

25 November 2013

Ms Jacqui Thorpe
Acting General Manager
Retail Markets Branch
Australian Energy Regulator

By email: AERInquiry@aer.gov.au

Dear Ms Thorpe,

Regulation of Alternative Energy Sellers under the National Energy Retail Law: Issues Paper (October 2013)

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.

We welcome the opportunity to comment on the Australian Energy Regulator's (AER's) *Regulation of Alternative Energy Sellers under the National Energy Retail Law Issues Paper* (October 2013) (Issues Paper) and we appreciate the AER extending the deadline to the 25 November.

We are pleased that the AER is looking into this topic in light of the growth of new business models which do not sell energy under a "typical" energy retailer model and which are also different from typical exempt sellers. CUAC has previously participated in the AER's consultations on retailer authorisations and exemptions. In December 2012, we released our research report *Growing Gaps: Consumer Protections and Energy Re-Sellers*,¹ which looked at the growing gaps in consumer protection that have arisen as a result of the growth in electricity re-selling in Victoria. The consumer protections for customers of energy retailers and customers of re-sellers are not equivalent. Two significant gaps in consumer protections which were highlighted in our research was the lack of access to the Energy and Water Ombudsman (Victoria) (EWOV) for customers of re-sellers and the practical barriers that made it difficult or impossible for these customers to exercise choice of retailer. In developing a framework to accommodate the new business models, we can draw from some of the lessons learned from re-selling.

Introduction

The Issues Paper refers to the concept of energy sold as an essential service. Its premise is that energy sold by an alternative energy seller could be classified as non-essential and energy sold by an authorised retailer as essential. CUAC believes that this concept confuses the 'source' and 'access/use' of energy. We would argue that the 'access/use' of energy is an essential service. Access to energy as an essential service and the protections around that access are at the very heart of consumer protections and regulation in the energy industry.

Some of the major considerations which we have regarding this topic are as follows:

¹ http://www.cuac.org.au/index.php?option=com_docman&task=doc_download&gid=275&Itemid=30

- Types of alternative energy sellers' contracts which are/will be available to customers
- Fairness and affordability of the abovementioned contracts
- Access to dispute resolution

We envisage some circumstances where customers may enter into a contract with an alternative energy seller where they pay for the solar panels and energy use over an extended period of time. A situation may arise whereby a customer cannot afford to continue with the contract or defaults on payment. This may ultimately result in the alternative energy seller withdrawing the solar panels and disconnecting the customer's supply. The customer may have financial obligations with the alternative energy seller. In these situations, the customer may have lost access to the majority of their energy supply and also find themselves in a position where they cannot afford access to supply from their authorised retailer. In such scenarios, we do not regard the supply from the alternative energy seller to be non-essential.

CUAC notes that as this is a relatively new area of market development, there may be a range of contracts to which we have not yet been exposed. The AER, therefore, needs to ensure that the regulatory framework that is developed for alternative energy sellers anticipates a range of circumstances or alternative energy sellers' business models. Given that the market is evolving rapidly and new players are coming in, it is important that the AER review the regulatory framework at least every two years to ensure that it is appropriate to the evolving market conditions. There also needs to be regular monitoring of compliance and enforcement where appropriate. We also suggest that the AER collect data from a wide range of sources (including complaints bodies under the Australian Consumer Law, energy ombudsman assuming that they acquire jurisdiction over alternative energy sellers, other tribunals etc) to assess what the customer experience with alternative energy sellers is and what the market conditions are. This information should be publicly reported.

Subject to our comments above, we have the following response to the questions raised on page 18 of the Issues Paper below:

- 1. What, if any, other alternative energy selling business models are stakeholders aware of (apart from those listed in section 3), and what future business models do stakeholders consider could emerge?***

We are not aware of other alternative energy models other than those which have been listed in section 3 of the Issues Paper. The smart meter environment opens the possibility for third parties to be involved in providing a range of smart meter-related services to consumers. Given the advancements in smart meter technology, it is likely that other alternative energy models will emerge or existing ones will evolve. Hence, we suggest that the AER regularly review any framework developed for alternative energy models to ensure that the framework is robust and remains appropriate to any new business model that emerges.

