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**Clean Energy Council submission to the Australian Energy Regulator**

**Regulation of alternative energy sellers under the *National Energy Retail Law***

**Executive Summary**

This submission supports the framework for regulation of alternative energy sellers as proposed by the Australian Energy Regulator (AER) in its Issues Paper. In addition, Clean Energy Council (CEC) urges the AER to consider extending the class exemption framework to all landlords and their approved agents. Doing so could facilitate the entry of new competitors into the ‘behind the meter’ power purchase agreement (PPA) market, increase sales of rooftop solar and other distributed generation, reduce tenants’ electricity bills and provide them with greater choice in their electricity supply options. The entry of landlords and real estate agents into the behind-the-meter PPA market could raise new issues regarding the consumer protection and tenancy laws. This review provides a timely opportunity for the consideration of these issues in the context of the protection currently afforded under the *National Energy Retail Law*.

We understand that the AER’s approach to regulation is technology-neutral and, for that reason, we have employed the term “behind-the-meter PPA” whenever referring to the AER regulatory framework. Solar PPAs are the primary example of behind-the-meter PPAs on offer in Australia. We refer to “solar PPAs” in this submission when discussing specific examples and experiences in the context of the Australian market.

1. **Barriers to solar PV ownership**

Recent studies have shown that income is no longer a significant barrier to ownership of a solar PV system. Owner occupation of dwellings has the strongest impact on PV uptake rates (ACIL Allen Consulting, 2013). While various measures of household income do have a statistically significant effect on PV uptake, the effect is relatively modest. Retirees are likely to adopt PV more readily than other households, but this effect is only mildly sensitive to retirement income levels.

The levelised cost of electricity from a rooftop solar PV system in Australia is now (generally) lower than the retail price of electricity. Installation of solar PV systems on rental homes across Australia is an opportunity to simultaneously improve rental properties, reduce electricity costs for renters, stimulate new investment and open new markets for the solar PV industry. What is needed to achieve this are institutional arrangements that can address the tenant-landlord split incentive problem. This review is a timely opportunity to consider the potential evolution of the behind-the-meter PPA business model, how that could be leveraged to address the tenant-landlord split incentive and whether any additional legal protection for consumers or tenants might be warranted.

The tenant-landlord split incentive is the most significant barrier to ownership of a solar PV system in Australia today. The problem is simple to understand and difficult to solve. Landlords do not have an incentive to install solar PV systems on their rental properties because the benefits would accrue to their tenants in the form of lower electricity bills. Although there may be some financial benefits for a landlord who installs solar PV on a rental property, those benefits are likely to be small in comparison with the costs. Tenants do not install PV systems on rental properties because they do not have sufficient security of tenure to be confident that they will recoup their investment over time in the form of reduced electricity bills. Neither the tenant nor the landlord invests in solar PV, despite the clear financial, environmental and other benefits.

1. **Equity issues**

In recent years in Australia a significant decrease in the cost of solar PV systems has coincided with a significant increase in retail electricity prices. As a result, the levelised cost of electricity from a rooftop solar PV system in Australia is below the retail price of electricity (Parkinson, 2013).

Access to solar PV is increasingly becoming seen as an equity issue, with solar ‘haves’ and have nots’. The most significant way to address this equity issue would be with a framework to enable a viable business model for the installation of PV systems on rental properties.

The key to this is enabling all landlords and their approved agents to sell solar PV electricity to tenants, profitably, with sufficient consumer protection and a net financial benefit for all parties involved in the transaction. This may already be possible under the existing regulations, but only to a limited extent. For example, the Issues Paper notes that class exemptions are already available to businesses that have another ‘relationship’ with their customers (caravan park and retirement village owners, residential and commercial landlords). We would urge the AER to consider the merits of extending the class exemption framework to all property owners, landlords and their approved agents.

1. **Alternative business models**

Solar PV can reduce electricity costs for consumers. The issue now is to develop the institutional arrangements needed to unlock the economic potential of solar PV, other forms of distributed generation and distributed storage.

As the business case for solar PV improves, new business models become viable.

For many years the entire solar PV industry has been based on a business model involving sale of equipment for self-generation. This approach has the disadvantage of significant up-front costs for the equipment purchaser. It is subject to all the issues of inequity caused by the tenant-landlord split incentive.

A number of Australian businesses now offer solar leases, whereby solar PV equipment is leased for the purpose of self-generation. This approach can address the barrier of the high up-front capital cost involved in purchasing a solar PV system. Unfortunately, this approach is not able to address the tenant-landlord split incentive. Solar leases are generally offered for a minimum contract term of not less than five years. Residential tenancy agreements rarely extend for more than 12 months duration. The lack of security of tenure is a barrier to a tenant entering into a solar leasing agreement.

