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Dear Sarah

RE Issues Paper Regulating innovative energy selling business models under the NERL

United Energy (UE) appreciates the opportunity to respond to the AER on the Issues Paper – Regulating innovative energy selling business models under the National Energy Retail Law (NERL).

In the Issues Paper the AER recognises that energy storage and smart grids are evolving and is seeking feedback for the regulation of the sale of energy in an appropriate, flexible way, including where storage is involved.

The AER provides two options –

- Option 1 – authorisation; or
- Option 2 – individual exemptions with robust conditions.

UE consider that the addition of a battery makes no material difference that warrants increased regulation to the level of retailer authorisation. UE support the individual exemption arrangement continuing with the same light handed obligations as the arrangements for on-selling of solar power purchase agreements (SPPAs) that are in place today.

The addition of a battery to a SPPA or any other solar/battery commercial arrangements is a consumer selected option, it is a commercial arrangement and a secondary form of sale/supply. It is not the consumers primary or default supply where there is an obligation to offer by retailers for sale/supply. The same consumer protections of obligation to offer, rights to disconnect for non payment and no disconnection arrangements in certain circumstances should not apply. Where a consumer does not continue to pay for the hired or leased equipment, in commercial arrangements the contract allows for the equipment to be re-possessed.

If the AER seeks to impose an authorisation model on all new products and services this will serve to increase the price of these other options. For example, it may increase the price for a consumers better alternative supply option where the traditional grid connection option is not cost effective or viable under cost reflective tariffing options. It may not be in consumers interests to regulate these options where

they are the sole supply option for consumers as this increases the cost of these options without commensurate increased benefits and may serve to limit competition and innovation, ultimately reducing options for all consumers.

As noted in the ENA response, solar may be a significant portion of a consumer's supply today, either from the consumer procuring a solar system and paying for the assets outright or via hire /lease arrangements. One of the options has no regulation by the AER, relies on the Australian Consumer Law (ACL) and has been taken up by a significant volume of consumers since 2009. The other option of a SPPA has been the subject of the exemption framework with some light handed regulation given that there is some third party supply within the premise because of the financing option. Whilst this exemption framework has placed increased workload on the AER, a full authorisation process would place even more and there is no market failure that warrants this. The exemption framework can also be readily bypassed by reconfiguring the package to the customer to have a monthly fee instead of an energy based fee.

COAG has agreed that the principles of best practice regulation to be adopted by jurisdictions include the following principles:

- Establishing a case for action before addressing a problem;
- Adopting the option that generates the greatest net benefit for the community;
- Ensuring that regulation remains relevant and effective over time; and
- Government action should be effective and proportional to the issue being addressed.¹

When considering the addition of energy storage where the consumer pays for the assets outright either as an option to not connect to the traditional grid, or limit the traditional grid side energy charges, again there is currently no regulation by the AER of this scenario. UE query why the financing of the adoption of the technology which is the consumers discretion and the charging arrangements are the deciding factors on whether the discretionary supply/sale should be regulated fully or via an exemption framework.

It is preferable that the AER allows the market to evolve so that consumers are provided with options. UE consider it inefficient and inappropriate to duplicate consumer protections on the sale /supply side within the premise. Consumers who procure solar/battery outright are protected by the ACL, consumers who procure lease car deals are also protected by the ACL, the configuration of the appliance package should not need additional customer protections. Matters relating to safety, and potential for adverse impacts on the grid to all consumers need to be managed, however these are better managed through other regulatory frameworks than they are through the NECF and authorisation frameworks.

Application of the exemption framework for SPPA/battery arrangements also provides a reasonable position while COAG consider the matters of third parties and new products and services more fully across both the National Electricity Rules and the National Energy Retail Rules. This approach does not

¹ Council of Australian Governments, Best Practice regulation, A guide for Ministerial Council's and National Standard Setting Bodies, Oct 2007, p4

seek to pre-empt this review, nor is there a pressing need to our knowledge of adverse impacts which warrants consideration of authorisation.

