



9 November 2015

Ms Sarah Proudfoot
General Manager—Retail Markets
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Via email: AERExemptions@aer.gov.au

Draft AER (Retail) Exempt Selling Guideline Version 4

Dear Ms Proudfoot

The ENA welcomes the opportunity to make a submission to the AER in response to the *Draft AER (Retail) Exempt Selling Guideline Version 4* published by the AER on 25 September 2015.

The Energy Networks Association is the national industry association representing the businesses operating Australia's electricity transmission and distribution and gas distribution networks. Member businesses provide energy to virtually every household and business in Australia. ENA members own assets valued at over \$100 billion in energy network infrastructure.

The ENA is of the view that the exemptions framework is currently challenged by the emergence of new technologies. The ENA believes that a holistic review of the National Energy Customer Framework (NECF) is required. It is anticipated that the COAG Energy Council will be taking an overview assessing whether the NECF requires enhancement in light of the ongoing change taking place in competitive energy markets particularly as it regards the introduction of new technologies, products and services during late 2015 and 2016.

The ENA notes that the AEMC proposes refocusing its market strategic priority to refocus on technology and new business models. The AEMC plans to investigate how regulation needs to evolve to permit innovation in new products and services to the benefit of consumers, without eroding the customer outcomes that regulation intends. The AEMC also plans to investigate network evolution for example: what will be the effect of technology on network investment and operation over the medium term? Will current regulation be appropriate for the business model evolution that may be required?

While understanding the drivers behind the current review in this particular case, the ENA believes that the AER and the AEMC should aim to address issues arising from strategic market developments impacts on frameworks in a coordinated and collaborative fashion with the COAG Energy Council review processes, in preference to undertaking a more piecemeal approach to revising various guidelines and reviews.

The ENA does not support a full authorisation framework for innovative business models. Instead the ENA supports a light-handed, competitively neutral regulatory framework.

ENA responses to questions for stakeholders

With regard to the questions posed in the *Notice of Draft Instrument: Amendments to the AER (Retail Exempt Selling Guideline)* on page 6 the ENA's positions are as follows:

Should the electricity tariff cap that exempt sellers may charge small customers (i.e. relevant retailer standing offer) be retained? If not, how else can small customer tariffs be kept to a reasonable level?

ENA would support the retention of the electricity tariff cap as a reasonable protection for affected consumers.

As tariffs become more cost reflective, time varying, demand or capacity based or where the embedded network owner is connecting to the grid on one voltage and selling on another, then direct comparisons to a grid side retail standing offer may be more complex. ENA also notes that standing offers are higher than market prices and it is not uncommon for 20-40% discounts to be provided on energy rates from the standing offer. As noted by the AER, the relevant retail standing offer is a price cap, embedded network operators may charge their customers less than the price cap.

Are there any potential barriers to exempt sellers offering a customer a minimum of two payment methods (see new Condition clause 3(2)).

ENA members are not directly affected by this. However, in general ENA supports in principle customers being offered a minimum of two payment methods.

Under Condition 11 - Reconnection of supply - the AER has removed the term 'as soon as practicable' in relation to the requirement that an exempt seller must reconnect the premises. We seek views on whether the obligation should be time limited and if yes, what limits should be imposed.

The ENA believes that a time limit should be imposed and that this time limit should align with that required of authorised retailers.

We are proposing to require exempt sellers to claim government rebates or concessions on behalf of customers who cannot claim the rebates or concessions themselves. In the current guideline exempt sellers must use best endeavours only. We are interested to understand what this change would mean for exempt sellers—in particular, what costs exempt sellers would incur in making the claims. We are also interested in whether stakeholders see other possible solutions to this issue.

The ENA would support a requirement that exempt sellers claim government rebates or concessions on behalf of customers who cannot claim the rebates or concessions themselves.

There should be consideration given to the issue of customer awareness in claiming rebates. ENA would support a positive obligation in terms of information provision or help from an exempt seller who becomes aware that a customer is eligible to claim government rebates or concessions as opposed to the exempt seller merely not hindering a customer's attempt to establish eligibility.

We are proposing a new class for power purchase agreement (PPA) providers who sell to business customers or residential customers where the PPA has particular characteristics, including limiting it to residential agreements of no more than a 10 year term.

a) Is this term appropriate? Do you consider a different term would be better?

The ENA supports this proposed timeframe.

b) Are there any other criteria the AER should include for eligibility for this class?

The AER has applied only two conditions to the new R8 exemption, information provision and exemption limited to sale of electricity through power purchase agreements.

The ENA recommend that the information provisions be expanded to cover clear termination, clarity of input costs to the consumer and obligation to maintain and provide distributors with generation infrastructure records. These conditions are equally applicable and should be applied to residential, small business and commercial customer's agreements under R8.

The AER notes that the transparency/clarity of the termination and buyout clauses and the contract term have been the main concerns in the individual exemptions. The ENA suggest that a new sub clause be added to Condition 20 on information provision to ensure that all exemptions under R8 provide clear exit calculations and terms, buy out arrangements and novation clauses.

A further new sub clause should be added under Condition 20 to make all input costs clear to the customer. As drafted the power purchase agreement is agnostic to the infrastructure provided for generation e.g. solar, solar/battery, small wind turbine, diesel generator etc. The inputs to solar or wind turbines being sun/wind are free to the consumer. This may not be the case for a battery charge/fill to allow a later release of energy or for diesel to allow generation. These types of input costs to the customer should be made clear in the contract. It may be a concern if a customer paid for a battery fill at peak prices from the authorised retailer then the exempt retailer released the battery and the customer received less benefit, this should be made clear in the information provided.

ENA recommend that Condition 19 and Condition 20 be enhanced to include a condition that the exempt person maintain records of the type and size of generation capability at the premise (including battery), Condition 19, and that this information be provided to the grid side distributor when altering the connection arrangements, Condition 20. This will assist the distributor in understanding the level of generation capacity on its network for planning purposes and in the case of the Victorian distributors will allow them to comply with their obligations to keep a register of embedded generators and to notify these customers every 3 years of their obligation to maintain equipment and meet safety regulations. ENA consider that these additional requirements are important given the discussion at the AER forum that there had been one battery caused house fire and meet AEMO's concerns about this type of information also being available to them for their statutory planning obligations.

c) Should the class be extended to cover other types of alternative energy seller?

The conditions placed on R8 for residential customers are also applicable protections for small business customers who may not have the same level of resources available to review and fully understand contracts as large commercial customers. The residential conditional use of R8 should include small business customers.

As drafted R8 only applies to customers who are directly connected to the grid. These customer issues are equally applicable to PPA's offered to child customers within an embedded network.

Yours sincerely,



John Bradley
Chief Executive Officer