

19 December 2012

Ms Sarah Proudfoot
General Manager, Retail Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne, VIC 3001

By email: AERInquiry@aer.gov.au

Dear Ms Proudfoot,

AER Retail Exempt Selling Guideline November 2012

The Consumer Utilities Advocacy Centre Ltd (CUAC) is a specialist consumer organisation established in 2002 to represent Victorian energy and water consumers in policy and regulatory processes. As Australia's only consumer organisation focused specifically on the energy and water sectors, CUAC has developed an in-depth knowledge of the interests, experiences and needs of energy and water consumers.

CUAC has participated in the AER's consultations on the current Retail Exempt Selling Guideline. We welcome the opportunity to respond to the revised *AER Retail Exempt Selling Guideline (November 2012)* ("Revised Guideline"). CUAC released a research report on the re-selling of electricity to residential customers on 3 December 2012. The report *Growing Gaps: Consumer Protections and Energy Re-sellers* ("CUAC's report")¹ identifies some of the problems around the re-selling of electricity to residential customers in Victoria, in particular, the inadequate protections re-sellers' customers are entitled to. The findings from the report are relevant to this consultation and also to other issues arising from the re-selling of electricity. We have enclosed a copy of this report to this submission; our report is to be considered as part of this submission.

Currently, re-sellers' customers are not entitled to all the consumer protections articulated in the National Energy Retail Law (NERL) and Rules, unlike customers of authorised energy retailers. From a fairness and equity perspective, CUAC is of the view that re-sellers' customers should be entitled to equivalent consumer protections as energy retailers' customers. Exemptions may be appropriate in certain situations. However, it is appropriate for a business selling electricity to be authorised rather than exempted under the National Energy Retail Law

¹ Consumer Utilities Advocacy Centre, *Growing Gaps: Consumer Protections and Energy Re-sellers* (December 2012). Available at: <http://www.cuac.org.au/>

(NERL):² (1) where re-selling is driven by profit; (2) where the re-seller operates across multiple sites, where there is a large customer base, and where energy is bought and re-sold in large volumes; and/or (3) where the re-seller is a specialist provider,.

Specialist external providers

According to the AER's Notice of Draft Instrument; *"it is the entity that is contracted to buy energy from an authorised retailer (and therefore bears the risk of any non-payment) that must hold the exemption."*³ This poses a significant problem if the owners' corporation has contracted with the authorised retailer for the bulk purchase of electricity, but appoints a specialist provider to assist in billing, metering, customer relations etc. While the owners' corporation is legally the exemption holder, the specialist provider is the one that engages with the customer. The specialist provider would be the body which the customer turns to for payment assistance, account enquiries, connections/disconnections, complaint resolution etc rather than the owners' corporation. Yet because the specialist provider is not the exemption holder, they will not be legally obliged to meet the conditions stipulated in the exemption. The specialist provider will also not be subject to the AER's regulatory oversight. We believe this is a critical issue which needs to be addressed by the AER. While it is possible for contract law to govern the relationship between the owners' corporation and the specialist provider so that the latter is obliged to meet conditions outlined in the exemption, it is not an ideal solution. It would mean that the owners' corporation will have to seek a civil remedy from the specialist provider if the latter breaches the conditions. A regulatory response is required to address this issue.

In CUAC's report, we discussed the issue of "Owners corporations & re-selling" noting that there may be legal implications on each individual member of the owners' corporation if the owners' corporation holds an exemption. Where there is re-selling, most members of an owners' corporation may not be aware of their obligations at law. In the case of new developments, most arrangements relating to the supply of electricity within the building would already have been negotiated by the developer on behalf of the owners' corporation, and agreed upon, before the owners' corporation is constituted.⁴ If the owners' corporation is an exemption holder for a development, then this is a material fact which needs to be disclosed to all potential property buyers.⁵

Another issue which arises where the owners' corporation is the exemption holder is in the context of customer access to the Energy and Water Ombudsman (Victoria) ("EWOV"). CUAC believes that the EWOV scheme should be extended to re-sellers' customers in Victoria.⁶ The fact that owners' corporation are exemption holders and/or re-selling electricity is a barrier to their customers obtaining access to EWOV (an industry scheme) since it is unlikely that industry

² Australian Energy Regulator, Notice of Draft Instrument: Revised Exempt Selling Guideline (November 2012), at 11.

³ Australian Energy Regulator, Notice of Draft Instrument: Revised Exempt Selling Guideline (November 2012), at 10. Also Draft AER (Retail) Exempt Selling Guideline (November 2012), at 7-8.

⁴ Consumer Utilities Advocacy Centre, Growing Gaps: Consumer Protections and Energy Re-sellers (December 2012), at 44. Available at: <http://www.cuac.org.au/>

⁵ Consumer Utilities Advocacy Centre, Growing Gaps: Consumer Protections and Energy Re-sellers (December 2012), At 44-45. Available at: <http://www.cuac.org.au/>

⁶ Consumer Utilities Advocacy Centre, Growing Gaps: Consumer Protections and Energy Re-sellers (December 2012), at 28-31. Available at: <http://www.cuac.org.au/>

will allow entities which are unlicensed to be members of the scheme. A suitable arrangement could be facilitated for owners' corporations to be members of an industry scheme. CUAC is of the view that an appropriate governance and accountability model needs to be developed to ensure that re-sellers' customers have access to EWOV.