The AER is specifically seeking feedback on the following issues:

Issues for stakeholder consideration

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?

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

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?

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

UE has provided more detailed responses on the issues raised in the AER's Issues Paper and makes further comments on the assessment criteria below.

In summary:

- UE consider that the few differences between a solar panel and a solar panel/battery (battery charge and release) can be dealt with in the contracting arrangements. Consumers need to provide explicit informed consent to enter these contracts just as they do with entering a lease agreement to access pay TV or lease of a motor vehicle. The product is part of a commercial arrangement and does not need additional conditions in the exemption framework to those already applying in SPPAs.
- UE consider that the requirement for authorisation being whether the seller is the primary source of energy supply to the premises is problematic when the need for authorisation rests on the financing/charging option of the new product. Both solar and solar/battery could be a primary source of supply to a grid connected small consumer. The AER may need to reconsider this criteria for authorisation moving forward. UE consider it inefficient and inappropriate to duplicate consumer protections with a further authorisation of the sale /supply side within the premise. This may create unnecessary barriers to entry for new parties and may reduce the options available to consumers or increase the cost of options.
- The grid connection has the consumer protections and is the default option generally available to consumers. The obligation to offer, obligation to connect, obligations relating to disconnection restrictions are more suited to one default offering rather than every new product that might be provided to consumers. Where these new products are discretionary for consumers and are better suited to some consumers not others, it is not appropriate that the full regulatory burden is applied.
- UE agree that a principle based approach is required to meet these future challenges given the emerging models outlined in the AER statement of approach June 14, Regulation of alternative

energy sellers under the NERL.² UE support a transparent approach by the AER which does not introduce unnecessary barriers to entry by competitive players and does not inhibit innovation and uptake.

- UE support the AER position which recognises evolving technology and market offers, and suggests some form of individual registration as opposed to deemed exemption or automatic registered exemption. The individual registration may facilitate increased awareness of technology/offers in the consideration by EMRWG/COAG.
- There are benefits if the overall framework is made clear ie exempt selling and exempt networks in moving forward to enable common understanding by all players and a consistent national approach. UE support the application of an individual exemption framework for solar and battery in much the same manner as has applied for SPPAs.
- The AER may like to consider that the individual exemption framework is not an evergreen framework and enable a possibility that should there be adverse impacts on consumers in the longer term that the AER could re-consider the question of authorisation. This could apply to new and current exemption arrangements and also establishes an option for the AER to apply a different even handed approach later or once the COAG review has been finalised.

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?

Some consumers have the choice to select these alternatives sources of energy supply whilst others may not eg apartments, renters, leased dwellings etc. These new technology options are discretionary and additional to the main or default supply via the traditional grid/network.

The Issues Paper suggests that the storage has the potential to make the SPPA the primary source of energy to the premises and because of this makes the alternative energy seller more closely reflect a retailer. Additional solar panels, reroofing to solar tiles, swapping heating over to gas or oil, a broken air conditioning system, changing household consumption patterns etc are other mechanisms that could make a solar panel the primary source of energy. The addition of storage does little more than time shift the generated energy to a time when it is needed by the customer or network.

It should also be recognised that if the inverter has tripped, if the solar panels are broken in a storm or the sun does not shine, despite the primary energy being from a solar/solar battery arrangements on some days, on other days the reverse may apply and the grid connection is the primary supply.

UE agree with the AER that the addition of battery and storage reduces the financial return from that consumer for the retailer and for the network. Where ongoing network and retail costs need to be covered, including regulatory and compliance obligations, these costs still need to be covered by consumers for viable businesses. This creates a number of challenges for regulators as well as retailers and networks who will need to reflect the true costs of supply services to customers, though these issues do not require the imposition of the costs of authorisation on new entrants.

Differences between SPPA and SPPA with the addition of a battery are in UE's view minimal:

² AER statement of approach June 14, Regulation of alternative energy sellers under the NERL p16 Appendix C

- The solar panel or solar panel/battery (as a single unit) generate electricity primarily for use within the customers premises;
- There may be some power purchased by the customer from the authorised retailer to fill the battery;
- Terms of access to install, maintain, contract term and termination/novation reasons are all essentially the same;
- Accurate, compliant metering, billing frequency and payment, dispute management etc essentially the same; and
- Control and release of energy from the battery – who establishes the agreed action and what circumstances is the battery released.

