64A Manahan St Condell Park, NSW 2200 7th January 2015

Australian Energy Regulator Level 35 The Tower  
360 Elizabeth Street  
Melbourne Central  
Melbourne VIC 3000

Attn. General Manager—Retail Markets Branch

**SUBMISSION TO AER AMENDED EXEMPT SELLING GUIDELINE – DECEMBER 2014**

Dear Sir,

I am writing to you to comment on the (AER) published draft revised version 3 of its Exempt Selling guideline for consultation, dated 22nd Dec 2015. Initially, I thought that submissions were only concerned with the proposed amendments to the guideline to keep open certain classes of registrable exemptions that would otherwise close to new entrants from 1 January 2015. However, the draft revision also includes information concerning profit intentions of the exempt seller.

The section of the revised document I wish to comment on is the Policy Principles, exempt seller related factors, pages 21-23 of the document. My comments refer to the core verses incidental business factors and the profit intensions of the exempt seller.

**Background:**

I occupy what is classified as a “Long-Term Casual Occupant Site” in a holiday (caravan) park at the Twofold Bay Beach Resort situated 7km south of Eden, NSW. The holiday park is owned by Aspen Parks Property Fund (APPF), trading as Aspen Parks who are based in Western Australia. The holiday park has appointed managers to run and operate the park.

Under your guidelines, Long-Term Casual Occupants of a holiday park would be regarded as exempt customers.

According to the APPF 2014 AGM presented 10/11/2014, as of 30/6/2014, the APPF holiday park portfolio stood at 21 parks to a value of $201.6m. In November 2014 they added a further park to the value of $8.4m.

AER website notes that Aspen Parks was granted an exemption authority class R4 on 11th January 2007, AER reference: AER - R0239. They also have D3 exemption deemed to all caravan parks.

Aspen Parks have advised me by email that they are classed as a small business consuming less that 100MWh of energy per year.

On 18th October 2014, all Long-Term Occupants of the park received notification by letter or email that “due to spiraling costs of electricity, they can no longer subsidise our power usage.” As of 1st July 2015, all sites will have meters installed and that all sites will be paying for electricity usage. This will be at the going rate per kWh used, along with a monthly SAC fee - all charged at the local area retail energy supplier rates. No information as to what the level of subsidisation Aspen Parks have been absorbing was presented in the notification, nor has been forthcoming despite repeated requests.

The current SAC fee applicable to Origin Energy for the local area is $42.40 per month. All sites are connected to an embedded network and are limited to a 15amp supply. Aspen Parks clearly indicated in their notification they will charge the full SAC rate of $42.40/month.

Currently, our annual fees payable by us to have our vans permanently on site per 12 months includes electricity usage. This is clearly identified on our annual fee increase notifications we receive each May, yet an email from Aspen Parks claims that electricity usage is not included.

Under the NSW “Holiday Parks Long-Term Casual Occupants Act of 2002” what is intended to be charged is within the laws applicable to this act. As occupants, we have very few rights in this act, much less than the protections afforded to NSW Permanent Residents under their act of 1998. In their act, permanent residents have available to them a sliding scale of payable SAC fees according to the amount of amps provide to them in an embedded network. For example, for a supply less than 20amps, a SAC fee would be 20% of that charged by a local area retail energy provider.

Under the NSW Holiday Park Long-term Casual Occupancy Act of 2002, by law, occupants can only occupy their site for a maximum of 180 days per year. I would also point out that due to the tyranny of distance and remoteness of this park from major cities/towns, the vast majority of occupants do not utilise their vans any more than 28-35 days per year, unlike holiday parks much closer to these centers where occupants can utilise their sites on weekends etc. Most occupants here at Eden travel 6 to 8 hours each way to occupy their sites. This holiday park would be considered a “seasonal” park.

To the best of my knowledge, and stated by the park management, there are currently 96 long-term occupant sites within the park. All sites are affected by Aspen Parks’ intention to introduce SAC fees and metered power.

**Profiteering.**

My submission to you concerns the excessive profiteering and lack of protections from the on selling of power and SAC fees that can be exploited by exempt holiday (caravan) park owners.

From the background provided above, for 96 long-term casual sites within the embedded network of the park being charged $42.40/month SAC fee, the total revenue raised by the park would be $48,844.80 per annum. For the small business classification that Aspen Parks have identified themselves to be, Origin Energy SAC fee costs to them for the year would equate to $617. This would provide a profit of over $48,000 per year. This would equate to 10% of the total fees collected from Long-Term Casual Occupants each year.

There are 230 other powered caravan/camp sites within the holiday park that also pay for electricity usage as part of their daily camp fee structure.

