



Mr Chris Pattas
General Manager
Network Operations and Development Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

12 August 2011

Dear Mr Pattas

Submission to Network and Retail Exemption Guidelines Consultations

Seed Advisory and Climateworks Australia have been working with a group of developers of co-generation and trigeneration projects, distributed energy services businesses, distribution businesses, regulators, government representatives and other stakeholders to identify ways in which the barriers to co-generation and tri-generation experienced by project proponents can be significantly reduced. Details of the project can be found on Climateworks Australia's website¹.

In working as part of a large group of stakeholders in collectively addressing the issues faced by project proponents, we have focussed on a group of "shovel ready" projects – projects that are currently in the design and development phase in and around Melbourne. A description of the key characteristics of the projects included in our work is attached to this submission. Of the projects included in our work, one is likely to fall within the scope of the Australian Energy Regulator's (AER) proposed individual exemptions for decentralised energy, while one of the participants in the group we are working with is considering a project, not included among the projects considered in our work, that would also be a candidate for an individual exemption, should the project go ahead. Our questions relating to the AER's proposals draw on our experience in this project and the characteristics of the projects we considered.

Do stakeholders support the AER's decision to align the classes of exemption in the network Guideline with the Exempt Selling Guideline?

We support the AER's decision to align the classes of exemption in the network Guideline with the Exempt Selling Guideline, but we believe some clarification is required in the network Guideline about the alignment where different parties may be involved in the two operations².

In the case of a decentralised energy development involving co-generation or tri-generation and district heating and/or cooling, it is possible to think of at least four different components of the

¹ http://www.climateworks.com.au/cogen_project_-_project%20outline%20April%202011.pdf

² The network Guideline, in a similar way to the Exempt Selling Guideline, refers to a "person seeking to transmit, distribute and selling electricity within a network"². Australian Energy Regulator, *AER approach to electricity network service provider exemptions, June 2011*, s5.4. See also Australian Energy Regulator, *Exempt Selling Guideline, June 2011*, Part 5. The discussion refers throughout to a person: "the AER encourages persons who wish to obtain an individual exemption ..."; "Any person who falls under a deemed or registrable exemption may ..."; "This may be desirable where the person does not consider ...". We have assumed that a company can be the holder of an individual exemption.



activity separate from the site or sites: the generator(s); the network assets subject to the AER's regulation; other network assets not the subject of the AER's regulation — for example, a district heating network; and the sale of energy to third parties, which may or may not require an exemption, depending on the customers. It is also possible to think of elements of this activity being separately owned, with the activities subject to regulation being owned, operated or controlled by separate entities.

The AER's discussion of the alignment of the two exemption frameworks – Exempt Selling and network exemptions – in the network Guideline appears to assume that the same person will hold both exemptions, but, in the scenario above, the appropriate entities may be two or more separately owned companies and this situation is explicitly discussed in the Exempt Selling Guideline. We suggest some explicit recognition of this possibility in the AER's discussion of the network Guideline.

Are there any other network situations that stakeholders consider would warrant a separate exemption category?

We are pleased that the AER has publicly stated that its intention with relation to co-generation, tri-generation and sustainability initiatives is not to discourage them³. We understand that, at this early stage, it may be difficult to develop a class exemption that will anticipate the characteristics that these developments will have in the longer term. However, we would encourage the AER to consider developing a registrable exemption category in both the network Guideline and the Exempt Selling Guideline because, in our view, the proposed individual exemption category raises a number of issues that, if not resolved, are likely to result in high transaction costs for both exemption holders and the AER.

We are particularly concerned about the complexity and risk associated with the individual exemption process in the event of a sale of the operation to which the exemption applies.

- We are concerned about the practicality of the prohibition on transfers of individual exemptions. For example, if a private company is the recipient of the individual exemption, is the AER's intention that, on a change of control of the company, the exemption would expire? And, if so, how does the AER propose to monitor changes in corporate control?
- If we consider the sale of a private company by its owner to another owner, if the individual registration is held by the company and the entity does not change, although ownership of the entity does, does the exemption transfer? If the exemption transfers in these circumstances, but not in the case where, for example, the assets that are the basis for the exemption are sold, is it the AER's intention to treat these cases differently?
- Other issues also arise in considering the sale of the entity holding the exemption or the assets underlying the exemption. When does the exemption expire? Will the AER entertain discussions with potential buyers prior to the change of ownership with a view to seamlessly

³ For example, in the *Draft Exempt Selling Guideline, June 2011* the AER states "projects involving decentralised energy, whereby energy is generated on or near a site to reduce transmission requirements and losses from transportation, with potentially be suitable candidates for exemptions." (p.19). Similarly, in the same document, the AER states "The draft exemption categories do not explicitly cover co-generation, tri-generation or sustainability initiatives, but it is not the AER's intention to discourage them. Decentralised energy is becoming increasingly common. ... Because each situation will be unique it is challenging to develop a class exemption to capture these activities. We consider it more appropriate, *at least in the short term*, for these situations to be covered by individual exemptions, and will grant exemptions in these situations where the initiative is in the long term interests of energy consumers having regard to all of the criteria and factors we are required to assess." (p. 23-24, emphasis added).



replacing one individual exemption with another on the change of ownership or is the AER anticipating some grace period during which the original exemption continues, during which period the new owner seeks to obtain an individual exemption in its own right? And, if so, given the AER currently specifies only a minimum timeline for consultations in the case of an individual exemption, how long should this period be? Finally, what happens to the customers after a change of ownership, assuming the individual exemption lapses immediately or after the grace period?

