteed Service Level (GSL) payments that are paid by distribution businesses to customers are approximately $5 per hour of sustained interruption of supply[3]. At the GSL rate of $5 per hour the $1,750 higher cost relating to the PPA is equivalent to supply interruptions totalling 350 hours, approximately 15 days. This is an order of magnitude higher than the retailer's obligation to raise a reconnection service order 1 business day after receiving the customer's request.

This comparison shows that the consequences for a consumer of an overpriced PPA are significantly greater than the consequences of de-energisation, even when the non-financial costs of any supply interruption are included.

Additionally, deemed exemption class D10 was created in 2013 to allow selling of metered energy by government agencies (including local government, statutory authorities, and government owned corporations) to non-residential customers, including small business customers. The AER is now proposing to extend this to allow universities to sell energy to non-residential customers.

Leaving aside the logic of the original decision, extending the existing exemption is not appropriate or consistent with the structure of the energy sector. This is because the energy sector is built around competitive retail markets composed of highly-regulated authorised retailers who provide comprehensive consumer protections. Small businesses in particular benefit from widespread protections under the National Energy Customer Framework (NECF) and jurisdictional retail requirements.

If the scope of exempt selling to small businesses continues to grow then this calls into question the value of the NECF protections relating to small business consumers. Simply Energy considers that the AER should refrain from further scope increases to exempt selling to small businesses until the AEMC has reviewed NECF and decided on the costs and benefits of the protections it provides to small business consumers.

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[1] A 3kW system in Melbourne generates approximately 3,500 kilowatt-hours(kWh) per year. This gives a 10 year total output of approximately 35,000 kWh. An additional 5c/kWh on 35,000 kWh costs $1,750.
[2] Due to different distributor service charges this may be higher if a manual re-energisation is required.
[3] $100 where the customer experiences more than 20 hours of unplanned sustained interruptions (lasting more than 60 seconds) per year (or $150 for more than 30 hours or $300 for more than 60 hours).

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Consumer protections have been reduced based on anecdotal evidence alone

Since 1 January 2015 anyone intending to retrofit a multi-occupancy site to change it from individual network connections to an embedded network must obtain an individual exemption. The previous deemed class (which did not require application for an individual exemption) was closed as it was facilitating removing customers from the competitive market and exposing them to a monopoly embedded network retailer.

The AER now proposes to reopen this deemed exemption class to retrofits that have been consented to by all affected consumers.

The AER's justification for allowing embedded network retrofits to be eligible for deemed exemptions is "the rise in electricity retail margins in recent years (that) has enabled landlords to bulk purchase and undercut existing electricity retailers and therefore, to offer residents / tenants a better deal." The AER states that the current requirements are preventing shopping centre tenants from "accessing lower energy costs through the bulk purchasing power of their landlords."

Consumers being asked to consent to a retrofit face information asymmetries and are likely to be less aware of the long-term consequences of the retrofit than the proponent. In particular, the consumer may not consider the consequences of being unable to access alternative retail offers in future years when the initial rates offered by the proponent have expired.

This concern shows that reopening this deemed exemption class does not bring about a straightforward net benefit. There are potential costs that will be borne by some consumers and there is no evidence that the AER has conducted a robust cost-benefit analysis to determine that the change is in the long-term interests of consumers. Also, the responsibility for conducting such an assessment potentially lies with the AEMC.

Nevertheless, if the AER chooses to reopen this deemed exemption class, then it should ensure that strong obligations to match discounted retailer offers (not standing offers) are applied, to protect the long-term interests of consumers. Otherwise consumers may agree to the retrofit because they benefit now, only to see their tariffs increase above market levels in future years, when they no longer have the ability to access competitive offers.

Responses to specific questions posed by the AER

1. *Should the electricity tariff cap that exempt sellers may charge small customers (i.e. relevant retailer standing offer) be retained? If not, how else can small customer tariffs be kept to a reasonable level?*

   Consumer preferences for high discount percentages has led to the retail market providing high discounts rather than low pre-discount rates. The regulatory ban on market rates that exceed standing offer rates has consequently led to a significant divergence between the prices paid by standing offer customers and customers who receive discounts.

