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Submission to the Issues paper: *Regulating innovative energy selling business models under the National Energy Retail Law*

Thank you for the opportunity to provide our perspectives on the issues paper “*Regulating innovative energy selling business models under the National Energy Retail Law*”. IES has a number of comments in relation to the paper and these are presented in the attached submission.

Intelligent Energy Systems (IES) is a leading provider of software and data solutions in the Australian electricity and gas markets. Our applications and systems are licensed to a range of market participants including generators, retailers, and network businesses.

I note that in the AER’s 2013/14 Annual Report the strategic priorities for the Australian energy industry include building consumer confidence in markets with the ultimate goal being to empower customers. IES believes that the introduction of new technologies will help fulfil these priorities through facilitating competition and improving customer choice. A regulatory environment that features limited additional compliance requirements will ensure that new technology solutions can compete and provide a long term energy supply solution for the benefit of consumers.

Please contact me should you require any clarifications or further information regarding this submission.

Yours sincerely

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Assumed Business Model

For the purposes of this submission IES bases its discussion on one supply model for alternative energy sellers. We assume that the alternative energy sellers own the PV and/or storage systems located at a customer's premises and on-sell the generated electricity to that customer. The sellers do not operate in the wholesale market. This model ensures that there is a role for the incumbent retailer, the distribution network, and the technology provider. Under this model the alternative energy seller will not become the financially responsible retailer at the site. This means that the incumbent retailer will continue to be registered as the financially responsible retailer and will supply any electricity that isn't generated locally. The customer is still able to choose its authorised retailer as per the principles of the Retail Law.

Regulatory Certainty

IES supports a consistent and stable regulatory framework for alternative energy sellers. Alternative energy sellers typically invest in technology infrastructure on behalf of the customer. The costs of these investments are recouped from consumers over an extended period of time. It is therefore important that regulatory certainty exists for the proponents of storage and PV systems and that the arrangements in the AER's statement of approach of July 2nd 2014 be preserved.

National Energy Retail Objective

The regulatory framework for retail energy markets should encourage the use of new technology by consumers. This approach is closely aligned with the National Energy Retail Objective. This objective is to "...*promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.*" New technologies such as photovoltaic (PV) and battery systems can help achieve this objective. Some of these benefits of these PV and storage systems include:

1. Providing consumers with greater choice in their energy supply by promoting competition;
2. Reducing demand peaks that may occur in the local distribution system and avoiding the costs of network augmentation;
3. Easing wholesale prices and demand at the market node during times of market volatility;
4. Providing greater visibility to consumers of their energy use and enabling them to make informed and efficient decisions as active participants in the market; and
5. Enabling consumers to lower their energy costs by shifting their consumption profiles.

Consumer Focus

IES notes that while it is important the AER establishes a consistent regulatory environment for participants in the retail energy sector, its priority should remain the needs of the consumer. Empowering consumers to have access to new technologies is fully consistent with this priority. We note that many of the benefits of new technology for consumers were identified in a speech by the Acting Chairman of the AER on August 6, 2014. *“The integration of even small players into the electricity market...helps customers make informed decisions regarding investment in appliances, energy efficiency, and local generation and storage, ensuring that energy efficiency and generation technologies can compete on a level playing field, and preventing unnecessary waste and stranding of existing assets.”*

Regulatory Compliance Costs

This existing regulatory framework has successfully minimised the compliance obligations for providers of PV systems to small customers. It is important that future technologies aren't burdened with an excessively onerous compliance regime. Many new technology providers do not have the resources to comply with the significant and extensive requirements that exist for retailer authorisation applicants. These pose substantial barriers to entry for alternative energy sellers. Under the Retail Law (and Retailer Authorisation Guidelines) applicants for authorisations are required to have sufficient organisational, technical, and financial capacity. These requirements were not designed for technology providers but were intended for organisations who have the capacity to;

1. participate in the wholesale electricity market and purchase financial products such as derivatives;
2. provide efficiency driven mass market services such as billing and call centre operations;
3. pass through network charges and any government scheme levies; and
4. provide a customer hardship program, life support, and potentially a retailer of last resort service.

None of these functions form a central part of the business operations of an alternative energy seller. The seller often invests upfront in the technology and is therefore a capital intensive business which may require financing. It has the responsibility of procuring the most efficient and viable technology so that it can offer a customer the best available solution. It also must have expertise in installing systems at customers' premises that comply with applicable safety standards. These are very different priorities to those of a mass market energy retailer.

Responses to the issues for stakeholder consideration

1. What difference, if any, should storage and/or other emerging technologies have on how the AER proposes to regulate SPPA and other alternative energy selling models?

The AER's issues paper identifies the take up of energy storage systems as a reason for changing the current compliance regime for alternative energy sellers. IES does not believe that this creates a need for the AER to introduce additional regulations for these sellers. Up until now the existing framework has successfully enabled individual exemptions to be granted to these sellers in accordance of section 110 of the Retail Law and the AER's statement of approach published on July 2nd 2014. The installation of a storage system at a customer's premises doesn't mean that an alternative energy seller will become the primary supplier of electricity. It makes no difference if a kilowatt-hour of electricity is used by the customer as soon as it is generated or if it is stored in an on-site battery and then used an hour, day, or week later. The presence of a storage system does not impact the total quantity of electricity consumed by the customer. Utilisation of a storage system will simply mean the electricity from the PV system will be consumed at some time after it is generated. There is no clear need for additional regulatory requirements for situations where an alternative energy seller intends to provide an energy storage service.

