

4 February 2011

General Manager  
Markets Branch  
Australian Energy Regulator  
GPO Box 520  
MELBOURNE VIC 3001

[AER Inquiry@aer.gov.au](mailto:AER.Inquiry@aer.gov.au)

Thank you for the opportunity to comment on the Draft Exempt Selling Guidelines.

The Energy & Water Ombudsman NSW investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers.

In our submission to the *Issues Paper* in July 2010, EWON outlined its jurisdiction in relation to exempt sellers in general, and customers living in residential parks in particular, noting that the coverage of the various jurisdictional ombudsmen schemes is not consistent in this area.

For ease of reference we have adopted the same numbering as the AER - Retail Exemptions Issues Paper.

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**Q1: Do stakeholders agree with the AER's considerations on whether onselling is in the long term interests of consumers?**

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EWON endorses the AER's view that on-selling will not always be in the long term interests of consumers. Long term residents of caravan parks are among the most vulnerable energy customers in the community, and specific concerns regularly raised by them in their complaints to EWON include:

- current lack of access to payment assistance schemes such as Energy Accounts Payment Assistance (EAPA) in NSW

- the reluctance to raise a complaint relating to an electricity issue with a provider who is also their landlord with the capacity to evict them in a context of no security of tenure.

Other more general disadvantages for customers of onsellors are:

- lack of access to a customer assistance/hardship program, to which customers of authorised retailers are entitled
- inconsistent access to energy ombudsmen schemes in different jurisdictions
- the lack of protection through a Retailer of Last Resort (ROLR) scheme if their retailer fails.

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#### Q2: Do stakeholders agree with the AER's considerations on onseller compliance costs?

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EWON endorses the AER's view that when assessing future applications it will generally place more weight on ensuring that customers of onsellors receive appropriate protections, than on minimising onsellors' compliance costs. On this basis the prospective onseller should then be in a position to evaluate whether applying for retailer authorisation, or an exemption, is in their best interests.

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#### Q5: Do stakeholders agree with the AER's reasons for not requiring hardship policies for deemed and registrable exemptions?

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EWON acknowledges that a requirement for hardship policies equal to those required under the NECF for authorised retailers would be onerous for small residential park operators who are not onselling electricity as their core business. At the same time, we support the general principle that exempt customers should as far as possible have the same protections as retail customers. We are particularly concerned about effective consumer protection for permanent residents of Residential Parks, especially where customers with limited financial resources are looking to Residential Parks for long term affordable housing.

For tenants experiencing financial difficulties, the option of a payment plan to spread payments over a period rather than paying a lump sum by the due date can be enormously beneficial. Under the conditions for class R4 onsellors (in relation to permanent residents of caravan parks), there is no obligation to offer a payment plan in the first place, however if one is offered the resident cannot be

disconnected while they are meeting the terms of the plan. EWON suggests that the Guidelines should seek to avoid inconsistencies of this nature.

When NSW residential park customers in financial difficulty take a dispute to the Consumer, Trader and Tenancy Tribunal (CTTT), the outcome is very often the setting up of a payment arrangement, so the park operators are very familiar with this and appear to be able to accommodate the process. EWON therefore suggests that the following provisions would not be unduly onerous, and would be consistent with the policy principle that, as far as practicable, exempt customers should not be denied customer protections afforded to retail customers:

- a positive obligation to offer a payment plan for an electricity bill
- to not allow for disconnection unless this offer has been made and either refused, or not adhered to.

It may also have the beneficial effect of allowing the resident to budget effectively for the payment of both their rent and energy bills, thus avoiding disconnection or eviction.

We also consider that the onseller has an important role in referring customers in financial difficulty to appropriate local sources for assistance. Condition 10 (Concessions and Rebates) relates principally to government energy rebates, but it also refers to 'assistance under a relief scheme'. We suggest this section could be expanded slightly to impose a more active obligation to provide referrals to government agencies and local community agencies, in much the same way that they are required to provide a referral to the ombudsman or other complaint body. This would not require any further action than maintaining a list and providing contact details. It is a minimum service performed by normal hardship programs, and should not be considered too onerous, even for very small operators. We also note that some additional protections may be found in jurisdictional arrangements, for example the *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks* for NSW.

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#### Q6: Do stakeholders support the AER's considerations on the application of Australian Standard ISO 10002-2006?

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EWON acknowledges that to require the onseller to develop complaint handling arrangements based on the Australian Standard, may be unduly onerous for many smaller exempt onsellors. However permanent residents of Residential Parks are in a particularly vulnerable position when raising complaints with their park operator, with whom they may have daily contact on issues affecting their quality

of life at that property. The desire to avoid conflict can mean that complaints are not raised.

