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4 October 2016

Stand-alone energy systems consultation paper

The Australian Energy Council (AEC) welcomes the opportunity to make a submission to the COAG Energy Council's (the Energy Council) consultation paper on Stand-alone energy systems in the Electricity Market.

The AEC is the industry body representing 21 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The AEC acknowledges that stand-alone energy systems may become more prevalent in the future given the transition away from the traditional centralised electricity supply model to an environment where customers have greater control over the delivery and consumption of electricity. Given this transition in the electricity sector, we support the Energy Council examining the issues related to stand-alone systems.

Regulatory frameworks

The AEC understands that stand-alone energy systems are not subject to the existing national regulatory frameworks, with the exception of Queensland that applies the National Energy Retail Law. However, we submit that regulatory reform or the introduction of new regulation should only occur where there is a recognised market failure, or a demonstrable problem that may be effectively resolved through regulatory intervention. To date, the AEC does not believe that either of these preconditions exists to warrant further regulations with respect to stand-alone energy systems.

It seems that the existing regulatory framework does not prevent stand-alone energy systems to be developed to replace existing grid-extensions. The set of consumer protections that would apply in these circumstances will depend on who initiates the opting out of the National Electricity Market (NEM).

The AEC considers that should a stand-alone system be initiated for consumers who have not actively opted out of access to the NEM, then it is appropriate that additional regulation be considered. These protections must be determined in line with the principles of consumer protections discussed below. Importantly, passive consumers must not be disadvantaged by a stand-alone system of this nature. Where Distribution Network Service Providers either initiate or undertake stand-alone energy services then it is acceptable that the National Electricity Law, and relevant ring-fencing guidelines, should apply to these activities as regulated entities.

Alternatively, customers that shift from the grid to stand-alone energy systems are making an active choice to leave the regulated energy system; this involves both an assessment of the benefits to do this and an assumption of risk on their behalf. The AEC considers that existing energy regulations, which have been designed on the basis that customers ought to be able to access an essential energy supply, should not apply to customers that have chosen to actively leave, or not connect with the grid.

Whilst the AEC appreciates that the Energy Council is seeking to understand the potential issues that may arise with stand-alone energy systems, it is recommended that a more empirical approach is adopted in regulating these issues if they arise in due course. In the meantime, the Energy Council should closely monitor the development of this market, to understand whether any specific consumer issues arise and whether they are

being properly dealt with under the Australian Consumer Law (ACL). This will ensure that unnecessary regulation does not burden the development of stand-alone energy systems.

Aspects of the current regulatory arrangements provide protections to the development of stand-alone systems. For instance, the ACL includes core consumer protection provisions including: prohibiting misleading or deceptive conduct; unconscionable conduct; and unfair terms in standard form consumer contracts. These provisions are broad enough to allow the development of contract terms that are fit-for-purpose for a stand-alone energy system. In contrast, the National Energy Customer Framework (NECF) specifies the terms and conditions that must be included in a standard form energy consumer contract. For example under Rule 24(1) of the National Energy Retail Rules, a retailer must issue a bill to a small customer at least once every three months unless the retailer has explicit and informed consent to bill another frequency from the retailer's usual recurrent period. In the case of stand-alone energy systems, mandating the billing cycle through regulation puts in place an unnecessary regulatory burden, with no benefit to the consumer. Most likely, it would increase the cost of delivering the product, which impedes effective competition. That said, there may be unidentified issues with the current customer protections arrangements to ensure that the basis, on whereby stand-alone system customers will have access to energy, is made clear including arrangements for life support customers and dispute resolution. Therefore, it is necessary to make effective use of existing consumer protection regimes (such as the ACL, jurisdictional fair trading laws and product and safety standards) and only supplement these with potential additional regulation where a genuine gap is identified.

Consumer Protection

We understand that there are a variety of consumer protection issues related to stand-alone energy systems, including the lack of retailer choice, which could lock in customers within a microgrid to a single, vertically integrated energy service provider.

It is noted that when the NECF was being developed, it was assumed that most customers would purchase a supply of electricity generated and transported in the interconnected electricity system, under a retail contract. This will continue to be an option, however with the emergence of new technologies, customers are being offered alternatives to traditional grid supply. In regards to stand-alone energy systems, the issue of consumer protection is complex, in particular assessing the provisions of the National Energy Retail Regulation (NERR) framework and ACL in relation to stand-alone energy systems. We consider that that the consumer protections in the NERL are no longer fit for purpose for all energy consumers.

The AEC considers that consumers with greater control over their energy usage and generation (such as 'prosumers') do not need the same protections as a consumer solely reliant on the grid to provide access to energy as an essential service. Changes may need to be made to accommodate stand-alone energy systems with consideration given to the different commercial and business models.

The AEC recommends that if regulatory reform is required then the following consumer protection principles should be considered:

1. Nationally consistent: Consumer protection regime should apply uniformly across NEM jurisdictions as this provides the least cost and most effective way to protect consumers, provides certainty and minimises regulatory burden. This would apply only if further regulation is deemed to be warranted through identification of market failure or demonstrable problems targeted through specific regulation.
2. Disclosure and informed consent granted: Consumers should be provided with all relevant facts, implications and consequences to make an informed decision about their energy supply arrangements.
3. Affordability: Every consumer should be given the opportunity to engage and obtain the benefits of a competitive market. Service providers, governments and the community sector have a shared responsibility to ensure customers in financial hardship not only stay connected to essential energy supply but to also remove any specific barriers that hinders these customers from actively participating in the market. However, where

customers leave then energy grid and its associated essential service consumer protections, then customers are doing so by choice; this represents a voluntary assumption of both the risks and benefits of that decision.

4. Contestability & competitive neutrality: Where possible competitive markets should be relied upon to facilitate the advancement of consumer preferences and technology. Where regulation is used to provide protection it should not advantage one form of service provision, business model or technology over others. Ring fencing should ensure no regulatory advantage is bestowed on any market participant.

5. Remove duplication: Energy specific consumer protection regulation should be eliminated where general consumer laws provide consumer protection (e.g.: Australia Competition and Consumer Commission, State based Fair Trading).

Given that stand-alone energy systems are still an emerging 'product/service' the AEC considers that the development of regulation at this stage would be premature. The current ACL framework and common law should be sufficient to address stand-alone energy system issues including consumer protection, reliability and service.

Any questions about our submission should be addressed to Carly Weate, Policy Adviser by email to carly.weate@energycouncil.com.au or by telephone on (03) 9205 3107.

Yours sincerely,



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