



**Total  
Environment  
Centre**

Suite 2, 89-97 Jones Street, Ultimo, NSW 2007

Ph: 02 9211 5022 | Fax: 02 9211 5033

[www.tec.org.au](http://www.tec.org.au)

## **Total Environment Centre**

### **Submission to AER**

# **Issues paper - regulating innovative business models under the NER**

February 2015

Mark Byrne  
Energy Market Advocate  
[markb@tec.org.au](mailto:markb@tec.org.au)

## Total Environment Centre's National Electricity Market advocacy

Established in 1972 by pioneers of the Australian environmental movement, Total Environment Centre (TEC) is a veteran of more than 100 successful campaigns. For nearly 40 years, we have been working to protect this country's natural and urban environment, flagging the issues, driving debate, supporting community activism and pushing for better environmental policy and practice.

TEC has been involved in National Electricity Market (NEM) advocacy for ten years, arguing above all for greater utilisation of demand side participation — energy conservation and efficiency, demand management and decentralised generation — to meet Australia's electricity needs. By reforming the NEM we are working to contribute to climate change mitigation and improve other environmental outcomes of Australia's energy sector, while also constraining retail prices and improving the economic efficiency of the NEM — all in the long term interest of consumers, pursuant to the National Electricity Objective (NEO).

### Introduction

TEC congratulates the AER for taking a proactive approach to the introduction of new technologies and services in the energy market. Our interest in this issues paper relates to our advocacy to assist the integration of more decentralised energy into the NEM. We are generally supportive of the AER's current framework for differentiating between authorised and exempt sellers – ie, that

...a retailer authorisation will likely be required if the seller meets the following criteria: they provide the primary source of energy to the premises of a small customer and sell a particular fuel across multiple sites; the seller is registered in the wholesale market for the particular fuel source and is the financially responsible retailer for the particular premises. (3)

The application of these criteria to solar PPA providers, for example, would see them eligible for retail exemptions where consumers retain a grid connection and a contract with an authorised retailer. We also note that many of the companies selling innovative energy products and services are choosing not to sell energy *per se*, and thereby escape the purview of the AER but are covered by the Australian Consumer Law (ACL). This is reasonable and should continue.

In relation to the advent of suppliers of energy storage and management products and services, we are concerned, however, that reference to 'the primary source of energy' creates ambiguity that is reflected in the need for stakeholder feedback in relation to the two options outlined in the issues paper. Basically, we do not regard the amount of energy supplied behind the meter as relevant. This is of concern mostly to incumbent authorised retailers, who may regard it as unfair that they have supposedly onerous obligations when they may be supplying the minority of a consumer's energy. From a consumer's point of view, this is irrelevant; if they make the choice to buy energy 'behind the meter,' and to be protected by both the AER's exempt retailer guideline and the ACL, then they should be entitled to the same consumer protections whether they are obtaining 10 per cent or 90 per cent of their energy behind the meter. In this respect we agree with the approach outlined in Westmore and Berry<sup>1</sup> – ie, 'Regulate the product not the seller'... 'Critical to regulation of a product or service is whether or not it is grid-connected and/or able to directly and materially affect the grid.'

---

<sup>1</sup> Tony Westmore, Luke Berry, 'Emerging energy services: Issues for consumers: awareness, engagement, protection,' 2014, 27.

<sup>2</sup> PIAC submission to the AER issues paper, Regulating innovative energy selling business models under the *National*

If a retailer considers that they are unable to make a profit from a customer retaining a peak period or emergency connection, they are entitled not to offer a contract to them. However, on current indications this is unlikely to be the case in the near future, especially in view of escalating fixed daily charges. If this trend leads to a flight from the grid, then authorised retailers are entitled to offer behind the meter products and services, as they are already starting to do.

The only potentially legitimate complaint we have heard from retailers about the cost to them of such an arrangement is that, where PV and storage customers have an issue with their products, they may approach energy retailers or the ombudsman to resolve it, leading to extra costs. But as above, retailers should be able to factor in such (probably very minor) costs into their retail offers to such customers. If this is not possible and they can prove in several years' time to have encountered a significant cost burden the issue could be reconsidered. We understand that some exempt sellers are already voluntary members of jurisdictional ombudsman schemes. This could become a mandatory condition of obtaining a retail exemption.

