



Ethnic Communities' Council of NSW Inc.

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Comment on *New Products and Services in the Electricity Market*

The Ethnic Communities Council of NSW (ECC NSW) welcomes the opportunity to provide comment on the COAG Energy Council paper *New Products and Services in the Electricity Market* published in December 2014.¹

Since its formation 40 years ago the ECC NSW has been the peak body for culturally and linguistically diverse (CALD) community members and representative organisations in NSW. The Ethnic Communities' Council of NSW main activities are advocacy, education and community development. It is a member of the Federation of Ethnic Communities Councils of Australia (FECCA) and the Energy Advocacy role represents FECCA in the NEM.

The ECC NSW thanks the COAG Energy Council through its Energy Market Reform Group for the opportunity to contribute to the discussion on its Issues paper. The nature of the energy market is changing very rapidly, particularly in relation to solar PV generation, storage and smart appliances/power use technologies and services. The ECC NSW recognises that traditionally a variety of CALD communities have had high take-up rates with respect to new and innovative technology, both as customers and as instigators and developers of such technology. It is in this context, therefore, that we would want to see appropriate protections in place to protect customers whilst not stifling emerging business opportunities.

The Issues Paper presented a number of questions for consideration:

- *Do the three markets (electricity supply, demand management and energy information markets) cover all new products and services that could be offered to small electricity customers?*
- *Are the principles proposed² useful for identifying whether a product or service should be drawn into the National Electricity Law and Rules?*

¹ COAG Energy Council, Energy Market Reform Group, Issues paper, *New Products and Services in the Electricity Market*, December 2014

² *ibid* page 7

1. *it affects the operation of or confidence in the wholesale electricity market;*
2. *it is a monopoly activity; or*
3. *it affects power system quality, safety, reliability and security (referred to as 'power system operations')*

- *Is the principle 'that energy specific consumer protections are required when a product or service impacts on a customer's access to a reliable, safe and high quality supply of energy on fair and reasonable terms' useful for identifying whether a product or service should be drawn into the NECF?*
- *Are there other products and services emerging in the electricity supply market (beyond distributed generation and storage) that we should consider in our advice to Ministers?*
- *Do you agree that the National Electricity Law and Rules can accommodate new products and services in this market, through the framework for authorising and exempting generators and network operators?*
- *Is the NECF flexible enough to allow the AER to ensure customers of alternative energy sellers have appropriate consumer protections?*
- *Will off-grid energy supply arrangements create specific consumer protection issues if this becomes a mass-market option?*
- *Are specific consumer protections required to help consumers make informed decisions about going off-grid?*
- *Are there other consumer protection issues we should consider in this market? If so, how could these be addressed?*
- *Are there other products and services emerging in the demand management market that we should consider in our advice to Ministers?*
- *Could direct load control products create material risks for power system operations? If so, how could these risks be managed within the regulatory framework?*
- *Are there similar implications for power system operations where distributed generation and storage are being controlled remotely?*
- *Should parties offering direct load control products to customers have similar obligations to retailers and distributors regarding informed consent?*
- *If so, how could these obligations be created for parties not covered by the National Electricity Retail Law?*
- *Do the National Electricity Rules protect metering data sufficiently where it is held by market participants?*
- *Is the Privacy Act sufficient to protect metering data where it is used by parties outside the electricity market?*
- *How can the privacy expectations of customers and the need for market participants to access data best be managed concurrently?*

The ECC NSW would like to comment on several of these questions.

1. Do the three markets (electricity supply, demand management and energy information markets) cover all new products and services that could be offered to small electricity customers?

It would at first glance seem useful to separate the range of new products into categories such as the three above. However, even at this early stage of the process of change there is considerable blurring of the boundaries between the three markets - electricity supply, demand management and energy information.

For example, Reposit Power is introducing a range of energy products and services that provide a technical platform for 'prosumers'.³ These will potentially provide a

³ Communication from COO of Reposit Power at COAG Energy Council consultation on New Products and Services in the Electricity Market, March 2015

range of services on both sides of the meter, controlling on-site generation and storage, providing demand side management from storage which is dispatchable and integrated into the network, and involvement by 'prosumers' in the provision of energy to the market.

