



## Department of State Development, Business and Innovation

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Jacqui Thorpe  
Acting General Manager, Retail Markets Branch  
Australian Energy Regulator  
Via email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

Dear Ms Thorpe

### **Alternative Energy Sellers Issues Paper**

The Victorian Department of State Development, Business and Innovation (the Department) welcomes the opportunity to provide comment on the Australian Energy Regulator's (AER's) issues paper, 'Regulation of alternative energy sellers under the National Energy Retail Law'.

Although the National Energy Customer Framework (NECF) currently does not apply in Victoria, the Victorian Government has undertaken work to undertake harmonisation of the Victorian Retail Code with the NECF and remains committed to implementation of the NECF subject to outstanding issues being resolved. The Department is providing comments on the AER's issues paper given its involvement with the NECF development and its ongoing efforts to pursue implementation.

The Department supports the AER's decision to provide high-level guidance to alternative energy sellers regarding their eligibility for a retailer authorisation or an exemption under the National Energy Retail Law (NERL). The Department has some comments it would like the AER to consider in the development of its final decision on this issue.

In summary, the Department makes the following comments –

- Although the AER's approach appears reasonable, its impacts on customers are unknown at this stage. Therefore, the AER should commit to undertaking a further review of its approach as more innovative arrangements enter into the market. It is important that Victorians consumers do not lose out as a result of any changes.
- Although customers will continue to have their primary retailer who will hold an authorisation, customers may still be at risk of experiencing issues with their alternative energy seller. Therefore, the conditions that the AER places on these entities will be important. Consulting on the proposed conditions with stakeholders, and monitoring the effectiveness of conditions, will be important to ensuring that customers are not adversely impacted by receiving supply from an exempt seller.
- The AER should consider whether it should apply specific conditions that may not be in the NECF to alternative sellers. This may include information requirements that are specific to the activities being



undertaken by the exempt seller, for example, the impact of the arrangements on the customer's contract with an authorised retailer. The Department has provided some examples of matters the AER should consider when establishing what conditions should apply to alternative selling arrangements, particularly where solar panels are involved.

- Customers should be made aware that they are entering into a contract with an exempt seller and the implications of this *before* they provide explicit informed consent to the alternative selling arrangements. In particular, customers should be aware that, in the event of a dispute with the alternative seller, they may not have access to their jurisdictional energy Ombudsman. This will enable customers to make an informed decision regarding whether they are willing to enter into arrangements with an exempt seller.

### **Victorian arrangements**

The Department notes that the AER's proposed approach in its issues paper is supported by the regulatory framework in the NERL, which provides the AER with enforcement and compliance powers to ensure that exempt sellers comply with their obligations under the NERL and the AER's exempt seller guideline.

In Victoria, exemptions from the requirement to hold a retail licence under the *Electricity Industry Act 2000* and the *Gas Industry Act 2001* are provided by Order in Council, administered by the Department. The General Exemption Order (GEO) under section 17 of the *Electricity Industry Act 2000* provides classes of arrangements where on-selling in embedded networks benefits from an exemption, and therefore does not require a license issued by the Essential Services Commission Victoria (ESCV).

While the Department may agree with the approach taken by the AER in its issues paper, these arrangements may not be appropriate in Victoria under its current framework. Therefore, if an alternative energy seller contacts the Department seeking an exemption from the requirement to hold a retail licence for energy selling in Victoria, they will not automatically receive an exemption on the basis that they may be eligible for an exemption under the NECF.

### **What, if any, other alternative energy selling business models are stakeholders aware of (apart from those listed in section 3), and what future business models do stakeholders consider could emerge?**

The alternative selling models outlined generally focus on scenarios including a customer, a third party who would engage in on-selling of a portion of the customer's electricity needs via alternative arrangements, and a traditional authorised electricity retailer (who would continue to provide electricity should the alternative arrangements fail) i.e. three parties in all.

There is the potential for additional parties to become involved in the on-selling of electricity, for example where the third party which leases and sells electricity from rooftop solar panels employs a separate agency to undertake its customer billing services i.e. four parties in all. Care would need to be taken under such arrangements that all parties are covered either under the retail exemption or via contractual arrangements with the customer. This is particularly important to ensure adequate consumer protections are maintained and that responsible parties can be clearly identified and appropriate compliance measures undertaken in the event part of the supply chain fails.

The models outlined also focus on scenarios where the alternative energy seller installs a new system and then sells the electricity generated by this system. In future companies may also wish to target customers with



existing installations, offering for example to maintain or upgrade these systems. Care would need to be taken under such scenarios to ensure that customers understand the potential implications for their current tariffs, particularly feed-in tariff arrangements, so that they do not inadvertently become ineligible.

