



3 February 2011

Mr Tom Leuner
General Manager
Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

By email: AERInquiry@aer.gov.au

Dear Mr Leuner

AER Consultation – Retail Exemptions

AGL welcomes the opportunity to comment on the AER's consultation paper on retail exemptions and the draft exempt selling guideline, released in December 2010.

As stated in our previous submission on this issue, AGL firmly believes that customers should be able to choose their energy retailer. Arrangements which hinder a customer's ability to exercise choice within the competitive market, are not desirable, particularly in relation to electricity.

We also consider that regulatory arrangements which permit, in effect, the development of two levels of customer protection must be avoided. Small customers of exempt sellers should therefore be afforded, wherever possible, the same protections as small customers of authorised retailers.

AGL is concerned with comments by the AER throughout the Issues Paper in relation to the costs incurred by exempt sellers in order to comply with consumer protection provisions. There are few reasons why most classes of exempt sellers should not be exposed to the same compliance costs as authorised retailers, particularly with respect to consumer protection. The minimisation of exempt seller compliance costs should not come at the expense of consumer protection for small customers.

While AGL would prefer to see all exempt sellers registered with the AER, we are pleased that the AER has revised the class of registrable exemptions, so that beyond 2015, individual exemptions will be required for certain classes. This should lead to greater transparency in the market, and facilitate greater monitoring and enforcement by the AER. Exempt sellers, especially those selling to residential customers, should be held to the same level of public accountability as authorised retailers and be made to ensure that their customers are well informed regarding the conditions of their supply. The reason that exempt sellers can often sell their electricity at a cheaper rate than authorised retailers is because they are not subject to the same high costs of compliance. Their customers should therefore understand that in paying a lower price, they may be 'trading' certain customer protections.

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We do not propose to repeat matters discussed in our previous submission and Attachment A sets out our response only to those questions on which we have a strong view. We have not provided comment on the draft guideline, which we consider covers all necessary matters for exempt selling applicants.

Should you wish to discuss this submission further, please contact Anna Stewart, Manager Regulatory Policy and Strategy, on (03) 8633 6830 or astewart@agl.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'AC', is positioned below the text 'Yours sincerely,'.

Alex Cruickshank
Head of Energy Regulation



1. Do stakeholders agree with the AER's considerations on whether onselling is in the long-term interests of consumers?

AGL shares the AER's view that onselling may not necessarily be in the long-term best interests of consumers, particularly small consumers. As was noted in the Issues Paper, while there may be some advantages to consumers, there are undoubtedly negative implications with regard to consumer protection and customer choice. AGL also shares the concerns of other stakeholders, with respect to broader market outcomes if the number of onsellers increases, especially in relation to prudential requirements, metering and RoLR arrangements. It is unclear from the Issues Paper exactly how many exempt sellers are actually operating in the market, and if this continues, there may be negative consequences for the broader market. Presumably, it is also more difficult for the AER to ensure compliance of exempt sellers if it does not have full visibility of those operating in the market.

2. Do stakeholders agree with the AER's reasons for not requiring hardship policies for deemed and registrable exemptions?

AGL is not convinced by the AER's reasons for not compelling exempt sellers to have a hardship policy. While we understand that it may not be practical for the AER to develop a policy that would cover all exempt sellers, it should be possible for at least those exempt sellers with residential customers to have to comply with some minimum hardship requirements (providing there is no conflict with residential tenancy legislation).

3. Do stakeholders support the AER's considerations on the application of Australian Standard ISO 10002-2006?

AGL supports the AER's view that exempt sellers should be required to develop complaints handling procedures in accordance with the Australian Standard ISO 10002-2006. Customers of exempt sellers should be able to have their disputes resolved to the same standards as those customers purchasing energy from authorised retailers. It cannot be argued that this is an onerous requirement for onsellers – rather, it is simply a cost of doing business and represents good business practice.

AGL would also support the AER raising the issue of Ombudsman scheme membership with both the schemes themselves, and through the Joint Implementation Group. The reason for this is simply that, to the extent that it is possible, there should be consistency across the industry. Consumers in dispute with their energy provider should be able to have the dispute resolved by an independent Ombudsman, at little or no cost. In particular, those customers who are vulnerable and disadvantaged, such as those living in caravan parks, would benefit from being able to take their dispute to the Ombudsman. However, AGL notes that there are presently some financial, practical and legal barriers which may make Ombudsman scheme membership difficult. Importantly, AGL would not support a situation in which existing Ombudsman scheme members are cross-subsidising exempt sellers.

4. Do stakeholders support the AER's proposed approach to reducing eligibility of some onselling activities for a class exemption, and instead requiring applications for individual exemption to be made?

AGL strongly supports the AER's proposed approach and agrees that requiring individual exemptions will ensure that the AER has greater oversight of exempt selling arrangements and can impose and monitor consumer protection provisions.

5. Should the AER ever issue individual exemptions on an entity-specific basis, enabling a person to onsell at multiple sites? Is a retailer authorisation more appropriate for onsellers that wish to onsell at multiple sites?

There seems no reason why an onseller selling at multiple sites, whose main interaction with the customer is in relation to sale of energy, should not be required to obtain a retailer authorisation. If the onseller's activities are such that the individual exemption has conditions attached which are virtually the same as the obligations imposed on retailers, it would be more practical and equitable (from a retailer perspective) to require authorisation. Such onsellers should be subject to the same compliance obligations and costs as authorised retailers, and their customers should be afforded the same protections.

6. Information requirements for the public register

While AGL would prefer to see all exempt sellers registered with the AER, we are pleased that the AER has revised the classes of registrable exemptions, such that in the future more exempt sellers will be required to register. Registration ensures that there is greater transparency in the market, and that exempt sellers are more publically accountable.

With respect to whether meter type and management arrangements for embedded sellers are included on the public register, AGL is of the view that this information would be beneficial. There is no obvious detriment to exempt sellers in requiring this information to be provided.

7. Do stakeholders agree with the revised conditions outlined in the draft determinations that will apply to each class of exemption? Why or why not?

AGL supports the revised conditions that will apply to each class of exemption, especially with respect to information provision. Particularly for those customers who do have a choice of supplier, the more information that the exempt seller is required to provide, the better informed the customer will be in terms of exercising that choice. Authorised retailers have onerous small customer information requirements, and other than cost, there are no compelling reasons why exempt sellers should not be required to ensure that their customers are just as well informed as customers of authorised retailers – especially in relation to price and payment arrangements.