We also note that the existence of the exempt selling regime has allowed many small solar companies to offer PPAs, and that if they had been forced to obtain full retail licences, many may not have been able to afford to do so, thereby limiting consumer choice. The reason why full retailers are required to have a larger range of consumer protections in place is because they are in a position where they have a great deal of control over the provision of an essential service, whereas exempt sellers are selling innovative products and services that increase consumer control over their energy supply and management as well as consumption. In principle, the more discretion consumers are able to exercise, the less they and their providers should be subject to obligations intended to protect them from oligopolistic behaviour, predatory marketing, unfair practices and information asymmetry by large energy companies.

Should the AER adopt Option 1, it is likely that some exempt sellers and other companies offering storage and smart meter services will avoid selling energy, potentially also encouraging their customers to obtain all their energy behind the meter, thereby leading to an underutilisation of existing infrastructure and further price pressures for remaining grid-connected consumers.

We therefore agree with PIAC that 'the exempt seller framework is adequate for current purposes and future purposes until such time as a significant number of consumers begin to leave the NEM,'<sup>2</sup> whence it may need to be revisited. However, with the introduction of cost reflective network tariffs, if fixed daily charges are not found to be inconsistent, they and peak demand charges may suffice to provide sufficient incentive for retailers to retail low volume customers. Alternately they may introduce special 'grid backup' tariffs.

## Microgrids

In our view, the main future challenge to the AER's regulation of innovative business models will come not from suppliers of storage and smart metering products and services, but from property developers, precinct scale co/trigen bioenergy companies, rural communities and other proponents wishing to develop microgrids. These proponents typically seek to be the main or sole generators and distributors of energy to their customers, and wish to maintain only a 'skinny' grid connection for peak demand or emergency backup supply. In such cases there may be a case for them to obtain full retail licences – depending, for instance, on whether customers can reasonably be said to have choice in respect of their decision to be part of such a microgrid. The critical issue in such cases is Condition 13 – ie whether an exempt seller must

---

<sup>2</sup> PIAC submission to the AER issues paper, Regulating innovative energy selling business models under the *National Energy Retail Law*. 16 February 2015, 2.

be required to allow consumers to have a choice of retailers. (This is unlike the situation currently in Victoria, for instance, where we understand that many high-rise apartment buildings recently constructed in Melbourne have all energy services delivered by the developers/managers as largely unregulated monopolies.) There may be circumstances in which the financial viability of a microgrid depends upon the proponent having supply contracts with all or most of its potential customers. This may be appropriate where new consumers have informed consent and this condition is not imposed on them for their existing supply.

The other important issue in relation to microgrids is where they are not connected to the NEM, and are therefore at present not regarded as embedded networks and (we assume) do not require a network exemption and are not subject to the AER's jurisdiction. As well as making it challenging for the AER to monitor compliance with some existing condition – especially Condition 8, Pricing – there may need to be additional conditions relating to reliability, voltage fluctuations, and other technical issues. Alternately, offgrid microgrids may need to be brought under the NER and/or the Retail Rules.

## Summary

In response to the issues for stakeholder consideration, TEC's views are therefore as follows:

*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?*

No difference. The current criteria for granting a retail exemption can also cover these products and services.

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

We regard the status quo, Option 2, as adequate.

*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?*

None other than those currently existing.

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

No. Not only would this option be almost impossible to administer, but all of the suggested trigger points are arbitrary, and do not relate to an individual customer's experience, needs or protections.

However, the AER should remove reference to 'the primary source of energy' from its criteria for a retail licence, since the percentage of energy supplied behind the meter or from the grid is not inherently relevant to consumers. Instead we suggest wording such as, '...they provide the grid-connected source of some energy supplied to the premises of a small customer...'

## Additional recommendation

The AER should separately consider developing an appropriate regime for the regulation of microgrids, including any necessary changes to the NER or the Retail Rules.

Yours sincerely,

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

**Jeff Angel**  
Executive Director