



EnergyAustralia

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Ms Sarah Proudfoot
General Manager – Retail Markets Branch
Australian Energy Regulator
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Dear Ms Proudfoot

Submission – Notice of Draft Instrument: AER (Retail) Exempt Selling Guidelines Version 5

1. Introduction

EnergyAustralia welcomes the opportunity to make this submission to the Australian Energy Regulator (AER) on the proposed changes to the (Retail) Exempt Selling Guidelines (Guidelines).

We are one of Australia's largest energy companies, with over 2.6 million household and business customer accounts in NSW, Victoria, Queensland, South Australia and the Australian Capital Territory. We also own and operate a multi-billion dollar portfolio of energy generation facilities across Australia, including coal, gas and wind assets with control of over 4,500MW of generation in the National Electricity Market (NEM).

EnergyAustralia is committed to working with the AER to ensure that the growing number of customers within embedded networks, alternative selling models and other exempt sales channels have access to similar energy opportunities and consumers protections as customers of traditional retailers; including free and independent dispute resolution services.

2. Dispute Resolution

EnergyAustralia supports the expansion of ombudsman schemes so that equivalent minimum customer dispute resolution standards apply to all sellers of energy, regardless of their classification as an authorised retailer or an exempt seller. We also agree with the AER that ombudsman schemes have a significant role in building consumer trust and confidence in the retail energy market. This is consistent with our submission to the AER's June 2017 issues paper. In our response we noted that: exempt customers should have access to dispute resolution services regardless of how they receive their energy services.¹ We have already

¹<https://www.aer.gov.au/system/files/EnergyAustralia%20submission%20-%20Access%20to%20dispute%20resolution%20services%20for%20exempt%20customers%20-%202014%20July%202017.pdf>

commenced engagement in ombudsman schemes to give effect to these objectives and will continue to do so as this process unfolds nationally.²

We understand that in some circumstances the cost of participating in ombudsman schemes may outweigh the benefits which may be realised by customers. In those cases, exempt customers should still have appropriate avenues to resolve complaints. For this reason, we agree the AER should retain the discretion to exclude particular exempt sellers from the requirement to be subject ombudsman schemes provided they have robust internal dispute resolution processes.

3. Other amendments

EnergyAustralia supports additional measures by the AER which aim to align exempt seller customer protections more closely with traditional retail customer protections.

Applications for individual exemptions - retrofits

We understand that applications for exemption involving retrofits require special consideration because of the potential detriment to the customer in terms of accessing market offers from other retailers. We agree with the AER that customers should be fully informed about both the potential benefits and detriments associated with network conversions. Where possible, we believe embedded networks are sufficiently flexible to allow most exempt customers to retain a level of autonomy when making informed decisions about energy consumption.

In our view, Section 7 of the Guideline and the new requirements in Appendix B, part 3 (33 – 37) require some refinement to better articulate the AER's intention. When reading these sections together, it is not clear whether the consent is required from every customer affected by the retrofit nor is it understood precisely what consent is being sought. For example: condition 33 requires: "*consent from all customers affected by the retrofit*". But, consent to what? Consent to *join* the embedded network? Or is it consent to *proceed* with the retrofit? Or consent to something else? Does that mean if the applicant for the individual exemption does not have consent of all customers that the exemption status will not be granted? Or that it cannot proceed with the retrofit? In addition, will customers be aware of the prices, terms and conditions of the offer at the time they are asked to give consent to the retrofit?

We are unsure of the interpretation of several of the conditions. Conditions 36 seems to indicate that exempt seller does not require the consent of all customers to proceed with the retrofit provided the applicant has sought advice from distributors as to whether they can be wired out of the embedded network. Condition 37 then indicates that a retrofit can proceed even if a non-consenting customer cannot be wired out of the embedded network provided they will not be financially disadvantaged. We request that the AER consider providing further guidance as to the intention of these conditions and or how compliance will be assessed.

We note that even though a customer may subsequently become part of an imbedded network they still retain the right to choose their retailer (as distinct from being wired out). A customer can consent to proceed with the retrofit, but elect to remain with their current retailer (or move to any other retailer). Indeed, this is envisaged in the guidelines where it is clear that consent to the retrofit is separate to consent to purchase energy energy.³

² EnergyAustralia, Submission to EWOV's funding model review; Incorporating operators of embedded networks into EWOV, 8 November 2017

³ AER, Draft AER (Retail) Exempt Selling Guideline version 5, November 2017.

We request that the AER consider including some further clarification and guidance around what happens if not all customers consent. The guideline need to be clearer so applicants can understand what is required in demonstrating to the AER that a network conversion should proceed. Particularly where all consents have not been secured, we request the AER clarify if there are any thresholds, or any hierarchy of preferred options.

Planned interruptions

EnergyAustralia agrees that customers within embedded networks should be provided with similar notifications and information services to those of customers of authorised retailers. However, in terms of the minimum four day notification period for planned interruptions, we see that there are likely be some practical difficulties for embedded network operators to comply in certain circumstances. In order to overcome these, EnergyAustralia recommends that the AER consider making a distinction between notifications required where interruption originates either:

1. on the distribution network side of the parent meter; or
2. from within the embedded network (i.e. behind the parent meter).

We consider that a minimum four day notification period is reasonable in most cases; however, this is not a practical requirement of exempt sellers where the interruption originates with the distribution network. In these circumstances, the distributor is required under the National Energy Retail Rules (NERR) to provide a minimum of four days notice to the exempt seller, who must then notify the exempt customers within the embedded network – in these circumstances the exempt seller is unlikely to meet the minimum notification period of four days. We recommend that the AER consider allowing a shorter notification period in these circumstances, for example two days' minimum notification (or more where possible). Alternatively, if it is the intention that all customers (whether customers of a traditional or exempt retailer) are to receive a minimum of four days' notification whatever the origination of the planned interruption, then AER would need to consider extending the notification obligation of planned interruptions under the NERR (for example, to something like much longer to allow for processing and mail out times). This would not be preferred as the four day notification period is already overly long in some cases.

4. Conclusion

EnergyAustralia welcomes the AER's steps to improve the accessibility of exempt customers to the energy market and to consumer protections that are more aligned with customers of traditional retailers. We believe this is timely given the current state of the market and the evolution of ways that customers receive and engage in the energy market, however we request the drafting of some of the requirements is revised for clarity. In addition, we urge further consideration is given to the circumstances which give rise to supply interruptions and the interaction between the timing of notifications under NERR and the proposed timing of notifications to exempt customers under the guideline.

Should you require further information regarding this submission please call me on (03) 8628 1242 or Samantha Nunan on (03) 8628 1516.

Yours sincerely

Melinda Green
Industry Regulation Leader