

22 November 2013

Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Attention: Jacqui Thorpe, Acting General Manager, Retail Markets Branch

By email: AERInquiry@aer.gov.au

Dear Ms Thorpe

Alternative Energy Sellers – Issues Paper

Thank you for the opportunity to provide a submission in response to the “Regulation of Alternative Energy Sellers under the *National Energy Retail Law: Issues Paper*” (the Paper).

Simply Energy is a member of the Energy Retailers Association of Australia (ERAA) and supports the ERAA’s submission to the Paper.

Simply Energy believes that the industry is at a crossroads with respect to ‘alternative energy sellers’ and what is decided through this review will frame how the retail energy market evolves in the future.

Originally, ‘exemptions’ to retail licensing requirements were intended to provide protection from enforcement action for activities where an energy supply was incidental to the main activity. The original concept was to provide for caravan parks and motels where the cost of the energy supplied was recovered through the rental charges paid by the temporary resident.

With time and technological innovation, exemptions are now being requested for activities where there is an explicit energy billing function undertaken by the ‘alternative energy seller’ and energy supply is no longer incidental to the main activity, but *is* the main activity being undertaken by the ‘alternative energy seller’. Additionally, these models are not restricted in geographical scope (such as to a particular caravan park or motel) but are mass-scale business models which see all energy users as their potential customers.

Failure of the regulatory framework to address ‘alternative energy sellers’

There are three key failures of the regulatory framework concerning ‘alternative energy sellers’.

1. It is turning the national consumer protection framework into a discretionary purchase item for the end customer.

The business models of the more sophisticated ‘alternative energy sellers’ are usually based on taking advantage of an avoided cost and/or inefficient price signal. This enables them to retail energy at a lower price than can be delivered by the traditional energy supply. The models are usually premised on avoiding the costs associated with complying with the National Energy Customer Framework (NECF) and/or receiving the benefit of a subsidy such as a feed-in tariff or advantageous network pricing classification.

The signal this sends to end customers is that they can receive a cheaper power supply by foregoing the protections contained in the NECF. They could pay a higher price to the traditional energy supplier and receive the full suite of protections, or forego those protections and receive a lower price from the ‘alternative energy

seller'. In effect the customer protection framework becomes a discretionary purchase item for end customers.

If regulators and governments believe that the NECF should be a discretionary purchase item, then it raises the question of whether the NECF is required at all (if customers are freely deciding to forego those protections to obtain a lower cost of supply).

2. An unlevel playing field tends to undermine the traditional energy retail supply model which could in time disappear. The question of who carries the customer protection obligations if and when this model disappears remains unanswered.

Many of these alternative business models (Express Solar is a recent example) seek to allay regulators' concerns about continued access to the protections of the NECF by stating that existing authorised retailers can act as a fall back, if a customer finds themselves in financial hardship, for example'. The 'alternative energy seller' will exit the market for that customer and the traditional energy supplier will pick up the difficulties and costs associated with managing financial hardship.

The problem with accepting this proposition is that as the traditional energy supplier is increasingly asked to absorb the costs of hardship and bad debts, it is excluded from the benefits of supplying a customer (primarily a profitable income stream). The model of the traditional energy supplier begins to break down and existing traditional energy retailers will exit that model of energy supply, and as a result there may no longer be a retailer that carries the obligation to supply.

As this example shows, imposing higher service standards and stronger obligations on some business models than on others (even though they are both conducting the same activity) creates an unlevel playing field that provides a competitive advantage to one business model solely as a result of inconsistent application of regulation, rather than superior business performance.

3. The activities of 'alternative energy sellers' and their ability to receive exemptions for their activities calls into question how much of a customer's energy supply is actually essential.

The Paper proposes that an authorisation would be necessary when an 'alternative energy selling' is the sole supplier of gas or electricity at a premise.² Otherwise the 'alternative energy seller' would not be required to have a retailer authorisation.

The approach assumes that where there is more than one supplier at a property, a proportion of the consumer's usage is non-essential.

We have strong reservations about this approach because it begins to call into question how much of a customer's gas and electricity consumption is essential.

For example, if a customer has engaged an electric vehicle (EV) supplier who directly bills the customer for the energy used in charging the vehicle and an exemption allows the provider to disconnect for non-payment without the relevant protections, then it suggests that the AER does not believe that the energy used in charging an electric vehicle is essential.

