



12 August 2011

General Manager
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Australian Energy Regulator
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Dear Sir/Madam,

Re: Submission to exempt selling guideline

Infigen welcomes the opportunity to comment on the draft *exempt selling guideline*.

Background

Infigen Energy (ASX: IFN) is a specialist renewable energy business with interests in a pipeline of Australian renewable energy developments and 24 operating wind farms across Australia and the United States. Infigen's total installed capacity exceeds 2,200MW and currently generates over 5,200GWh of renewable electricity per year. As a fully integrated renewable energy business in Australia, Infigen owns, develops, builds and operates electricity generation assets. Infigen also directly manages the sale of the electricity that is produced to wholesale and retail customers, as well as the National Electricity Market.

Infigen currently retails electricity to the Sydney Desalination Plant (SDP) from its 140.7MW Capital Wind Farm near Bungendore, NSW. SDP provides water to up to 1.5 million customers in Sydney and can provide up to 15% of the city's water supply needs. It is owned by Sydney Water, a statutory State owned corporation and Australia's largest water utility. Infigen's Capital Wind Farm generates enough renewable energy to offset the energy use of SDP.

Infigen is required to hold a NSW retail electricity supplier's licence in order to supply SDP.

Infigen has a development pipeline of renewable energy projects around the NEM and is at various stages of negotiations with large sophisticated customers for offtake arrangements. Given the size, capabilities and resources of those customers, the offtake arrangements will be similar in scope and comprehensiveness to the current arrangements between Infigen and SDP.



Large sophisticated customers

Infigen supports the policy initiative of:

- national electricity retailer licensing rather than the myriad of State based regimes; and
- adequate minimum or "safety net" provisions for electricity retailing to small customers (such as residential households).

Infigen is concerned that the exempt selling guideline does not contain an adequate classification to distinguish between the sale of electricity to (1) small customers and (2) large sophisticated customers.

Infigen considers "large sophisticated customers" as businesses that consume energy at their premises in an equal or greater amount than 750MWh per annum. Examples of such customers would include large industrial, mining or commercial enterprises (such as SDP). In NSW, the consumption threshold of 750MWh per annum has applied to electricity retailing deregulation since 1 July 1997, meaning that this type of customer in NSW has enjoyed a choice of suppliers for over 14 years.

While the exempt selling guideline does not distinguish between small customers and large sophisticated customers, we note that it is focused on the protection of small customers. This could lead to the unintended and disadvantageous outcomes described below.

Exempt selling guideline should distinguish large sophisticated customers

Based on the policy principles, "exempt seller related factors" and "customer related factors" contained in the exempt selling guideline, we set out below some of the reasons why a new *retail supply to large sophisticated customers* class should be a deemed or registrable class of exemption:

- ***Large sophisticated customers have more resources and capability than small customers:*** Large sophisticated customers are sophisticated business consumers with the financial, technical and legal resources to protect their commercial interests through bilateral negotiations with sellers. In many instances, these customers have also had the experience of retail competition which commenced in the late 1990s. By way of example, the long term contractual arrangements between SDP and Infigen were negotiated over a substantial period of time and were prepared with the assistance and considerable expense of professional legal counsel.
- ***Small customer protections will not protect large sophisticated customers:*** Large sophisticated customers by their nature do not require the same types of consumer protection as small customers. They have more sophisticated, technical and specialised account management, invoicing, metering, physical supply, credit support and force majeure requirements. Accordingly, large sophisticated



customers do not require the same safety net provisions that are provided for small customers, such as standing offer prices, cooling off periods, life support and hardship policies, and standard connection & disconnection arrangements.

- **Increased barriers to entry for independent power producers (IPP):** Where IPPs, such as Infigen, who only supply to wholesale customers and large sophisticated customers are required to obtain a national retailer authorisation or individual exemption, this will increase the barriers to entry for an IPP. The compliance requirements of a retailer authorisation or continuously seeking individual exemption on a customer by customer basis will burden the IPP with unreasonable and unnecessary costs. In addition to these ongoing costs, the uncertainty involved in the application for a site-specific individual exemption would be extremely prohibitive to attempts to secure new business with a large sophisticated customer.

Infigen holds concerns that such barriers to entry may result in substantially lessened competition and therefore fewer supply options for large sophisticated customers.

- **Constraining build of generation assets:** The compliance costs of a retailer authorisation or individual exemption, and the uncertainty of obtaining such an authorisation or exemption, would burden the electricity generation market. For IPPs such as Infigen, the development, financing and construction of generation asset is predicated on certain and financially viable offtake arrangements. By adding to the cost and uncertainty of development, the application of these may have the unintended consequence of constraining the build of generation assets by IPPs.
- **Small customers of exempt sellers not to be unreasonably disadvantaged:** Since this submission relates only to sellers who are selling to *large sophisticated customers*, Infigen believes this submission would not compromise the policy principle contained in the Retail Law that customers of exempt sellers are not unreasonably disadvantaged as compared to customers of authorised retailers. This approach is also in the long term interests of large sophisticated customers.

Submission

Infigen submits that *retail supply to large sophisticated customers* should be a deemed or registrable class of exemption.



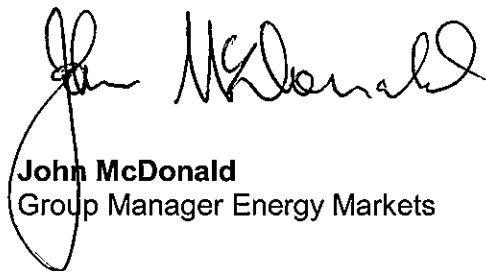
This can be achieved in the exempt selling guideline by adding a new class of deemed or registrable exemption, or amending an existing class (such as Class R5 so that it applies to both retailing and onselling).

Alternatively the retailer authorisation guideline should contain a separate class of retailer authorisation for retailers who are selling solely to large sophisticated customers. The criteria for and conditions on such a retailer authorisation would be applicable and relevant to protect those large sophisticated customers.

In conclusion, Infigen submits that the exempt selling guideline and/or retailer authorisation guideline should contain certainty for sellers and customers. However conditions should be designed to be relevant to protect customers and sellers alike while fostering a competitive national retail electricity market.

Should you wish to discuss any aspect of this submission please contact me on (02) 8031 9937 or john.mcdonald@infigenenergy.com.

Yours faithfully,

A handwritten signature in black ink, appearing to read "John McDonald". The signature is written in a cursive style with a large loop at the end.

John McDonald
Group Manager Energy Markets