I quote from the AER Exempt Seller Guidelines:

### Section 9.2.1 Core versus incidental business.

“Section 115(1)(a) of the Retail Law enables the AER to consider ‘*whether selling energy is or will be a core part of the exempt seller’s business or incidental to that business’*.

“If the energy sale is incidental, the seller is likely to be eligible for an exemption. Where it is not incidental an authorisation may be more appropriate.”

### Section 9.2.3 Profit intentions of the exempt seller.

“Section 115(1)(c) of the Retail Law enables the AER to consider ‘*whether the exempt seller is intending to profit from the exempt selling arrangement.”*

*“*An energy seller’s profit motive can help determine whether energy selling is incidental or not, but is not a defining feature. Where someone sells energy to make a profit rather than to recover costs, the sale is less likely to be incidental. Depending on the scale of the energy sold, a retailer authorisation may be more appropriate for the seller than an exemption.

Where an exempt person is intending to profit from selling energy we will need to be satisfied that there are appropriate pricing protections in place for exempt customers, particularly where they do not have a cost-effective choice of retailer. It is acceptable for an exempt person to earn a profit from selling energy. However, it is our expectation that they would charge their customers fair and reasonable energy costs and not take advantage of the lesser bargaining power of exempt customers who are caught in an embedded network.”

**My contention is**:

1. That for the number of sites involved and the fact that Aspen Parks will charge the full SAC fee rate allowable, this now forms a core part of their business and is fundamental to the exempt person’s business and is not incidental to their business.
2. Protections should be in place similar to the NSW Permanent Residents Act 1998 where Long-Term Casual Occupants should not be charged the full SAC fee applicable but a percentage of the fee when connected to an embedded network based on supply availability. In fact, I have not been able to find any reference in your guidelines relating to sliding scale SAC fees for class R4 exemptions for permanent residents.
3. Based on a SAC fee equivalent to 20% of the applicable retail supplier SAC fee, the total revenue collected for this holiday park would be $9768.96 per year. This would still provide Aspen Parks a profit of over $9,000 per year, in my view still excessive, but certainly within the intent of the AER exempt guidelines and I quote *“It is acceptable for an exempt person to earn a profit from selling energy. However, it is our expectation that they would charge their customers fair and reasonable energy costs and not take advantage of the lesser bargaining power of exempt customers who are caught in an embedded network”*

Exempt customers such as Long-Term Casual Occupants, where serviced by embedded networks in holiday parks, are susceptible to profit exploitation where they:

1. Have no choice of retail provider,
2. Have no ability to use solar energy,
3. Are restricted to 15amp supply and not a full 60 amp (plus) supply available to residential customers, but can potentially be charged the full SAC fee for a residential customer
4. Do not have the availability of Energy rebates, social programs and energy efficiency programs of a residential customer
5. Cannot occupy their sites for more than 180 days per year in NSW (we are contracted to 160 days usage by Aspen Parks), yet will be charged a SAC fee the full 12 months, and
6. Are vulnerable to excessive profiteering by exempt persons on- selling power to exempt customers where there are no controls governing recovery of energy costs by the exempt person that would be fair and reasonable. The exempt person can charge the full SAC fee simply because they can.

**In summary:**

Under the AER guidelines Aspen Parks are imposing fees for electricity usage the same as if we are a residential customer. **YET,** we have a restricted supply, no choice of retailer, can only occupy our sites for 180 days per year and would have to pay a SAC fee for the full year where for 185 days we would pay for a service we cannot access. This again is profiteering to the extreme.

To date Aspen Parks have not made provision for a reduction of our annual fees where energy costs are part of our fees. This again is profiteering where they would be double dipping with monies collected for energy usage in our annual fees and at the same time imposing separate fees for SAC and metered power usage.

**In the “Notice of final instrument” of the ARE (Retail) Exempt Selling Guideline – Version 2 dated July 2013, the following was mentioned…**

I quote:

“We understand that access to a retailer of choice is not readily available in many embedded networks. **This therefore makes embedded customers more susceptible to profiteering than non-embedded customers.**

We do not intend to prevent exempt sellers from making a profit. **However, we are opposed to opportunistic or excessive pricing for exempt customers where those customers do not have access to choice of retailer**. **We are concerned about reports that some exempt sellers are making excessive profit from their activities** (given that the exemptions framework is somewhat predicated on the fact that the sale of energy is not the exempt seller’s primary business activity).”

**Recommendation:**

I submit that in your review of the current guidelines;

1. Better defined protections need to be put in place to protect exempt customers from excessive profiteering.
2. Bring Long-Term Casual Occupants of holiday parks into line with those of Permanent Residents in relation to fee structures for SAC costs in embedded networks where there is no choice of retailer.
3. Review and revoke an exempt person’s classification should they chose to profiteer from their charges to exempt customers.

Thank you for opportunity to have input over my concerns.

Yours Sincerely,

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