**What are stakeholders' views on the AER's proposed policy considerations set out in section 3 of the issues paper?**

The Department broadly supports the AER's policy principles.

**What are stakeholders' views on the AER's proposed approach to granting exemptions and authorisations for alternative energy sellers in section 4? What, if any, other considerations should the AER take into account to regulate the sale of energy under alternative energy selling models?**

The Department broadly agrees with the AER's proposed approach to regulating alternative energy sellers.

In its paper, the AER notes that it will not create a deemed or registrable class for exemptions at this time. The Department strongly believes that all alternative sellers who do not fit within the current registrable or deemed classes should be required to obtain an individual exemption until the AER has received further information regarding the implications of these activities on customers. Not only does this enable the AER to consider the merits of each application, including undertaking public consultation, but it allows the AER to tailor exemption conditions to the relevant activities.

Victoria has seen the evolution of on-selling arrangements resulting from the GEO, and expects that alternative selling arrangements will also evolve and grow over time. It is important that the AER remains flexible in its approach to regulating these entities. Once these alternative selling models are better understood there may still be potential to move to a deemed or registrable class at a later date.

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

*Consumer Protections*

The Department believes that for the foreseeable future the AER should approach each individual exemption on a case by case basis rather than having a set of pre-determined conditions which would apply to all alternative selling arrangements or broad categories of arrangements. As the impact of alternative selling models is relatively unknown at this point in the development of the market, the AER should ensure that it reviews and amends individual conditions as appropriate and should the need arise.

The Department also believes that the AER should approach each individual exemption from the principle that alternative sellers must comply with all consumer protections available to customers under the NECF, except those provisions that are inappropriate for the selling model. This way, the AER approaches the setting of conditions by considering what aspects of the NECF should not apply (for example the Retailer of Last Resort and obligation to supply provisions) rather than looking at what may apply. This approach will encourage the application of as many consumer protections as possible and create an understanding with potential alternative sellers that they will be expected to comply with the NECF.

The Department broadly supports the current approach by the AER to apply the consumer protections outlined in the exempt seller guideline where small customers are being supplied by alternative energy sellers.



However, there may be other consumer protections not in the guideline and not in the NECF that could also be applied, as they are specific to the alternative selling arrangements. For example, the alternative seller might be required provide information specific to its activities, and receive the customer's explicit informed consent to the arrangements in the contract.

The Department suggests that the AER commit to reviewing conditions of alternative selling models by a specified date (for example three years) so that it can determine whether its approach under this issues paper is still appropriate. Alternative sellers should be made aware of this review and that there may be changes to their conditions in accordance arising from any findings.

### *Metering*

It is unclear at this point in time what specific metering arrangements will apply under various alternative selling arrangements. The Department considers that the following points should be considered by the AER when assessing individual applications:

- Given that at least some alternative energy sellers are likely to be targeting emerging markets such as rooftop solar and offers may include clauses relating to the treatment of feed-in tariffs, sufficient information should be made available to the customer so they are able to determine what feed-in tariffs will be available to them. In particular the customer should be able to understand whether the alternative selling arrangement involves net or gross metering and whether they are able to retain any feed-in tariff credits.
- The Department envisages that in at least some instances it may be possible for a separate metering device to be attached to the embedded generator so that total consumption can be read. This could be used to measure the total generation from the system, for example rooftop solar panels. A separate market compliant meter could then be retained to measure imports to and exports to the actual electricity grid. Care would need to be taken to ensure that adequate customer protections are in place for the non-market meter, for example in relation to meter testing, availability of meter readings and the ability to query meter readings.

### *Potential Impact on Supply Tariffs and Arrangements with Chosen Retailer*

The issues paper notes on page 12 that under the circumstances described 'the sale of energy is an add-on, or supplementary service'. It further notes that 'in this case, the customer's relationship with its chosen retailer is not affected by its relationship with the alternative energy seller.'

The Department believes that, in at least some instances, the alternative selling arrangement may in fact impact on the customer's existing arrangements with their chosen retailer. For example, if the alternative selling arrangement involves the installation of rooftop solar, the customer may find that this impacts on the range of available network tariffs and tariff structures which are available to them. This may in turn impact on the range of offers available from their chosen retailer. The new tariffs may well be equally beneficial or even more beneficial than the customer's current arrangement, however, it is important that the customer be provided with information on potential impacts upfront so they are able to make an informed decision.

Similarly a customer may currently have a dedicated load in place, for example for slab heating or hot water system which may be associated with a dedicated off-peak tariff. Depending on the alternative selling model



proposed, the customer may or may not be able to retain a dedicated load. Again, customers should be provided with sufficient information upfront so that they can assess whether they would prefer to remain on their current arrangement or would in fact benefit from a change to an alternative on-selling model.