¹ Authorised retailers are also expected to act as a 'fall-back' supplier – providing energy to the consumer if the 'alternative energy seller' fails or otherwise ceases supply.

² AER 2013 p. 13

If the AER is expecting that the traditional retailer will step in to pick up this supply, then all that is being created is an unlevel playing field between two different business models as was discussed in the previous section. Traditional retailers are being asked to bear the costs and obligations associated with retailing but someone else is receiving the benefit of the income stream that would otherwise pay for these costs and obligations.

The AER's assessment framework

The assessment framework proposed by the AER suggests that an exemption might be appropriate where the alternative energy seller is not the sole supplier of gas or electricity at a premise and is instead offering an add-on service where energy is not charged as a separate component of the bill.

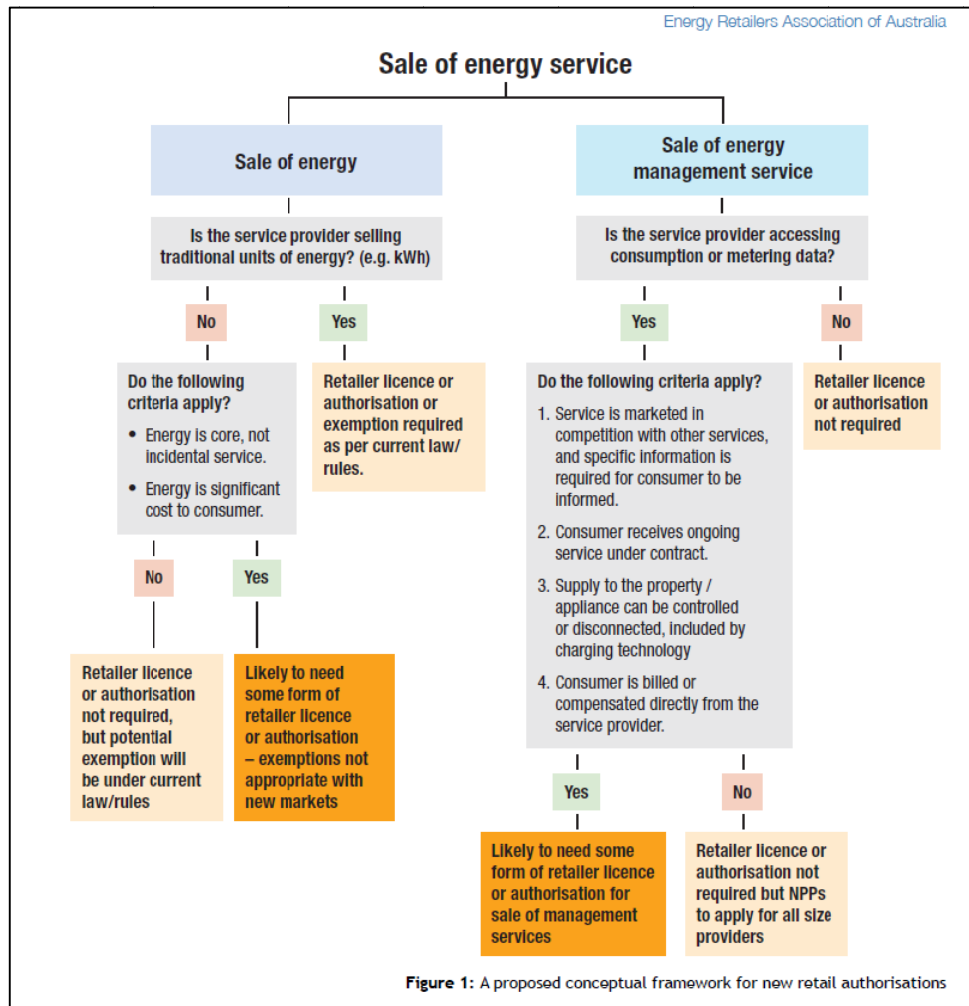
We do not agree with this assessment framework. First, it will create a strong incentive for alternative energy sellers to vary their business models so that any energy consumed is not charged separately even where a large amount of energy will be consumed by the end customer. For example, it is only a small step for an EV provider to recover the cost of energy use within the rental charge for the equipment used to charge the vehicle if it means the EV provider can avoid the costs of retail regulation. However, this is the likely outcome that will result from the assessment framework being proposed by the AER and will reduce the transparency that the end consumer will have over how much their energy supply is costing them.

