

21 November 2011

General Manager  
Retail Markets Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne. Victoria 3000

Dear AER;

**Re: AER's Proposed Exempt Selling guidelines & NSP Exemptions**

I am writing to comment on a number of issues in regard to these proposed guidelines, which go hand in hand.

Elengas is a small consulting firm, based in Adelaide. It provides advisory services in the energy industry, predominantly the oil & gas and electricity business's. Elengas provides electricity broking services to large (50 GWh/a\annum) companies through to much smaller large market customers. Further, Elengas has over the last 10 years or so assisted various clients with exempt onselling and network distribution issues.

I recently sent an email requesting more time to provide comments on the draft papers for each of these guidelines, however, it seems time is short before the official guidelines are to be promulgated by your organisation.

However, given the importance of these guidelines, and that once they come into being they will impact the procedures, operations and therefore costs of onsellors, as well as embedded network owners and operators (for which there are many thousands of each) many being both, I wonder if in fact sufficient canvassing for comments has been undertaken.

In any event, I have attached comments on each area, even though they may be late.

I make the point however, that this firm is not being paid to make this submission, (hence the lateness of our response – paid work comes first !) and by not offering up our comments, we may actually receive more work, since the confusion in 'exempt city' will be high. However, we offer our comments in an attempt to get more well – practicality' and balance into the regulations.

Yours sincerely

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CEO

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ATTACHMENT

COMMENTS

Please note, these comments are not in any particular order

1 **Spread of Consultation**

We note that the AER has sought responses through a publication of draft guidelines requesting views and comments over the last year or so.

It would appear that the number of responses overall, being around 19 in the December 2010 round seeking submissions, and around 21 in the June round seeking submissions has been **poor**.

If the number of submissions from 'exempt sellers' and exempt customers' or their representatives are only counted, then the level of response is **extremely poor**.

One wonders then if there has in fact been sufficient widespread consultation. We are of the view there has not and the proposed guidelines are not truly reflective of a widespread view of concerns that 'exempt sellers or customers' may have.

There are many thousands of exempt sellers operating in the applicable jurisdictions, of which the vast majority would not even be aware that the AER exists, let alone that there are new regulations about to become effective that will have a material impact upon them, and may push them into being operating outside the regulations.

We are unaware if the AER has sought out many individual (or groups) of exempt sellers, or customers to understand the likely impacts upon them in terms of compliance costs and procedural adherence.

We are of the view that listing a draft guideline on the AER website and calling through the draft guideline for submissions is not nearly sufficient to say that the draft papers have adequately been in the public domain sufficiently long enough for public comment.

The website is difficult enough to navigate around, let alone to actually locate the papers that may impact upon my operations if I were an exempt seller or customer.

**If, the AER has not gone out to exempt sellers and customers (in large numbers) directly then in our view this process needs to be deferred until this has occurred.**

## **2 Registration**

It appears the basic reason for registration would be for the AER to find out who are exempt sellers, although not all, as a large section will have blanket exemptions.

Once registered, the AER will scrutinize their operations – a wonderful motivation to have a register.

We question the requirement to have a register at all, as the regulations shall apply to those on or not on a register!

It seems totally illogical to have a register for some categories and not all, and yet conversely to exclude some and not all.

Further, the definitions of one category to the other are at times totally arbitrary, if I have 19 exempt customers (because a few are vacant) but if I rent a few more I will have greater than 20 exempt customers. This is only an example of the arbitrary nature of the categories..

We question the motives for having a register at all, it would appear the primary motive is to find out who the exempt sellers are (the larger ones anyhow) and to create ongoing work for the AER.

Indeed, we see an explosion of work for the AER in regard to compliance and registration of exempt sellers and network operators.

**WHY**

What benefit is there in this ?

We question the level of complaints and material issues which have been experienced in the last 10 years or so of operations of embedded networks and reselling in each of the jurisdictions which has necessitated this step to register exempt resellers, and have their operations made public ???

It would appear the exempt resellers are the boogy men that have to be held to account ?? for what – providing a product and service as part of their overall infrastructure for tenants.

There has not been any requirement for registration up to now, (well certainly not in SA), why is it necessary to have registration now? – this is adding a level of getting into details which is not required.

Basically, we are of the view if it's not broken (and it appears that it isn't otherwise we are sure the number of complaints and regulation breaches would have been published with these papers) then leave it alone.

## **3 Confidentiality**

We note that the registration process is to be public !

What ???

Do the Retailers give you this information, and do you go public with it ???

Have you considered – for a fleeting moment perhaps – that some of the information you are seeking which may then end up in the public domain due

to your proposed publication of the exemption application may – **just may be confidential** – if not to the exempt seller – but to the exempt sellers retailer and also just may be confidential to the exempt customer/s (particularly large sites with a small number of exempt customers).

We oppose the notion of making exempt applications public, and we do not agree that AER can pick and choose as to what is confidential. If a company claims confidentiality, this ought to be sufficient.

#### **4 Cost of Compliance**

We are of the view that since the AER is imposing a new set of regulatory rules, not without to cost to exempt sellers, the AER will reimburse the exempt sellers their respective costs of compliance? After all you state the costs will be minimal – so then you won't mind paying will you?

The answer is of course a resounding NO – however, maybe we wouldn't get your attention if we simply just said can the exempt sellers now pass on to the exempt customers their compliance costs ?, after all, if the exempt sellers were in fact retailers, the retailers would be including their compliance costs in their annual applications for price resets?

#### **5 Equity**

We are concerned regarding the apparent inequities being afforded to the exempt sellers, in regard to number of aspects;

- a) While the exempt customer can elect at any time to select a retailer of its choice, being a basic tennat of the NEM, the exempt seller is not protected, from the risk of the loss of the exempt customer.