It will be difficult to ascertain where emerging energy technology and services will lead and in which direction, and indeed, in which combinations of the three (or more) markets listed. It will be important to maintain flexibility within any framework and regulation, particularly if a product or service is to be allocated to one market or another and so incurs different regulatory and consumer protection regimes in so doing. The ongoing complex discussion about the differences in the provision of consumer protection (NERL vs ACL) for both regulated and exempt sellers (a reasonably straightforward distinction in the provision of energy to consumers) informs the difficulty of any exploration of the complexities of multiple new energy products and services.

Comments:

1. The ECC NSW agrees in principle that the categories of: electricity supply market, demand management market and energy information market, are useful as an initial basis for categorising new products and services in the energy market.

2. Existing products and services, as well as those currently being developed, will not fall neatly into one or other of the markets and so any regulation or consumer protection will need to be consistent across all market categories.

2. Is the principle 'that energy specific consumer protections are required when a product or service impacts on a customer's access to a reliable, safe and high quality supply of energy on fair and reasonable terms' useful for identifying whether a product or service should be drawn into the NECF?

The ECC NSW believes that all residential and small business consumers, not just those belonging to CALD communities, need to be adequately protected under either Retail Law or under Australian Consumer Law (ACL). We note that the solar PV industry has developed an ACCC-approved Code of Conduct to address consumer protection issues in relation to standards of service and product quality ⁴ and that there are moves for this to be extended to alternative energy sellers. We are most supportive of this initiative by the Clean Energy Council.

The ECC NSW also notes that some exempt sellers are already voluntary members of the NSW Energy and Water Ombudsman (EWON). We would encourage this process as a positive move in the protection of consumers in the alternative energy selling business.

The National Energy Consumer Framework (NECF) comes into effect when there is a sale of energy, and most new products and services in the energy sector are not

⁴ ACCC authorisation A91365/66, 25 September 2013

specifically covered by the NECF. How new products and services, some of which will involve the sale of energy and may in fact be the only source of energy to a consumer (off-grid generation and storage, either by consumer choice or network rationalisation, for example), can be included in the NECF will be an important investigation and the principle is a good starting point. Whether this may involve a full retail authorisation process, or a mix of ACL and additional regulation under the exemption process will require careful consideration and wide consultation at all levels of the energy market.

Hardship programs can involve considerable cost to an energy seller, and generally would not be required as part of an alternative energy sellers' business model (eg a solar PPA arrangement), given the nature of their business and customer base. It would become important, however, if an exempt energy seller's customer base included significant numbers of customers who would have traditionally had access to a hardship program.

Comments:

3. *The ECC NSW agrees that energy specific consumer protections under NECF should be required when a product or service impacts on a customer's access to a reliable, safe and high quality supply of energy on fair and reasonable terms.*
4. *The ECC NSW suggests that the COAG Energy Council ask the AER to investigate the possibility of requiring exempt sellers to be members of a relevant Ombudsman scheme.*
5. *The ECC NSW suggests that the exempt energy selling sector will need to be monitored closely to ascertain whether hardship programs should be a potential requirement of any exemption process.*

3. Are there other products and services emerging in any of the three markets identified that we should consider in our advice to Ministers?

As indicated earlier, there will be combinations of the three markets and these will have synergies/consequences not yet realised.

4. Do you agree that the National Electricity Law and Rules can accommodate new products and services in this market, through the framework for authorising and exempting generators and network operators?

The ECC NSW notes that generally the AER framework for regulating alternative energy sellers to date has been effective.

While CALD communities generally reflect wider society in their take-up of innovative energy selling opportunities, both as consumers and as instigators, there are additional areas that need to be considered.

Some CALD communities have adopted innovative energy initiatives enthusiastically, especially when their involvement has been accompanied by a program of in-language, bi-lingual educator supported information.⁵

There are also considerable CALD community issues with respect to consumer understanding, consultation and support, again alleviated in great part by the use of culturally appropriate, in-language information, supported by bi-lingual educators that come from the relevant communities.⁶

National Energy Retail Law (Retail Law) would seem to indicate that retailer authorisation should be held by an energy seller when it is the major provider of energy from the NEM to a customer.