As noted in the AER Issues Paper, behind-the-meter PPAS (specifically, solar PPAs) are becoming an increasingly popular form of electricity supply agreement. When solar PPAs are provided by third parties they will have a minimum duration, similar to solar leases. This will limit their ability to address the spilt incentive problem, just as solar leases are limited in this regard. A third party who does not have another ongoing business association with the rental property will require a minimum contract duration. While the regulatory framework is no barrier to shorter contracts, commercial considerations dictate that the minimum contract period for a solar PPA exceeds the normal duration of a tenancy agreement. There is a need for a framework that allows an equipment supplier to enter an arrangement for system installation with a party other than the tenant. The class exemption framework should be extended to all residential landlords and their agents.

Landlords (and their agents) who have an ongoing business association with the property or its tenants could develop a viable business model for sale of electricity from solar PV provided the regulatory framework enables it. For example, a landlord could profitably install a solar PV system on a rental property and sell the electricity to tenants at a price less than the prevailing retail electricity price. A real estate agent could also act as an agent for an alternative energy seller, whether the alternative energy seller is the landlord or a third party.

Distributed generators could also generate power for their own requirements on site and sell the excess to their neighbours, avoiding the need for use of the costly distribution network. These arrangements are sometimes referred to as ‘wheeling arrangements’.

1. **Principles for a new regulatory framework**

A regulatory framework for alternative energy sellers should aim to:

* Improve equity among consumers
* Improve consumer choice by enabling the entry of new competitors into the electricity supply market
* Ensure adequate protection for consumers
* Ensure that the administrative and compliance burden is the minimum required to ensure the other aims are achieved.

A regulatory framework that enables renters to enjoy the financial benefits of behind-the-meter PPAs will, in itself, help to ensure greater equity between electricity consumers. The most significant equity issue regarding rooftop solar PV is that (currently) home owners can use solar PV to reduce their electricity bills and renters cannot. The most significant policy issue to overcome is the tenant-landlord split incentive. An important means of addressing the split incentive would be to extend the exemption framework to enable renters to purchase electricity generated by solar PV systems owned not only by their landlord, but also by the approved agent of the landlord.

By streamlining the requirements on alternative energy sellers, the proposed framework will assist companies wanting to enter the behind-the-meter PPA market. This will improve competition for electricity supply and will expand the choices available to consumers.

The customer protections proposed in the AER Issues Paper ensure that customers receive the full suite of protections under the Retail Law whenever an alternative energy seller takes on the role of an energy retailer and provides energy as an essential service, to the exclusion of other suppliers. This is appropriate.

It is unclear from the Issues paper how extensive the administrative requirements of the retailer exemption framework for alternative energy sellers will be. The Issues Paper should, for example, describe the obligations upon alternative energy sellers who enter into a behind-the-meter PPA contract with a business that has a class exemption.

We support the AER’s view that site-by-site applications for an exemption for every person or business that enters into a behind-the-meter PPA contract would be unnecessarily burdensome. We acknowledge the difficulty of developing a class exemption to cover a business model that is still rapidly evolving. The proposal for multiple site exemptions is supported. Where a company offers more or less the same behind-the-meter PPA to a range of clients, an exemption for all of those clients would be a preferable alternative.

1. **Recommendations**
   1. The AER should continue with the regulatory framework as outlined in the Issues Paper, requiring providers of behind-the-meter PPAs to obtain: a retailer authorisation exemption when they are the secondary providers; and a retailer authorisation only when the PPA provider seeks to be the customer’s only access to reliable energy supply.
   2. The AER should extend the class exemption for retailer authorisation to all landlords and their approved agents.
   3. The AER should clarify the regulatory framework governing the direct sale of electricity between a distributed generator that produces solar electricity in excess of its own requirements and a neighbouring company that wishes to purchase the electricity (sometimes referred to as ‘wheeling arrangements’).
   4. The AER should continue to consult with the Clean Energy Council regarding the proposed framework for multiple site exemptions for behind-the-meter PPAs and the administrative requirements of the retailer exemption framework for alternative energy sellers.
2. **Responses to AER questions**
   1. ***What, if any, other alternative energy selling business models are stakeholders aware of (apart from those listed inn section 3), and what future business models do stakeholders consider could emerge?***