Second, the assessment framework assumes that there will always be a primary retailer at each connection point. One of the key outcomes of the Australian Energy Market Commission's (AEMC) Power of Choice review was the proposition that there may be multiple retailers at a site none of which could be considered 'primary'.

A model for considering exemptions

The Energy Retailers' Association of Australia's (ERAA's) Smart Meter Working Paper No. 5 considered the issue of third party supply of energy management services. It is available on the ERAA's website.

The paper put forward a decision framework for thinking through whether an exemption from a retail authorisation should or should not be granted. This model is centred on the concept of the sale of energy services. As technology evolves, the 'sale of energy' is no longer an adequate test of whether a retailing activity should be authorised and the concept should shift to the sale of energy services (the sale of energy is an example of an energy service). We have reproduced the decision framework below.



A model such as this is likely to arrive at the same outcomes as proposed by the AER — an exemption with certain NECF (and/or other) obligations attached.

However, this decision framework shifts the focus away from the business model being used, and re-focuses the decision on the services being delivered and the impact on the customer. Given this focus, it removes the incentive ‘alternative energy sellers’ may have to set up their business models to specifically avoid the regulatory framework and is indifferent to the number of retailers supplying an individual site.

To which obligations should ‘alternative energy sellers’ be subject?

It is unlikely that the full suite of obligations that follow from holding a retail authorisation will be required for most alternative energy sellers. For example, they may not require ‘Market Participant’ status from AEMO.

However, the customer protection framework is a different matter because all ‘alternative energy sellers’ will be engaging directly with the end customer. In our view, customers of all energy sellers (regardless of business model) should have access to the same customer protections, including cooling-off periods, contract length,

pre-contractual procedures, marketing obligations, debt recovery, consumer hardship and complaints management.

There are also other unresolved questions relating to 'alternative energy sellers'. Most energy concessions are delivered by authorised retailers. It remains unclear to us how the energy concession is impacted if most of the energy supplied to a site is provided by an 'alternative energy seller'. A further question is whether these activities should be subject to Ombudsman schemes.

Business models alternative energy sellers may adopt

It is almost impossible to know or predict the various business models that 'alternative energy sellers' may adopt.

They are entities that respond to the regulatory framework that is in place at the time and are set up with the intent of avoiding that regulatory framework. As the regulatory framework evolves, so the business models of 'alternative energy sellers' will evolve to avoid it.

We are now seeing the evolution of the model from small-scale activity (such as directly billing consumers in one apartment block) to large-scale retail activities that could potentially market to every household in the NEM.

We suggest that the decision framework proposed by the ERAA is a more effective way of considering the issue of whether a particular business model should be authorised or not. If this decision framework is kept front of mind in considering any applications for an exemption, then the actual business model employed by the 'alternative energy seller' is irrelevant and the focus can remain on the service being sold and whether it should be subject to consumer protections.

One thing the AER will need to be conscious of is 'alternative energy sellers' supplying energy which is described as another activity. For example, an electric car provider that directly bills for the energy used in charging the vehicle may attempt to gain an exemption by advocating that it is selling cars and not energy. However, the supply of energy is core to the package the electric car provider has sold the customer.

Other considerations the AER should take into account to regulate the sale of energy under alternative energy selling models?

The AER may wish to consider the pricing outcomes that may arise as a result of the entry of alternative energy sellers.

If an authorised retailer is expected to continue as the financially responsible party for a site, and the distributor is expected to continue to supply network services to the site, but the bulk of the energy consumed at the site is supplied by an alternative energy supplier, then the basis of charging the customer at the site will likely shift to a predominantly fixed daily charge. Consumers may increasingly feel that they are 'paying for nothing', leading to increasing complaints and debt recovery challenges.

Conclusion

Simply Energy views an authorisation to retail energy as a privilege that comes with a set of commensurate obligations. Many 'alternative energy seller' models are deliberately designed to take advantage of that privilege while avoiding the obligations that go with it. In essence, they are looking to take the benefits of the income stream that derives from the supply of energy services but pass some of the costs and obligations of



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retailing onto the traditional retailer, who will no longer have the income stream to pay for those costs or obligations.

Please don't hesitate to contact James Barton on (03) 8807 1171, if you wish to discuss this submission with us.

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