There is a key difference between the impacts of disconnection from the grid and disconnection from solar PV/storage systems and other innovative energy management systems,⁷ and so we would be of the opinion that current (non grid-disconnect) innovative energy products and services would be best regulated by being exempt sellers. This could easily change, particularly when a product or service impacts on a customer's access to a reliable, safe and high quality supply of energy on fair and reasonable terms, as discussed earlier, and so should fall under the jurisdiction of the NECF.

Difficulties in interpretation arise when an exempt seller becomes the major provider of energy (through the NEM or off-NEM) to a customer, or the customer goes off-grid or both, thereby blurring the differences between the two under the Retail Law. At the stage when either of these two things happen, we believe that the exempt business could fall within the Retail Law and the supplier become a regulated supplier rather than an exempt supplier.

Comments:

6. *If significant numbers of consumers take up offers that include disconnection from the grid from innovative sellers who are not authorised suppliers, the AER should initiate steps to include these suppliers in a regulated process under Retail Law.*

5. Will off-grid energy supply arrangements create specific consumer protection issues if this becomes a mass-market option?

⁵ ECC NSW, Saving Water in Asian Restaurants Project (SWARP), Best Energy Smart Tips project (BEST) among others.

⁶ ECC NSW, guidelines for *Engaging CALD energy consumers - what works*, draft 2015

⁷ *ibid* page 3

Are specific consumer protections required to help consumers make informed decisions about going off-grid? Are there other consumer protection issues we should consider in this market? If so, how could these be addressed?

In general, the ECC NSW supports exemption for innovative or alternative energy selling, managing or storing models. The ECC NSW supports the AER's conditions for solar PPA individual exemptions, notably:

- *clearly inform its customers that the seller is not an authorised retailer*
- *explain that it is not bound by obligations under Retail Law that apply to an authorised seller, but is bound by all other relevant consumer protection legislation*
- *refrain from registering in the wholesale market for the purposes of purchasing energy*
- *not be the financially responsible retailer for the premises*⁸

We recognise that if there is a large consumer take-up of off-grid and/or storage proposals provided by exempt sellers then the AER may need to put in place processes requiring such sellers to have approved hardship plans and membership of any relevant Ombudsman processes, as well as reviewing Retail Law to see whether these sellers should be incorporated within the Retail Law.

CALD communities have particular issues relating to communication, understanding and the concept of 'informed consent'. Research undertaken within CALD communities indicates there are major difficulties with CALD consumers' (both domestic and small business) understanding of their bills and contracts.⁹ Lack of trust in energy product and service offers, difficulties with understanding and comparing competing offers and particular issues in newly arrived and refugee communities all present special difficulties for some CALD consumers. 'Informed consent' implies understanding, and specific communications strategies are required in CALD communities if effective communication is to be achieved.¹⁰

In our view, a trigger point would be reached when there were considerable numbers of consumers 'opting out' of NEM grid connections, and hence protection under NERL.

Comments:

7. *The ECC NSW suggests that 'informed decisions' have particular dimensions with respect to CALD communities and that guidelines for communication about off-grid possibilities include CALD specific methodologies and processes.*

8. *The ECC NSW would support a full review of the National Electricity Law and Retail Law in the event that considerable numbers of customers begin to disconnect from the NEM supported grid.*

⁸ AER Industry Guidance: *solar power purchase agreements*, July 2014 p2

⁹ ECC research conducted under the *Business Energy Smart Tips (BEST) 2014/5* and *Experiences of Energy Consumption for CALD communities 2012* projects

¹⁰ See *Engaging CALD Consumers - what works, 2015*, ECC NSW draft guidelines for energy retailers and distributors

If you require additional information please contact Iain Maitland, Energy Advocate on 02 9319 0288 or email energy2@eccnsw.org.au .

Sincerely yours,

Mary Karras

A handwritten signature in black ink, appearing to read 'M. Karras', is positioned above a thin red horizontal line. To the left of the signature, a vertical black line extends downwards from the top of the signature area.

Executive Officer
Ethnic Communities' Council of NSW Inc.