

4 February 2011  
General Manager  
Markets Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

By email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

Dear Mr Roberts

**Consultation Paper and Response to Submissions  
Retail Exemptions**

Integral Energy welcomes the opportunity to comment on the "Consultation Paper and Response to Submissions, Retail Exemptions" (Consultation Paper) released by the Australian Energy Regulator (AER) in December 2010.

The Consultation Paper seeks comments on draft Exempt Selling Guidelines and draft determinations of class exemptions.

In particular, the Consultation Paper seeks comments on whether it fully addresses its statutory requirements under section 118 of the NERL (addressing both the retail consultation process and the coverage of all matters required under the Rules) and rule 154 of the NERR (specifying provisions which must be included in Exempt Selling Guidelines).

**Practicality of requiring full retail competition in electricity embedded networks/onselling situations**

Integral Energy notes that the AER is currently considering making changes to its Network Service Provider Exemption Guidelines to underpin arrangements in jurisdictions where electricity full retail competition is currently available in embedded networks (i.e. in Victoria and NSW)<sup>1</sup>.

The AER has stated that its' proposed preliminary arrangements may include ensuring that electricity networks make suitable arrangements for:

- the provision of, and access to, consumer metering;
- the registration of National Meter Identifier (NMI) data; and
- compliance with AEMO requirements for metrology.'

These issues are currently dealt with in the National Electricity Rules.

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<sup>1</sup> p19

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Notwithstanding this, the AER has foreshadowed that, pending consideration of the issue of NMI registration as part of consultation on the Network Service Provider Exemption Guidelines, it will include the NMI of both the “parent” and “child” meters in any (electricity) embedded network in the Public Register, as this would assist in facilitating a customer transfer to the customer’s retailer of choice in the event that the customer seeks to exercise choice of retailer (at least in jurisdictions where choice of retailer is available within embedded networks)<sup>2</sup>.

Integral Energy notes that access to retailer of choice within embedded networks is restricted in the Australian Capital Territory, Tasmania, Queensland and South Australia. As such, the changes contemplated by the AER to the Network Service Provider Exemption Guidelines will most noticeably affect distributors in Victoria and New South Wales.

The registration of NMI’s with respect to “parent” and “child” meters in embedded networks has significant implications for network service providers and customers, particularly in NSW where network arrangements differ from those in Victoria.

The issue of NMIs in embedded networks is extremely complex as recognised by the AEMC in its 25 November 2010 Rule determination titled “*National Electricity Amendment (Provision of Metering Data Services and Clarification of Existing Metrology Requirements) Rule 2010*”, and has potentially substantial funding implications.

As such, it would appear premature to solicit and contemplate amendments to the Network Service Provider Exemption Guidelines and which is outside the scope of the Exempt Selling Guidelines.

### **Recognition of pre-existing onselling arrangements under jurisdictional legislation**

The AER has identified the stranding of embedded network assets as a consideration in making decisions under the retail exemptions regime. It notes that embedded network investments may not be able to be recouped through charging distribution charges alone, and that it may be necessary for the network operator to be able to charge both network and retail charges to recoup their investment.<sup>3</sup>

The AER has revised a draft class exemption category to accommodate persons, who prior to commencement of the national retail regulatory framework have operated under State/Territory exemption regimes from continuing to engage in onselling activities, provided that onselling has not been their core business.

As such, onsellers that have some relationship with customers through the provision of accommodation or management of residential or commercial services would be exempted.

Integral Energy considers pre-existing onselling arrangements are different for the issue of asset stranding. Integral Energy concurs with the AER that existing embedded

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<sup>2</sup> p19

<sup>3</sup> p26



network assets should not be stranded, however, maintains that the retail charge for energy should not cross-subsidise network costs.

An exempt seller is intending to profit from the arrangement if it on-sells energy at a higher rate than the cost of energy together with an appropriate network charge component. The direct cross-subsidisation of costs of an embedded network from energy charges should be distinguished from the appropriate pass through of costs for the embedded network. In many cases, it is unclear whether an exempt seller is recouping the costs of embedded networks through other charges, such as lease charges and is profiting from on-selling energy at a cost higher than the energy cost.

In jurisdictions where full retail competition exists, retailers should be given the opportunity to compete with on-sellers. Where an exempt seller recoups their embedded network costs through rental or other charges, they obtain an additional advantage over retailers as retailers must negotiate access arrangements to their embedded networks.

Any decision for an exemption (and any attached conditions, or omission of conditions to that exemption) which facilitates the cross-subsidisation of costs for embedded networks would need to be properly and specifically addressed in the context of the exempt seller related factors and customer related factors, and would appear contrary to full retail competition.

### **Off-grid networks**

The AER has stated that it “*considers that generally, the provision of energy through decentralised networks and off-grid networks will be in the long term interests of consumers.*”<sup>4</sup>

The Consultation Paper is silent on how the AER arrived at its position and the rationale underpinning that stance.

Section 114(1) sets out the policy principles the AER must take into account in performing or exercising an AER exempt selling regulatory function or power. These are as follows:

*“(a) regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers;*

*(b) exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable retail customers in the same jurisdiction have that right;*

*(c) exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and the Rules. “*

The AER has stated that it will work with each participating State and Territory to determine the scope (if any) of off-grid networks that will be covered by the customer framework and the feasibility of developing a class exemption category for them.

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<sup>4</sup> p30

It is unclear how the sale of energy through off-grid networks will be brought under the customer framework. As there is no retail competition in off-grid supply arrangements, customers do not have a retailer of choice. Further, off-grid supply customers are not subject to retail price regulation and as such standing offer prices do not apply. Similarly, other protections provided to customers of retailers do not apply to off-grid supply customers.

Any exemption (and any conditions attached to an exemption) granted by the AER to off-grid networks for the sale of energy would need to specifically address the policy principles stated in s114 (1) of the NERL.

Lastly, it would appear a primary benefit to a customer of an off-grid network, would be the supply of energy in the absence of any alternative energy sources (such as access to energy from the grid). However, it does not necessarily follow that because a customer has access to off-grid energy rather than no energy "*the provision of energy through decentralised networks and off-grid networks will be in the long term interests of consumers*".

If you have any questions with respect to this matter, please contact Mr Erik Beerden, Regulatory Affairs Manager, on telephone number (02) 9853 6904.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'Rod Howard', with a stylized flourish at the end.

Rod Howard  
General Manager Network