

COAG Energy Council Secretariat
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Submitted online at energycouncil@industry.gov.au

18 March 2015

Dear COAG Energy Council,

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RE: New Products and Services in the Electricity Market

Thank you for the opportunity to respond to the Energy Market Reform Working Group (EMRWG) Consultation Paper on New Products and Services in the Electricity Market.

As the peak non-government representative body for the health and community services sector in South Australia, the South Australian Council of Social Service (SACOSS) believes in justice, opportunity and shared wealth for all South Australians. SACOSS has a long-standing interest in the delivery of essential services and cautiously welcomes the innovation of new products and services that may, ultimately, provide better cost outcomes for consumers.

SACOSS recognises and supports the need for the energy market to innovate and believes there is enormous potential for consumers to positively engage with new technologies. The role of the consumer in the energy market is changing from passive end-user to active market participant and this presents new challenges. There is a well-recognised need to ensure that the consumer protection framework is fit for purpose for the new technologies emerging in the energy market.

SACOSS is of the view that implementation of strong consumer protections that safeguard consumer interests but also encourage consumer confidence and motivation to engage with market offerings is critically important. We believe this balance is achievable but also understand how complex this balance is when regulating a market without knowing what the market can and will provide in the future. As such we welcome this initial work by the Energy Council and the related work of the AER. This submission has addressed several of the consumer protection related questions posed in the EMRWG Paper.

We thank you in advance for your consideration of our comments. If you have any questions relating to the above, please contact SACOSS Senior Policy Officer, Jo De Silva on 8305 4211 or via jo@sacoss.org.au.

Yours sincerely,



Ross Womersley
Executive Director

Consultation question:

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?

SACOSS is of the view that the current authorisation and exemption framework does not have the flexibility to adequately regulate energy sellers who do not operate under a 'typical energy retailer model'¹. SACOSS acknowledges the challenge in designing a regulatory system that keeps pace with the advances in new technologies, promotes market entry for new and innovative businesses and preserves a strong focus on consumer protections.

SACOSS notes the work the Australian Energy Regulator (AER) is progressing to reform the current authorisation and exemption framework and how it is applied to the business models of innovative energy sellers. The AER has proposed two options and SACOSS in principle supports option two – Individual exemptions with robust conditions, but **only where** the robust conditions include strong consumer protections.

In conjunction with option two SACOSS is of the view that there must also be a review of exemption conditions to monitor and assess the ongoing validity of the exemption. The AER suggests a number of trigger points for the review including when the exempt seller reaches a certain number of customers. In principle this trigger seems reasonable however a concern with this approach occurs if the energy seller is able to create a new entity before it reaches the customer base threshold, in order to avoid further regulatory obligations. We note for example that major retailers are already able to obtain retail exemptions (with lesser conditions than their retail license) for wholly-owned subsidiaries².

SACOSS believes a potential solution for this scenario consideration should be given to the merits of a tiered licensing regime such as how the Essential Services Commission of South Australia (ESCOSA) regulates licensed water operators. The ESCOSA model has a tiered approach where operators are licensed within three classes according to customer volume and different consumer protections are applied that reflect the scale and scope of business operations³.

A similar regime could be implemented for exempt energy sellers with a tiered approach for all operators based on the number of customers and a sliding scale of conditions, including consumer protections that must be met, applied to each tier. SACOSS believes an approach based on customer volume, rather than a time triggered review provides better opportunity for consumer protections to keep pace with emerging product and service innovations.

An alternative approach to reforming the exemption framework is to implement legislation that requires all innovative energy suppliers to obtain explicit informed consent (opt-in) as described in the National Energy Retail Law, from their customers to ensure consumers are actively engaged and informed about their rights and responsibilities.

¹ A model where the retailer buys electricity from the wholesale market and sells it to customers via the distribution network, AER 2013, Regulation

² For Example: AGL Energy Services Pty Ltd trading as AGL Solar has a retail exemption but is a wholly owned subsidiary of AGL Energy Limited (<http://www.aer.gov.au/node/27633>) Origin Energy Retail No. 2 Pty Ltd holds an exemption but is a subsidiary of Origin Energy Limited.

³ Licence classes: Major – more than 50,000 customers, Intermediate – 500 to 10,000 customers and Minor – less than 500 customers
<http://www.escosa.sa.gov.au/library/140407-Water-RetailCode-FactSheet-MinorIntermediateRetailers.pdf>

SACOSS is of the view that this approach at a minimum must include providing the consumer with information that is easily accessible, written in plain language and specifies the following:

- a) a clear description of the service /product;
- b) terms of the contract, including contract length and price and,
- c) clear and visible information regarding the consumer protections associated with the purchase/contract and contact details for the relevant energy ombudsman office.

SACOSS notes a similar approach has been implemented by the telecommunications industry with the introduction of the Critical Information Summary⁴.