You, may ask, so what ?, this is what the NEM is all about ?, however, as a Broker, I see electricity contracts being entered into by exempt sellers. The exempt sellers negotiate a new electricity contract with a retailer every 3 or so years, so the negotiated rates are 'on foot' for this period.

If, an exempt customer (which may be a large part of the volume, underpinning the retailer / exempt seller contract) elects to choose its own retailer, the exempt seller can be financially penalised since invariably these days most large market contracts have a volumetric limits (both up and down).

As a result, the exempt seller, while trying to negotiate a great deal at a particular time, may find himself holding an uneconomic supply contract, for which it is then paying penalties (in one form or another) for the balance of the contract term.

The point here is that the exempt seller, every time it does a supply agreement, takes a risk, it is not in and out of the wholesale market,

like retailers, and therefore doesn't have the market base to withstand the market moving against it, if it the exempt customer goes with a retailer of its choice..

It seems the AER is more concerned with bringing exempt customers into the NEM, at the disadvantage of the exempt sellers.

**Large exempt sellers are obliged to sign a term deal (3 to 5 yrs normally) with a retailer, and yet large exempt customers are not ! they can pick and choose who they will take supply from  
Where is the protection for the large exempt sellers ?**

- b) It is interesting to note, the protections for the exempt customer are predominantly aimed at the small market exempt customers.

Expand

## 6 Comprehension

We are of the view, that while the AER draft guidelines are perhaps of a lesser 'technical nature' than what they could have been, they are still have a great deal of 'NEM technical jargon' that for most exempt resellers they will not be able to understand sufficiently what their obligations will be, so we suggest, that some resources be applied to couch the new regulations into reader friendly form of English

## 7 Multiple sites

You make the point in section 2.2.4 that you usually will not grant an individual exemption covering multiple sites – why not ?

If a company has similar operations, but electricity reselling is not a 'core' component of the business, why wouldn't you ???

## 8 Revocation of an Exemption

We note that you talk about revocation in 'a material' circumstances etc of an exemption, but you don't say what happens in this event ? – You talk about (section 5.1.5) who you will advise – does this mean the exempt seller will not be sold any electricity by his retailer ?? (I am not sure this would be legal ?)

How does the exempt customer continued to be supplied?

Are there penalties because you have revoked an exemption, since by your revocation, the exempt seller will already be in breach !

What happens if you refuse to grant an exemption – does electricity sales to that exempt seller (and customer/s) cease? What happens ???

What higher authority can a party appeal to if, in their mind they have been unfairly treated in your interpretation of the relevant law, and application of the regulations?

Surely these avenues should be listed in your guidelines?

**Does the AER have a dispute resolution mechanism ? like you are telling everyone else to get ?**

**9 Other Points**

The following is a list of ‘other points – or general points;

- a) Information for registration – why do you want to know about the contract the exempt seller has entered into ?,
- b) What’s the significance to you if the exempt seller secures his electricity through a contract with a retailer , or other means (such as the wholesale market – you would know this anyhow, as you work with AEMO – so you would know the market participants – why are you asking this ?
- c) None of these guidelines focuss on the supply side, so why are you intruding into the supply side business arrangements?
- d) Why is this information important in deciding to grant an exemption, or are you just being nosey ?
- e) Why does the AER require both email and snail mail for an exemption application, but will only send an email note of receipt back ?
- f) Is the AER or ESCOSA going to change their definition of a small market / large market customer ? As you are aware, a large market customer in SA is one which consumes > 160 MWhrs/a, whereas your definitions of a large market customer is one which consumes > 100 MWhrs/a which is it ?
- g) **Condition 4 – point 1 (Class R1)** what is meant by ‘best endeavours’ ? perhaps the term reasonable endeavours is more appropriate ?
- h) **Condition 7 point 1a. and point 2 d. 9Class R1)** Is it a purposeful thing to allow the repayment of an over change for the previous 12 months, but only the recovery of an under change for the previous 9 months What is the justification for this discrimination?

**10 Exempt Sellers are not benevolent Uncles**

Unfortunately, exempt sellers are themselves NEM customers and no one gives them a break when they are the buyer and have a lot of expenses etc, Where is the Government assistance for the exempt sellers to provides payment plans for defaulting exempt customers etc, Retailers generally are required to comply with such plans, since it was a basic condition for them to secure a retail licence.

Exempt sellers on the other hand have had these type of social service obligations thrust upon them. I am sure most if not all recognize there are exempt customers which require special assistance etc.

However, please bear in mind, the exempt sellers do not source their supply from the wholesale market, like the retailers can and do, and therefore have lower input costs, and therefore their capacity to provide such services is far easier for them financially. So, who picks up these costs? (not AER !)

**11 Metering**

**Condition 2 point 1(class R1)** why does the exempt person have to supply information on metering – they may not even know themselves – surely it is up to the person exempt customer themselves to determine this – in connection with their proposed retailer.

**12 Non Standard Pricing**

We note a reference to on site solar generation but it is not governed by a pricing structure?

Nor is energy pricing proposed for electricity generated from an emergency generation unit (such as diesel) which may be more expensive per unit, but the benefit to the exempt customers is they keep operating if not for the emergency generation.

We propose that there is no pricing structure for these as there are too many variations, but perhaps you ought to say this.

**13 Guidelines for the exemption to register as Network Service Provider**

Previously NECA looked after this area, and based up our view of if its not broken don't muck about with it , it look like you are doping a similar thing here .

What were the number of separate applications / approvals under the NECA guidelines in the preceding 10 or 11 years – about one a year on average.

So what enlightened number of issues have all of a sudden appeared which necessitates a rewrite of the rules, and to have a registration process etc – similar to exempt selling.?

Our comments on the network registration process and requirement are similar to those above.