Noting that in both arrangements SPPA and SPPA with battery the consumer is seeking out these arrangements and is choosing to opt in (or not). These products are discretionary customer products available to some consumers, not all. If the battery release came from a leased motor vehicle would the AER contemplate requiring a retailer authorisation of the motor vehicle lease company?

UE consider that the few differences (battery charge and release) can be dealt with in the contracting arrangements. Consumers need to provide explicit informed consent to enter these contracts just as they do with entering a lease agreement to access pay TV or lease of a motor vehicle. The product is part of a commercial arrangement and does not need additional conditions in the exemption framework to those already applying in SPPAs. The commercial matters are adequately dealt with by the ACL, in the same manner that the SPPA equivalent terms are not part of the exemption framework and are covered by ACL.

There has been no case made that the ACL is not sufficient or that there are increasing consumer issues which may require some additional customer protections.

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

To date the AER position has been that a retailer authorisation is likely to be required if the seller meets the following criteria:

- They provide the primary source of energy to the premises for a small customer and sell a particular fuel across multiple sites; and
- The seller is registered in the wholesale market for the particular fuel source and is the FRMP for the particular premises.

Where there is a need to register in the wholesale market and be the FRMP at a grid connection then a retail authorisation is required. Where a party is registered in an alternate arrangement then this should not be required eg SMGA or DRA .

The AER suggests that the solar/battery may become a larger portion of a small consumers energy supply and may be the primary source as opposed to traditional grid. This may well be the case as the

technology becomes a financially feasible option compared to retail tariffs. As solar panels reduce in price and home solar installations become larger this may also be the case for solar only premises.

To the extent that the new technology (eg solar or battery/solar) is faulty, broken, inverter has tripped etc the customer is supplied the full energy requirements from the grid. The back up or default essential service in the case of SPPA or new technology is still the traditional network/grid. Until there is a clear market failure or adverse consumer situation that cannot be dealt with via exemption conditions there should be no increase in regulation. The question is not should they be authorised but do the new entrants really need to be authorised?

UE consider that the requirement for authorisation being whether the seller is the primary source of energy supply to the premises is problematic when the need for authorisation rests on the financing option of the new product. Both solar and solar/battery could be a primary source of supply to a grid connected small consumer. The AER may need to reconsider this criteria for authorisation moving forward.

UE agree that a principle based approach is required to meet these future challenges given the emerging models outlined in the AER statement of approach June 14, Regulation of alternative energy sellers under the NERL.³ UE support a transparent approach by the AER which does not introduce unnecessary barriers to entry by competitive players and does not inhibit innovation and uptake.

The AER statements in the Issues Paper about trying to regulate an evolving market or pre-empt the market requirements and necessary consumer protections are reasonable.

“While the AER has used the exemptions framework to regulate businesses selling energy through SPPAs, we are concerned that the Retail Law is not equipped to deal with many emerging energy retail models. As such, there are significant challenges in applying the authorisation/exemption distinction in those cases and it may be timely to revisit the framework more generally.”⁴

“As a regulator it is important that we understand the situations in which activities will be regulated and the effect that our decisions have on businesses and consumers. In the face of rapid technological developments, good regulatory practice should be ‘principles-based’ rather than ‘destination-based’ and allow the market to decide which technology or solution is preferable, rather than having the regulator try to pick winners.”⁵

We need to ensure that our assessment of non-traditional business models is transparent, consistent with the underlying objectives/ principles of the Retail Law, flexible and does not inhibit innovation. We need to balance this with ensuring that customers are appropriately protected

³ , p16 Appendix C AER statement of approach June 14, Regulation of alternative energy sellers under the NERL

⁴ AER Issues Paper – Regulating innovative energy selling business models under the NER, Nov 14, p6

⁵ Michelle Groves, Perspectives on regulation in a changing environment, Speech delivered to the Annual Energy Users Association of Australia Conference in Melbourne on 13 October 2014, p.4. A copy of the transcript of the speech is also available at: <http://www.aer.gov.au/node/27697>.

with the relevant level of protection depending on the needs of the customer and nature of the energy sold. “⁶

If the position is altered to regulation of the standing or default service at the grid connection for the benefit of all consumers rather than consideration of the need to regulate any premise side arrangements then the focus will be different.