Deemed exemption threshold

CUAC supports registration of all re-sellers, including those under the deemed category of exemptions, as this would provide the foundation for more effective regulatory oversight.⁷ However, short of a universal registration system, we agree with the AER's proposal to reduce the threshold from 20 to 10 customers, for the deemed exemption category. This would subject re-sellers with more than 10 customers, to registration.

Choice of retailer

The AER has stated that they do not want to see restrictions on customer choice continue in new developments and re-developments, and that exemptions would not be granted to new developments where individual meters have not been installed.⁸ We agree that exemptions should not be granted to new developments where individual meters have not been installed. CUAC's report, however, reveals that customers in relatively new apartment buildings (which are individually metered) still experience considerable barriers in moving their electricity account from their re-seller to an energy retailer of their choice.⁹ Thus, the customer would not (as per the draft AER (Retail) Exempt Selling Guideline) be able to *"take supply from an authorised retailer by switching immediately, rather than having to negotiate a new connection with a distributor and/or change metering infrastructure."*¹⁰

Our research revealed that in some cases, the customer was advised by their re-seller or a third party (i.e. property manager, real estate agent, owners' corporation) that they could not change energy companies. Other customers who wanted to switch were not accepted by their chosen energy retailer; while others were told that they had to replace their meter or pay for their meter to be replaced to facilitate choice. Facilitating access to retailer choice is a complex matter which, as recommended in our report, needs to be addressed by the Federal and State governments.

We note that it is an AER condition of an exemption, that where choice is available, the re-seller has to advise their customer of this at the start of their occupancy/tenancy and not prevent the customer from purchasing energy from a retailer of their choice. The AER should monitor re-sellers' compliance with this obligation.

⁷ Consumer Utilities Advocacy Centre, Growing Gaps: Consumer Protections and Energy Re-sellers (December 2012), at 43. Available at: <http://www.cuac.org.au/>

⁸ Australian Energy Regulator, Draft (Retail) Exempt Selling guideline (November 2012), at 24.

⁹ Consumer Utilities Advocacy Centre, Growing Gaps: Consumer Protections and Energy Re-sellers (December 2012), at 21-25. Available at: <http://www.cuac.org.au/>

¹⁰ Australian Energy Regulator, Draft (Retail) Exempt Selling guideline (November 2012), at 28.

Access to customer protections

Please refer to CUAC's report which articulates the key customer protections which we believe all re-sellers' customers should be entitled to, and which also recommends amendments to the AER retail exemptions framework¹¹ to enhance customer protections. Consumer protections for re-sellers' customers is critical given the increase in the number of re-selling activities in medium and high density residential developments, and the potential mix of social and community housing within these developments. People who reside in social and community housing have low incomes; they may need more payment assistance from their re-seller.¹²

We are particularly concerned with the requirement for re-sellers' customers to self-identify to their re-seller as experiencing payment difficulty before they are entitled to payment assistance. If access to payment assistance is based solely on customer self-identification, this could result in vulnerable customers being disconnected due to an inability to pay.¹³

As previously mentioned, re-sellers' customers should have recourse to EWOV where they have a complaint against their re-seller. This is a basic consumer protection; and it is especially important for customers facing imminent disconnection, and those who are vulnerable. While we note that extending the EWOV scheme is a matter which the government and EWOV have to progress,¹⁴ an exemption should only be granted if a customer has access to the services of the energy ombudsman in their respective jurisdictions.

Thank you for the opportunity to participate in the AER's consultation on the revision to the Retail Exempt Selling Guideline. If you have queries on our submission, please contact the undersigned at (03) 9639 7600. We are keen to engage with the AER further on the issues around the re-selling of electricity.

Yours sincerely,



Jo Benvenuti
Executive Officer



Deanna Foong
Research & Policy Advocate

¹¹ Recommendations 4, 6, 8 to 10 are addressed to the AER. See Consumer Utilities Advocacy Centre, Growing Gaps: Consumer Protections and Energy Re-sellers (December 2012).

Available at: <http://www.cuac.org.au/>

¹² Consumer Utilities Advocacy Centre, Growing Gaps: Consumer Protections and Energy Re-sellers (December 2012), at 11-13. Available at: <http://www.cuac.org.au/>

¹³ Consumer Utilities Advocacy Centre, Growing Gaps: Consumer Protections and Energy Re-sellers (December 2012), at 33-35. Available at: <http://www.cuac.org.au/>

¹⁴ Consumer Utilities Advocacy Centre, Growing Gaps: Consumer Protections and Energy Re-sellers (December 2012), at 28-31. Available at: <http://www.cuac.org.au/>