   We draw the AER's attention to the St Vincent de Paul Society's recent report ("The National Energy Market – Still winging it", Melbourne, September 2015) that considers that consumers in are significantly disadvantaged if paying standing offer rates. If the AER agrees with this, then it is not appropriate to allow embedded network retailers to charge standing offer rates to consumers who are unable to move to another retailer.

   If small customers in an embedded network are unable to access competitive offers, then the embedded network retailer should be required to price match a genuine offer that the small customer would

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otherwise be able to obtain. In order to provide stability, the small customer could be restricted to seeking price-matched tariffs from the embedded network retailer only once in any 12-month period.

2. *Are there any potential barriers to exempt sellers offering a customer a minimum of two payment methods (see new Condition clause 3(2))?*

   Simply Energy is unaware of any potential barriers.

3. *Under Condition 11 - Reconnection of supply - the AER has removed the term 'as soon as practicable' in relation to the requirement that an exempt seller must reconnect the premises. We seek views on whether the obligation should be time limited and if yes, what limits should be imposed.*

   The obligation should give consistent customer outcomes with the requirements relating to authorised retailers and regulated distribution businesses. Authorised retailers are required to raise a reconnection service order on the business day following the customer request, and this will be executed by the distribution business the following business day if received before the cut-off time.

4. *We are proposing to require exempt sellers to claim government rebates or concessions on behalf of customers who cannot claim the rebates or concessions themselves. In the current guideline exempt sellers must use best endeavours only. We are interested to understand what this change would mean for exempt sellers—in particular, what costs exempt sellers would incur in making the claims. We are also interested in whether stakeholders see other possible solutions to this issue.*

   We note the AER's conclusion that in this case 'best endeavours' has not given the consumer outcomes desired, as some exempt sellers have refused to assist consumers unless required to by regulation. With this in mind, we consider that the AER's proposal to make this a regulatory obligation makes sense. Additionally, we are concerned about the AER's statement on page 14 of the Paper, that if this change is not adopted, then the 'best endeavours' obligation will be removed anyway. We cannot understand how consumers who are eligible for concessions will benefit from such a change.

5. *We are proposing a new class for power purchase agreement (PPA) providers who sell to business customers or residential customers where the PPA has particular characteristics, including limiting it to residential agreements of no more than a 10 year term.*
   a. *Is this term appropriate? Do you consider a different term would be better?*
   b. *Are there any other criteria the AER should include for eligibility for this class?*
   c. *Should the class be extended to cover other types of alternative energy seller?*

   Given the AER's approach to PPAs, Simply Energy considers that a criterion based on a 10-year term provides an appropriate balance for a residential PPA – a shorter term would limit the value of the exemption because it is too short for recovery of solar PV system costs at a reasonable rate per kilowatt-hour, whereas a longer term would potentially lock consumers into an arrangement for an excessive length of time.

   We also agree that including PPAs sold to business customers in the deemed exemption is appropriate given the AER's approach to PPAs, reflecting the additional resources available to business customers to ensure that they benefit from any arrangements they enter into.

   Simply Energy does not consider that any other criteria would be appropriate, given the exemption principle the AER is applying. All exempt sellers, no matter what their ownership or structure, should have the same opportunities to provide the services identified by the AER for the exemption class.

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The AER states that its experience in overseeing alternative energy seller PPA exemptions for over 2 years has given it sufficient experience to create the new class without putting good consumer outcomes at risk. Similarly, the class should not be extended to other types of alternative energy sellers until the AER has sufficient experience in each type, to be confident that changes will not put good consumer outcomes at risk.

6. *Your views on any other proposed changes.*

Simply Energy is concerned that the AER is determining policy by further extending the scope of energy retailing by business models that provide reduced consumer protections. This type of policy direction is outside the scope of the AER and should instead be addressed by the COAG Energy Council and the AEMC reviewing consumer protections in general and replacing or revising the framework if found to be appropriate.

If you have any questions about this submission, please contact James Barton, Regulatory Policy Manager on (03) 8807 1171.

Yours sincerely

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