Consultation question:

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

SACOSS believes a mass off-grid market option will produce specific consumer protection issues for those consumers relying on grid-supplied electricity. The greatest concern relates to the costs that on-grid consumers will pay as network businesses seek to maintain regulated revenues from a decreasing customer base. Severance (2011, p.13) defines this scenario as the Death Spiral:

“The unspoken fear of all utility managers is the “Death Spiral Scenario”. In this nightmare, a utility commits to build new equipment. However, when electric rates are raised to pay for the new plant, the rate shock moves customers to cut their kWh use. The utility then raises its rates even higher – causing a further spiral as customers cut their use even more... In the final stages of that death spiral, the more affluent customers drastically cut purchases by implementing efficiency and on-site power, but the poorest customers have been unable to finance such measures...”⁵

There is evidence that trends consistent with what a death spiral might look like are already appearing in Australia. In particular the South Australian electricity market has experienced a clear decline in residential consumption from the grid after 2010, decreasing around 20% from its peak by 2014⁶ and a dramatic increase in solar PV systems connected to the grid around the same time⁷. Evidence of businesses asking for an increased rate of return to compensate for the risks of a death spiral occurring are also appearing. For example SA Power Networks in their 2015 – 2020 Regulatory Proposal, has stated:

“...new “disruptive technologies” raise fundamental questions about what the network will look like in the future and whether it will be possible to obtain an adequate return on investments. Now is not the time to be reducing risk adjusted returns because there is a real risk that if the return on equity is substantially reduced, insufficient investment incentives will exist affecting the level of financial resilience and service that customers expect from their electricity distributor”⁸.

and

⁴ ACMA 2014, Critical Information Summaries for telecommunications consumers, <http://acma.gov.au/theACMA/critical-information-summaries-for-telecommunications-consumers>

⁵ Severance, C. 2011, “A practical, affordable (and least business risk) plan to achieve 80% clean electricity by 2035”, *The Electricity Journal*, 24(6): 8-26.

⁶ Source: SA Power Networks (2014) Regulatory Proposal 2015-20 at <http://www.aer.gov.au/node/20941> p. 54.

⁷ Source: South Australia Power Networks RIN data published by the AER

⁸ SAPN Regulatory Proposal 2015-20 Section 26 “Weighted average cost of capital” p. 303

“Electricity industry commentators often refer to a ‘tipping point’ or ‘point of inflection’ where the regulated pricing system becomes unsustainable and an endless spiral of disconnections commences. If a significant number of customers find distributed generation and storage more cost effective than staying connected, the prices for those who remain connected would rise to recover the costs of the infrastructure no longer used for the customers who had disconnected. As the prices are raised, it creates the incentive for another group of customers to disconnect and so on until there is not a sufficient customer base to be able to cover the costs of the whole system.”⁹

Ultimately, the Death Spiral can exacerbate the distributional impacts of electricity policy. If the winners are those who leave the grid and the losers are those left behind then a defining attribute will be access to capital. As has been the case with solar to date, options for renters are likely to be particularly limited.

Consultation question:

Are specific consumer protections required to help consumers make informed decisions about going off-grid?

SACOSS is of the view that consumers who choose to go off-grid should also be in a position to assume all of the risk associated with this decision. However it is reasonable to expect that these consumers will need regulatory protection in order to make informed decisions regarding disconnecting from grid-supplied electricity.

Consumer protections for off-grid arrangements should include information in plain language that explains:

- a) consumer rights and in particular clear explanations on the demarcations of the National Energy Customer Framework (NECF) and the Australian Consumer Law and
- b) charges and processes associated with reconnecting to the grid

In addition SACOSS is of the view that businesses that sell and/or lease products and services for off-grid purposes should have an obligation to obtain explicit informed consent (opt-in) as described in the National Energy Retail Law¹⁰, to ensure consumers are actively engaged and informed about their rights and responsibilities.

In reverse, protection for consumers who may remain on the grid against subsidising those who return to the grid also need to be considered. SACOSS is of the view that off-grid consumers who access grid supplied electricity should pay a fair price for this service. The details of how this is managed and how much consumers should pay requires further deliberation and SACOSS is interested in participating in future dialogue on this topic.

Another group of consumers to consider in off-grid protections are those consumers who are moved to off-grid supply by their energy provider. SACOSS acknowledges that this may occur in remote locations where it is deemed more cost effective to supply electricity to consumers via off-grid methods.

Currently in South Australia there are several remote communities who already have electricity supplied via non-NEM licensed distributors¹¹. These communities have access to consumer

⁹ SAPN (2014) p. 308

¹⁰ National Energy Retail Law (South Australia) 2011

¹¹ Department of State Development 2014, Remote Areas Supply Scheme, <https://www.sa.gov.au/topics/water-energy-and-environment/energy/energy-supply-and-sources/remote-areas-energy-supplies-scheme>

protections through the jurisdictional contract arrangements as set out in the Department of State Developments Customer Connection and Supply Contract¹². Whilst these protections appear to be less comprehensive than those offered through the NECF, SACOSS believes a harmonisation between jurisdictional and national frameworks drawing on best practice is a favourable option for future off-grid communities. Ultimately a robust framework that supports all consumers is the best possible outcome.

SACOSS is also of the view that regulatory arrangements need to ensure that distribution businesses have an obligation to reconnect off-grid consumers to the NEM should a consumer require it. SACOSS is concerned that without the relevant regulatory requirement, consumers could be left without an essential service if a distribution business chooses not to reconnect off-grid consumers.

¹² Department of State Development 2012, Remote Areas Energy Supplies (RAES) Customer Connection and Supply Contract, Doc Ref: A312368, <https://www.sa.gov.au/topics/water-energy-and-environment/energy/energy-supply-and-sources/remote-areas-energy-supplies-scheme>