- 2. What are stakeholders' views on the AER's proposed policy considerations set out in section 3 above?***

We strongly support the AER's view that if an alternative energy seller is selling energy (whether as an essential or non-essential service), it is appropriate that they are authorised or exempted under the National Energy Retail Law (NERL). The AER has identified the following as key issues to be considered as a starting point for considering how alternative energy sellers should be regulated:

- Whether the customer has access to an authorised retailer
- Whether the energy is being sold as an essential service
- Whether the customer retains their right to access the energy retail market and engage a retailer of their choice

We suggest that the AER take a broad interpretation as to what **access** to an authorised retailer means. A customer may in theory retain their right to access the energy retail market and obtain supply from a retailer of choice. But in practice this may not be realistic. CUAC's research on re-selling revealed that there were multiple barriers faced by residents living in apartments with an exempt electricity network from accessing supply from an alternative licensed retailer (a supplier other than the re-seller). The barriers included the need to pay for a meter replacement; some residents were told by their re-seller, real estate agent and/or owners corporation that they could not switch; others were rejected by a retailer of their choice. Customers receiving supply from an alternative energy seller may not be attractive to retailers and may find difficulty exercising choice. Where the cost of switching to an alternative supplier is prohibitive or where there are real obstacles to switching, the customer does not retain their right to access the energy retail market, and an authorisation (rather than an exemption) is appropriate. Customers would then have the benefit of all the consumer protections articulated in the National Energy Customer Framework (NECF) including the RoLR provisions.

The AER has stated that under most alternative selling energy models, the customer purchases their energy from two energy sellers – (1) An authorised retailer who provides the essential service; and (2) an alternative energy seller who provides a portion of the household's total energy needs. We have in our introductory section submitted that we do not support distinguishing between the source through the authorised retailers versus the source through an alternative energy seller as relating to the provision of an essential service. It is access to the 'use' that should trigger appropriate consumer protections.

3. What are stakeholders' views on the AER's proposed approach to granting exemptions and authorisations for alternative energy sellers in section 4?

While we agree in principle with the general approach to granting exemptions and authorisations set out in section 4 of the Issues Paper, we have some concerns.

The AER has stated that **authorisations** are appropriate where the alternative energy seller:

- Is the sole supplier of gas or electricity at a premise
- Prohibits the customer from entering into a contract with another retailer, or requires the customer to enter into a contract with a specified retailer
- Is registered with AEMO in the wholesale market for the particular fuel source and is the financially responsible retailer for the premise

The AER has stated that *'in these circumstances, energy is being provided as an essential service as the alternative energy seller is supplying all or most of the energy consumption needs of the premises.'*

It is unclear whether all three conditions need to be met for an authorisation; or whether one condition is sufficient. This needs to be clarified. As previously mentioned, the 'use' of energy whether sourced from an authorised retailer or from an alternative energy seller is essential.

We agree that an authorisation will ensure that customers are covered by the suite of consumer protections in the NECF (including ROLR). This is all the more important in a monopoly situation.

At the same time, we are of the view that it is inappropriate for an alternative energy seller to limit a customer's access to choice of retailer. In Victoria, for example, customers generally have access to choice of retailer. It is government policy to encourage consumers to choose an offer which is most appropriate for their needs. Customers who are restricted from exercising choice of retailer may find themselves locked in with an alternative energy seller for a very long time; because they are unable to switch, they will be exposed to any price (and variations) charged by the alternative energy seller. Pricing is outside the jurisdiction of energy ombudsman schemes. Thus, customers of an authorised alternative energy seller

cannot obtain recourse from the Energy and Water Ombudsman Victoria (EWOV) if they have a pricing complaint.

The AER has also stated that **exemptions** are appropriate where the alternative energy re-seller is providing:

- An 'add-on' service to the customer – the customer retains the right to buy energy from a retailer of choice
- A bundled contract for a service which includes the sale of energy, but where the sale of energy is a small or insignificant component of that contract

We are of the view that an individual exemption where the terms and conditions of the exemption can be specifically tailored to a particular alternative energy selling model is appropriate.

Further, the AER has mentioned that although exemptions apply to the selling of energy at a single site, the AER may grant a multiple site exemption to an alternative energy seller which would allow the sale of energy across all jurisdictions which have signed on to the NECF. We seek further clarification and examples from the AER as to when a multiple site exemption is appropriate to assist our understanding of these circumstances.

4. What implications, or future implications, could arise for the regulation of alternative energy sellers under the Retail Law, or other consumer protection legislative frameworks?

There are other concurrent policy and regulatory processes which are looking into the role of third parties. The Australian Energy Market Commission (AEMC) acknowledged in the *Power of Choice Review* that there is a need to clarify the role of third parties providing 'energy management services.' We understand that SCER will provide further advice to Ministers as to whether third parties should be regulated under the NECF. We agree that a regulatory framework for alternative energy sellers needs to be developed; however, we are also concerned that there may be some overlaps between the various regulatory processes, which could result in duplication and confusion. We ask the AER to clarify the relationship between the proposed regulatory framework for alternative energy sellers and the other processes looking into the role of third parties.