Table 1 – Alternative energy selling business models and implications for this Issues Paper

|  |  |  |  |
| --- | --- | --- | --- |
| Business model | Status in Australia | Issues for policy | Implications for this AER Issues Paper |
| Sale of equipment for self-generation | The most common approach toward solar PV in Australia today | Unable to address the equity issues of the tenant-landlord split incentive | None |
| Leasing of equipment for self-generation | An increasingly popular approach in Australia today | Unable to address the equity issues of the tenant-landlord split incentive | None |
| Behind-the-meter PPA via the solar PV retailer or installer | A business model that has recently commenced in Australia | Unable to address the equity issues of the tenant-landlord split incentive | Addressed by this Issues paper |
| Behind-the-meter PPA via landlord or agent | Not yet available in Australia | Could address the equity issues of the tenant-landlord split incentive | Additional consumer protection may be required |
| Generation for self-consumption and sale via a behind-the-meter PPA | ‘Wheeling arrangements’ are unusual in Australia | Regulatory framework is unclear and would benefit from clarification | Regulatory framework is unclear and would benefit from clarification |
| Behind-the-meter PPA with system sold by solar PV retailer or installer and operated by Special Purpose Vehicle, which could be a finance entity or investor | Not yet available in Australia | May have implications for consumer protection (eg. which party is responsible for customer service?) | Consider whether any additional consumer protection would be required |

* 1. ***What are the stakeholder’s views on the AER’s proposed policy considerations set out in section 3?***

The AER’s proposed policy considerations set out in section 3 appear reasonable, as do the factors taken into account when regulating such businesses.

As noted in the AER Issues Paper, customers who purchase electricity through a solar PPA will in all likelihood retain their right to access the energy retail market and engage a retailer of their choice. Their authorised retailer will continue the role of essential service provider and the customer has access to consumer protections provided under the *Retail Law* through its relationship with the authorised retailer. Providers of solar PPAs will be secondary providers, and the service they provide is optional. In this situation, it is reasonable not to require a retailer authorisation for the solar PPA provider.

In situations where a solar PPA provider seeks to be the customer’s only access to reliable energy supply, it would be reasonable to require the solar PPA provider to obtain a retailer authorisation.

* 1. ***What are the stakeholder’s views on the AER’s proposed approach to granting exemptions and authorisations for alternative energy sellers in section 4?***

CEC supports the AER’s proposal that an alternative energy seller should be required to obtain a retailer authorisation when:

* An alternative energy sellers is the sole supplier of gas or electricity at a premises
* The alternative energy seller prohibits the customer from entering into a contract with another retailer, or requires the customer to enter into a contract with a specified retailer
* The alternative energy seller is registered with AEMO in the wholesale market for the particular fuel source, and is the financially responsible retailer for the particular premises

Site-by-site applications for an exemption for every person or business that enters into a solar PA contract seems unnecessarily burdensome. The difficulty of developing a class exemption to cover a business model that is still rapidly evolving is understood. Nevertheless, we believe that further thought needs to be given to developing class exemptions for solar PPAs. The AER should work toward the establishment of a class exemption for solar PPAs once the solar PPA market in Australia has matured and business model for solar PPAs becomes better understood.

* 1. ***What, if any, other considerations should the AER take into account to regulate the sale of energy under alternative energy selling markets?***

Further consideration should be given to the regulations needed to enable landlords or real estate agents to enter into solar PPAs or other alternative energy selling arrangements with tenants while guaranteeing the rights of tenants, both as tenants and as consumers.

The AER should clarify the regulatory framework governing the direct sale of electricity between a distributed generator that produces solar electricity in excess of its own requirements and a neighbouring company that wishes to purchase the electricity (sometimes referred to as ‘wheeling arrangements’).

* 1. ***What implications, or future implications, could arise for the regulation of alternative energy sellers under the Retail Law, or other consumer protection legislative frameworks?***

There may be a need to consider implications for state and territory tenancy laws and whether any changes are needed to enable landlords or real estate agents to enter into solar PPAs or other alternative energy selling arrangements with tenants while guaranteeing the rights of tenants, both as tenants and as consumers. For example, in future behind-the-meter PPAs could, in future, form part of a rental agreement. There may be a need for some degree of consumer protection for tenants to prevent price gouging and to ensure that the arrangement reduces tenants’ electricity bills.

* 1. ***What, if any, conditions should be placed on an individual exemption for an alternative energy seller?***

The obligations outlined for the Exempt Selling Guideline would appear to provide sufficient consumer protection for customers purchasing electricity through third party providers of a solar PPA. There may be a need for additional consumer protections where solar PPAs are administered by parties with an existing relationship to a property or its tenants (eg. by a landlord or real estate agent).

1. **References**

ACIL Allen Consulting (2013), *Drivers of Domestic PV Uptake: Characteristics of households with solar photovoltaic systems.* Report to the Australian Renewable Energy Agency, October 2013

Australian Energy Regulator (2013), *Regulation of alternative energy sellers under the National Energy Retail Law: Issues paper.* Commonwealth of Australia, 2013

Parkinson, G. (2013), ‘Conergy tips Australia solar market to grow 20% a year to 2015’, *Renew Economy*, <http://reneweconomy.com.au/2013/conergy-tips-australia-solar-market-to-grow-20-a-year-to-2015-2015> (viewed 18 November 2013)