#### *Comparison with Authorised Retail Offers*

The Department understands that in at least some instances the alternative offer will be based on selling the electricity generated by the embedded generator (for example rooftop solar system) at a rate which is lower than the rate generally available from authorised retailers in the market. The Department suggests some form of mechanism which would allow the customer to make a meaningful comparison between the alternative offers and generally available rates from authorised retailers would be useful.

The ability for customers to make meaningful comparisons may be particularly problematic where the alternative offer is provided as a flat rate whilst the supply rate offered by the electricity may be multi-part (i.e. with both peak and off-peak components and potentially also a shoulder component).

The Department also understands that the relative benefits of entering into such an on-selling contract may depend on the proportion of electricity the customer uses within the home and the portion that is exported to the grid i.e. it will largely depend on individual usage patterns and the size of the system installed. If the system size is well matched to internal home consumption then the customer may benefit from an arrangement where they pay less for the electricity generated from their panels than the retail rate for purchasing from the electricity grid. If the system is not appropriately sized, for example an oversized system is installed, then customers might still need to pay for all generation but might only use a small percentage of this generation in the home and would export the rest. In this instance the rate paid for the electricity generated by the alternative seller may be higher than the feed-in tariff available to the customer for exports to the grid.

#### *Payment Options and Timely Billing*

The issues paper suggests that customers who enter into an alternative selling arrangement would be provided with protections allowing them at least 13 business days to pay a bill. The Department believes that more comprehensive protections available to other electricity and gas customers, such as the ability to enter into payment arrangements, should also be available to these customers. Whilst the customer, under the alternative selling arrangements envisaged in the issues paper, would still have an authorised retailer, depending on the size of the generation system installed, the payment to the alternative seller may be quite sizeable and may indeed constitute the largest part of the customer's overall energy costs.

Clarity should also be provided on what occurs when the alternative energy seller does not issue bills in a timely manner.

#### *System Failures or Temporary Disruptions*

The Department envisages that there will be at least some scenarios where rooftop panels contracted under an alternative selling arrangement may cease generating. For example, there may be a general outage or voltage variations in an area which leads to systems automatically switching off for safety reasons. In some instances the system inverter may be intelligent enough to switch the system back on once the issue has been rectified. The Department understands that in other instances the inverter may not automatically reset and the customer may therefore not be aware that the panels are no longer generating for some time. Clarification would need to



be provided on who is responsible in such instances for ensuring that the generators continue to operate as foreseen and for any potential breach of contractual conditions under the alternative selling arrangement that may arise.

Similarly there may be instances where customers wish to undertake renovations which could involve temporarily relocating or removing rooftop panels. Care would need to be taken that customers are not prevented from undertaking reasonable modifications to their premises as part of their alternative selling arrangements.

#### *Change of Owner at Property*

The issues paper notes that alternative selling arrangements often involve medium to long term contracts. In some instances this may include the upfront provision of a system in return for an agreement by the customer to purchase energy from the alternative energy seller for the lifetime of the contract. The use of medium to long term contracts means there are likely to be more instances of customers moving house before a contract expires. Care would therefore need to be taken that contracts include adequate provisions to deal with such scenarios, who retains ownership of the panels, whether ownership can be transferred to the new property owner and under what circumstances, whether early termination of contracts would be allowed and under what circumstances etc.

#### *Customer Understanding of Dispute Resolution Arrangements*

Customers may be confused about the concept of an exemption and national retailer authorisation, and therefore may not understand that they are entering into arrangements that may not be within the jurisdiction of their jurisdictional energy Ombudsman scheme. However, if they are advised of this consequence before entering into the arrangements, they can make an informed decision regarding whether lack of access to the energy Ombudsman is something that they can accept. It also minimises any surprises for the customer if they do find themselves in a dispute and unable to access the Ombudsman.

Therefore, the Department believes that the customer should be advised as part of pre-contractual marketing they are entering into an arrangement with an entity that does not hold a national retailer authorisation, and as a result the customer may not have access to an energy Ombudsman scheme in the event of a dispute. This may also be reflected in their contract with the energy seller. Further, the customer should be provided with information on external dispute resolution services that are available to them if not the Ombudsman. The customer must give explicit informed consent to these arrangements.

Thank you for considering the Department's comments on these matters. Should you have any questions in relation to this submission, please contact Katharina Benzler, Senior Policy Officer, Department of State Development at [katharina.benzler@dsdbi.vic.gov.au](mailto:katharina.benzler@dsdbi.vic.gov.au).

Yours sincerely,



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