5. What, if any, conditions should be placed on an individual exemption for an alternative energy seller?

The AER has stated that they '*anticipate conditions to be minimal as customers of alternative energy sellers already have a full and extensive range of protections,*' by virtue of their relationship with the authorised retailer.

The conditions that apply to an individual exemption need to be tailored to the specific alternative energy selling model. We believe that regardless of whether the customers have a suite of protections vis-a-vis their authorised retailer, it is appropriate to have adequate (not minimal) conditions attached to an individual exemption that applies to an alternative energy seller. This is as the conditions set out the rights and obligations between the alternative energy seller and customer. Where there is a breach of a condition, the AER will be able to take appropriate action against the alternative energy seller, including revoking the exemption where there is a material failure by the seller to meet the conditions. CUAC is of the view that a good starting point on the conditions that should apply to an individual exemption would be the conditions listed on page 9 of the Issues Paper.

We agree with the alternative energy seller's obligations suggested by the AER on page 17 of the Issues paper:

- Obtain explicit informed consent from the customer
- Sell energy that is metered
- Provide clear, accurate billing information
- Provide at least 13 business days for customers to pay their bills

However, we suggest that in addition to clear, accurate billing information, billing frequency should also be included.

We also suggest including **additional conditions** to the individual exemption:

a. Access to energy ombudsman

As a matter of principle, CUAC supports energy issues falling within the jurisdiction of the energy ombudsman scheme. This is an ongoing matter which needs to be addressed as the energy market develops. As mentioned earlier, a significant gap in the exemptions framework is that customers of re-sellers are unable to access the services of the energy ombudsman to resolve complaints they have against their re-seller. CUAC is of the view that access to the energy ombudsman is a key consumer protection.

We believe that it should be a condition of an individual exemption for an alternative energy seller. A customer's relationship with their authorised retailer will not help the customer resolve any complaints the customer has with their alternative energy seller; for e.g. disconnection and billing issues. Billing accounts for the highest number of complaints at energy ombudsman schemes. It is therefore highly likely that a customer would have billing issues with their alternative energy seller and would benefit from having access to the services of the energy ombudsman.

During the period 1 July 2013 – 30 September 2013, EWOV received 2,669 solar cases. 92 percent of these cases were registered against energy retailers. One retailer accounted for 39 per cent of all solar cases. Cases against distribution businesses accounted for 3 per cent of all solar cases. 85 cases were outside EWOV's jurisdiction because the complaint was against a private solar installer. In those cases EWOV referred the customer to Consumer Affairs Victoria. The majority of customer issues that required investigation were caused by billing issues and these include:

- Receiving bills that did not show the FiT credits
- Not receiving bills for several billing cycles and being unaware if solar credits had been applied and/or if the solar process was completed correctly
- Receiving bills that showed either the incorrect FiT applied or the FiT being charged instead of being credited²

The AER has stated that alternative energy selling models include bundled long term contracts that provide a service and a product such as solar panel companies (e.g. Solar Power Purchase Agreements – page 10 Issues Paper). Given the types of solar cases EWOV has been receiving, we anticipate that customers of alternative energy sellers will likely face the same types of problems. These customers of alternative energy sellers should be given access to EWOV.

b. Access to payment plans

Disconnection from a 'non-essential' service should not be seen as the solution for a customer who is unable to pay their bill. Although the customer may still retain access to supply for their household by virtue of their relationship with their authorised retailer, the retailer is not in a position to offer the

² <http://www.ewov.com.au/reports/solar-and-smart-meter-update-october-2013/top-10-solar-issues>

customer any assistance with the bills issued by the alternative energy seller. Therefore, we suggest that it is appropriate for the alternative energy seller to offer customers' payment plans when they experience payment difficulties.

c. Notices to customers – reminders and disconnection notices

We suggest including a notice requirement as a condition of an individual exemption. A customer should at least receive a reminder and a disconnection notice before disconnection.

d. Access to supply

We discussed this in an earlier section of our submission.

e. Choice of retailer

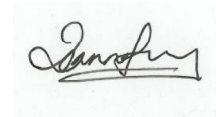
Please refer to our response to question 3 above.

Thank you for the opportunity to participate in this consultation. Please do not hesitate to contact us at 03 9639 7600 if you have any queries on the submission.

Yours sincerely,



Jo Benvenuti
Executive Officer



Deanna Foong
Research & Policy Advocate