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?

UE consider that individual exemptions for on-selling is still appropriate with SPPA or SPPA/battery.

UE support the AER position which recognises evolving technology and market offers, and suggests some form of individual registration as opposed to deemed exemption or automatic registered exemption. The individual registration may facilitate increased awareness of technology/offers in the consideration by EMRWG/COAG.

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?

As already mentioned above, the grid connection has the consumer protections and is the default option generally available to consumers. The obligation to offer, obligation to connect, obligations relating to disconnection restrictions are more suited to one default offering rather than every new product that might be provided to consumers. Where these new products are discretionary for consumers and are better suited to some consumers not others, it is not appropriate that the full regulatory burden is applied to all new products and services.

The ACL covers contractual negotiations and a number of consumer protections relating to services and goods. Consumers seeking solar panels or solar panels/batteries as a discretionary product will need to be well informed and provide consent to any contract for leased goods housed on a consumers premise.

Traditional retailer obligations like hardship policy and financial difficulty are not as relevant to the take up of consumer discretionary products. If consumers have the benefit of leased or hired equipment and they don't pay the appropriate charges then the equipment is taken back, for this secondary or optional service the same should apply.

The exempt network/onselling framework requires some exemption to keep registers of life support eg embedded networks that are retirement villages. Where there is a solar panel or solar panel/battery on an individual customers premises then the customer connection on the grid by the authorised retailer already deals with this.

Billing frequency, payment terms, compliant metering etc are able to be dealt with via the exemption conditions and is not a case to require authorisation. These matters are dealt with in hire, lease agreements today without authorisation and to our knowledge without consumer issues that warrant a full authorisation model.

⁶ AER Issues Paper – Regulating innovative energy selling business models under the NER, Nov 14, p7

Dispute resolution mechanisms, including a requirement to following the Australian Standards are able to be dealt with in exemption conditions.

Generally only customers of licenced/authorised entities are able to access Ombudsman schemes. EWOV in the June 14 report already advised that it does not cover alternative energy selling and to our knowledge the Victorian Government has made no decision to change this situation.

If the AER requires authorisation of the retail component, then what of the network exemptions that sit with the onselling exemption?

In the Issues Paper the AER is only considering the energy on-selling arrangements in terms of retailer authorisation or exemption. In considering the authorise or exempt equation there should also be some consideration of the network exemption framework. The network deemed other (NDO1) and the network registrable other (NRO1), do not clearly link to the exempt selling categories.

There are benefits if the overall framework is made clear ie exempt selling and exempt networks in moving forward to enable common understanding by all players and a consistent national approach. UE support the application of an individual exemption framework for solar and battery in much the same manner as has applied for SPPAs.

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

The AER considers a number of triggers for review of an exemption eg sales volume, customer base or storage capacity. UE query whether these type of formal trigger points are the right approach.

The AER may like to consider that the individual exemption framework is not an evergreen framework and enable a possibility that should there be adverse impacts on consumers in the longer term that the AER could re-consider the question of authorisation. This could apply to new and current exemption arrangements and also establishes an option for the AER to apply a different even handed approach later or once the COAG review has been finalised.

The impact of multiple trading arrangements and the need for wholesale price benefits etc to be part of the consumer's offerings will already complicate the market and consumers offerings, and these arrangements will require authorisation by the AER. To the extent that these benefit consumers and involve a range of new products and services, on one level the AER will already have the increased level of regulation and authorisation of sale/supply options.

If you have any queries please feel free to phone me on (03) 8846 9856.

Yours sincerely

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