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## Issues Paper: Regulating innovative energy selling business models under the National Energy Retail Law

Dear Sarah

Pooled Energy Pty Ltd (**Pooled Energy**) thanks the Australian Energy Regulator (**AER**) for the opportunity to provide a submission on its *Issues Paper: Regulating innovative energy selling business models under the National Energy Retail Law (Issues Paper)*. We also thank the AER for the stakeholder forums held to discuss the Issues Paper which allowed for additional, useful consultation. Pooled Energy appreciates that there is wide-ranging stakeholder interest in the Issues Paper and is pleased to be able to share its views.

### Background

Pooled Energy retails electricity to swimming pool owners and provides advanced pool automation services to improve the effective operation and energy efficiency of swimming pools. Pooled Energy became an authorised electricity retailer in December 2013 knowing it needed to be an electricity retailer to be able to effectively demonstrate to customers the energy savings achieved through optimal management of their swimming pool.

Overall, Pooled Energy supports a light handed approach to regulating the energy industry that responds when market failure necessitates. We note that the AER in its consultations raised the concern that innovation in energy selling may be stymied should all energy sellers be required to meet the consumer protection requirements under the National Energy Retail Law (**NERL**) and Retail Rules imposed on retailers due to the cost of compliance. As a retailer with a highly-innovative model, Pooled Energy does not consider the cost of being a retailer to be sufficiently onerous to discourage it from market entry.

Whilst not all alternative suppliers of energy or energy services should be subject to the full scope of obligations under the NERL and Retail Rules, the growth of such models does necessitate an overall review of the energy laws to ensure that they are keeping pace with the market and meet the needs of consumer protection.

Following are Pooled Energy's responses to the questions raised by the AER in the Issues Paper.

**Stakeholder question 1: What difference, if any, should storage and/or other emerging technologies have on how the AER proposes to regulate SSPA and other alternative energy selling models?**

Pooled Energy does not believe that storage per se should effectively change how the AER proposes to regulate alternative energy sellers. Overall, the AER should focus on the services being marketed and offered by the seller to the consumer as guide on the degree of regulation necessary. Storage may be one of many innovations that will result in consumer's energy services being predominantly in the domain of an alternative seller.

For example, if a seller is offering energy supply in kWh that will effectively minimise the need for their existing retailer on a day to day basis, the regulatory requirements should be more reflective of those on their existing retailer. In effect, the alternative energy seller is the supplier of the essential service in this case.

Alternatively, if the energy seller is offering an appliance or service that provides a consumer energy efficiency or the opportunity to incidentally offset their energy supply from the market and the retailer continues to be the predominant supplier of energy, consumers will remain fundamentally protected by their energy retailer.

The onus of concern for the AER should be on the degree of consumer protection it deems necessary for energy supply services being offered and whether protections of the Australian Consumer Law are sufficient. In a scenario where an alternative energy seller is providing the predominant supply of electricity to a consumer and the consumer's service agreement implies such, there should be some consumer protections under the NERL and Retail Rules that should apply to the alternative energy seller.

**Stakeholder question 2: What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?**

Pooled Energy does not view that full authorisation is necessary for innovative energy sellers as they are not registered in the wholesale market or the financially responsible market participant (**FRMP**) for the consumer site.

However, as the AER has acknowledged in its consultative forums, the NERL and Retail Rules were not written and implemented to meet the changes to energy selling that alternative and innovative models bring to the market. Therefore, the NERL and Retail Rules will need to be reformed to meet the growth of innovative models whilst protecting consumers. We understand that the Energy Retailers Association of Australia has provided a conceptual framework for how providers of energy and energy services may be subject to a form of authorisation to regulate their activities. Pooled Energy is supportive of alternative forms of authorisation for energy sellers and sellers of energy services who may not be retailers.

Until such time as there is a review and revision to the NERL and Retail Rules, alternative and innovative sellers of energy should be only allowed to apply for and receive Individual Exemptions. This allows the AER a more fulsome review AER of the business' proposed selling model and to set appropriate conditions on the business for the selling of energy.

Pooled Energy also understands that the AER's jurisdiction does not extend to models where consumers will be taken off-grid. Nevertheless, these models do raise high concern as consumers may not fully understand the impact of being off-grid to the reliability of their supply and choice as to supplier. Whilst not in the

domain of the AER, ensuring the energy lexicon addresses off-grid supply and potential issues should be part of any overall effort to increase awareness amongst consumers about the changes in energy selling.

**Stakeholder question 3: 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?**

Whilst the AER must exercise its discretion on what conditions should be placed on alternative energy sellers depending on the business model and service offering to consumers, Pooled Energy believes that the following must be strongly considered:

1. **Requirement for Explicit Informed Consent from Consumers:** Particularly with complex models where energy supply may not be predominantly supplied by the retailer, consumers must provide their explicit informed consent that they understand and agree to the offer provided;
2. **Appropriate Contractual Protections:** Whilst most contractual protections exist under the Australian Consumer Law, there are ones unique to energy supply such as conditions under which the supply may be disconnected and their supply resuming from their energy retailer.
3. **Access to appropriate Dispute Resolution schemes:** Energy consumers currently have access to free Energy and Water Ombudsman schemes and can raise disputes against their retailer or distributor that cannot be resolved directly. With additional parties in the supply of energy to the consumer, such disputes will become increasingly complex and all parties involved should therefore contribute to these schemes. Pooled Energy understands that not all Energy and Water Ombudsman schemes are chartered or equipped to manage alternative arrangements, which may need to be reviewed.

The AER also needs to consider various state concession schemes and the impact of alternative energy sales on consumers who are recipients of concessions or rebates which are measured on their metered consumption. If their energy consumption is not measured through their energy meter and billed by their retailer, eligible consumers access to such concessions may be effectively cut. Retailers should also in turn not bear the risk of paying concessions to consumers where the electricity consumption cannot be accurately measured through the meter.

**Stakeholder question 4: Should the AER include a “trigger point” for review of individual cases if it proceeds with Option 2?**

Pooled Energy understands the AER’s interest in a “trigger point” that will help guide individual exemption reviews as to what conditions should apply. Pooled Energy still believes as noted in its answer to question 1 that the AER must closely examine the service offering to consumers to help guide its decisions on what conditions may apply. Meeting of a single trigger may not foster the fulsome review needed for such exemptions.

Pooled Energy again expresses its appreciation to the AER for the opportunity to share its views. We remain available to answer any questions or provide additional information as necessary.

Yours sincerely

**Hilary Priest**  
Regulatory and Compliance Manager