The individual exemption framework has to date provided an adequate means for new technology providers to grow their businesses and should remain unchanged. As stated by Mr Andrew Reeves, Acting AER Chairman on August 6th 2014: "*We cannot regulate innovation. We can however create an environment in which innovation may flourish.*" We also note that the AER's existing approach to regulating alternative energy sellers has taken into account the AEMC's Power of Choice review and the principles that the AEMC identified for developing a compliance regime for such energy service providers.

We note that the emergence of cost-effective PV and storage technologies has provided potential challenges to current business and regulatory models of retailers and distribution businesses. To the extent that this occurs, it should be dealt with within that regulatory regime, not by stifling innovation and competition in retailing.

2. What are stakeholders' views on the AER's proposed options?

IES does not consider that there is a current need for changes to the regulatory framework for alternative energy sellers. The existing framework is functioning adequately and enabling new electricity supply technologies to be introduced into the marketplace.

Option 1 from the issues paper is not considered necessary and would inhibit the introduction of new energy technologies. This option would require an alternative energy seller who provides

storage systems to apply for a retailer authorisation. Alternative energy sellers operate under different models from the energy supply model that was intended when the Retail Law was written. These differences were identified in the *Regulatory Compliance Costs* section of this submission. This section also highlights the additional regulatory burden that would be imposed on alternative energy sellers if they were required to obtain an authorisation. Furthermore the customer will have an authorised retailer acting as the financially responsible retailer at the connection point to a site. This incumbent retailer already provides customer hardship, life support, and retailer of last resort services. It is important to avoid duplication.

Option 2 is broadly supported by IES to the extent that it doesn't differ greatly from the individual exemption framework. However when the alternative energy seller reaches a market share it shouldn't have conditions imposed on it that would 'mirror' those of a standard retailer. IES notes that the conditions proposed in Attachment A of the AER's issues paper are the same as the conditions in the AER's Exempt Selling Guideline. These apply (in whole or in part) for a deemed or registrable exemption. The activities of deemed and registrable exemption holders are different to those of alternative energy sellers. IES has provided a list of possible conditions for alternative energy sellers in its response to question 4 of the issues paper.

We also note that it is not clear whether the AER issues paper is suggesting that under option 2 the conditions imposed should match a standard retailer or those that may currently exist in the Exempt Selling Guideline for a deemed or registrable exemption holder. IES is of the view that neither set of obligations are applicable to the activities of alternative energy sellers.

3. Are there other options to which the AER should have regard?

IES supports the existing framework which enables individual exemptions to be obtained by alternative energy sellers. This is consistent with option 2 but without a trigger based on market share or infrastructure capacity. Any additional conditions placed on alternative energy sellers should be limited. Our response to question 4 of the issues paper provides some examples of these conditions.

4. In relation to Option 2 (exemption, rather than authorisation), what, if any, conditions should be placed on an individual exemption for an alternative energy seller?

IES considers that limited conditions should be placed on alternative energy sellers who have an individual exemption. Some examples of these conditions are:

- A written communication to the customer that the technology provider is not the customer's authorised retailer and therefore does not provide hardship, life support, or retailer of last resort services.
- A written communication to the customer that any dispute mechanism will be facilitated under Australian Consumer Law, not the National Energy Retail Law. In

this respect the customer should be made aware that they may be entering into a contract that is of a longer period than a traditional energy supply contract, with different conditions (eg. such as those for early exits).

- A commitment that the price of electricity from the PV and storage system will not exceed the gazetted retail tariff for that region.
- If operating under an individual exemption, the technology provider should not have access to the wholesale market. A separate entity should act as the financially responsible retailer at the connection point to the site.

We note that some of these conditions are the same or similar to those in the AER's statement of approach published July 2nd, 2014.

5. Should the AER include a 'trigger point' for review of individual cases if it proceeds with Option 2?

IES doesn't consider that trigger points based on market share or infrastructure capacity should be introduced. It is also important that the regulatory approach follow a principles based approach rather than a 'destination' based approach. Storage is in its infancy as a viable alternative for energy supply and such arbitrary thresholds are likely to obstruct its take up. The nature of an alternative energy seller's business model is substantially different from a standard retailer. In particular the technology provider invests in infrastructure upfront and requires a long term certainty for the revenue it will receive from its customer. The customer should have only one point of contact for hardship, life support, and retailer of last resort issues to avoid duplication. When an alternative energy seller's market share reaches a certain point it should not be considered necessary for the compliance requirements to 'mirror' that of an existing retailer, or a deemed or registrable exemption holder.

We also note that triggers based on market share or infrastructure capacity can be circumvented by the creation of multiple corporate entities. However a review by the AER of the individual exemption requirements under a fixed timeframe (such as five to ten years) may be a reasonable alternative. IES stresses that the timeframe for any regulatory review should be in the long term. This gives technology providers a degree of certainty when investing upfront in new technology infrastructure.