- The situation where the AER is undertaking consultations with prospective buyers in advance of a sale relating to the potential for an individual exemption raises wider issues about the AER's discretion in the individual exemption process. As currently described, the AER's discretion in this area is wide. Its internal views on the appropriateness of particular types of development may change over time and the current process would allow those changes in the AER's view to be reflected in, for example, a refusal to grant an individual exemption relating to a particular development in the event of a change of control, notwithstanding the previous individual exemption for the same development. If this possibility — that policy may change over time without consultation — is the AER's intention, then the AER runs the risk of discouraging developments that its current intention is not to discourage.

A registrable exemption applying to the class of developments meeting the characteristics of a project offering decentralised energy would minimise the need to deal with the issues outlined above and could be drafted in such a way as to capture the essential features of proposed projects.

Are there any other matters the AER has not considered in this draft network Guideline which stakeholders believe should be addressed?

We think the AER should include some discussion on its interpretation of the phrase *owned, operated or controlled* in the network Guideline.

The AER's interpretation of the phrase *owned, operated or controlled* is likely to be important in the circumstances described above, where elements of the operation supplying services to customers are owned by different parties, in:

- determining which entity is required to register for an exemption or seek an individual exemption in the case of the network covered by the AER's framework
- determining the requirement to reapply for an exemption in the case of a sale of one or more of the assets.

If the AER's interpretation is that control of the network lies with the organisation selling the energy and other services, then ownership of individual assets could change without triggering a requirement for a further application for registration or exemption. Alternatively, in an analogous way to the current relationship between the retail and network businesses, the exemptions relating to a single site could be held by different parties – the network owner or operator and the organisation managing the sales of electricity and gas – maintaining the alignment the AER is seeking, but recognising the different economic interests and responsibilities of the parties involved.

Additionally, in the case of the Exempt Selling Guideline, we consider the AER should consider defining, in the context of its discussion of the meaning of the phrase *owned, operated or controlled*, the meaning of *site*. One of the projects included in our work has three separately metered buildings on two contiguous land titles. The application of Class D8 in these circumstances appears to depend on the interpretation of the word *site*: looking at the draft Exempt Selling Guideline, there appears to be no question that the companies are related for the purposes of the



deemed exemption. In these circumstances, the AER's interpretation of the meaning of *site* is critical. Further, we anticipate this issue may have wider application, including industrial developments and industrial parks where there may be differences in the number of sites considering land titles, meter connection points and the effective control of an operation or operations.

We would welcome the opportunity of discussing this submission and our project with you. I can be contacted on 03 9658 2352 or on 0412 254 589.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Boyce', enclosed in a light grey rectangular box.

Patricia Boyce
Director

Project Descriptions

Description of site	Size of generation unit	Directional Flows	Relationship to load serviced	DNSP
CBD office tower, single title, new build	2 by 1.15 MW co-generation units and possibility of further diesel back-up generation. Tri-generation under consideration	Overflow and synchronising flows into the distribution network planned.	Servicing own needs, base power, heating and possibly chilling	Citipower
CBD office tower, single title, retrofit	2MW tri-generation	Inflows at the meter for tenants' requirements; no planned flows into the distribution network, (including in the event of failure)	Servicing own needs, base power, heating and chilling. Desirably, sale of power to third party tenants	Citipower
New build within large brownfields development, single land owner	1MW co-generation	Grid synchronised, in line with requirements of private network; capable of running in island mode	Own use, with the potential for a small number of unrelated tenants to take power off the network assuming metering capability existed.	UED (Jemena)
Multi-use, single site, existing build	Existing 6 x 1MWe co-generation units also connected to absorption chillers. Proposed project is to expand to 12MWe tri-generation system.	Overflow into the distribution network for export to other buildings within the site.	Servicing own needs with base power, standby power, heating and cooling.	Citipower
Brownfields development, consolidated site, single land owner,	200kW co-generation	Grid synchronised. Inflows at the meter for balance of development's requirements; no planned flows into the broader distribution network (including in the event of failure).	Small number of tenants (land owner sponsored/funded enterprises) on consolidated site to take power from cogen unit	UED (Jemena)

Description of site	Size of generation unit	Directional Flows	Relationship to load serviced	DNSP
Greenfields “new model urban development”, currently single site and title. Subsequent subdivision and sale of land parcels	1MW tri-generation, with increments to 3MWs and 6MWs as development proceeds, linked by hub-and-spoke network	Planned export from co-generation unit to other sites within development. Will require net inflows from grid for backup and for balance of development’s requirements. Consideration of alternative network configurations to address ‘export’ problems.	District scale heating and cooling network provided to future owners/tenants; power provided to a range of future businesses/activities connected to local network	SP AusNet