EWON's experience of investigating complaints against Residential Park operators has been that residents often prefer to simply request information rather than seek EWON's direct involvement in resolving a dispute with the park operator. They can then decide whether to use this information in their own discussions with the park operator, or to take their dispute to the CTTT.

EWON therefore supports the wording of Condition 13, placing a positive obligation on the park operator to 'make reasonable endeavours' to resolve customers' energy related complaints. However EWON would appreciate advice on the enforceability of this section and what steps the AER would take if customer complaints to EWON indicate that no endeavours were made to resolve a complaint.

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**Q11: Do stakeholders agree with the AER's categories of exemption set out in the draft determinations? Why or why not?**

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EWON supports the revised classes of deemed and registrable exemptions, particularly the removal of the number of customer sites as an eligibility requirement for Residential Parks.

We note that the short-term residents in holiday accommodation (Class D3) have a more limited set of protections than the permanent residents in Residential Parks (Class R4), though it can sometimes be the case that both sets of occupants are located within the same park. However as Class D3 is only intended for transient or short term residents, the additional requirements may not be required for this group of residents, for example to protect permanent residents against disconnection.

EWON would appreciate clarification as whether customers who have long-term leases in caravan parks, and to whom the *Holiday Parks (Long-term Casual Occupation) Act 2002 (NSW)* applies, fit within Class D3 or Class R4.

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**Q23: Do stakeholders agree with the revised conditions outlined in the draft determinations that will apply to each class of exemption? Why or why not?**

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EWON supports the revised conditions, in particular:

- **Condition 7 (Payment difficulties):** the inclusion of the requirement for a reminder notice, a disconnection warning notice, and an attempt at personal contact prior to disconnection for non-payment provides these exempt customers with protection similar to that provided to customers of authorised retailers under the NECF.
- **Condition 8 (When disconnection prohibited):** the inclusion of a complaint to any other relevant external dispute resolution body as a protection against disconnection, protects those customers where the energy ombudsman's jurisdiction does not extend to exempt selling situations.
- **Condition 14 (Life support):** the requirement for the exempt seller to advise not only the distributor, but also the authorised retailer when an exempt customer is on life support equipment provides added protection for these vulnerable customers

EWON suggests changes to:

- **Condition 10 (concessions and rebates):** we recommend a positive obligation on the exempt seller to provide a referral to an appropriate agency providing 'assistance under a relief scheme'. We consider this would not be too onerous for an exempt retailer, and would be consistent with the aim of providing exempt customers with as far as possible with the same protections as offered to customers of authorised retailers.
- **Condition 15 (Continuity of supply):** while we have noted the removal of the disconnection notice as the trigger for this notification, the onus is still on the exempt seller to notify their customers and the AER immediately if they expect to be disconnected, or if there is any likelihood that they will be unable to continue onselling energy. EWON has concerns about the protection of ongoing supply for customers if the exempt seller does not voluntarily comply with this condition.

There appears to be insufficient incentive for an exempt seller who is either experiencing financial difficulty, or who is deliberately seeking disconnection of supply as a strategy to achieve redevelopment of the site to carry out these notifications. This exposes the customers of the exempt seller, who may have in fact paid all their energy charges to the park

operator, to the risk of cessation of supply through no fault of their own. EWON provided a case study and our conclusions in our previous submission on this issue<sup>1</sup>.

We would have a preference for placing an obligation on the authorised retailer to notify the AER if disconnection of an exempt seller appears imminent, though we note that this would require the authorised retailer to maintain a record of their customers who are exempt sellers, and to have these flagged in their billing system. Notification to the AER would be triggered by the issue of a Notice of Intention to Disconnect.

Disconnection in these cases would not be allowed without the authority of the AER, and authority would not be given unless the interests of the exempt customers were protected.

It is also likely that the distributor could have a role here, but we note that the Network Guidelines will be covered in a separate consultation.

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Q24: Does the AER's revised pricing condition achieve the AER's objective of ensuring that, from a pricing perspective, residential customers of an onseller are not disadvantaged relative to customers of the local area retailer?

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We note that the terms of Condition 6 reflect the current situation in s 72 of the *Electricity Supply Act 1995(NSW)*.

If you would like to discuss this matter further, please contact me or Prue McLennan, Investigations Policy Officer on 82185250.

Yours sincerely



Clare Petre  
Energy & Water Ombudsman NSW

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<sup>1</sup> **P5 EWON submission to AER's Issues Paper: Approach to retail exemptions, June 2010. July 2010**